

CONSOLIDATED SUBJECT INDEX

2001 – 2010

ATTENDANCE ALLOWANCE

Accommodation in private residential care home – financed by local authority pending sale of a house – whether claimant is meeting cost of accommodation **R(A) 1/02**

Claimant resident in nursing home – interpretation of “accommodation” and “cost of accommodation” **R(A) 2/07**

Claimant resident in nursing home – whether entitled to claim for an award of benefit **R(A) 1/07**

*See also: Attention in connection with bodily functions
Review*

ATTENTION IN CONNECTION WITH BODILY FUNCTIONS

Assistance required with communication – meaning of “frequent” **R(A) 1/03**

Attention in connection with drinking – whether bringing drinks to claimant counts **R(A) 1/06**

Faecal incontinence – whether washing of clothing and cleaning of adjacent surfaces relevant
Ramsden v Secretary of State for Work and Pensions [2003] EWCA Civ 32
R(DLA) 2/03

Meaning of “night” – objective approach by reference to hypothetical household **R(A) 1/04**

Meaning of “significant portion of the day”
Ramsden v Secretary of State for Work and Pensions [2003] EWCA Civ 32
R(DLA) 2/03

Profoundly deaf claimant – guidance for fact-finders **R(DLA) 3/02**

Profoundly deaf claimant – whether action to attract claimant’s attention is attention in connection with hearing **R(DLA) 2/02**

Profoundly deaf claimant – whether attention to be given in the claimant’s presence **R(DLA) 1/02**

Significant portion of the day – meaning of “day” **R(DLA) 8/02**

Transient effects of alcohol **R(DLA) 6/06**

Whether functions of the brain are bodily functions – whether prompting and motivating and assistance with communication and social integration are capable of constituting attention in connection with bodily functions **R(DLA) 1/07**

BEREAVEMENT AND DEATH BENEFITS

Bereavement benefit – spouse’s category A pension – human rights **R(G) 1/06**

Effect on entitlement when more than one surviving polygamously married widow **R(P) 2/06**

CONSOLIDATED SUBJECT INDEX

Widow's benefit provisions – human rights – whether possible to construe to include a long-term unmarried partner **R(G) 1/04**

See also: Forfeiture

Funeral payment

Human rights

Retirement pension

CAPITAL

Business premises owned by claimant and part of same building as dwelling occupied as home – whether capital to be disregarded **R 1/02 (FC)(T)**

Calculation of capital at start of assessed income period – point at which income becomes capital for state pension credit purposes **R(PC) 3/08**

Death benefits held in trust by Court for children – disregard – valuation
McAuley v Department for Social Development [2001] NICA 15 **R 3/01 (IS)**

Deprivation – acquisition of a possession with the intention of obtaining income support – inter-relation between the valuation of actual capital under paragraph 10 of Schedule 10 to the Income Support Regulations and notional capital under regulation 51(1) **R(IS) 8/04**

Deprivation – capital disposed of by person who later became claimant's partner – whether to be treated as claimant's notional capital
R (Hook) v Social Security Commissioner and Secretary of State for Work and Pensions [2007] EWHC 1705 (Admin) **R(IS) 7/07**

Deprivation – significant operative purpose **R(H) 1/06**

Disregard for arrears of income-related benefit – whether applies to refund to income support claimant of wrongly imposed charges for after-care provided under section 117 of the Mental Health Act 1983 **R(IS) 5/08**

Disregard for “dwelling occupied as the home” – whether two houses can be one dwelling
Secretary of State for Work and Pensions v Miah [2003] EWCA Civ 1111 **R(JSA) 9/03**

Disregard of trust fund derived from compensation for personal injury – whether disregard applies when injury was to deceased partner **R(IS) 3/03**

Disregards: home – need to clarify whether former partners are estranged or separated, when estrangement occurred and if former partner a lone parent **R(IS) 5/07**

Funds administered by Court of Protection – how funds to be valued **R(IS) 9/04**

Interest in matrimonial home occupied by former partner – whether to be disregarded – reasonable steps to dispose of premises **R(IS) 5/05**

No immediate intention to buy another home – whether proceeds of sale of former home “to be used” for the purchase of another home **R(IS) 7/01**

Notional capital – whether potential right to secure orders under the Matrimonial Causes Act 1973 is “capital” **R(IS) 1/03**

Savings made by a foster carer to meet future expenditure in respect of a foster child – whether income or capital – whether held in trust **R(IS) 9/08**

Share in jointly owned testamentary gift of property occupied by other joint owner – whether share had a “current market value”

- Wilkinson v Chief Adjudication Officer** **R(IS) 1/01**
- Tenants in common owning property in unequal shares – whether to be regarded as holding equal shares
Secretary of State for Work and Pensions v Hourigan [2002] EWCA Civ 1890
R(IS) 4/03
- Valuation of assets after bankruptcy order made – possibility of finding of deprivation based on claimant’s conduct during bankruptcy process
KS v Secretary of State for Work and Pensions (JSA) [2009] UKUT 122 (AAC)
[2010] AACR 3
- Value of a chose in action is an estimate of actual capital **R 2/09 (IS)**
- Value of a joint tenant’s interest in a house – whether always half the net capital value – need to make full enquiry into relevant circumstances **R(IS) 5/07**
- Value of claimant’s interest in former matrimonial home – correct practice in cases involving valuation evidence **R(JSA) 1 /02**
- Whether a caravan is capital – whether to be disregarded as a personal possession **R(H) 7/08**
- Whether property purchased in France in the claimant’s name was held on trust for the person who provided the purchase money
Martin v Secretary of State for Work and Pensions [2009] EWCA Civ 1289
[2010] AACR 9

See also: Housing and council tax benefit

CARER’S ALLOWANCE

- Calculation of number of hours of education – meaning of “attends a course of education at” – meaning of “supervised study”
Flemming v Secretary of State for Work and Pensions [2002] EWCA Civ 641 **R(G) 2/02**
- Calculation of number of hours of education – meaning of attends a course of education at – meaning of “supervised study”
Wright-Turner v Department for Social Development [2002] NICA 2 **R 1/02 (ICA)**
- Meaning of “receiving full-time education” – whether test is time spent by student or requirements of course
Secretary of State for Work and Pensions v Deane [2010] EWCA Civ 699
[2010] AACR 42
- Severely disabled person in hospital – whether conditions of entitlement satisfied when attendance allowance not payable
Secretary of State for Work and Pensions v Pridding [2002] EWCA Civ 306 **R(G) 1/02**

