
STATUTORY RULES OF NORTHERN IRELAND

1995 No. 293

**The Social Security (Adjudication)
Regulations (Northern Ireland) 1995**

PART IV

PROVISIONS RELATING TO PARTICULAR BENEFITS OR PROCEDURES

SECTION C —

REVIEW OF DECISIONS

Date from which revised decision has effect on a review in specified circumstances

57.—(1) In the case of a review to which either paragraph (2) or (3) applies, the decision given shall have effect from the date from which the decision being reviewed had effect or from such earlier date from which the authority which gave the decision being reviewed could have awarded benefit had that authority taken account of the evidence mentioned in paragraph (2) or not overlooked or misconstrued some provision or determination as mentioned in paragraph (3).

(2) This paragraph applies to a review of any decision under sections 23(1)(a), 28(2)(a) and (4) and 33(1)(a) of the Administration Act, whether that decision was made before or after the coming into operation of this regulation, where the reviewing authority, that is to say the adjudication officer or, as the case may be, the appeal tribunal, is satisfied that—

- (a) the evidence upon which it is relying to revise the decision under review is specific evidence which was directly relevant to the determination of the claim or question and which the authority which was then determining the claim or question had before it at the time of making the decision under review but failed to take into account;
- (b) the evidence upon which it is relying to revise the decision under review is a document or other record containing such evidence which at the time of making the submission to the authority which was then to determine the claim or question, the officer of the Department who made the submission had in his possession but failed to submit; or
- (c) the evidence upon which it is relying to revise the decision under review did not exist and could not have been obtained at that time, but was produced to an officer of the Department or to the authority which made the decision as soon as reasonably practicable after it became available to the claimant.

(3) Subject to paragraph (4), this paragraph applies to a review of any decision under sections 23(2) and 28(2)(d) of the Administration Act, whether that decision was made before or after the coming into operation of this regulation, where the adjudication officer or, as the case may be, the appeal tribunal, is satisfied that the adjudication officer, in giving the decision under review, overlooked or misconstrued either—

- (a) some statutory provision; or
- (b) a determination of a Commissioner or the court,

which, had he taken it properly into account, would have resulted in a higher award of benefit or, where no award was made, an award of benefit.

(4) A determination on a claim or question shall not be revised on review, in consequence of a determination by a Commissioner in another case that a decision of an adjudicating authority was erroneous in point of law, under section 23(2) or 28(2)(d) of the Administration Act so as to make benefit payable or to increase the amount of benefit payable in respect of that claim or question for any period prior to the date of that Commissioner's determination.

(5) In this regulation—

“a Commissioner” includes a Commissioner within the meaning of section 191 of the Social Security Administration Act 1992(1);

“the court” has the same meaning as it has in section 66 of the Administration Act.

(6) The provisions of this Section, including regulation 63 (review in income support cases), are subject to the provisions of this regulation.

Review of decisions in cases to which section 67(1) of the Administration Act applies

58. In any case to which section 67(1) of the Administration Act applies, the decision given on review shall have effect from the date of the relevant determination within the meaning of that subsection whether the decision which is being reviewed was made before, on or after 9th March 1992.

Review of decisions involving payment or increase of benefit other than industrial injuries benefit, income support, family credit or disability working allowance

59.—(1) Where on a review a decision relating to benefit other than industrial injuries benefit, income support, family credit or disability working allowance is revised so as to make benefit payable, or to increase the rate of benefit, then, subject to paragraphs (2) to (10), the decision given on the review shall have effect from such date as may be specified in the decision, being a date not earlier than—

- (a) in the case of unemployment benefit and maternity allowance, the date of the application for the review;
- (b) in the case of incapacity benefit or severe disablement allowance, the date two weeks before the date of the application for the review;
- (c) in the case of widow's benefit under sections 36 to 39 of the Contributions and Benefits Act (and benefit under section 78(9) of that Act corresponding to a widow's pension or a widowed mother's allowance), an invalid care allowance, a child's special allowance, a guardian's allowance, a retirement pension of any category or an age addition, the date three months before the date of the application for the review;
- (d) in the case of child benefit, the date 12 months before the beginning of the week in which the application for review is made; and
- (e) in the case of attendance allowance or disability living allowance, where the decision is reviewed—
 - (i) under section 28(1) of the Administration Act and head (ii) does not apply, the date of claim,
 - (ii) under section 28(1) of that Act as applied by sections 29(2) and 33(8) of that Act, three months before the date of the application for review made under section 28(2) or (4) which preceded the application for review under section 28(1), or

(iii) under section 28(2) or (4) or section 33 of that Act, three months before the date of the application for review.

