



Social Security Act 1975

1975 CHAPTER 14

PART III

DETERMINATION OF CLAIMS AND QUESTIONS

Adjudication generally

114 Regulations as to determination of questions

- (1) Subject to the provisions of this Part of this Act provision may be made by regulations for the determination—
 - (a) by the Secretary of State ; or
 - (b) by a person or tribunal appointed or constituted in accordance with the regulations,of any question arising under or in connection with this Act or the former legislation, including a claim for benefit. " The former legislation" means the National Insurance Acts 1965 to 1974 and the National Insurance (Industrial Injuries) Acts 1965 to 1974.
- (2) Regulations under subsection (1) above may modify, add to or exclude any provisions of this Part of this Act, so far as relating to any questions to which the regulations relate.
- (3) As respects any question as to the right to benefit (other than a question for determination by the Secretary of State under section 93 or 95 of this Act) regulations under subsection (1) above shall not provide for the determination of that question by the Secretary of State but, subject to subsection (4) below, shall provide—
 - (a) for the submission of the question in the first instance to an officer appointed by the Secretary of State ;
 - (b) for authorising the officer either himself to determine the question or to refer it to a local tribunal, and for enabling an appeal to be brought from the officer's decision to such a tribunal;
 - (c) for enabling an appeal to be brought from such a tribunal to, or to a tribunal presided over by, a Commissioner.

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- (4) Regulations under subsection (3) above may provide for the submission of different aspects of the same question to different officers; and for that purpose paragraphs (a) and (b) of that subsection shall have effect subject to the necessary modifications.
- (5) Regulations under subsection (1) above may provide—
- (a) for the reference to the High Court or, in Scotland, the Court of Session for decision of any question of law arising in connection with the determination of a question by the Secretary of State; and
 - (b) for appeals to the High Court or Court of Session from the decision of the Secretary of State on any such question of law;
- and subsections (5) to (8) of section 94 of this Act shall apply to a reference or appeal under this subsection as they apply to a reference or appeal under subsections (1) to (3) of that section.

115 Procedure

- (1) Regulations may, for any purpose of this Part of this Act, make any such provision as is specified in Schedule 13 (procedure, evidence, hearings, forms of documents and other matters relating to adjudication).
- (2) Regulations made by virtue of subsection (1) above are referred to in this Act as " procedure regulations"; and in Schedule 13 " competent tribunal" means a Commissioner, a local tribunal, a medical appeal tribunal, a medical board or a single medical practitioner acting in place of a medical board.
- (3) Procedure regulations may deal differently with claims and questions relating to benefit under Part II, Chapters I to III and those relating to industrial injuries benefit.
- (4) At any inquiry held by virtue of procedure regulations the witnesses shall, if the person holding the inquiry thinks fit, be examined on oath; and the person holding the inquiry shall have power to administer oaths for that purpose.
- (5) Procedure regulations prescribing the procedure to be followed in cases before a Commissioner shall provide that any hearing shall be in public except in so far as the Commissioner for special reasons otherwise directs.
- (6) It is hereby declared that the power to prescribe procedure includes power to make provision as to the representation of one person, at any hearing of a case, by another person whether having professional qualifications or not.
- (7) Except so far as it may be applied in relation to England and Wales by procedure regulations, the Arbitration Act 1950 shall not apply to any proceedings under this Part of this Act.

116 Tribunal of 3 Commissioners

- (1) If it appears to the Chief National Insurance Commissioner (or, in the case of his inability to act, to such other of the Commissioners as he may have nominated to act for the purpose) that an appeal falling to be heard by one of the Commissioners involves a question of law of special difficulty, he may direct that the appeal be dealt with, not by that Commissioner alone, but by a Tribunal consisting of any 3 of the Commissioners.
- (2) If the decision of the Tribunal is not unanimous, the decision of the majority shall be the decision of the Tribunal.

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117 Finality of decisions

- (1) Subject to the provisions of this Part of this Act, the decision of any claim or question in accordance with those provisions shall be final; and subject to the provisions of any regulations under section 114, the decision of any claim or question in accordance with those regulations shall be final.
- (2) Subsection (1) above shall not make any finding of fact or other determination embodied in or necessary to a decision, or on which it is based, conclusive for the purpose of any further decision.
- (3) A decision (given under section 107(2) of this Act or otherwise) that an accident was an industrial accident is to be taken as determining only that paragraphs (a), (b) and (c) of section 107(5) are satisfied in relation to the accident, and neither any such decision nor the reference to a medical board or medical appeal tribunal under section 108 of the disablement questions in connection with any claim to or award of disablement benefit is to be taken as importing a decision as to the origin of any injury or disability suffered by the claimant, whether or not there is an event identifiable as an accident apart from any injury that may have been received ; but—
 - (a) a decision that on a particular occasion when there was no such event a person had an industrial accident by reason of an injury shall be treated as a decision that, if the injury was suffered by accident on that occasion, the accident was an industrial accident; and
 - (b) a decision that an accident was an industrial accident may be given, and a declaration to that effect be made and recorded in accordance with section 107, without its having been found that personal injury resulted from the accident (saving always the discretion under section 107(3) to refuse to determine the question if it is unlikely to be necessary for the purposes of a claim for benefit).
- (4) Notwithstanding anything in subsection (2) or (3) above (but subject to the provisions of this Part of this Act as to appeal and review), where for purposes of disablement benefit in respect of an accident it has been found by a medical board or medical appeal tribunal, on the determination or last determination of the disablement questions, that an injury resulted in whole or in part from the accident, then for purposes of industrial death benefit in respect of that accident (including benefit on a death occurring before the passing of this Act) the finding shall be conclusive that the injury did so result.

