STATUTORY INSTRUMENTS

1975 No. 558

SOCIAL SECURITY

The Social Security (Determination of Claims and Questions) Regulations 1975

Made - - - -	3*rd April* 1975
Laid before Parliament	4*th April* 1975
Coming into Operation	6*th April* 1975

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SCHEDULE

Regulations revoked.

The Secretary of State for Social Services, after consultation with the Council on Tribunals in so far as required by section 10 of the Tribunals and Inquiries Act 1971**(a)**, in exercise of the powers conferred by sections 30(3), 109(2) and (3), 110(5), 111(1) and (3), 112(3) and (5), 113(1) and (2), 114, 115, 119(3) and (4) of, and Schedules 12 and 13 to, the Social Security Act 1975**(b)** and section 2(1) of, and paragraphs 3, 7 and 9 of Schedule 3 to, the Social Security (Consequential Provisions) Act 1975**(c)** and of all other powers enabling her in that behalf, without having referred any proposals on the matter to the National Insurance Advisory Committee or the Industrial Injuries Advisory Council since it appears to her that by reason of urgency it is inexpedient to do so, hereby makes the following regulations:—

PART I

GENERAL

Citation and commencement

1. These regulations may be cited as the Social Security (Determination of Claims and Questions) Regulations 1975 and shall come into operation on 6th April 1975.

Interpretation

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

"the Act" means the Social Security Act 1975;

"applicant" in Part II of these regulations means any person who has made an application to the Secretary of State for the determination of a question to which that Part relates;

"competent tribunal" means a Commissioner, a local tribunal, a medical appeal tribunal, a medical board or a single medical practitioner acting in place of a medical board;

"hearing" means oral hearing;

"question" includes, except for the purposes of Part II of these regulations, a claim under the Act;

"insurance officer" means an officer appointed in accordance with Section 97(1) of the Act;

"local tribunal" means a tribunal constituted in accordance with section 97(2) and (4) of the Act;

and other expressions have the same meanings as in the Act.

(a) 1971 c. 62. (b) 1975 c. 14. (c) 1975 c. 18.

(2) 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.

(3) Any power given by these regulations to extend the period during which anything is required to be done under these regulations or to dispense with any of the requirements thereof may be exercised in any case, notwithstanding that the period during which the thing is required to be done has expired.

(4) Unless the context otherwise requires, any reference in these regulations—

(*a*) to a numbered section or Schedule is to the section of or, as the case may be, the Schedule to the Act bearing that number;

(*b*) to a numbered regulation is a reference to the regulation 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;

(*c*) to any provision made by or contained in any enactment or instrument shall be construed as a reference to that provision as amended or extended by any enactment or instrument and as including a reference to any provision which it re-enacts or replaces, or which may re-enact or replace it, with or without modification.

(5) The rules for the construction of Acts of Parliament contained in the Interpretation Act 1889(a) shall apply in relation to this instrument and in relation to the revocations effected by it as if this instrument and the regulations revoked by it were Acts of Parliament, and as if each revocation were a repeal.

Procedure at hearings and in connection with determinations; and right to representation

3.—(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 competent tribunal or the person holding the inquiry, as the case may be, shall determine; so however that in the case of a local tribunal the procedure shall be such as the chairman of the tribunal 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 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 or discussing any question of procedure, a local tribunal, a medical board or a medical appeal tribunal, as the case may be, shall, notwithstanding anything contained in these regulations, order all persons not being members of the tribunal or board, other than the person acting as a clerk to the tribunal or board, to withdraw from the sitting of the tribunal or board provided that, if all the members of a local tribunal or a medical appeal tribunal, as the case may be, agree and if no person having the right to be heard objects, they may permit a member or members of the Council on Tribunals, or of the Scottish Committee of the

(a) 1889 c. 63.

Council, present only in that capacity, to remain present at any such sitting even though by virtue of this paragraph other persons are ordered to withdraw.

(3) Any person having the right to be heard who appears at a hearing before a local tribunal, a medical appeal tribunal or a Commissioner, as the case may be, may call witnesses and shall be given an opportunity of putting questions directly to any witnesses called at the hearing and of addressing the tribunal or Commissioner as the case may be.

