

SCHEDULES

SCHEDULE 1

Article 6(1).

MANAGEMENT OF DISABILITY LIVING ALLOWANCE AND ATTENDANCE ALLOWANCE

1. The principal Act shall be amended as follows.

Adjudication

2. In section 98(1)

- (a) at the beginning insert “Subject to section 115C(1) below,”; and
- (b) for “104” substitute “104A”.

3.—(1) In subsection (1) of section 99, after “section 98” insert “(other than a claim which under section 100A(11) or (12) or 104A(5) falls to be treated as an application for a review)”.

(2) In subsection (2) of that section, after “questions),” insert “and subject also to subsection (2A) below,”.

- (3) After that subsection insert the following subsection—

“(2A) The adjudication officer must decide a claim for or question relating to an attendance allowance or a disability living allowance himself.”.

Reviews and appeals

4. In section 100—

- (a) in subsection (1), after “question,” insert “other than a claim or question relating to an attendance allowance or a disability living allowance,”;
- (b) in subsection (2), after “decision” insert “falling within subsection (1) above”; and
- (c) in subsection (6), after “amount” insert “of benefit (other than an attendance allowance or a disability living allowance)”.

5. After section 100 insert the following sections—

“Reviews of decisions by adjudication officers as to attendance allowance or disability living allowance.

100A.—(1) On an application under this section made within the prescribed period, a decision of an adjudication officer under section 99 above which relates to an attendance allowance or a disability living allowance may be reviewed on any ground.

(2) On an application under this section made after the end of the prescribed period, such a decision may be reviewed if—

- (a) the adjudication officer is satisfied that the decision was given in ignorance of, or was based on a mistake as to, some material fact; or

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- (b) there has been any relevant change of circumstances since the decision was given; or
- (c) it is anticipated that a relevant change of circumstances will so occur; or
- (d) the decision was erroneous in point of law; or
- (e) the decision was to make an award for a period wholly or partly after the date on which the claim was made or treated as made but subject to a condition being fulfilled and that condition has not been fulfilled,

but regulations may provide that a decision may not be reviewed on the ground mentioned in paragraph (a) above unless the officer is satisfied as mentioned in that paragraph by fresh evidence.

(3) Regulations may prescribe what are, or are not, relevant changes of circumstances for the purposes of subsection (2)(b) and (c) above.

(4) On an application under this section made after the end of the prescribed period a decision of an adjudication officer under section 99 above that a person is or was at any time terminally ill for the purposes of section 35(2B), 37ZB(5) or 37ZC(12) above may be reviewed if there has been a change of medical opinion with respect to his condition or his reasonable expectation of life.

(5) The claimant shall be given such notification as may be prescribed of a decision which may be reviewed under this section and of his right to a review under subsection (1) above.

(6) A question may be raised with a view to a review under this section by means of an application made in writing to an adjudication officer stating the grounds of the application and supplying such information and evidence as may be prescribed.

(7) Regulations—

- (a) may provide for enabling or requiring, in prescribed circumstances, a review under this section notwithstanding that no application under subsection (6) above has been made; and
- (b) if they do so provide, shall specify under which provision of this section a review carried out by virtue of any such regulations falls.

(8) Reviews under this section shall be carried out by adjudication officers.

(9) Different aspects of any question which arises on such a review may be dealt with by different adjudication officers; and for this purpose this section and the other provisions of this Part of this Act which relate to reviews under this section shall apply with any necessary modifications.

(10) If a review is under subsection (1) above, the officer who took the decision under review shall not deal with any question which arises on the review.

(11) Except in prescribed circumstances, where a claim for a disability living allowance in respect of a person already awarded such an allowance by an adjudication officer is made or treated as made during the period for which he has been awarded the allowance, it shall be treated as an application for a review under this section.

(12) Where—

- (a) a claim for an attendance allowance or a disability living allowance in respect of a person has been refused; and
- (b) a further claim for the same allowance is made in respect of him within the period prescribed under subsection (1) above,

the further claim shall be treated as an application for a review under that subsection.

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Further reviews of decisions as to attendance allowance or disability living allowance.

100B.—(1) Subsections (2) and (4) of section 100A above shall apply to a decision on a review under subsection (1) of that section as they apply to a decision of an adjudication officer under section 99 above but as if the words “made after the end of the prescribed period” were omitted from each subsection.

(2) Subsections (1), (2) and (4) of section IOOA above shall apply—

- (a) to a decision on a review under subsection (2) or (4) of that section; and
- (b) to a refusal to review a decision under subsection (2) or (4) of that section,

as they apply to a decision of an adjudication officer under section 99 above.

(3) The claimant shall be given such notification as may be prescribed—

- (a) of a decision on a review under section 100A above;
- (b) if the review was under section IOOA(1), of his right of appeal under section 100D below; and
- (c) if it was under section IOOA(2) or (4), of his right to a further review under section IOOA(1).

