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STATUTORY INSTRUMENTS

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1986 No. 2218

**SOCIAL SECURITY**

**The Social Security (Adjudication) Regulations 1986**

<i>Made</i>	- - - -	16th December 1986
<i>Laid before Parliament</i>		17th December 1986
<i>Coming into Operation</i>		6th April 1987

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The Secretary of State for Social Services in exercise of the powers set out in Schedule 1 to this instrument, and of all other powers enabling him in that behalf, after consultation with the Council on Tribunals in accordance with section 10 of the Tribunals and Inquiries Act 1971(a), 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 1986 and shall come into operation on 6th April 1987.

(2) In these regulations, unless the context otherwise requires:—

“the Acts” means the Family Income Supplements Act 1970(b), the Social Security Acts 1975 to 1986, the Industrial Injuries and Diseases (Old Cases) Act 1975(c), the Child Benefit Act 1975(d) and the Supplementary Benefits Act 1976(e);

“the 1975 Act” means the Social Security Act 1975(f);

“the 1982 Act” means the Social Security and Housing Benefits Act 1982(g);

“the 1983 Act” means the Health and Social Services and Social Security Adjudications Act 1983(h);

“the 1986 Act” means the Social Security Act 1986(i);

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

“adjudicating medical authority” has the meaning assigned to it by regulation 27;

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- (a) 1971 c.62.  
(b) 1970 c.55.  
(c) 1975 c.16.  
(d) 1975 c.61.  
(e) 1976 c.71.  
(f) 1975 c.14.  
(g) 1982 c.24.  
(h) 1983 c.41.  
(i) 1986 c.50.

“adjudicating medical practitioner” means a medical practitioner appointed in accordance with paragraph 1 of Schedule 12 to the 1975 Act;

“adjudication officer” means an officer appointed in accordance with section 97(1) of the 1975 Act;

“appeal tribunal” means a social security appeal tribunal constituted in accordance with section 97(2) to (2E) of the 1975 Act;

“the Attendance Allowance Board” means the Board constituted in accordance with section 105 of the 1975 Act;

“Chief Adjudication Officer” means the Chief Adjudication Officer appointed under section 97(1B) of the 1975 Act;

“Chief Commissioner” means the Chief Social Security Commissioner appointed under section 97(3) of the 1975 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 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 97(3) of the 1975 Act and includes a Tribunal of 3 such Commissioners constituted in accordance with section 116 of that Act;

“full-time chairman” means a regional or other full-time chairman of appeal tribunals and medical appeal tribunals appointed under paragraph 1A of Schedule 10 to the 1975 Act;

“inquiry” means an inquiry held pursuant to section 93(3) of the 1975 Act;

“medical appeal tribunal” means a tribunal constituted in accordance with Schedule 12 to the 1975 Act;

“medical board” and “special medical board” have the meanings assigned to them by regulation 27;

“party to the proceedings” means—

- (a) the claimant (including a claimant to any benefit mentioned in section 52(6) of the 1986 Act);
- (b) in proceedings before an appeal tribunal, the adjudication officer;
- (c) in proceedings relating to the determination of a question included in section 93(1) of the 1975 Act, any person interested within the meaning of regulation 13;
- (d) in any other proceedings except proceedings in which he is the adjudicating authority:—
  - (i) the adjudication officer; and
  - (ii) the Secretary of State;
- (e) any other person appearing to the Secretary of State, 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 1985(a);

“President” means the President of social security appeal tribunals and medical appeal tribunals appointed under paragraph 1A of Schedule 10 to the 1975 Act;

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

“specially qualified adjudicating medical practitioner” means a medical practitioner appointed under section 113 of the 1975 Act; and

“the Supplementary Benefits Act” means the Supplementary Benefits Act 1976(b).

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

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

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

(4) In any case where the Attendance Allowance Board have delegated their functions to one or more medical practitioners under paragraph 5 of Schedule 11 to the 1975 Act references in these regulations to the Board or to its chairman shall be construed as references to that practitioner.

(5) Unless the context otherwise requires, any reference in these regulations to a numbered or lettered Part, Section, regulation or Schedule is a reference to the Part, Section, regulation or Schedule bearing that number or letter in these regulations and any reference in a regulation to a numbered paragraph is a reference to the paragraph of that regulation bearing that number.

## PART II

### COMMON PROVISIONS

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

2.— (1) Subject to the provisions of the Acts 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 Secretary of State, 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;

(b) any person who by virtue of the provisions of these regulations has the right to be heard at a hearing or an inquiry may be accompanied and may be represented by another person whether having professional

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(a) S.I. 1985/967.

(b) 1976 c.71.

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 Acts and these regulations.

(2) For the purpose of arriving at their decision an appeal tribunal, a medical board, a special medical board or a medical 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 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) a member of the Council on Tribunals or of the Scottish Committee of the Council and 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) (except a person undergoing training as an adjudication officer or as an adjudicating medical practitioner),

may remain present at any such sitting.

(3) Nothing in these regulations shall prevent a member of the Council on Tribunals or of the Scottish Committee of the Council from being present at a hearing before an appeal tribunal or a medical appeal tribunal or at any inquiry, in his capacity as such, notwithstanding that the hearing or inquiry is not in public.

*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—

(a) “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); and

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

(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 or a medical 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.

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

### *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 before an adjudicating authority or of an inquiry shall be given to every party to the proceedings, and if 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) If a party to the proceedings to whom notice has been given under paragraph (2) shall fail 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 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 before 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 or a medical appeal tribunal, or as a clerk to either of such tribunals, 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 Secretary of State in the training or supervision of clerks to appeal tribunals or medical appeal tribunals or of adjudication officers or officers of the Secretary of State 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 Secretary of State; and

(b) any person acting on behalf of the Secretary of State in the training or supervision of officers of the Secretary of State; and

(c) with the leave of the person holding the inquiry and the consent of all parties 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) 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 an 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 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 thinks fit.

(2) An oral hearing or an 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 or a medical 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 Acts 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, the adjudication officer; or
  - (ii) in any other case, the Secretary of State,
- 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 99(2) of the 1975 Act or to a medical board under regulation 42(3) or 57(2) or to a medical appeal tribunal under section 109(3) of the 1975 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 109(3) of the 1975 Act made at the instance of the Secretary of State only with his consent.

(4) An application under regulation 14 for a decision of the Secretary of State on any question may, with his 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 or a medical 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.

(2) Before making an order under paragraph (1) the chairman shall send notice 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 or a medical appeal tribunal may, on application by the party concerned, give leave to reinstate any application, appeal or reference which has been struck out in accordance with paragraph (1).

#### *Medical references*

8. The Secretary of State or an adjudicating authority may refer to a medical practitioner for examination and report any question arising for his or its determination.

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

9.— (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, shall not be disclosed to the claimant or any person acting for or representing 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 paragraphs (1) or (2).

(4) In this regulation "adjudicating authority" includes the Secretary of State in a case involving a question which is for determination by him.

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

10.— (1) Subject to regulation 12 (provisions common to regulations 10 and 11), 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*

11.— (1) Subject to regulation 12 (provisions common to regulations 10 and 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; or
- (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 or instrument 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 10 and 11*

12.— (1) In regulations 10 and 11 “adjudicating authority” includes the Secretary of State.

(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 10 or on which notice is given of a determination that a decision shall not be set aside following an application made under regulation 11, as the case may be.

(3) There shall be no appeal against a correction made under regulation 10 or a refusal to make such a correction or against a determination given under regulation 11.

(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 SECRETARY OF STATE

##### *Construction of Section A*

13. 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 Part I of the 1982 Act or Part V of and Schedule 4 to the 1986 Act, or under regulations under those Parts, a question has arisen that is for determination by the Secretary of State under section 52(2) of and Part II of Schedule 5 to the 1986 Act; or

(b) whose rights, duties or obligations are called in question by way of review of a determination under section 96 of the 1975 Act,

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

*Application for decision of the Secretary of State on principal questions*

14.— (1) A person desiring to obtain the decision of the Secretary of State on any of the questions mentioned in section 93(1) of the 1975 Act (including those to which that section applies by virtue of section 60(1) of the Social Security Pensions Act 1975(a) and section 52(2) of and Part II of Schedule 5 to the 1986 Act) shall deliver or send to the Secretary of State an application for the purpose in writing in a form approved by him.