(4) 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 a local tribunal, a medical appeal tribunal or a Commissioner, in his capacity as such, notwithstanding that the hearing is not in public.

Non-disclosure of evidence by local tribunal, medical appeal tribunal and Commissioner

4. Where, in connection with the consideration and determination of any claim or question there is before a local tribunal, a medical appeal tribunal, or a Commissioner, medical advice or medical evidence relating to the claimant which has not been disclosed to him and in the opinion of the chairman of the tribunal or a Commissioner, as the case may be, 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 tribunal or the Commissioner shall not by reason of such non-disclosure be precluded from taking it into account for the purpose of the said determination.

Reference by the Secretary of State, an insurance officer or a competent tribunal to medical practitioner for report

5. The Secretary of State, an insurance officer or a competent tribunal, as the case may be, may refer to a medical practitioner for examination and report any question arising for his or their determination, except in proceedings on an application for leave to appeal, appeal or reference under Part V of these regulations.

PART II

ADJUDICATION BY THE SECRETARY OF STATE

Application for and procedure on determination of question by the Secretary of State

6.—(1) A person desiring to obtain the decision of the Secretary of State on any of the questions mentioned in section 93(1) shall deliver or send to the Secretary of State an application for the purpose in writing in a form approved by him, and shall furnish such particulars as the Secretary of State may require for the purpose of the consideration and determination of any such question.

(2) The Secretary of State shall take steps to bring any such application and any such particulars 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) to hold an inquiry into the question of 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 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) In this regulation, 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.

(8) Nothing in paragraph (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

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

Review or reference

8.—(1) A person desiring to raise a question with a view to a review under section 96(1) of a decision under section 93(1) shall make application to the Secretary of State in writing within 3 months of the date when he receives notice (given under regulation 6(5)), of that decision or, if a statement of grounds is requested within 21 days of that date, within 3 months of the date when he receives the statement or in either case within such further time as the Secretary of State may for special reasons allow.

(2) The provisions of regulation 6(6) to (8) shall apply to an application under paragraph (1) as they apply to an application under regulation 6(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 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 6(1) is referred to the

Secretary of State—

(i) under section 103(2)(*a*) (reference by an insurance 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) (reference of such question for decision by the Secretary of State where the decision thereof is necessary for the determination of any proceedings).

PART III

ADJUDICATION BY INSURANCE OFFICERS, LOCAL TRIBUNALS AND COMMISSIONERS

Appeals from insurance officer's decisions

9.—(1) Where an insurance 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) (appeals to local 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 insurance officer shall, for the purposes of section 100(1), 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 insurance officer (if not reviewed) shall then, subject to the provisions of paragraph (4), be treated as adverse for the purposes of section 100(1) and the claimant shall be notified of his right of appeal to a local 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 insurance 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 insurance officer's decision shall thereafter, if not reviewed, be treated as an adverse decision for the purposes of section 100(1) and the claimant shall be notified of his right of appeal to a local tribunal, the time limit for such appeal being measured from the date of the Secretary of State's decision;

(*b*) where the Secretary of State's decision upholds the assumption, section 100(3) shall apply as if the insurance 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 insurance officer, be treated as an application for the review of the insurance officer's decision, and for the purposes

of regulation 31 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.

Time and place of hearing before local tribunals

10.—(1) Reasonable notice of the time and place of any hearing before the local tribunal shall be given to the claimant, and to any other person who is deemed by paragraph (3) to be interested or who may appear to the chairman of the tribunal to be interested, and, except with the consent of the claimant, the local tribunal shall not proceed with the hearing of any case unless such notice has been given.

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

Provided that, if a reasonable explanation for his absence has been given by him or on his behalf, the tribunal shall not, without his consent, determine the case in his absence, unless the hearing has first been adjourned for at least one month and reasonable notice of the time and place of the adjourned hearing has been given to him.

(3) For the purposes of this Part of these regulations, a person shall be deemed to be interested if, by virtue of Schedule 9, he is a person whose right to benefit is or may be affected by the decision of the tribunal.

Hearings before local tribunals

11.—(1) Every hearing by a local tribunal shall be in public except in so far as the chairman of the tribunal may otherwise direct if he is of the opinion that intimate personal or financial circumstances may have to be disclosed or that considerations of public security are involved.

