

## 1999 No. 1958 (C. 51)

### SOCIAL SECURITY

#### The Social Security Act 1998 (Commencement No. 8, and Savings and Consequential and Transitional Provisions) Order 1999

Made - - - -

4th July 1999

The Secretary of State for Social Security, in exercise of the powers conferred on him by sections 79(3) and (4) and 87(2) and (3) of the Social Security Act 1998(a) and of all other powers enabling him in that behalf, hereby makes the following Order:

#### Citation and interpretation

1.—(1) This Order may be cited as the Social Security Act 1998 (Commencement No. 8, and Savings and Consequential and Transitional Provisions) Order 1999.

(2) In this Order, unless the context otherwise requires—

“the Act” means the Social Security Act 1998;

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

and references to sections and Schedules are references to sections of, and Schedules to, the Act.

#### Appointed day

2.—(1) Subject to paragraph (2) below and to articles 3 and 5 of this Order, 5th July 1999 is the day appointed for the coming into force of—

- (a) paragraph 105 of Schedule 7 (co-ordination with Northern Ireland), and section 86(1) in so far as it relates to that paragraph; and
- (b) the provisions of the Act specified in Schedule 1 to this Order, in so far as those provisions are not already in force, for the purposes of -
  - (i) guardian’s allowance under Part III of the Social Security Contributions and Benefits Act 1992(c),
  - (ii) benefits under Part V of that Act (benefits for industrial injuries),
  - (iii) child benefit, and
  - (iv) any matter to which, by virtue of section 170 of the Pension Schemes Act 1993(d), provisions of Chapter II of Part I of the Act are to apply.

(2) Paragraphs 63 and 102 of Schedule 7 shall come into force immediately before, respectively, paragraphs 4 and 14 of Schedule 7 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999(e) come into force.

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(a) 1998 c. 14.

(b) 1992 c. 5.

(c) 1992 c. 4.

(d) 1993 c. 48. Section 170 is substituted by paragraph 131 of Schedule 7 to the Act and amended by section 16(2) of the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2) (“the Transfer Act”).

(e) 1999 c. 2. See S.I. 1999/1662 (C. 47).

### Savings

<sup>1</sup>Words inserted in art. 3(1) by para. 2(a) of Sch. 20 to S.I. 1999/3178 as from 29.11.99.

**3.—(1)** Notwithstanding the coming into force of section 39(3) (Part II of the Administration Act to cease to have effect <sup>1</sup>, section 86(2) and Schedule 8 (repeals)◀ or regulation 59 (revocations) of the Social Security and Child Support (Decisions and Appeals) Regulations 1999(a)—

- (a) sections 18 and 19 of the Administration Act (appeals on questions of law, and review of decisions);
- (b) sections 59 to 61 of, and Schedule 3 to, that Act (regulations about procedural and supplementary matters) as they relate to regulations made in relation to those sections; and
- (c) any regulations made under or in connection with the operation of any of those sections or that Schedule,

shall continue to have effect with respect to any decision given before 1st April 1999 by the Secretary of State under section 17(1)(d) of that Act (decision whether person employed in employed earner's employment for purposes of industrial injuries benefit).

(2) Notwithstanding the coming into force of paragraph 101 of Schedule 7, section 164(5)(a) of the Administration Act (which provides for certain fees to be paid into the National Insurance Fund) shall continue to have effect in relation to any payment of fees made on or after 5th July 1999 under regulations made by virtue of section 62(2)(b) of that Act in connection with a medical examination conducted before that date.

### Consequential amendments and modifications

**4.—(1)** The amendments and modifications made by the following paragraphs of this article shall take effect on 5th July 1999.

(2) The Social Security (Guardian's Allowances) Regulations 1975(b) shall be amended in accordance with Schedule 2 to this Order.

(3) The Child Benefit (General) Regulations 1976(c) shall be amended in accordance with Schedule 3 to this Order.

(4) The Social Security (Claims and Payments) Regulations 1979(d) shall be amended in accordance with Schedule 4 to this Order.

<sup>2</sup>Paras. (5) and (9) to (12) of art. 4 revoked by para. 1(a) of Sch. 20 to S.I. 1999/3178 as from 29.11.99.

