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STATUTORY RULES OF NORTHERN IRELAND

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**1995 No. 293**

**SOCIAL SECURITY**

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

*Made* - - - - - *21st July 1995*

*Coming into operation* *25th August 1995*

The Department of Health and Social Services for Northern Ireland, in exercise of the powers set out in Schedule 1 and of all other powers enabling it in that behalf, hereby makes the following Regulations:

**PART I  
GENERAL**

**Citation, commencement and interpretation**

**1.**—(1) These Regulations may be cited as the Social Security (Adjudication) Regulations (Northern Ireland) 1995 and shall come into operation on 25th August 1995.

(2) In these Regulations—

“the Acts” means the Social Security Contributions and Benefits (Northern Ireland) Act 1992(1) and the Social Security Administration (Northern Ireland) Act 1992(2);

“the Administration Act” means the Social Security Administration (Northern Ireland) Act 1992;

“the Contributions and Benefits Act” means the Social Security Contributions and Benefits (Northern Ireland) Act 1992;

“adjudicating authority” means, as the case may be, an adjudicating medical practitioner, the Chief or any other adjudication officer, an appeal tribunal, a medical appeal tribunal, a disability appeal tribunal or a medical board;

“adjudicating medical authority” has the meaning assigned to it by regulation 34;

“adjudicating medical practitioner” means a medical practitioner appointed in accordance with section 47(1) of the Administration Act;

“adjudication officer” means an officer appointed in accordance with section 36(1) of the Administration Act;

“appeal tribunal” means a social security appeal tribunal constituted in accordance with section 39 of the Administration Act;

“Chief Adjudication Officer” means the Chief Adjudication Officer appointed under section 37(1) of the Administration Act;

“claimant” means a person who has claimed benefit under the Acts (including, in relation to an award or decision, a beneficiary under the award or a person affected by the decision) or from whom benefit is alleged to be recoverable, and, in relation to statutory sick pay and statutory maternity pay, includes both the employee alleged to be entitled to, and the employer alleged to be liable to pay, such pay;

“Commissioner” means the Chief or any other Social Security Commissioner appointed in accordance with section 50(1) of the Administration Act and includes a Tribunal of 2 or 3 such Commissioners constituted in accordance with section 55 of that Act;

“disability appeal tribunal” means a tribunal constituted in accordance with section 41 of the Administration Act;

“disability question” has the meaning assigned by regulation 27(2);

“full-time chairman” means a full-time chairman of appeal tribunals, medical appeal tribunals and disability appeal tribunals appointed under section 49 of the Administration Act;

“income support” means income support under Part VII of the Contributions and Benefits Act and includes personal expenses addition, special transitional addition and transitional addition as defined in the Income Support (Transitional) Regulations;

“the Income Support Regulations” means the Income Support (General) Regulations (Northern Ireland) 1987(3);

“the Income Support (Transitional) Regulations” means the Income Support (Transitional) Regulations (Northern Ireland) 1987(4);

“inquiry” means an inquiry held pursuant to section 15(4) of the Administration Act;

“medical appeal tribunal” means a tribunal constituted in accordance with section 48 of the Administration Act;

“medical board” has the meaning assigned to it by regulation 34;

“party to the proceedings” means—

- (a) the claimant;
- (b) in proceedings before an appeal tribunal or a disability appeal tribunal, the adjudication officer;
- (c) in proceedings relating to the determination of a question included in section 15(1) of the Administration Act, any person interested within the meaning of regulation 12;
- (d) in any other proceedings, the adjudication officer and the Department except in proceedings in which the adjudication officer or the Department is the adjudicating authority; and

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(3) S.R. 1987 No. 459

(4) S.R. 1987 No. 460

- (e) any other person appearing to the Department, the adjudicating authority or, in the case of a tribunal or board, its chairman or, in relation to an inquiry, the person appointed to hold the inquiry, to be interested in the proceedings.

“the Prescribed Diseases Regulations” means the Social Security (Industrial Injuries) (Prescribed Diseases) Regulations (Northern Ireland) 1986<sup>(5)</sup>;

“President” means the President of appeal tribunals, medical appeal tribunals and disability appeal tribunals appointed under section 49 of the Administration Act;

“proceedings” means proceedings on a claim, application, appeal or reference to which these Regulations apply.

- (3) Where, by any provision of the Acts or of these Regulations—

- (a) any notice or other document is required to be given or sent to any office, that notice or document shall be treated as having been so given or sent on the day that it is received in that office; and

- (b) any notice or other document is required to be given or sent to any person, that notice or document shall, if sent by post to that person’s last known or notified address, be treated as having been given or sent on the day that it was posted.

- (4) Unless otherwise provided, where any power is conferred by these Regulations on a chairman of an appeal tribunal, a medical appeal tribunal or a disability appeal tribunal then—

- (a) where that power is to be exercised at the hearing of an appeal or application, it shall be exercised by the chairman of the tribunal hearing that appeal or application; and

- (b) otherwise, it shall be exercised by a person who is eligible to be nominated to act as a chairman of an appeal tribunal under section 39 of the Administration Act.

- (5) The Interpretation Act (Northern Ireland) 1954<sup>(6)</sup> shall apply to these Regulations as it applies to a Measure of the Northern Ireland Assembly.

## PART II

### COMMON PROVISIONS

#### **Procedure in connection with determinations; and right to representation**

- 2.—(1) Subject to the provisions of the Administration Act and of these Regulations—

- (a) the procedure in connection with the consideration and determination of any claim or question to which these Regulations relate shall be such as the Department, the adjudicating authority or the person holding the inquiry, as the case may be, shall determine; so however that in the case of a tribunal or board, the procedure shall be such as the chairman shall determine; and

- (b) any person who by virtue of these Regulations has the right to be heard at a hearing or inquiry may be accompanied and may be represented by another person whether having professional qualifications or not and, for the purposes of the proceedings at any such hearing or inquiry, any such representative shall have all the rights and powers to which the person whom he represents is entitled under the Administration Act and these Regulations.

- (2) For the purpose of arriving at its decision an appeal tribunal, a medical board, a medical appeal tribunal or a disability appeal tribunal, as the case may be, shall, and for the purpose of discussing any question of procedure may, notwithstanding anything contained in these Regulations, order all

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<sup>(5)</sup> S.R. 1986 No. 179

<sup>(6)</sup> 1954 c. 33 (N.I.)

persons not being members of the tribunal or board, other than the person acting as clerk to the tribunal or board, to withdraw from the sitting of the tribunal or board, except that—

- (a) the President and any full-time chairman; and
- (b) with the leave of the chairman of the tribunal or board, and if no person having the right to be heard objects, any person mentioned in regulation 4(6)(b) and (d) (oral hearings and inquiries), except a person undergoing training as an adjudication officer or as an adjudicating medical practitioner,

may remain present at any such sitting.

### **Manner of making applications, appeals or references; and time limits**

**3.—**(1) Any application, appeal or reference mentioned in column (1) of Schedule 2 shall be in writing and shall be made or given by sending or delivering it to the appropriate office within the specified time.

(2) In this regulation—

“the appropriate office” means the office specified in column (2) of Schedule 2 opposite the description of the relevant application, appeal or reference listed in column (1) of that Schedule;

“the specified time” means the time specified in column (3) of Schedule 2 opposite the description of the relevant application, appeal or reference listed in column (1) of that Schedule.

(3) The time specified by this regulation and Schedule 2 for the making of any application, appeal or reference (except an application to the chairman of an appeal tribunal, a medical appeal tribunal or a disability appeal tribunal for leave to appeal to a Commissioner) may be extended for special reasons, even though the time so specified may already have expired, and any application for an extension of time under this paragraph shall be made to and determined by the person or body to whom the application, appeal or reference is sought to be made or, in the case of a tribunal or board, its chairman.

(4) An application under paragraph (3) for an extension of time which has been refused may not be renewed.

(5) Any application, appeal or reference under these Regulations shall contain particulars of the grounds on which it is made or given and, in the case of an appeal, it shall include sufficient particulars of the decision under appeal to enable that decision to be identified.

(6) Where it appears to the Department, an adjudication officer or the chairman of a tribunal or board that an application, appeal or reference which is made to it or him or to the tribunal or board gives insufficient particulars to enable the question at issue to be determined, it or he may require the person making the application, appeal or reference to furnish such further particulars as may reasonably be required.

(7) A chairman of an appeal tribunal, a medical appeal tribunal or a disability appeal tribunal may give directions for the disposal of any purported appeal where he is satisfied that the tribunal does not have jurisdiction to entertain the appeal.

### **Oral hearings and inquiries**

**4.—**(1) This regulation applies to any oral hearing of an application, appeal or reference and to any inquiry.

(2) Reasonable notice (being not less than 10 days beginning with the day on which the notice is given and ending on the day before the hearing of the case or, as the case may be, the inquiry is to take place) of the time and place of any oral hearing by an adjudicating authority or of an inquiry shall be given to every party to the proceedings, and where such notice has not been given to a person

to whom it should have been given under the provisions of this paragraph the hearing or inquiry may proceed only with the consent of that person.

(3) Where a party to the proceedings to whom notice has been given under paragraph (2) fails to appear at the hearing or inquiry the adjudicating authority or the person holding the inquiry may, having regard to all the circumstances including any explanation offered for the absence, proceed with the case or inquiry notwithstanding his or its absence, or give such directions with a view to the determination of the case or conduct of the inquiry as it or he may think proper.