(2) The following persons shall be entitled to be present and be heard at the hearing of any case by a local tribunal:—

(*a*) the claimant;

(*b*) the insurance officer;

(*c*) the Secretary of State;

(*d*) any person to whom regulation 10(3) refers;

and any person appearing to the tribunal to be interested shall have the right to be present notwithstanding that the hearing of the case is not in public.

(3) 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.

(4) In such cases as the chairman of the local tribunal may determine, a medical practitioner may sit with that tribunal as an assessor.

(5) An assessor sitting with a local tribunal as aforesaid shall not take any part in the determination or decision of that tribunal except in an advisory capacity.

Decisions of local tribunals

12.—(1) The decision of the majority of the local 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) A local tribunal shall—

(*a*) record in writing all their decisions (whether on an appeal or on a reference from an insurance officer); and

(*b*) include in the record of every decision a statement of the 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 reason given by him for so dissenting.

(3) As soon as may be practicable after a case has been decided by a local tribunal, a copy of the record of their decision made in accordance with this regulation shall be sent to the claimant, to the insurance officer and to any other person who appears to the local tribunal to be interested and, if the decision of the tribunal is in whole or in part adverse to the claimant or any person to whom regulation 10(3) refers, he shall be informed of the conditions governing appeals to a Commissioner.

Procedure before Commissioner on appeal from a local tribunal

13.—(1) If a person to or by whom notice of appeal from a decision of a local tribunal is given makes a request to a Commissioner for a hearing of the appeal, 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 appeal can properly be determined without a hearing, in which event he shall so inform the claimant in writing and may proceed to determine the case without a hearing.

(2) If, in accordance with the provisions of paragraph (1), a request for a hearing has been granted, or if, notwithstanding that no request has been made, a Commissioner is otherwise satisfied that a hearing is desirable, reasonable notice of the time and place of the hearing shall be given to every person to or by whom notice of appeal was given, and, if a Commissioner thinks fit, to any other person appearing to him to be interested.

(3) The insurance officer and any person to whom notice of the hearing has been given shall be entitled to be present and to be heard at the hearing.

(4) If any person to whom notice of the hearing has been duly given should fail to appear either in person or by representative at the hearing, the Commissioner may proceed to determine the appeal notwithstanding the absence of any such person or representative or may give such directions with a view to the determination of the appeal as he thinks proper.

(5) In any case in which a hearing of an appeal is held it shall be in public except in so far as the Commissioner may otherwise direct if he is of the opinion that intimate personal or financial circumstances may have to be disclosed or that considerations of public security are involved.

(6) The decision of a Commissioner shall be in writing and signed by him and 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 appearing to the Commissioner to be interested.

Local referees

14.—(1) Any question of fact arising upon the consideration of any question by an insurance officer or a local tribunal as to the right to benefit may be referred by the insurance officer or the chairman of the local tribunal, as the case may be, for previous examination and report to two persons who are persons resident in the neighbourhood in which the claimant resides (hereafter in this regulation referred to as "the local referees") and of whom one shall be drawn from each panel mentioned in section 97(2) (constitution of local tribunals):

Provided that, where a question of fact has been referred, the insurance officer or the local tribunal, as the case may be, may determine the question before him or them, notwithstanding that the report of the local referees has not been received, if there has elapsed reasonable time within which the local referees could have submitted their report.

(2) If any question of fact shall be so referred, the local referees shall interview the claimant and shall report to the insurance officer or to the local tribunal, as the case may be, stating their findings of fact upon the question so referred.

(3) If the local referees do not agree upon their report each referee shall make a separate report.

(4) Any question of fact so referred may, with the consent of the claimant, but not otherwise, be proceeded with in the absence of one of the two local referees by the other referee, who shall interview the claimant and report upon the question of fact referred.

(5) No person shall act as a local referee if he would be prevented, by the provisions of paragraph (*a*) of the proviso to paragraph 1(4) of Schedule 10, from sitting upon a local tribunal during the consideration of the case of the claimant.

Both husband and wife to be treated as claimants in certain cases

15. 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) (re-entry into regular employment after retirement), the provisions of sections 98 to 104 and the foregoing provisions of this Part of these regulations shall in their application to the determination of the question whether the wife has consented to such election or whether her consent has been unreasonably withheld be modified so that both the husband and wife are treated as claimants and have the rights and powers of claimants.