CARE STANDARDS

- Registration of childminders – suspension pending an investigation
OFSTED v GM [2009] UKUT 89 (AAC) **[2010] AACR 21**

CHILDREN

- Child benefit – responsibility for child – meaning of “parent” – shared residence order under the Children Act **R(F) 1/08**

CHILD SUPPORT

CONSOLIDATED SUBJECT INDEX

Application for maintenance – application by absent parent for a maintenance assessment – whether effective when person with care subsequently makes an application for a maintenance calculation **R(CS) 1/06**

Application for maintenance – authority to the Secretary of State to take action – prescribed benefit terminating before assessment – whether application continues to have effect **R(CS) 1/02**

Application for maintenance – court order requiring payment of school fees – whether a “maintenance order”
Secretary of State for Social Security v Foster and another **R(CS) 1/01**

Application for maintenance – parent in receipt of benefit – scope of restriction on Secretary of State to require authorisation to act if risk of harm **R(CS) 8/02**

Application for maintenance – prescribed benefit obtained by fraud – whether Secretary of State has power to make maintenance calculation **R(CS) 3/08**

Application for maintenance – series of retrospective assessments – whether new application needed following period(s) where child had temporarily ceased to live with person with care **R(CS) 8/08**

Calculation of income – child tax credit payable to non-resident parent’s partner – whether absence of words “shall be treated as the income of the non-resident parent” from paragraph 13A of the Schedule to the Child Support (Maintenance Calculations and Special Cases) Regulations 2000 renders provision meaningless
Secretary of State for Work and Pensions v RH [2008] UKUT 19 (AAC) **R(CS) 3/09**

Calculation of income – expenses “wholly, exclusively and necessarily incurred in the performance of the duties of the employment” – car allowance paid by employer – whether apportionable between business and personal use **R(CS) 4/08**

Calculation of income – periodical payments to director from small family company in repayment of loan – whether income or capital
Chandler v Secretary of State for Work and Pensions and another [2007] EWCA Civ 1211 **R(CS) 2/08**

Calculation of income – personal income tax allowance exhausted against occupational pension – whether calculation of self-employed earnings to be based on notional or actual tax liability **R(CS) 1/05**

Calculation of income – “total taxable profits” of self-employed trader – whether to be calculated net of capital allowances
Smith v Secretary of State for Work and Pensions [2006] UKHL 35 **R(CS) 6/06**

Calculation of income – treatment of “salary sacrifice” arrangements **R(CS) 9/08**

Calculation of income – whether dividend income to be taken as income under the reformed child support scheme **R(CS) 4/05**

Departure direction – assets capable of producing income or higher income – the correct application of regulation 23 of the Child Support Departure Direction and Consequential Amendments (Northern Ireland) 1996 Regulations to assets **R 1/03 (CS)**

Departure direction – contact costs – meaning of “a set pattern”
PB v Child Maintenance and Enforcement Commission (CSM) [2009] UKUT 262 (AAC) [2010] AACR 22

Departure direction – costs arising from long-term illness or disability – whether financial

CONSOLIDATED SUBJECT INDEX

- assistance includes social security benefits **R(CS) 2/02**
- Departure direction – costs incurred to maintain contact with children
R (Qazi) v Secretary of State for Work and Pensions [2004] EWHC 1331 (Admin)
R(CS) 5/04
- Departure direction – debts incurred before becoming an absent parent – application of regulation 16 of the Child Support Departure Direction and Consequential Amendments Regulations 1996 to personal loan taken out to repay debt incurred in respect of property which had been formerly occupied as matrimonial home **R(CS) 5/03**
- Departure direction – debts incurred before becoming an absent parent – whether exclusion of a debt was reasonable **R(CS) 3/02**
- Departure direction – debts incurred before becoming an absent parent – whether loan made by “employer” – meaning of regulation 16(4) of the Child Support Departure Direction and Consequential Amendments Regulations 1996 **R(CS) 3/03**
- Departure direction – earlier county court order on financial provision ancillary to divorce proceedings – whether doctrine of estoppel applies
Denson v Stevenson and another **R(CS) 2/01**
- Departure direction – lifestyle inconsistent with declared income – life-style paid for by partner – whether part-contribution by partner towards life-style can be included in departure direction increase **R(CS) 6/02**
- Departure direction – lifestyle inconsistent with declared income – meaning of “overall lifestyle” **R 1/05 (CS)(T)**
- Departure direction – lifestyle inconsistent with declared income – whether tribunal entitled to base direction on evidence which could also be used in formula assessment **R(CS) 3/01**
- Departure direction – whether car parking charges are “minor incidental costs” incurred in connection with travel between home and normal place of work **R(CS) 5/08**
- Departure direction – whether referral to tribunal can be withdrawn only by Secretary of State
Milton v Secretary of State for Work and Pensions [2006] EWCA Civ 1258 **R(CS) 1/07**
- Departure direction – whether taking a company car is a diversion of income **R(CS) 6/05**
- Departure direction – whether the 1996 Regulations were incompatible with a Convention right
Department for Social Development v MacGeagh [2005] NICA 28 **R 2/05 (CS)**
- Maintenance assessment – cancellation where parents attempt reconciliation – whether supersession or revision required – meaning of “there no longer being any qualifying child”
SL v Child Maintenance and Enforcement Commission (CSM) [2009] UKUT 270 (AAC)
[2010] AACR 24
- Maintenance assessment – child sometimes in care of relatives – whether absent parent providing “day to day care” **R(CS) 11/02**
- Maintenance assessment – child sometimes staying in residential unit attached to his school – residential unit funded by local education authority – whether local authority providing “day to day care” – whether child at a boarding school **R(CS) 2/04**
- Maintenance assessment – day to day care – child at boarding school where fees met by local authority **R(CS) 1/04**
- Maintenance assessment – day to day care – whether looking after the qualifying children overnight at the home of the parent with care counts as shared care **R(CS) 7/08**

CONSOLIDATED SUBJECT INDEX

Maintenance assessment – day to day care – whether period other than 12 months must end with relevant week **R(CS) 4/03**

Maintenance assessment – effective date of formula assessment made after interim assessment
Secretary of State for Work and Pensions v Boyle and another [2008] EWCA Civ 210
R(CS) 6/08

Maintenance assessment – exempt and protected income – calculation of eligible housing costs – current account mortgage **R(CS) 3/05**

Maintenance assessment – exempt and protected income – calculation of eligible housing costs – whether charge on non-resident parent’s beneficial interest was a charge on home
NM v Child Maintenance and Enforcement Commission (CSM) [2010] UKUT 58 (AAC)
[2010] AACR 33

