

STATUTORY INSTRUMENTS

1984 No. 451

SOCIAL SECURITY

The Social Security (Adjudication) Regulations 1984

<i>Made</i>	- - - -	<i>26th March 1984</i>
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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(a), hereby makes the following regulations.

This instrument contains only regulations made in consequence of section 25 of and Schedule 8 to the Health and Social Services and Social Security Adjudications Act 1983(b) and it is made before the expiry of the period of 6 months beginning with the commencement of that section and that Schedule, and accordingly the Secretary of State has not referred any proposals to make any regulations contained in it to the Industrial Injuries Advisory Council or the Social Security Advisory Committee.

PART I

GENERAL

Citation, commencement and interpretation

1.— (1) These regulations may be cited as the Social Security (Adjudication) Regulations 1984 and shall come into operation on 23rd April 1984.

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

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

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

“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 Commissioner, a medical appeal tribunal, a medical board or a special medical board;

(a) See Tribunals and Inquiries Act 1971 (c. 62), section 10.

(b) 1983 c. 41; see Schedule 8, paragraph 31(3).

(c) 1975 c. 14.

“adjudicating medical authority” has the meaning assigned to it by regulation 30;

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

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

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

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

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

“Chief Commissioner” means the Chief Social Security Commissioner appointed under section 97(3) of the Act;

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

“the Family Income Supplements Act” means the Family Income Supplements Act 1970(a);

“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 Act;

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

“medical board” and “special medical board” have the meanings assigned to them by regulation 30;

“the Prescribed Diseases Regulations” means the Social Security (Industrial Injuries) (Prescribed Diseases) Regulations 1980(b);

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

“the Requirements Regulations” means the Supplementary Benefit (Requirements) Regulations 1983(c);

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

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

(a) 1970 c. 55; sections 1, 6, 7, 10 and 17 were amended by section 7 of the Social Security Act 1980 (c. 30); sections 6 and 8 were amended by Schedule 8, and section 7 was repealed by Schedule 10 to the 1983 Act.

(b) S.I. 1980/377; the relevant amending instruments are S.I. 1982/249, 566, 1983/185, 1094.

(c) S.I. 1983/1399.

(d) 1976 c. 71; the Act, as amended by the Social Security Act 1980, is set out in Part II of Schedule 2 to the latter Act; the Act was further amended by sections 38 and 48(5) of, and Schedule 4 to, the Social Security and Housing Benefits Act 1982 (c. 24) and Schedule 8 to the 1983 Act.

(3) A person, other than a beneficiary, who is required to repay an amount of benefit to the Secretary of State by a decision given in accordance with subsection (1) or (2A) of section 119 of the Act (effect of adjudication on payment and recovery) as modified by regulations made under subsections (3) and (4) (cc) of that section in their application to sums by way of benefit paid to a person other than, but on behalf of, a beneficiary shall, as respects the determination of the question whether he throughout used due care and diligence to avoid overpayment of benefit, have the same rights and powers under sections 100 to 104 of the Act and Parts II, IV, V and VII as has a claimant, and references in those provisions to "the claimant" shall be treated as including references to such a person.

(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 Act references in these regulations to the Board or to its chairman shall be construed as references to that practitioner.

(5) Any notice or other document required or authorised to be given or sent to any person under the provisions of these regulations shall be deemed to have been given or sent if it was sent by post to that person at his ordinary or last known address.

(6) Unless the context otherwise requires, any reference in these regulations to a numbered Part, regulation or Schedule is a reference to the Part, regulation or Schedule bearing that number 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 Act 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 qualifications or not and, for the purposes of the proceedings at any such hearing, any such representative shall have all the rights and powers to which the person whom he represents is entitled under the Act 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 tribunal or board and if no person having the right to be heard objects, any person mentioned in regulation 4(6)(b) and (c),

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, a medical appeal tribunal or a Commissioner, in his capacity as such, notwithstanding that the hearing 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) Except in the case of an application to the chairman of an appeal tribunal or a medical appeal tribunal for leave to appeal to a Commissioner the time limited by this regulation and Schedule 2 for the making of an application, appeal or reference to the Secretary of State or to an adjudicating authority may be extended for special reasons, and may be so extended by the Secretary of State or by that authority or, in the case of a tribunal or board, its chairman, as the case may be, even though the original time limit has already expired.

(4) Any application, appeal or reference under these regulations shall contain particulars of the grounds on which it is made or given.

(5) Where it appears to the Secretary of State, an adjudication officer, the chairman of a tribunal or board or a Commissioner 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

4.— (1) This regulation applies to any oral hearing of an application, appeal or reference to which these regulations apply.

(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 is to take place) of the time and place of any oral hearing before an adjudicating authority shall be given to the claimant and to any other person who appears to the Commissioner or chairman, as the case may be, to be interested, 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 adjudicating authority shall not proceed with the hearing of the case without the consent of that person.

(3) If a claimant or other person to whom notice of an oral hearing has been duly given in accordance with these regulations should fail to appear at the hearing the adjudicating authority may proceed with the case notwithstanding his absence, or may give such directions with a view to the determination of the case as he or they may think proper having regard to all the circumstances including any explanation offered for the absence.

(4) Any oral hearing before an adjudicating authority shall be in public except where—

- (a) in a case before an adjudicating authority other than a Commissioner, the claimant requests a private hearing; or
- (b) the Commissioner or chairman, as the case may be, 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 shall be in private.

(5) Where an adjudicating authority holds an oral hearing the following persons shall be entitled to be present and be heard:—

- (a) the person making the application, appeal or reference;
- (b) the claimant;
- (c) the Secretary of State;
- (d) in a case which originated in a decision of or a reference to an appeal tribunal by an adjudication officer, the adjudication officer; and
- (e) any other person who in the opinion of the Commissioner or chairman, as the case may be, is a person interested in the decision.

(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; and
- (c) with the leave of the Commissioner or the chairman of the tribunal or board, as the case may be, and the consent of all persons entitled to be heard and actually present, any other person.

(7) Nothing in paragraph (6) affects the rights of any person mentioned in sub-paragraphs (a) and (b) at any hearing where he is sitting as a member of the tribunal, or acting as its clerk or is a party to the proceedings.

(8) Any person entitled to be heard at an oral hearing may address the

adjudicating authority and, subject to paragraph (9), may give evidence, may call witnesses and may put questions directly to any other person called as a witness.

(9) In the case of an oral hearing by a Commissioner of an appeal on the ground of error of law or of an application for leave to appeal on such a ground, witnesses may be called and questioned with the leave of the Commissioner but not otherwise.

Postponement and adjournment

5.— (1) Where a person to whom notice of a hearing by an adjudicating authority has been given wishes to apply for that hearing to be postponed he shall do so in writing to the Commissioner or chairman, as the case may be, stating his reasons for the application, and the Commissioner or chairman may grant or refuse the application as he thinks fit.

(2) A hearing may be adjourned by the adjudicating authority at any time on the application of any party to the proceedings or of his or their own motion.

Withdrawal of appeals, applications for leave to appeal and references

6.— (1) A person who has made an application for leave to appeal against a decision of an appeal tribunal, a medical appeal tribunal or the Attendance Allowance Board may withdraw his application at any time before it is determined by giving written notice of intention to withdraw to the adjudicating authority to whom the application was made.

(2) Any appeal made under the Act these regulations (except an appeal from the Secretary of State under section 94 or an appeal to a Commissioner) and any reference made under section 109(3) of the Act (reference of a decision of a medical board which, in the opinion of the Secretary of State, should be considered by a medical appeal tribunal) may be withdrawn by the appellant or, as the case may be, the Secretary of State—

- (a) with the consent in writing of all persons, not being the adjudicating authority or one of its members, to whom notice of the appeal or reference is required to be given, at any time before the hearing begins; or
- (b) 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.

Medical references

7. 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, except in proceedings on an application for leave to appeal or an appeal from or reference by a medical appeal tribunal or the Attendance Allowance Board.

Non-disclosure of medical evidence

8.— (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 the claimant 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 the claimant of that advice or evidence would be harmful to the claimant's health, such advice or evidence shall not be required to be disclosed to the claimant, but the adjudicating authority shall not by reason of such non-disclosure be precluded from taking it into account for the purpose of the said determination.

(2) Paragraph (1) does not apply to an adjudicating medical authority when considering any claim or question other than one in respect of a prescribed disease.

(3) In the case of a claim for attendance allowance where the claimant is not the disabled person in respect of whom the claim is made, paragraph (1) applies where the medical advice or medical evidence relates to that disabled person and has effect so that the advice or evidence shall not be required to be disclosed to either the claimant or that disabled person.

Correction of accidental errors in decisions

9.— (1) Subject to regulation 11 (provisions common to regulations 9 and 10), accidental errors in any decision or record of a decision may at any time be corrected by the adjudicating authority who gave the decision.

(2) A correction made to, or to the record of, a decision shall be deemed to be part of the decision or the record thereof and accordingly written notice thereof shall be given as soon as practicable to persons interested in the decision.

Setting aside of decisions on certain grounds

10.— (1) Subject to and in accordance with the provisions of this regulation and regulation 11 (provisions common to regulations 9 and 10), on an application made by a person interested in the decision, a decision may be set aside by the adjudicating authority who gave the decision 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 relating to the proceedings.

(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 person interested in the decision 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 persons interested in the decision 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(5) 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 at his ordinary or last known address.

Provisions common to regulations 9 and 10

11.— (1) In regulations 9 and 10—

“adjudicating authority” includes the Secretary of State; and

“person interested in the decision” means any person to whom notice of the decision is required to be given under the statutory provisions relating to it and, if he is not such a person and is not the person who gave the decision, the Secretary of State.

(2) In calculating any time for applying for leave to appeal or appealing against a decision or referring a decision under section 109 of the Act, 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 9 or on which notice is given of a determination that a decision shall not be set aside following an application made under regulation 10, as the case may be.