PART IV

DETERMINATION OF DISABLEMENT QUESTIONS

Constitution of medical boards

16.—(1) Subject to the provisions of Schedule 12 and the following provisions of this regulation, a medical board shall consist of 2 members.

(2) A medical practitioner shall not act as a member of a medical board for the purpose of the consideration of any case referred to the board if he—

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

(*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 examination and report or as an employer or as a witness.

(3) A medical board shall not determine any question if—

(*a*) any member thereof is unable to be present at the consideration of any such question; or

(*b*) the medical board, being a board consisting of 2 members, are unable to reach a unanimous decision on any such question.

(4) In any case in which, by reason of paragraphs (1), (2) and (3), a medical board are unable to determine any question, the reference to that board shall be revoked and the questions arising in that case shall forthwith be referred to another medical board, which in a case to which paragraph (3)(*b*) relates shall consist of 3 members, whose decision, if not unanimous, shall be that of the majority of such members.

Reference to single medical practitioner instead of to medical board

17.—(1) For the purposes of the provisions of section 111(1) (reference of disablement questions to a single medical practitioner) and notwithstanding anything in the foregoing provisions of these regulations, the disablement questions arising in any case may, with the consent of the claimant, be referred to a single medical practitioner appointed by the Secretary of State instead of to a medical board.

(2) The provisions of regulations 18 and 19 shall apply to the proceedings on a reference to a single medical practitioner in accordance with paragraph (1), as if such practitioner were a medical board constituted in accordance with the Act or the chairman of such a board, as the case may be.

(3) If a medical practitioner to whom any questions have been referred in accordance with paragraph (1) is of the opinion that a final assessment can be made but that the period which should be taken into account by such assessment would exceed 6 months, he shall, instead of himself determining such questions make a report in writing stating his opinion and the grounds for it, and thereupon the reference to the single medical practitioner shall be revoked and the disablement questions arising in the case shall be referred to a medical board constituted under the Act, to whom a copy of such report shall be made available.

Notice of sitting and procedure of medical boards

18.—(1) Reasonable notice of the time and place at which a medical board 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 board, the board shall not proceed to determine the questions referred to them without his consent.

(2) No person shall be entitled to be present and be heard during the consideration of any question by a medical board other than the claimant and any other person whom the medical board may, with the consent of the claimant, allow to be present as being a person who, in their opinion, is likely to assist them in the determination of that question.

Notice of decision of medical board

19.—(1) A medical board 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 board)—

(*a*) a statement of their findings on all questions of fact material to such decision; and

(*b*) in a case in which the decision of a medical board consisting of 3 persons 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 a medical board, 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 said findings of the board, including, where the decision was not unanimous, a statement that one of the members dissented and of the reasons given by him for dissenting.

Constitution of medical appeal tribunals

20.—(1) A person shall not act as a member of a medical appeal tribunal constituted under Schedule 12 for the purpose of the consideration of any case referred to them if he—

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

(*b*) has taken any part in such case as a medical assessor or as a medical practitioner who has regularly attended the claimant or who has acted as a member of a medical board or to whom any question has been referred for examination and report or as an employer or as a witness.

(2) Where any member of a medical appeal tribunal is not present at the consideration of a case, the reference to that tribunal shall be revoked and the case shall forthwith be referred to another such tribunal.

Notice of appeal and notification by the Secretary of State

21.—(1) An appeal by a claimant against a decision of a medical board shall be brought by giving notice of appeal at a local office within 3 months after notice of that decision has been given in accordance with regulation 19 or within such further period as the chairman of a medical appeal tribunal may for good reason allow.

(2) A notice of appeal shall be in writing and shall contain a statement of the grounds upon which the appeal is made.

(3) For the purpose of securing the reference of a case to a medical appeal tribunal in accordance with section 109(3) where the Secretary of State is of the opinion that a decision of a medical board ought to be considered by a medical appeal tribunal, the Secretary of State may notify the insurance officer of his opinion in that respect within 3 months after the date of that decision or such longer period as the chairman of a medical appeal tribunal may for good reason allow.

