



Social Security Act 1998

1998 CHAPTER 14

PART I

DECISIONS AND APPEALS

CHAPTER II

SOCIAL SECURITY DECISIONS AND APPEALS

Cases of error

27 Restrictions on entitlement to benefit in certain cases of error

- (1) Subject to subsection (2) below, this section applies where—
- (a) the effect of the determination, whenever made, of an appeal to a Commissioner or the court (“the relevant determination”) is that the adjudicating authority’s decision out of which the appeal arose was erroneous in point of law; and
 - (b) after the date of the relevant determination a decision falls to be made by the Secretary of State in accordance with that determination (or would, apart from this section, fall to be so made)—
 - (i) in relation to a claim for benefit;
 - (ii) as to whether to revise, under section 9 above, a decision as to a person’s entitlement to benefit; or
 - (iii) on an application made under section 10 above for a decision as to a person’s entitlement to benefit to be superseded.
- (2) This section does not apply where the decision of the Secretary of State mentioned in subsection (1)(b) above—
- (a) is one which, but for section 25(2) or (3)(a) above, would have been made before the date of the relevant determination; or
 - (b) is one made in pursuance of section 26(3) or (5) above.

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- (3) In so far as the decision relates to a person's entitlement to a benefit in respect of—
- (a) a period before the date of the relevant determination; or
 - (b) in the case of a widow's payment, a death occurring before that date,
- it shall be made as if the adjudicating authority's decision had been found by the Commissioner or court not to have been erroneous in point of law.
- (4) In deciding whether a person is entitled to benefit in a case where his entitlement depends on his having been entitled to the same or some other benefit before attaining a particular age, subsection (3) above shall be disregarded for the purpose only of deciding whether he was so entitled before attaining that age.
- (5) Subsection (1)(a) above shall be read as including a case where—
- (a) the effect of the relevant determination is that part or all of a purported regulation or order is invalid; and
 - (b) the error of law made by the adjudicating authority was to act on the basis that the purported regulation or order (or the part held to be invalid) was valid.
- (6) It is immaterial for the purposes of subsection (1) above—
- (a) where such a decision as is mentioned in paragraph (b)(i) falls to be made, whether the claim was made before or after the date of the relevant determination;
 - (b) where such a decision as is mentioned in paragraph (b)(ii) or (iii) falls to be made on an application under section 9 or (as the case may be) 10 above, whether the application was made before or after that date.
- (7) In this section—
- “adjudicating authority” means—
- (a) the Secretary of State;
 - (b) any former officer, tribunal or body; or
 - (c) any officer, tribunal or body in Northern Ireland corresponding to a former officer, tribunal or body;
- “benefit” means—
- (a) benefit under Parts II to V of the Contributions and Benefits Act, other than Old Cases payments;
 - (b) benefit under Part II of the Social Security Act 1975 (in respect of a period before 1st July 1992 but not before 6th April 1975);
 - (c) benefit under the National Insurance Act 1946 or 1965, or the National Insurance (Industrial Injuries) Act 1946 or 1965 (in respect of a period before 6th April 1975);
 - (d) a jobseeker's allowance;
 - (e) any benefit corresponding to a benefit mentioned in paragraphs (a) to (d) above; and
 - (f) any income-related benefit;
- “the court” means the High Court, the Court of Appeal, the Court of Session, the High Court or Court of Appeal in Northern Ireland, the House of Lords or the Court of Justice of the European Community;
- “former officer, tribunal or body” means any of the following, that is to say—

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- (a) an adjudication officer or, in the case of a decision given on a reference under section 21(2) or 25(1) of the Administration Act, a social security appeal tribunal, a disability appeal tribunal or a medical appeal tribunal;
 - (b) an adjudicating medical practitioner appointed under section 49 of that Act or a specially qualified adjudicating medical practitioner appointed in accordance with regulations under section 62(2) of that Act; or
 - (c) the National Assistance Board, the Supplementary Benefits Commission, the Attendance Allowance Board, a benefit officer, an insurance officer or a supplement officer.
- (8) For the purposes of this section, any reference to entitlement to benefit includes a reference to entitlement—
- (a) to any increase in the rate of a benefit; or
 - (b) to a benefit, or increase of benefit, at a particular rate.
- (9) The date of the relevant determination shall, in prescribed cases, be determined for the purposes of this section in accordance with any regulations made for that purpose.
- (10) Regulations made under subsection (9) above may include provision—
- (a) for a determination of a higher court to be treated as if it had been made on the date of a determination of a lower court or a Commissioner; or
 - (b) for a determination of a lower court or a Commissioner to be treated as if it had been made on the date of a determination of a higher court.