STATUTORY RULES OF NORTHERN IRELAND

1992 No. 36

SOCIAL SECURITY

The Social Security (Adjudication) (Amendment) Regulations (Northern Ireland) 1992

Made - - - - 29th January 1992
Coming into operation in accordance with regulation 1(1)

The Department of Health and Social Services for Northern Ireland, in exercise of the powers set out in Schedule 1 and of all other powers enabling it in that behalf, hereby makes the following regulations:

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Social Security (Adjudication) (Amendment) Regulations (Northern Ireland) 1992 and shall come into operation as follows—

(a) regulations 2 and 13 except insofar as they relate to the Attendance Allowance Board and attendance allowance, and regulations 1, 3 to 10, 12 and 14 to 16 on 3rd February 1992; and

(b) regulations 2 and 13 insofar as not already in operation and regulations 11 and 17 on 6th April 1992.

(2) In these regulations "the principal regulations" means the Social Security (Adjudication) Regulations (Northern Ireland) 1987(**1**).

(3) The Interpretation Act (Northern Ireland) 1954(**2**) shall apply to these regulations as it applies to a Measure of the Northern Ireland Assembly.

Amendment of regulation 1 of the principal regulations

2.—(1) Regulation 1 of the principal regulations (interpretation) shall be amended in accordance with paragraphs (2) and (3).

(2) In paragraph (2)—

(a) in the definition of "adjudicating authority" for "the Attendance Allowance Board, a medical appeal tribunal" there shall be substituted "a medical appeal tribunal, a disability appeal tribunal";

(**1**) S.R. 1987 No. 82; relevant amending regulations are S.R. 1987 No. 466, S.R. 1990 No. 119 and S.R. 1991 Nos. 406 and 488
(**2**) 1954 c. 33 (N.I.)

(b) the definition of "the Attendance Allowance Board" shall be omitted;

(c) after the definition of "the Department" there shall be inserted the following definitions—

""disability appeal tribunal" means a tribunal constituted in accordance with Schedule 10A to the 1975 Act(**3**);

"disability question" has the meaning assigned by regulation 26C(2);";

(d) in the definition of "full-time chairman" for "and medical appeal tribunals" there shall be substituted ", medical appeal tribunals and disability appeal tribunals"(**4**);

(e) in the definition of "party to the proceedings" in paragraph (b) after "appeal tribunal" there shall be inserted "or a disability appeal tribunal"; and

(f) in the definition of "President" for "and medical appeal tribunals" there shall be substituted ", medical appeal tribunals and disability appeal tribunals".

(3) Paragraph (4) shall be omitted.

Amendment of regulation 2 of the principal regulations

3. In regulation 2(2) of the principal regulations (procedure in connection with determinations; and right to representation) for "or a medical appeal tribunal" there shall be substituted ", a medical appeal tribunal or a disability appeal tribunal".

Amendment of regulation 3 of the principal regulations

4. In regulation 3(3) and (7) of the principal regulations (manner of making applications, appeals or references; and time limits) for "or a medical appeal tribunal" there shall be substituted ", a medical appeal tribunal or a disability appeal tribunal".

Amendment of regulation 4 of the principal regulations

5.—(1) Regulation 4(6) of the principal regulations (oral hearings and inquiries) shall be amended in accordance with paragraphs (2) and (3).

(2) In sub-paragraph (b) for "or a medical appeal tribunal, or as a clerk to either of such tribunals" there shall be substituted ", a medical appeal tribunal or a disability appeal tribunal, or as a clerk to any such tribunal".

(3) In sub-paragraph (c) for "or medical appeal tribunals" there shall be substituted ", medical appeal tribunals or disability appeal tribunals".

Amendment of regulation 6 of the principal regulations

6. In regulation 6(1) of the principal regulations (withdrawal of applications, appeals and references) for "or a medical appeal tribunal" there shall be substituted ", a medical appeal tribunal or a disability appeal tribunal".

