STATUTORY RULES OF NORTHERN IRELAND

1999 No. 407 (C. 31)

SOCIAL SECURITY

The Social Security (1998 Order) (Commencement No. 9 and Transitional Provisions) Order (Northern Ireland) 1999

Made - - - - 4th October 1999

The Department of Health and Social Services, in exercise of the powers conferred on it by Article 1(2) and (4) of the Social Security (Northern Ireland) Order 1998(**1**) and of all other powers enabling it in that behalf, hereby makes the following Order:

Citation and interpretation

1.—(1) This Order may be cited as the Social Security (1998 Order) (Commencement No. 9 and Transitional Provisions) Order (Northern Ireland) 1999.

(2) In this Order "the Order" means the Social Security (Northern Ireland) Order 1998.

Appointed day

2. The day appointed for the coming into operation of—

(a) paragraph 44 of Schedule 6 to the Order (minor and consequential amendments) and Article 78(1) of the Order in so far as it relates to it; and

(b) the provisions of the Order specified in the Schedule, in so far as they are not already in operation, for the purposes of family credit and disability working allowance under Part VII of the Contributions and Benefits Act,

is 5th October 1999.

Commencement

3. This Article and Article 4 shall come into operation on 5th October 1999.

Transitional provisions

4.—(1) Any decision which fell to be made, but was not made, before 5th October 1999—

(a) on a claim for; or

(**1**) S.I.1998/1506 (N.I. 10)

(b) under or by virtue of Part II of the Administration Act in relation to,

family credit or disability working allowance (other than a decision which fell to be made on appeal) shall be made by the Department under Article 9(1)(a) or, as the case may be, (c) of the Order.

(2) Any application made under Part II of the Administration Act for a review of a decision (other than a decision made on appeal) in relation to family credit or disability working allowance which was not decided before 5th October 1999 shall be treated as an application to the Department—

(a) where the application is made—

(i) within three months of the date of notification of the decision or such longer period as may be allowed under paragraph (4), and

(ii) other than on the grounds of a relevant change of circumstances,

for a revision of that decision under Article 10 of the Order; or

(b) in any other case, for a decision under Article 11 of the Order superseding that decision.

(3) Any application made before 5th October 1999 under Part II of the Administration Act for a review of a decision made on appeal in relation to family credit or disability working allowance shall be treated as an application to the Department for a decision under Article 11 of the Order superseding that decision.

(4) Subject to paragraphs (5) and (6), the period of three months specified in paragraph (2)(a) may be extended where the application is made before 5th November 2000 by a claimant or a person acting on his behalf, containing—

(a) particulars of the grounds on which an extension of time is sought; and

(b) sufficient details of the decision to enable it to be identified.

(5) An application for an extension of time shall not be granted unless the Department is satisfied that—

(a) it is reasonable to grant the application;

(b) the application for review has merit; and

(c) special circumstances are relevant to the application for an extension of time and, as a result of those special circumstances, it was not practicable for the application for review to be made within three months of the date of notification of the decision which it is sought to have reviewed.

(6) In determining whether it is reasonable to grant an application for an extension of time, no account shall be taken of the following—

(a) that the claimant or any person acting for him was unaware of or misunderstood the law applicable to his case (including ignorance or misunderstanding of the time limits imposed by paragraph (2)(a)); or

(b) that a Commissioner (including a Commissioner within the meaning of section 39(1) of the Social Security Act 1998(**2**)), or a court has taken a different view of the law from that previously understood and applied.

(7) Where, by virtue of paragraph (2)(b) or (3)—

(a) a decision made under Article 11 of the Order is advantageous to the claimant; and

(b) the same decision could have been made on a review before 5th October 1999,

that decision shall take effect from the date on which it would have taken effect had the decision been so made.

(**2**) 1998 c. 14

(8) Any decision (other than a decision of a social security appeal tribunal, a disability appeal tribunal or a Commissioner) made before 5th October 1999—

(a) on a claim for; or

(b) under or by virtue of Part II of the Administration Act in relation to,

family credit or disability working allowance, shall be treated as a decision of the Department under Article 9(1)(a) or, as the case may be, (c) of the Order.

(9) Where notice of a decision referred to in paragraph (8) was not given or sent to the claimant before 5th October 1999, the Department shall give or send notice of that decision to the claimant.

(10) Where, in relation to family credit or disability working allowance—

(a) a decision was made before 5th October 1999; and

(b) the time limit within which an appeal may be made against that decision has not expired before that date,

notwithstanding regulation 59 of the Decisions and Appeals Regulations, regulation 3 of the Adjudication Regulations(**3**) as it relates to the time within which an appeal may be made, or any extension of that period, shall continue to apply in relation to any appeal, subject to the modifications specified in paragraph (11).

(11) Regulation 3 of the Adjudication Regulations shall have effect as if—

(a) references to a chairman or to a person considering the application were references to a legally qualified panel member;

(b) references to a tribunal were references to an appeal tribunal constituted under Article 8 of the Order; and

(c) in paragraph (3E)(**4**) for the words from "six years" to the end there were substituted "5th November 2000".

(12) Notwithstanding regulation 3 of the Decisions and Appeals Regulations, a decision made before 5th October 1999 on a claim for, or award of, family credit or disability working allowance (other than a decision made on appeal) may be revised by the Department under Article 10 of the Order—

(a) pursuant to an application for a review of that decision made within three months of the date of notification of the decision; or

(b) where an appeal has been made against that decision but not determined.

(13) Where a decision is revised pursuant to paragraph (12), the appeal shall lapse unless the revised decision is not more advantageous to the appellant than the decision before it was revised.