Maintenance assessment – exempt income – housing costs – limitation of eligible housing costs – costs necessarily incurred
Pabari v Secretary of State for Work and Pensions and another [2004] EWCA Civ 1480
R(CS) 2/05

Maintenance assessment – more than six years after birth of child – whether liability barred by Limitation Act 1980 **R(CS) 10/02**

Maintenance assessment – payment in place of payment of child support maintenance – whether can be imposed retrospectively – supersession of assessment when absent parent starts to receive relevant benefits **R(CS) 5/05**

Maintenance assessment – protected income – whether “maintenance” includes child support maintenance in the calculation of income **R(CS) 4/02**

Maintenance assessment – shared care – parent not in receipt of child benefit treated as non-resident parent – *vires* of regulation 8(2)(b)(i) of the Child Support (Maintenance Calculations and Special Cases) Regulations 2000 **R(CS) 1/09**

Maintenance assessment – special case of child in care of local authority being allowed to live with parent – whether other parent can be a “person with care” **R(CS) 7/02**

Maintenance assessment – special case of parent caring for children of more than one absent parent – whether deceased parent is “absent parent” **R(CS) 2/03**

Maintenance assessment – student – meaning of “attending a full-time course”
DY v Child Maintenance and Enforcement Commission (CSM) [2010] UKUT 19 (AAC)
[2010] AACR 32

Maintenance assessment – subsequent revision because absent parent not habitually resident – whether error of child support officer “official error” – whether child support officer was “an officer of the Department of Social Security acting as such ...” **R(CS) 3/04**

Maintenance assessment under Child Support Act 1991 – whether competent to apply for a maintenance calculation under the Child Support, Pensions and Social Security Act 2000 **R(CS) 3/07**

Maintenance assessment – whether “parent with care” includes step-parent **R(CS) 6/03**

Reduced benefit direction – reasonable grounds for believing risk of harm or undue **distress** – whether objective or subjective test
Secretary of State for Work and Pensions v Roach [2006] EWCA Civ 1746 **R(CS) 4/07**

CONSOLIDATED SUBJECT INDEX

Variation – assets – circumstances in which an asset will produce income which takes it out of the exception in regulation 18(3)(d) of the Variations Regulations 2000 **MG v Child Maintenance and Enforcement Commission (CSM) [2010] UKUT 83 (AAC)**
[2010] AACR 37

Variation – costs of contact – costs of travel for purposes of overnight care of the child
R(CS) 1/08

Variation – dividend – period in respect of which the conditions in regulation 19(1A) of the Variations Regulations 2000 must be satisfied
Secretary of State for Work and Pensions v Wincott [2009] EWCA Civ 113 R(CS) 4/09

Variation – lifestyle inconsistent – exception where non-resident parent in receipt of working tax credit – whether credit must be lawfully payable
R(CS) 2/09

Variation – meaning of “qualifying child” – whether exclusion of costs of contact with child in France inconsistent with European Union law or European Convention on Human Rights
Child Maintenance and Enforcement Commission v NC (CSM) [2009] UKUT 106 (AAC)
[2010] AACR 1

Variation – procedure – relationship between maintenance calculation and variation decisions
R(CS) 5/06

Variation – whether tribunal can increase maintenance on just and equitable grounds
R(CS) 5/06

See also: Human rights

Jurisdiction

Revision and supersession

Tribunals

CONSOLIDATED SUBJECT INDEX

CLAIM

Claims for housing benefit and council tax benefit – failure to give required evidence or information – whether power to refuse to give decision on a claim **R(H) 3/05**

Claims for housing benefit and council tax benefit – required information – claimant’s partner not allowed recourse to public funds – whether partner subject to national insurance requirement as “any other person in respect of whom he is claiming benefit” **R(H) 7/06**

Date of claim where receipt delayed by mishandling of Royal Mail – *vires* of regulation 6(1) Claims and Payments Regulations – application of section 7 Interpretation Act 1978

Levy v Secretary of State for Work and Pensions [2006] EWCA Civ 890 **R(G) 2/06**

Effect of withdrawal of claims for housing benefit and council tax benefit **R(H) 2/06**

Housing benefit – advance claims – when regulation 72(11) applies to assist an advance claim to be considered under regulation 65(1) and (2) of the Housing Benefit (General) Regulations 1987 **R(H) 9/07**

Late claim – “could not reasonably have been expected to make the claim earlier” – objective standard – whether one or more of the specified circumstances must be the actual reason why claimant did not claim earlier **R 2/01 (IS)**

Late claim – extension of up to one month in prescribed circumstances – claimant who falls within prescribed category immediately before date of claim – whether earlier unreasonable delay within period of express claim prevents entitlement for later period of reasonable delay **R(IS) 6/04**

Late claim – “given information by an officer of the Department” – whether New Deal adviser is “an officer of the Department” – whether actual information must be given or failure to give information suffices – whether information must relate to the benefit claimed late **R 1/01 (IS)(T)**

Late claim – whether breach of regulation 4(5) Claims and Payments Regulations suspends time-limit for claim **R(IS) 4/07**

Prospective claim – whether Secretary of State entitled to disallow claim before renewal date **R(DLA) 4/05**

Refugee – backdated claim under regulation 21ZB of the Income Support (General) Regulations 1987 – whether notification to claimant’s solicitor is notification to claimant **Tkachuk v Secretary of State for Work and Pensions [2007] EWCA Civ 515** **R(IS) 4/07**

Renewal claims – whether a renewal claim for disability living allowance can be disallowed before the renewal date **R 2/05 (DLA)(T)**

Validity of posthumous claim **R(IS) 3/04**

Whether request for benefits in general terms can constitute claim for housing benefit **Novitskaya v London Borough of Brent and Secretary of State for Work and Pensions [2009] EWCA Civ 1260** **[2010] AACR 6**

See also: *Income*
Retirement pension

COMPENSATION RECOVERY

Benefit payable at different rates – whether part of benefit may be found to have been paid “otherwise than in respect of” the relevant accident **R(CR) 1/03**

Benefits awarded on the basis that the claimant was incapable of work – whether “paid ... in respect of” the relevant disease if the claimant was not actually incapable of work
R(CR) 2/02

Cause of payment of benefits – attribution where there have been two separate accidents
R(CR) 2/04

Cause of payment of benefits – deemed incapacity for work – effective cause of disablement – weight to be given to GP’s evidence
R(CR) 1/04

