

SCHEDULES

SCHEDULE 5

Article 77.

TRANSITORY PROVISIONS

Constitution of appeal tribunals

1. In relation to any time before the coming into operation of Article 8 so far as it relates to appeals under Article 13, section 39 of the Administration Act (constitution of social security appeal tribunals) shall have effect as if—

- (a) in subsection (1), for the words “and two other persons” there were substituted the words “sitting either alone or with one or two other persons”;
- (b) in subsection (2), for the words “The members other than the chairman” there were substituted the words “Any members other than the chairman”; and
- (c) for subsection (5) there were substituted the following subsection—

“(5) Where the appeal tribunal hearing a case consists of more than one member it shall, if practicable, include at least one member who is of the same sex as the claimant.”.

Claims no longer subsisting after decisions made

2. In relation to any time before the coming into operation of Article 9(2), section 19 of the Administration Act (decision of adjudication officer) shall have effect as if after subsection (6) there were added the following subsection—

“(7) Where at any time a claim for a benefit to which section 18 above applies is decided by an adjudication officer or by a social security appeal tribunal on a reference by such an officer—

- (a) the claim shall not be regarded as subsisting after that time; and
- (b) accordingly, the claimant shall not (without making a further claim) be entitled to the benefit on the basis of circumstances not obtaining at that time.”.

Appeals to tribunals

3.—(1) In relation to appeals brought after the coming into operation of Article 77 and any time before the coming into operation of Article 13(8)(b), section 20 of the Administration Act (appeal to social security appeal tribunal) shall have effect as if after subsection (7) there were added the following subsection—

“(8) In deciding an appeal under this section, a social security appeal tribunal shall not take into account any circumstances not obtaining at the time when the decision appealed against was made.”.

(2) In relation to such appeals and any such time, section 31 of that Act (appeals following reviews) shall have effect as if after subsection (6) there were added the following subsection—

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“(7) The tribunal shall not take into account any circumstances not obtaining at the time when the decision appealed against was made.”.

Appeals to Commissioners

4.—(1) In relation to any time before the coming into operation of Article 15(7), section 21 of the Administration Act (appeal from social security appeal tribunal to Commissioner) shall have effect as if—

(a) after subsection (6) there were inserted the following subsection—

“(6A) If each of the principal parties to the appeal expresses the view that the decision appealed against was erroneous in point of law, the Commissioner may set aside the decision and refer the case to a tribunal with directions for its determination.

In this subsection “principal parties” means—

- (a) in a case relating to statutory sick pay or statutory maternity pay, the persons mentioned in subsection (2)(a), (b) and (c) above;
- (b) in any other case—
 - (i) the persons mentioned in subsection (3)(a) and (b) above; and
 - (ii) where applicable, the person mentioned in subsection (3)(d) above and such a person as is first mentioned in subsection (4) above.”; and

(b) in subsection (8), for the words “subsection (7)(b) above” there were substituted the words “subsection (6A) or (7)(b) above”.

(2) In relation to any such time, section 32 of that Act (appeal from social security appeal tribunals or disability appeal tribunals to Commissioners and appeals from Commissioners), shall have effect as if, in subsection (4), for the words “(7) to (10) of section 21” there were substituted the words “(6A) to (10) of section 21”.

(3) In relation to any such time, section 46 of that Act (appeal etc. on question of law to Commissioner) shall have effect as if—

(a) after subsection (4) there were inserted the following subsection—

“(4A) If each of the principal parties to the appeal expresses the view that the decision appealed against was erroneous in point of law, the Commissioner may set aside the decision and refer the case to a medical appeal tribunal with directions for its determination.

In this subsection “principal parties” means the persons mentioned in subsection (1)(a) and (b) above and the Department.”; and

(b) in subsection (6), for the words “subsection (5) above” there were substituted the words “subsection (4A) or (5) above”.

Suspension of benefit in prescribed circumstances

5.—(1) In relation to any time before the coming into operation of Article 21(2)(d), section 5(1) of the Administration Act (regulations about claims for and payments of benefit) shall have effect as if after paragraph (o) there were inserted the following paragraph—

“(oo) for suspending payment, in whole or in part, where an appeal is pending against the decision given in a different case by a social security appeal tribunal, a Commissioner or a court, and it appears to the Department that if the appeal were to be determined in a particular way an issue would arise whether the award in the case itself ought to be revised;”.