Reviews of decisions as to attendance allowance or disability living allowance: supplementary.

100C.—(1) An award of an attendance allowance or a disability living allowance on a review under section 100A above replaces any award which was the subject of the review.

(2) Where a person who has been awarded a disability living allowance consisting of one component applies or is treated as applying for a review under section 100A above and alleges that he is also entitled to the other component, the adjudication officer need not consider the question of his entitlement to the component which he has already been awarded or the rate of that component.

(3) Where a person who has been awarded a disability living allowance consisting of both components applies or is treated as applying for a review under section 100A above and alleges that he is entitled to one component at a rate higher than that at which it has been awarded, the adjudication officer need not consider the question of his entitlement to the other component or the rate of that component.

(4) Where a person has been awarded a component for life, on a review under section 100A above the adjudication officer shall not consider the question of his entitlement to that component or the rate of that component or the period for which it has been awarded unless—

- (a) the person awarded the component expressly applies for the consideration of that question; or
- (b) information is available to the adjudication officer which gives him reasonable grounds for believing that entitlement to the component, or entitlement to it at the rate awarded or for that period, ought not to continue.

(5) No decision which relates to an attendance allowance or a disability living allowance shall be reviewed under section 100A above on the ground that the person is or was at any time terminally ill, within the meaning of section 35(2C) above, unless an application for review is made expressly on that ground either—

- (a) by the person himself; or

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- (b) by any other person purporting to act on his behalf, whether or not that other person is acting with his knowledge or authority;

and a decision may be so reviewed on such an application, notwithstanding that no claim under section 35(2B) or 37ZB(5) or 37ZC(12) above has been made.

(6) Where a decision is reviewed under section 100A above on the ground that it is anticipated that a change of circumstances will occur, the decision given on review—

- (a) shall take effect on the day prescribed for that purpose by reference to the date on which the change of circumstances is expected to occur; and
- (b) shall be reviewed again if the change of circumstances either does not occur or occurs otherwise than on that date.

(7) Where a claimant has appealed against a decision of an adjudication officer under section 100D below and the decision is reviewed again under section 100A(2) or (4) above by an adjudication officer, then—

- (a) if the adjudication officer considers that the decision which he has made on the review is the same as the decision that would have been made on the appeal had every ground of the appeal succeeded, then the appeal shall lapse; but
- (b) in any other case, the review shall be of no effect and the appeal shall proceed accordingly.

(8) Subsections (5) and (7) to (10) of section 104 below apply in relation to a review under section 100A above as they apply to a review under that section but as if—

- (a) subsection (5)(a) were omitted; and
- (b) in subsection (7) for the words “subsection (1A) above” there were substituted the words “section 100A above on the ground that it was erroneous in point of law”.

(9) Where an adjudication officer has determined that any amount paid by way of an attendance allowance or a disability living allowance is recoverable under or by virtue of Article 54 of the Social Security (Northern Ireland) Order 1986 (overpayments), any person from whom he has determined that it is recoverable shall have the same right of review under section 100A above as a claimant.

(10) This Act shall have effect in relation to a review by virtue of subsection (9) above as if any reference to the claimant were a reference to the person from whom the adjudication officer has determined that the amount in question is recoverable.

Appeals following reviews of decisions as to attendance allowance or disability living allowance.

100D.—(1) Where an adjudication officer has given a decision on a review under section 100A(1) above, the claimant or such other person as may be prescribed may appeal—

- (a) in prescribed cases, to a disability appeal tribunal; and
- (b) in any other case, to a social security appeal tribunal.

(2) Regulations may make provision as to the manner in which, and the time within which, appeals are to be brought.

(3) An award of an attendance allowance or a disability living allowance on an appeal replaces any award which was the subject of the appeal.

(4) Where a person who has been awarded a disability living allowance consisting of one component alleges on an appeal that he is also entitled to the other component, the tribunal

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need not consider the question of his entitlement to the component which he has already been awarded or the rate of that component.

(5) Where a person who has been awarded a disability living allowance consisting of both components alleges on an appeal that he is entitled to one component at a rate higher than that at which it has been awarded, the tribunal need not consider the question of his entitlement to the other component or the rate of that component.

(6) The tribunal shall not consider—

(a) a person’s entitlement to a component which has been awarded for life; or

(b) the rate of a component so awarded; or

(c) the period for which a component has been so awarded, unless—

(i) the appeal expressly raises that question; or

(ii) information is available to the tribunal which gives it reasonable grounds for believing that entitlement to the component, or entitlement to it at the rate awarded or for that period, ought not to continue.

(7) Schedule 10A to this Act has effect with respect to disability appeal tribunals.”.