Cause of payment of benefits – whether compensator can assert that injury was caused in a different way from that asserted in claim
R(CR) 1/07

Claimant suffering from illnesses other than the relevant disease – whether benefits are recoverable when they would have been paid even if the relevant disease had not developed
R(CR) 3/03

Compensation paid for psychiatric illness caused by medical negligence – whether paid in consequence of an accident, injury or disease
R(CR) 4/03

Compensator’s appeal to tribunal after deducting amount of certificate of recoverable benefits from payment into court – scope of appeal
R(CR) 2/03

Industrial injuries benefits – whether necessarily “paid ... in respect of” the relevant accident
R(CR) 1/02

Injury said to be due partly to a pre-existing cause – whether benefit paid “in respect of” the relevant accident throughout the relevant period
R(CR) 1/01

Scope of appeal – deduction from compensation by compensator
R(CR) 2/04

Whether compensator’s liability should end as soon as injured person becomes capable of work
R 1/05 (CRS)

Whether legislation permits recovery of only a partial element of a relevant benefit paid to the injured person
R 1/06 (CRS)

See also: Tribunals

CONTRIBUTIONS AND CREDITS

Contributions – record-keeping and decision-making about graduated retirement contributions – whether responsibility of Secretary of State or Revenue – requirement for tribunal to consider evidence of contributions
R(P) 1/08

Which government department should decide a dispute about the application of the Earnings Factor Regulations – which tribunal should decide an appeal about such a dispute
R(IB) 1/09

*See also: European Union law
Jurisdiction
Tribunals*

CRIMINAL INJURIES COMPENSATION

See: Judicial review

CONSOLIDATED SUBJECT INDEX

DISABILITY LIVING ALLOWANCE

- Care component – ability to prepare a cooked main meal – correct approach to decision-making **R(DLA) 2/05**
- Care component – ability to prepare a cooked main meal – whether nausea relevant **R(DLA) 1/08**
- Care component and lower rate mobility component – meaning of “severely disabled physically or mentally” **R(DLA) 3/06**
- Care component – application of *Moyna* to the middle and higher rate care component – meaning of “frequent throughout the day” and “prolonged” **R(DLA) 5/05**
- Care component – child – comparison with child with normal requirements **R(DLA) 1/05**
- Care component – child under 16 – attention required whilst at school
Secretary of State for Work and Pensions v Hughes (a Minor) [2004] EWCA Civ 16
R(DLA) 1/04
- Care component – frequent attention in connection with bodily functions – assistance required with communication **R(DLA) 3/03**
- Care component – meaning of “continual supervision” **R(DLA) 10/02**
- Care component – payability – person in publicly funded accommodation – whether Mental Health Act 1983 is an enactment relating to a person under a disability **R(DLA) 6/04**
- Care component – refusal of medical treatment – whether care reasonably required **R(DLA) 10/02**
- Care component – renewal over age 65 – whether entitlement to lowest rate permissible following award of highest rate **R(DLA) 5/02**
- Care component – severe mental disablement – whether late development amounts to mental disablement **R(DLA) 1/05**
- Care component – whether ability to prepare a cooked main meal pre-supposes use of a low level oven – objective test of reasonableness **R 2/02 (DLA)**
- Care component – whether inability to prepare a cooked main meal on 1–3 days a week satisfies test – whether tribunals can properly reach different conclusions on the same facts – whether the meaning of words used in legislation is a question of law
Secretary of State for Work and Pensions v Moyna [2003] UKHL 44 **R(DLA) 7/03**
- Disablement – care component – roles of adjudicating authorities and medical authorities **R 2/04 (DLA)(T)**
- Disablement – care component – whether there must be free-standing finding of severe disablement **R(DLA) 10/02**
- Duration of award – whether any minimum period **R(DLA) 11/02**
- Higher rate mobility component – terminally ill claimant – whether deemed entitlement **R(DLA) 7/06**
- Mobility component – disruptive behaviour requiring another person to be present and watching over claimant when awake – whether requirement satisfied when claimant behind closed door **R(DLA) 9/02**

- Mobility component – inability or virtual inability to walk – meaning of physical disablement – extent to which physical symptoms resulting from a mental condition can be taken into account **R(DLA) 4/06**
- Mobility component – lower rate – disregard of ability to use routes which are familiar to claimant – whether consideration of that ability is prohibited when determining ability on unfamiliar routes **R(DLA) 2/08**
- Mobility component – lower rate – entitlement where claimant is impeded in walking because of fear or anxiety **R(DLA) 6/05**
- Mobility component – lower rate – guidance or supervision – “familiar” and “unfamiliar routes” – inability on familiar routes **R 4/04 (DLA)**
- Mobility component – lower rate – guidance or supervision – severe anxiety that is “a symptom of mental disablement” **R(DLA) 3/04**
- Mobility component – lower rate – relevance of the fact that the claimant did not walk in unfamiliar surroundings **R(DLA) 6/03**
- Mobility component – lower rate – “supervision and unfamiliar routes” **R 1/03 (DLA)**
- Mobility component – lower rate – the ability to drive is evidence of clear-headedness and competency which is relevant to the ability to walk on unfamiliar routes without guidance or supervision **R 1/07 (DLA)**
- Mobility component – lower rate – whether guidance or supervision also constituting attention or supervision for the purposes of the care component may be taken into account **R(DLA) 4/01**
- Mobility component – pre-lingually deaf – whether guidance or supervision arising from fear and anxiety may be considered **R(DLA) 4/01**
- Mobility component – severe behavioural problems – whether conditions relating to disruptive behaviour and “watching over” satisfied **R(DLA) 7/02**
- Mobility component – virtual inability to walk – onset of severe discomfort – effect of halts – relationship of pain and severe discomfort **R(DLA) 4/03**
- Mobility component – virtual inability to walk – severe discomfort even when not walking no bar to entitlement **R(DLA) 4/04**
- Suspension of payment – claimant residing in a care home – whether care home is either hospital accommodation or Part III accommodation **R(DLA) 2/06**

See also: Attention in connection with bodily functions

Claim

Human rights

Practice

Residence and presence conditions

Review

Revision and supersession

Tribunals

DISABILITY WORKING ALLOWANCE

See: Incapacity for work

DISABLEMENT BENEFIT

CONSOLIDATED SUBJECT INDEX

Assessment of disablement – aggregation of awards made pre-October 1986 – whether fresh claim/supersession necessary – whether aggregation compulsory **R(I) 4/03**