(4) Any oral hearing by an adjudicating authority and any inquiry shall be in public except where (in the case of an oral hearing) the claimant requests a private hearing or, in any case, the chairman or the person holding the inquiry is satisfied that intimate personal or financial circumstances may have to be disclosed or that considerations of public security are involved, in which case the hearing or inquiry shall be in private.

(5) At any oral hearing or inquiry any party to the proceedings shall be entitled to be present and be heard.

(6) The following persons shall also be entitled to be present at an oral hearing (whether or not it is otherwise in private) but shall take no part in the proceedings—

- (a) the President and any full-time chairman;
- (b) any person undergoing training as a chairman or other member of an appeal tribunal, a medical appeal tribunal or a disability appeal tribunal, or as a clerk to any such tribunal, or as an adjudication officer or an adjudicating medical practitioner;
- (c) any person acting on behalf of the President, the Chief Adjudication Officer or the Department in the training or supervision of clerks to appeal tribunals, medical appeal tribunals or disability appeal tribunals or of adjudication officers or officers of the Department or in the monitoring of standards of adjudication by adjudication officers; and
- (d) with the leave of the chairman of the tribunal or board, as the case may be, and the consent of every party to the proceedings actually present, any other person.

(7) At any inquiry (whether or not it is otherwise in private) the following persons shall be entitled to be present but shall take no part in the proceedings—

- (a) any person undergoing training as an officer of the Department;
- (b) any person acting on behalf of the Department in the training or supervision of officers of the Department; and
- (c) with the leave of the person holding the inquiry and the consent of every party to the proceedings actually present, any other person.

(8) Nothing in paragraph (6) affects the rights of any person mentioned in sub-paragraphs (a) and (b) of that paragraph at any oral hearing where he is sitting as a member of the tribunal or acting as its clerk, and nothing in this regulation prevents the presence at an oral hearing or inquiry of any witness.

(9) Any person entitled to be heard at an oral hearing or inquiry may address the adjudicating authority or person holding the inquiry, may give evidence, may call witnesses and may put questions directly to any other person called as a witness.

### **Postponement and adjournment**

5.—(1) Where a person to whom notice of an oral hearing by an adjudicating authority or of an inquiry has been given wishes to apply for that hearing or inquiry to be postponed, he shall do so in writing to the chairman or, as the case may be, the person appointed to hold the inquiry stating his reasons for the application, and the chairman or person appointed may grant or refuse the application as he sees fit.

(2) A chairman may of his own motion at any time before the beginning of an oral hearing postpone that hearing.

(3) An oral hearing or inquiry may be adjourned by the adjudicating authority or, as the case may be, the person appointed to hold the inquiry at any time on the application of any party to the proceedings or of its or his own motion.

### **Withdrawal of applications, appeals and references**

6.—(1) A person who has made an application to the chairman of the tribunal for leave to appeal to a Commissioner against a decision of an appeal tribunal, a medical appeal tribunal or a disability appeal tribunal may withdraw his application at any time before it is determined by giving written notice of intention to withdraw to the chairman.

(2) Any appeal to an adjudicating authority made under the Administration Act or these Regulations may be withdrawn by the person who made the appeal—

- (a) before the hearing begins by giving written notice of intention to withdraw to the adjudicating authority to whom the appeal was made and with the consent in writing of—
  - (i) in a case which originated in a decision of an adjudication officer, an adjudication officer, or
  - (ii) in any other case, the Department,and, in any case, of any other party to the proceedings; or
- (b) after the hearing has begun, with the leave of the adjudicating authority or, in the case of a tribunal or board, its chairman, at any time before the determination is made.

(3) A reference by an adjudication officer to an appeal tribunal under section 19(2) of the Administration Act, or to an adjudicating medical authority under regulation 45(3) (reference of diagnosis and recrudescence questions for medical report) or to a medical appeal tribunal under section 44(3) of the Administration Act may be withdrawn by him at any time before the reference is determined by giving written notice of intention to withdraw to the adjudicating authority to whom the reference was made, but in the case of a reference under section 44(3) of the Administration Act made at the instance of the Department only with its consent.

(4) An application under regulation 13 for a decision of the Department on any question may, with its leave, be withdrawn at any time before the decision is given.

### **Striking-out of proceedings for want of prosecution**

7.—(1) The chairman of an appeal tribunal, a medical appeal tribunal or a disability appeal tribunal may, subject to paragraph (2), on the application of any party to the proceedings or of his own motion, strike out any application, appeal or reference for want of prosecution including the failure of the appellant to comply with a direction given by the chairman under regulation 2(1)(a) (procedure in connection with determinations).

(2) The chairman shall not make an order under paragraph (1) before a notice has been sent to the person against whom it is proposed that any such order should be made giving him a reasonable opportunity to show cause why such an order should not be made.

(3) The chairman of an appeal tribunal, a medical appeal tribunal or a disability appeal tribunal may, on application by the party concerned, made not later than 12 months beginning with the date of the order made under paragraph (1) give leave to reinstate any application, appeal or reference which has been struck out in accordance with paragraph (1).

### **Non-disclosure of medical evidence**

**8.—**(1) Where, in connection with the consideration and determination of any claim or question, there is before an adjudicating authority medical advice or medical evidence relating to a person which has not been disclosed to him and in the opinion of the adjudicating authority or, in the case of a tribunal or board, its chairman, the disclosure to that person of that advice or evidence would be harmful to his health, such advice or evidence shall not be required to be disclosed to that person.

(2) Evidence such as is mentioned in paragraph (1) shall not be disclosed to any person acting for or representing the person to whom it relates or, in a case where a claim for benefit is made by reference to the disability of a person other than the claimant and the evidence relates to that other person not be disclosed to the claimant or any person acting for or representing, shall him, unless the adjudicating authority or, in the case of a tribunal or board, its chairman, is satisfied that it is in the interests of the person to whom the evidence relates to do so.

(3) An adjudicating authority shall not be precluded from taking into account for the purposes of the determination evidence which has not been disclosed to a person under the provisions of paragraph (1) or (2).

(4) In this regulation “adjudicating authority” includes the Department in a case involving a question which is for determination by the Department.

### **Correction of accidental errors in decisions**

**9.—**(1) Subject to regulation 11 (provisions common to regulations 9 and 10), accidental errors in any decision or record of a decision may at any time be corrected by the adjudicating authority who gave the decision or by an authority of like status.

(2) A correction made to, or to the record of, a decision shall be deemed to be part of the decision or of that record and written notice of it shall be given as soon as practicable to every party to the proceedings.

### **Setting aside of decisions on certain grounds**

**10.—**(1) Subject to regulation 11, on an application made by a party to the proceedings, a decision may be set aside by the adjudicating authority who gave the decision or by an authority of like status in a case where it appears just to set the decision aside on the ground that—

- (a) a document relating to the proceedings in which the decision was given was not sent to, or was not received at an appropriate time by, a party to the proceedings or the party’s representative or was not received at an appropriate time by the adjudicating authority who gave the decision;
- (b) a party to the proceedings in which the decision was given or the party’s representative was not present at a hearing or inquiry relating to the proceedings; or
- (c) the interests of justice so require.

(2) An application under this regulation shall be made in accordance with regulation 3 and Schedule 2.

(3) Where an application to set aside a decision is entertained under paragraph (1), every party to the proceedings shall be sent a copy of the application and shall be afforded a reasonable opportunity of making representations on it before the application is determined.

(4) Notice in writing of a determination on an application to set aside a decision shall be given to every party to the proceedings as soon as may be practicable and the notice shall contain a statement giving the reasons for the determination.

(5) For the purposes of determining under these Regulations an application to set aside a decision there shall be disregarded regulation 1(3)(b) and any provision in any enactment to the effect that any

notice or other document required or authorised to be given or sent to any person shall be deemed to have been given or sent if it was sent by post to that person's last known or notified address.

### **Provisions common to regulations 9 and 10**

**11.**—(1) In regulations 9 (correction of accidental errors in decisions) and 10 (setting aside of decisions on certain grounds) “adjudicating authority” includes the Department.

(2) In calculating any time specified in Schedule 2 there shall be disregarded any day falling before the day on which notice was given of a correction of a decision or the record thereof pursuant to regulation 9 or on which notice is given of a determination that a decision shall not be set aside following an application made under regulation 10, as the case may be.

(3) There shall be no appeal against a correction made under regulation 9 or a refusal to make such a correction or against a determination given under regulation 10.

(4) Nothing in this Part shall be construed as derogating from any power to correct errors or set aside decisions which is exercisable apart from these Regulations.

## **PART III**

### **ADJUDICATING AUTHORITIES**

#### **SECTION A —**

#### *THE DEPARTMENT*

#### **Construction of Section A**

**12.** In this Section “a person interested” means, except in relation to statutory sick pay or statutory maternity pay, a person whose interest in the application or decision relates to that person's own liability under the Acts or his actual or potential rights under them and in relation to statutory sick pay or statutory maternity pay means an employer or employee (including a person who is alleged or claims to be the employer or employee of another person)—

- (a) in relation to whose rights, duties or obligations under Parts XI and XII of the Contributions and Benefits Act or under regulations under those Parts, a question has arisen that is for determination by the Department under section 15(1)(g) or (h) of the Administration Act; or
- (b) whose rights, duties or obligations are called into question by way of review of a determination under section 17 of the Administration Act,

and references to a person appearing to be interested shall be construed accordingly.

#### **Application for decision of the Department on principal questions**

**13.**—(1) A person desiring to obtain the decision of the Department on any of the questions mentioned in section 15(1) of the Administration Act (including those to which that section applies by virtue of section 16.5(1) of the Pension Schemes (Northern Ireland) Act 1993(7)) shall deliver or send to the Department an application for the purpose in writing in a form approved by it.