(3) There shall be no appeal against a correction made under regulation 9 or a determination given under regulation 10.

(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.

(5) In the event of it being impracticable or of it being likely to cause undue delay for a decision or record of a decision to be dealt with pursuant to regulation 9 or 10 by the adjudicating authority who gave the decision, another adjudicating authority of like status may so deal with it.

PART III

ADJUDICATION BY THE SECRETARY OF STATE

Construction of Part III

12. In this Part “a person interested” means a person whose interest in the application or decision—

(a) is under and for the purposes of the Act; and

(b) relates to that person's own liability under the Act or his actual or potential rights under it;

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

Application for decision of Secretary of State

13.— (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 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) Any person appointed by the Secretary of State under section 93(3) of the Act to hold an inquiry into the question or any matters arising in connection therewith and to report to him thereon, may by summons require persons to attend any such inquiry to give evidence or to produce documents reasonably required for the purpose of the inquiry.

(4) The applicant and any persons notified of the application in accordance with paragraph (2) and any other person appearing to the person appointed to hold the inquiry to be interested in the application shall have the right to be present and to be heard at any such inquiry and they shall be given reasonable notice of the time and place of the inquiry.

(5) The Secretary of State shall give notice in writing of his 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.

(6) An application for a decision of the Secretary of State shall not be made otherwise than by a person interested.

(7) Nothing in paragraphs (1) or (6) shall affect the right or obligation of any adjudicating authority to refer any question to the Secretary of State.

Statement of grounds for Secretary of State's decision

14. 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 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 Act) has arisen upon which he may appeal to the High Court or the Court of Session under section 94(3) of the Act.

Review or reference

15.— (1) A person desiring to raise a question with a view to a review under

section 96(1) of the Act of a decision under section 93(1) shall make application to the Secretary of State.

(2) The provisions of regulation 13(6) and (7) shall apply to any application under paragraph (1) as they apply to an application under regulation 13(1).

(3) The foregoing provisions of these regulations 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 Act of any decision of the Secretary of State given in accordance with this Part of these regulations; or
- (b) a question such as is mentioned in regulation 13(1) is referred to the Secretary of State—
 - (i) under section 103(2)(a) of the 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 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

16.— (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 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), section 95(1)(b) or (c) or section 95(1)(d) of the Act; and the provisions of sections 93(3), 94(1) to (4), 95(2) and 96 of the Act and of Parts I, II, this Part and Part VI 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 fall to be so determined by virtue of section 6(3) of the National Insurance Act 1966(c).

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

PART IV

ADJUDICATION BY ADJUDICATION OFFICERS

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

17.— (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 section 100(2) of the Act (appeals to appeal tribunals) 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) Where such a notice as is referred to in paragraph (1) is given, the decision of the adjudication officer shall, for the purposes of section 100(1) of the Act, be treated as adverse to the extent only that the following provisions of this regulation so provide.

(3) 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, the decision of the adjudication officer (if not reviewed) shall then, subject to the provisions of paragraph (4), be treated as adverse for the purposes of section 100(1) of the Act and the claimant 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.

(4) If, where the provisions of paragraph (3) 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.

(5) If the question so arising is determined by the Secretary of State, then—

- (a) the adjudication officer's decision shall thereafter, if not reviewed, be treated as an adverse decision for the purposes of section 100(1) of the Act and 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.
- (b) where the Secretary of State's decision upholds the assumption, section 100(3) of the Act shall apply as if the adjudication officer had given the certificate therein referred to;
- (c) 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 82 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.

PART V

ADJUDICATION BY APPEAL TRIBUNALS

Oral hearing of appeals and references

18.— (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, 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.

(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.

Decisions of appeal tribunals

19.— (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 grounds of 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 the claimant, to the adjudication officer and to any other person to whom notice of the hearing was given under regulation 4(2) and the claimant and any such other person shall be informed of the conditions governing appeals to a Commissioner.

Application for leave to appeal to a Commissioner from an appeal tribunal

20.— (1) Subject to the following provisions of this regulation and to regulation 93(4), an application to the chairman of an appeal tribunal for leave to appeal to a Commissioner from a decision of an appeal tribunal (where such leave is required as a condition of appealing) 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 adjudication officer shall, as soon as may be practicable, send to the claimant a copy of the application.

(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.

(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 appointed to act as a chairman for the particular area or if there is no such person by the chairman of an appeal tribunal in an adjoining area.

PART VI

FORFEITURE ACT 1982

Construction of Part VI

21. In this Part—

“adjudicating authority” includes the Secretary of State;

“forfeiture rule question” means the question referred to in section 4(1) of the Forfeiture Act 1982(a); and

“persons interested” means a person in relation to whom a forfeiture rule question arises and, as appropriate, an adjudication officer or the Secretary of State.

Reference of cases to Commissioner by adjudicating authorities where forfeiture rule question arises

22. Where a forfeiture rule question arises in a case before an adjudicating authority and that authority is not satisfied that the case can be disposed of without that question being determined, the adjudicating authority shall—

(a) if not the Secretary of State, require the Secretary of State to arrange for the case to be referred to a Commissioner to determine the forfeiture rule question; and

(b) if the Secretary of State, refer the case to a Commissioner to determine that question,

and shall inform the person in relation to whom the forfeiture rule question

(a) 1982 c. 34.

arises that his case is being referred to a Commissioner to determine that question.

Procedure after determination of forfeiture rule question

23.— (1) Subject to paragraph (2), the Commissioner, having determined the forfeiture rule question, shall remit the case to the adjudicating authority who caused it to be referred to him together with a copy of his decision on that question and that authority shall then dispose of the case in the light of the Commissioner's decision on the forfeiture rule question.

(2) Where, disregarding the forfeiture rule question, the case referred to a Commissioner under regulation 22 is one where an appeal tribunal has, or in the event of an appeal from a decision of an adjudication officer would have, jurisdiction to dispose of the case, the Commissioner may, with the consent of the persons interested, dispose of the case as if it were an appeal to him from an appeal tribunal as well as determining the forfeiture rule question.

Miscellaneous provisions relating to references under regulation 22

24.— (1) The provisions of section 116 of the Act (tribunal of 3 Commissioners dealing with cases involving questions of law of special difficulty) shall apply in relation to this Part as they apply in relation to the Act.

(2) The provisions of section 104(1) of the Act (review of decisions) shall apply to a decision of a forfeiture rule question by a Commissioner under this Part with the modification that the power of review shall be exercisable only by a Commissioner, to whom any application for review shall be made.

(3) In section 14 of the Social Security Act 1980 (appeal from Commissioners etc on point of law) subsection (3)(a) shall have effect as if a person interested within the meaning of this Part were a person to whom that subsection applies.

(4) Section 6(1) of the National Insurance Act 1974(a) (power to make regulations with respect to the correction of accidental errors in decisions and, in certain circumstances, to set aside decisions) shall have effect as if this Part were a relevant enactment within the meaning of that section; and accordingly regulations 9 to 11 shall apply to any decision of a Commissioner under this Part.

(5) Subject to the provisions of this Part and section 14 of the Social Security Act 1980, the decision of a Commissioner on any reference under regulation 22 shall be final, but shall not make any finding of fact or other determination embodied in or necessary to the decision or on which it is based, conclusive for the purposes of any further decision.

(a) 1974 c. 14.

PART VII

ADJUDICATION BY COMMISSIONERS

Application to a Commissioner for leave to appeal

25.— (1) A person who has been refused leave to appeal by the chairman of an appeal tribunal or a medical appeal tribunal, or who has failed to apply for such leave within the prescribed time, may make an application to a Commissioner for leave to appeal and the provisions of regulation 3 and Schedule 2 shall apply to such an application.

(2) Regulation 20(2) shall apply to any such application for leave to appeal against the decision of an appeal tribunal.

(3) Regulation 35(2) shall apply to any such application for leave to appeal against the decision of a medical appeal tribunal.

(4) If on consideration of an application for leave to appeal to him from the decision of an adjudicating authority the Commissioner gives leave he may, with the consent of the applicant and of all persons who were parties to the proceedings from which it is sought to appeal, treat the application as an appeal and determine any question arising on the application as though it was a question arising on an appeal.

Procedure before Commissioner on application for leave to appeal or appeal

26.— (1) Where, in any proceedings before a Commissioner, a request is made by any party thereto for an oral hearing the Commissioner shall grant such request, unless, after considering the record of the case and the reasons put forward in the request for the hearing, he is satisfied that the application or appeal can properly be determined without a hearing, in which event he may proceed to determine the case without a hearing and he shall inform the person making the request that it has been refused, either in writing before giving his decision or in the decision itself.

(2) Notwithstanding that no request for an oral hearing has been made a Commissioner may, if he is otherwise satisfied that a hearing is desirable, direct such a hearing.

(3) In the case of an application for leave to appeal or an appeal from the Attendance Allowance Board or an application for leave to appeal from or reference by a medical appeal tribunal a Commissioner may, before determining the application, appeal or reference, require the Board or tribunal, as the case may be, to submit a statement of such facts as he considers necessary for the proper determination of that application, appeal or reference.

(4) The decision of a Commissioner shall be in writing and signed by him and, except in the case of an application for leave to appeal, he shall record the reasons for his decision; and a copy of the decision and reasons shall be sent as soon as may be practicable to the claimant and to any other person to whom notice of any oral hearing would be required to be given under regulation 4(2).

Powers of Commissioner in Supplementary Benefit and Family Income Supplement Cases

27. On an appeal from the decision of an appeal tribunal in any case involving the right to or amount of supplementary benefit or family income supplement the Commissioner may—

- (a) hold that the decision is erroneous in point of law and—
 - (i) if he is satisfied that it is expedient in the circumstances, give the decision the tribunal should have given; or
 - (ii) refer the case to a differently constituted tribunal with directions for its determination; or
- (b) hold that the decision is not erroneous in point of law.