Hearing of appeals by, and procedure of, medical appeal tribunals

22.—(1) For the purpose of determining any case, a medical appeal tribunal shall hold a hearing which shall be in public except in so far as the chairman of

the tribunal may for special reasons otherwise direct.

(2) Reasonable notice of the time and place at which a medical appeal tribunal will hear a case shall be given to the claimant and to the Secretary of State, and, except with the consent of the claimant, the tribunal shall not proceed with the hearing unless such notice has been given.

(3) The Secretary of State and the claimant shall have the right to be heard at a hearing of a medical appeal tribunal.

(4) If a claimant, to whom notice of hearing has been duly given in accordance with paragraph (2), should fail to appear at the hearing, the medical appeal tribunal may proceed to determine the case notwithstanding his absence, or may give such directions with a view to the determination of the case as they may think proper having regard to all the circumstances including any explanation offered for the absence:

Provided that, if a reasonable explanation for his absence has been given by him or on his behalf, the tribunal shall not, without his consent, determine the case in his absence, unless the hearing has first been adjourned for at least one month and reasonable notice of the time and place of the adjourned hearing has been given to him.

(5) 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.

Record and notice of decision of medical appeal tribunal

23.—(1) 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.

(2) 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 (1).

Application for review involving review of decision of medical appeal tribunal

24. Where, in the opinion of the insurance officer, an application made under the provisions of section 104(2) 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 insurance 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 a medical board with a view to a review of that decision unless that medical appeal tribunal grant such leave.

PART V

APPEAL OR REFERENCE TO A COMMISSIONER ON A POINT OF LAW FROM A MEDICAL APPEAL TRIBUNAL

Further provision as to notice of decision of medical appeal tribunal

25. A person to whom written notice of a decision of a medical appeal tribunal is sent in accordance with the provisions of regulation 23(2) 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 regulation 23(1) 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 to a Commissioner from decision of medical appeal tribunal

26.—(1) Subject to paragraphs (2) to (4), an application for leave to appeal to a Commissioner from a decision of a medical appeal tribunal on the ground that the decision is erroneous in point of law shall be made in the first instance to a medical appeal tribunal—

(*a*) orally at the hearing by the tribunal of the appeal from, or reference of, the decision of the medical board, or

(*b*) in writing within 3 months from the date on which the decision of the tribunal was given.

(2) A person who has been refused leave to appeal by a medical appeal tribunal may make an application in writing for such leave to a Commissioner within 21 days from the date on which the decision refusing leave was given, or within such further time as the Commissioner may for special reasons allow.

(3) Where there has been a failure to apply to a medical appeal tribunal for leave to appeal within the time specified in paragraph (1)(*b*), an application in writing for such leave may nevertheless be made to a Commissioner, who may, if for special reasons he thinks fit, proceed, notwithstanding such failure, to consider and determine the application.

(4) Every application for leave to appeal required by this regulation to be in writing shall be made by giving or sending it to a local office for transmission to the medical appeal tribunal or to a Commissioner as the case may be, and such application shall include a statement of the point of law in respect of which it is alleged that the decision of the tribunal is erroneous and on which it is wished to appeal.

(5) Where an application for leave to appeal is made to a Commissioner the Secretary of State shall cause to be sent to him a copy of the record, made in pursuance of regulation 23(1) of the decision of the medical appeal tribunal and, if leave to appeal has been refused by the tribunal, a copy of the record of the decision refusing such leave.

(6) Where an application in writing for leave to appeal is made by the Secretary of State, a copy of the application shall be sent to the claimant.

Appeal against decision of medical appeal tribunal

27.—(1) Subject to the provisions of regulation 29(7), an appeal against the decision of a medical appeal tribunal shall be brought by giving notice of it in writing at a local office within 3 months from the date on which the decision giving leave to appeal was given, or within such further time as a Commissioner may for special reasons allow, and such notice shall include a statement of the point of law in respect of which it is alleged that the decision is erroneous.

(2) A copy of the notice of appeal shall be sent to the chairman of the medical appeal tribunal and, in the case of an appeal by the Secretary of State, to the

claimant, and the Secretary of State shall, as soon as may be practicable, cause to be sent to a Commissioner—

(*a*) a copy of the record, made in pursuance of regulation 23(1), of the decision under appeal;

(*b*) the notice of appeal; and

(*c*) where the application for leave to appeal was made to the tribunal, a copy of the record of the decision of the tribunal on that application.