(2) The Department shall take steps to bring any such application to the notice of any person appearing to it to be interested in the application and to obtain from such person such particulars



within such time and in such form as it considers reasonably necessary for the proper determination of the question.

(3) An application for a decision of the Department shall not be made otherwise than by a person interested or, in the case of an application relating to statutory sick pay or statutory maternity pay, by an inspector appointed under section 104 of the Administration Act.

(4) Nothing in paragraph (1) or (3) shall affect any right or obligation under the Acts or regulations made under the Acts to refer any question to the Department.

### **Procedures for inquiries**

**14.** Any person appointed by the Department under section 15(4) of the Administration Act to hold an inquiry into any question or any matters arising in connection therewith and to report to it thereon may—

- (a) by summons require persons to attend any such inquiry to give evidence or to produce documents reasonably required for the purpose of the inquiry;
- (b) require any person so summoned, or who otherwise attends to give evidence, to be examined on oath; and
- (c) for that purpose administer oaths.

### **The Department's decision and statement of grounds**

**15.—(1)** The Department shall give notice in writing of its decision under section 15 of the Administration Act and of the right to request a statement of the grounds of the decision to the applicant and to any persons appearing to it to be interested therein and may publish its decision in such manner as it thinks fit.

(2) The applicant and any other person appearing to the Department to be interested shall, on request, be furnished with such a statement of the grounds of the Department's decision under section 15 of the Administration Act as will enable him to determine whether any question of law (not being a question which has been referred to the Court of Appeal in accordance with section 16(1) of that Act) has arisen upon which he may appeal to the Court of Appeal under section 16(3) of that Act.

### **Review or reference**

**16.—(1)** The provisions of regulation 13(3) and (4) (application for decision of the Department on principal questions) shall apply to any application for a review under section 17(1) of the Administration Act of a decision under section 15(1) of that Act as they apply to an application under regulation 13(1).

(2) The provisions of regulations 13(2), 14 (procedure for inquiries) and 15 (the Department's decision and statement of grounds) shall apply with the necessary modifications to any case in which—

- (a) a question has been raised with a view to the review under section 17(1) of the Administration Act of any decision of the Department given in accordance with this Section; or
- (b) a question such as is mentioned in regulation 13(1) is referred to the Department under section 35(1) or 111(2) of the Administration Act.

### **Questions for determination by the Department**

**17.—(1)** It shall be for the Department to determine—

- (a) a question whether—

- (i) an increase of disablement pension under section 104 of the Contributions and Benefits Act, or
  - (ii) a further increase under section 105 of that Act,
- is to be granted or renewed and, if so, for what period and of what amount;
- (b) a question how the limitations under Part VI of Schedule 7 to the Contributions and Benefits Act on the benefit payable in respect of any death are to be applied in the circumstances of any case;
  - (c) a question arising under regulations made under section 5(1)(i) of the Administration Act.
- (2) The Department may review any determination given by it on any question referred to in paragraph (1) where—
- (a) new facts have been brought to its notice; or
  - (b) it is satisfied that the determination—
    - (i) was given in ignorance of some material fact,
    - (ii) was based on a mistake as to some material fact, or
    - (iii) was erroneous in point of law.
- (3) A decision of the Department on a question under section 70(7) of the Contributions and Benefits Act or on any question which by virtue of regulations falls to be determined by the Department in its discretion may be given so as to have effect with respect to a period before the date of the decision; and it may at any time and from time to time reconsider the exercise of its discretion with respect to such a question and decide it again with such other effects as may seem to it to be proper in the circumstances of the case.
- SECTION B —

### *ADJUDICATION OFFICERS*

#### **Notification of decisions**

- 18.**—(1) Subject to paragraph (2) and regulation 55 (notification of decisions in income support cases), the decision of an adjudication officer on any claim or question and the reasons for it shall be notified in writing to the claimant who shall at the same time be informed—
- (a) in the case of a decision of an adjudication officer—
    - (i) under section 19 of the Administration Act relating to attendance allowance, disability living allowance or disability working allowance, or
    - (ii) on a review under section 28(2) or (4) or section 33 of that Act, of his right to a review under section 28(1) of that Act;
  - (b) in the case of a decision of an adjudication officer under section 28(1) of that Act, of his right of appeal—
    - (i) to a disability appeal tribunal where the appeal relates to the determination of a disability question, and
    - (ii) to an appeal tribunal in any other case; and
  - (c) in all other cases, of his right of appeal to an appeal tribunal under section 20 of that Act.
- (2) Paragraph (1) does not apply in relation to a decision (other than a decision given on review) awarding benefit for a period which begins immediately after a period in respect of which the claimant had been awarded benefit of the same kind and at the same rate as that awarded by the first-mentioned decision.

### **Procedure on claim or question involving questions for determination by the Department**

19.—(1) Where an adjudication officer has decided any claim or question on an assumption of facts as to which there appeared to him to be no dispute, but concerning which, had a question arisen, that question would have fallen for determination by the Department, it shall be deemed to be a sufficient compliance with the requirements of regulation 18 as to notification to the claimant, to give him notice in writing informing him of the decision and of the reasons for it and that, if he is dissatisfied with the decision, he should reply to that effect, giving the reasons for his dissatisfaction.

(2) Where—

- (a) the claimant replies to the notice referred to in paragraph (1) expressing his dissatisfaction with the decision;
- (b) after any appropriate investigations and explanations have been made, the claimant nonetheless remains dissatisfied with the decision; and
- (c) an adjudication officer certifies that the sole ground for dissatisfaction appears to be the assumption referred to in paragraph (1)

the claimant shall be notified in writing of his right to apply for the determination by the Department of the question arising on the assumption.

(3) Where the Department's decision—

- (a) upholds the assumption, section 20(3) of the Administration Act shall apply as if the adjudication officer had given the certificate therein referred to;
- (b) does not uphold the assumption, the Department's decision may be treated by the adjudication officer as an application for the review of the adjudication officer's decision, and, for the purposes of regulation 59 (review of decisions involving payment or increase of benefit other than industrial injuries benefit, income support, family credit or disability working allowance), the date of the claimant's application for the Department's decision shall be treated as the date of the application for review.

### **Reference by an employee of questions relating to statutory sick pay or statutory maternity pay for determination by an adjudication officer**

20.—(1) A question in relation to statutory sick pay or statutory maternity pay to which sections 18(3), 19(4), 20(1) and (2) and 21(2) of the Administration Act apply may be submitted to an adjudication officer by the employee concerned in accordance with paragraphs (2) and (3) and not otherwise.

(2) A reference of any such question by an employee shall be made by way of an application in writing in a form approved for the purpose by the Department or in such other manner, being in writing, as it may accept as sufficient in the circumstances.

(3) Such an application made by an employee shall—

- (a) be delivered or sent to an office of the Department within six months of the earliest day in respect of which liability for statutory sick pay or statutory maternity pay is in dispute; and
- (b) state the grounds (if any) on which the applicant's employer has denied liability for statutory sick pay or statutory maternity pay in respect of the period specified in the application.

### **Reference of a special question in child benefit cases**

21.—(1) In this regulation—

“child benefit” means child benefit under Part IX of the Contributions and Benefits Act;

“question” means any question as to the right to child benefit other than a special question; and

“special question” means any question relating to child benefit which, under the provisions of Schedule 10 to the Contributions and Benefits Act or regulations made under the Acts, falls to be determined by the Department in its discretion; any question whether an establishment is a recognised educational establishment as defined in section 143(1) of the Contributions and Benefits Act or any question which by virtue of the provisions of regulation 5 of the Child Benefit (Residence and Persons Abroad) Regulations (Northern Ireland) 1976<sup>(8)</sup> falls to be determined by the Department under the provisions of the Administration Act as if it were a question arising under that Act.

(2) Paragraphs (3) and (4) apply where on consideration of any claim or question an adjudication officer is of the opinion that there arises a special question.

(3) Subject to paragraph (4), the adjudication officer shall—

- (a) refer the question so arising for determination by the Department; and
- (b) deal with any other question as if the question so referred had not arisen.

(4) The adjudication officer may—

- (a) postpone the reference of, or dealing with, any question until other questions have been determined; and
- (b) in cases where the determination of any question disposes of a claim, or any part of it, determine that question and dispose of the claim or that part of it, without referring or dealing with any other question.

SECTION C —

### *APPEAL TRIBUNALS*

#### **Oral hearing of appeals and references**

**22.**—(1) An appeal tribunal shall, except where section 27(a) of the Administration Act applies, hold an oral hearing of any appeal or reference made to it.

(2) Any case may with the consent of the claimant or his representative, but not otherwise, be proceeded with in the absence of any one member other than the chairman.

(3) Where an oral hearing is adjourned and at the hearing after the adjournment the tribunal is differently constituted, otherwise than through the operation on that occasion of paragraph (2), the proceedings at that hearing shall be by way of a complete rehearing of the case.

(4) Regulation 21 (reference of a special question in child benefit cases) applies to an appeal tribunal as it applies to an adjudication officer, except that a tribunal shall, instead of referring a question in accordance with paragraph (3)(a) of that regulation, direct it to be so referred by an adjudication officer.

#### **Decisions of appeal tribunals**

**23.**—(1) The decision of the majority of the appeal tribunal shall be the decision of the tribunal but, where the tribunal consists of an even number, the chairman shall have a second or casting vote.