Appeals to the Courts

28.— (1) In a case where the Chief Commissioner considers that it is impracticable, or would be likely to cause undue delay, for an application under section 14(3) of the Social Security Act 1980(a) for leave to appeal against a decision of a Commissioner to be determined by that Commissioner, that application shall be determined—

- (a) where the decision was a decision of an individual Commissioner, by the Chief Commissioner or a Commissioner selected by the Chief Commissioner; and
- (b) where the decision was a decision of a Tribunal of 3 Commissioners, by a differently constituted Tribunal of 3 Commissioners selected by the Chief Commissioner.

(2) If the Chief Commissioner is unable to act, paragraph (1) shall have effect as if the expression “the Chief Commissioner” referred to such other of the Commissioners as he may have nominated to act for the purpose.

(3) The provisions of regulation 28 of the Social Security (Claims and Payments) Regulations 1979(b) (persons unable to act) shall apply to the right of appeal conferred by section 14 of the Social Security Act 1980 (appeal from Commissioners etc. on point of law) as they apply to rights arising under the Act.

(4) In relation to a decision of a Commissioner which was given in consequence of a reference under section 112(4) of the Act (references of questions of law by medical appeal tribunals), section 14(3) of the Social Security Act 1980 shall have effect with the modification that an application for leave to appeal against the Commissioner’s decision may only be made by—

- (a) the claimant in relation to whose claim the question of law arose before the medical appeal tribunal; or
- (b) a person appointed to apply on behalf of the claimant under paragraph (3) above; or
- (c) a trade union of which the claimant was a member at the material time; or

(a) 1980 c. 30.

(b) S.I. 1979/628.

- (d) any other association which exists to promote the interests and welfare of its members and of which the claimant was a member at the material time; or
 - (e) the Secretary of State.
- (5) In paragraph (4)(c) and (d), “the material time” means, where the question of law arose in relation to—
- (a) an accident, the time of that accident; or
 - (b) a prescribed disease, the date of onset (within the meaning of the Prescribed Diseases Regulations) of that disease; or
 - (c) a claim for mobility allowance, the date on which the reference was made.
- (6) In relation to such a decision of a Commissioner as is referred to in paragraph (4), section 14(5) of the Social Security Act 1980 shall have effect with the modification that “the relevant place” means the premises where the medical appeal tribunal which has referred the question of law to the Commissioner usually exercises its functions.

Time limits for making written observations

29.— (1) Subject to regulation 92(8), if any party to any proceedings before a Commissioner wishes to submit written observations on the application, appeal or reference, he shall do so—

- (a) in the case of proceedings which lie only on a question of law, within 4 weeks; and
 - (b) in any other case, within 3 months, beginning with the day on which notice of the application appeal or reference was given to him or within such further time as the Commissioner may, for special reasons, allow.
- (2) Any observations which any other party may wish to make on the observations made under paragraph (1) shall be made within 6 weeks beginning with the day on which the first-mentioned observations were received by him.
- (3) In any case where the Commissioner invites comments in writing on a direction of his, any party to the proceedings who wishes to make such comments shall submit them to the Commissioner within 8 weeks beginning with the day on which notice of the direction is received by him or within such further time as the Commissioner may for special reasons allow.
- (4) Without prejudice to the provisions of paragraphs (1), (2) and (3), the Commissioner may direct any party to any proceedings before him to make such written observations or further written observations as may seem to him necessary to enable the question at issue to be determined.
- (5) For the purposes of this regulation the receipt of any noted observations or direction at a local office shall be treated as receipt by the Secretary of State or an adjudication officer as the case may be.

PART VIII

MEDICAL ADJUDICATION

Construction of Part VIII

30. In this Part—

“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

31.— (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

32.— (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) (ignorance of or mistake as to a material fact) or of an assessment of disablement under section 110(2) of the Act (unforeseen aggravation);
- (b) subject to the provisions of Part IX (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 Part X (mobility allowance), any question mentioned in regulation 53(1); 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 Part IX 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 or D7 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 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, after such notice has been given, the claimant should fail to appear at the sitting of the authority, the authority shall not proceed to determine the questions referred to him or them without his consent.

(9) For the purposes of these regulations a sitting of an adjudicating medical authority is not an oral hearing, and no person shall be entitled to be present and be heard during the consideration of any question by such an authority other than 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

33.— (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.

Medical appeal tribunals

34.— (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 the 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 the claimant shall be sent written notice of the decision of a medical appeal tribunal, 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 record of that decision made in accordance with paragraph (4).

(6) A person to whom written notice of a decision of a medical appeal tribunal is sent in accordance with the provisions of paragraph (5) shall be informed in writing of the conditions governing an appeal to a Commissioner, and there shall be supplied to him, or, where he is represented by another person, to that person, a copy of the record of that decision made in accordance with the provisions of paragraph (4) if, for the purposes of an appeal, he or that other person makes a request for it in writing at a local office.

Application for leave to appeal and appeal from a medical appeal tribunal

35.— (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, the Secretary of State shall, as soon as may be practicable, send to the claimant a copy of the application.

(3) The decision of the chairman on an application for leave to appeal shall be recorded in writing and notice thereof shall be given to the applicant.

(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 a medical appeal tribunal to be determined by the person who was chairman of the tribunal which gave the decision, that application shall be determined by any other person qualified under paragraph 2(4) of Schedule 12 to the Act to act as a chairman of medical appeal tribunals.

(5) An appeal against the decision of a medical appeal tribunal shall be made in accordance with the provisions of regulation 3 and Schedule 2 and a copy of any notice of appeal by the Secretary of State shall be sent to the claimant.

Disqualification from acting as an adjudicating medical authority or as a member thereof or as a member of a medical appeal tribunal

36.— (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 or D7 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

37. Where, in the opinion of the adjudication officer, an application made under the provisions of section 110(2) of the Act raises a question as to the review of a decision of a medical appeal tribunal and, by virtue of section 110(5), 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 medical appeal tribunal of a question of law for decision by a Commissioner

38. 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 Act, the tribunal shall cause to be sent—

- (a) to the Commissioner, a submission in writing signed by the chairman of the tribunal, which shall include a statement of the said question and the facts on which it arises; and
- (b) to the Secretary of State and the claimant, a copy of that submission.

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

39.— (1) For the purpose of giving, confirming or revising their decision on

the case in accordance with section 112(5) of the Act a medical appeal tribunal shall hold a hearing, and, subject to paragraphs (2) and (3), the provisions of these regulations which relate to hearings of appeals by medical appeal tribunals, shall apply to the hearing as if it were the original hearing of an appeal; but the provisions of this paragraph shall not apply in relation to the confirming by a medical appeal tribunal of a decision which a Commissioner has held not to be erroneous in point of law.

(2) For the purpose of confirming or revising their decision on the case a medical appeal tribunal, whether or not consisting of the same members who constituted the tribunal when that decision was given in the first place,—

(a) shall proceed upon the facts included in the record of the decision so given; and

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

(3) When after receipt of the decision of a Commissioner on a point of law a medical appeal tribunal give, confirm or revise their decision on the case, such decision shall be recorded and notified in accordance with the provisions of regulation 34(4) and (5).

PART IX

PRESCRIBED DISEASES

Construction of Part IX

40. Regulation 30 applies for the construction of this Part as it applies for the construction of Part VIII.

Application of Part III of the Act and of these regulations

41.— (1) The provisions of section 110(3) of the Act (effect of decisions as to a loss of faculty) and of section 107 (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 Act, subject to the provisions of this Part 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 and D7 in Part I of Schedule 1 to the Prescribed Diseases Regulations, to the provisions of Part VI 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 Act in respect of a prescribed disease.

Construction of references

42. Save as provided in this Part any reference in Part III of the 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.

Reference of diagnosis and recrudescence questions for medical report

43.— (1) In the following provisions of this Part any question arising in connection with a claim for or award of sickness benefit made by virtue of section 50A of the 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.

(2) Subject to the provisions of regulation 44, 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 and D7 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.

Power to dispense with reference for medical report

44.— (1) The adjudication officer may determine a diagnosis or recrudescence question without referring it as provided by regulation 43(2) 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.

(2) The adjudication officer may, if he is satisfied that a reference for report as provided in regulation 43(2) may be dispensed with on any of the grounds specified in the preceding paragraph of this regulation, 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 as aforesaid.

(3) 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.

(4) 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.

(5) The provisions of regulation 43(2) and of the foregoing paragraphs shall apply to an appeal tribunal and a Commissioner as they apply to an adjudication officer with this modification, that an appeal tribunal or a Commissioner, instead of themselves or himself referring a diagnosis or recrudescence question to a medical practitioner in accordance with regulation 43, shall direct the adjudication officer to refer it to a medical board in accordance with regulation 45.

Procedure on receipt of medical report

45.— (1) If a diagnosis or recrudescence question has been referred as provided by regulation 43(2), the adjudication officer shall, subject to the provisions of paragraph (6), 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 paragraph (4), the adjudication officer may—

- (a) himself determine the question in favour of the claimant; or
- (b) refer the question to a medical board for their decision; or
- (c) himself determine the question adversely to the claimant.

(3) If the question so referred was a recrudescence question, then, subject to paragraphs (4) and (5), the adjudication officer—

- (a) if he is satisfied having regard to such report as aforesaid 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) 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.

(5) If a diagnosis question is referred to a medical board under the foregoing provisions of this regulation or under the provisions of regulation 46, 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.

(6) Subject to the provisions of these regulations, the provisions of sections 100, 103 and 104 of the Act shall apply as if a diagnosis or recrudescence question were a question such as is referred to in section 103(1) 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.

Appeal against decision of adjudication officer

46.— (1) Where, under the provisions of regulation 44 or 45, an adjudication officer has decided a diagnosis question adversely to the claimant or has decided 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 who is dissatisfied with any decision mentioned in paragraph (1) may appeal to a medical board in accordance with the provisions of regulation 3 and Schedule 2.