(2) The Secretary of State shall take steps to bring any such application to the notice of any person appearing to him to be interested in the application and to obtain from such person such particulars within such time and in such form as he considers reasonably necessary for the proper determination of the question.

(3) An application for a decision of the Secretary of State 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 58 of the 1986 Act.

(4) Nothing in paragraphs (1) or (3) shall affect any right or obligation under the Acts or regulations made under the Acts to refer any question to the Secretary of State.

*Procedure for inquiries*

15. Any person appointed by the Secretary of State under section 93(3) of the 1975 Act to hold an inquiry into any question or any matters arising in connection therewith and to report to him 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 Secretary of State's decision and statement of grounds*

16.— (1) The Secretary of State shall give notice in writing of his decision under section 93 of the 1975 Act and of the right to request a statement of the grounds of the decision to the applicant and to any persons appearing to him to be interested therein and may publish his decision in such manner as he thinks fit.

(2) The applicant and any other person appearing to the Secretary of State to be interested shall, on request, be furnished with such a statement of the grounds of the Secretary of State's decision under section 93 of the 1975 Act as will enable him to determine whether any question of law (not being a question which has been referred to the High Court or the Court of Session in accordance with section 94(1) of the 1975 Act) has arisen upon which he may appeal to the High Court or the Court of Session under section 94(3) of the 1975 Act.

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(a) 1975 c.60.

*Review or reference*

17.— (1) The provisions of regulation 14(3) and (4) shall apply to any application for a review under section 96(1) of the 1975 Act of a decision under section 93(1) as they apply to an application under regulation 14(1).

(2) The provisions of regulations 14(2), 15 and 16 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 96(1) of the 1975 Act of any decision of the Secretary of State given in accordance with this Section of this Part of these regulations; or
- (b) a question such as is mentioned in regulation 14(1) is referred to the Secretary of State—
  - (i) under section 103(1) of the 1975 Act (reference by an adjudication officer of any such question for determination where such question arises on the consideration of any claim or question); or
  - (ii) under section 148(2) of the 1975 Act (reference of such question for decision by the Secretary of State where the decision thereof is necessary for the determination of any proceedings).

*Determination of industrial injuries questions by the Secretary of State*

18.— (1) Any question arising under or in connection with the National Insurance (Industrial Injuries) Acts 1965 to 1974 which, but for any repeal contained in the Social Security (Consequential Provisions) Act 1975(a), would have fallen to be determined by the Secretary of State by virtue of section 35 of the National Insurance (Industrial Injuries) Act 1965(b) shall be determined by the Secretary of State as if any such question which would have fallen to be so determined by virtue of—

- (a) paragraphs (a) to (e) of subsection (1) of that section;
- (b) paragraph (f) or (g) of that subsection; or
- (c) subsection (2) of that section,

were respectively, a question specified in section 93(1) of the 1975 Act or in regulation 19(1)(a) or (b), or was a question which by virtue of regulations falls to be determined by the Secretary of State in his discretion; and the provisions of sections 93(3), 94(1) to (4), and 96 of the 1975 Act and of Parts I, II and this Section of this Part of these regulations shall apply accordingly.

(2) The reference in paragraph (1) to questions which would have fallen for determination by the Secretary of State by virtue of paragraph (f) of section 35(1) of the National Insurance (Industrial Injuries) Act 1965 includes questions which would have fallen to be so determined by virtue of section 6(3) of the National Insurance Act 1966(c) but for its repeal by the Social Security Amendment Act 1974(d).

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(a) 1975 c.18.  
(b) 1965 c.52.  
(c) 1966 c.6.  
(d) 1974 c.58.

*Other questions for determination by the Secretary of State*

19.— (1) It shall be for the Secretary of State to determine—

(a) a question whether—

(i) an increase of disablement pension under section 61 of the 1975 Act (constant attendance), or

(ii) a further increase under section 63 of the 1975 Act (exceptionally severe disablement),

is to be granted or renewed and, if so, for what period and of what amount;

(b) a question how the limitations under Schedule 9 to the 1975 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 51(1)(j) of the 1986 Act (claims in the alternative or in addition).

(2) A decision of the Secretary of State on a question under section 37(7) of the 1975 Act or on any question which by virtue of regulations falls to be determined by the Secretary of State in his discretion may be given so as to have effect with respect to a period before the date of the decision; and he may at any time and from time to time reconsider the exercise of his discretion with respect to such a question and decide it again with such other effects as may seem to him to be proper in the circumstances of the case.

**SECTION B—ADJUDICATION OFFICERS**

*Notification of decisions*

20.— (1) Subject to paragraph (2) and regulation 63 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 of his right of appeal to an appeal tribunal under section 100 of the 1975 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.

(3) Where a person to whom any notice relating to family income supplement is required to be given is a member of a family which includes both a man and a woman the requirements as to the giving of notice shall, unless the Secretary of State in any case or class of case otherwise directs, be satisfied in relation to both the man and the woman if notice is given to one of them.

*Procedure on claim or question involving questions for determination by the Secretary of State*

21.— (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 Secretary of State, it shall be deemed to be a sufficient

compliance with the requirements of regulation 20 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) If the claimant replies to the notice referred to in paragraph (1) and, after any appropriate investigations and explanations have been made, he remains dissatisfied, then subject to paragraph (3), he shall be notified of his right of appeal to an appeal tribunal, the time limit for such an appeal being measured from the date of that notification.

(3) If, where the provisions of paragraph (2) would otherwise apply, an adjudication officer certifies that the sole ground of the claimant's dissatisfaction appears to him to be the assumption referred to in paragraph (1), those provisions shall not apply, but the claimant shall be notified in writing of his right to apply for the determination by the Secretary of State of the question arising on the assumption.

(4) If the question so arising is determined by the Secretary of State, then the claimant shall be notified of his right of appeal to an appeal tribunal, the time limit for such appeal being measured from the date when the claimant is notified of the Secretary of State's decision, and—

- (a) where the Secretary of State's decision upholds the assumption, section 100(3) of the 1975 Act shall apply as if the adjudication officer had given the certificate therein referred to;
- (b) where the Secretary of State's decision does not uphold the assumption, it may, at the discretion of the adjudication officer, be treated as an application for the review of the adjudication officer's decision, and for the purposes of regulation 65 the date of the claimant's application for the Secretary of State'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*

22.— (1) A question to which section 98(1) of the 1975 Act (as substituted in its application to statutory sick pay and statutory maternity pay by section 52(7) of the 1986 Act) applies may be submitted to an adjudication officer by the employee concerned in accordance with the following provisions of this regulation 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 Secretary of State or in such other manner, being in writing, as he may accept as sufficient in the circumstances.

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

- (a) be delivered or sent to a local office within 6 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*

23.— (1) In this regulation—

“child benefit” means child benefit under the Child Benefit Act 1975(a);

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

“special question” means any question relating to child benefit which, under the provisions of Schedule 2 to the Child Benefit Act 1975 or regulations made under the Acts, falls to be determined by the Secretary of State in his discretion; any question whether an establishment is a recognised educational establishment as defined in section 24(1) of that Act or any question which by virtue of the provisions of regulation 5 of the Child Benefit (Residence and Persons Abroad) Regulations 1976(b) falls to be determined by the Secretary of State under the provisions of the 1975 Act as if it were a question arising under that Act.

(2) The following paragraphs apply if 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 Secretary of State; 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;
- (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*

24.— (1) An appeal tribunal shall hold an oral hearing of every appeal or reference made to them.

(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.

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(a) 1975 c.61.

(b) S.I. 1976/963; the relevant amending instrument is S.I. 1976/1758.

(4) In such cases as the chairman of the appeal tribunal may determine, a medical practitioner may sit with that tribunal as an assessor.

(5) An assessor sitting with an appeal tribunal as aforesaid shall not take any part in the determination or decision of that tribunal except in an advisory capacity.

