



# Social Security Act 1998

## 1998 CHAPTER 14

### PART I

#### DECISIONS AND APPEALS

### CHAPTER II

#### SOCIAL SECURITY DECISIONS AND APPEALS

#### *Decisions and appeals dependent on other cases*

#### **25 Decisions involving issues that arise on appeal in other cases**

- (1) This section applies where—
  - (a) a decision by the Secretary of State falls to be made under section 8, 9 or 10 above in relation to a particular case; and
  - (b) an appeal is pending against the decision given in another case by a Commissioner or a court (whether or not the two cases concern the same benefit).
- (2) In a case relating to a relevant benefit, the Secretary of State need not make the decision while the appeal is pending if he considers it possible that the result of the appeal will be such that, if it were already determined, there would be no entitlement to benefit.
- (3) If the Secretary of State considers it possible that the result of the appeal will be such that, if it were already determined, it would affect the decision in some other way—
  - (a) he need not, except in such cases or circumstances as may be prescribed, make the decision while the appeal is pending;
  - (b) he may, in such cases or circumstances as may be prescribed, make the decision on such basis as may be prescribed.

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- (4) Where the Secretary of State acts in accordance with subsection (3)(b) above, following the determination of the appeal he shall if appropriate revise his decision (under section 9 above) in accordance with that determination.
- (5) For the purposes of this section, an appeal against a decision is pending if—
- (a) an appeal against the decision has been brought but not determined;
  - (b) an application for leave to appeal against the decision has been made but not determined; or
  - (c) in such circumstances as may be prescribed, an appeal against the decision has not been brought (or, as the case may be, an application for leave to appeal against the decision has not been made) but the time for doing so has not yet expired.
- (6) In paragraphs (a), (b) and (c) of subsection (5) above, any reference to an appeal, or an application for leave to appeal, against a decision includes a reference to—
- (a) an application for, or for leave to apply for, judicial review of the decision under section 31 of the Supreme Court Act 1981; or
  - (b) an application to the supervisory jurisdiction of the Court of Session in respect of the decision.

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

- C1** Ss. 25, 26 applied (with modifications) by (14.6.1999 for specified purposes, 5.7.1999 in so far as not already in force) , 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))

#### **Commencement Information**

- I1** S. 25 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](#))
- I2** S. 25 in force at 6.9.1999 for specified purposes by [S.I. 1999/2422](#), art. 2(c), [Sch. 1](#) (with art. 4, [Sch. 14](#))
- I3** S. 25 in force at 5.10.1999 for specified purposes by [S.I. 1999/2739](#), art. 2, [Sch. 1](#) (with art. 3, [Sch. 2](#))
- I4** [S. 25](#) 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](#))
- I5** S. 25(3)(b)(5)(c) in force at 4.3.1999 for specified purposes by [S.I. 1999/528](#), art. 2(a), [Sch.](#)

## **26 Appeals involving issues that arise on appeal in other cases**

- (1) This section applies where—
- (a) an appeal (“appeal A”) in relation to a decision under section 8, 9 or 10 above is made to an appeal tribunal, or from an appeal tribunal to a Commissioner; and
  - (b) an appeal (“appeal B”) is pending against a decision given in a different case by a Commissioner or a court (whether or not the two appeals concern the same benefit).
- (2) If the Secretary of State considers it possible that the result of appeal B will be such that, if it were already determined, it would affect the determination of appeal A, he may serve notice requiring the tribunal or Commissioner—
- (a) not to determine appeal A but to refer it to him; or

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- (b) to deal with the appeal in accordance with subsection (4) below.
- (3) Where appeal A is referred to the Secretary of State under subsection (2)(a) above, following the determination of appeal B and in accordance with that determination, he shall if appropriate—
  - (a) in a case where appeal A has not been determined by the tribunal, revise (under section 9 above) his decision which gave rise to that appeal; or
  - (b) in a case where appeal A has been determined by the tribunal, make a decision (under section 10 above) superseding the tribunal’s decision.
- (4) Where appeal A is to be dealt with in accordance with this subsection, the appeal tribunal or Commissioner shall either—
  - (a) stay appeal A until appeal B is determined; or
  - (b) if the tribunal or Commissioner considers it to be in the interests of the appellant to do so, determine appeal A as if—
    - (i) appeal B had already been determined; and
    - (ii) the issues arising on appeal B had been decided in the way that was most unfavourable to the appellant.

In this subsection “the appellant” means the person who appealed or, as the case may be, first appealed against the decision mentioned in subsection (1)(a) above.
- (5) Where the appeal tribunal or Commissioner acts in accordance with subsection (4) (b) above, following the determination of appeal B the Secretary of State shall, if appropriate, make a decision (under section 10 above) superseding the decision of the tribunal or Commissioner in accordance with that determination.
- (6) For the purposes of this section, an appeal against a decision is pending if—
  - (a) an appeal against the decision has been brought but not determined;
  - (b) an application for leave to appeal against the decision has been made but not determined; or
  - (c) in such circumstances as may be prescribed, an appeal against the decision has not been brought (or, as the case may be, an application for leave to appeal against the decision has not been made) but the time for doing so has not yet expired.
- (7) In this section—
  - (a) the reference in subsection (1)(a) above to an appeal to a Commissioner includes a reference to an application for leave to appeal to a Commissioner; and
  - (b) any reference in paragraph (a), (b) or (c) of subsection (6) above to an appeal, or to an application for leave to appeal, against a decision includes a reference to—
    - (i) an application for, or for leave to apply for, judicial review of the decision under section 31 of the Supreme Court Act 1981; or
    - (ii) an application to the supervisory jurisdiction of the Court of Session in respect of the decision.
- (8) Regulations may make provision supplementing that made by this section.

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

- C1** Ss. 25, 26 applied (with modifications) by (14.6.1999 for specified purposes, 5.7.1999 in so far as not already in force) , 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))

#### **Commencement Information**

- I6** S. 26 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](#))
- I7** S. 26(1)-(7) in force at 6.9.1999 for specified purposes by [S.I. 1999/2422](#), art. 2(c), [Sch. 1](#) (with art. 4, [Sch. 14](#))
- I8** S. 26(1)-(7) in force at 5.10.1999 for specified purposes by [S.I. 1999/2739](#), art. 2, [Sch. 1](#) (with art. 3, [Sch. 2](#))
- I9** [S. 26\(1\)-\(7\)](#) 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](#))
- I10** S. 26(6)(c) in force at 4.3.1999 for specified purposes by [S.I. 1999/528](#), art. 2(a), [Sch.](#)
- I11** S. 26(8) in force at 1.6.1999 by [S.I. 1999/1510](#), [art. 2\(d\)](#) (with arts. 48-51)

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