



# Social Security Act 1998

## 1998 CHAPTER 14

### PART I

#### DECISIONS AND APPEALS

### CHAPTER II

#### SOCIAL SECURITY DECISIONS AND APPEALS

#### *Cases of error*

#### **27 Restrictions on entitlement to benefit in certain cases of error**

- (1) Subject to subsection (2) below, this section applies where—
- (a) the effect of the determination, whenever made, of an appeal to [<sup>F1</sup>the Upper Tribunal] or the court (“the relevant determination”) is that the adjudicating authority’s decision out of which the appeal arose was erroneous in point of law; and
  - (b) after the date of the relevant determination a decision falls to be made by the Secretary of State in accordance with that determination (or would, apart from this section, fall to be so made)—
    - (i) in relation to a claim for benefit;
    - (ii) as to whether to revise, under section 9 above, a decision as to a person’s entitlement to benefit; or
    - (iii) on an application made under section 10 above for a decision as to a person’s entitlement to benefit to be superseded.
- (2) This section does not apply where the decision of the Secretary of State mentioned in subsection (1)(b) above—
- (a) is one which, but for section 25(2) or (3)(a) above, would have been made before the date of the relevant determination; or
  - (b) is one made in pursuance of section 26(3) or (5) above.

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- (3) In so far as the decision relates to a person's entitlement to a benefit in respect of—
- (a) a period before the date of the relevant determination; or
  - (b) in the case of a widow's payment, a death occurring before that date,
- it shall be made as if the adjudicating authority's decision had been found by [<sup>F2</sup>the Upper Tribunal] or court not to have been erroneous in point of law.
- (4) In deciding whether a person is entitled to benefit in a case where his entitlement depends on his having been entitled to the same or some other benefit before attaining a particular age, subsection (3) above shall be disregarded for the purpose only of deciding whether he was so entitled before attaining that age.
- (5) Subsection (1)(a) above shall be read as including a case where—
- (a) the effect of the relevant determination is that part or all of a purported regulation or order is invalid; and
  - (b) the error of law made by the adjudicating authority was to act on the basis that the purported regulation or order (or the part held to be invalid) was valid.
- (6) It is immaterial for the purposes of subsection (1) above—
- (a) where such a decision as is mentioned in paragraph (b)(i) falls to be made, whether the claim was made before or after the date of the relevant determination;
  - (b) where such a decision as is mentioned in paragraph (b)(ii) or (iii) falls to be made on an application under section 9 or (as the case may be) 10 above, whether the application was made before or after that date.
- (7) In this section—
- “adjudicating authority” means—
- (a) the Secretary of State;
  - (b) any former officer, tribunal or body; or
  - (c) any officer, tribunal or body in Northern Ireland corresponding to a former officer, tribunal or body;
- “benefit” means—
- (a) benefit under Parts II to V of the Contributions and Benefits Act, other than Old Cases payments;
  - (b) benefit under Part II of the Social Security Act 1975 (in respect of a period before 1st July 1992 but not before 6th April 1975);
  - (c) benefit under the National Insurance Act 1946 or 1965, or the National Insurance (Industrial Injuries) Act 1946 or 1965 (in respect of a period before 6th April 1975);
  - (d) a jobseeker's allowance;
  - (dd) [<sup>F3</sup>state pension credit;]
  - (de) [<sup>F4</sup>an employment and support allowance;]
  - (e) any benefit corresponding to a benefit mentioned in [<sup>F5</sup>paragraphs (a) [<sup>F6</sup>to (de)] above]; and
  - (f) any income-related benefit;
- “the court” means the High Court, the Court of Appeal, the Court of Session, the High Court or Court of Appeal in Northern Ireland, the House of Lords or the Court of Justice of the European Community;
- “former officer, tribunal or body” means any of the following, that is to say—

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- (a) an adjudication officer or, in the case of a decision given on a reference under section 21(2) or 25(1) of the Administration Act, a social security appeal tribunal, a disability appeal tribunal or a medical appeal tribunal;
  - (b) an adjudicating medical practitioner appointed under section 49 of that Act or a specially qualified adjudicating medical practitioner appointed in accordance with regulations under section 62(2) of that Act; or
  - (c) the National Assistance Board, the Supplementary Benefits Commission, the Attendance Allowance Board, a benefit officer, an insurance officer or a supplement officer.
- (8) For the purposes of this section, any reference to entitlement to benefit includes a reference to entitlement—
- (a) to any increase in the rate of a benefit; or
  - (b) to a benefit, or increase of benefit, at a particular rate.
- (9) The date of the relevant determination shall, in prescribed cases, be determined for the purposes of this section in accordance with any regulations made for that purpose.
- (10) Regulations made under subsection (9) above may include provision—
- (a) for a determination of a higher court to be treated as if it had been made on the date of a determination of a lower court or [<sup>F7</sup>the Upper Tribunal]; or
  - (b) for a determination of a lower court or [<sup>F8</sup>the Upper Tribunal] to be treated as if it had been made on the date of a determination of a higher court.