The reference in this subsection to a medical board includes a medical practitioner determining disablement questions on a reference under section 111.

- (5) Subsections (2) to (4) above shall apply as regards the effect to be given in any proceedings to any decision, or to a reference under section 108 of this Act, whether the decision was given or reference made or the proceedings were commenced before or after the passing of the National Insurance Act 1972 (section 5 of which is replaced by this section), except that it shall not affect the determination of any appeal under section 112 from a decision of a medical appeal tribunal given before the passing of that Act, nor affect any proceedings consequent on such an appeal from a decision so given; and accordingly—
 - (a) any decision given before the passing of that Act that a claimant was not entitled to industrial death benefit may be reviewed in accordance with this Part of this Act to give effect to subsection (4) above; and
 - (b) the references in subsections (2) and (3) above to provisions of this Act, and the reference in this section to section 108, shall (so far as necessary) include the corresponding provisions of previous Acts.

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118 Questions as to child or family

- (1) Subject to subsection (2) below, this section applies to any question—
 - (a) whether a person is or was a child, or is or was under school-leaving age;
 - (b) whether a person has or had a family including a child or children, or is or was a child of some other person's family;
 - (c) whether a person could have been treated under paragraph 3 of the Schedule to the Family Allowances Act as, or but for certain facts would have been, or could have been so treated as, a child of any other person's family;
 - (d) whether, for the purposes of the payment to a beneficiary of any benefit in respect of a child, the child in question is living with the beneficiary.
- (2) This section does not apply—
 - (a) to any question within section 95(1)(d) of this Act; or
 - (b) to the question whether a person is to be treated for any purpose as having a family including a child or children, or as being a child of some other person's family.
- (3) Where a question to which this section applies arises with respect to benefit, the question shall be determined in accordance with the foregoing provisions of this Part of this Act, subject to any prescribed modifications and adaptations.
- (4) Any decision of a question to which this section applies by virtue of subsection (1)(a) to (c) above, if given under this Part of this Act, shall have effect also for the purposes of the Family Allowances Act, whether given for the purposes of this Act or of that Act.

119 Effect of adjudication on payment and recovery

- (1) Where benefit is or has been paid in pursuance of a decision which is reversed or varied on appeal, or is revised on a review, then, subject to subsection (2) below, the decision given on the appeal or review shall require repayment to the Secretary of State of any benefit which was paid in pursuance of the original decision to the extent to which it—
 - (a) would not have been payable if the decision on the appeal or review had been given in the first instance; and
 - (b) is not directed to be treated as paid on account of the benefit awarded by the decision on appeal or review, or as having been properly paid.
- (2) A decision given on appeal or review shall not require repayment of benefit paid in pursuance of the original decision in any case where it is shown to the satisfaction of the person or tribunal determining the appeal or review that in the obtaining and receipt of the benefit the beneficiary, and any person acting for him, has throughout used due care and diligence to avoid overpayment.
- (3) Regulations may make provision as respects matters arising—
 - (a) pending the determination under this Act (whether in the first instance or on an appeal or reference, and whether originally or on review) of any claim for benefit or of any question affecting any person's right to benefit or its receipt, or any person's liability for contributions under Part I of this Act; or
 - (b) out of the revision on appeal or review of any decision under this Act on any such claim or question.

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- (4) Without prejudice to the generality of subsection (3) above, regulations thereunder may include provision—
- (a) as to the date from which any decision on a review is to have effect or to be deemed to have had effect;
 - (b) for treating any benefit paid to any person under an award, or by virtue of any provision of the regulations, which it is subsequently decided was not payable, as properly paid or as paid on account of any other benefit which it is decided was payable to him, or for the repayment of any such benefit and the recovery thereof by deduction from other benefit, or from any payment under the Old Cases Act (other than a payment in respect of the death of any person), or otherwise;
 - (c) modifying subsections (1) and (2) above in relation to sums paid by way of benefit in respect of a child of the family of a man and his wife living together where those sums would have been receivable, if properly paid, by either the man or the wife;
 - (d) making any such provision for the recovery of sums paid by way of benefit and required to be repaid by virtue of subsection (1) as is authorised to be made in a case where repayment is required by the regulations.