

## SCHEDULE 12

Article 5

### TRANSITIONAL PROVISIONS

1.—(1) In this Schedule, unless the context otherwise requires—

“adjudicating authority” means an adjudication officer, an adjudicating medical practitioner, a specially qualified adjudicating medical practitioner, a medical board or a special medical board;

“appellate authority” means a medical appeal tribunal or a social security appeal tribunal;

“the Adjudication Regulations” means the Social Security (Adjudication) Regulations 1995(1);

“decision”, in relation to any period before 5th July 1999, includes a determination, and “decided” is to be construed accordingly;

“legally qualified panel member” has the same meaning as in the Regulations;

“the Regulations” means the Social Security and Child Support (Decisions and Appeals) Regulations 1999(2); and

“relevant benefit” means any of the benefits mentioned in article 2(1)(b)(i) to (iii) of this Order.

(2) Any reference in paragraphs 6 to 12 of this Schedule to—

(a) an appeal to an appellate authority is to be construed as a reference to an appeal in relation to the decision of an adjudicating authority as respects a relevant benefit; and

(b) a decision of an appellate authority is to be construed as a reference to a decision of such an appeal.

2. Any matter which before 5th July 1999 fell to be decided in relation to a relevant benefit by an adjudicating authority but which has not been decided immediately before that date shall be decided on or after that date by the Secretary of State under paragraph (a) or, as the case may be, paragraph (c) of section 8(1).

3.—(1) Any application duly made before 5th July 1999 for a review of a decision of an adjudicating authority in relation to a relevant benefit which was not decided before that date shall on or after that date be treated as an application to the Secretary of State—

(a) where the application was made within one month of the date on which the applicant was notified of the decision, or within such longer period as may be allowed under sub-paragraph (2) below, for a revision of that decision under section 9; or

(b) in any other case, for a decision under section 10 to supersede that decision.

(2) Subject to sub-paragraphs (3) and (4) below, the period of one month specified in sub-paragraph (1)(a) above may be extended where an application for such an extension is made before 5th August 2000 by a claimant or a person acting on his behalf containing—

(a) the grounds on which an extension of time is sought; and

(b) sufficient details of the decision to enable it to be identified.

(3) An application for an extension of time shall not be granted under sub-paragraph (2) above unless the Secretary of State is satisfied that—

(a) it is reasonable to grant that application;

(b) the application for review has merit; and

(1) S.I.1995/1801; regulations 3 and 10 have been amended by S.I. 1996/182 and 2450.

(2) S.I. 1999/991, as amended by S.I.1999/1466, 1623, 1662 (C.47) and 1670.

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- (c) special circumstances are relevant to the application for extension of time as a result of which it was not practicable for the application for review to be made within one month of the date of the adjudicating authority's decision being notified to the claimant.
- (4) In deciding whether to grant an extension of time no account shall be taken of the following factors—
  - (a) that the claimant or any person acting for him misunderstood or was unaware of the law applicable to his case (including misunderstanding or being unaware of the period specified in sub-paragraph (1)(a) above); or
  - (b) that a Social Security Commissioner or a court has taken a different view of the law from that previously understood and applied by the adjudicating authority.
- (5) Where, by virtue of sub-paragraph (1)(b) above—
  - (a) a decision is made under section 10 which is advantageous to the applicant; and
  - (b) the same decision could have been made by the adjudicating authority prior to 5th July 1999 on the application for review,

that decision shall take effect from the date from which it would have taken effect had the decision been so made.

4.—(1) Where, before 5th July 1999, a decision has been made by an adjudicating authority in relation to a relevant benefit, that decision shall be treated on or after that date as a decision of the Secretary of State under paragraph (a) or, as the case may be, paragraph (c) of section 8(1).

(2) Where, before that date, any person was required to give notice to the claimant of that decision of the adjudicating authority, and such notice has not been given to the claimant before that date, the Secretary of State shall on or after that date give notice to the claimant of that decision.

5.—(1) Where—

- (a) a decision of an adjudicating authority in relation to a relevant benefit has been made before 5th July 1999; and
- (b) the period within which an appeal may be made in relation to that decision has not expired before that date,

regulation 3 of the Adjudication Regulations as it relates to the period within which an appeal may be made, or any extension of that period, shall, notwithstanding regulation 59 of the Regulations, continue to have effect, subject to the modifications in sub-paragraph (2) below, with respect to any appeal to an appeal tribunal on or after that date in relation to that decision.