6. In section 101—

(a) in subsection (1), after “local tribunal” insert “or disability appeal tribunal”; and

(b) in subsection (5A)(a) omit “of a social security appeal tribunal”.

7.—(1) In section 102(1)

(a) after “local tribunal” insert “, a disability appeal tribunal”; and

(b) for “or”, in the second place where it occurs, substitute “, subject to subsection (3) below, or the”.

(2) After subsection (2) add the following subsection—

“(3) A social security appeal tribunal may not determine a question by virtue of subsection (1) above if an appeal in relation to such a question would have lain to a disability appeal tribunal.”.

8. In section 104 insert “other than a decision relating to an attendance allowance or a disability living allowance)”—

(a) in subsection (1), after “a Commissioner”; and

(b) in subsection (1A), after “adjudication officer”, in the first place where it occurs.

9. After section 104 insert the following section—

“Reviews of decisions on appeal as to attendance allowance and disability living allowance.

104A.—(1) Any decision under this Act of a social security appeal tribunal, a disability appeal tribunal or a Commissioner which relates to an attendance allowance or a disability living allowance may be reviewed at any time by an adjudication officer if—

(a) he is 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) it is anticipated that a relevant change of circumstances will so occur; or

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- (d) the decision was that a person is or was at any time terminally ill for the purposes of section 35(2B), 37ZB(5) or 37ZC(12) above and there has been a change of medical opinion with respect to his condition or his reasonable expectation of life; or
- (e) the decision was to make an award for a period wholly or partly after the date on which the claim was made or treated as made but subject to a condition being fulfilled and that condition has not been fulfilled,

but regulations may provide that a decision may not be reviewed on the ground mentioned in paragraph (a) above unless the officer is satisfied as mentioned in that paragraph by fresh evidence.

(2) Regulations may prescribe what are, or are not, relevant changes of circumstances for the purposes of subsection (1)(b) and (c) above.

(3) A question may be raised with a view to a review under this section by means of an application made in writing to an adjudication officer, stating the grounds of the application and supplying such information and evidence as may be prescribed.

(4) Reviews under this section shall be carried out by adjudication officers.

(5) Except in prescribed circumstances, where a claim for a disability living allowance in respect of a person already awarded such an allowance on an appeal is made or treated as made during the period for which he has been awarded the allowance, it shall be treated as an application for a review under this section.

(6) Subsections (1), (2) and (4) of section 100A above shall apply—

(a) to a decision on a review under this section; and

(b) to a refusal to review a decision such as is mentioned in subsection (1) above, as they apply to a decision of an adjudication officer under section 99 above.

(7) The person whose claim was the subject of the appeal the decision on which has been reviewed under this section shall be given such notification as may be prescribed—

(a) of the decision on the review; and

(b) of his right to a further review under section IOOA(1) above.

(8) Section IOOA(9) above and section IOOC(1) to (5) above shall apply in relation to a review under this section as they apply to a review under section 100A above.

(9) Subsections (1ZA), (3A) and (5) of section 104 above shall apply in relation to a review under this section as they apply to a review under that section but as if—

(a) in subsection (1ZA), “(1)(c)” were substituted for “(1)(bb)”;

(b) in subsection (3A), “(3)” were substituted for “(2)”;

(c) subsection (5)(a) were omitted.”.

10. In section 115(2), after “social security appeal tribunal,” insert “a disability appeal tribunal,”.

11. In section 115A(2), after paragraph (d) insert the following paragraph—

“(dd) a disability appeal tribunal;”.

12. In section 115B(2), after paragraph (c) insert the following paragraph—

“(cc) a disability appeal tribunal;”.

13. After section 115B insert the following sections—

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“References of claims relating to attendance allowance and disability living allowance to medical practitioners and Disability Living Allowance Advisory Board.

115C.—(1) Before a claim for an attendance allowance or a disability living allowance or any question relating to such an allowance is submitted to an adjudication officer under section 98 above the Department may refer the person in respect of whom the claim is made or the question is raised to a medical practitioner for such examination and report as appears to the Department to be necessary—

- (a) for the purpose of providing the adjudication officer with information for use in determining the claim or question; or
- (b) for the purpose of general monitoring of claims for attendance allowances and disability living allowances.

(2) An adjudication officer may refer—

- (a) a person in respect of whom such a claim is made or such a question is raised;
- (b) a person who has applied or is treated as having applied for a review under section 100A or 104A above,

to a medical practitioner for such examination and report as appears to the adjudication officer to be needed to enable him to reach a decision on the claim or question or the matter under review.

(3) The Department may direct adjudication officers to refer for advice to a medical practitioner who is an officer of the Department any case falling within a specified class of cases relating to attendance allowance or disability living allowance, and an adjudication officer may refer for advice any case relating to attendance allowance or disability living allowance to such a medical practitioner without such a direction.

