
STATUTORY RULES OF NORTHERN IRELAND

1995 No. 293

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

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⁽¹⁾ 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.

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

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;
- (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(2) 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

(2) 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))

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.

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(3) (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;
- (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(4) 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(5) applies by virtue of paragraph (3) or (4) of that regulation;
- (e) whether for the purposes of regulation 12 of the Income Support Regulations(6) 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(7); and
- (g) whether regulation 22 of the Income Support Regulations(8) 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.

(3) 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

(4) Regulation 10(1)(d) was amended by regulation 5(a) of S.R. 1989 No. 365

(5) Regulation 10A was inserted by regulation 6 of S.R. 1989 No. 365 and amended by regulation 2 of S.R. 1992 No. 471

(6) Relevant amending regulations are S.R. 1990 No. 131, S.R. 1992 No. 403 and S.R. 1993 No. 373

(7) 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

(8) 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

*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 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(9);

“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⁽¹⁰⁾) 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—

(10) 1972 c. 57

- (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(11);
 - (b) any protected sum determined in accordance with Schedule 3A(12) or 3B(13) 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(14).
- (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(15) 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(16).

(11) 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

(12) 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

(13) 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

(14) 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

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

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

Repayment of student loan not a change of circumstances

64. The repayment of a loan to which regulation 66A of the Income Support Regulations(17) or regulation 42A of the Family Credit (General) Regulations (Northern Ireland) 1987(18) (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.

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.

(17) 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

(18) 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

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