(6) Paragraphs (3) and (4) of regulation 23 apply to an appeal tribunal as they apply 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*

25.— (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 in writing all their decisions (whether on an appeal or on a reference from an adjudication officer); and

(b) include in the record of every decision a statement of the reasons for such decision and of their findings on questions of fact material thereto; and

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

(3) As soon as may be practicable after a case has been decided by an appeal tribunal, a copy of the record of their 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*

26.— (1) Subject to the following provisions of this regulation and to regulation 74(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) as provided by 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 each 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 97(2D) of the 1975 Act to act as a chairman of appeal tribunals.

## SECTION D—MEDICAL ADJUDICATION

### *Construction of Section D*

#### 27. In this Section—

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

“medical board” means 2 or more adjudicating medical practitioners nominated by the Secretary of State to act jointly in the consideration of a case; and

“special medical board” means a medical board of which at least 2 of the members are specially qualified adjudicating medical practitioners.

### *Appointment of adjudicating medical practitioners and specially qualified adjudicating medical practitioners*

28.— (1) Adjudicating medical practitioners shall be appointed by the Secretary of State to act for such area or areas as may be specified in the instrument of appointment.

(2) Specially qualified adjudicating medical practitioners shall be appointed by the Secretary of State to act for such area or areas as may be specified in the instrument of appointment.

### *Determination of medical questions*

29.— (1) The following questions shall be referred to and determined by a medical board, that is to say—

- (a) any application (except in the case of any of the diseases mentioned in paragraph (2)) for the review of a decision under section 110(1) of the 1975 Act (ignorance of or mistake as to a material fact) or of section 110(1A) (error of law) or of an assessment of disablement under section 110(2) of the 1975 Act (unforeseen aggravation);
- (b) subject to the provisions of Section A of Part IV (prescribed diseases) any question (except a question to which paragraph (2) applies) arising on a claim made in respect of a prescribed disease;
- (c) subject to the provisions of Section B of Part IV (mobility allowance), any question mentioned in regulation 53; and
- (d) any other case which, in the opinion of the Secretary of State, should be determined by more than one adjudicating medical practitioner.

(2) Subject to the provisions of Section A of Part IV any question arising in connection with a claim made in respect of any of the diseases numbered B6, C15, C17, C18, C22(b), D1, D2, D3, D7, D8 or D9 in Part I of Schedule 1 to

the Prescribed Diseases Regulations shall be referred to and determined by a special medical board.

(3) Any question which falls to be determined by an adjudicating medical authority other than those within paragraphs (1) and (2) shall be referred to and determined by an adjudicating medical practitioner.

(4) Where a case has been referred to an adjudicating medical practitioner for determination the Secretary of State may, at any time before the determination is made, revoke that reference and refer the case instead to a medical board.

(5) Where a case has been referred to a medical board or a special medical board consisting of 2 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 3 members and if they are not unanimous the decision of the majority shall be the decision of the board.

(6) The Secretary of State shall appoint one of the members of any medical board or special medical board to act as chairman.

(7) A medical board or special 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.

(8) 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 should fail to appear at the sitting of the authority, the authority may proceed to determine the questions referred to him or them only with the claimant's consent.

(9) 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 his or their opinion, is likely to assist him or them in the determination of that question.

#### *Decisions of adjudicating medical authorities*

**30.**— (1) An adjudicating medical authority shall in each case record his or their decision in writing in such form as may from time to time be approved by the Secretary of State and shall include in such record (which shall be signed by all members of the authority)—

- (a) a statement of his or their findings on all questions of fact material to such decision; and
- (b) in a case in which the decision of a medical board or special medical board consisting of 3 members was not unanimous, a statement that one of the members dissented and of 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 Secretary of State and shall contain a summary of the findings of the authority, including, where the decision was not unanimous, a statement that one of the members dissented and of 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*

31.— (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 instead adjourn it for consideration by another tribunal.

(3) Where a medical appeal tribunal are 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 their decision in writing in such form as may from time to time be approved by the Secretary of State and shall include in such record, which shall be signed by all members of the tribunal, a statement of the reasons for their decision, including their 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 their 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 from a medical appeal tribunal to a Commissioner*

32.— (1) Subject to the following provisions of this regulation, 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 Secretary of State 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 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 paragraph 2(4) of Schedule 12 to the 1975 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*

33.— (1) 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 if he—

- (a) is or may be directly affected by that case;
- (b) has taken any part in such 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 a member thereof, to whom the case was referred.

(2) Notwithstanding the provisions of paragraph (1), a medical practitioner shall not be precluded from acting as a member of a special 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 or D9 in Part I of Schedule 1 to the Prescribed Diseases Regulations has been referred for report.

(3) If 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 decision of a medical appeal tribunal*

34. Where, in the opinion of the adjudication officer, an application made under the provisions of section 110(2) of the 1975 Act raises a question as to the review of a decision of a medical appeal tribunal and, by virtue of section 110(5) 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 such tribunal may consider whether such leave shall be granted and shall not refer the question to an adjudicating medical authority with a view to review of that decision unless the medical appeal tribunal grant such leave.

*Reference by a medical appeal tribunal of a question of law for decision by a Commissioner*

35. Where any question of law arises in a case before a medical appeal tribunal and the tribunal decide to refer that question to a Commissioner for his decision in accordance with section 112(4) of the 1975 Act, the tribunal shall cause to be sent to the Commissioner and to every party to the proceedings, a submission in writing signed by the chairman of the tribunal, which shall include a statement of the question and the facts on which it arises.

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

36.— (1) Subject to the following provisions of this regulation the provisions of these regulations apply for the disposal by a medical appeal tribunal of a case remitted to it following an appeal or reference to a Commissioner as if it were an original hearing of an appeal to the medical appeal tribunal.

(2) If, on appeal from the 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) If the case is remitted to the medical appeal tribunal following a reference to the Commissioner under section 112(4) of the 1975 Act the medical appeal tribunal, whether or not consisting of the same members who constituted the medical appeal tribunal when the reference was made—

(a) shall proceed upon the facts stated in the submission made to the Commissioner under regulation 35; and

(b) may receive such further evidence and find such further facts as, having regard to the decision of the Commissioner, is necessary for the purpose of giving its decision on the case.

(4) If the case is remitted to the medical appeal tribunal following an appeal to the Commissioner in which it was decided that the decision of the medical appeal tribunal was erroneous in point of law the proceedings shall, unless the medical appeal tribunal consists of the same members who constituted the medical appeal tribunal which gave the decision appealed against, be by way of a complete re-hearing of the appeal.

**SECTION E—THE ATTENDANCE ALLOWANCE BOARD**

*Definition of "the Board"*

37. In this Section "the Board" means the Attendance Allowance Board.

*Application for reviews of determinations made by the Board*

38.— (1) The prescribed period within which an application may be made, pursuant to section 106(1)(b) of the 1975 Act, for the Board to review a determination on any ground is the period of 3 months from the date on which notice of the determination which it is sought to have reviewed was given or sent to the claimant.

(2) Subject to the provisions of paragraph (3), an application, in pursuance of section 106(1)(a) or (b) of the 1975 Act, for a review of a determination may be made by the claimant or the Secretary of State and shall be made in writing to the Board.

(3) An application under paragraph (2) by the claimant shall be delivered or sent to a local office, and in the case of an application by the Secretary of State he shall send a copy of it to the claimant.

(4) If within 12 months of an application having been made as in paragraph

(2) a further review is sought, it shall be a requirement for such review that leave of the Board to make the application is first obtained.

(5) On receipt of any such application in respect of which the leave of the Board has been given or is not required, the Board shall proceed to deal with it in accordance with the provisions of section 106(1) of the 1975 Act.

#### *Review of determinations made by the Board*

39.— (1) The prescribed period within which a determination may be reviewed by the Board on any ground without an application, pursuant to section 106(1)(bb) of the 1975 Act is 3 months from the date of that determination.

(2) Where the Board, having where appropriate given leave under regulation 38(4), have reviewed a determination or have refused to review a determination, the claimant and the Secretary of State shall be notified in writing of the determination on the review or of that refusal, as the case may be, and, subject to the provisions of paragraph (3), of the reasons for it, and of the conditions governing an appeal to a Commissioner.

(3) If he consents to forego it, a claimant or the Secretary of State need not be notified of the reasons for a determination on review when it takes place.

(4) Where notification of a determination on review is given to the claimant without a statement of the reasons for it, he shall at the same time be notified of the conditions governing an appeal to a Commissioner and of his right under paragraph (5) to be provided with such a statement.