(2) Where, in any case to which paragraph (1) applies (other than child benefit), a claimant proves—

- (a) that on a date earlier than the date on which the application for review was made, he was (apart from satisfying the condition of making a claim for it) entitled to benefit; and
- (b) that throughout the period between the earlier date and the date on which the application for review was made, there was good cause for delay in making the application,

subject to paragraphs (3) to (5) he shall not be disqualified by virtue of paragraph (1) for receiving any benefit to which he would have been entitled in respect of that period.

(3) Except in a case to which regulation 57(2), (3) or (4) or regulation 58 applies, no sum on account of benefit shall, in a case to which paragraph (2) applies, be paid to any person in respect of any part of the period referred to in sub-paragraph (b) of that paragraph earlier than 12 months before the date on which the application for review was made, so however that the foregoing provisions of this paragraph shall not apply to—

- (a) any case where it is certified in the decision on review that the original decision was revised by reason only of one or more of the following—
 - (i) a matter specified in section 15(1)(b) of the Administration Act, or
 - (ii) a matter relating to the number of days in respect of which the claimant has been entitled or deemed to be entitled to short-term incapacity benefit; or
- (b) the review of a decision disallowing a claim for sickness benefit, invalidity benefit, severe disablement allowance or unemployment benefit in so far as it is a decision which, under the provisions of regulations made under section 5(1)(f, of the Administration Act, has been treated as a decision disallowing a further claim for any of those benefits.

(4) In any case, other than a case to which paragraph (5) applies, in which the review to which paragraphs (1) to (3) relate was based on a relevant change of circumstances subsequent to the date from which the original decision took effect, it shall not have effect for any period before the date declared by the adjudicating authority making the review to be the date on which that change took place.

(5) In any case relating to attendance allowance or disability living allowance in which the review to which paragraphs (1) to (4) relate was based on a relevant change of circumstances to which this paragraph applies subsequent to the date from which the original decision took effect, the decision on review shall not have effect for any period before—

- (a) the date declared by the adjudicating authority making the review to be the date on which that change took place;
- (b) where more than one change has taken place between the date from which the original decision took effect and the date of the application for review, the date declared by the adjudicating authority making the review to be the date on which the most recent change took place; or
- (c) the date three months before the date of the application for review, whichever is the later.

(6) Paragraph (5) applies only to a relevant change of circumstances which relates to a deterioration in a person's physical or mental condition.

(7) Where a claim for attendance allowance or disability living allowance has been refused and either—

- (a) an application for review of the decision is made under section 28(1) of the Administration Act; or

(b) a further claim is made within the period prescribed under section 28(1) and is treated as an application for review in accordance with section 28(13) of that Act, then, if that review results in an award of attendance allowance or disability living allowance, the decision on review shall have effect from the date specified in paragraph (8).

(8) The date referred to in paragraph (7) is such date as may be specified in the decision on review being a date not later than—

- (a) in the case of attendance allowance, six months; and
- (b) in the case of disability living allowance, three months,

after the date on which the application for review or the further claim is made, whichever is appropriate.

(9) For the purposes of this regulation, where a decision is reviewed at the instance of an adjudication officer under section 23(1) or (2) of the Administration Act, the date on which the adjudication officer decided to make that review shall be deemed to be the date of the application for the review.

(10) In any case to which paragraph (1) applies, the decision on review shall not in any event have effect for any period before the date on which the original decision took effect or would have taken effect if any award had been made.

Review of decisions involving payment or increase of industrial injuries benefit

60.—(1) Except in a case to which regulation 57(2), (3) or (4) or regulation 58 applies, where on a review a decision of an adjudication officer, an appeal tribunal or a Commissioner is revised so as to make industrial injuries benefit payable or to increase the rate of such benefit, the decision given on review shall, subject to paragraph (2) have effect as from the date of the application for the review or from such earlier date as appears to the person or tribunal determining the review to be reasonable in the circumstances.