Reference by medical appeal tribunal of a question of law for decision by a Commissioner

28. 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), the tribunal shall cause to be sent—

(*a*) to a 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.

Provisions as to the hearing and determination of applications for leave to appeal and of appeals and references

29.—(1) If the Secretary of State, the claimant or the trade union, as the case may be, makes a request to an adjudicating authority for a hearing of an application for leave to appeal, appeal or reference under this Part of these regulations such request shall be granted unless after considering the documents in the case and the reasons put forward in such request, the adjudicating authority is satisfied that the application, appeal or reference can properly be determined without a hearing, in which event the adjudicating authority may refuse such request and proceed to determine the application, appeal or reference and the person who made the request shall be informed in writing of such refusal.

(2) If, in accordance with the provision of paragraph (1), a request for a hearing has been granted or if, notwithstanding that no request has been made, the adjudicating authority is otherwise satisfied that a hearing is desirable, reasonable notice of the time and place of the hearing shall be given to the claimant or the trade union and to the Secretary of State; and every such hearing shall be in public except in so far as the adjudicating authority for special reasons may otherwise direct.

(3) The Secretary of State and the claimant or the trade union shall have the right to be present and to be heard at such a hearing by an adjudicating authority.

(4) If any person to whom notice of hearing has been duly given in accordance with paragraph (2) should fail to appear either in person or by representative at the hearing, the adjudicating authority may proceed to determine the application, appeal or reference notwithstanding the absence of such person, or may give such directions as are thought proper with a view to the determination of the application, appeal or reference.

(5) Where a medical appeal tribunal are unable to reach a unanimous decision on an application for leave to appeal, the decision of the majority of the members thereof shall be the decision of the tribunal.

(6) The decision of a medical appeal tribunal on an application for leave to appeal shall be recorded in writing, 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, and a copy of the record shall be sent as soon as may be practicable to the Secretary of State and to the claimant or the trade union.

(7) Where a Commissioner, upon consideration of an application made to him in accordance with the provisions of regulation 26, gives leave to appeal he may proceed to determine any question of law stated in the application for leave to appeal, as though it were a question of law arising on an appeal and as though the application were an appeal:

Provided that he shall not so proceed unless the consent of the Secretary of State and the claimant or the trade union has been given.

(8) A Commissioner may either before, or at any time during, the hearing of an appeal or reference, require the medical appeal tribunal to submit such further statement of the facts on which the question of law submitted for his decision arises as he considers necessary for the proper determination of that question.

(9) The decision of a Commissioner on an application for leave to appeal shall be recorded in writing and signed by him, and a copy of the decision shall be sent as soon as may be practicable to the chairman of the medical appeal tribunal and to the Secretary of State and to the claimant or the trade union.

(10) The decision of a Commissioner on the question of law raised by any appeal or reference shall be in writing and signed by him, and he shall record the reasons for his decision and as soon as may be practicable a signed copy of the decision and reasons shall be sent to the chairman of the medical appeal tribunal and copies of them shall be sent to the Secretary of State, and to the claimant or the trade union.

(11) In this regulation—

"adjudicating authority" means a medical appeal tribunal or a Commissioner;

"the trade union" means the trade union or association which has made an application under section 112(3) for leave to appeal or, as the case may be, has appealed under section 112(1).

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

30.—(1) For the purposes of giving, confirming or revising their decision on the case in accordance with section 112(5) a medical appeal tribunal shall hold a hearing, and subject to paragraphs (2) and (3), those provisions of Part IV 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 subject to the modification that the trade union referred to in regulation 29 shall have the same rights thereunder as the claimant; 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 purposes of confirming or revising their decision on the case, a medical appeal tribunal, whether or not consisting of the members who constituted the tribunal when that decision was given in the first place, shall proceed upon the facts included in the record of the decision so given:

Provided that if, having regard to the decision of a Commissioner on the question of law, the finding of additional facts is necessary for the purposes aforesaid, the tribunal may receive further evidence and find such facts.

(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 23.