(5) Where a statement of reasons was not sent with the determination on review the claimant or the Secretary of State may, within 3 months from the date on which a notification of the determination was sent to the claimant or within such further time as the Board may for special reasons allow, make a request in writing for notification of the reasons for the determination whereupon the claimant and the Secretary of State shall be notified in writing of those reasons and the claimant shall again be notified of the conditions governing an appeal to a Commissioner.

(6) On being informed of any decision of the Commissioner in which he holds that the determination of the Board was erroneous in law, the Board shall review their determination for the purpose of confirming or revising it.

### PART IV

#### PROVISIONS RELATING TO PARTICULAR BENEFITS OR PROCEDURES

#### SECTION A—PRESCRIBED DISEASES

##### *Construction of Section A*

40.— (1) Regulation 27 applies for the construction of this Section as it applies for the construction of Section D of Part III.

(2) Except as provided in this Section any reference in Part III of the 1975 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 sickness benefit made by virtue of section 50A of the 1975 Act or 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 is referred to as a recrudescence question.

#### *Application of Part III of the 1975 Act and of these regulations*

41.— (1) Subject to regulation 49 (review on ground of unforeseen aggravation) the provisions of section 110(3) of the 1975 Act (effect of decisions as to a loss of faculty) and of section 107 of that Act (declaration that an accident is an industrial accident) shall not apply in relation to prescribed diseases.

(2) The provisions of—

- (a) Part III of the 1975 Act, subject to the provisions of this Section and of 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 and D9 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 Chapter V of Part II of the 1975 Act in respect of a prescribed disease.

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

42.— (1) Subject to paragraph (2), if 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 and D9 in Part I of Schedule 1 to the Prescribed Diseases Regulations shall be a specially qualified adjudicating medical practitioner or practitioners and shall have power, if he or they consider it to be necessary, to do any or all of the following, namely—

- (a) to make or cause to be made a radiological examination of the person'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 sub-paragraph (a) of this paragraph 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 a special medical board any diagnosis or recrudescence question in connection with a claim in respect of each of the diseases numbered B6, C15, C17, C18 and C22(b), without having referred such a question for report.

(4) If 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 as aforesaid or before so referring it.

(5) If during a period taken into account by an assessment of disablement relating to an award of disablement benefit in respect of a prescribed disease, 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 as aforesaid shall be referred for decision to a medical board 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 themselves referring a diagnosis or recrudescence question to a medical practitioner in accordance with paragraph (1), shall direct the adjudication officer to refer it to a medical board in accordance with regulation 43.

### *Procedure on receipt of medical report*

43.— (1) If a diagnosis or recrudescence question has been referred as provided by regulation 42(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) If the question so referred was a diagnosis question, then, subject to regulation 44(1), the adjudication officer may himself determine the question or refer it to a medical board for their decision.

(3) If the question so referred was a recrudescence question, then, subject to regulation 44, 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;

(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 100, 103 and 104 of the 1975 Act shall apply as if a diagnosis or recrudescence question were a question such as is referred to in section 103(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*

44.— (1) If, 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 a medical board together with the disablement question.

(2) If a diagnosis question is referred to a medical board under the provisions of regulations 43 or 45, the adjudication officer shall not himself determine any recrudescence question which arises in connection therewith but shall refer it to the medical board together with the diagnosis question.

### *Appeal against decision of adjudication officer*

45.— (1) Where, under the provisions of regulation 42 or 43, an adjudication officer has decided a diagnosis question or a 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 a medical board in accordance with the provisions of regulation 3 and Schedule 2.

(3) If an appeal is made against a decision on a recrudescence question, the

adjudication officer shall also refer the diagnosis question, and the medical board may confirm, reverse or vary the decision on that question as on an appeal.

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

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

46.— (1) A claimant may appeal the decision of a medical board 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 Secretary of State notifies the adjudication officer that he is of the opinion, that any decision of a medical board 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 their consideration and the tribunal may confirm, reverse or vary the decision as on an appeal.

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

47. 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 a medical board, may confirm, reverse or vary that decision; and
- (b) if it is determined that the disease is a recrudescence of an attack to which an earlier decision of a medical board or a medical appeal tribunal relates, may proceed to review that earlier decision under the provisions of section 110(2) of the 1975 Act.

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

48. 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 medical board may review such previous assessment, as provided by section 110 of the 1975 Act, so however that, in any such case, notwithstanding the provisions of subsection (5) 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*

49. 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 3 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 decision on diagnosis or recrudescence question*

50.— (1) Any decision on a diagnosis or recrudescence question of an adjudication officer, medical board or medical appeal tribunal may be reviewed at any time by a medical board if they are satisfied by fresh evidence that the decision was given in ignorance of, or was based on 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 grant leave.

(3) Subject to the foregoing provisions of this regulation, a medical board may deal with a case on review in any manner in which they could deal with it on an original reference to them, and regulation 46 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 them.

*Additional provisions relating to the powers and decisions of special medical boards*

51.— (1) Special medical boards shall have power to make or cause to be made a radiological examination of the lungs of the claimant, and to obtain the report of a radiologist on the case, and to make or cause to be made serological, lung function and such other tests as they consider necessary and 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) a special medical board or, as the case may be, a medical appeal tribunal gives a decision under the foregoing provisions of these regulations that the claimant is or, as the case may be, was suffering from one or other of those diseases—

- (a) that board or, as the case may be, medical appeal tribunal may, on the evidence before it at the time of its decision, determine also the date

from which the claimant has or, as the case may be, had suffered from that disease; and

- (b) notwithstanding the provisions of section 117(1) of the 1975 Act (finality of decisions), in making that determination, the board or, as the case may be, the medical appeal tribunal shall not be bound by any previous decision of an adjudication officer or a special medical board that the claimant was not suffering from that disease; and
- (c) any such previous decision, in so far as inconsistent with the said determination, shall cease to have effect.

## SECTION B—MOBILITY ALLOWANCE

### *Application of the 1975 Act and regulations*

52. The provisions of Part III of the 1975 Act (determination of claims and questions) and of these regulations shall apply to the determination of any question arising in connection with a mobility allowance, subject to the modifications, additions and exclusions set out in the following provisions of this Section.

### *Definition of "medical question"*

53. In this Section any question arising in connection with a claim for or award of mobility allowance—

- (a) whether a person is suffering from physical disablement such that he is either unable to walk or virtually unable to do so at the date the claim is received or treated as received or at any subsequent date up to the date the question is determined, and if so, what date; or
- (b) whether such inability or virtual inability to walk is likely to persist for at least 12 months from the date found for the purposes of paragraph (a); or
- (c) for what period, being a period limited by reference either to the person attaining the age of 75 or to a definite earlier date, the person may be expected to continue to be unable, or virtually unable to walk; or
- (d) whether during most of the period during which a person may be expected to continue to be unable, or virtually unable to walk, his condition will be such as permits him from time to time to benefit from enhanced facilities for locomotion,

is referred to as a medical question.

### *Date for the determination of the medical questions*

54. In determining any medical question on a claim for mobility allowance, an adjudication officer, medical board or medical appeal tribunal shall have regard to the physical disablement of the person in respect of whom the claim is made at the date at which the claim is received or treated as received by the Secretary of State or, where those questions cannot be determined in that person's favour as at that date, they shall decide whether those questions may be determined in his favour from any subsequent date up to the date the questions are determined.

### *Reconsideration of entitlement conditions for an allowance*

55. Where the medical questions with respect to a claim for mobility allowance are determined in favour of the person in respect of whom a claim for an allowance has been made, from a date later than the date the claim was received or treated as received and the conditions of entitlement to an award are satisfied at that later date, the award shall be made payable from that date.

### *Reference of medical questions for report*

56.— (1) Subject to the provisions of regulation 54 and of regulation 57(2), if a medical question arises in any case, the adjudication officer shall forthwith refer that question for examination and report to one or more medical practitioners.