(2) Paragraph (1)—

- (a) shall not permit benefit to become payable from a date earlier than the earliest date from which it could have been payable had it been awarded in the decision being reviewed; or
- (b) in the case of a review made by virtue of section 58(5)(a) of the Administration Act (which permits the review of a decision given before the passing of the National Insurance Act 1972(2) that a claimant was not entitled to industrial death benefit), shall not permit benefit to become payable for any period earlier than 9th August 1972.

(3) Where a decision is reviewed at the instance of an adjudication officer under section 23(1) or (2) of the Administration Act, the date on which it was first decided by the adjudication officer that the decision should be reviewed shall be treated for the purposes of this regulation as the date of the application for review.

Review of medical decisions on grounds of ignorance of, or mistake as to, a material fact

61. A decision of an adjudicating medical authority or a medical appeal tribunal may not be reviewed under section 45(1) of the Administration Act unless the adjudicating medical authority is satisfied as mentioned in that subsection by fresh evidence.

Period to be taken into account by assessments revised on ground of unforeseen aggravation

62. On a review of any assessment under section 45(4) of the Administration Act the period to be taken into account by any revised assessment may include any period not exceeding three months before—

- (a) where the review is in consequence of an application by the claimant, or a person acting on his behalf, the date of that application; or
- (b) where the review is in consequence of a decision on a recrudescence question, within the meaning of regulation 43(3)(b), given under regulation 7(4) of the Prescribed Diseases Regulations, the date of the claim on which that decision was given,

if the medical board is satisfied that throughout that period there has been unforeseen aggravation of the results of the relevant injury since the making of the assessment under review.

Review in income support cases

63.—(1) Except in a case to which regulation 57(2), (3) or (4) or regulation 58 applies, a determination on a claim or question relating to income support shall not be revised on review under section 23 of the Administration Act so as to make income support payable or to increase the amount of income support payable in respect of—

- (a) any period which falls more than 12 months before the date on which the review was requested or, where no request is made, the date of the review; or
- (b) any past period which falls within the period of 12 months mentioned in sub-paragraph (a) and has been followed by termination or interruption of entitlement to income support and—
 - (i) the total amount of the increase would be &5 or less, or
 - (ii) the grounds for review are a material fact or relevant change of circumstances of which the claimant was aware but of which he previously failed to furnish information to the Department.

(2) Section 139 of the Administration Act shall not apply to any award of income support in force in favour of a person where there is applicable to that person—

- (a) any amount determined in accordance with regulation 17(2) to (7) of the Income Support Regulations(3);
- (b) any protected sum determined in accordance with Schedule 3A(4) or 3B(5) to those regulations; or
- (c) any transitional addition, personal expenses addition or special transitional addition applicable under Part III of the Income Support (Transitional) Regulations(6).

(3) Where section 139 of the Administration Act does not apply to an award of income support by virtue of paragraph (2), that award may be reviewed by an adjudication officer or, on a reference by him, by an appeal tribunal for the sole purpose of giving effect to any change made by an order under section 132 of that Act.

(3) Paragraphs (2) to (7) were added by regulation 2 of S.R. 1988 No. 193 and amended by regulation 4(a) of S.R. 1989 No. 395 and paragraph 6(4) of Schedule 2 to S.R. 1993 No. 149; paragraph (6A) was inserted by regulation 4(b) of S.R. 1989 No. 395

(4) Schedule 3A was inserted by paragraph 16 of Schedule 1 to S.R. 1988 No. 318 and amended by regulation 17 of S.R. 1988 No. 431, regulation 7 of, and paragraph 11 of Schedule 1 to, S.R. 1989 No. 139, regulation 8 of S.R. 1989 No. 395, regulation 17(b) of S.R. 1990 No. 131, regulation 14(b) of S.R. 1991 No. 338 and regulation 3(3) of S.R. 1992 No. 284

(5) Schedule 3B was inserted by regulation 10 of, and paragraph 18 of Schedule 1 to, S.R. 1989 No. 139 and amended by regulation 9 of S.R. 1989 No. 395, regulation 18 of S.R. 1990 No. 131, regulation 15(b) of S.R. 1991 No. 338 and regulation 3(4) of S.R. 1992 No. 284

