
STATUTORY RULES OF NORTHERN IRELAND

1999 No. 371

**The Social Security (1998 Order) (Commencement
No. 8 and Savings, Consequential and Transitional
Provisions) Order (Northern Ireland) 1999**

Transitional Provisions and Revocations

Transitional provisions

18.—(1) Subject to paragraph (3), any decision which fell to be made, but was not made, before 6th September 1999—

- (a) on a claim for; or
- (b) under or by virtue of Part II of the Administration Act in relation to,

a relevant benefit (other than a decision which fell to be made on appeal) shall be made by the Department under Article 9(1)(a) or, as the case may be, (c) of the Order.

(2) Subject to paragraph (3), any reference of a disablement question made in relation to a relevant benefit which fell to be determined, but was not determined, before 6th September 1999 shall be determined by the Department.

(3) Any case referred to a medical appeal tribunal under section 44(3)(b) of the Administration Act for a decision in relation to a relevant benefit which was not determined before 6th September 1999 shall be determined by an appeal tribunal.

(4) Any application made under Part II of the Administration Act for a review of a decision (other than a decision made on appeal) in relation to a relevant benefit which was not decided before 6th September 1999 shall be treated as an application to the Department—

- (a) where the application is made—
 - (i) within three months of the date of notification of the decision or such longer period as may be allowed under paragraph (6), and
 - (ii) other than on the grounds of a relevant change of circumstances, for a revision of that decision under Article 10 of the Order; or
- (b) in any other case, for a decision under Article 11 of the Order superseding that decision.

(5) Any application made before 6th September 1999 under Part II of the Administration Act for a review of a decision made on appeal in relation to a relevant benefit shall be treated as an application to the Department for a decision under Article 11 of the Order superseding that decision.

(6) Subject to paragraphs (7) and (8), the period of three months specified in paragraph (4)(a) may be extended where the application is made before 6th October 2000 by a claimant or a person acting on his behalf, containing—

- (a) particulars of the grounds on which an extension of time is sought; and
- (b) sufficient details of the decision to enable it to be identified.

(7) An application for an extension of time shall not be granted unless the Department is satisfied that—

- (a) it is reasonable to grant the application;
- (b) the application for review has merit; and
- (c) special circumstances are relevant to the application for an extension of time and, as a result of those special circumstances, it was not practicable for the application for review to be made within three months of the date of notification of the decision which it is sought to have reviewed.

(8) In determining whether it is reasonable to grant an application for an extension of time, no account shall be taken of the following—

- (a) that the claimant or any person acting for him was unaware of or misunderstood the law applicable to his case (including ignorance or misunderstanding of the time limits imposed by paragraph (4)(a)); or
- (b) that a Commissioner (including a Commissioner within the meaning of section 39(1) of the Social Security Act 1998⁽¹⁾) or a court has taken a different view of the law from that previously understood and applied.

(9) Where, by virtue of paragraph (4)(b) or (5)—

- (a) a decision made under Article 11 of the Order is advantageous to the claimant; and
- (b) the same decision could have been made on a review before 6th September 1999,

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

(10) Any decision (other than a decision of a social security appeal tribunal, a medical appeal tribunal or a Commissioner) made before 6th September 1999—

- (a) on a claim for; or
- (b) under or by virtue of Part II of the Administration Act in relation to,

a relevant benefit, shall be treated as a decision of the Department under Article 9(1)(a) or, as the case may be, (c) of the Order.

(11) Where notice of a decision referred to in paragraph (10) was not given or sent to the claimant before 6th September 1999, the Department shall give or send notice of that decision to the claimant.

(12) Where, in relation to a relevant benefit—

- (a) a decision was made before 6th September 1999; and
- (b) the time limit within which an appeal may be made against that decision has not expired before that date,

notwithstanding regulation 59 of the Decisions and Appeals Regulations, regulation 3 of the Adjudication Regulations⁽²⁾ as it relates to the time within which an appeal may be made, or any extension of that period, shall continue to apply in relation to any appeal, subject to the modifications specified in paragraph (13).

(13) Regulation 3 of the Adjudication Regulations shall have effect as if—

- (a) references to a chairman or to a person considering the application were references to a legally qualified panel member;
- (b) references to a tribunal were references to an appeal tribunal constituted under Article 8 of the Order; and
- (c) in paragraph (3E)⁽³⁾ for the words from “six years” to the end there were substituted “6th October 2000”.