(2) The adjudication officer may determine a medical question without referring it as provided in paragraph (1) if he is satisfied that such question should be determined in favour of the person in respect of whom an allowance is claimed and that such reference can be dispensed with having regard to—

- (a) the report of a medical examination made in connection with an application to be supplied with an invalid carriage or other vehicle or a payment by way of grant under section 5(2)(a) of and Schedule 2 to the National Health Service Act 1977(a) or section 46 of the National Health Service (Scotland) Act 1978(b); or
- (b) a report made, or evidence obtained, in connection with a claim for—
  - (i) an attendance allowance;
  - (ii) sickness benefit made by virtue of section 50A of the 1975 Act or disablement benefit (including any increase of such benefit); or
  - (iii) a war disablement pension as defined in regulation 1(2) of the Family Income Supplements (General) Regulations 1980(c).

(2) If 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 medical question he may determine that an award cannot be made or may determine the question submitted to him accordingly without referring such medical question for report as aforesaid or before so referring it.

(3) The above provisions of this regulation shall apply to an appeal tribunal as they apply to an adjudication officer with the modification, that an appeal tribunal, instead of itself referring a medical question to a medical practitioner in accordance with paragraph (1), shall direct the adjudication officer to refer it to a medical board.

### *Procedure on receipt of report*

57.— (1) If a medical question has been referred as provided by regulation 56(1), the adjudication officer shall, subject to the provisions of paragraph (3), proceed with the consideration of that question as soon as possible after he has

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(a) 1977 c.49.  
(b) 1978 c.29.  
(c) S.I. 1980/1437.

received the report of the medical practitioner or practitioners to whom it was referred.

(2) On consideration of the question so referred, the adjudication officer may either determine the question himself or refer the question to a medical board for their decision.

(3) Subject to the provisions of this Section, the provisions of sections 100, 103 and 104 of the 1975 Act shall apply as if the medical question were a disablement question in relation to industrial injuries benefit and as if references in those sections to the determination of, or to the review of the decision of, either of the disablement questions in relation to industrial injuries benefit included references to the determination of, or to the revision of the decision of, a medical question under this Section.

#### *Notification of decision and right of appeal*

**58.**— (1) Where under the provisions of regulations 56 or 57 an adjudication officer has determined a medical 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 a medical board in accordance with the provisions of regulation 3 and Schedule 2.

#### *Appeal or reference to a medical board*

**59.**— (1) If an appeal is made under the provisions of regulation 58, the adjudication officer as soon as practicable shall refer the question to a medical board for their decision.

(2) If, in any case, a medical question arises which the adjudication officer is satisfied should be referred for decision by a medical board instead of being first referred as provided by regulation 56(1), or if he is directed in accordance with regulation 56(3) to refer a medical question to a medical board, he shall forthwith refer that question to a medical board for their decision.

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

**60.**— (1) A claimant may appeal any decision of a medical board on a medical 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 Secretary of State notifies the adjudication officer that he is of the opinion, that any decision of a medical board on a medical question ought to be considered by a medical appeal tribunal the adjudication officer shall refer the case to a medical appeal tribunal for their consideration and the medical appeal tribunal may confirm, reverse or vary the decision as on an appeal.

(3) Where a medical question is referred to a medical appeal tribunal under the foregoing provisions of this regulation, the medical appeal tribunal, upon determining the question referred, may proceed to determine any other

medical question which arises in connection therewith and, where a decision on any such question has been given by a medical board, may confirm, reverse or vary that decision.

*Modification of section 112(1) of the 1975 Act*

61. Section 112 of the 1975 Act (appeal etc. on question of law to Commissioner) shall apply to an appeal from any decision of a medical appeal tribunal on a medical question subject to the modification that for paragraph (b) of subsection (1) of that section there shall be substituted the following paragraph:—

“(b) a trade union of which the claimant is a member at the time of the appeal and was so immediately before the question at issue arose; or”.

*Review of decision on medical question*

62.— (1) Any decision on a medical question of an adjudication officer, medical board or medical appeal tribunal may be reviewed at any time by a medical board if—

- (a) the medical board are satisfied that the decision was given in ignorance of, or was based on a mistake as to, some material fact; or
- (b) there has been any relevant change of circumstances since the decision was given; or
- (c) in the case only of a decision of that or another medical board, that the decision was erroneous in law.

(2) A question may be raised with a view to the review of any decision on a medical question by means of an application in writing to an adjudication officer, and on receipt of such application the adjudication officer shall refer such question to a medical board.

(3) A medical board may deal with a case on review in any manner in which they could deal with it on an original reference to them except that, in the case of a review under paragraph (1)(b), any medical question arising in connection with a person's entitlement to an allowance shall be decided as at the date of application for review, and if the decision under review is revised the revised decision shall have effect respectively from the date of claim or the date of application for review.

(4) The provisions of regulation 60 shall apply to a decision given on review as it applies to a decision given on an original reference.

**SECTION C—SUPPLEMENTARY BENEFIT**

*Notification of decisions in supplementary benefit cases*

63.— (1) Subject to paragraphs (2), (3) and (4) the decision of an adjudication officer on any claim or question relating to supplementary benefit 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 of appeal to an appeal tribunal.

(2) Where, under arrangements made by the Secretary of State either throughout or in any part of Great Britain, supplementary benefit by way of a pension or allowance is payable together with a benefit under the 1975 Act(a), 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 benefit which is implemented by a cash payment if 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 a pension or allowance if 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) So far as may be practicable, and subject to paragraph (6), where a determination to which paragraph (1) or (2) applies relates to a pension or allowance the Secretary of State shall also give or send to the claimant a written notice of assessment showing the total amounts, as determined by the adjudication officer, of the normal, additional and, except in so far as regulation 5B(2) of the Supplementary Benefit (Determination of Questions) Regulations 1980(b) provides otherwise, housing requirements respectively and of the income resources taken into account.

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

- (a) under the Supplementary Benefit (Urgent Cases) Regulations 1981(c) or Part II of the Supplementary Benefit (Trade Disputes and Recovery from Earnings) Regulations 1980(d) (urgent cases);
- (b) that a pension or allowance is not payable either by reason of regulation 7 of the Supplementary Benefit (Resources) Regulations 1981(e) (maximum capital resources for entitlement to benefit) or for any other reason other than that the claimant's resources are sufficient to meet his requirements; or
- (c) made on review under regulation 69, either under paragraph (5) of that regulation or where in other cases under that regulation (for example, where an additional requirement for laundry becomes applicable) the Secretary of State considers a written notice of assessment unnecessary;
- (d) awarding a pension or allowance to a claimant who is affected by a trade dispute (and whose requirements fall to be disregarded to any extent by virtue of section 8 of the Supplementary Benefits Act) other than the first of one or more successive awards;
- (e) in respect of a claimant to whom section 9 of the Supplementary Benefits Act (return to work after trade dispute) applies.

(7) If, within the time limited by regulation 3 and Schedule 2 for the bringing

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(a) See also section 66(2) of the Social Security Pensions Act 1975 (c.60).

(b) S.I. 1980/1643; relevant amending instruments are S.I. 1982/914, 1983/337 and 1984/938.

(c) S.I. 1981/1529.

(d) S.I. 1980/1641.

(e) S.I. 1981/1527; relevant amending instrument is S.I. 1983/1245.

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.

*Supplementary benefit and social fund questions not immediately determinable*

64.— (1) Where on consideration of a claim or question relating to supplementary benefit or to payment of maternity expenses from the Social Fund under Part III of the 1986 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 any of the questions mentioned in paragraph (3), and he 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 99(2) of the 1975 Act, and notwithstanding the provisions of section 100 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 respect of any of the questions mentioned in paragraph (3), the tribunal shall not determine the last mentioned question until it has been determined by an adjudication officer.