(2) The chairman of an appeal tribunal shall—

- (a) record the decision of the tribunal in writing (whether on an appeal or on a reference from an adjudication officer);
- (b) include in such record a statement of the reasons for the decision, including findings on all questions of fact material to the decision; and

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(8) [S.R. 1976 No. 227](#); relevant amending regulations are [S.R. 1976 No. 329](#)

(c) if the decision is not unanimous, record a statement that one of the members dissented and the reasons given by him for dissenting.

(3) As soon as may be practicable after a case has been decided by an appeal tribunal, a copy of the record of the decision made in accordance with this regulation shall be sent to every party to the proceedings who shall also be informed of the conditions governing appeals to a Commissioner.

#### **Application for leave to appeal to a Commissioner from an appeal tribunal**

**24.**—(1) Subject to paragraphs (2) to (4), an application to the chairman of an appeal tribunal for leave to appeal to a Commissioner from a decision of an appeal tribunal shall be made—

- (a) orally at the hearing after the decision is announced by the tribunal; or
- (b) in accordance with regulation 3 and Schedule 2.

(2) Where an application in writing for leave to appeal is made by an adjudication officer the clerk to the tribunal shall, as soon as may be practicable, send a copy of the application to every other party to the proceedings.

(3) The decision of the chairman on an application for leave to appeal made under paragraph (1) (a) shall be recorded in the record of the proceedings of the tribunal, and on an application under paragraph 1 (b) shall be recorded in writing and a copy shall be sent to every party to the proceedings.

(4) Where in any case it is impracticable, or it would be likely to cause undue delay for an application for leave to appeal against a decision of an appeal tribunal to be determined by the person who was the chairman of that tribunal, that application shall be determined by any other person qualified under section 39(4) of the Administration Act to act as a chairman of appeal tribunals.

SECTION D —

### *DISABILITY ADJUDICATION*

#### **Prescribed period**

**25.**—(1) Subject to paragraph (2), the prescribed period for the purposes of section 28(1), (2) and (4) of the Administration Act shall be three months beginning with the date on which notice in writing of the decision of an adjudication officer under section 19 of that Act was given to the claimant.

(2) Where a claimant submits an application for review under section 28(1) of the Administration Act by post which would have arrived in an office of the Department in the ordinary course of the post within the period prescribed by paragraph (1) but is delayed by postal disruption caused by industrial action whether within the postal service or elsewhere, that period shall expire on the day the application is received in the office of the Department where that day does not fall within the period prescribed by paragraph (1).

#### **Manner of making applications for review under section 28 of the Administration Act**

**26.** An application for a review of a decision of an adjudication officer under section 28(1), (2) and (4) of the Administration Act shall be made to an office of the Department.

#### **Appeal to a disability appeal tribunal**

**27.**—(1) The claimant may appeal to a disability appeal tribunal from a decision of an adjudication officer under section 28(1) of the Administration Act in any case in which there arises—

- (a) a disability question; or

- (b) both a disability question and any other question relating to attendance allowance, disability living allowance or disability working allowance.
- (2) In this regulation “disability question” means a question as to—
- (a) whether the claimant satisfies the conditions for entitlement to—
    - (i) the care component of a disability living allowance specified in section 72(1) and (2) of the Contributions and Benefits Act,
    - (ii) the mobility component of a disability living allowance specified in section 73(1), (8) and (9) of that Act,
    - (iii) an attendance allowance specified in sections 64 and 65(1) of that Act, or
    - (iv) a disability working allowance specified in section 128(1)(b) of that Act<sup>(9)</sup>;
  - (b) the period throughout which the claimant is likely to satisfy the conditions for entitlement to attendance allowance or disability living allowance;
  - (c) the rate at which attendance allowance is payable; or
  - (d) the rate at which the care component or the mobility component of a disability living allowance is payable.

### **Persons who may appeal to disability appeal tribunals and appeal tribunals**

**28.** A person purporting to act on behalf of a person who is terminally ill as defined in section 66(2) of the Contributions and Benefits Act, whether or not that person is acting with his knowledge or authority, may appeal to a disability appeal tribunal or an appeal tribunal, as appropriate, in accordance with section 31(1) of the Administration Act in any case where the ground of appeal is that that person is or was at any time terminally ill.

### **Procedure for disability appeal tribunals**

**29.—(1)** A disability appeal tribunal, except where section 30(7)(a) of the Administration Act applies, shall hold an oral hearing of any appeal made to it.

(2) Where any member of a disability appeal tribunal is not present at the consideration of a case the tribunal shall not proceed to determine that case but shall adjourn it for consideration by another tribunal.

(3) Where an oral hearing is adjourned and at the hearing after the adjournment the tribunal is differently constituted, otherwise than through the operation on that occasion of paragraph (2), the proceedings at that hearing shall be by way of a complete rehearing of the case.

(4) Where a disability appeal tribunal is unable to reach a unanimous decision on any case the decision of the majority of its members shall be the decision of the tribunal.

(5) The chairman of a disability appeal tribunal shall in each case—

- (a) record the decision of the tribunal in writing;
- (b) include in such record a statement of the reasons for the decision, including findings on all questions of fact material to the decision;
- (c) if the decision is not unanimous, record a statement that one of the members dissented and the reasons given by him for dissenting.

(6) As soon as may be practicable after a case has been decided by a disability appeal tribunal, a copy of the record of the decision made in accordance with this regulation shall be sent to every

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(9) Section 128(1) was amended by Article 12(2) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I.1994/1898 (N.I. 12))

party to the proceedings who shall also be informed of the conditions governing appeals to a Commissioner.

#### **Examination and report by a medical practitioner**

**30.** A person who may be nominated as chairman of a disability appeal tribunal may refer a claimant to a medical practitioner for examination and report if he is satisfied that without such examination and report an appeal by the claimant cannot be properly determined.

#### **Persons who may not act as members of disability appeal tribunals**

- 31.**—(1) A person shall not act as a member of a disability appeal tribunal in any case where he—
- (a) is or may be directly affected by that case; or
  - (b) has taken any part in such case as an assessor, a medical practitioner who has regularly attended the claimant or to whom any question has been referred for report or advice, or as a witness.
- (2) Where a disability appeal tribunal is unable to determine a question by reason of the provisions of paragraph (1) the case shall be referred to another such tribunal.

#### **Application for leave to appeal to a Commissioner from a disability appeal tribunal**

- 32.**—(1) Subject to paragraphs (2) to (4), an application to the chairman of a disability appeal tribunal for leave to appeal to a Commissioner from a decision of a disability appeal tribunal shall be made—
- (a) orally at the hearing after the decision is announced by the tribunal; or
  - (b) in accordance with regulation 3 and Schedule 2.
- (2) Where an application in writing for leave to appeal is made by an adjudication officer, the clerk to the tribunal shall, as soon as may be practicable, send a copy of the application to every other party to the proceedings.
- (3) The decision of the chairman on an application for leave to appeal shall be recorded in writing and notice of it shall be given to every party to the proceedings.
- (4) Where in any case it is impracticable, or it would be likely to cause undue delay, for an application for leave to appeal against a decision of a disability appeal tribunal to be determined by the person who was the chairman of that tribunal, that application shall be determined by any other person qualified under section 41(5) of the Administration Act to act as a chairman of disability appeal tribunals.

#### **Procedure of a disability appeal tribunal on receipt of a Commissioner's decision**

- 33.**—(1) Subject to paragraph (2), the provisions of these Regulations apply for the disposal by a disability appeal tribunal of a case remitted to it following an appeal to a Commissioner as if it were an original hearing of an appeal to the disability appeal tribunal.
- (2) Where the case is remitted to the disability appeal tribunal following an appeal to a Commissioner in which it was decided that the decision of the disability appeal tribunal was erroneous in point of law, the proceedings shall, subject to any direction of the Commissioner, be by way of a complete rehearing of the appeal by persons who were not members of the tribunal which gave the erroneous decision.

SECTION E —

## MEDICAL ADJUDICATION

### Construction of Section E

34. In this Section—

“adjudicating medical authority” means, as the case may be, an adjudicating medical practitioner or a medical board;

“medical board” means two or more adjudicating medical practitioners nominated by the Department to act jointly in the consideration of a case.

### Appointment of adjudicating medical practitioners

35. Adjudicating medical practitioners shall be appointed by the Department to act for such area or areas as may be specified in the instrument of appointment.

### Determination of medical questions

- (a)
  - (i) Section 45(1) of the Administration Act shall have effect as if for the words “an adjudicating medical practitioner” in the second place where they occur there were substituted “a medical board”,
  - (ii) section 45(2) of the Administration Act shall have effect as if for “such a practitioner if he” there were substituted “a medical board if it”;
- (b) any case which, in the opinion of the Department, should be determined by more than one adjudicating medical practitioner, shall be referred to and determined by a medical board.
- (2) Any question which falls to be determined by an adjudicating medical authority other than those within paragraph (1) shall be referred to and determined by an adjudicating medical practitioner.
- (3) Where a case has been referred to an adjudicating medical practitioner for determination the Department may, at any time before the determination is made, revoke that reference and refer the case to a medical board.
- (4) Where a case has been referred to a medical board consisting of two members and they are unable to agree, the reference to that board shall be revoked and the case shall be referred to a board consisting of three members and if they are not unanimous the decision of the majority shall be the decision of the board.
- (5) The Department shall appoint one of the members of any medical board to act as chairman.
- (6) A medical board shall not determine any question unless all the members thereof are present at the consideration of that question, and if any member of the board is absent the reference to that board shall be revoked and the case shall be referred to another such board.
- (7) Reasonable notice (being not less than 10 days beginning with the day on which the notice is given and ending on the day before the sitting is to take place) of the time and place at which an adjudicating medical authority will sit for the consideration of any case shall be given to the claimant and if such notice is not given or if, after such notice has been given, the claimant fails to appear at the sitting of the authority, the authority may proceed to determine the questions referred to it only with the claimant’s consent.
- (8) For the purposes of these Regulations a sitting of an adjudicating medical authority is not an oral hearing, and the only persons entitled to be present and be heard during the consideration of any question by such an authority are the claimant and any other person whom the authority may, with the consent of the claimant, allow to be present as being a person who, in its opinion, is likely to assist it in the determination of that question.