(6) Relevant amending regulations are S.R. 1988 Nos. 132 and 153, S.R. 1989 Nos. 371 and 485, S.R. 1991 No. 341 and S.R. 1992 No. 284

(4) A determination relating to income support made by an adjudicating authority or a Commissioner shall be reviewed by an adjudication officer or, on a reference by him, by an appeal tribunal where this is necessary to give effect to—

- (a) regulation 22 of the Income Support Regulations (reductions in applicable amounts in certain cases of actual or notional unemployment benefit disqualification);
- (b) a determination given on a question to which regulation 56 (income support and social fund questions not immediately determinable) applies; or
- (c) a change of circumstances to which regulations 14 (reduction and termination of transitional and personal expenses addition) and 15 (special transitional addition) of the Income Support (Transitional) Regulations apply.

(5) Where a claimant in receipt of income support, other than a claimant to whom Part II of Schedule 4 to the Income Support Regulations(7) applies, lives in a nursing home or residential care home and is absent from the home for a period of less than one week, that absence shall not be treated as a relevant change of circumstances for the purposes of section 23(1)(b) and (c) of the Administration Act.

(6) In paragraph (5) “nursing home” and “residential care home” have the same meanings as they have in regulation 19 of the Income Support Regulations(8).

Repayment of student loan not a change of circumstances

64. The repayment of a loan to which regulation 66A of the Income Support Regulations(9) or regulation 42A of the Family Credit (General) Regulations (Northern Ireland) 1987(10) (treatment of student loans) applies shall not be treated as a relevant change of circumstances for the purposes of section 23(1)(b) and (c) of the Administration Act.

Review in family credit cases

65. Where a review under section 23(1)(a) of the Administration Act of a decision relating to family credit arises from a disclosure of a material fact of which the person who claimed family credit was, or could reasonably have been expected to be, aware but of which he previously failed to furnish information to the Department, then where that review would result in either a new award of family credit or an increase in the amount of family credit payable, such new award or increase shall not be payable in respect of any period earlier than 12 months before the date on which that person first furnished that information.

Review in disability working allowance cases

- 66.—(1) Where a claim for disability working allowance has been refused and either—
- (a) an application for review of the decision is made under section 28(1) of the Administration Act; or
 - (b) a further claim is made within the period prescribed under section 28(1) and is treated as an application for review in accordance with section 28(13) of that Act,

then, if that review results in an award of disability working allowance, the decision on review shall have effect from the date on which the application for review or the further claim is made, whichever is appropriate.

(7) Relevant amending regulations are [S.R. 1988 No. 146](#) and [S.R. 1993 No. 149](#)

(8) Relevant amending regulations are [S.R. 1993 Nos. 149](#) and [373](#) and [S.R. 1994 No. 65](#)

(9) Regulation 66A was inserted by regulation 4(7) of [S.R. 1990 No. 297](#) and amended by regulation 8 of [S.R. 1991 No. 46](#) and regulation 10 of [S.R. 1991 No. 338](#)

(10) [S.R. 1987 No. 463](#); regulation 42A was inserted by regulation 2(5) of [S.R. 1990 No. 297](#) and amended by regulation 8 of [S.R. 1991 No. 326](#)

(2) Where a review under section 28(1) or (5)(u) or section 33(3)(u) of the Administration Act of a decision relating to disability working allowance arises from a disclosure of a material fact of which the person who claimed disability working allowance was, or could reasonably have been expected to be, aware but of which he previously failed to furnish information to the Department, then if that review would result in either a new award of disability working allowance or an increase in the amount of disability working allowance payable, the decision on review shall not have effect in respect of any period earlier than 12 months before the date on which that person first furnished that information.

Review in social fund maternity, funeral or heating expenses cases

67. Except in a case to which regulation 57(2), (3) or (4) or regulation 58 applies, a determination on a claim or question relating to maternity or funeral expenses or expenses for heating, which appear to the Department to have been or to be likely to be incurred in cold weather, out of the social fund under Part VIII of the Contributions and Benefits Act and section 64 of the Administration Act shall not be revised on review under sections 23 to 27 and 67 of the Administration Act so as to make such expenses payable or to increase the amount of such expenses payable in respect of a determination of a claim for such expenses made more than 12 months before the date on which the review was requested or, where no request is made, the date of review.