(3) If notice of appeal is given 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 medical appeal tribunal

47.— (1) Subject to the provisions of regulation 51(3), if a claimant is dissatisfied with the decision of a medical board on a diagnosis or recrudescence question he may appeal and the case shall be referred to a medical appeal tribunal.

(2) If the Secretary of State notifies the adjudication officer that he is of 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

48. Where a diagnosis or recrudescence question is referred to a medical appeal tribunal the tribunal, upon determining the question referred—

- (a) may proceed to determine any recrudescence or diagnosis 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 provision of section 110(2) of the Act.

Review of previous assessment following recrudescence decision

49. Where, by reason of the provisions of regulation 7(4) of the Prescribed Diseases Regulations, the decision of a recrudescence question necessitates the review of a previous assessment of disablement, the medical board may review such previous assessment accordingly, as provided by section 110 of the 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 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 a 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 47 shall apply to a decision of a medical board in connection with such 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 diseases 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, 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 Act (finality of decisions), in making that determination, the board or, as the case may be, the 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.

(3) In relation to a decision (in this paragraph called 'the current decision') of a special medical board on a diagnosis question in respect of prescribed disease D1 (pneumoconiosis) or D2 (byssinosis) raised by a claimant for disablement benefit by reason of either disease, regulation 47(1) (appeal to medical appeal tribunal) shall not apply if—

- (a) the claimant has previously made an appeal, or an adjudication officer has previously made a reference affecting the claimant under regulation 47(2), to a medical appeal tribunal in respect of a decision on a diagnosis question relating to prescribed diseases D1 (pneumoconiosis) or, as the case may be, D2 (byssinosis), unless by the date of the current decision at least 2 years have elapsed since the last occasion on which, having heard such an appeal or reference, the medical appeal tribunal rejected the appeal or, as the case may be, determined the question referred to them; or
- (b) the current decision was given before 19th May 1982, unless at least once before the date on which the claim which gave rise to that decision was made—
 - (i) the claimant has claimed disablement benefit on account of prescribed diseases D1 (pneumoconiosis) or, as the case may be, D2 (byssinosis),
 - (ii) a special medical board has, at least one year before the date of

the current decision, given a decision (other than one given only on review under regulation 50) that no such disease was diagnosed, and

- (iii) accordingly the claim was or, as the case may be, remained rejected.

PART X

ADJUDICATION FOR MOBILITY ALLOWANCE

Application of the Act and regulations

52. The provisions of Part III of the 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 Part.

Reference of medical questions for report

53.— (1) In this Part 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; or
- (b) whether such inability or virtual inability to walk is likely to persist for at least 12 months from a specified date; or
- (c) for what period, being a period limited by reference either to the person's 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.

(2) 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.

Power to dispense with reference for report

54.— (1) The adjudication officer may determine a medical question without referring it as provided in regulation 53(2) 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

- (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 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(b).

(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) If, within 21 days of a determination that an award of an allowance cannot be made to any person, a further claim is received in respect of that person, any medical question arising on such claim, instead of being referred for report, as aforesaid, shall be referred for decision to a medical board.

(4) The provisions of regulation 53(2) and of the foregoing paragraphs of this regulation shall apply to an appeal tribunal and the Commissioner as they apply to an adjudication officer with this modification, that an appeal tribunal or the Commissioner, instead of themselves or himself referring a medical question to a medical practitioner in accordance with regulation 53, shall direct the adjudication officer to refer it to a medical board.

Procedure on receipt of report

55.— (1) If a medical question has been referred as provided by regulation 53(2), 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 received the report of the medical practitioner or practitioners to whom it was so referred.

(2) On consideration of the question so referred, the adjudication officer may—

- (a) himself determine the question in favour of the person in respect of whom the allowance is claimed; or
- (b) himself determine the question adversely to the person in respect of whom the allowance is claimed; or
- (c) refer the question to a medical board for their decision,

and for the purposes of sub-paragraph (b) the question specified in regulation 53(1)(c) shall be treated as having been determined adversely to the person in respect of whom the allowance is claimed where it is determined by reference to a period ending on some definite date earlier than the date on which that person will attain the age of 75.

(a) 1977 c. 49.

(b) S.I. 1980/1437.

(3) Subject to the provisions of this Part, the provisions of sections 100, 103 and 104 of the 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 Part.

Right of appeal

56. Where under the provisions of regulation 55 an adjudication officer has determined a medical question adversely to the person in respect of whom an allowance is claimed, that person may appeal to a medical board and the provisions of regulation 3 and Schedule 2 shall apply to such an appeal.

Appeal or reference to medical board

57.—(1) As soon as practicable after receiving notice of appeal given under the provisions of regulation 56, the adjudication officer 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 53(2), or if he is directed in accordance with regulation 54(4) 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 medical appeal tribunal

58.—(1) If a person in respect of whom a mobility allowance is claimed is dissatisfied with the decision of a medical board on a medical question, he may appeal and the case shall be referred to a medical appeal tribunal.

(2) 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 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 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 Act

59. Section 112 of the 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.”.

Review of decision on medical question

60.— (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, and in the case of a decision of a medical appeal tribunal satisfied by fresh evidence, 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.

(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, and regulation 58 shall apply to a decision of a medical board in connection with such an application to review as it applies to a decision on an original reference to them.

PART XI

ADJUDICATION BY THE ATTENDANCE ALLOWANCE BOARD

Definition of “the Board”

61. In this Part “the Board” means the Attendance Allowance Board.

Application for reviews of determinations made by the Board

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

(2) An application under paragraph (1) 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.

(3) If within 12 months of an application having been made as in paragraph (1) 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.

(4) 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 Act.

Reviews of determinations made by the Board

63.— (1) The prescribed period within which the Board may, in pursuance of section 106(1)(b) of the Act, review a determination on any ground shall be a 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, so however that if an application for review is made (whether by the claimant or the Secretary of State) within 3 months from that date the prescribed period shall be extended until the application for review is determined.

(2) Where the Board, having where appropriate given leave under regulation 62(3), 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, where review is refused or the determination on review is not more favourable to the claimant than the determination reviewed, the claimant and the Secretary of State shall, subject to the provisions of paragraph (3), also be notified in writing of the reasons for such refusal or determination, and the claimant shall be notified 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.

Appeals to a Commissioner on a question of law

64.— (1) Subject to the provisions of these regulations, the claimant or the Secretary of State may appeal to a Commissioner, with the leave of a Commissioner, against a determination by the Board of any question of law arising on a review by the Board in pursuance of section 106(1) of the Act, or arising in connection with a refusal by the Board to review a determination made in pursuance of section 105(3) of the Act.

(2) An application for leave to appeal or an appeal shall be made in accordance with the provisions of regulation 3 and Schedule 2 and where the application for leave to appeal or the appeal is made by the Secretary of State he shall send a copy of the application or of the notice of appeal to the claimant.

(3) The Secretary of State shall inform the Board of any decision of the Commissioner in which he holds that the determination of the Board was

erroneous in law, and the Board shall review their determination for the purpose of confirming or revising it.

PART XII

ADJUDICATION IN SUPPLEMENTARY BENEFIT AND FAMILY INCOME SUPPLEMENT CASES

Application of the Act

65. The provisions of the Act specified in column (1) of Schedule 4 shall apply for the determination of any question mentioned in section 2(1) of the Supplementary Benefits Act subject to the modifications (if any) specified opposite that provision in column (3) of that Schedule, and also for the determination of any question mentioned in section 6(1) of the Family Income Supplements Act subject to the modifications (if any) specified opposite that provision in column (4) of that Schedule.

Application of regulations

66. Parts I, II, V to VII, this Part, regulations 87 to 89 in Part XIV, Part XV and Schedules 2 and 4 apply for the determination of any question mentioned in regulation 65.

Decision of adjudication officer

67.— (1) An adjudication officer to whom a claim or question is submitted under this Part of these regulations shall take it into consideration and, so far as practicable, dispose of it in accordance with the provisions of the Act and of these regulations which apply by virtue of regulations 65 and 66 within 14 days of its submission to him.

(2) The adjudication officer may in the case of any claim or question so submitted to him—

- (a) decide it himself; or
- (b) refer it to an appeal tribunal.

(3) Where an adjudication officer refers a case to an appeal tribunal, notice in writing of the reference shall be given to the claimant and any other person who appears to the adjudication officer to be interested.

Notification of decisions in supplementary benefit cases

68.— (1) Subject to paragraphs (2) and (3), in the case of a claim for, or a review of a decision relating to, supplementary benefit, the claimant shall be notified in writing of the adjudication officer's decision and of his right to request a statement of the reasons therefor and of his right of appeal.

(2) Where, under arrangements made by the Secretary of State either throughout or in any part of Great Britain, a pension or allowance is payable

together with a benefit under the 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 any determination—

- (a) awarding benefit which is implemented by a cash payment; or
- (b) terminating entitlement to a pension or allowance provided it is reasonable in the circumstances not to give written notice (for example where the reason for the termination is known to the claimant).

(4) So far as may be practicable, and subject to paragraph (5), 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.

(5) Paragraph (4) 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 87, 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.

(6) If, within 28 days beginning with the day on which notice of the adjudication officer's decision is given to him or, where paragraph (3) applies, the date of payment or date of termination of entitlement, as the case may be, 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.

(a) See also section 66(2) of the Social Security Pensions Act 1975 (c. 60).
(b) S.I. 1980/1643.
(c) S.I. 1981/1529.
(d) S.I. 1980/1641.
(e) S.I. 1981/1527; relevant amending instrument is S.I. 1983/1245.