### **Decisions of adjudicating medical authorities**

**37.**—(1) An adjudicating medical authority shall in each case record its decision in writing in such form as may from time to time be approved by the Department and shall include in such record (which shall be signed by all members of the authority)—

- (a) a statement of its findings on all questions of fact material to the decision; and
- (b) in a case in which the decision of a medical board consisting of three members was not unanimous, a statement that one of the members dissented and the reasons given by him for dissenting.

(2) As soon as may be practicable, the claimant shall be sent written notice of the decision of the adjudicating medical authority, and such notice shall be in such form as may from time to time be approved by the Department and shall contain a summary of the findings of the authority, including, if the decision is not unanimous, a statement that one of the members dissented and the reasons given by him for dissenting.

(3) A person to whom written notice of the decision of an adjudicating medical authority is sent in accordance with paragraph (2) shall be informed in writing of the conditions governing an appeal to a medical appeal tribunal.

### **Medical appeal tribunals**

**38.**—(1) A medical appeal tribunal shall hold an oral hearing of any appeal or reference made to it.

(2) Where any member of a medical appeal tribunal is not present at the consideration of a case, the tribunal shall not proceed to determine that case but shall adjourn it for consideration by another tribunal.

(3) Where a medical appeal tribunal is unable to reach a unanimous decision on any case, the decision of the majority of its members shall be the decision of the tribunal.

(4) A medical appeal tribunal shall in each case record its decision in writing and shall include in such record, which shall be signed by all members of the tribunal, a statement of the reasons for the decision, including findings on all questions of fact material to the decision.

(5) As soon as may be practicable after a case has been decided by a medical appeal tribunal, a copy of the record of the decision made in accordance with this regulation shall be sent to every party to the proceedings who shall also be informed of the conditions governing appeals to a Commissioner.

### **Application for leave to appeal to a Commissioner from a medical appeal tribunal**

**39.**—(1) Subject to paragraphs (2) to (4), an application to the chairman of a medical appeal tribunal for leave to appeal to a Commissioner from a decision of a medical appeal tribunal shall be made in accordance with regulation 3 and Schedule 2.

(2) Where an application in writing for leave to appeal is made by the Department or an adjudication officer, the clerk to the tribunal shall, as soon as may be practicable, send a copy of the application to every other party to the proceedings.

(3) The decision of the chairman on an application for leave to appeal shall be recorded in writing and notice of it shall be given to every party to the proceedings.

(4) Where in any case it is impracticable, or it would be likely to cause undue delay, for an application for leave to appeal against a decision of a medical appeal tribunal to be determined by the person who was the chairman of that tribunal, that application shall be determined by any other person qualified under section 48(4) of the Administration Act to act as a chairman of medical appeal tribunals.

### **Disqualification from acting as an adjudicating medical authority or as a member thereof or as a member of a medical appeal tribunal**

**40.**—(1) Subject to paragraphs (2) and (3), a person shall not act as an adjudicating medical authority or as a member thereof or as a member of a medical appeal tribunal in any case where he—

- (a) is or may be directly affected by that case;
- (b) has taken any part in such a case as a medical assessor, or as a medical practitioner who has regularly attended the claimant or to whom any question has been referred for report, or as an employer or as a witness; or
- (c) in the case only of a medical appeal tribunal, has acted as an adjudicating medical authority, or as a member thereof, to whom the case was referred.

(2) A medical practitioner to whom a question has been referred under regulation 45(1) (reference of diagnosis and recrudescence questions for medical report) shall not be precluded from acting as an adjudicating medical practitioner solely by reason of his having prepared, under that regulation, a report on the case of the claimant (whether in relation to the question for determination or otherwise) if he proposes to determine the question in favour of the claimant.

(3) A medical practitioner shall not be precluded from acting as a member of a medical board for the purpose of the consideration of a case solely because he has taken part in that case as a medical practitioner to whom a question relating to any of the diseases numbered B6, C15, C17, C18 C22(b), D1, D2, D3, D7, D8, D9, D10, D11 or D12 in Part I of Schedule 1 to the Prescribed Diseases Regulations(10); has been referred for report.

(4) Where an adjudicating medical authority or a medical appeal tribunal is unable to determine a question by reason of the provisions of paragraph (1), the reference to that authority or tribunal shall be revoked and the case shall be referred to another such authority or tribunal.

### **Application for review involving review of a decision of a medical appeal tribunal**

**41.** Where, in the opinion of an adjudication officer, an application made under the provisions of section 45(4) of the Administration Act raises a question as to the review of a decision of a medical appeal tribunal and, by virtue of section 45(7) of that Act, such a decision may not be reviewed without the leave of a medical appeal tribunal, the adjudication officer shall submit the application to a medical appeal tribunal so that the tribunal may consider whether such leave shall be granted and shall not refer the question to an adjudicating medical authority with a view to the review of that decision unless the medical appeal tribunal grant such leave.

### **Procedure of a medical appeal tribunal on receipt of a Commissioner's decision**

**42.**—(1) Subject to paragraphs (2) and (3), the provisions of these Regulations apply for the disposal by a medical appeal tribunal of a case remitted to it following an appeal to a Commissioner as if it were an original hearing of an appeal to the medical appeal tribunal.

(2) Where, on appeal from a medical appeal tribunal to him, the Commissioner has decided that the decision of the medical appeal tribunal is not erroneous in point of law, the medical appeal tribunal need not hold a hearing for the purpose of confirming its decision.

(3) Where the case is remitted to the medical appeal tribunal following an appeal to a Commissioner in which it was decided that the decision of the medical appeal tribunal was erroneous in point of law, the proceedings shall, subject to any direction of the Commissioner, be by way of a complete rehearing of the appeal by persons who were not members of the tribunal which gave the erroneous decision.

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(10) Relevant amending regulations are [S.R. 1986 No. 270](#), [S.R. 1987 No. 116](#), [S.R. 1991 No. 414](#) and [S.R. 1993 Nos. 148 and 350](#)

## PART IV

### PROVISIONS RELATING TO PARTICULAR BENEFITS OR PROCEDURES SECTION A —

#### *PRESCRIBED DISEASES*

##### **Construction of Section A**

**43.**—(1) Regulation 34 applies for the construction of this Section as it applies for the construction of Section E of Part III.

(2) Except as provided in this Section, any reference in Part II of the Administration Act or in these Regulations to the relevant accident shall be construed as a reference to the relevant disease and any reference to the date of the relevant accident shall be construed as a reference to the date of onset of the relevant disease.

(3) In the following provisions of this Section any question arising in connection with a claim for, or award of, disablement benefit—

- (a) whether any person is suffering or has suffered from a prescribed disease, is referred to as a diagnosis question;
- (b) whether a prescribed disease has, in fact, been contracted afresh in a case where that question arises under the provisions of regulation 7 or 8 of the Prescribed Diseases Regulations(11) is referred to as a recrudescence question.

##### **Application of Part II of the Administration Act and of these Regulations**

**44.**—(1) Subject to regulation 52 (review on ground of unforeseen aggravation), the provisions of sections 42 and 45(5) of the Administration Act shall not apply in relation to prescribed diseases.

(2) The provisions of—

- (a) Part II of the Administration Act, subject to the provisions of this Section and Schedule 3; and
- (b) these Regulations, subject, in the case of each of the diseases numbered B6, C15, C17, C18, C22(b), D1, D2, D3, D7, D8, D9, D10, D11 and D12 in Part I of Schedule 1 to the Prescribed Diseases Regulations, to the provisions of Part V of those regulations,

shall apply for the determination of any question arising in connection with a claim for benefit under sections 108, 109 and 110 of the Contributions and Benefits Act in respect of a prescribed disease.

##### **Reference of diagnosis and recrudescence questions for medical report**

**45.**—(1) Subject to paragraph (2), where a diagnosis or recrudescence question arises in any case, the adjudication officer shall forthwith refer that question for report to one or more medical practitioners who, in the case of each of the diseases numbered B6, C15, C17, C18, C22(b), D1, D2, D3, D7, D8, D9, D10, D11 and D12 in Part I of Schedule 1 to the Prescribed Diseases Regulations shall have power, if he or they consider it to be necessary, to do any or all of the following—

- (a) to make or cause to be made a radiological examination of the claimant's lungs;
- (b) to obtain the report of a radiologist or other physician on the case;
- (c) to make or cause to be made serological or lung function tests or such other tests as he or they consider necessary;

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(11) Relevant amending regulations are [S.R. 1989 No. 319](#) and [S.R. 1993 Nos. 148 and 350](#)

(d) to obtain reports upon the results of such tests.

(2) The adjudication officer may determine a diagnosis or recrudescence question without referring it as provided by paragraph (1) if he is satisfied that such reference can be dispensed with having regard to—

- (a) a medical report signed by a medical practitioner on the staff of a hospital at which the claimant is receiving or has received treatment for a condition due to a prescribed disease, or by a medical officer engaged at the place of work where the claimant is or was employed; or
- (b) the decision on any similar diagnosis or recrudescence question which has been determined on the consideration of any previous claim or question arising in respect of the same disease suffered by the same person (including the date and terms of any medical reports on which such previous decision was based and of any medical certificates submitted by the claimant),

so however that a reference for report shall not be dispensed with on the grounds specified in subparagraph (a) except where a diagnosis question is determined in favour of the claimant or where a recrudescence question arises in connection with a diagnosis question which has been so determined under this regulation.