(4) A medical practitioner who is an officer of the Department and to whom a case or question relating to an attendance allowance or disability living allowance is referred under section 115A above or subsection (3) above may refer the case or question to the Disability Living Allowance Advisory Board for advice.

(5) Such a medical practitioner may obtain information about such a case or question from another medical practitioner.

(6) Where—

- (a) the Department has exercised the power conferred on it by subsection (1) above or an adjudication officer has exercised the power conferred on him by subsection (2) above; and
- (b) the medical practitioner requests the person referred to him to attend for or submit himself to medical examination; but
- (c) he fails without good cause to do so,

the adjudication officer shall decide the claim or question or matter under review against him.

Medical examination etc. in relation to appeals to disability appeal tribunals.

115D.—(1) Where an appeal has been brought under section IOOD(1)(a) above, a person who may be nominated as chairman of a disability appeal tribunal may, if prescribed conditions are satisfied, refer the claimant to a medical practitioner for such examination and report as appears to him to be necessary for the purpose of providing a disability appeal tribunal with information for use in determining the appeal.

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(2) At a hearing before a disability appeal tribunal, except in prescribed circumstances, the tribunal—

- (a) may not carry out a physical examination of the claimant; and
- (b) may not require the claimant to undergo any physical test for the purpose of determining whether he satisfies the condition mentioned in section 37ZC(1)(a) above.”.

Disability appeal tribunals

14. On the commencement of this paragraph, and by virtue of its operation—

- (a) the President of social security appeal tribunals and medical appeal tribunals shall become President of social security appeal tribunals, medical appeal tribunals and disability appeal tribunals; and
- (b) each full-time chairman of social security appeal tribunals and medical appeal tribunals shall become full-time chairman of social security appeal tribunals, medical appeal tribunals and disability appeal tribunals.

15. For paragraph 1A(1) of Schedule 10 and the heading immediately preceding it substitute the following—

“The President of social security appeal tribunals, medical appeal tribunals and disability appeal tribunals and full-time chairmen

1A.—(1) The Lord Chancellor may appoint for Northern Ireland—

- (a) a President of social security appeal tribunals, medical appeal tribunals and disability appeal tribunals; and
- (b) full-time chairmen of such tribunals.”.

16. After that Schedule insert the following Schedule—

“SCHEDULE IOA

DISABILITY APPEAL TRIBUNALS

1. A disability appeal tribunal shall consist of a chairman and two other persons.
2. Section 97(2C) to (2E) of this Act shall have effect in relation to the chairman of a disability appeal tribunal as they have effect in relation to the chairman of a social security appeal tribunal.
3. The President shall constitute for the whole of Northern Ireland, to act for such areas as he thinks fit and be composed of such persons as he thinks fit to appoint, panels of persons to act as members of disability appeal tribunals.
4. There shall be two panels for each area.
5. One panel shall be composed of medical practitioners.
6. The other shall be composed of persons who are experienced in dealing with the needs of disabled persons—
 - (a) in a professional or voluntary capacity; or
 - (b) because they are themselves disabled,but may not include medical practitioners.

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7. In considering the appointment of members of the panels the President shall have regard to the desirability of appointing disabled persons.

8. Paragraph 1(2A) and (6) of Schedule 10 above have effect in relation to panels constituted under this Schedule as they have effect in relation to the panels mentioned in section 97(2A) of this Act.

9. Of the members of a tribunal other than the chairman one shall be drawn from the panel mentioned in paragraph 5 above.

10. The other shall be drawn from the panel mentioned in paragraph 6 above.

11. Paragraphs 1A(10) and 1B to 3 of Schedule 10 above apply to disability appeal tribunals as they apply to social security appeal tribunals.

12. In summoning members of a panel to serve on a tribunal, the clerk to the tribunal shall have regard to the desirability of at least one of the members of the tribunal being a disabled person.

13. If practicable, at least one of the members of the tribunal shall be of the same sex as the claimant.”.

17. In paragraph 7A of Schedule 13 (procedure regulations), after “social security appeal tribunal” insert “, a disability appeal tribunal”.

Financial arrangements

18. In section 129(2), after paragraph (c) insert the following paragraph—

“(ca) a disability living allowance;”.

Making of claim condition of entitlement

19. In section 154A(3), for the words from “for an attendance” to “of another” there shall be substituted the words “on behalf of another for an attendance allowance by virtue of section 35(2B) above or for a disability living allowance by virtue of section 37ZB(5) or 37ZC(12) above”.

Definitions

20. In Schedule 17—

(a) insert at the appropriate point the following definition—

“The Disability Living Allowance
Advisory Board”

“The Disability Living Allowance
Advisory Board for Northern Ireland.”.

(b) in the definition of “President” for “and medical appeal tribunals” substitute “, medical appeal tribunals and disability appeal tribunals”.