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

- (a) whether a person's requirements fall to be disregarded to any extent by virtue of section 8 of the Supplementary Benefits Act (persons affected by trade disputes);
- (b) whether regulation 8 of the Supplementary Benefit (Requirements) Regulations 1983(a) (modification of normal requirements in certain cases of actual or notional unemployment benefit disqualification) applies to a person by virtue of paragraph (1)(e) of that regulation and, if so, the period of its application by virtue of paragraph (4)(c) of that regulation;
- (c) whether by virtue of regulation 7(1) of the Supplementary Benefit (Conditions of Entitlement) Regulations 1981(b) (circumstances in which persons are to be treated as available for employment) a person is, subject to regulations 7(2) and 8 of those regulations, to be treated as available for employment and whether by virtue of regulation 8(1)(b) or (f) of those regulations he is not to be so treated;
- (d) whether for the purposes of regulation 10 of the Supplementary Benefit (Conditions of Entitlement) Regulations 1981 (circumstances in which persons are to be treated as receiving relevant education) a person is, by virtue of paragraph (1)(a)(iv) of that regulation, to be treated as receiving full-time education, not being advanced education, within the meaning of regulation 1(2) of the Child Benefit (General) Regulations 1976(c) by virtue of the provisions of regulation 6 of those regulations;
- (e) whether a person is for the purposes of regulation 3(5)(b) of the

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(a) S.I. 1983/1399, to which there are amendments not relevant to these regulations.

(b) S.I. 1981/1526; relevant amending instruments are S.I. 1982/907 and 1984/938.

(c) S.I. 1976/965; the relevant amending instruments are S.I. 1977/534, 1980/1045 and 1983/3.

Supplementary Benefit (Aggregation) Regulations 1981(a) (circumstances in which a person is to be treated as being responsible for another person) attending a course which would, if he were aged less than 19, be relevant education;

(f) whether for the purposes of regulation 4(9) of the Supplementary Benefit (Resources) Regulations 1981(b) (notional resources of seasonal workers) a person is a seasonal worker and, if he is, the duration of—

(i) his last period of normal employment,

(ii) his off-season;

except that this sub-paragraph shall not apply in respect of a person who was, during his last period of employment, a self-employed earner (other than a share fisherman);

(g) whether for the purposes of regulation 8(1)(c) of the Supplementary Benefit (Conditions of Entitlement) Regulations 1981(c) (circumstances in which persons are not to be treated as available for work) after a situation in any suitable employment has been properly notified to a person 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.

## SECTION D—REVIEW OF DECISIONS

*Review of decisions involving payment or increase of benefit other than industrial injuries benefit, mobility allowance, supplementary benefit, or family income supplement*

65.— (1) Where on a review a decision relating to benefit other than industrial injuries benefit, mobility allowance, supplementary benefit or family income supplement is revised so as to make benefit payable, or to increase the rate of benefit, then subject to the following provisions of this regulation, 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 sickness benefit, invalidity benefit or severe disablement allowance the date 2 weeks before the date of the application for the review;

(c) in the case of widow's benefit under sections 24 to 26 of the 1975 Act (and benefit under section 39(4) 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 3 months before the date of the application for the review;

(d) in the case of attendance allowance—

(i) if the review was made pursuant to section 106(1)(b) or (bb) of the

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(a) S.I. 1981/1524; relevant amending instrument is S.I. 1984/938.

(b) S.I. 1981/1527; the relevant amending instruments are S.I. 1982/1126 and 1984/1102.

(c) S.I. 1981/1526, to which there are amendments not relevant to these regulations.

1975 Act (review of determinations on any ground), the date of claim; and

(ii) in any other case, the date 3 months before the date of the application for review;

(e) in the case of child benefit, the date 12 months before the beginning of the week in which the application for review is made.

(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) and (4), 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) Subject to regulation 72 in a case to which paragraph (2) applies, no sum on account of benefit shall 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 93(1)(b) of the 1975 Act (contributions and earnings factor); 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 sickness benefit; or

(iii) a determination on review made by the Attendance Allowance Board;

(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 51(1)(f) of the 1986 Act, has been treated as a decision disallowing a further claim for any of those benefits.

(4) In any case in which the review to which the foregoing provisions of this regulation relate was based on a material 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) For the purposes of this regulation, where a decision is reviewed at the instance of an adjudication officer under section 104(1) or (1A) of the 1975 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.

(6) 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*

66.— (1) 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;
- (b) in the case of a review made by virtue of section 117(5)(a) of the 1975 Act (which permits the review of a decision given before the passing of the National Insurance Act 1972(a) 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 104(1) of the 1975 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 application for review.

*Review of medical decisions on grounds of ignorance of or mistake as to a material fact*

67. A decision of an adjudicating medical authority or a medical appeal tribunal may not be reviewed under section 110(1) of the 1975 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*

68. On review of any assessment under section 110(2) of the 1975 Act (review on ground of unforeseen aggravation) the period to be taken into account by any revised assessment may include any period not exceeding 3 months before—

- (a) if the review was in consequence of an application by a claimant, or a person acting on his behalf, the date of that application; or
- (b) if the review was in consequence of a decision on a recrudescence question, within the meaning of regulation 40(3)(b) given under regulation 7(4) of the Prescribed Diseases Regulations (recrudescence

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(a) 1972 c.57.

of a prescribed disease), the date of the claim on which that decision was given,

if the medical board are 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 supplementary benefit cases*

**69.**— (1) Subject to regulation 72 a determination on a claim or question relating to supplementary benefit shall not be revised on review under section 104 of the 1975 Act so as to make supplementary benefit payable or to increase the amount of benefit payable in respect of—

- (a) a determination of a claim for a single payment made more than 12 months before the date on which the review was requested or, where no request is made, the date of review; or
- (b) 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 review; or
- (c) any past period which falls within the period of 12 months mentioned in sub-paragraph (b) and has been followed by termination or interruption of entitlement to a pension or allowance 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 Secretary of State.

(2) Where a pension or allowance is being paid by means of an order book no revision shall be made under section 104(1)(b) of the 1975 Act during the currency of the book if the sole effect would be to reduce the weekly amount of the pension or allowance by less than 50 pence.

(3) A change mentioned in sub-paragraph (a) or (b) of regulation 15(2) of the Supplementary Benefit (Requirements) Regulations 1983(a) (fall in interest rates and reduction of outstanding loan capital where amount applicable for interest on the loan) shall be deemed not to be a change of circumstances if the amount of the instalments payable to the lender remains constant but, in such a case, where a determination is subsequently reviewed under section 104(1)(b) of the 1975 Act, that review shall also take account of any such change.

(4) In a case to which regulation 5B of the Supplementary Benefit (Determination of Questions) Regulations 1980(b) (determination of amount of water charges) applies, any determination of the Secretary of State which relates to an increase or reduction in the amount applicable in respect of water charges shall be deemed not to be a change of circumstances to which section 104(1)(b) of the 1975 Act applies.

(5) A determination relating to supplementary benefit made by an

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(a) S.I. 1983/1399.

(b) S.I. 1980/1643.

adjudicating authority or a Commissioner 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 in—

- (a) any amount specified in Schedule 1 to the Supplementary Benefits Act or in the Supplementary Benefit (Requirements) Regulations 1983 in connection with the determination of requirements;
- (b) the prescribed rate of any payment—
  - (i) under the 1975 Act, the Child Benefit Act 1975(a) or the Family Income Supplements Act 1970, or
  - (ii) made by virtue of any scheme made under the Industrial Injuries and Diseases (Old Cases) Act 1975(b), or
  - (iii) of a war disablement pension or war widow's pension, as defined in regulation 2(1) of the Supplementary Benefit (Duplication and Overpayment) Regulations 1980(c),

but any such change shall be deemed not to be a change of circumstances for the purpose of section 104 of the 1975 Act.

(6) A determination relating to supplementary benefit 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 8(4)(b)(i) or (ii) of the Supplementary Benefit (Requirements) Regulations 1983 (subsequent determination of claim for unemployment benefit where normal requirements modified in cases of actual or notional disqualification); or
- (b) a determination given on a question to which regulation 64 applies; or
- (c) a change of circumstances to which regulation 10(5) of the Supplementary Benefit (Transitional) Regulations 1980(d) (reduction of transitional additions on change of circumstances) applies, and paragraph 5 shall not apply in such case.

#### *Review in family income supplement cases*

70.— (1) Where a review under section 104(1)(a) of the 1975 Act of a decision relating to family income supplement arises from a disclosure of a material fact of which a person who claimed the supplement was, or could reasonably have been expected to be, aware but of which he previously failed to furnish information to the Secretary of State, then if that review would result in either a new award of supplement or increase in the amount of supplement payable, such supplement or increase of supplement shall not be payable in respect of any period earlier than 12 months before the date on which that person first furnished that information.