(5) ▶<sup>2</sup>◀

(6) The Workmen's Compensation (Supplementation) Scheme 1982(e) shall be amended in accordance with Schedule 6 to this Order.

(7) The Pneumoconiosis, Byssinosis and Miscellaneous Diseases Benefit Scheme 1983(f) shall be amended in accordance with Schedule 7 to this Order.

(8) The Social Security (Industrial Injuries) (Prescribed Diseases) Regulations 1985(g) shall be amended in accordance with Schedule 8 to this Order.

(9)–(12) ▶<sup>2</sup>◀

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(a) S.I. 1999/991.

(b) S.I. 1975/515, to which there are amendments not relevant to this Order.

(c) S.I. 1976/965; relevant amending instruments are S.I. 1988/1227, 1996/2327, 2530 and 1998/563.

(d) S.I. 1979/628; relevant amending instruments are S.I. 1983/186 and 1994/458.

(e) S.I. 1982/1489; relevant amending instruments are S.I. 1987/419, 1990/2538, 1997/371, 1998/571 and 1999/720.

(f) S.I. 1983/136; relevant amending instruments are S.I. 1983/504, 1985/491, 1987/400, 824, 1990/2538, 1993/1363 and 1997/824.

(g) S.I. 1985/967, as amended by S.I. 1986/1374, 1561, 1987/335, 2112, 1988/553, 1989/1207, 1990/2269, 1991/1938, 1993/861, 862, 1985, 1994/2343, 1996/425 and 1997/810.

**Transitional provisions**

5. Schedule 12 to this Order shall have effect.

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

4th July 1999

*Angela Eagle*  
Parliamentary Under-Secretary of State,  
Department of Social Security

## SCHEDULE 1

Article 2

## PROVISIONS BROUGHT INTO FORCE ON 5th JULY 1999 FOR PURPOSES SPECIFIED IN ARTICLE 2(1)(b)

<i>Provision of the Act</i>	<i>Subject matter</i>
Section 1(a)	Transfer of adjudication officer's functions to Secretary of State
Section 2(2)(a)	Use of computers
Section 4(1)(a), in so far as it relates to social security appeal tribunals and medical appeal tribunals, and (2)(a)	Unified appeal tribunals
Section 8(1)(a) and (c), (2), (3)(a) and (g), (4) and (5)(a)	Decisions by Secretary of State
Sections 9 and 10(a)	Revisions, and decisions superseding earlier decisions
Section 11(1) and (2), and (3) except the definition of "the current legislation" in so far as it relates to the Jobseekers Act 1995(b) and the Social Security (Recovery of Benefits) Act 1997(c) and the definition of the former legislation in so far as it relates to Part II of the Social Security Act 1986	Regulations with respect to decisions, and assistance from experts
Section 12(1)(a) (in so far as it relates to paragraphs 4, 5, 6(a) and 9 of Schedule 2) and (b) (in so far as it relates to paragraphs 1, 2, 3(a) and (c), 4, 5 (except in so far as that paragraph relates to section 71A of the Administration Act(d)), 6, 7 and 9 of Schedule 3), (2), (3), (4) (except in so far as it relates to section 74 of the Administration Act) and (5) to (9)(e)	Appeal to appeal tribunal
Section 13(f)	Redetermination etc. of appeals
Section 14 and Schedule 4(f)	Appeal from tribunal to Commissioner
Section 15	Appeal from Commissioner on point of law
Section 16 and Schedule 5(g)	Procedure
Section 17	Finality of decisions
Sections 18(1) and 19(g)	Matters arising as respects decisions, and medical examination required by Secretary of State

(a) Sections 8 and 10 are amended by paragraphs 22 and 23 respectively of Schedule 7 to the Transfer Act.

(b) 1995 c. 18.

(c) 1997 c. 27.

(d) 1992 c. 5; section 71A was inserted by section 18 of the Jobseekers Act 1995 (c. 18).

(e) Section 12 and Schedule 3 are amended by paragraphs 25 and 36 respectively of Schedule 7 to the Transfer Act.

(f) Sections 13 and 14 are amended by paragraphs 26 and 27 respectively of that Schedule.