(1) 1998 c. 14

(2) Regulation 3 was amended by regulation 2(2) of S.R. 1996 No. 24 and regulation 3(4) of S.R. 1996 No. 457

(3) Paragraph (3E) was inserted by regulation 2(2)(b) of S.R. 1996 No. 24

(14) Notwithstanding regulation 3 of the Decisions and Appeals Regulations, a decision made before 6th September 1999 on a claim for, or award of, a relevant benefit (other than a decision made on appeal) may be revised by the Department under Article 10 of the Order—

- (a) pursuant to an application for a review of that decision made within three months of the date of notification of the decision; or
- (b) where an appeal has been made against that decision but not determined.

(15) Where a decision is revised pursuant to paragraph (14) the appeal shall lapse unless the revised decision is not more advantageous to the appellant than the decision before it was revised.

(16) Any appeal to a social security appeal tribunal or a medical appeal tribunal in relation to a relevant benefit which was not determined before 6th September 1999 shall, without prejudice to Chapter III of Part V of the Decisions and Appeals Regulations, be treated as an appeal to an appeal tribunal against a decision of the Department.

(17) Paragraphs (18) to (20) shall apply where—

- (a) the clerk to the tribunal gave a direction under regulation 22(1) or, as the case may be, 38(1) of the Adjudication Regulations(4); and
- (b) notification referred to in paragraph (1A) of regulation 22 or, as the case may be, 38 of those Regulations was not received by him before 6th September 1999.

(18) A notification in response to a direction given under regulation 22(1) or, as the case may be, 38(1) of the Adjudication Regulations 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 the appeal tribunal may direct.

(19) An appeal may be struck out by the clerk to the appeal tribunal where a notification referred to in paragraph (18) is not received within the period specified in that paragraph.

(20) An appeal which has been struck out in accordance with paragraph (19) shall be treated for the purpose of reinstatement as if it had been struck out under regulation 46 of the Decisions and Appeals Regulations.

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

- (a) a notification is received by the clerk to the appeal tribunal under paragraph (18); or
- (b) the chairman or, in the case of an appeal tribunal which has only one member, that member, is satisfied that such a hearing is necessary to enable the appeal tribunal to reach a decision.

(22) Where an appeal to a social security appeal tribunal or a medical appeal tribunal in relation to a relevant benefit has been struck out under regulation 7 of the Adjudication Regulations a legally qualified panel member may, 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) paragraph (2A)(5) of that regulation does not apply,

and the appeal shall be treated as an appeal to an appeal tribunal against a decision of the Department.

(23) An appeal tribunal shall completely rehear any appeal to a social security appeal tribunal or a medical appeal tribunal in relation to a relevant benefit which stands adjourned immediately before 6th September 1999.

(24) A copy of a statement of—

- (a) the reasons for a decision of a social security appeal tribunal or, as the case may be, a medical appeal tribunal in relation to a relevant benefit; and

(4) Paragraphs (1) and (1A) of regulation 22 and paragraphs (1) and (1A) of regulation 38 were substituted respectively by regulation 3(10) and (13)(a) of [S.R. 1996 No. 457](#)

(5) Paragraph (2A) was inserted by regulation 3(8)(c) of [S.R. 1996 No 457](#)

(b) its findings of fact material thereto,

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

(25) Subject to paragraph (26), any decision of a social security appeal tribunal or a medical appeal tribunal in relation to a relevant benefit shall be treated as a decision of an appeal tribunal.

(26) Where paragraph (25) applies, any application for leave to appeal which is made for the purposes of Article 15(10)(a) of the Order shall be made no later than three months from the date on which a copy of the statement of the decision of the social security appeal tribunal or, as the case may be, the medical appeal tribunal was given or sent to the applicant.

(27) Notwithstanding regulation 59 of the Decisions and Appeals Regulations, and subject to paragraph (29), regulation 10 of the Adjudication Regulations, and regulation 3 of those Regulations in so far as it relates to that regulation, shall continue to apply in relation to any application to set aside a decision of a social security appeal tribunal or a medical appeal tribunal in relation to a relevant benefit, subject to the modifications specified in paragraph (28).

(28) The Adjudication Regulations shall have effect as if—

(a) in regulation 3, reference to a chairman were a reference to a legally qualified panel member; and

(b) in regulation 10(1) the first 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 Article 8 of the Order.