Supplementary benefit questions not immediately determinable

69.— (1) Where on consideration of a claim for or a review of a decision relating to supplementary benefit 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 that question cannot be immediately determined, he shall proceed to determine the claim or to make the review on the assumption that the determination of that question 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 regulation 67(2)(b), and notwithstanding the provisions of regulation 71(2)(b), 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 that question or those questions until it or they have 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 Requirements Regulations (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(a) 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—
 - (i) is, by virtue of paragraph (1)(a) of that regulation, receiving full-time education, not being advanced education, by attendance at a recognised educational establishment, for the purposes of section 2(1)(b) of the Child Benefit Act 1975(b), or
 - (ii) has, for the purposes of paragraph (1)(b) of that regulation, ceased to receive such education;
- (e) whether a person is for the purposes of regulation 3(5)(b) of the Supplementary Benefit (Aggregation) Regulations 1981(c) (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

(a) S.I. 1981/1526; relevant amending instrument is S.I. 1982/907.

(b) 1975 c. 61.

(c) S.I. 1981/1524, to which there are amendments not relevant to these regulations.

Benefit (Resources) Regulations 1981(a) (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(b) 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.

Notification of decisions in family income supplement cases

70.— (1) A person whose right to family income supplement is affected by a decision made by an adjudication officer shall be notified in writing of that decision, of the reasons for it and of his right of appeal.

(2) 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.

Appeal to appeal tribunals

71.— (1) A person claiming, or in receipt of, supplementary benefit or family income supplement or from whom benefit is recoverable under section 20 of the Supplementary Benefits Act may appeal to an appeal tribunal against any determination of an adjudication officer (including a determination to refuse to review a determination) with respect to the claim, benefit or supplement.

(2) On an appeal under this regulation or under section 12(4) of the Supplementary Benefits Act the appeal tribunal may—

- (a) confirm the determination appealed against; or
- (b) substitute for that determination any determination which an adjudication officer could have made.

PART XIII

ADJUDICATION IN CHILD BENEFIT CASES

Construction of Part XIII

72. In this Part—

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- (a) S.I. 1981/1527; the relevant amending instrument is S.I. 1982/1126.
 - (b) S.I. 1981/1526, to which there are amendments not relevant to these regulations.

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

“claimant” means a person who has claimed benefit and the expression includes, in relation to an award or decision, a person entitled to receive benefit under the award or directly affected by the decision;

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

“special question” means any such question as is referred to in section 7(2) of the Child Benefit Act 1975, 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 Act as if it were a question arising under the Act.

Determination of child benefit questions

73.— (1) Any question as to the right to benefit shall be determined by an adjudication officer, an appeal tribunal or a Commissioner as if the right were a right to benefit under the Act and the following provisions shall apply:—

- (a) sections 97 to 100, 101(1), (2)(a) and (b) and (5), 102, 103, 104 (except subsection (1)(c)), 116, 117(1) and (2) and, subject to the provisions of this Part, 119 of the Act;
- (b) section 15 of the Social Security Act 1980(c) (leave required for appeal from appeal tribunal to Commissioner); and
- (c) Parts I, II and IV to VII of and Schedule 2 to these regulations.

(2) Sections 100(3) and 103 shall have effect as if there were included in the questions to which those sections apply a special question.

Reference of a special question

74.— (1) The following paragraphs apply if on consideration of any claim or question an adjudication officer is of opinion that there arises a special question.

(2) Subject to paragraph (3), the adjudication officer shall—

- (a) refer the question so arising for determination by the Secretary of State; and
- (b) deal with any other questions as if the question so referred had not arisen.

(3) 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,

(a) 1975 c. 61.

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

(c) 1980 c. 30.

or any part of it, make an award or decide that an award cannot be made as to the claim, or that part of it, without referring or dealing with, or before the determination of, any other question.

(4) Paragraphs (2) and (3) apply to an appeal tribunal and a Commissioner as they apply to an adjudication officer, except that a tribunal or Commissioner shall, instead of referring a question in accordance with paragraph (2)(a), direct it to be so referred by an adjudication officer.

Additional power to review decisions

75. In addition to the powers of review conferred by section 104(1)(a) and (b) of the Act any decision under the Child Benefit Act 1975 of an adjudication officer, an appeal tribunal or a Commissioner may be reviewed at any time by an adjudication officer or, on a reference by an adjudication officer, by an appeal tribunal if the decision was based on the decision of a special question and the decision of that question is revised under section 7(3) of the Child Benefit Act 1975 or section 96 of the Act.

Payment of sums on account of benefit where appeal is pending

76.— (1) Subject to the provisions of the Child Benefit Act 1975 and of these regulations, sums on account of benefit awarded shall be payable notwithstanding that an appeal against the award is pending and, subject as aforesaid, shall be treated as having been properly paid and shall not be recoverable under the provisions of the Act or otherwise.

(2) Subject to paragraph (4), where notice of an appeal by an adjudication officer to a Commissioner from an award of an appeal tribunal is given to the person claiming the benefit within a period of 28 days beginning on the date when the adjudication officer was given notice in writing of the appeal tribunal's decision, payment of the benefit to which the appeal relates shall be suspended until the appeal has been determined.

(3) Where leave is necessary for such an appeal and either—

- (a) application for leave having been made by an adjudication officer to the chairman of the appeal tribunal, notice of the application is given to the claimant within the 28 day period referred to in paragraph (2) above, or
- (b) such an application having been refused and an application for leave to appeal having been made by the adjudication officer to the Commissioner, notice of the latter application is given to the claimant within six weeks of the date on which the adjudication officer was notified of the refusal of the chairman of the appeal tribunal to give leave to appeal,

payment of the benefit to which the application for leave to appeal relates shall be suspended until a decision on the application (whether refusing or allowing leave to appeal) is given.

(4) In a case where leave to appeal is given on an application referred to in paragraph (3) above, paragraph (2) shall have effect as if the 28 day period to which it refers began on the date on which notice was given to the adjudication officer that leave to appeal had been given.

Date from which benefit is to be payable to a person in respect of a child in respect of whom another person has previously been awarded benefit

77.— (1) The following provisions of this regulation shall have effect for the purpose of determining the date from which benefit is to be payable to a person (hereafter in this regulation referred to as “A”) in respect of a child in a case where, before benefit was awarded to A in respect of that child, benefit in respect of that child had been awarded to another person (hereafter in this regulation referred to as “B”).

(2) Where benefit paid in respect of the child for any week under the award made in favour of B is, by a decision on appeal or review, found not to be payable, it shall be treated as properly paid if—

- (a) it was received by another person (whether or not A) who as at that week either had the child living with him or was contributing towards the cost of providing for the child at a weekly rate which was not less than the weekly rate of benefit paid in respect of the child under the award made in favour of B; and
- (b) a person could have been entitled to benefit in respect of the child for that week had a claim been made before that week.

(3) Subject to paragraph (4), any benefit awarded to A in respect of the child for a week earlier than that in the course of which A is awarded benefit in respect of the child shall not be payable if that earlier week is one in respect of which benefit paid under the award made in favour of B is treated as properly paid under paragraph (2).

(4) Where for any week in relation to which paragraph (2) applies, the weekly rate of benefit paid in respect of the child under the award made in favour of B is lower than the weekly rate of benefit awarded to A in respect of the child, paragraph (3) shall not operate so as to make the difference between those weekly rates not payable to A.

Review of decisions involving payment of benefit

78.— (1) Where on review a decision is revised so as to make sums on account of benefit payable, the decision given on the review shall have effect as if a claim to benefit has been made on the date of the application for the review and accordingly no sum on account of benefit shall be payable in respect of any period earlier than 52 weeks before the week in which such application was made.

(2) For the purposes of this regulation—

- (a) where a decision is reviewed at the instance of an adjudication officer, the date on which it was first decided by the adjudication officer that the decision should be reviewed shall be deemed to be the date of the application for the review;
- (b) the date of an application for review under the provisions of section 104(2) of the Act, as applied by regulation 73(1)(a), shall be the date (hereafter in this sub-paragraph referred to as “the relevant date”) on which it is received in an office of the Department of Health and Social Security so, however, that if the Secretary of State accepts that an application which has been sent by post has not been delivered in

the ordinary course of post and gives a direction accordingly, the date of the application shall be a date earlier than the relevant date, being, whichever is the later, the date of the application had it been delivered in the ordinary course of post or a date 13 weeks before the relevant date.

Recovery of sums required to be repaid

79. Where by a decision on appeal or review benefit is required to be repaid to the Secretary of State, then, without prejudice to any other method of recovery, it shall be recoverable by deduction from benefit to which the person by whom it is to be repaid is then or thereafter entitled.

Modification of section 119(2) of the Act

80.— (1) Section 119(2) of the Act shall apply in relation to child benefit as modified in paragraph (2) but this modification shall not have effect in a case where section 119 applies as modified by regulations under section 6(5) of the Child Benefit Act, as extended by section 4(4) of the Social Security Act 1980(a) (payment of benefit by way of crediting a bank or other account).

(2) At the end of the said section 119(2) of the Act there shall be added the following proviso:—

“Provided that—

- (a) for any week in which a person entitled under the original decision to child benefit in respect of a child was one of two spouses residing together and arrangements had been made whereby benefit in respect of that child as well as being payable to the spouse entitled to it might, in the alternative, be paid to the other spouse on behalf of the spouse entitled to it; or
- (b) in a case (not being one to which paragraph (a) above applies) where payment of child benefit has been made not to the person entitled to it but to another person (whether or not the spouse of the person entitled) on his behalf,

if the spouse or person entitled does, but the other spouse or other person does not, satisfy the person or tribunal determining the appeal or review that in the obtaining and receipt of the benefit he has throughout used due care and diligence to avoid overpayment, repayment shall be required not from the spouse or person entitled but from the other spouse or other person.”.

Recovery from benefit of overpaid interim benefit under section 16 of the Child Benefit Act 1975 or of overpaid family allowances

81. Where in accordance with a decision given on appeal or review benefit under section 16 of the Child Benefit Act 1975 (interim benefit for unmarried or separated parents with children) or any sum by way of an allowance under the Family Allowances Acts 1965 to 1975 is required to be repaid to the Secretary of State, then, without prejudice to any other method of recovery, it shall be

(a) 1980 c. 30.

recoverable by deduction from benefit to which the person required to repay it is then or thereafter entitled.