Assessment of disablement – aggregation – whether tribunal entitled to award aggregation for any period prior to the date of decision in the case which is the “relevant determination” under section 27 of the Social Security Act 1998 **R(I) 1/03**

Assessment of disablement – amputation of leg – measurement of stump **R(I) 4/04**

Assessment of disablement – prescribed degree of disablement – Schedule 2 to the Social Security (General Benefit) Regulations 1982 **R(I) 1/04**

See also: Review

Revision and supersession

DISCRIMINATION ON GROUND OF SEX

Council Directive 79/7/EEC – parents with shared care of child – indirect discrimination by linking of JSA child additions to receipt of child benefit – whether objectively justified
Hockenjos v Secretary of State for Work and Pensions [2004] EWCA Civ 1749
R(JSA) 2/05

Council Directive 79/7/EEC – parents with shared care of child – whether income-based JSA within scope of Directive
Hockenjos v Secretary of State for Social Security [2001] EWCA Civ 624 **R(JSA) 1/05**

Council Directive 79/7 EEC – whether male-to-female transgender person entitled to retirement pension at age 60
Richards v Secretary of State for Work and Pensions (C-423/04) **R(P) 1/07**

Council Directive 79/7/EEC – whether regulation 51(2)(c) of the Jobseeker’s Allowance Regulations 1996 discriminates on grounds of sex **R(JSA) 4/03**

European Union Law – woman over the age of 60 not entitled to incapacity benefit – whether breach of Directive 79/7 **R(IB) 5/04**

Incapacity benefit – whether unequal age conditions linked to different pension ages for men and women contrary to Directive 79/7 **R(IB) 5/04**

Jobseeker’s allowance – requirement that a claimant be available for employment for at least 40 hours per week – whether indirect discrimination contrary to the Sex Discrimination Act 1975 or Council Directive 79/7/EEC **R(JSA) 4/02**

Leave of absence granted to full-time student who was pregnant – whether direct discrimination contrary to Council Directive 79/7/EEC
Secretary of State for Social Security v Walter [2001] EWCA Civ 1913 **R(JSA) 3/02**

Pension rights of male-to-female transgender persons under Council Directive 79/7 – claim made before Gender Recognition Act 2004 came into force – claimant under 65 at date of claim **R(P) 1/09**

Pension rights of male-to-female transgender persons under Council Directive 79/7 – claimant in receipt of pension as man at date of claim – entitlement on basis of “deferment” **R(P) 2/09**

See also: Human rights

EUROPEAN UNION LAW

Conflict of laws – Article 13 of Regulation (EEC) 1408/71 EC rather than Article 1

determines the national legislation applicable – whether an entitlement to national insurance credits if established brings claimant within Article 13 of Regulation 1408/71 EC

Secretary of State for Work and Pensions v PS (IB) [2009] UKUT 226 (AAC)
[2010] AACR 14

Council Regulation (EEC) 1408/71, Article 10 – winter fuel payment claimed by retirement pensioner living in Spain – whether winter fuel payment is a supplement to a retirement pension
R(IS) 8/06

Discrimination on ground of nationality – dependent child resident in another EU state
Secretary of State for Work and Pensions v Bobezes [2005] EWCA Civ 111 R(IS) 6/05

Effective enjoyment of Community rights – time limits for claiming winter fuel payments following UK Commission agreement concerning application of Council Regulation (EEC) 1408/71

Secretary of State for Work and Pensions v Walker-Fox [2005] EWCA Civ 1441
R(IS) 3/06

Free movement – EU citizen leaving work to care for her husband who is not a EEA national – whether they retain rights of residence under Article 18(1) of the EC Treaty
R(IS) 4/09

Free movement of workers – discrimination by nationality
Collins v Secretary of State for Work and Pensions (C-138/02) [2006] EWCA Civ 376
R(JSA) 3/06

Free movement of workers – whether registration scheme for accession State nationals within permitted derogation from Regulation EEC/1612/68 – whether proportionate
Zalewska v Department for Social Development [2007] NICA 17 and [2008] UKHL 67
R 1/09 (IS)

Free movement – whether a former worker has a right of residence under Article 18(1) of the EC Treaty
Kaczmarek v Secretary of State for Work and Pensions [2008] EWCA Civ 1310
R(IS) 5/09

Free movement – whether an asylum-seeker is legally resident for the purposes of Article 16 of Directive 2004/38/EC
R(IS) 3/08

Free movement – whether a workseeker has a right of residence
R(IS) 8/08

Regulation (EEC) 1408/71 – whether state pension credit is a special non-contributory benefit which is not exportable

EC v Secretary of State for Work and Pensions (SPC) [2010] UKUT 95 (AAC)
[2010] AACR 39

Whether right to reside requirement breaches international treaty obligations – whether discriminatory contrary to Article 12 of the EC Treaty

Abdirahman and Ullosow v Secretary of State for Work and Pensions
[2007] EWCA 657
R(IS) 8/07

See also: Child support

Discrimination on ground of sex

Incapacity benefit

Income support

Jobseeker's allowance

Recovery of overpayment

Residence and presence conditions

CONSOLIDATED SUBJECT INDEX

EVIDENCE

- Admissibility of documents from matrimonial proceedings in child support appeals
R(CS) 5/06
- Evidence of children
R(DLA) 3/06
- Evidence of disablement produced after the date of the decision under appeal – whether admissible evidence of circumstances obtaining at the date of the decision
R(DLA) 2/01
- Evidence of disablement produced after the date of the decision under appeal – whether admissible evidence of circumstances obtaining at the date of the decision
R(DLA) 3/01
- Observations made by the tribunal at the hearing of an appeal
R(DLA) 8/06
- Onus of proof – offset under regulation 13 of the Social Security (Payments on account, Overpayments and Recovery) Regulations 1988
R(IS) 1/05
- Relevance of burden of proof to benefit claim
Kerr v Department for Social Development [2002] NICA 31 and [2004] UKHL 23
R 1/04 (SF)
- Whether fraud investigation report admissible to tribunal – right of both parties to an appeal to a fair trial and the production of relevant evidence
R 1/02 (DLA)
- X-ray evidence – whether included in prohibition of physical examination of a claimant
R(IB) 2/06

See also: Claim

Housing and council tax benefit

Review

Tribunals

FORFEITURE

- Claimant convicted of manslaughter on the ground of diminished responsibility – whether forfeiture rule applicable in all cases of manslaughter
R(FP) 1/05
- Whether conviction for soliciting to murder ousts jurisdiction to modify forfeiture rule – whether rule should be modified
R(FG) 1/04