(g) Sections 16, 18 and 19 are amended by paragraphs 28, 29 and 30 respectively of that Schedule.

<i>Provision of the Act</i>	<i>Subject matter</i>
Section 20(1), (2) and (3)(a)(a)	Medical examination required by appeal tribunal
Sections 21 to 25(a)	Suspension and termination of benefits, and decisions dependent on other cases
Section 26	Appeals involving issues that arise on appeal in other cases
Section 27	Restrictions on entitlement to benefit in cases of error
Section 28 (except subsection (3)(d) and (e))(b)	Correction of errors, and setting aside of decisions
Sections 29 and 30	Industrial accidents
Section 39(b)	Interpretation etc. of Chapter II of Part I of the Act
Schedule 7(c) in the respects specified below, and section 86(1) in so far as it relates to them—	Minor and consequential amendments—
paragraph 11	provision as to forfeiture
paragraphs 63 to 65	provisions concerned with industrial injuries and diseases
paragraphs 66 to 71	miscellaneous provisions relating to benefits
paragraph 79(1)	claims and payments
paragraph 81	overpayments
paragraph 84	issues arising in proceedings
paragraphs 88 and 89	disclosure of information, and notification of deaths
paragraphs 101 and 102	general financial matters
paragraphs 106 to 108	reciprocal agreements, and travelling expenses
paragraph 111(b)	definition of “claimant”
paragraph 115	old cases payments
paragraph 129	information about pensions
paragraphs 130(2) and 131	decisions and appeals about pension schemes

(a) Sections 20 and 21 are amended by paragraphs 31 and 32 respectively of that Schedule.

(b) Sections 28 and 39 are amended by paragraphs 34 and 35 respectively of Schedule 7 to the Transfer Act.

(c) Certain provisions of Schedule 7 are repealed by Schedule 10 to the Transfer Act.

<i>Provision of the Act</i>	<i>Subject matter</i>
Schedule 8 in respect of the repeals specified below, and section 86(2) in so far as it relates to them—	repeals
in the Administration Act— section 164(5)(a)	
in the Pension Schemes Act 1993— section 167(4)	

[ Schedule 2 amends S.I. 1975/515 ]

[ Schedule 3 amends S.I. 1976/965 ]

[ Schedule 4 amends S.I. 1979/628 ]

▶<sup>1</sup>◀

[ Schedule 6 amends S.I. 1982/1489 ]

[ Schedule 7 amends S.I. 1983/136 ]

[ Schedule 8 amends S.I. 1985/967 ]

▶<sup>1</sup>◀

<sup>1</sup>Schs. 5 and 9 to 11 revoked by para. 1(a) of Sch. 20 to S.I. 1999/3178 as from 29.11.99.

## SCHEDULE 12 TRANSITIONAL PROVISIONS

Article 5

**1.—(1)** In this Schedule, unless the context otherwise requires—

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

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

“the Adjudication Regulations” means the Social Security (Adjudication) Regulations 1995(**a**);

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

“legally qualified panel member” has the same meaning as in the Regulations;

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

“relevant benefit” means any of the benefits mentioned in article 2(1)(b)(i) to (iii) of this Order.

**(2)** Any reference in paragraphs 6 to 12 of this Schedule to—

- (a) an appeal to an appellate authority is to be construed as a reference to an appeal in relation to the decision of an adjudicating authority as respects a relevant benefit; and

(a) S.I. 1995/1801; regulations 3 and 10 have been amended by S.I. 1996/182 and 2450.

(b) S.I. 1999/991, as amended by S.I. 1999/1466, 1623, 1662 (c. 47) and 1670.

- (b) a decision of an appellate authority is to be construed as a reference to a decision of such an appeal.

2. Any matter which before 5th July 1999 fell to be decided in relation to a relevant benefit by an adjudicating authority but which has not been decided immediately before that date shall be decided on or after that date by the Secretary of State under paragraph (a) or, as the case may be, paragraph (c) of section 8(1).