PART XIV

MISCELLANEOUS

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

82.— (1) Where on a review a decision relating to benefit other than industrial injuries benefit, supplementary benefit, family income supplement or child benefit is revised so as to make benefit payable, or to increase the rate of benefit, the decision given on the review shall, subject to the following provisions of this regulation, have effect—

- (a) in the case of unemployment benefit and maternity allowance, as from the date of the application for the review;
- (b) in the case of sickness benefit, invalidity benefit or non-contributory invalidity pension as from the date 10 days before the date of the application for the review;
- (c) in the case of widow's benefit under sections 24 to 26 of the Act (and benefit under section 39(4) corresponding to a widow's pension or a widowed mother's allowance), attendance allowance, an invalid care allowance, a child's special allowance, a guardian's allowance, a retirement pension of any category or an age addition, as from the date 3 months before the date of the application for the review.

(2) Where in any case to which paragraph (1) applies a claimant proves—

- (a) that on a date earlier than the date on which the application for the 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) 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 Act (contributions and earnings factor); or
 - (ii) a matter relating to the number of days in respect of which the claimant has been 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 or unemployment benefit in so far as it is a decision which, under the provisions of regulations made under section 79(3)(d) of the 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 adjudication officer, the appeal tribunal or the Commissioner, as the case may be, 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) of the Act, the date on which it was first decided by the adjudication officer that the decision should be reviewed 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

83.— (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 by way of pension or allowance 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 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 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.

(a) 1972 c. 57.

Adjustment of benefit other than industrial injuries benefit, supplementary benefit, family income supplement or child benefit on review or appeal

84. Where by a decision on review or appeal a person entitled to benefit other than industrial injuries benefit, supplementary benefit, family income supplement or child benefit is awarded some other such benefit in lieu thereof, the decision on the review or appeal shall direct that any payments already made on account of the benefit originally awarded in respect of any period covered by the decision on review or appeal shall be treated as having been made on account of the benefit awarded by the decision.

Adjustment of industrial injuries benefit on review or appeal

85.— (1) Subject to the provisions of paragraph (4), any sum on account of industrial injuries benefit which has been paid to any person in pursuance of a decision which is afterwards revised on a review or reversed or varied on an appeal shall be treated as paid on account of any benefit which it is decided is or was payable to him in respect of the same accident or disease and, except as is provided in paragraph (3), in respect of the same period (in this regulation referred to as “the common period”).

(2) For the purpose of paragraph (1)—

(a) a gratuity under section 57 of the Act shall be treated as a periodical payment payable in respect of the period (in this regulation referred to as “the gratuity period”) taken into account by the relevant assessment of the degree of disablement (that period, where it is more than 7 years or is not limited by reference to a definite date, being deemed to be one of 7 years); and

(i) to the extent to which a gratuity falls to be treated as paid on account of a pension or allowance (or a pension or allowance falls to be treated as paid on account of a gratuity) the gratuity shall be treated as payable at a weekly rate calculated by dividing by 364 an amount equal to the amount of the gratuity payable for a period limited by reference to the beneficiary’s life in respect of the said assessment of the degree of disablement, fractions of a penny being disregarded; and

(ii) to the extent to which a gratuity falls to be treated as paid on account of another gratuity, so much of the first mentioned gratuity shall be so treated as bears the same ratio to its total amount as does the common period to the gratuity period, fractions of 5 pence being disregarded;

(b) a gratuity under section 71 or 72 of the Act shall be treated as a periodical payment payable in respect of the period of 2 years from the date of the deceased’s death and at a weekly rate calculated by dividing the amount of the gratuity by 104.

(3) Where on a review a decision awarding a woman a gratuity under section 67 of the Act on the termination of her widow’s pension is reversed, any sum paid on account of that gratuity shall be treated as having been paid on account of any further benefit awarded to her under that section in respect of the same death.

(4) The foregoing provisions of this regulation shall not operate—

- (a) so as to make a pension or allowance (other than arrears thereof) payable at less than half the appropriate weekly rate unless the adjudicating authority awarding the pension or allowance is not satisfied that the beneficiary, and any person acting for him, has throughout used due care and diligence to avoid overpayment of the benefit which is to be treated as paid on account of such pension or allowance; or
- (b) so as to require any sum paid on account of benefit to be treated as paid on account of other benefit to the extent to which that sum exceeds the amount which is payable or treated as payable in respect of the common period, of the other benefit.

Period to be taken into account by assessments revised on ground of unforeseen aggravation

86. On a review of any assessment under section 110(2) of the 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 43(1)(b) given under regulation 7(4) of the Prescribed Diseases Regulations (recrudescence 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

87.— (1) A determination on a claim or question relating to supplementary benefit shall not be revised on review under section 104 of the Act or regulation 89 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 52 weeks before the date on which the review was requested or, where no request is made, the date of review;
- (b) any period which falls more than 52 weeks 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 52 weeks 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 an order book no revision

shall be made under section 104(1)(b) of the 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 Requirements Regulations (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 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(a) 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 Act applies.

(5) A determination under the Supplementary Benefits Act made by an adjudicating authority may be reviewed by an adjudication officer 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 Requirements Regulations in connection with the determination of requirements;
- (b) the prescribed rate of any payment—
 - (i) under the Act, the Child Benefit Act 1975(b) or the Family Income Supplements Act, or
 - (ii) made by virtue of any scheme made under the Industrial Injuries and Diseases (Old Cases) Act 1975(c), 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(d),

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

(6) A determination relating to supplementary benefit made by an adjudicating authority shall be reviewed by an adjudication officer where this is necessary to give effect to—

- (a) regulation 8(4)(b)(i) or (ii) of the Requirements Regulations (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 69 applies; or
- (c) a change of circumstances to which regulation 10(5) of the Supplementary Benefit (Transitional) Regulations 1980(e) (reduction of

(a) S.I. 1980/1643; relevant amending instruments are S.I. 1982/914 and 1983/337.

(b) 1975 c. 61.

(c) 1975 c. 16.

(d) S.I. 1980/1580; relevant amending instrument is S.I. 1981/815.

(e) S.I. 1980/984.

transitional additions on change of circumstances) applies, and paragraph (5) above shall not apply in any such case.

Review in family income supplement cases

88.— (1) Where a review under section 104(1)(a) of the 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 in an increase in the amount of supplement payable, such supplement or increase of supplement shall not be payable in respect of any period earlier than twelve months before the date on which that person first furnished that information.

(2) A decision relating to family income supplement made by any adjudicating authority 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).

Review of decisions on the ground of error of law

89.— (1) Subject to paragraph (2) and regulation 87(1) (review in supplementary benefit cases) any decision of an adjudication officer may be reviewed at any time by an adjudication officer or, on a reference by an adjudication officer, by an appeal tribunal on the ground that it was erroneous in point of law.

(2) Notwithstanding the foregoing provisions of this Part a decision shall not be revised on a review under paragraph (1) so as to make benefit payable or not payable, or to alter the rate or amount of benefit payable, in respect of any period or, where the benefit in question is not payable in respect of a period, in respect of a claim made more than 52 weeks before the date of application for review or, where no application is made, the date of review.

Re-entry into regular employment after retirement

90. Where a husband is entitled to a Category A retirement pension and his wife is entitled to a Category B retirement pension by virtue of his contributions and he has given notice of election for the purpose of regulations made under section 30(3) of the Act (re-entry into regular employment after retirement), the provisions of sections 98 to 104 of the Act and the foregoing provisions of these regulations shall be modified so that the determination of the question whether the wife has consented to such election or whether her consent has been unreasonably withheld shall have effect in relation to the entitlement to such pensions of both the husband and wife, and that for the purposes of such a determination both the husband and wife are treated as claimants and have the rights and powers of claimants.

(a) S.I. 1980/1437.

Overpaid benefit to be treated as properly paid where additional supplementary benefit would otherwise have been payable

91.— (1) Subject to paragraph (3), this regulation has effect where—

(a) in pursuance of a decision under the Act or the Child Benefit Act 1975 benefit has been paid for any period and—

(i) the effect of a decision given on appeal against, or review of, that decision is such that had it been given in the first instance the whole or part of that benefit would not have been paid, or

(ii) in a case where the first mentioned decision cannot be reviewed, the facts established for the purpose of a subsequent decision of an adjudication officer, appeal tribunal or a Commissioner, other than a decision given on appeal against the earlier decision, are such that had they been known when the earlier decision was given the whole or part of that benefit would not have been paid,

and

(b) it appears to the adjudicating authority that an additional amount of supplementary pension or allowance would have been paid to a person (whether or not the claimant) in receipt of such pension or allowance, but for the fact that that benefit, or such part of it as would not have been paid in the circumstances envisaged in paragraph (a)(i) or (ii), was taken into account as a resource in calculating his entitlement to such pension or allowance.

(2) Where this regulation has effect, the decision on appeal or review, or the subsequent decision referred to in paragraph (1)(a)(ii), as the case may be, shall direct that benefit under the Act or, as the case may be, the Child Benefit Act 1975, to the extent of the additional amount of supplementary pension or allowance, was properly paid.

(3) Where benefit under the Act or the Child Benefit Act 1975 was paid for any period in respect of a child not living with, or an adult dependant not residing with, the claimant, paragraphs (1) and (2) shall not apply unless either—

(a) the claimant has or is deemed to have contributed to the cost of providing for that child, or has contributed to the maintenance of that adult dependant, as the case may be, at a weekly rate not less than the weekly rate of benefit paid to him in respect of that child or adult dependant; or

(b) it appears that it is the claimant who has been paid less supplementary pension or allowance than he would have been paid had no benefit under the Act or the Child Benefit Act 1975, or only a reduced amount of such benefit, been paid in respect of that child or adult dependant.