(2) Section 104(1)(b) of the 1975 Act (review on ground of relevant change of

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(a) 1975 c.61.  
(b) 1975 c.16.  
(c) S.I. 1980/1580.  
(d) S.I. 1980/984.

circumstances) shall not apply to a decision relating to family income supplement.

(3) A decision relating to family income supplement made by an adjudicating authority or a Commissioner may be reviewed by an adjudication officer, or on a reference by him, by an appeal tribunal if he or they are satisfied that supplement should not be paid for any family or should not be receivable by any person by reason of the provisions of regulation 4 of the Family Income Supplements (General) Regulations 1980(a) (circumstances in which payment of supplementary benefit is to make benefit under the Family Income Supplements Act 1970 not payable for a family or not receivable by a person).

#### *Review in social fund maternity and funeral expenses cases*

71. Subject to regulation 72 a determination on a claim or question relating to maternity or funeral expenses out of the social fund under Part III of the 1986 Act shall not be revised on review under section 104 of the 1975 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.

#### *Exemption from limitations on payment of arrears of benefit*

72. Nothing in this section shall operate so as to limit the amount of benefit or additional benefit that may be awarded on a review of a decision if the adjudicating authority making the review is satisfied either—

- (a) that the decision under review was erroneous by reason only of a mistake made, or of something done or omitted to be done by an officer of the Department of Health and Social Security or of the Department of Employment acting as such, or by an adjudicating authority or the clerk or other officer of such an authority, and that the claimant and anyone acting for him neither caused nor materially contributed to that mistake, act or omission; or
- (b) that where the grounds for review are that the decision was given in ignorance of or was based on a mistake as to a material fact, those grounds are established by evidence which was not before the adjudicating authority which gave the decision; that the claimant and anyone acting for him could not reasonably have produced that evidence to that authority at or before the time the decision was given, and that it has been produced as soon as reasonably practicable.

## PART V

### TRANSITIONAL PROVISIONS, SAVINGS AND REVOCATIONS

#### *Transitional provisions*

73.— (1) These regulations shall apply—

- (a) to any claim or question under the National Insurance Acts 1965 to

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(a) S.I. 1980/1437.

1974 or to the National Insurance (Industrial Injuries) Acts 1965 to 1974 as they apply to a corresponding claim or question under the 1975 Act, and for this purpose questions relating to graduated contributions and payments in lieu of contributions shall be treated as questions relating to contributions; and

(b) to any claim or question under the National Assistance Act 1948(a) or the Supplementary Benefit Act 1966(b) as they apply to a corresponding claim or question under the Supplementary Benefits Act.

(2) Subject to paragraph (7), anything done or begun pursuant to any provision of Part III (including Schedules 10 to 13) of the 1975 Act which was amended by section 52 of and Schedule 5 to, or repealed by section 86 or and Schedule 11 to the 1986 Act, or pursuant to any regulations made under those provisions or revoked by these regulations, shall be deemed to have been done or, as the case may be, may be continued pursuant to those provisions as amended or the provisions of these regulations.

(3) So much of any document as refers expressly or by implication to any regulation made under the enactments mentioned in paragraph (2) or 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.

(4) Nothing in paragraphs (2) and (3) shall be taken as affecting the general application of the rules for the construction of Acts of Parliament contained in sections 15 to 17 of the Interpretation Act 1978(c) (repealing enactments) with regard to the effect of revocations.

(5) Notwithstanding their repeal, sections 64, 65, 66 and 97 of the National Insurance Act 1965(d) and section 80 of that Act, in so far as it relates to payments in respect of any matter arising out of Part III of the 1975 Act, shall continue in force for the purpose of disposing of any question, appeal or other matter to which they relate (whether arising by virtue of regulations made under the Social Security (Consequential Provisions) Act 1975(e) or otherwise).

(6) Without prejudice to the powers conferred on the Lord Chancellor or the Lord President of the Court of Session by section 7 of the Tribunals and Inquiries Act 1971(f) or on the Secretary of State or the President by Part III of and Schedules 10 and 12 to the 1975 Act, any person who, immediately before the coming into force of section 25 of and Schedule 8 to the 1983 Act, held a subsisting appointment as—

(a) a member of any of the panels of persons constituted under the said section 7 from which were selected chairmen of National Insurance Local Tribunals (constituted under section 97(2) of the 1975 Act) or, as the case may be, of Supplementary Benefit Appeal Tribunals (constituted under Schedule 4 to the Supplementary Benefits Act) shall be deemed to have been appointed to the panel from which chairmen

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(a) 1948 c.29.  
(b) 1966 c.20.  
(c) 1978 c.30.  
(d) 1965 c.51.  
(e) 1975 c.18.  
(f) 1971 c.62.

of appeal tribunals are selected for a period corresponding to that of his subsisting appointment;

- (b) a member of either of the tribunal membership panels mentioned in section 97(2)(a) of the 1975 Act and paragraph 1(a) of Schedule 4 to the Supplementary Benefits Act (representing employers and earners other than employed earners) shall be deemed to have been appointed to the panel constituted by the President under paragraph 1(4) of Schedule 10 to the 1975 Act for a period corresponding to that of his subsisting appointment;
- (c) a member of either of the tribunal membership panels mentioned in section 97(2)(b) of the 1975 Act and paragraph 1(b) of Schedule 4 to the Supplementary Benefits Act (representing employed earners) shall be deemed to have been appointed to the panel constituted by the President under paragraph 1(3) of Schedule 10 to the 1975 Act for a period corresponding to that of his subsisting appointment;
- (d) a clerk to any National Insurance Local Tribunal or Supplementary Benefit Appeal Tribunal shall be deemed to have been assigned by the President as a clerk to the appeal tribunal for the area in question;
- (e) a member of a pneumoconiosis medical panel (under regulation 49 of the Prescribed Diseases Regulations) shall be deemed to have been appointed as a specially qualified adjudicating medical practitioner.

(7) Except in relation to proceedings before a Commissioner but notwithstanding paragraph (2) where, before the coming into operation of these regulations, the time limited by any enactment, rule or regulation mentioned in that paragraph for the making of any application, appeal or reference has begun to run, that time limit shall continue to apply, and the application, appeal or reference shall be made to the same person or body and in the same manner, as if the relevant enactment, rule or regulation had continued in force without amendment.

#### *Saving for existing chairmen of tribunals*

74.— (1) Notwithstanding any enactment any person who, immediately before the coming into force of section 25 of and Schedule 8 to the 1983 Act was a member of either of the panels referred to in regulation 73(6)(a) that person shall, though not a barrister, advocate or solicitor, or not of 5 years standing as such, be eligible for appointment or reappointment to the panel from which chairmen of appeal tribunals are selected for any period or periods before 23rd April 1989.

(2) Any person mentioned in paragraph (1) who, before 23rd April 1989, becomes a barrister, advocate or solicitor shall remain eligible for appointment or reappointment for any period or periods during the 5 years from the date of his call or admission.

(3) An appeal tribunal the chairman of which is eligible for appointment as such by virtue only of paragraph (1) shall not determine any appeal or reference other than an appeal or reference relating to a claim or question arising under the Supplementary Benefits Act or the Family Income Supplements Act 1970.

(4) An application for leave to appeal to a Commissioner against a decision of an appeal tribunal presided over by a chairman who is eligible for

appointment as such by virtue only of paragraph (1) shall not be determined by that chairman but shall instead be referred to and determined by the President or a full-time chairman.

*Revocations*

75. Except in so far as they apply to proceedings before a Commissioner, the regulations set out in column (1) of Schedule 4 are revoked to the extent mentioned in column (3) of that Schedule.

Signed by authority of the Secretary of State for Social Services.

*Nicholas Lyell,*  
Parliamentary Under-Secretary of State,  
Department of Health and Social Security.

16th December 1986.