#### Textual Amendments

- F1** Words in s. 27(1)(a) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 1(1), **Sch. 3 para. 163(a)**
- F2** Words in s. 27(3) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 1(1), **Sch. 3 para. 163(b)**
- F3** S. 27(7)(dd) inserted (2.7.2002 for specified purposes, 6.10.2003 in so far as not already in force) by [State Pension Credit Act 2002 \(c. 16\)](#), s. 22(3), **Sch. 1 para. 9(a)**; S.I. 2002/1691, art. 2(i); S.I. 2003/1766, art. 2(a)
- F4** Words in s. 27(7) inserted (27.10.2008) by [Welfare Reform Act 2007 \(c. 5\)](#), s. 70(2), **Sch. 3 para. 17(5)(a)**; S.I. 2008/787, art. 2(4)(f)
- F5** Words in s. 27(7)(e) substituted (2.7.2002 for specified purposes, 6.10.2003 in so far as not already in force) by [State Pension Credit Act 2002 \(c. 16\)](#), s. 22(3), **Sch. 1 para. 9(b)**; S.I. 2002/1691, art. 2(i); S.I. 2003/1766, art. 2(a)
- F6** Words in s. 27(7) substituted (27.10.2008) by [Welfare Reform Act 2007 \(c. 5\)](#), s. 70(2), **Sch. 3 para. 17(5)(b)**; S.I. 2008/787, art. 2(4)(f)
- F7** Words in s. 27(10)(a) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 1(1), **Sch. 3 para. 163(a)**
- F8** Words in s. 27(10)(b) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 1(1), **Sch. 3 para. 163(a)**

#### Modifications etc. (not altering text)

- C1** S. 27 restricted (5.10.1999) by [Tax Credits Act 1999 \(c. 10\)](#), s. 20(2), **Sch. 2 para. 19(a)** (with s. 19)

#### Commencement Information

- I1** S. 27 in force at 5.7.1999 for specified purposes by S.I. 1999/1958, art. 2(1)(b), **Sch. 1** (with art. 5, Sch. 12)

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| <b>I2</b> | S. 27 in force at 6.9.1999 for specified purposes by S.I. 1999/2422, art. 2(c), <b>Sch. 1</b> (with art. 4, Sch. 14)             |
| <b>I3</b> | S. 27 in force at 5.10.1999 for specified purposes by S.I. 1999/2739, art. 2, <b>Sch. 1</b> (with art. 3, Sch. 2)                |
| <b>I4</b> | S. 27 in force at 18.10.1999 for specified purposes by S.I. 1999/2860, art. 2(c), <b>Sch. 1</b> (with art. 4, Schs. 16-18)       |
| <b>I5</b> | S. 27 in force at 29.11.1999 for specified purposes by S.I. 1999/3178, art. 2(1)(a)(2), <b>Sch. 1</b> (with art. 4, Schs. 21-23) |

## 28 Correction of errors and setting aside of decisions

(1) Regulations may make provision with respect to—

- (a) the correction of accidental errors in any decision [<sup>F9</sup>of the Secretary of State] or record of a decision [<sup>F9</sup>of the Secretary of State] made under any relevant enactment; <sup>F10</sup> ...

<sup>F10</sup>(b) .....

[<sup>F11</sup>(1A) In subsection (1) “decision” does not include [<sup>F12</sup>any decision of the First-tier Tribunal or] any decision made by an officer of the Inland Revenue, other than a decision under or by virtue of Part III of the Pension Schemes Act 1993.]

(2) Nothing in subsection (1) above shall be construed as derogating from any power to correct errors <sup>F13</sup> ... which is exercisable apart from regulations made by virtue of that subsection.