(3) The adjudication officer may, if he is satisfied that a reference for report as provided in paragraph (1) may be dispensed with on any of the grounds specified in paragraph (2), refer for the decision of an adjudicating medical authority any diagnosis or recrudescence question in connection with a claim in respect of each of the diseases numbered B6, C1.5, C17, C18 and C22(b) in Part I of Schedule 1 to the Prescribed Diseases Regulations, without having referred such a question for report.

(4) Where the adjudication officer is of the opinion that the claim or question submitted to him or any part thereof can be disposed of without determining any diagnosis or recrudescence question, he may make an award or determine that an award cannot be made or may determine the question submitted to him accordingly without referring such diagnosis or recrudescence question for report or before so referring it.

(5) Where the assessed extent of a person's disablement in respect of a prescribed disease amounts to one per cent. or more and during the period taken into account by that assessment, the beneficiary either—

- (a) applies for a review of such assessment; or
- (b) makes a further claim for disablement benefit in respect of a fresh attack of the disease,

any recrudescence question arising on such application or further claim instead of being referred for report shall be referred for decision to an adjudicating medical authority together with any disablement question which arises.

(6) The provisions of this regulation apply to an appeal tribunal as they apply to an adjudication officer with the modification that an appeal tribunal, instead of referring a diagnosis or recrudescence question to a medical practitioner in accordance with paragraph (1), shall direct the adjudication officer to refer it to an adjudicating medical authority in accordance with regulation 46 (procedure on receipt of medical report).

### **Procedure on receipt of medical report**

**46.**—(1) Where a diagnosis or recrudescence question is referred as provided by regulation 45(1), the adjudication officer shall, subject to the provisions of paragraph (4), proceed with the consideration of that question as soon as possible after he has received the report of the medical practitioner or practitioners to whom it was so referred.

(2) Where the question so referred is a diagnosis question, then, subject to regulation 47 (restriction of adjudication officer's power to determine diagnosis and recrudescence questions), the adjudication officer may determine the question or refer it to an adjudicating medical authority for decision.

(3) Where the question so referred is a recrudescence question, then, subject to regulation 47, the adjudication officer—

- (a) if he is satisfied having regard to the report that the disease ought to be treated as having been, in fact, contracted afresh, shall so treat it and shall determine the question accordingly; or
- (b) if he is not so satisfied, shall treat the disease as a recrudescence of the previous attack or as not having developed on or after 5th July 1948, as the case may require, and shall determine the question accordingly.

(4) Subject to the provisions of these Regulations, the provisions of sections 20, 23 to 27, 35 and 67 of the Administration Act(12) shall apply as if a diagnosis or recrudescence question were a question such as is referred to in section 35(1) of that Act and as if references in those sections to the determination of, or to the review of the decision of, such a question included references to the determination of, or to the review of the decision of, a diagnosis or recrudescence question under these Regulations.

### **Restriction of adjudication officer's power to determine diagnosis and recrudescence questions**

**47.**—(1) Where, on the consideration of a diagnosis or recrudescence question, the adjudication officer is of the opinion that there arises a disablement question, he shall not determine the diagnosis or recrudescence question but shall refer it to an adjudicating medical authority together with the disablement question.

(2) Where a diagnosis question is referred to an adjudicating medical authority under the provisions of regulation 46 (procedure on receipt of medical report) or 48 (appeal against decision of adjudication officer), the adjudication officer shall not determine any recrudescence question which arises in connection therewith but shall refer it to the adjudicating medical authority together with the diagnosis question.

### **Appeal against decision of adjudication officer**

**48.**—(1) Where, under the provisions of regulation 45 (reference of diagnosis and recrudescence questions for medical report) or 46 (procedure on receipt of medical report), an adjudication officer has decided a diagnosis or recrudescence question, the claimant shall be notified in writing of the decision, of the reasons for it and of his right of appeal under paragraph (2).

(2) A claimant may appeal any decision mentioned in paragraph (1) to an adjudicating medical authority in accordance with the provisions of regulation 3 and Schedule 2.

(3) appeal is made against a decision on a recrudescence question, the adjudication officer shall also refer the diagnosis question, and the adjudicating medical authority may confirm, reverse or vary the decision on that question as on an appeal.

(4) Where a diagnosis or recrudescence question is referred to an adjudicating medical authority to which there is also referred a disablement question and the decision of the adjudicating medical authority on the diagnosis or recrudescence question enables the case to be decided adversely to the claimant, the adjudicating medical authority shall not determine the disablement question.

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(12) Sections 23(1) and 25(2) were amended by paragraphs 46 and 47 respectively of Schedule 1 to the Social Security (Incapacity for Work) Order (Northern Ireland) 1994 (S.I. 1994/1898 (N.I. 12))

### **Appeal or reference to a medical appeal tribunal**

**49.**—(1) A claimant may appeal the decision of an adjudicating medical authority on a diagnosis or recrudescence question and in that event the case shall be referred to a medical appeal tribunal.

(2) If the adjudication officer is of the opinion, or if the Department notifies the adjudication officer that it is of the opinion, that any decision of an adjudicating medical authority on a diagnosis or recrudescence question ought to be considered by a medical appeal tribunal, the adjudication officer shall refer the case to a medical appeal tribunal for consideration and the tribunal may confirm, reverse or vary the decision as on an appeal.

### **Powers of a medical appeal tribunal upon determining the question referred**

**50.** Where a diagnosis or recrudescence question is referred to a medical appeal tribunal that tribunal, upon determining the question referred—

- (a) may proceed to determine any diagnosis or recrudescence question which arises in connection therewith and any disablement question which arises in consequence thereof and where a decision on any-such question has been given by an adjudicating medical authority, may confirm, reverse or vary that decision; and
- (b) where it is determined that the disease is a recrudescence of an attack to which an earlier decision of an adjudicating medical authority>-or a medical appeal tribunal relates, may proceed to review that earlier decision under the provisions of section 45(4) of the Administration Act.

### **Review of previous assessment following recrudescence decision**

**51.** Where, by reason of the provisions of regulation 7(4) of the Prescribed Diseases Regulations, the decision on a recrudescence question necessitates the review of a previous assessment of disablement, the adjudicating medical authority may review such previous assessment, as provided by section 45 of the Administration Act, so however that, in any such case, notwithstanding the provisions of subsection (7) of that section, a previous assessment may be reviewed as provided by this regulation at any time without the leave of a medical appeal tribunal.

### **Review on ground of unforeseen aggravation**

**52.** Section 45(S) of the Administration Act shall have effect as if—

- (a) after “this section” there were inserted “and of subsection (8A)”; and
- (b) the following subsection were inserted after subsection (8)—

“(8A) Where—

- (a) a final assessment of the extent of disablement resulting from a loss of faculty has been made for a period limited by reference to a definite date; and
- (b) an application for review on the ground that there has been unforeseen aggravation of the results of the relevant disease is made within a period of three months immediately following that date,

the adjudicating medical authority shall determine the extent of disablement resulting from the relevant loss of faculty both for the period mentioned in paragraph (a) and any time after that period.”.

### **Review of a decision on diagnosis or recrudescence question**

**53.**—(1) Any decision on a diagnosis or recrudescence question of an adjudication officer, adjudicating medical authority or medical appeal tribunal may be reviewed at any time by a medical

board if it is satisfied by fresh evidence that the decision was given in ignorance of, or was based on a mistake as to, some material fact, so however that a decision of a medical appeal tribunal on a diagnosis or recrudescence question shall not be reviewed by a medical board without the leave of a medical appeal tribunal.

(2) A question may be raised with a view to the review of any decision on a diagnosis or recrudescence question by means of an application in writing to an adjudication officer, and on receipt of such application the adjudication officer shall proceed to refer such question to a medical board, so however that where in the opinion of the adjudication officer such application raises a question as to the review of a decision of a medical appeal tribunal on a diagnosis or recrudescence question, the adjudication officer shall submit the application to a medical appeal tribunal so that such tribunal may consider whether leave shall be granted and shall not refer the question to a medical board unless the medical appeal tribunal grants leave.

(3) Subject to paragraphs (1) and (2), a medical board may deal with a case on review in any manner in which it could deal with it on an original reference to it, and regulation 49 (appeal or reference to a medical appeal tribunal) shall apply to a decision of a medical board in connection with an application for review as it applies to a decision on an original reference to it.

#### **Additional provisions relating to the powers and decisions of adjudicating medical authorities**

**54.**—(1) Adjudicating medical authorities shall, when determining any question in respect of each of the diseases numbered B6, C15, C17, C18, C22(b), D1, D2, D3, D7, D8, D9, D10, D11 and D12 in Part I of Schedule 1 to the Prescribed Diseases Regulations, have power—

- (a) to make or cause to be made a radiological examination of the claimant's lungs;
- (b) to obtain the report of a radiologist on the case;
- (c) to make or cause to be made serological or lung function tests or such other tests as they consider necessary; and
- (d) to obtain reports upon the results of such tests.