## SCHEDULE 1

### PROVISIONS CONFERRING POWERS EXERCISED IN MAKING THESE REGULATIONS

Column (1) Provision	Column (2) Relevant Amendments	
National Insurance Act 1974(a)	section 6(1) and (3)	The 1986 Act, Schedule 11.
Social Security Act 1975 (b)	section 100(2) and (4)	The 1986 Act, Schedule 5, paragraph 6(a) and (d).
	section 101(5A) and (5B)	The 1986 Act, Schedule 5, paragraph 7(3).
	section 105(2)	None.
	section 106(1)(b) and (bb), (2) and (4)	The 1986 Act, Schedule 5, paragraph 11.
	section 108(2) and (3)	The 1983 Act, Schedule 8, paragraph 21.
	section 109(2) and (3)	The 1983 Act, Schedule 10 and the 1986 Act, Schedule 5, paragraph 13.
	section 110(5)	None.
	section 112(3) and (5)	The 1983 Act, Schedule 8, paragraph 4 and the 1986 Act, Schedule 5, paragraph 15(b).
	section 113(1) and (2)	None.
	section 114	Employment Protection (Consolidation) Act 1978(c), Schedule 16, paragraph 19(1) and the 1986 Act, Schedule 5, paragraph 16.
	section 115	The 1983 Act, Schedule 8, paragraph 5.
	section 119(3) and (4)	Child Benefit Act 1975(d), Schedule 4, paragraph 33; Social Security Act 1979(e), Schedule 3, paragraph 9 and Social Security Act 1980(f), Schedule 1, paragraph 12.
	Health and Social Services and Social Security Adjudications Act 1983(g)	section 166
Schedule 12		The 1983 Act, Schedule 8, paragraph 27; the 1986 Act, Schedule 5, paragraph 18.
Schedule 13		The 1983 Act, Schedule 8, paragraph 12; the 1986 Act, Schedule 5, paragraph 19.
Schedule 20		The 1986 Act, Schedule 5, paragraph 20.
Schedule 8, paragraph 31		None.
Social Security Act 1986(h)	section 52(4)	None.
	Section 89(1)	None.
	Schedule 7, paragraph 4(2)	None.

- (a) 1974 c.14.
- (b) 1975 c.14.
- (c) 1978 c.44.
- (d) 1975 c.61.
- (e) 1979 c.18.
- (f) 1980 c.30.
- (g) 1983 c.41.
- (h) 1986 c.50.

SCHEDULE 2

Regulation 3

TIME LIMITS FOR MAKING APPLICATIONS, APPEALS OR REFERENCES

Column (1) Application, appeal or reference	Column (2) Appropriate office	Column (3) Specified time
<p>1. Appeal to a medical board—</p> <p>(a) from an adjudication officer's determination of a diagnosis question or a recrudescence question (regulation 45);</p> <p>(b) from an adjudication officer's determination of a medical question (regulation 59).</p> <p>2. Appeal to a medical appeal tribunal from a decision of an adjudicating medical authority, as defined in regulation 27 (section 109(2) of the 1975 Act).</p> <p>3. Reference to a medical appeal tribunal at the instance of the Secretary of State or adjudication officer (section 109(3) of the 1975 Act).</p> <p>4. Appeal to an appeal tribunal from a decision of an adjudication officer (section 100(1) of the 1975 Act).</p> <p>5. Application to the chairman for leave to appeal to a Commissioner from the decision of an appeal tribunal (regulation 26(1)).</p> <p>6. Application to the chairman for leave to appeal to a Commissioner from the decision of a medical appeal tribunal (regulation 32(1)).</p> <p>7. Application to the Secretary of State with a view to a review under section 96(1) of the 1975 Act of a decision under section 93(1) of that Act (regulation 17(1)).</p> <p>8. Application to an adjudicating authority to set aside its decision (regulation 11(2)).</p>	<p>A local office.</p> <p>The office of the clerk to the appeal tribunal.</p> <p>The office of the clerk to the medical appeal tribunal.</p> <p>The office of the Department of Health and Social Security or the Department of Employment from which notice of the decision was issued.</p> <p>A local office of the Department of Health and Social Security or, in the case of unemployment benefit, either at such an office or at a local office of the Department of Employment or, in any case, at the office of the authority who gave the decision.</p>	<p>3 months beginning with the date when notice in writing of the decision was given to the appellant.</p> <p>3 months beginning with the date when notice in writing of the decision was given to the appellant.</p> <p>3 months beginning with the date when notice in writing of the decision was given to the appellant.</p> <p>3 months beginning with the date of the decision of the medical board.</p> <p>3 months beginning with the date when notice of the decision was given to the appellant.</p> <p>3 months beginning with the date when a copy of the record of the decision was given to the applicant.</p> <p>3 months beginning with the date when a copy of the record of the decision was given to the applicant.</p> <p>3 months beginning with the date when the Secretary of State gave the applicant notice in writing of the decision.</p> <p>3 months beginning with the date when notice in writing of the decision was given to the applicant.</p>

MODIFICATION OF PART III OF THE 1975 ACT IN ITS APPLICATION TO BENEFIT AND CLAIMS AND QUESTIONS TO WHICH PART IV OF THESE REGULATIONS APPLY

1. Section 117(4) of the 1975 Act shall have effect as if for the words "an accident" there were substituted the words "a prescribed disease"; as if for the words "an injury resulted in whole or in part from the accident" there were substituted the words "a person suffered from a prescribed disease"; as if for the words "that accident" there were substituted the words "that disease"; and as if for the words "the injury did so result" there were substituted the words "the person did so suffer".

2. There shall be included in the questions to be determined under the 1975 Act any question—

- (a) whether a person is suffering or has suffered from a prescribed disease or injury;
- (b) whether a prescribed disease or injury, suffered by a person who has previously been awarded benefit under the National Insurance (Industrial Injuries) Act 1946(a), under the National Insurance (Industrial Injuries) Act 1965(b), or under the 1975 Act, or who is or has been in receipt of compensation under the Workmen's Compensation Acts 1925 to 1945 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 Chapter V of Part II or section 113(1) of the 1975 Act necessitate the determination of that question);

which shall, where the question arises in connection with a claim for or award of sickness benefit made by virtue of section 50A of the 1975 Act 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 100 or 101 of the 1975 Act from a decision of an adjudication officer on any such question.

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(a) 1946 c.62.  
(b) 1965 c.52.

SCHEDULE 4

Regulation 75

REGULATIONS REVOKED

Column (1) Citation	Column (2) Statutory Instrument	Column (3) Extent of revocation
The Statutory Sick Pay (Adjudication) Regulations 1982	S.I. 1982/1400	The whole of the regulations.
The Social Security (Adjudication) Regulations 1984	S.I. 1984/451	Regulations 1 to 75, 78, 82 to 83, 86 to 90, 92 to 94 and Schedules 1 to 5.
The Social Security (Adjudication) Amendment Regulations 1984	S.I. 1984/613	The whole of the regulations.
The Social Security (Severe Disablement Allowance) Regulations 1984	S.I. 1984/1303	Regulation 12.
The Social Security (Adjudication) Amendment (No. 2) Regulations 1984	S.I. 1984/1991	The whole of the regulations.
The Social Security (Industrial Injuries) (Prescribed Diseases) Amendment Regulations 1985	S.I. 1985/159	Regulation 6.
The Supplementary Benefit (Miscellaneous Amendments) Regulations 1986	S.I. 1986/1259	Regulation 18.
The Social Security (Industrial Injuries and Adjudication) Miscellaneous Amendments Regulations 1986	S.I. 1986/1374	Regulation 4.
The Mobility Allowance Amendment Regulations 1986	S.I. 1986/1541	Regulation 3.

## EXPLANATORY NOTE

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

These regulations relate to the determination of claims and questions under the Family Income Supplements Act 1970, the Social Security Acts 1975 to 1986, the Industrial Injuries and Diseases (Old Cases) Act 1975, the Child Benefit Act 1975 and the Supplementary Benefits Act 1976. They reflect the further changes made in the social security adjudication system by section 52 of and Schedules 5 and 7 to the Social Security Act 1986. They do not deal with proceedings before the Social Security Commissioners which are the subject of separate regulations made by the Lord Chancellor.

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 Secretary of State; Section B for adjudication officers; Section C for social security appeal tribunals; Section D for adjudicating medical practitioners and medical appeal tribunals, and Section E for the Attendance Allowance Board.

Part IV contains provisions relating to particular benefits or procedures. Section A (with Schedule 3) relates to prescribed industrial diseases; Section B to mobility allowance; Section C to supplementary benefit, and Section D to the review of decisions.

Part V and Schedule 4 contain transitional provisions and revocations.