3.—(1) Any application duly made before 5th July 1999 for a review of a decision of an adjudicating authority in relation to a relevant benefit which was not decided before that date shall on or after that date be treated as an application to the Secretary of State—

- (a) where the application was made within one month of the date on which the applicant was notified of the decision, or within such longer period as may be allowed under sub-paragraph (2) below, for a revision of that decision under section 9; or
- (b) in any other case, for a decision under section 10 to supersede that decision.

(2) Subject to sub-paragraphs (3) and (4) below, the period of one month specified in sub-paragraph (1)(a) above may be extended where an application for such an extension is made before 5th August 2000 by a claimant or a person acting on his behalf containing—

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

(3) An application for an extension of time shall not be granted under sub-paragraph (2) above unless the Secretary of State is satisfied that—

- (a) it is reasonable to grant that application;
- (b) the application for review has merit; and
- (c) special circumstances are relevant to the application for extension of time as a result of which it was not practicable for the application for review to be made within one month of the date of the adjudicating authority's decision being notified to the claimant.

(4) In deciding whether to grant an extension of time no account shall be taken of the following factors—

- (a) that the claimant or any person acting for him misunderstood or was unaware of the law applicable to his case (including misunderstanding or being unaware of the period specified in sub-paragraph (1)(a) above); or
- (b) that a Social Security Commissioner or a court has taken a different view of the law from that previously understood and applied by the adjudicating authority

(5) Where, by virtue of sub-paragraph (1)(b) above—

- (a) a decision is made under section 10 which is advantageous to the applicant; and
- (b) the same decision could have been made by the adjudicating authority prior to 5th July 1999 on the application for review,

that decision shall take effect from the date from which it would have taken effect had the decision been so made.

4.—(1) Where, before 5th July 1999, a decision has been made by an adjudicating authority in relation to a relevant benefit, that decision shall be treated on or after that date as a decision of the Secretary of State under paragraph (a) or, as the case may be, paragraph (c) of section 8(1).

(2) Where, before that date, any person was required to give notice to the claimant of that decision of the adjudicating authority, and such notice has not been given to the claimant before that date, the Secretary of State shall on or after that date give notice to the claimant of that decision.

**5.—(1) Where—**

- (a) a decision of an adjudicating authority in relation to a relevant benefit has been made before 5th July 1999; and
- (b) the period within which an appeal may be made in relation to that decision has not expired before that date,

regulation 3 of the Adjudication Regulations as it relates to the period within which an appeal may be made, or any extension of that period, shall, notwithstanding regulation 59 of the Regulations, continue to have effect, subject to the modifications in sub-paragraph (2) below, with respect to any appeal to an appeal tribunal on or after that date in relation to that decision.

**(2) The modifications referred to in sub-paragraph (1) above are—**

- (a) as if references to a chairman or to a person considering the application were references to a legally qualified panel member;
- (b) as if references to a tribunal were references to an appeal tribunal constituted under section 7; and
- (c) as if in paragraph (3E) for the words from “6 years” to the end of the paragraph there were substituted the words “5th August 2000”.

**6.** An appeal to an appellate authority which was duly made before 5th July 1999 and which has not been determined before that date shall, without prejudice to Chapter III of Part V of the Regulations, be treated on or after that date as an appeal duly made to an appeal tribunal in relation to a decision of the Secretary of State under section 8.

**7.—(1)** This paragraph applies where a clerk to an appellate authority has before 5th July 1999 given a direction under regulation 22(1) of the Adjudication Regulations in connection with an appeal to that authority, and the notification mentioned in paragraph (1A) of that regulation 22 has not been received by the clerk before that date.

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

(3) An appeal may be struck out by the clerk to an appeal tribunal where the notification referred to in sub-paragraph (2) above is not received within the period specified in that sub-paragraph.

(4) An appeal which has been struck out in accordance with sub-paragraph (3) above shall be treated for the purpose of reinstatement as if it had been struck out under regulation 46 of the Regulations.

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

- (a) a notification is received by the clerk to the appeal tribunal under sub-paragraph (2) above; or
- (b) the chairman or, in the case of an appeal tribunal which has only one member, that member of the appeal tribunal is satisfied that such a hearing is necessary to enable the appeal tribunal to reach a decision.