(4) In this regulation “supplementary pension” and “supplementary allowance” mean such a pension or allowance under the Supplementary Benefits Act.

PART XV

TRANSITIONAL PROVISIONS, SAVINGS AND REVOCATIONS

Transitional provisions

92.— (1) These regulations shall apply—

- (a) to any claim or question under the National Insurance Acts 1965 to 1974 or the National Insurance (Industrial Injuries) Acts 1965 to 1974 as they apply to a corresponding claim or question under the 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 Benefits Act 1966(b) as they apply to a corresponding claim or question under the Supplementary Benefits Act.

(2) Subject to paragraphs (7) and (8) any decision made and anything whatsoever done under or by virtue of any enactment amended by section 25 of and Schedule 8 to the 1983 Act or repealed by section 30 of and Schedule 10 to that Act or of any rules or regulations made under those enactments or revoked by these regulations shall be deemed to have been made or done under or by virtue of the corresponding provision of the Act or of these regulations, and anything whatsoever begun under such enactments, rules or regulations may be continued under the Act or these regulations as if begun under the Act or 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 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 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) 1948 c. 29.
(b) 1966 c. 20.
(c) 1978 c. 30.
(d) 1965 c. 51.
(e) 1975 c. 18.
(f) 1971 c. 62.

- (a) a member of either of the panels of persons appointed by the Lord Chancellor from which were selected chairmen of National Insurance Local Tribunals (constituted under section 97(2) of the 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 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 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 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 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 Act for a period corresponding to that of his subsisting appointment;
 - (d) a clerk to any National Insurance Local Tribunal or Supplementary Benefits 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) an insurance officer (under section 97(1) of the Act), a benefit officer (under section 27(2) of the Supplementary Benefits Act) or a supplement officer (under section 1(1A) of the Family Income Supplements Act, shall be deemed to have been appointed as an adjudication officer; and
 - (f) 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) 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.
- (8) Notwithstanding paragraph (2), in respect of any application, appeal or reference to a Commissioner made before the coming into operation of these regulations but which had not then been determined, the time limits for making written observations in accordance with regulation 29 shall be such time limits (if any) as applied in respect of that application, appeal or reference immediately before these regulations came into operation.

Saving for existing chairmen of tribunals

93.— (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 92(6)(a) 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.

(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

94. The regulations set out in column (1) of Schedule 5 are revoked to the extent mentioned in column (3) of that Schedule.

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

Tony Newton,
Parliamentary Under-Secretary of State,
Department of Health and Social Security.

26th March 1984.

SCHEDULE 1

PROVISIONS CONFERRING POWERS EXERCISED IN MAKING THESE REGULATIONS

Column (1) Provision	Column (2) Relevant amendments
Family Income Supplements Act 1970(a)	section 6(1) and 10 The Social Security Act 1980, section 7; the 1983 Act, section 25 and Schedule 8, paragraph 16.
National Insurance Act 1974(b)	section 6(1) and (3) None.
Social Security Act 1975(c)	section 30(3) None.
	section 104(1A) The 1983 Act, section 25 and Schedule 8, paragraph 3.
	section 105(2) None.
	section 106 None.
	section 108(2) and (3) The 1983 Act, Schedule 8, paragraph 21.
	section 109(2) and (3) The 1983 Act, Schedule 10.
	section 110(5) None.
	section 112(3) and (5) The 1983 Act, section 25 and Schedule 8, paragraph 4.
	section 113(1) and (2) None.
	section 114 Employment Protection (Consolidation) Act 1978(d), section 159(2) and Schedule 16, paragraph 19(1).
	section 115 The 1983 Act, section 25 and schedule 8, paragraph 5.
	section 119(3) and (4) Child Benefit Act 1975(e), section 21(1) and Schedule 4, paragraph 33; Social Security Act 1979(f), section 21(4) and Schedule 3, paragraph 9 and Social Security Act 1980(g), sections 2 and 21 and Schedule 1, paragraph 12.
	section 166 None.
	Schedule 12 The 1983 Act, section 25 and Schedule 8, paragraph 27.
	Schedule 13 The 1983 Act, section 25 and Schedule 8, paragraph 12.
	Schedule 20 None.
Child Benefit Act 1975	sections 7 and 22 None.

(a) 1970 c. 55.

(d) 1978 c. 44.

(g) 1980 c. 30.

(b) 1974 c. 14.

(e) 1975 c. 61.

(c) 1975 c. 14.

(f) 1979 c. 18.

SCHEDULE 1 *cont.*

Column (1) Provision		Column (2) Relevant amendments
Supplementary Benefits Act 1976(a)	section 2(1) and (1A)	The Social Security Act 1980, section 6 and Schedule 2; the 1983 Act, section 25 and Schedule 8, paragraph 14.
	section 14(1) and (2)(d)	None.
Social Security Act 1980	section 33	None.
	section 14(2), (3), (7) and (8)(a)	None.
	section 15(1) and (2)	The 1983 Act, Schedule 8, paragraph 18.
Forfeiture Act 1982(b)	section 4(2) and (3)	None.
Health and Social Services and Social Security Adjudications Act 1983(c)	section 25 and Schedule 8, paragraph 31.	None.

(a) 1976 c. 71.

(b) 1982 c. 34.

(c) 1983 c. 41.

SCHEDULE 2 **Regulation 3(1)**
TIME LIMITS FOR MAKING APPLICATIONS, APPEALS OR REFERENCES

Column (1) <i>Application, appeal or reference</i>	Column (2) <i>Appropriate office</i>	Column (3) <i>Specified time</i>
<p>1. Appeal to a medical board— <i>(a)</i> from an adjudication officer's determination of a diagnosis question or a recrudescence question (regulation 46); <i>(b)</i> from an adjudication officer's determination of a medical question (regulation 56).</p> <p>2. Appeal to a medical appeal tribunal from a decision of an adjudicating medical authority, as defined in regulation 30 (section 109(2) of the Act).</p> <p>3. Reference to a medical appeal tribunal at the instance of the Secretary of State (section 109(3) of the Act).</p> <p>4. Appeal to an appeal tribunal from an adjudication officer's determination concerning supplementary benefit or family income supplement (regulation 71(1)).</p>	<p>A local office.</p> <p>A local office.</p> <p>A local office.</p> <p>A local office.</p> <p>A local office.</p>	<p>10 days beginning with the date when notice of the decision was given to the appellant.</p> <p>28 days 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>28 days beginning with— <i>(a)</i> the date when notice of the decision was given to the appellant; or <i>(b)</i> in supplementary benefit cases, the date when a statement of reasons was given to the appellant, if requested within 28 days of <i>(a)</i>.</p>

SCHEDULE 2 *cont.*

Column (1) <i>Application, appeal or reference</i>	Column (2) <i>Appropriate office</i>	Column (3) <i>Specified time</i>
<p>5. Application for leave to appeal to a Commissioner from the decision of an appeal tribunal—</p> <p>(a) application to the chairman of the tribunal (regulation 20(1));</p> <p>(b) application to a Commissioner, the chairman having refused leave on an application under (a), made within the specified time (regulation 25(1));</p> <p>(c) application to a Commissioner, no application having been made to the chairman under (a) within the specified time (regulation 25(1)).</p>	<p>A local office.</p> <p>A local office.</p> <p>A local office.</p>	<p>6 weeks beginning with the date when a copy of the record of the decision was given to the applicant.</p> <p>6 weeks beginning with the date when notice in writing of the chairman's decision refusing leave was given to the applicant.</p> <p>3 months beginning with the date when a copy of the record of the tribunal's decision against which he seeks leave to appeal was given to the applicant.</p>
<p>6. Application for leave to appeal to a Commissioner from the decision of a medical appeal tribunal—</p> <p>(a) application to the chairman of the tribunal (regulation 35(1));</p> <p>(b) application to a Commissioner, the chairman having refused leave on an application under (a), made within the specified time (regulation 25(1));</p>	<p>A local office.</p> <p>A local office.</p>	<p>3 months beginning with the date when a copy of the record of the decision was given to the applicant.</p> <p>28 days beginning with the date when notice in writing of the chairman's decision refusing leave was given to the applicant.</p>

SCHEDULE 2 *cont.*

Column (1) <i>Application, appeal or reference</i>	Column (2) <i>Appropriate office</i>	Column (3) <i>Specified time</i>
(c) application to a Commissioner, no application having been made to the chairman under (a) within the specified time (regulation 25(1)).	A local office.	Such time beyond that specified in respect of (a) as the Commissioner may for special reasons allow.
7. Application to a Commissioner for leave to appeal to him against a determination by the Attendance Allowance Board of a question of law (regulation 64(2)).	A local office.	3 months beginning with— (a) the date when notice of the Board's refusal to review, or of the Board's determination on the review as the case may be, was given to the applicant, if reasons in writing were sent to the applicant at the same time; or (b) the date when notice of the Board's reasons for its determination on review were given to the applicant, if given later than the notice of the determination; or (c) the date when notice of the Board's refusal to extend time for applying for reasons was given to the applicant.
8. Appeal to a Commissioner— (a) from a decision of a medical appeal tribunal (regulation 35(5)),	A local office.	3 months beginning with the date when notice in writing of the decision giving leave to appeal was given to the appellant.
(b) from a determination of the Attendance Allowance Board (regulation 64(2)).	A local office.	3 months beginning with the date when notice in writing of the decision giving leave to appeal was given to the appellant.