Amendment of regulation 7 of the principal regulations

7. In regulation 7(1) and (3) of the principal regulations (striking-out of proceedings for want of prosecution) for "or a medical appeal tribunal" there shall be substituted ", a medical appeal tribunal or a disability appeal tribunal".

(**3**) 1975 c. 15; Schedule 10A was inserted by paragraph 16 of Schedule 1 to the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991 (S.I.1991/1712 (N.I. 17))

(**4**) *See* paragraph 1A(1) of Schedule 10 to the Social Security (Northern Ireland) Act 1975 which was substituted by paragraph 15 of Schedule 1 to the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991

Amendment of regulation 20 of the principal regulations

8. In regulation 20(1) of the principal regulations (notification of decisions) for "be informed of his right of appeal" to the end of the paragraph there shall be substituted the following—

"be informed—

(a) in the case of a decision of an adjudication officer—

(i) under section 99 of the 1975 Act(**5**) relating to attendance allowance, disability living allowance or disability working allowance, or

(ii) on a review under section 100A(2) or (4) or section 104A of that Act(**6**),

of his right to a review under section 100A(1) of that Act;

(b) in the case of a decision of an adjudication officer under section 100A(1) of that Act, of his right of appeal—

(i) to a disability appeal tribunal where the appeal relates to the determination of a disability question, and

(ii) to an appeal tribunal in any other case; and

(c) in all other cases, of his right of appeal to an appeal tribunal under section 100 of that Act(**7**).".

Insertion of Section CA into the principal regulations

9. After Section C of Part III of the principal regulations there shall be inserted the following Section—

"SECTION CA

— DISABILITY ADJUDICATION

Prescribed period

26A.—(1) Subject to paragraph (2), the prescribed period for the purposes of section 100A(1), (2) and (4) of the 1975 Act shall be three months beginning with the date on which notice in writing of the decision of an adjudication officer under section 99 of that Act was given to the claimant.

(2) Where a claimant submits an application for review under section 100A(1) of the 1975 Act by post which would have arrived in an office of the Department in the ordinary course of the post within the period prescribed by paragraph (1) but is delayed by postal disruption caused by industrial action whether within the postal service or elsewhere, that period shall expire on the day the application is received in the office of the Department if that day does not fall within the period prescribed by paragraph (1).

(**5**) Section 99 was amended by paragraph 4 of Schedule 5 to the Social Security (Northern Ireland) Order 1986 (S.I. 1986/1888 (N.I. 18)); paragraph 2 of Schedule 3 to the Social Security (Northern Ireland) Order 1989 (S.I. 1989/1342 (N.I. 13)) and paragraph 3 of Schedule 1 to the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991

(**6**) Sections 100A and 104A were inserted by paragraphs 5 and 9 respectively of Schedule 1 to the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991

(**7**) Section 100 was amended by paragraph 5 of Schedule 5 and by Schedule 10 to the Social Security (Northern Ireland) Order 1986; Schedule 9 to the Social Security (Northern Ireland) Order 1989; paragraph 4(1) of Schedule 6 to the Social Security (Northern Ireland) Order 1990 (S.I. 1990/1511 (N.I. 15)) and paragraph 4 of Schedule 1 to the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991

Manner of making applications for review under section 100A of the 1975 Act

26B. An application for a review of a decision of an adjudication officer under section 100A(1), (2) and (4) of the 1975 Act shall be made to an office of the Department.

Appeal to a disability appeal tribunal

26C.—(1) The claimant may appeal to a disability appeal tribunal from a decision of an adjudication officer under section 100A(1) of the 1975 Act in any case in which there arises—

(a) a disability question; or

(b) both a disability question and any other question relating to attendance allowance, disability living allowance or disability working allowance.