PART VI

MISCELLANEOUS

Review of decisions involving payment or increase of benefit other than industrial injuries benefit

31.—(1) Where on a review a decision relating to benefit other than industrial injuries 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 or invalidity benefit, 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 (and benefit under section 39(4) corresponding to a widow's pension or a widowed mother's allowance), attendance 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*) (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*), 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 insurance officer, the local tribunal or the Commissioner, as the case may be, to be the date on which that change took place.

(5) For the purposes of regulation 37 and this regulation, where a decision is reviewed at the instance of an insurance officer under section 104(1), the date on which it was first decided by the insurance 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 an award had been made.

Review of decisions involving payment or increase of industrial injuries benefit

32.—(1) Where on a review a decision 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*) (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.

Adjustment of benefit other than industrial injuries benefit on review or appeal

33. Where by a decision on review or appeal a person entitled to benefit other than industrial injuries 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 that decision.

Adjustment of industrial benefit on review or appeal

34.—(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

(a) 1972 c. 57.

or was payable to him in respect of the same accident or disease and except as is provided in pararaph (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 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 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 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 person or tribunal 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 grounds of unforeseen aggravation

35. On a review of any assessment under section 110(2) (review on grounds of unforeseen aggravation) the period to be taken into account by any revised assessment may include any period not exceeding 3 months before the date of the application for the review 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.

Re-entry into regular employment after retirement

36. 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) (re-entry into regular employment after retirement), the provisions of sections 98 to 104 and the foregoing provisions of these regulations shall be modified so that the determination of the question whether the wife has consented to such an 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.

Single payments in satisfaction of rights to graduated retirement benefit

37.—(1) The following provisions of this regulation shall apply, in relation to payments (in this regulation referred to as "single payments") under Schedule 2 to the Social Security (Graduated Retirement Benefit) Regulations 1975**(a)** (single payment in satisfaction of right to graduated retirement benefit).

(2) For the purposes of section 104, in the case of a decision awarding a single payment, it shall be deemed not to be a material fact or relevant change of circumstances, as the case may be, that, since the date which was the appropriate date for the purposes of the said Schedule 2, graduated retirement benefit would, apart from that Schedule, have ceased to be payable, but it shall be deemed to be such a fact or change that, since that date, a person's right to graduated retirement benefit has ceased to be by virtue of section 36(7) of the National Insurance Act 1965**(b)** as continued in force by, and set out in Schedule 1 to, the Social Security (Graduated Retirement Benefit) Regulations 1975.

(3) Where on review or appeal a decision awarding a single payment falls, or but for this paragraph would fall, to be revised so as to make payable either—

(*a*) a single payment in satisfaction of a right to graduated retirement benefit at a weekly rate higher than the weekly rate ("the original weekly rate") of the graduated retirement benefit in satisfaction of the right to which the original single payment was awarded; or

(*b*) weekly payments of graduated retirement benefit;

then—

(i) the decision on the review or appeal shall direct that the single payment originally awarded shall be treated as duly made in satisfaction for life of any right of the beneficiary (whether by virtue of the said section 36(7) or not) to graduated retirement benefit so far as it does not exceed the original weekly rate; and

(ii) the beneficiary's right to graduated retirement benefit, so far as it exceeds the original weekly rate, shall be treated as a separate right.

(4) Where on review or appeal a decision awarding weekly payments of graduated retirement benefit falls to be revised so as to make a single payment payable, the appropriate date for the purposes of the said Schedule 2 shall be deferred until the date of the application for the review or of the notice of appeal, as the case may be, and the decision on review or appeal shall direct that any sums paid on account of the weekly payments originally awarded in respect of any period thereafter shall be treated as having been paid on account of the single payment.

(a) S.I. 1975/557(1975 I, p. 1949). **(b)** 1965 c. 51.

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

38.—(1) Subject to paragraph (2), where—

(*a*) by a decision given on appeal or review it is decided that the whole or part of any benefit under the Act for any period was not payable and but for this regulation repayment thereof would be required; and

(*b*) the Supplementary Benefits Commission certifies that the claimant or some other person would have been paid supplementary benefit additional to that which was paid to him for that period had there been no overpayment of the benefit under the Act,

the decision on review or appeal shall direct that the benefit overpaid shall be treated as properly paid to the extent of the additional amount shown in the certificate.