(2) Where, in respect of a claim for disablement benefit by reason of prescribed disease D1 (pneumoconiosis) or D2 (byssinosis), an adjudicating medical authority or a medical appeal tribunal gives a decision under the foregoing provisions of these Regulations that the claimant is or was suffering from one or other of those diseases—

- (a) that authority or tribunal may, on the evidence before it at the time of its decision, determine also the date from which the claimant has or had suffered from that disease;
- (b) notwithstanding the provisions of section 58(1) of the Administration Act, in making that determination, the authority or tribunal shall not be bound by any previous decision of an adjudication officer or adjudicating medical authority that the claimant was not suffering from that disease; and
- (c) any such previous decision, in so far as it is inconsistent with the said determination, shall cease to have effect.

SECTION B —

#### *INCOME SUPPORT*

#### **Notification of decisions in income support cases**

**55.**—(1) Subject to paragraphs (2) to (4), the decision of an adjudication officer on any claim or question relating to income support shall be notified in writing to the claimant who shall at the

same time be notified of his right to request a statement of the reasons for that decision and of his right to appeal to an appeal tribunal.

(2) Where, under arrangements made by the Department, income support is payable together with another benefit under the Contributions and Benefits Act, notice of the aggregate amount so payable shall be notice for the purpose of paragraph (1).

(3) Written notice shall not be required of a determination awarding income support which is implemented by a cash payment where in all the circumstances it would be impracticable to give such a notice.

(4) Written notice shall not be required of a determination terminating entitlement to income support where the reason for the termination is already known to the claimant or it is otherwise reasonable in the circumstances not to give such notice.

(5) In so far as may be practicable, and subject to paragraph (6), where a claimant is notified of a decision under paragraph (1) or (2) the Department shall also give or send him a written notice of assessment showing—

- (a) the total amounts of the personal allowances, family premium, other premiums and housing costs determined under Part IV of the Income Support Regulations as are appropriate in his case;
- (b) the income taken into account; and
- (c) any personal expenses addition, special transitional addition and transitional addition payable under the Income Support (Transitional) Regulations.

(6) Paragraph (5) shall not apply to any determination—

- (a) that income support is not payable for any reason other than that the claimant's income exceeds the applicable amount;
- (b) made on review under regulation 63, either under paragraph (2) of that regulation or where in other cases under that regulation the Department considers a written notice of assessment unnecessary;
- (c) in respect of a claimant to whom section 126 of the Contributions and Benefits Act applies.

(7) Where, within the time limited by regulation 3 and Schedule 2 for the bringing of an appeal against an adjudication officer's decision, the claimant requests a statement of the reasons for that decision he shall be given such a statement in writing and shall again be informed of his right of appeal.

### **Income support and social fund questions not immediately determinable**

**56.**—(1) Where, on consideration of a claim or question relating to income support or to payment of maternity expenses from the social fund under Part VIII of the Contributions and Benefits Act, it appears to an adjudication officer that the claimant's entitlement to, or the rate or amount of, such benefit depends on the determination of—

- (a) the question as to what housing costs are to be included in the claimant's applicable amount by virtue of regulation 17(1)(e) or 18(1)(f) of, and Schedule 3 to, the Income Support Regulations<sup>(13)</sup> (applicable amounts) and the adjudication officer is satisfied that not all of those housing costs can be immediately determined, he shall proceed to determine the claim or question on the assumption that the housing costs to be included in the claimant's applicable amount are those that can be immediately determined;

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<sup>(13)</sup> Relevant amending provisions are S.R. 1988 Nos. 146, 193, 274, 318 and 431, S.R. 1989 Nos. 139, 249 and 395, S.R. 1990 Nos. 131, 346 and 387, S.R. 1991 No. 474, S.R. 1992 Nos. 6, 85, 147 and 403, S.R. 1993 Nos. 28, 120, 149, 195, 218, 233, 311, 373 and 479, S.R. 1994 Nos. 77 and 138 and S.R. 1995 Nos. 71, 86, 101 and 162



- (b) any of the questions mentioned in paragraph (3) and the adjudication officer is satisfied that the question cannot be immediately determined, he shall proceed to determine the claim or question on the assumption that the determination of the question so mentioned will be adverse to the claimant.

(2) Without prejudice to the power of an adjudication officer to refer any claim or question to an appeal tribunal under section 19(2) of the Administration Act, and notwithstanding the provisions of section 20 of that Act, on an appeal to an appeal tribunal in any case where the adjudication officer has applied the provisions of paragraph (1) in relation to any of the questions mentioned or referred to in that paragraph, the tribunal shall not determine any such question until it has been determined by an adjudication officer.

(3) The questions referred to in paragraphs (1) and (2) are—

- (a) whether in relation to any person the applicable amount falls to be reduced or disregarded to any extent by virtue of section 125(3) of the Contributions and Benefits Act;
- (b) whether by virtue of regulation 9(1) of the Income Support Regulations a person is to be treated as available for employment and whether by virtue of regulation 10(1)(b), (d) or (g) of those regulations<sup>(14)</sup> he is not to be so treated;
- (c) whether for the purposes of regulation 10(1)(a) of the Income Support Regulations after a situation in any employment has been properly notified to a claimant as vacant or about to become vacant he has without good cause refused or failed to apply for that situation or refused to accept that situation when offered to him;
- (d) whether regulation 10A of the Income Support Regulations<sup>(15)</sup> applies by virtue of paragraph (3) or (4) of that regulation;
- (e) whether for the purposes of regulation 12 of the Income Support Regulations<sup>(16)</sup> a person is by virtue of that regulation to be treated as receiving relevant education;
- (f) whether in relation to any claimant the applicable amount includes severe disability premium by virtue of regulation 17(1)(d) or 18(1)(e) of, and paragraph 13 of Schedule 2 to, the Income Support Regulations<sup>(17)</sup>; and
- (g) whether regulation 22 of the Income Support Regulations<sup>(18)</sup> applies to a person by virtue of paragraph (4)(c)(iii) of that regulation and, if so, the period of its application by virtue of paragraph (6)(c) of that regulation.

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

<sup>(14)</sup> Regulation 10(1)(d) was amended by regulation 5(a) of S.R. 1989 No. 365

<sup>(15)</sup> Regulation 10A was inserted by regulation 6 of S.R. 1989 No. 365 and amended by regulation 2 of S.R. 1992 No. 471

<sup>(16)</sup> Relevant amending regulations are S.R. 1990 No. 131, S.R. 1992 No. 403 and S.R. 1993 No. 373

<sup>(17)</sup> Paragraph 13 of Schedule 2 was amended by regulation 30(d) of S.R. 1988 No. 146, regulation 6(f) of S.R. 1989 No. 395, regulation 10(4)(c) of S.R. 1992 No. 6, regulation 3(2) of S.R. 1993 No. 218 and regulation 2(9)(b) of S.R. 1994 No. 327

<sup>(18)</sup> Relevant amending regulations are S.R. 1988 No. 146, S.R. 1989 Nos. 139, 249 and 365, S.R. 1990 No. 131, S.R. 1991 No. 46 and S.R. 1993 No. 149

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(19);

“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<sup>(20)</sup> 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(21);
- (b) any protected sum determined in accordance with Schedule 3A(22) or 3B(23) 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(24).

(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.

(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(25) 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(26).

### **Repayment of student loan not a change of circumstances**

**64.** The repayment of a loan to which regulation 66A of the Income Support Regulations(27) or regulation 42A of the Family Credit (General) Regulations (Northern Ireland) 1987(28) (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.

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(21) 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

(22) 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

(23) 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

(24) 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

(25) Relevant amending regulations are S.R. 1988 No. 146 and S.R. 1993 No. 149

(26) Relevant amending regulations are S.R. 1993 Nos. 149 and 373 and S.R. 1994 No. 65

(27) 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

(28) 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

### **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.

(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.

## **PART V**

### **TRANSITIONAL PROVISIONS AND REVOCATIONS**

#### **Transitional provisions**

**68.**—(1) The Social Security (Adjudication) Regulations (Northern Ireland) 1987<sup>(29)</sup> as originally made, shall continue to apply to the adjudication of any claim or question under the National Assistance Act (Northern Ireland) 1948<sup>(30)</sup> or the Supplementary Benefits &c. Act

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<sup>(29)</sup> S.R. 1987 No. 82

<sup>(30)</sup> 1948 c. 13 (N.I.)

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(Northern Ireland) 1966(31) as they apply to a corresponding claim or question under the Supplementary Benefits (Northern Ireland) Order 1977(32) and to the adjudication of any claim or question under that Order as if these Regulations had not been made.

(2) Anything done, begun or deemed to be done or begun under the Social Security (Adjudication) Regulations (Northern Ireland) 1987 shall be deemed to have been done or continued under the corresponding provisions of these Regulations.

(3) So much of any document as refers expressly or by implication to any regulation revoked by these Regulations shall, if and so far as the context permits, for the purposes of these Regulations be treated as referring to the corresponding provision of these Regulations.

### **Revocations**

**69.** The regulations set out in column (1) of Schedule 4 are revoked to the extent mentioned in column (3) of that Schedule.

Sealed with the Official Seal of the Department of Health and Social Services for Northern Ireland  
on

L.S.

21st July 1995.

*W. G. Purdy*  
Assistant Secretary

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(31) 1966 c. 28(N.I.)