(2) In relation to any such time, paragraph 10(2) of Schedule 1 to the Jobseekers Order (supplementary provisions) shall have effect as if for the words “5(1)(o)” there were substituted the words “5(1)(o) or (oo)”.

Restrictions on entitlement in certain cases of error

6. In relation to applications under section 24(1) or 28 of the Administration Act made after the coming into operation of Article 77 and any time before the coming into operation of Article 27, section 67 of that Act (determination of questions on review following erroneous decisions) shall have effect as if after subsection (1) there were inserted the following subsection—

“(1A) Where the review under section 23(2) or 28 above was carried out on an application under section 24(1) above or (as the case may be) section 28, it is immaterial for the purposes of subsection (1) above whether the application was made before or after the date of the relevant determination.”.

Reviews of social fund determinations

7. In relation to any time before the coming into operation of Article 38, section 64 of the Administration Act (reviews) shall have effect as if—

(a) after paragraph (a) of subsection (1) there were inserted the following paragraph—

“(aa) may review such a determination on the ground that the person who applied for the payment to which the determination relates misrepresented, or failed to disclose, any material fact; and”;

(b) after subsection (5) there were inserted the following subsection—

“(5A) In making a determination on a review a social fund officer or a social fund inspector need not consider—

- (a) in the case of a determination on a review under subsection (1)(a) above, any issue that is not raised by the application;
- (b) in the case of a determination on a review under subsection (1)(aa) above, any issue that is not raised by the material fact;
- (c) in the case of a determination on a review under subsection (1)(b) above, any issue that did not cause him to carry out the review.”;

(c) for subsection (6) there were substituted the following subsection—

“(6) In determining a question on a review under subsection (1)(a) or (b) above a social fund officer or social fund inspector shall, subject to subsection (7) below, have regard to whichever of the following are applicable, namely—

- (a) all the circumstances of the case and, in particular, the criteria specified in paragraphs (a) to (e) of subsection (1) of section 136 of the Contributions and Benefits Act;
 - (b) the criteria mentioned in paragraphs (a) and (b) of subsection (1A) of that section; and
 - (c) the criterion specified in directions issued by the Department under that subsection and the criteria mentioned in paragraph (b) of that subsection.”;
- (d) in subsection (7) of that section, after the word “review” there were inserted the words “under subsection (1)(a) or (b) above”;
- (e) after that subsection there were inserted the following subsections—

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“(7A) In making a determination on a review under subsection (1)(aa) above a social fund officer or a social fund inspector shall—

- (a) act in accordance with any general directions issued by the Department; and
- (b) take account of any general guidance issued by the Department.

(7B) Any reference in subsection (5A), (6), (7) or (7A) above to a determination on a review under a particular provision of subsection (1) above shall be construed, in relation to a social fund inspector, as a reference to a determination on a further review of a determination which has been reviewed under that provision.”;

- (f) in subsection (9), for the words “this section”, in the first place where they occur, there were substituted the words “subsection (1)(a) or (b) above”; and
- (g) in subsection (10), after the word “determination”, in the first place where it occurs, there were inserted the words “which has been reviewed under subsection (1)(a) or (b) above”.

Overpayments out of the social fund

8. In relation to any time before the coming into operation of Articles 10, 11 and 38, section 69ZA of the Administration Act (overpayments out of the social fund) shall have effect as if for subsection (2) there were substituted the following subsection—

“(2) Section 69 above as it so applies shall have effect as if the following provisions were omitted, namely—

- (a) in paragraph (a) of subsection (5) and subsection (5A), the words “reversed or varied on an appeal or”;
- (b) in paragraph (b) of subsection (5), the words “appeal or”; and
- (c) subsections (7) and (10A).”.

Child support: appeals to tribunals

9. In relation to appeals brought after the coming into operation of Article 77 and any time before the coming into operation of Article 42, Article 22 of the Child Support Order (appeals) shall have effect as if after paragraph (4) there were added the following paragraph—

“(5) In deciding an appeal under this Article, the tribunal shall not take into account any circumstances not obtaining at the time when the decision appealed against was made.”.