FUNERAL PAYMENT

- Estranged family members – meaning of “equally close contact”
Kerr v Department for Social Development [2002] NICA 31 and [2004] UKHL 23
R 1/04 (SF)
- Estrangement of immediate adult family members – minor’s capacity to accept responsibility
R 1/02 (SF)
- Four immediate family members of whom only one is not in receipt of qualifying benefit – whether claimant disentitled
R(IS) 1/02
- Mother of deceased child a minor – funeral directors refusing to contract with mother – claim by grandmother – whether grandmother able to claim as a “close friend” of deceased child
R(IS) 7/04
- Qualifying benefit – whether award of alternative maximum council tax benefit required

R(IS) 11/05

Whether cost of coffin provided by funeral director is a cremation fee – whether discriminatory if coffin provided by cremation authorities in some areas but not others

R(IS) 10/04

See also: Human rights

HOUSING AND COUNCIL TAX BENEFIT

Council tax benefit – dwelling – sole or main residence **R(H) 3/08**

Council tax benefit – termination of entitlement for failure to provide information following suspension – information requirement framed by reference to a document which did not exist

R(H) 1/09

Council tax benefit – whether regulation linking the claimant’s entitlement to the concept of “occupying a dwelling as his home” was authorised by the primary legislation **R(H) 4/05**

Housing and council tax benefit – dwelling normally occupied as claimant’s home – new tenancy – furniture moved into home while claimant in hospital **R(H) 9/05**

Housing and council tax benefit – liability to make payments – income as capital **R(H) 5/05**

Housing and council tax benefit – occupation of the home – full-time student
Stroud District Council v JG [2009] UKUT 67 (AAC) **R(H) 8/09**

Housing and council tax benefit – whether “gross income” means incapacity benefit actually received after deduction by virtue of section 30DD of the SSCBA 1992 or the full notional rate **R(H) 2/09**

Housing and council tax benefit – whether reduction in incapacity benefit because of receipt of occupational pension is “any deduction by way of recovery” **R(H) 2/09**

Housing benefit – delay moving into dwelling where delay was necessary in order to adapt dwelling to meet disablement needs – meaning of “adapt” **R(H) 4/07**

Housing benefit – dwelling normally occupied as claimant’s home – entry into residential accommodation on a trial basis – position where residence becomes permanent
Secretary of State for Work and Pensions v Selby District Council and another [2006] EWCA Civ 271 **R(H) 4/06**

Housing benefit – dwelling occupied as the home – whether two tenancies on different properties can constitute a single dwelling
London Borough of Hackney v GA [2008] UKUT 26 (AAC) **R(H) 5/09**

Housing benefit – eligible payments – meaning of “long tenancy” **R(H) 3/07**

Housing benefit – eligible payments – mooring charges – meaning of “houseboat” **R(H) 9/08**

Housing benefit – liability to make payments in respect of a dwelling – claimant previously owned dwelling – relevance of perceptions **R(H) 6/07**

Housing benefit – liability to make payments in respect of a dwelling – meaning of “partner” **R(H) 6/04**

Housing benefit – liability to make payments in respect of a dwelling – payments by an owner – whether a person with legal title but no beneficial interest is an “owner”
Burton v New Forest District Council [2004] EWCA Civ 1510 **R(H) 7/05**

CONSOLIDATED SUBJECT INDEX

- Housing benefit – liability to make payments in respect of a dwelling – payments by an owner – whether freeholder of a dwelling subject to a long lease at a low rent is the “owner” of the dwelling **R(H) 8/07**
- Housing benefit – liability to make payments in respect of a dwelling – payments to former partner – whether in respect of dwelling previously occupied as a couple – whether local authority bound by decision awarding JSA to claimant and wife as a couple **R(H) 9/04**
- Housing benefit – liability to make payments in respect of a dwelling – whether statutory tenancy necessarily on a commercial basis **R(H) 10/05**
- Housing benefit – liability to make payments in respect of a dwelling – whether tenancy agreement is a sham **R(H) 3/03**
- Housing benefit – liability to make payments in respect of a dwelling – whether tenancy on a commercial basis **R(H) 6/04**
- Housing benefit – liability to make payments in respect of a dwelling – whether tenancy on a commercial basis – findings of fact **R(H) 1/03**
- Housing benefit – maximum housing benefit – pre-2 January 1996 regulation 11 Housing Benefit (General) Regulations 1987 – incapacity for work – basis of assessment – by whom to be determined **R(H) 3/06**
- Housing benefit – maximum housing benefit – pre-2 January 1996 regulation 11 Housing Benefit (General) Regulations 1987 – availability of suitable cheaper accommodation – burden of proof **R(H) 2/05**
- Housing benefit – new tenancy – conditions of entitlement first satisfied in second week of tenancy – whether benefit to be paid from second or third week of tenancy
Secretary of State for Work and Pensions v Robinson and another [2004] EWCA Civ 342 **R(H) 4/04**
- Housing benefit – occupation of the home and temporary absence – convicted prisoner serving 15 weeks in prison – meaning of “undergoing medical treatment in accommodation other than residential accommodation”
Torbay BC v RF (HB) [2010] UKUT 7 (AAC) **[2010] AACR 26**
- Housing benefit – occupation of the home – whether child at university to be treated as occupier of parent’s home
SK v South Hams DC (HB) [2010] UKUT 129 (AAC) **[2010] AACR 40**
- Housing benefit – payment to landlord – benefit paid to tenant where duty to pay to landlord – whether possible to pay to landlord for same period – effect of offsetting provisions **R(H) 2/08**
- Housing benefit – payment to landlord – scope of appeal by landlord **R(H) 1/08**
- Housing benefit – payment to landlord – whether local authority has power to suspend payment pending decision whether to pay to landlord **R(H) 1/08**
- Housing benefit – rent restrictions – exemption where housing-related support provided by person “acting on behalf of landlord” – support provided to the tenant by a third party who acts on behalf of the landlord in some respect other than providing support **R(H) 6/08**
- Housing benefit – rent restrictions – exemption where housing-related support provided – relevance of support available to tenants generally but not taken advantage of by claimant **R(H) 4/09**
- Housing benefit – rent restrictions – exemption where housing-related support provided –

whether accommodation can be “provided” by a body other than the landlord
Chorley Borough Council v IT (HB) [2009] UKUT 107 (AAC) [2010] AACR 2

