

SCHEDULES

SCHEDULE 3

Article 23.

ADJUDICATION

Questions arising for determination by the Department

1.—(1) In section 93 of the principal Act (questions for the Department), after subsection (2) insert the following subsection—

“(2A) Regulations may make provision restricting the persons who may apply to the Department for the determination of any such question as is mentioned in subsection (1) above.”.

(2) In section 115 of that Act (power to make procedure regulations), in subsection (5) (declaration of extent of certain powers) after “declared” insert “(a)” and at the end of that subsection add

“and

(b) that the power to provide for the manner in which questions arising for determination by the Department are to be raised includes power to make provision with respect to the formulation of any such questions (whether arising on a reference under section 139 below or otherwise).”.

Procedure on determination of claims or questions

2. At the end of section 99 of that Act (decision of adjudication officer) add the following subsection—

“(4) Where—

- (a) a case has been referred to a social security appeal tribunal (“the tribunal”); and
- (b) the claimant makes a further claim which raises the same or similar questions; and
- (c) that further claim is referred to the tribunal by the adjudication officer,

then the tribunal may proceed to determine the further claim whether or not notice of its reference has been given to the claimant under subsection (3) above.”.

3.—(1) After section 115 of that Act insert the following sections—

“Power of adjudicating authorities to refer matters to experts.

115A.—(1) An authority to which this section applies may refer any question of special difficulty arising for decision by the authority to one or more experts for examination and report.

(2) The authorities to which this section applies are—

- (a) an adjudication officer;

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- (b) an adjudicating medical practitioner, or two or more such practitioners acting together;
- (c) a specially qualified adjudicating medical practitioner appointed by virtue of section 113 above, or two or more such practitioners acting together;
- (d) a social security appeal tribunal;
- (e) a medical appeal tribunal;
- (f) the Attendance Allowance Board;
- (g) a Commissioner;
- (h) the Department.

(3) Regulations may prescribe cases in which a Commissioner shall not exercise the power conferred by subsection (1) above.

(4) In this section “expert” means a person appearing to the authority to have knowledge or experience which would be relevant in determining the question of special difficulty.

Assessors.

115B.—(1) Where it appears to an authority to which this section applies that a matter before the authority involves a question of fact of special difficulty, then, unless regulations otherwise provide, the authority may direct that in dealing with that matter they shall have the assistance of one or more assessors.

(2) The authorities to which this section applies are—

- (a) two or more adjudicating medical practitioners acting together;
- (b) two or more specially qualified adjudicating medical practitioners, appointed by virtue of section 113 above, acting together;
- (c) a social security appeal tribunal;
- (d) a medical appeal tribunal;
- (e) the Attendance Allowance Board;
- (f) a Commissioner;
- (g) the Department.”.

(2) The following provisions of that Act (which enable certain adjudicating authorities to refer matters to medical practitioners or to have the assistance of assessors and which are superseded by sub-paragraph (1)) shall cease to have effect—

- (a) section 101(6) and (7);
- (b) paragraph 4 of Schedule 11;
- (c) paragraphs 8 and 9 of Schedule 13.

4. In Schedule 13 to that Act, in paragraph 1 (procedure to be followed in connection with determination of claims and questions by Department, etc.) after “Department” insert “, an adjudication officer”.

Appeals and appellate bodies

5. In section 100 of that Act (appeals to social security appeal tribunal), in subsection (3) the words from “without leave” onwards shall cease to have effect.

6. In section 101 of that Act (appeals from social security appeal tribunal to Commissioner on point of law), in subsection (5) (powers of Commissioner when holding that there has been error of law)—

- (a) after “point of law” insert “he shall set it aside and”; and
- (b) after paragraph (b) (Commissioner to refer case to tribunal with directions for determination) add—

“and, subject to any direction of the Commissioner, the tribunal on a reference under paragraph (b) above shall consist of persons who were not members of the tribunal which gave the erroneous decision”.

7. In section 104 of that Act (review of decisions), after subsection (3A) insert the following subsection—

“(3B) Where a claimant has appealed against a decision of an adjudication officer and the decision is reviewed under this section by an adjudication officer, then—

- (a) if the adjudication officer considers that the decision which he has made on the review is the same as the decision that would have been made on the appeal had every ground of the claimant’s appeal succeeded, then the appeal shall lapse; but
- (b) in any other case, the review shall be of no effect and the appeal shall proceed accordingly.”.

8. In section 106 of that Act, for subsection (2) (regulations to make provision concerning appeals from determination of the Attendance Allowance Board on point of law, etc.) substitute the following subsections—

“(2) An appeal lies to a Commissioner, with his leave or that of another Commissioner, against a determination by the Board of any question of law arising either—

- (a) on a review under subsection (1) above; or
- (b) in connection with a refusal by the Board to review a determination made by them under section 105(3) above or this section,

at the instance of the claimant in question or the Department.

(2A) Where the Commissioner holds that the Board’s determination was erroneous in point of law—

- (a) he shall set it aside and refer the case to the Board; and
- (b) unless the Commissioner otherwise directs, the Board shall not delegate the determination of that case to the medical practitioner, or any of the medical practitioners, who gave the erroneous decision.

(2B) The references to the Board in subsection (2) above, and the first such reference in subsection (2A) above, include a reference to a delegate appointed in pursuance of paragraph 5 of Schedule 11 to this Act.

(2C) Regulations may make provision as to the manner in which, and the time within which, appeals under subsection (2) above are to be brought and applications for leave to appeal under that subsection are to be made.”.