**8.** Where an appeal to an appellate authority has been struck out under regulation 7 of the Adjudication Regulations, a legally qualified panel member may on or after 5th July 1999, on an application made by any party to the proceedings not later than three months from the date of the order under paragraph (1) of that regulation, reinstate the appeal if he is satisfied that—

- (a) the applicant did not receive a notice under paragraph (2) of that regulation; and
- (b) the conditions in paragraph (2A) of that regulation were not satisfied,

and the appeal shall then be treated as an appeal to an appeal tribunal in relation to a decision of the Secretary of State under section 8.



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

**10.** A copy of a statement of—

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

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

**11.—(1)** Subject to sub-paragraph (2) below, any decision of an appellate authority shall, for the purposes of sections 13 and 14, be treated as a decision of an appeal tribunal.

(2) Where sub-paragraph (1) above applies, any application for leave to appeal which is made for the purposes of section 14(10)(a) shall be made no later than 3 months after the date on which a copy of the statement of the decision of the appellate authority was given or sent to the applicant.

**12.—(1)** Subject to sub-paragraph (3) below, regulation 10 of the Adjudication Regulations, and regulation 3 of those Regulations in so far as it relates to that regulation 10, shall, notwithstanding regulation 59 of the Regulations, continue to have effect on and after 5th July 1999, subject to the modifications specified in sub-paragraph (2) below, in relation to any application to set aside a decision of an appellate authority.

(2) The modifications referred to in sub-paragraph (1) above are—

- (a) as if, in that regulation 3, or in paragraph (1) of that regulation 10 any reference to the adjudicating authority which gave the decision or to an authority of like status were a reference to an appeal tribunal constituted under section 7; and
- (b) as if, in that regulation 3, for the reference to a chairman there were substituted a reference to a legally qualified panel member.

(3) Paragraph (1) above shall not apply in any case where an application to set aside a decision of an appellate authority is made after 5th August 2000.

**13.** Where, immediately before 5th July 1999, payment of a relevant benefit was suspended or withheld by virtue of any provision of Part V of the Social Security (Claims and Payments) Regulations 1987(a) (suspension and extinguishment), the provisions of Chapter I of Part III of the Regulations (suspension and termination) shall, on or after that date, apply with respect to that suspension or withholding as if it were a suspension imposed by virtue of those provisions.

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(a) S.I. 1987/1968; relevant amendments to Part V were made by S.I. 1992/247, 1993/2113, 1994/2319 and 1996/1460 and 2306.

**EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order provides for the coming into force on 5th July 1999 of further provisions of the Social Security Act 1998 (“the Act”) so as to introduce on that date - as respects guardian’s allowance, industrial injuries benefits, child benefit and issues arising under the Pension Schemes Act 1993 - the new arrangements for decision-making and appeals provided for in Chapter II of Part I of the Act.

The provisions brought into force by article 2 and Schedule 1 relate in particular to the transfer of decision-making functions from adjudication officers to the Secretary of State, and from social security appeal tribunals and medical appeal tribunals to appeal tribunals constituted under Chapter I of Part I of the Act, and provide for the exercise of such functions under the provisions of Chapter II of that Part (which replace the adjudication arrangements currently in force under Part II of the Social Security Administration Act 1992) (“the Administration Act”).

Savings are made as respects provisions of the Administration Act in relation to certain decisions taken by the Secretary of State before 1st April 1999, and the destination of fees paid in connection with certain medical examinations (article 3).

This Order makes consequential amendments in other statutory instruments in so far as they are concerned with, or make reference to, existing arrangements for decision making and appeals specifically in relation to guardian’s allowance, child benefit or industrial injuries benefits (article 4 and Schedules 2 to 4 and 6 to 8). Certain other provisions (for example, those which relate to claims and payments generally) are modified in relation to those benefits pending their amendment once Chapter II of Part I of the Act is fully in force in relation to all benefits (article 4 and Schedules 5, 9, 10 and 11).

This Order also makes transitional provision, in particular as to the manner in which matters which, immediately before 5th July 1999, are awaiting determination under the existing arrangements for decision making and appeals are to be dealt with on or after that date (article 5 and Schedule 12).

[ See Annex 2 on page 1.3291 for details as to earlier commencements. ]