(2) The modifications referred to in sub-paragraph (1) above are—

- (a) as if references to a chairman or to a person considering the application were references to a legally qualified panel member;
- (b) as if references to a tribunal were references to an appeal tribunal constituted under section 7; and
- (c) as if in paragraph (3E) for the words from “6 years” to the end of the paragraph there were substituted the words “5th August 2000”.

6. An appeal to an appellate authority which was duly made before 5th July 1999 and which has not been determined before that date shall, without prejudice to Chapter III of Part V of the Regulations, be treated on or after that date as an appeal duly made to an appeal tribunal in relation to a decision of the Secretary of State under section 8.

7.—(1) This paragraph applies where a clerk to an appellate authority has before 5th July 1999 given a direction under regulation 22(1) of the Adjudication Regulations in connection with an

appeal to that authority, and the notification mentioned in paragraph (1A) of that regulation 22 has not been received by the clerk before that date.

(2) A notification in response to such a direction given under that regulation 22(1) shall be in writing and shall be made within 14 days of receipt of the direction or within such other period as the clerk to an appeal tribunal may direct.

(3) An appeal may be struck out by the clerk to an appeal tribunal where the notification referred to in sub-paragraph (2) above is not received within the period specified in that sub-paragraph.

(4) An appeal which has been struck out in accordance with sub-paragraph (3) above shall be treated for the purpose of reinstatement as if it had been struck out under regulation 46 of the Regulations.

(5) An oral hearing of the appeal shall be held where—

- (a) a notification is received by the clerk to the appeal tribunal under sub-paragraph (2) above; or
- (b) the chairman or, in the case of an appeal tribunal which has only one member, that member of the appeal tribunal is satisfied that such a hearing is necessary to enable the appeal tribunal to reach a decision.

**8.** Where an appeal to an appellate authority has been struck out under regulation 7 of the Adjudication Regulations, a legally qualified panel member may on or after 5th July 1999, on an application made by any party to the proceedings not later than three months from the date of the order under paragraph (1) of that regulation, reinstate the appeal if he is satisfied that—

- (a) the applicant did not receive a notice under paragraph (2) of that regulation; and
- (b) the conditions in paragraph (2A) of that regulation were not satisfied,

and the appeal shall then be treated as an appeal to an appeal tribunal in relation to a decision of the Secretary of State under section 8.

**9.** An appeal tribunal shall completely rehear any appeal to an appellate authority which stands adjourned immediately before 5th July 1999.

**10.** A copy of a statement of—

- (a) the reasons for a decision of an appellate authority; and
- (b) its findings on questions of fact material thereto,

shall be supplied by the Secretary of State to each party to the proceedings before that authority, if requested by any such party within 21 days of the date on which notification of that decision was given or sent.

**11.—(1)** Subject to sub-paragraph (2) below, any decision of an appellate authority shall, for the purposes of sections 13 and 14, be treated as a decision of an appeal tribunal.

(2) Where sub-paragraph (1) above applies, any application for leave to appeal which is made for the purposes of section 14(10)(a) shall be made no later than 3 months after the date on which a copy of the statement of the decision of the appellate authority was given or sent to the applicant.

**12.—(1)** Subject to sub-paragraph (3) below, regulation 10 of the Adjudication Regulations, and regulation 3 of those Regulations in so far as it relates to that regulation 10, shall, notwithstanding regulation 59 of the Regulations, continue to have effect on and after 5th July 1999, subject to the modifications specified in sub-paragraph (2) below, in relation to any application to set aside a decision of an appellate authority.

(2) The modifications referred to in sub-paragraph (1) above are—

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- (a) as if, in that regulation 3, or in paragraph (1) of that regulation 10 any reference to the adjudicating authority which gave the decision or to an authority of like status were a reference to an appeal tribunal constituted under section 7; and
- (b) as if, in that regulation 3, for the reference to a chairman there were substituted a reference to a legally qualified panel member.

(3) Paragraph (1) above shall not apply in any case where an application to set aside a decision of an appellate authority is made after 5th August 2000.

**13.** Where, immediately before 5th July 1999, payment of a relevant benefit was suspended or withheld by virtue of any provision of Part V of the Social Security (Claims and Payments) Regulations 1987<sup>(3)</sup> (suspension and extinguishment), the provisions of Chapter I of Part III of the Regulations (suspension and termination) shall, on or after that date, apply with respect to that suspension or withholding as if it were a suspension imposed by virtue of those provisions.

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(3) S.I. 1987/1968; relevant amendments to Part V were made by S.I. 1992/247, 1993/2113, 1994/2319 and 1996/1460 and 2306.