(2) Where the benefit overpaid was in respect of a child not living with, or an adult dependant not residing with, the claimant, paragraph (1) shall not apply in respect of any period 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 the benefit paid to him in respect of that child or adult dependant; or

(*b*) it appears from the certificate issued by the Supplementary Benefits Commission that it is the claimant who has been paid less supplementary benefit than he would have been paid had there been no overpayment of the benefit under the Act in respect of that child or adult dependant.

(3) In this regulation supplementary benefit means benefit under the Supplementary Benefit Act 1966**(a)**.

Savings

39. Notwithstanding their repeal, sections 64, 65, 66 and 97 of the National Insurance Act 1965**(b)** 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 that 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**(c)** or otherwise).

Revocation and transitional provisions

40.—(1) The regulations specified in column 1 of the Schedule to these regulations are hereby revoked to the extent mentioned in column 3 of that Schedule.

(2) These regulations shall apply—

(*a*) to any claim for benefit under the National Insurance Acts 1965 to 1974 or the National Insurance (Industrial Injuries) Acts 1965 to 1974, and

(*b*) to any question arising under any of those Acts,

(a) 1966 c. 20 (enacted as the Ministry of Social Security Act 1966).

(b) 1965 c. 51. **(c)** 1975 c. 18.

as they apply to a claim for the corresponding benefit under the Social Security Act 1975 or, as the case may be, to a corresponding question which may arise under that Act; and for this purpose questions relating to graduated contributions and payments in lieu of contributions shall be treated as questions relating to contributions.

(3) Any decision made and anything whatsoever done under or by virtue of any regulation revoked by these regulations shall be deemed to have been made or done under or by virtue of the corresponding provision of these regulations, and anything whatsoever begun under such regulations may be continued under these regulations as if begun under these regulations.

(4) So much of any document as refers expressly or by implication to any regulation 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.

(5) Nothing in paragraphs (3) and (4) of this regulation shall be taken as affecting the general application by regulation 2(5) of these regulations of the rules for the construction of Acts of Parliament contained in section 38 of the Interpretation Act 1889 (effect of repeal) with regard to the effect of revocations.

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

Brian O'Malley,
Minister of State,
Department of Health and Social Security.

3rd April 1975.

Regulation 40

SCHEDULE

Column 1 Regulations revoked	Column 2 References	Column 3 Extent of revocation
The National Insurance (Determination of Claims and Questions) (No. 2) Regulations 1967.	S.I. 1967/1570 (1967 III, p. 4350).	The whole regulations.
The National Insurance (Industrial Injuries) (Determination of Claims and Questions) (No. 2) Regulations 1967.	S.I. 1967/1571 (1967 III, p. 4362).	The whole regulations.
The National Insurance (Determination of Claims and Questions) Amendment Regulations 1969.	S.I. 1969/290 (1969 I, p. 792).	The whole regulations.
The National Insurance (Industrial Injuries) (Determination of Claims and Questions) Amendment Regulations 1969.	S.I. 1969/1749 (1969 III, p. 5477).	The whole regulations.
The National Insurance (Miscellaneous Amendments) Regulations 1971.	S.I. 1971/1419 (1971 II, p. 3964).	Regulation 12.
The National Insurance (Unemployment and Sickness Benefit and Miscellaneous Amendments) Regulations 1972.	S.I. 1972/1301 (1972 II, p. 3922).	Regulation 4.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations relate to the determination of claims and questions under the Social Security Act 1975.

The Regulations provide for: general procedural matters (Part I); adjudication by the Secretary of State (Part II); adjudication by insurance officers, local tribunals and Commissioners (Part III); the determination of disablement questions relating to industrial injuries (Part IV); appeals and references to Commissioners on points of law from Medical Appeal Tribunals (Part V); and miscellaneous provisions consequential to appeals and reviews, including the adjustment of benefit (Part VI).

The Regulations also contain transitional provisions and revocations; they save certain provisions of the National Insurance Act 1965 for the disposal of matters arising under that Act.

The Regulations are made after consultation with the Council on Tribunals (except for Parts II and VI, which do not contain procedural rules for tribunals under their supervision).

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