SCHEDULE 2 *cont.*

Column (1) <i>Application, appeal or reference</i>	Column (2) <i>Appropriate office</i>	Column (3) <i>Specified time</i>
<p>9. Application to a Commissioner for leave to appeal against a Commissioner's decision (section 14(2)(a) of the Social Security Act 1980(a)).</p>	<p>The office of the Commissioners in London, Edinburgh or Cardiff, according as the decision on which it is desired to appeal was made by a Commissioner in England, Scotland or Wales.</p>	<p>3 months beginning with the date on which the Commissioner has given notice in writing of the decision to the appellant.</p>
<p>10. Application to the Secretary of State with a view to a review under section 96(1) of the Act of a decision under section 93(1) (regulation 15(1)).</p>	<p>The office of the Department of Health and Social Security from which notice of the decision was issued.</p>	<p>3 months beginning with— (a) the date when the Secretary of State gave the applicant notice in writing of the decision; or (b) the date when the Secretary of State gave him a statement of grounds, if requested within 28 days of (a).</p>
<p>11. Application to an adjudicating authority to set aside its decision (regulation 10(2)).</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>28 days beginning with the date when notice of the decision was given to the applicant.</p>

(a) 1980 c.30.

SCHEDULE 3

Regulation 41(2)

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

1. Section 117(4) of the 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 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 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 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 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 Act from a decision of an adjudication officer on any such question.

(a) 1946 c. 62.

(b) 1965 c. 52.

SCHEDULE 4 **Regulation 65**

PROVISIONS OF THE ACT WHICH APPLY FOR THE DETERMINATION OF QUESTIONS IN SUPPLEMENTARY BENEFIT AND FAMILY INCOME SUPPLEMENT CASES

Column (1) Provision	Column (2) Subject matter	Column (3) Modifications for supplementary benefit cases	Column (4) Modifications for family income supplement cases
1. Section 98(1) (a) and (b) and (3). 2. Section 101(1).	1. Claims and questions to be submitted to adjudication officer. 2. Appeal from appeal tribunal to Commissioner.	1. None. 2. An appeal lies only on the ground that the decision is erroneous in point of law, and does not lie except with the leave of either the chairman of the appeal tribunal or a Commissioner.	1. None. 2. An appeal lies only on the ground that the decision is erroneous in point of law, and does not lie except with the leave of either the chairman of the appeal tribunal or a Commissioner.
3. Section 101(2) (a) and (b).	3. Appeal from appeal tribunal to Commissioner.	3. "Claimant" includes a person from whom benefit is recoverable under section 20 of the Supplementary Benefits Act.	3. None.
4. Section 101(5) as modified by section 15(3) of the Social Security Act 1980.	4. Appeal from appeal tribunal to Commissioner.	4. The reference in sub- paragraph (b) to a trade union or other association does not apply.	4. The reference in sub- paragraph (b) to a trade union or other association does not apply.

SCHEDULE 4 *cont.*

Column (1) Provision	Column (2) Subject matter	Column (3) Modifications for supplementary benefit cases	Column (4) Modifications for family income supplement cases
5. Section 104(1) (a) and (b). 6. Section 104(1A). 7. Section 104(2) and (4).	5. Review of decisions. 6. Review of decisions. 7. Review of decisions.	5. None. 6. None. 7. In subsection (4) for the references to sections 99 and 100 of the Act there are substituted references to regulations 67 and 71.	5. Sub-paragraph (b) does not apply. 6. None. 7. In subsection (4) for the references to sections 99 and 100 of the Act there are substituted references to regulations 67 and 71.
8. Section 116.	8. Tribunal of 3 Commissioners.	8. None.	8. None.
9. Section 117(1) and (2).	9. Finality of decisions.	9. None.	9. None.
10. Schedule 10, paragraph 3(1) and (3).	10. Expenses of tribunal members and others.	10. None.	10. None.

Regulation 94

SCHEDULE 5

REGULATIONS REVOKED

Column (1) Citation	Column (2) Statutory Instrument	Column (3) Extent of revocation
The Social Security (Determination of Claims and Questions) Regulations 1975	S.I. 1975/558	The whole regulations
The Social Security (Correction and Setting Aside of Decisions) Regulations 1975	S.I. 1975/572	The whole regulations
The Social Security (Attendance Allowance) (No. 2) Regulations 1975	S.I. 1975/598	Regulations 8 to 14
The Social Security (Determination of Industrial Injuries Questions) Regulations 1975	S.I. 1975/958	The whole regulations
The Social Security (Non- contributory Invalidity Pension) Regulations 1975	S.I. 1975/1058	Regulation 20
The Mobility Allowance Regulations 1975	S.I. 1975/1573	Regulations 12 to 20
The Social Security (Invalid Care Allowance) Regulations 1976	S.I. 1976/409	Regulation 16
The Child Benefit (Determination of Claims and Questions) Regulations 1976	S.I. 1976/962	The whole regulations
The Child Benefit (Determination of Claims and Questions) Amendment Regulations 1977	S.I. 1977/1048	The whole regulations
The Child Benefit (Miscellaneous Amendments) Regulations 1978	S.I. 1978/540	Regulation 2
The Social Security (Determination of Claims and Questions) Amendment Regulations 1979	S.I. 1979/1163	The whole regulations
The Social Security (Attendance Allowance) Amendment (No. 2) Regulations 1979	S.I. 1979/1684	Regulations 4 and 5
The Child Benefit (Determination of Claims and Questions) Amendment Regulations 1980	S.I. 1980/15	The whole regulations

SCHEDULE 5 *cont.*

Column (1) Citation	Column (2) Statutory Instrument	Column (3) Extent of revocation
The Social Security (Industrial Injuries) (Prescribed Diseases) Regulations 1980	S.I. 1980/377	Regulations 22 to 33, 49 and Schedule 2 as applied by regulation 23(2)
The Social Security (Attendance Allowance) Amendment Regulations 1980	S.I. 1980/1136	Regulation 5
The Social Security Commissioners (Appeals to the Courts) Regulations 1980	S.I. 1980/1321	The whole regulations
The Family Income Supplements (General) Regulations 1980	S.I. 1980/1437	Regulations 11, 12 and 13
The Social Security (Determination of Claims and Questions) Amendment Regulations 1980	S.I. 1980/1561	The whole regulations
The Social Security (Determination of Claims and Questions) Miscellaneous Amendment Regulations 1980	S.I. 1980/1622	The whole regulations
The Child Benefit (Determination of Claims and Questions) (No. 2) Regulations 1980	S.I. 1980/1640	The whole regulations
The Supplementary Benefits (Determination of Questions) Regulations 1980	S.I. 1980/1643	Regulations 2 to 5A
The Supplementary Benefit (Miscellaneous Amendments) Regulations 1981	S.I. 1981/815	Regulation 10(2) to (5)
The Mobility Allowance (Amendment) Regulations 1981	S.I. 1981/1817	Regulation 3 as it applies to regulation 13(1)(c) of S.I. 1975/1573
The Social Security (Determination of Claims and Questions) Amendment Regulations 1982	S.I. 1982/38	The whole regulations
The Child Benefit (Determination of Claims and Questions) Amendment Regulations 1982	S.I. 1982/39	The whole regulations

SCHEDULE 5 *cont.*

Column (1) Citation	Column (2) Statutory Instrument	Column (3) Extent of revocation
The Social Security (Industrial Injuries) (Prescribed Diseases) Amendment Regulations 1982	S.I. 1982/249	Regulations 2(5), (6), (7) and (10) and 4
The Social Security (Industrial Injuries) (Prescribed Diseases) Amendment (No. 2) Regulations 1982	S.I. 1982/566	Regulation 2
The Supplementary Benefit (Housing Benefits) (Miscellaneous Consequential Amend- ments) Regulations 1982	S.I. 1982/914	Regulation 3(2) and (3)
The Child Benefit (Claims and Payments) Amendment Regulations 1982	S.I. 1982/1242	Regulation 3
The Social Security and Pensions (Forfeiture Act 1982) (Consequential) Regulations 1982	S.I. 1982/1732	The whole regulations
The Social Security (Industrial Injuries) (Prescribed Diseases) Amendment Regulations 1983	S.I. 1983/185	Regulation 2(2) as it applies to regulation 24 of and Schedule 2 to S.I. 1980/377, and 2(11) and (19)
The Social Security (Abolition of Injury Benefit) (Consequential) Regulations 1983	S.I. 1983/186	Regulation 6
The Supplementary Benefit (Miscellaneous Amendments) Regulations 1983	S.I. 1983/1000	Regulation 5(2)
The Social Security (Industrial Injuries) (Prescribed Diseases) Amendment (No. 2) Regulations 1983	S.I. 1983/1094	Regulations 5, 6, 7 and 16
The Mobility Allowance Amendment Regulations 1983	S.I. 1983/1186	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 Act 1975, the Child Benefit Act 1975, and the Supplementary Benefits Act 1976. They reflect the changes made in the systems of adjudication by section 25 of and Schedule 8 to the Health and Social Services and Social Security Adjudications Act 1983.

Part II and Schedule 2 contain provisions common to the procedures of all the adjudicating authorities, both medical and non-medical.

Parts III to V and VII contain provisions applying to adjudication by, respectively, the Secretary of State, adjudication officers, social security appeal tribunals and Social Security Commissioners. Part VI provides the procedure for referring questions to a Social Security Commissioner under section 4 of the Forfeiture Act 1982 and for the procedure after the Commissioner has determined such a question.

Part VIII contains general provisions relating to adjudication by adjudicating medical practitioners and medical appeal tribunals. Parts IX and X and Schedule 3 make special provision for adjudication in respect of prescribed diseases under Chapter V of Part II of the Social Security Act 1975 and in respect of mobility allowance under section 37A of that Act. Part XI is concerned with adjudication by the Attendance Allowance Board.

Part XII and Schedule 4 provide for the adjudication of claims and questions in respect of supplementary benefit and family income supplements. Part XIII provides for adjudication in child benefit cases.

Part XIV contains miscellaneous provisions and Part XV and Schedule 5 contain transitional provisions and revocations.

The Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 (S.I. 1980/1605), which are superseded by these regulations, will lapse with the repeal of sections 15 and 15A of the Supplementary Benefits Act 1976 under which they are made (*see* the Health and Social Services and Social Security Adjudications Act 1983 (Commencement No. 3) Order 1984 (S.I. 1984/216)).

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