Housing benefit – rent restrictions – exemption where housing-related support provided – whether “care, support or supervision” is provided by the landlord to the tenant where the landlord is not the main provider of support – whether the support must be more than *de minimis* **R(H) 7/07**

Housing benefit – rent restrictions – exemption where housing-related support provided – whether provider “acting on behalf of landlord” **R(H) 2/07**

Housing benefit – rent restrictions – exemption where housing-related support provided – whether undertaking maintenance can be the provision of support
Chorley Borough Council v IT (HB) [2009] UKUT 107 (AAC) [2010] AACR 2

See also:

Capital and income

Claim

Human rights

Jurisdiction

Recovery of overpayment

Residence and presence conditions

Revision and supersession

HUMAN RIGHTS

Application of Human Rights Act 1998 where Secretary of State’s decision before October 2000 and tribunal hearing afterwards **R(CS) 6/03**

Article 14 and Article 8 of the Convention – whether men whose wives died before 9 April 2001 could claim widow’s benefit **R(G) 2/04**

Article 14 – whether denial of income support to pregnant student indirect discrimination
CM v Secretary of State for Work and Pensions [2009] UKUT 43 (AAC) **R(IS) 7/09**

Articles 9 and 14 – freedom of religion and indirect discrimination – whether in deciding if tenancy was on a commercial basis factors relating to claimants’ religion should be left out of account – whether housing benefit is a possession for purposes of Article 1 of Protocol 1 – whether regulation 7(1A) of the Housing Benefit Regulations was *ultra vires*
Campbell and others v South Northamptonshire District Council and another [2004] EWCA Civ 40 **R(H) 8/04**

Capital disposed of by person who later became claimant’s partner – whether counting as notional capital of disabled claimant in breach of Article 8 of the Convention.
R (Hook) v Social Security Commissioner and Secretary of State for Work and Pensions [2007] EWHC 1705 (Admin) **R(IS) 7/07**

Child support maintenance assessment – whether differential treatment of same-sex couples and heterosexual couples discriminatory contrary to Article 14 of the Convention
Secretary of State for Work and Pensions v M [2006] UKHL 11 **R(CS) 4/06**

Covert observation and videotaping of claimant – whether a breach of the right to respect for private and family life – whether admission of the evidence a breach of the right to a fair trial **R(DLA) 4/02**

Discrimination against former member of a heterosexual relationship – whether facts fell within the ambit of Article 8 – whether discrimination could be justified – whether claimant entitled to any remedy
Langley v Bradford Metropolitan District Council and another [2004] EWCA Civ 1343 **R(H) 6/05**

CONSOLIDATED SUBJECT INDEX

- Discrimination on ground of sex under Article 14 – whether man between 60 and 65 more likely to be compelled to draw on personal pension scheme than a woman – whether comparator group in relatively similar situation exists **R(IS) 12/04**
- Exclusion from housing benefit because close relative of and living in same dwelling as landlord – whether breach of Article 14 of the Convention **R(H) 5/06**
- Funeral payment – whether condition that funeral must take place in UK discriminatory contrary to Article 14 of the Convention.
Esfandiari and others v Secretary of State for Work and Pension [2006] EWCA Civ 282
R(IS) 11/06
- Funeral payment – whether regulation restricting payments to funerals within the United Kingdom is *ultra vires* or contrary to the Human Rights Act 1998 **R(IS) 3/02**
- Non-disregard of death benefits held in trust for children by Court – whether breach of Article 8 and Article 1 of the First Protocol
McAuley v Department for Social Development [2001] NICA 15 **R 3/01 (IS)**
- Recovery of overpayment – “fair and public hearing within a reasonable time”– whether delay by Secretary of State in acting on information may be taken into account **R(IS) 2/04**
- Recovery of overpayment – “fair and public hearing within a reasonable time” – whether proceedings criminal within Article 6 – when dispute starts for purposes of determining whether delay unreasonable **R(IS) 1/04**
- Refusal to revise on the ground of official error a decision made more than 13 months before the refusal – no right of appeal against such refusal – whether absence of a right of appeal contrary to Article 6 or 14 of the Convention **R(IS) 15/04**
- Right to income under a personal pension scheme taken into account as notional income – whether interference with peaceful enjoyment of possessions under Article 1 of Protocol 1
R(IS) 12/04
- Sure Start Maternity Grant – whether exclusion of person caring for child under residence order was discrimination contrary to Article 14 of the Convention
Francis v Secretary of State for Work and Pensions [2005] EWCA Civ 1303 **R(IS) 6/06**
- Tribunal decision before 2 October 2000 – whether Convention rights can be relied on
R 4/01 (IS)(T)
- Unmarried partner of deceased ex-serviceman – whether conditions for entitlement to service pension contrary to Article 14 of the Convention
Ratcliffe v Secretary of State for Defence [2009] EWCA Civ 39 **R(AF) 2/09**
- Upper age limit for entitlement to mobility component – whether discrimination contrary to Article 14 of the Convention
NT v Secretary of State for Work and Pensions [2009] UKUT 37 (AAC) **R(DLA) 1/09**
- Whether a tribunal or Commissioner had to apply Article 6 of the Convention even where the decision under appeal was made prior to the commencement of the Human Rights Act 1998
R(IS) 6/04
- Whether contrary to Article 6 of the Convention to exclude rights of appeal against decisions as to whether and when claims made in the prescribed manner **R(IS) 6/04**
- Whether difference in treatment of polygamously married widows amount to discrimination contrary to Article 14 of the Convention **R(P) 2/06**

CONSOLIDATED SUBJECT INDEX

Whether exclusion from entitlement to severe disability premium where claimant residing with landlord contrary to Article 14 of the Convention **R(IS) 12/06**

Whether failure to make regulations allowing backdating of award of state pension credit to successful asylum-seeker in breach of Article 14 of European Convention on Human Rights read with Article 1 of Protocol 1 **R(PC) 1/08**

Whether limit of three months on backdating of claim for retirement pension constitutes deprivation of possessions contrary to Article 1 of the First Protocol to the Convention **R(P) 1/06**

Whether mandatory time limit for written notice of permitted work breaches Article 1 to the First Protocol of the Convention **R 1/07 (IB)**

Whether refusal of departure direction for contact costs in breach of the Convention
R (Qazi) v Secretary of State for Work and Pensions [2004] EWHC 1331 (Admin)
R(CS) 5/04

Whether 13-month time limit for bringing an appeal is in breach of Article 6
Denson v Secretary of State for Work and Pensions [2004] EWCA Civ 462 **R(CS) 4/04**

