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STATUTORY RULES OF NORTHERN IRELAND

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**1999 No. 310**

**The Social Security (1998 Order) (Commencement No. 7 and Savings, Consequential and Transitional Provisions) Order (Northern Ireland) 1999**

**Transitional Provisions and Revocations**

**Transitional provisions**

**14.**—(1) Any decision in relation to a relevant benefit which fell to be made, but was not made, by an adjudicating authority before 5th July 1999 shall be made by the Department.

(2) Any application for a review of a decision of an adjudicating authority in relation to a relevant benefit which was not decided before 5th July 1999 shall be treated—

- (a) where the application is made within one month of the date of notification of the decision or such longer period as may be allowed under paragraph (3), as an application to the Department for a revision of that decision under Article 10 of the Order; or
- (b) in any other case, as an application to the Department for a decision under Article 11 of the Order superseding that decision.

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

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

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

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

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

- (a) that the claimant or any person acting for him was unaware of or misunderstood the law applicable to his case (including ignorance or misunderstanding of the time limits imposed by paragraph (2)(a)); or
- (b) that a Commissioner (including a Commissioner within the meaning of section 39(1) of the Social Security Act 1998(1)) or a court has taken a different view of the law from that previously understood and applied.

(6) Where, by virtue of paragraph (2)(b)—

- (a) a decision made under Article 11 of the Order is advantageous to the claimant; and
- (b) the adjudicating authority could have made the same decision before 5th July 1999 on an application for review,

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

(7) Where, before 5th July 1999, an adjudicating authority has made a decision in relation to a relevant benefit, it shall be treated as a decision of the Department.

(8) Where notice of the decision referred to in paragraph (7) was not given or sent to the claimant before 5th July 1999, the Department shall give or send notice of that decision to the claimant.

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

- (a) an adjudicating authority's decision was made before 5th July 1999; and
- (b) the time limit within which an appeal may be made against that decision has not expired before that date,

notwithstanding regulation 59 of the Decisions and Appeals Regulations, regulation 3 of the Adjudication Regulations(2) as it relates to the time within which an appeal may be made, or any extension of that period, shall continue to apply in relation to any appeal, subject to the modifications specified in paragraph (10).

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

- (a) references to a chairman or to a person considering the application were references to a legally qualified panel member;
- (b) references to a tribunal were references to an appeal tribunal constituted under Article 8 of the Order; and
- (c) in paragraph (3E)(3) for the words from “six years” to the end there were substituted “5th August 2000”.

(11) Any appeal to an appellate authority which was not determined before 5th July 1999 shall, without prejudice to Chapter III of Part V of the Decisions and Appeals Regulations, be treated as an appeal to an appeal tribunal against a decision of the Department.

(12) Paragraphs (13) to (16) shall apply where—

- (a) the clerk to the tribunal gave a direction under regulation 22(1) or, as the case may be, 38(1) of the Adjudication Regulations(4); and
- (b) notification referred to in paragraph (1A) of regulation 22 or, as the case may be, 38 of those Regulations was not received by him before 5th July 1999.

(13) A notification in response to a direction given under regulation 22(1) or, as the case may be, 38(1) of the Adjudication Regulations shall be in writing and shall be made within 14 days of receipt of the direction or within such other period as the clerk to the appeal tribunal may direct.

(14) An appeal may be struck out by the clerk to the appeal tribunal where a notification referred to in paragraph (13) is not received within the period specified in that paragraph.

(15) An appeal which has been struck out in accordance with paragraph (14) shall be treated for the purpose of reinstatement as if it had been struck out under regulation 46 of the Decisions and Appeals Regulations.

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

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

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

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

- (a) a notification is received by the clerk to the appeal tribunal under paragraph (13); or
- (b) the chairman or, in the case of an appeal tribunal which has only one member, that member, is satisfied that such a hearing is necessary to enable the appeal tribunal to reach a decision.

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

- (a) the applicant did not receive a notice under paragraph (2) of that regulation; and
- (b) paragraph (2A)(5) of that regulation does not apply,

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

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

(19) A copy of a statement of—

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

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

(20) Subject to paragraph (21), any decision of an appellate authority shall, for the purposes of Articles 14 and 15 of the Order, be treated as a decision of an appeal tribunal.

(21) Where paragraph (20) applies, any application for leave to appeal which is made for the purposes of Article 15(10)(a) of the Order shall be made no later than three months from the date on which a copy of the statement of the decision of the appellate authority was given or sent to the applicant.

(22) Notwithstanding regulation 59 of the Decisions and Appeals Regulations, and subject to paragraph (24), regulation 10 of the Adjudication Regulations, and regulation 3 of those regulations in so far as it relates to that regulation, shall continue to apply in relation to any application to set aside a decision of an appellate authority, subject to the modifications specified in paragraph (23).

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

- (a) in regulation 3, and in regulation 10(1) any reference to the adjudicating authority which gave the decision or to an authority of like status were a reference to an appeal tribunal constituted under Article 8 of the Order; and
- (b) in regulation 3, reference to a chairman were a reference to a legally qualified panel member.

(24) Paragraph (22) shall not apply in any case where an application to set aside a decision of an appellate authority is made after 5th August 2000.

(25) Any reference in paragraphs (11) to (24) to—

- (a) “an appeal to an appellate authority” shall be construed as a reference to an appeal against the decision of an adjudicating authority as respects a relevant benefit; and
- (b) “a decision of an appellate authority” shall be construed as a reference to a decision on such an appeal.

(26) Where, before 5th July 1999, payment of a relevant benefit was suspended or withheld by virtue of any provision of Part V of the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987, the provisions of Chapter I of Part III of the Decisions and Appeals Regulations shall

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

apply with respect to that suspension or withholding as if it were a suspension imposed by virtue of those provisions.

(27) In this Article—

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

“the Adjudication Regulations” means the Social Security (Adjudication) Regulations (Northern Ireland) 1995(6);

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

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

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

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

“relevant benefit” means any benefit mentioned in Article 2(1)(b)(i) to (iii).

## **Revocations**

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