(2) In this regulation "disability question" means a question as to—

(a) whether the claimant satisfies the conditions for entitlement to—

(i) the care component of a disability living allowance specified in section 37ZB(1) and (2) of the 1975 Act(**8**),

(ii) the mobility component of a disability living allowance specified in section 37ZC(1), (8) and (9) of that Act(**9**),

(iii) an attendance allowance specified in section 35(1)(a) or (b) and (2) of that Act(**10**), or

(iv) a disability working allowance specified in Article 21(6A)(b) of the 1986 Order(**11**);

(b) the period throughout which the claimant is likely to satisfy the conditions for entitlement to attendance allowance or disability living allowance;

(c) the rate at which attendance allowance is payable(**12**); or

(d) the rate at which the care component or the mobility component of a disability living allowance is payable(**13**).

Persons who may appeal to disability appeal tribunals and appeal tribunals

26D. A person purporting to act on behalf of a person who is terminally ill as defined in section 35(2C) of the 1975 Act(**14**), whether or not that person is acting with his knowledge or authority, may appeal to a disability appeal tribunal or an appeal tribunal, as appropriate, in accordance with section 100D(1) of that Act(**15**) in any case where the ground of appeal is that that person is or was at any time terminally ill.

(**8**) Section 37ZB was inserted by Article 3 of the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991

(**9**) Section 37ZC was inserted by Article 3 of the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991

(**10**) Section 35(1) and (2) was amended by Article 3(2) of the Social Security (Northern Ireland) Order 1979 (S.I. 1979/396 (N.I. 5)); Article 3(1) of the Social Security (Northern Ireland) Order 1988 (S.I. 1988/594 (N.I. 2)) and paragraph 5(2) of Schedule 8 to the Social Security (Northern Ireland) Order 1989

(**11**) Paragraph (6A) was inserted by Article 8(4) of the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991

(**12**) *See* section 35(3) of the Social Security (Northern Ireland) Act 1975

(**13**) *See* sections 37ZB(4) and 37ZC(11) of the Social Security (Northern Ireland) Act 1975

(**14**) Section 35(2C) was inserted by Article 3(1) of the Social Security (Northern Ireland) Order 1990

(**15**) Section 100D was inserted by paragraph 5 of Schedule 1 to the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991

Procedure for disability appeal tribunals

26E.—(1) A disability appeal tribunal, except where section 100C(7)(a) of the 1975 Act(**16**) applies, shall hold an oral hearing of any appeal made to it.

(2) Where any member of a disability 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 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) Where a disability appeal tribunal is unable to reach a unanimous decision on any case the decision of the majority of its members shall be the decision of the tribunal.

(5) The chairman of a disability appeal tribunal shall in each case—

(a) record the decision of the tribunal in writing;

(b) include in such record a statement of the reasons for the decision, including findings on all questions of fact material to the decision; 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.

(6) As soon as may be practicable after a case has been decided by a disability appeal tribunal, a copy of the record of the decision made in accordance with this regulation shall be sent to every party to the proceedings who shall also be informed of the conditions governing appeals to a Commissioner.

Examination and report by a medical practitioner

26F. A person who may be nominated as chairman of a disability appeal tribunal may refer a claimant to a medical practitioner for examination and report if he is satisfied that without such examination and report an appeal by the claimant cannot be properly determined.

Persons who may not act as members of disability appeal tribunals

26G.—(1) A person shall not act as a member of a disability appeal tribunal in any case if he—

(a) is or may be directly affected by that case; or

(b) has taken any part in such case as an assessor, a medical practitioner who has regularly attended the claimant or to whom any question has been referred for report or advice, or as a witness.

(2) If a disability appeal tribunal is unable to determine a question by reason of the provisions of paragraph (1) the case shall be referred to another such tribunal.

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

26H.—(1) Subject to paragraphs (2) to (4), an application to the chairman of a disability appeal tribunal for leave to appeal to a Commissioner from a decision of a disability appeal tribunal shall be made—

(**16**) Section 100C was inserted by paragraph 5 of Schedule 1 to the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991