9.—(1) In section 112A of that Act (appeals from medical appeal tribunal to Commissioner on point of law)—

- (a) subsection (4) (power of tribunal to refer question of law to a Commissioner) shall cease to have effect; and

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(b) in subsection (5) (tribunal to revise decision on case in light of Commissioner’s decision on point of law) the words “or reference” and the words from “and the medical” onwards shall cease to have effect.

(2) After subsection (5) of that section insert the following subsections—

“(5A) Where the Commissioner holds that the decision was erroneous in point of law he shall set it aside and refer the case to a medical appeal tribunal with directions for its determination.

(5B) Subject to any direction of the Commissioner, the tribunal on a reference under subsection (5A) above shall consist of persons who were not members of the tribunal which gave the erroneous decision.”.

10. In Schedule 13 to that Act (provision which may be made by procedure regulations), after paragraph 7 insert the following paragraph—

“**7A.** Provision empowering the chairman of a social security appeal tribunal or a medical appeal tribunal to give directions for the disposal of any purported appeal which he is satisfied that the tribunal does not have jurisdiction to entertain.”.

Review of decisions

11.—(1) In section 104 of that Act (review of decisions), in subsection (1) after paragraph (b) insert the following paragraph—

“(bb) it is anticipated that a relevant change of circumstances will so occur; or”.

(2) After that subsection insert the following subsection—

“(1ZA) Where a decision is reviewed on the ground mentioned in subsection (1)(bb) above, the decision given on the review—

(a) shall take effect on the day prescribed for that purpose by reference to the date on which the relevant change of circumstances is expected to occur; and

(b) shall be reviewed again if the relevant change of circumstances either does not occur or occurs otherwise than on that date.”.

(3) In subsection (5) of that section (regulations), in paragraph (a) after the words “subsection (1) (b)” insert “and (bb)”.

(4) At the end of paragraph (b) of that subsection add “(whether that period falls wholly or partly before or after the making of the regulations)”.

Disablement benefit, etc.

12.—(1) In section 108 of that Act (disablement questions), at the end of subsection (1) add “(and accordingly fall to be determined by an adjudication officer)”.

(2) For subsection (4A) of that section substitute the following subsections—

“(4A) Where, in the case of a claimant for disablement benefit, the extent of any disablement of his resulting from an aggregable accident (that is to say, an accident other than the one which is the basis of the claim in question) has been assessed in accordance with paragraph 4(2) of Schedule 8 to this Act at less than 14 per cent., then—

(a) the adjudication officer may refer the disablement questions relating to the aggregable accident to one or more adjudicating medical practitioners for fresh determination; and

(b) on any such reference—

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- (i) those questions shall be determined as at the first day of the common period; and
- (ii) the period to be taken into account shall be the period beginning with that day.

(4B) In subsection (4A) above “the first day of the common period” means whichever is the later of—

- (a) the first day of the period taken into account by the assessment of the extent of the claimant’s disablement resulting from the accident which is the basis of the claim in question;
- (b) the first day of the period taken into account by the assessment of the extent of his disablement resulting from the aggregable accident.”.

13.—(1) In Schedule 8 to that Act (assessment of extent of disablement), for paragraph 4(2) substitute the following sub-paragraphs—

“(2) Where the assessed extent of a claimant’s disablement amounts to less than 14 per cent., then, subject to sub-paragraphs (3) and (4) below, that assessment shall be a final assessment and the period to be taken into account by it shall not end before the earliest date on which it seems likely that the extent of the disablement will be less than 1 per cent.

(3) Sub-paragraph (2) above does not apply in any case where it seems likely that—

- (a) the assessed extent of the disablement will be aggregated with the assessed extent of any present disablement; and
- (b) that aggregate will amount to 14 per cent. or more.

(4) Where the extent of the claimant’s disablement is assessed at different percentages for different parts of the period taken into account by the assessment, then—

- (a) sub-paragraph (2) above does not apply in relation to the assessment unless the percentage assessed for the latest part of that period is less than 14 per cent.; and
- (b) in any such case that sub-paragraph shall apply only in relation to that part of that period (and subject to sub-paragraph (3) above).”.

(2) In paragraph 5 of that Schedule, in paragraph (a) of the proviso (degree of particularity in assessment of extent and period of disablement)—

- (a) for “section 57” substitute “sections 57 and 59A”; and
- (b) at the end add “and reduced earnings allowance (whether or not a claim has been made)”.

Recovery of overpayments

14.—(1) In Article 54 of the 1986 Order (overpayments), after paragraph (1) insert the following paragraph—

“(1A) Where any such determination as is referred to in paragraph (1) is made on an appeal or review, there shall also be determined in the course of the appeal or review the question whether any, and if so what, amount is recoverable under that paragraph by the Department.”.

(2) In paragraph (4) of that Article after “unless” insert “(a)” and at the end add “and

- (b) it has been determined on the appeal or review that the amount is so recoverable.”

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Miscellaneous

15. In section 103 of the principal Act (reference of special questions), in subsection (2) after “making” insert “or directing”.

16. In section 156 of that Act (control of regulations and orders), after subsection (5) insert the following subsection—

“(5A) All regulations made under this Act by the Lord Chancellor shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.”.

17. In Schedule 10 to that Act (supplementary provision as to social security appeal tribunals, etc.) paragraphs 1(7) and 2(2) (which require, so far as practicable, tribunal panel members and chairmen to serve in turn) shall cease to have effect.

18. In paragraph 2(5) of Schedule 12 to that Act (chairman of medical appeal tribunal to be barrister or solicitor of at least 7 years' standing), for “7 years” substitute “5 years”.