

1999 No. 1302

SOCIAL SECURITY

**The Social Security (Adjudication) (Amendment)
Regulations 1999**

<i>Made - - - -</i>	<i>6th May 1999</i>
<i>Laid before Parliament</i>	<i>10th May 1999</i>
<i>Coming into force</i>	<i>1st June 1999</i>

The Secretary of State for Social Security, in exercise of the powers conferred on him by sections 61(1) and (2), 189(1), (3) and (4) and 191 of the Social Security Administration Act 1992(a), and of all other powers enabling him in that behalf, after agreement by the Social Security Advisory Committee that proposals to make these Regulations should not be referred to it(b), hereby makes the following Regulations:

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the Social Security (Adjudication) (Amendment) Regulations 1999 and shall come into force on 1st June 1999.

(2) In these Regulations “the principal Regulations” means the Social Security (Adjudication) Regulations 1995(c).

(3) These Regulations apply to a review conducted under section 25, 30 or 35 of the Social Security Administration Act 1992 on or after the date on which these Regulations come into force.

Amendment of the principal Regulations

2. The principal Regulations shall be amended by the insertion after regulation 59 of the following—

“Review of decisions involving incapacity for work or cessation or reduction of certain benefits

59A.—(1) For the purposes of this regulation—

(a) “original decision” means a decision—

(i) relating to an attendance allowance provided for in section 64 of the Contributions and Benefits Act, or the care component or the mobility component of a disability living allowance provided for in sections 72 and 73 respectively of that Act, or

(ii) as to whether a person is incapable of work applying the all work test in Part III of the Social Security (Incapacity for Work) (General) Regulations 1995(d) or is to be treated as incapable of work made in accordance

(a) 1992 c. 5. Section 191 is cited because of the meaning ascribed to the word “prescribe”.

(b) See the Social Security Administration Act 1992, section 173(1)(b).

(c) S.I. 1995/1801 to which there are amendments not relevant to these regulations.

(d) S.I. 1995/311; relevant amending instruments are S.I. 1995/987, 1996/3207 and 1997/1009.

with regulation 10 (certain persons with a severe condition to be treated as incapable of work) or 27 (exceptional circumstances) of those Regulations and

- (b) “payee” means the person to whom a benefit referred to in head (i) of paragraph (a), or a benefit a condition of entitlement to which is incapacity for work determined under Part XIIA of the Contributions and Benefits Act, is payable.
- (2) This regulation applies where a decision on review revises an original decision—
- (a) in the case of a decision in relation to a benefit referred to in head (i) of paragraph (1)(a) so as to make that benefit cease to be payable or to reduce the rate of that benefit and the decision on review is based on—
 - (i) in the case of an attendance allowance, the person not satisfying any of the conditions in section 64 of the Contributions and Benefits Act,
 - (ii) in the case of the care component of a disability living allowance, the person not satisfying any of the conditions in section 72(1) of the Contributions and Benefits Act; or
 - (iii) in the case of the mobility component of a disability living allowance, the person not satisfying any of the conditions in section 73(1) to (3) of the Contributions and Benefits Act; or
 - (b) in the case of a decision as to whether a person is or is to be treated as incapable of work, so that a person is not incapable of work applying the all work test referred to in head (ii) of paragraph (1)(a) or is not treated as incapable of work in accordance with the regulations referred to in head (ii) of paragraph (1)(a).
- (3) A decision on review to which this regulation applies shall take effect from the date of the decision, except that—
- (a) where the review is on a ground set out in section 25(1)(a), 30(2)(a) or 35(1)(a), as the case may be, (the adjudicating authority is satisfied that the original decision was given in ignorance of, or was based on a mistake as to, some material fact) of the Administration Act and the adjudicating authority is satisfied that the claimant or payee knew, or could reasonably have been expected to know, of the fact in question and that it was relevant to the original decision, the decision on review shall take effect from the date that the claimant or the payee, as the case may be, had, or could reasonably be expected to have had, such knowledge or from the date of the original decision whichever is the later; or
 - (b) where the review is on a ground set out in section 25(1)(b), 30(2)(b) or 35(1)(b), as the case may be, (there has been a relevant change of circumstances since the original decision was given) of the Administration Act and the adjudicating authority is satisfied that the claimant or payee failed to notify a change of circumstances which regulations under the Administration Act require him to notify, and the claimant or payee knew, or could reasonably have been expected to know, that the change of circumstances should have been notified, the decision on review shall take effect—
 - (i) from the date on which the claimant or payee ought to have notified the change of circumstances, or
 - (ii) if more than one change has taken place between the date from which the original decision took effect and the date of the review, from the date on which the first change ought to have been notified.
- (4) Where a person’s receipt of or entitlement to a benefit (“the first benefit”) is a condition of his receiving or being entitled to any other benefit, allowance or advantage (“the second benefit”) and a decision is made to which this regulation applies the effect of which is that the first benefit ceases to be payable, or becomes payable at a lower rate than was in payment following the original decision, the consequent change in his receipt of or entitlement to the second benefit shall take effect from the date referred to in paragraph (3).”.

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

Stephen C. Timms
Minister of State,
Department of Social Security

6th May 1999

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Social Security (Adjudication) Regulations 1995. They make provision for the effective date of review decisions where entitlement to an attendance allowance or a disability living allowance is reduced or removed because the person does not satisfy the conditions of entitlement. They also provide for the effective date of a decision that a person is not, or is not to be treated as, incapable of work. The effective date provisions apply to revised entitlement to benefits where receipt of other benefits is a condition (new regulation 59A(4)).

The effective date provided for is the date of the decision unless one of two exceptions applies. The first exception is where the ground for review is ignorance of or mistake as to a material fact which the person claiming or receiving an attendance allowance, a disability living allowance, or a benefit related to incapacity for work knew, or could reasonably have been expected to know was relevant to the original decision. In this case the review dates from whichever is the later of the date when the person became, or should reasonably have become, aware of the fact and the date of the original decision (regulation 59A(3)(a)). The second exception applies where the review is based on a relevant change of circumstances which the claimant or recipient of one of those benefits is under a duty to notify. (The duty is currently in regulation 32 of the Social Security (Claims and Payments) Regulations S.I. 1987/1968). Where the person knew, or could reasonably have been expected to know, of the relevant change the review dates from when the change, or, if more than one, the first relevant change, ought to have been notified (regulation 59A(3)(b)).

These Regulations do not impose a charge on business.

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