(32) S.I. 1977/2156(N.I. 27)



## SCHEDULE 1

### Provisions Conferring Powers Exercised in Making these Regulations

Column (1)	Column (2)
Social Security Administration (Northern Ireland) Act 1992(33)	section 15(3)
	section 18(3)(b)
	section 20(2) and (4)
	section 21(9) and (10)
	section 23(3)
	section 24(3)
	section 25(1)
	section 28
	section 29(3)
	section 30(8)
	section 31(1) and (2)
	section 32(4)
	section 33(10)
	section 43(2)
	section 44(2) and (3)
	section 45(3), (7) and (9)
	section 46(3) and (4)
	section 47(3)
	section 48(6)
	section 53(1)
	section 56
	section 57
	section 59(1), (2) and (3)
	section 60
	section 68(1)
	section 139
	section 165(6)
	Schedule 3
	Schedule 7, paragraph 2

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## SCHEDULE 2

Regulation 3

**Time Limits for >Making Applications, Appeals or References**

Column (1) <i>Application, appeal or reference</i>	Column (2) <i>Appropriate office</i>	Column (3) <i>Specified time</i>
1. Appeal to an or reference medical authority from an adjudication officer's determination of a diagnosis or recrudescence question (regulation 48).	An office of the department.	3 months beginning with the date when notice in writing of the decision was given to the appellant.
2. Appeal to a medical appeal tribunal from a decision of an adjudicating medical authority, as defined in regulation 34 (;section 44(2) of the Administration Act).	An office of the department.	3 months beginning with the date when notice in writing of he decision was given to the appellant.
3. Reference by the Department notifying the adjudication officer that a decision of an adjudicating medical practitioner ought to be considered by a medical appeal tribunal (section 44f3) of the Administration Act).	An office of the department.	3 months beginning ,with the date of the decision of the adjudicating medical practitioner.
4. Appeal to an appeal tribunal from a decision of an adjudication officer (section 2W 1) (of the Administration Act).	An office of the department.	3 months beginning with the date when notice of the decision was given to the appellant.
5. Appeal to a disability appeal tribunal from a decision (on review of an adjudication officer under section 28(1) of the Administration Act.	An office of the department.	3 months beginning with the date when notice in writing of the decision was given to the appellant.
6. Appeal to an appeal tribunal from a decision (on review of an adjudication officer under section 28(1) of the Administration Act.	An office of the department.	3 months beginning with the date when notice in writing of the decision was given to the appellant.
7. Application to the chairman for leave to appeal to a Commissioner from the decision o an appeal tribunal (regulation 24(1)).	The office of the clerk to the appeal tribunal.	3 months beginning with the date when a copy of the record of the decision was given to the applicant.
8. Application to the chairman for leave to appeal	The office of the clerk to the medical appeal tribunal.	3 months beginning with the date when a copy of the record

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Column (1) <i>Application, appeal or reference</i>	Column (2) <i>Appropriate office</i>	Column (3) <i>Specified time</i>
to ;I Commissioner from the decision (1 a medical appeal tribunal (regulation 39(1)).		of the decision was given to the applicant.
9. Application to the chairman for leave to appeal to a Commissioner from the decision of a disability appeal tribunal (regulation 32(1)).	The office of the clerk to the disability appeal tribunal.	3 months beginning with the date when a copy of the record of the decision was given to the applicant.
10. Application to the Department with a view to a review under section 17(1) of the Administration Act of a decision under section 15(1) of that Act (regulation 16(1)).	The office of the Department from which notice of the decision was issued.	3 months beginning with the date when the Department gave the applicant notice in writing of the decision.
11. Application to an adjudicating authority to set aside its decision (regulation 10(2)).	An office of the Department or the office of the authority who gave the decision.	3 months beginning with the date when notice in writing of the decision was given to the applicant.

### SCHEDULE 3

Regulation 44(2)

#### **Modification of Part II of the Administration Act in its Application to Benefit and Claims and Questions to which Part IV of these Regulations Applies**

1. Section 58(4) of the Administration Act shall have effect as if for “an accident” there were substituted “a prescribed disease”; as if for “an injury resulted in whole or in part from the accident” there were substituted “a person suffered from a prescribed disease”; as if for “that accident” there were substituted “that disease”; and as if for “the injury did so result” there were substituted “the person did so suffer”.

2. There shall be included in the questions to be determined under the Administration Act any question—

- (a) whether a person is suffering or has suffered from a prescribed disease or injury; and
- (b) whether a prescribed disease or injury, suffered by a person who has previously been awarded benefit under the National Insurance (Industrial Injuries) Act (Northern Ireland) 1946<sup>(34)</sup>, under the National Insurance (Industrial Injuries) Act (Northern Ireland) 1966<sup>(35)</sup>, under the Social Security (Northern Ireland) Act 1975<sup>(36)</sup> or under the Acts or who is or has been in receipt of compensation under the Workmen’s Compensation Acts (Northern Ireland) 1927 to 1943 or under any contracting-out scheme duly certified thereunder in respect of the same disease or injury, has been contracted or received afresh (if and in so far as regulations made under section 108,109 or 110 of the Contributions and Benefits Act or section 60(1) of the Administration Act necessitate the determination of that question),

<sup>(34)</sup> 1946 c. 21 (N.I.)

<sup>(35)</sup> 1966 c. 9 (N.I.)

<sup>(36)</sup> 1975 c. 15

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which shall, where the question arises in connection with a claim for, or award of, sickness benefit made by virtue of section 102 of the Contributions and Benefits Act which or disablement benefit, be determined as provided by regulations, by an adjudication officer in the light of medical advice or by a medical board or a medical appeal tribunal, so however that no appeal shall lie under the provisions of section 20 or 21 of the Administration Act from a decision of an adjudication officer on any such question.

## SCHEDULE 4

Regulation 69

**Regulations Revoked**

Column (1) <i>Citation</i>	Column (2) <i>Reference</i>	Column (3) <i>Extent of revocation</i>
The Social Security (Adjudication) Regulations (Northern Ireland) 1987	<a href="#">S.R. 1987 No. 82</a>	The whole regulations, except for the purposes of regulation 68(1) of these Regulations
The Social Security (Adjudication) (Amendment No. 2) Regulations (Northern Ireland) 1987	<a href="#">S.R. 1987 No. 466</a>	The whole regulations
The Social Security (Common Provisions) (Miscellaneous Amendments) Regulations (Northern Ireland) 1988	<a href="#">S.R. 1988 No. 369</a>	Regulation 2
The Social Security (Adjudication) (Amendment) Regulations (Northern Ireland) 1989	<a href="#">S.R. 1989 No. 397</a>	The whole regulations
The Social Security (Adjudication) (Amendment) Regulations (Northern Ireland) 1990	<a href="#">S.R. 1990 No. 119</a>	The whole regulations
The Social Security (Adjudication) (Amendment No. 2) Regulations (Northern Ireland) 1991	<a href="#">S.R. 1991 No. 406</a>	The whole regulations
The Social Security (Miscellaneous Provisions) (Amendment) Regulations (Northern Ireland) 1991	<a href="#">S.R. 1991 No. 488</a>	Regulation 4
The Social Security (Adjudication) (Amendment) Regulations (Northern Ireland) 1992	<a href="#">S.R. 1992 No. 36</a>	The whole regulations

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Column (1) <i>Citation</i>	Column (2) <i>Reference</i>	Column (3) <i>Extent of revocation</i>
The Social Security (Miscellaneous Provisions) (Amendment) Regulations (Northern Ireland) 1992	<a href="#">S.R. 1992 No. 83</a>	Regulation 6
The Social Security Benefits (Amendments Consequential Upon the Introduction of Community Care) Regulations (Northern Ireland) 1993	<a href="#">S.R. 1993 No. 149</a>	Schedule 2, paragraph 1
The Social Security (Industrial Injuries and Adjudication) (Amendment) Regulations (Northern Ireland) 1993	<a href="#">S.R. 1993 No. 168</a>	Regulation 3
The Social Security (Industrial Injuries) (Prescribed Diseases) (Amendment No. 2) Regulations (Northern Ireland) 1993	<a href="#">S.R. 1993 No. 350</a>	Regulation 9
The Social Security (Adjudication) (Amendment) Regulations (Northern Ireland) 1994	<a href="#">S.R. 1994 No. 21</a>	The whole regulations
The Social Security (Adjudication) (Amendment No. 2) Regulations (Northern Ireland) 1994	<a href="#">S.R. 1994 No. 150</a>	The whole regulations
The Social Security (Adjudication) (Amendment No. 3) Regulations (Northern Ireland) 1994	<a href="#">S.R. 1994 No. 396</a>	The whole regulations
The Social Security (Incapacity Benefit) (Consequential and Transitional Amendments and Savings) Regulations (Northern Ireland) 1995	<a href="#">S.R. 1995 No. 150</a>	Regulation 19

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## EXPLANATORY NOTE

*(This note is not part of the Regulations.)*

These Regulations are made for the purpose only of consolidating the regulations hereby revoked (set out in Schedule 4) and accordingly, by virtue of section 149(3) of, and paragraph 9 of Schedule 5 to, the Social Security Administration (Northern Ireland) Act 1992 (c. 8), (“the Administration Act”), are not subject to the requirement of section 149(2) of that Act for prior reference to the Social Security Advisory Committee.

The Regulations relate to the determination of claims and questions under the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7) and the Administration Act.

Part I contains provisions about the citation, commencement and interpretation of the Regulations.

Part II and Schedule 2 contain provisions common to the proceedings of all the adjudicating authorities, both medical and non-medical.

Part III makes provision for each of the various adjudicating authorities — Section A for the Department of Health and Social Services; Section B for adjudication officers; Section C for social security appeal tribunals; Section D for disability adjudication; and Section E for medical adjudication.

Part IV contains provisions relating to particular benefits or procedures — Section A (with Schedule 3) relates to prescribed industrial diseases; Section B to income support; and Section C to the review of decisions.

Part V contains transitional provisions and revocations.