STATUTORY INSTRUMENTS

1980 No. 1622

SOCIAL SECURITY

The Social Security (Determination of Claims and Questions) Miscellaneous Amendments Regulations 1980

Made - - - -	*28th October* 1980
Laid before Parliament	*3rd November* 1980
Coming into Operation	*24th November* 1980

The Secretary of State for Social Services, in exercise of the powers conferred by sections 106(2), 112(3), 115 and 119(3) and (4) of, and Schedule 13 to, the Social Security Act 1975**(a)** and section 15(1) of the Social Security Act 1980**(b)** and of all other powers enabling him in that behalf after consultation with the Council on Tribunals in so far as is required by section 10 of the Tribunals and Inquiries Act 1971**(c)** and after reference to the National Insurance Advisory Committee hereby makes the following regulations:—

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Social Security (Determination of Claims and Questions) Miscellaneous Amendments Regulations 1980 and shall come into operation on 24th November 1980.

(2) In these regulations "the principal regulations" means the Social Security (Determination of Claims and Questions) Regulations 1975**(d)**.

Amendment of regulation 8 *of the principal regulations*

2. In regulation 8(1) of the principal regulations (review or reference) for the words "of the date when he receives notice (given under regulation 6(5))", there shall be substituted the words "beginning with the date when the Secretary of State gives him notice in writing" and for "21" there shall be substituted "28".

Amendment of regulation 9 *of the principal regulations*

3. In regulation 9(5)(*a*) of the principal regulations (appeals from insurance officer's decisions) after the words "from the date" there shall be inserted the words "when the claimant is notified".

Amendment of regulation 11 *of the principal regulations*

4. In regulation 11 of the principal regulations (hearings before local tribunals), at the end of paragraph (3) there shall be added the words "but such consent may only be given if the claimant is first informed of the effect of the provisions requiring leave to appeal to a Commissioner from a decision of a tribunal which is unanimous.".

Insertion of new regulation 12A *in the principal regulations*

5. After regulation 12 of the principal regulations there shall be inserted the following regulation:—

(a) 1975 c. 14; section 119(4) was amended by section 2 of, and paragraph 12 of Schedule 1 to, the Social Security Act 1980.

(b) 1980 c. 30. **(c)** 1971 c. 62.

(d) S.I. 1975/558; relevant amending instrument is S.I. 1979/1163.

"*Application for leave to appeal to a Commissioner*

12A.—(1) Subject to the following provisions of this regulation, an application to the chairman of a local tribunal for leave to appeal to a Commissioner from a decision of a local tribunal which is unanimous (such application being required as a condition of appealing by section 15 of the Social Security Act 1980) shall be made in the first instance—

(*a*) orally at the hearing after the decision is announced by the tribunal; or

(*b*) in writing within 28 days beginning with the date when a copy of the record of the tribunal's decision was given to the person concerned.

(2) The decision of the chairman on an application for leave to appeal made orally shall be recorded in the record of the proceedings of the tribunal.

(3) A person who has been refused leave to appeal by the chairman of a tribunal may apply for such leave in writing to a Commissioner within 6 weeks beginning with the date when that person is given notice in writing of the chairman's decision refusing leave or within such further time as the Commissioner may for special reasons allow.

(4) Where an application having been made out of time the chairman of the local tribunal refuses leave to appeal, the person concerned may apply for such leave in writing to a Commissioner within 10 weeks 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 him, or within such further time as the Commissioner may for special reasons allow.

(5) Every application for leave to appeal required by this regulation to be in writing shall be made by giving it or sending it to a local office for transmission either to the chairman of the local tribunal against whose decision it is desired to appeal, or to a Commissioner, as the case may be; and every such application shall contain a statement of the grounds upon which leave to appeal is requested.

(6) Where an application in writing for leave to appeal is made by an insurance officer, the insurance officer shall, as soon as may be practicable, send to the claimant a copy of the application.

(7) 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 local tribunal to be determined under section 15(1) of the Social Security Act 1980 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 a local tribunal in an adjoining area.".

Insertion of new regulation 15A *in the principal regulations*

6. At the end of Part III of the principal regulations (adjudication by insurance officers, local tribunals and Commissioners) there shall be inserted the following regulation—

"*Rights of appeal of a person other than the beneficiary who is required to repay benefit*

15A. (1) This regulation applies to a person other than a beneficiary who is required to repay an amount of benefit to the Secretary of State, by a decision of an insurance officer, a local tribunal or the Commissioner,

given in accordance with subsection (1) or (2A) of section 119 (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.

(2) A person to whom this regulation applies 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 and regulations 3 and 9 to 13 as has a claimant and references in those provisions to "the claimant" shall be treated as including references to such a person.".

Amendment of regulation 26 *of the principal regulations*

7. In regulation 26 of the principal regulations (application for leave to appeal to Commissioner from decision of medical appeal tribunal)—

(*a*) in paragraph 1(*b*) for the words "from the date on which the decision of the tribunal was given" there shall be substituted the words "beginning with the date when a copy of the record of the tribunal's decision was given to the person concerned";

(*b*) in paragraph (2) for the words "21 days from the date on which the decision refusing leave was given" there shall be substituted the words "28 days beginning with the date when a copy of the record of the tribunal's decision refusing leave was given to the person concerned".