(3) In this section “relevant enactment” means any enactment contained in—

- (a) this Chapter;  
 (b) the Contributions and Benefits Act;  
 (c) the Pension Schemes Act 1993;  
 (d) the Jobseekers Act; <sup>F14</sup> ...  
 (e) the Social Security (Recovery of Benefits) Act 1997; <sup>F15</sup> ...  
 [<sup>F16</sup>(f) the State Pension Credit Act 2002][<sup>F17</sup>; or  
 (g) Part 1 of the Welfare Reform Act 2007].

### Textual Amendments

- F9** Words in s. 28(1)(a) inserted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 1(1), **Sch. 3 para. 164(a)(i)**
- F10** S. 28(1)(b) and preceding word omitted (3.11.2008) by virtue of The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 1(1), **Sch. 3 para. 164(a)(ii)**
- F11** S. 28(1A) inserted (5.7.1999) by Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), s. 28(3), **Sch. 7 para. 34** (with Sch. 8); S.I. 1999/1662, art 2(b), Sch. Pt. 2 (with art. 4)
- F12** Words in s. 28(1A) inserted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 1(1), **Sch. 3 para. 164(b)**
- F13** Words in s. 28(2) omitted (3.11.2008) by virtue of The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 1(1), **Sch. 3 para. 164(c)**
- F14** Word in s. 28(3) repealed (7.4.2003) by State Pension Credit Act 2002 (c. 16), s. 22(3), **Sch. 3**; S.I. 2003/966, art. 2(b), Sch.
- F15** Word in s. 28(3) repealed (27.10.2008) by Welfare Reform Act 2007 (c. 5), s. 70(1), **Sch. 8**; S.I. 2008/787, art. 2(4)(g)

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- F16** S. 28(3)(f) and preceding word inserted (2.7.2002 for specified purposes, 7.4.2003 in so far as not already in force) by [State Pension Credit Act 2002 \(c. 16\), s. 22\(3\), Sch. 1 para. 10](#); [S.I. 2002/1691, art. 2\(i\)](#); [S.I. 2003/966, art. 2\(a\)](#)
- F17** S. 28(3)(g) and preceding word inserted (18.3.2008 for specified purposes, 27.7.2008 in so far as not already in force) by [Welfare Reform Act 2007 \(c. 5\), s. 70\(2\), Sch. 3 para. 17\(6\)](#); [S.I. 2008/787, art. 2\(1\)\(3\)\(a\), Sch.](#)

#### Modifications etc. (not altering text)

- C2** S. 28 applied (with modifications) by [Pension Schemes Act 1993 \(c. 48\), s. 170\(7\)](#) (as substituted (14.6.1999 for specified purposes, 5.7.1999 in so far as not already in force) by [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c. 2\), ss. 16\(2\), 28\(3\)](#) (with [Sch. 8](#)); [S.I. 1999/1662, art 2, Sch. \(with art. 4\)](#))
- C3** S. 28 applied (with modifications) (temp.) (17.12.2002) by [The Tax Credits \(Appeals\) Regulations 2002 \(S.I. 2002/2926\), regs. 1\(1\)\(2\), 11](#)
- C4** S. 28 applied (with modifications) (25.2.2005) by [The Child Trust Funds \(Non-tax Appeals\) Regulations 2005 \(S.I. 2005/191\), regs. 1\(1\), 13](#)

#### Commencement Information

- I6** S. 28 in force at 4.3.1999 for specified purposes by [S.I. 1999/528, art. 2\(a\), Sch.](#)
- I7** S. 28 in force at 29.11.1999 for specified purposes by [S.I. 1999/3178, art. 2\(1\)\(a\)\(2\), Sch. 1](#) (with [art. 4, Schs. 21-23](#))
- I8** S. 28(1)(2)(3)(a)-(c) in force at 5.7.1999 for specified purposes by [S.I. 1999/1958, art. 2\(1\)\(b\), Sch. 1](#) (with [art. 5, Sch. 12](#))
- I9** S. 28(1)(2)(3)(a)(b) in force at 6.9.1999 for specified purposes by [S.I. 1999/2422, art. 2\(c\), Sch. 1](#) (with [art. 4, Sch. 14](#))
- I10** S. 28(1)(2)(3)(a)(b) in force at 5.10.1999 for specified purposes by [S.I. 1999/2739, art. 2, Sch. 1](#) (with [art. 3, Sch. 2](#))
- I11** S. 28(1)(2)(3)(a)(b)(d) in force at 18.10.1999 for specified purposes by [S.I. 1999/2860, art. 2\(c\), Sch. 1](#) (with [art. 4, Schs. 16-18](#))

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