(14) Any appeal to a social security appeal tribunal or a disability appeal tribunal in relation to family credit or disability working allowance which was not determined before 5th October 1999 shall, without prejudice to Chapter III of Part V of the Decisions and Appeals Regulations, be treated as an appeal to an appeal tribunal against a decision of the Department.

(15) Paragraphs (16) to (18) shall apply where—

(a) the clerk to the tribunal gave a direction under regulation 22(1) or, as the case may be, 29(1) of the Adjudication Regulations(**5**); and

(b) notification referred to in paragraph (1A) of regulation 22 or, as the case may be, 29 of those Regulations was not received by him before 5th October 1999.

(**3**) Regulation 3 was amended by regulation 2(2) of S.R. 1996 No. 24 and regulation 3(4) of S.R. 1996 No. 457
(**4**) Paragraph (3E) was inserted by regulation 2(2)(b) of S.R. 1996 No. 24
(**5**) Paragraphs (1) and (1A) of regulation 22 and paragraphs (1) and (1A) of regulation 29 were substituted respectively by regulation 3(10) and (12)(a) of S.R. 1996 No. 457

(16) A notification in response to a direction given under regulation 22(1) or, as the case may be, 29(1) of the Adjudication Regulations shall be in writing and shall be made within 14 days of receipt of the direction or within such other period as the clerk to the appeal tribunal may direct.

(17) An appeal may be struck out by the clerk to the appeal tribunal where a notification referred to in paragraph (16) is not received within the period specified in that paragraph.

(18) An appeal which has been struck out in accordance with paragraph (17) shall be treated for the purpose of reinstatement as if it had been struck out under regulation 46 of the Decisions and Appeals Regulations.

(19) An oral hearing of the appeal shall be held where—

(a) a notification is received by the clerk to the appeal tribunal under paragraph (16); or

(b) the chairman or, in the case of an appeal tribunal which has only one member, that member, is satisfied that such a hearing is necessary to enable the appeal tribunal to reach a decision.

(20) Where an appeal to a social security appeal tribunal or a disability appeal tribunal in relation to family credit or disability working allowance has been struck out under regulation 7 of the Adjudication Regulations, a legally qualified panel member may, on an application made by any party to the proceedings not later than three months from the date of the order under paragraph (1) of that regulation, reinstate the appeal if he is satisfied that—

(a) the applicant did not receive a notice under paragraph (2) of that regulation; and

(b) paragraph (2A)(**6**) of that regulation does not apply,

and the appeal shall be treated as an appeal to an appeal tribunal against a decision of the Department.

(21) An appeal tribunal shall completely rehear any appeal to a social security appeal tribunal or a disability appeal tribunal in relation to family credit or disability working allowance which stands adjourned immediately before 5th October 1999.

(22) A copy of a statement of—

(a) the reasons for a decision of a social security appeal tribunal or, as the case may be, a disability appeal tribunal in relation to family credit or disability working allowance; and

(b) its findings of fact material thereto,

shall be supplied to each party to the proceedings before that tribunal, if requested by any of them, within 21 days of the date on which notification of that decision was given or sent.

(23) Subject to paragraph (24), any decision of a social security appeal tribunal or a disability appeal tribunal in relation to family credit or disability working allowance shall be treated as a decision of an appeal tribunal.

(24) Where paragraph (23) applies, any application for leave to appeal which is made for the purposes of Article 15(10)(a) of the Order shall be made no later than three months from the date on which a copy of the statement of the decision of the social security appeal tribunal or, as the case may be, the disability appeal tribunal was given or sent to the applicant.

(25) Notwithstanding regulation 59 of the Decisions and Appeals Regulations, and subject to paragraph (27), regulation 10 of the Adjudication Regulations, and regulation 3 of those Regulations in so far as it relates to that regulation, shall continue to apply in relation to any application to set aside a decision of a social security appeal tribunal or a disability appeal tribunal in relation to family credit or disability working allowance, subject to the modifications specified in paragraph (26).

(26) The Adjudication Regulations shall have effect as if—

(a) in regulation 3, reference to a chairman were a reference to a legally qualified panel member; and

(**6**) Paragraph (2A) was inserted by regulation 3(8)(c) of S.R. 1996 No. 457

(b) in regulation 10(1) the first reference to the adjudicating authority which gave the decision or to an authority of like status were a reference to an appeal tribunal constituted under Article 8 of the Order.

(27) Paragraph (25) shall not apply in any case where an application to set aside a decision of a social security appeal tribunal or a disability appeal tribunal is made after 5th November 2000.

(28) Where, before 5th October 1999, payment of family credit or disability working allowance was suspended or withheld by virtue of any provision of Part V of the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(**7**), the provisions of Chapter I of Part III of the Decisions and Appeals Regulations shall apply with respect to that suspension or withholding as if it were a suspension imposed by virtue of those provisions.

(29) For the purpose of Article 11(1)(b) of the Order, a decision of a Commissioner in relation to family credit or disability working allowance made before 5th October 1999 shall be treated as a decision of a Commissioner made under Article 15 of that Order.

(30) In this Article—

"the Adjudication Regulations" means the Social Security (Adjudication) Regulations (Northern Ireland) 1995(**8**);

"the Decisions and Appeals Regulations" means the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999(**9**);

"legally qualified panel member" has the same meaning as in regulation 1(2) of the Decisions and Appeals Regulations.

Sealed with the Official Seal of the Department of Health and Social Services on

4th October 1999.

John O'Neill
Assistant Secretary

(**7**) S.R. 1987 No. 465
(**8**) S.R. 1995 No. 293
(**9**) S.R. 1999 No. 162