Amendment of regulation 27 *of the principal regulations*

8. In regulation 27(1) of the principal regulations (appeal against decision of medical appeal tribunal) for the words "from the date on which the decision giving leave to appeal was given" there shall be substituted the words "beginning with the date when notice in writing of the decision giving leave to appeal was given to the person concerned".

Amendment of regulation 29 *of the principal regulations*

9. In regulation 29(6) of the principal regulations (provisions as to hearing and determination of application for leave to appeal) for the words ", and there shall be included in such record, which shall be signed by all the members thereof, a statement of the reasons for such decision" there shall be substituted the words "and such record shall be signed by all the members thereof".

Amendment of regulation 38 *of the principal regulations*

10.—(1) In paragraph (1)(*b*) of regulation 38 of the principal regulations (certificate of the Supplementary Benefits Commission showing that more supplementary benefit would have been paid had benefit under the Act not been overpaid), for "the Supplementary Benefits Commission certify that", there shall be substituted "a statement in writing of a supplementary benefit officer shows that in his opinion".

(2) In paragraphs (2) and (3)(*b*) of the said regulation 38 (benefit under the Act treated as properly paid), for the words "the certificate of the Supplementary Benefits Commission" there shall be substituted, in each case, the words "the statement of the supplementary benefit officer".

(3) For the purposes of paragraphs (2) and (3) of the said regulation 38, a certificate of the Supplementary Benefits Commission issued before the date when this regulation comes into operation shall have effect on or after that date as if the amendments made by paragraphs (1) and (2) above had not been made.

(4) At the end of paragraph (4) of the said regulation 38 (interpretation by reference to the Supplementary Benefits Act 1976**(a)**) there shall be added—

"and "supplementary benefit officer" means a person appointed under that Act to perform the functions conferred by it on benefit officers."

Amendment of the Social Security (Attendance Allowance) (No. 2) Regulations 1975

11. In regulation 10(4) of the Social Security (Attendance Allowance) (No. 2) Regulations 1975**(b)** (appeals to a Commissioner on a question of law) for the words "was made" there shall be substituted the words "was sent in accordance with regulation 12(1) to the person to whom such leave was given".

Amendment of the Mobility Allowance Regulations 1975

12. In regulation 16(2) of the Mobility Allowance Regulations 1975**(c)** (notification of decision and right of appeal)—

(*a*) for "21" wherever that figure appears there shall be substituted "28"; and

(*b*) for the words "after he has been notified of the insurance officer's decision" there shall be substituted the words "beginning with the date when the Secretary of State gave him notice in writing of the decision".

Patrick Jenkin,
Secretary of State for Social Services.

28th October 1980.

(a) 1976 c. 71; section 27(2) was amended by paragraph 24 of Schedule 2 to the Social Security Act 1980 (c. 30).

(b) S.I. 1975/598, to which there are amendments not relevant to these regulations.

(c) S.I. 1975/1573, to which there are amendments not relevant to these regulations.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations amend the Social Security (Determination of Claims and Questions) Regulations 1975 (the "principal regulations") the Social Security (Attendance Allowance) (No. 2) Regulations 1975 and the Mobility Allowance Regulations 1975 by prescribing new time limits for appeals to the adjudicating authorities under the Social Security Act 1975 (regulations 3, 7, 8, 11 and 12), and for review by the Secretary of State of a decision given by him under section 93 of that Act (regulation 2).

Regulation 5 inserts a new regulation in the principal regulations which is concerned with applications for leave to appeal to a Commissioner from a decision of a local tribunal which is unanimous. The regulation makes provision for the time within which and the manner in which such application should be made, and for the procedure for dealing with such applications.

Regulation 4 provides for a claimant to be informed of the effect of the provisions requiring such leave to appeal before he consents to a hearing by a local tribunal in the absence of one of its members.

Regulation 6 inserts a new regulation in the principal regulations giving a person who has been paid benefit on behalf of a beneficiary and is subsequently required to repay an amount found to be overpaid the rights and powers of a beneficiary under adjudication provisions as respects the question whether he throughout used due care and diligence to avoid overpayment.

Regulation 9 deletes the provision in the principal regulations requiring medical appeal tribunals hearing applications for leave to appeal to include in the record of their decision a statement of the reasons for that decision.

Regulation 10 amends a provision of the principal regulations whereby benefit is exempt from recovery as being overpaid if the Supplementary Benefits Commission certify that, but for the overpayment, more supplementary benefit would have been awarded. The amendment provides for a statement in writing showing the opinion of a benefit officer on that matter to replace the Commission's certificate.

The report of the National Insurance Advisory Committee dated 21st October 1980, on the draft of these Regulations referred to them, together with a statement showing that the Regulations give effect to the Committee's recommendations, is contained in the House of Commons Paper No. 803 (Session 1979/80) published by Her Majesty's Stationery Office.

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