(29) Paragraph (27) shall not apply in any case where an application to set aside a decision of a social security appeal tribunal or a medical appeal tribunal is made after 6th October 2000.

(30) Where, before 6th September 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 (Northern Ireland) 1987, the provisions of Chapter I of Part III of the Decisions and Appeals Regulations shall apply with respect to that suspension or withholding as if it were a suspension imposed by virtue of those provisions.

(31) For the purpose of Article 11(1)(b) of the Order, a decision of a Commissioner in relation to a relevant benefit made before 6th September 1999 shall be treated as a decision of a Commissioner made under Article 15 of that Order.

(32) A determination of the Department (including a determination made following a change of circumstances) whether a person is, or is to be treated as, capable or incapable of work shall be conclusive for the purposes of any decision which falls to be made—

(a) under a relevant statutory provision; or

(b) on a claim for, or award of, housing benefit.

(33) Where before 29th November 1999, in relation to a determination for any purpose to which Part XIIA of the Contributions and Benefits Act(6) applies, a determination falls to be made as to—

(a) whether a person is, or is treated as, capable or incapable of work in respect of any period; or

(b) whether a person is terminally ill,

that determination shall be made by the Department notwithstanding regulation 1(1)(e) and (f) of the Decisions and Appeals Regulations and that other matters fall to be determined by another authority.

(34) An appeal shall lapse where the Department makes a determination pursuant to paragraph (33) in relation to a case where an appeal against a decision of an adjudication officer

(6) Part XIIA was inserted by Article 7 of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I.1994/1898 (N.I. 12))

has been made but not determined provided that the revised decision is more advantageous to the appellant than the decision before it was revised.

(35) Where—

- (a) the Department reverses a determination under section 167C of the Contributions and Benefits Act that a person satisfies or is treated as satisfying the all work test; and
- (b) that determination which is reversed is necessary to or embodied in a decision in relation to which Part II of the Administration Act continues to have effect,

an adjudication officer shall revise that decision upon review in consequence of that reversal.

(36) An appeal made by or on behalf of a person against a decision of an adjudication officer (other than a decision in relation to a relevant benefit) which incorporates a determination as to whether the all work test is satisfied or treated as satisfied—

- (a) shall be heard by a social security appeal tribunal consisting of two persons, one being a medically qualified panel member and the other being a legally qualified panel member; and
- (b) may be heard with an appeal made by or on behalf of the same person against a decision of the Department which incorporates such a determination.

(37) Where an appeal to which paragraph (36) applies is heard with an appeal to an appeal tribunal—

- (a) Article 14 of the Order shall not apply in relation to the appeal to the appeal tribunal; and
- (b) notwithstanding regulation 59 of the Decisions and Appeals Regulations, regulation 24 of the Adjudication Regulations and regulation 3 of, and Schedule 2 to, those Regulations in so far as they relate to that regulation 24 shall apply to the appeal to the appeal tribunal, subject to the modifications specified in paragraph (38).

(38) The provisions of the Adjudication Regulations mentioned in paragraph (37) shall have effect as if—

- (a) references to an adjudication officer were references to the Department;
- (b) references to an appeal tribunal were references to an appeal tribunal constituted under Article 8 of the Order;
- (c) references to the chairman of an appeal tribunal and a chairman of appeal tribunals were references to a chairman of an appeal tribunal constituted under Article 8 of the Order or, in the case of a tribunal which has only one member, that member;
- (d) references to the clerk to the tribunal were references to the clerk to the appeal tribunal; and
- (e) “under section 39(4) of the Administration Act” were omitted.

(39) In this Article—

“the Adjudication Regulations” means the Social Security (Adjudication) Regulations (Northern Ireland) 1995(7);

“the Decisions and Appeals Regulations” means the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999(8);

“disablement question” shall be construed in accordance with section 43 of the Administration Act;

“legally qualified panel member” and “medically qualified panel member” have the same meanings as in regulation 1(2) of the Decisions and Appeals Regulations;

“relevant benefit” means any benefit mentioned in Article 2(b);

(7) S.R. 1995 No. 293

(8) S.R. 1999 No. 162

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

“relevant statutory provision” has the same meaning as in Article 9(4) of the Order;
“the all work test” has the same meaning as in regulation 2(1) of the Social Security (Incapacity for Work) (General) Regulations (Northern Ireland) 1995.

Revocations

19. The Regulations specified in column (1) of Schedule 2 are revoked to the extent mentioned in column (3) of that Schedule.