Whether treatment of parent not in receipt of child benefit as non-resident parent in breach of Article 14 of the Convention **R(CS) 1/09**

See also: Bereavement benefits
Child support
Retirement pension

INCAPACITY BENEFIT

Council Regulation (EEC) 1408/71 – whether periods of receipt of sickness benefit in another member state count towards long-term incapacity benefit **R(IB) 1/02**

Reduction for occupational pension – meaning of “pension payment ... payable” – whether amount of pension gross or net of income tax to be used in calculation **R(IB) 3/05**

Reduction of incapacity benefit for pension payments – part of occupational pension paid direct to former wife under court order – whether “payable to” claimant **R(IB) 1/04**

See also: Discrimination on ground of sex
Incapacity for work
Income

INCAPACITY FOR WORK

All work test – bending and kneeling – meaning of “cannot either, bend or kneel, or bend and kneel ...” **R(IB) 3/02**

All work test – contended descriptors **R 3/01 (IB)(T)**

All work test – holding on to something for fear of injury – whether “cannot rise from sitting to standing without holding on to something” **R 1/01 (IB)(T)**

All work test – interrelation of the activities of lifting and carrying and manual dexterity – effect of exclusion in activity 8 **R(IB) 4/03**

All work test – treating claimant as incapable of work – exceptional circumstances – whether there was “medical evidence” that claimant required an operation **R 4/01 (IB)**

CONSOLIDATED SUBJECT INDEX

- All work test – whether squatting is bending or kneeling
Purdy v Social Security Commissioners **R(IB) 2/02**
- Deemed incapacity – claim for period starting within six months of previous adverse decision
– whether days within that period after expiry of six months to be treated as days of
incapacity **R(IB) 8/04**
- Deemed incapacity – retrospective medical evidence produced after date of decision
R(IS) 4/04
- Effect of amending regulation following misleading reference to the Social Security Advisory
Committee – validity of supersession following personal capability assessment **R(IB) 5/05**
- Exceptional circumstances – meaning of “previously undiagnosed ... condition”
R 1/04 (IB)(T)
- Exceptional circumstances – misleading reference of amending regulation to Social Security
Advisory Committee – invalidity of amendment
Howker v Secretary of State for Work and Pensions and another
[2002] EWCA Civ 1623 **R(IB) 3/03**
- Exceptional circumstances – whether test of substantial risk to be evaluated against specific
employments or in the abstract
Charlton v Secretary of State for Work and Pensions [2009] EWCA Civ 42 **R(IB)2/09**
- Failure to attend a medical examination – whether burden of proof that notice of the
examination had been sent lies on the Secretary of State **R(IB) 2/01**
- Linking periods of incapacity for work separated by days of entitlement to disability working
allowance – whether claimant entitled to disability working allowance for the week when last
engaged in remunerative work **R(S) 1/02**
- Medical examination – claimant not attending cancelled examination – whether “fails ... to
attend ... an examination” **R(IB) 1/01**
- Personal capability assessment – activity 13: continence – whether person wearing an
ileostomy bag has “no voluntary control over bowels” **R(IB) 4/04**
- Personal capability assessment – activity 14: “remaining conscious” – whether amendment to
definition of activity validly made **R(IB) 3/04**
- Personal capability assessment – adequacy of report by non-specialist examining doctor
R 2/04 (IB)(T)
- Personal capability assessment – electronic medical report – whether signature required
R(IB) 7/05
- Personal capability assessment – exemptions– severe mental illness stabilised by medication
R(IB) 1/08
- Personal capability assessment – “lifting and carrying by the use of the upper body and arms”
– whether ability to walk with relevant object required **R(IB) 5/03**
- Personal capability assessment – manual dexterity – descriptors 7(b) and (f) “Cannot turn a
sink tap or the control knobs on a cooker ...” – meaning of “or” **R 1/03 (IB)**
- Personal capability assessment – meaning of “frequently distressed at some time of the day
due to fluctuation of mood” **R 4/02 (IB)**
- Personal capability assessment – standing – ability to stand with palms of hands on table

R(IB) 5/03

Personal capability assessment – variable conditions – “frequently distressed at some time of the day due to fluctuation of mood” – whether claimant had to be distressed every day

R 1/02 (IB)(T)

Personal capability assessment – whether claimant who presses on seat of chair in order to get up rises “ ... from sitting to standing without holding on to something”

R(IB) 2/03

Personal capability assessment – whether “standing” means standing stock still

R(IB) 6/04

Treated as capable of work – application of regulation 16(3) of the Social Security (Incapacity for Work) (General) Regulations 1995

R(IB) 1/07

Treating as capable of work – whether provision of meals and linen to paying guests “domestic tasks carried out in his own home”

R(IB) 1/03

Treating as capable of work – work undertaken on the advice of a doctor

R 2/02 (IB)

Validity of amendments to the Incapacity for Work (General) Regulations (Northern Ireland) 1995 – applicability in Northern Ireland of the decision of the Court of Appeal in England and Wales in *Howker v Secretary of State for Work and Pensions and the Social Security Advisory Committee* (2002)

(R(IB) 3/03)

R 1/05 (IB)(T)

See also: Revision and supersession

INCOME

Bankrupt – whether annuity which had vested in the trustee in bankruptcy was actual income – whether annuity notional income

R(IS) 4/02

Calculation of exempt earnings for entitlement to incapacity benefit – whether Computation of Earnings Regulations apply

Secretary of State for Work and Pensions v Doyle [2006] EWCA Civ 466

R(IB) 1/06

Calculation of income – self employed earnings – deductible expenses – whether repayments of capital on a loan used to purchase a replacement car are deductible – whether repayments of capital and interest apportionable in accordance with proportion of business use

R(H) 5/07

Calculation of income – self-employed earnings – drawings made from capital of a partnership

AR v Bradford Metropolitan District Council [2008] UKUT 30 (AAC)

R(H) 6/09

Calculation of income – “total taxable profits” of self-employed trader – whether to be calculated net of capital allowances

R(DLA) 7/06

Carer’s allowance – computation of earnings – whether potential PAYE liability is deductible when deciding whether claimant gainfully employed

SJ v Secretary of State for Work and Pensions [2009] UKUT 23 (AAC)

R(G) 1/09

Claimant receiving payments under an insurance policy providing for income protection in case of ill health – whether any disregard allowable

R(IS) 13/01

Computation of earnings – notional earnings – whether regulation 4(2) of the Computation of Earnings Regulations 1996 *ultra vires* – whether actual earnings or contractual entitlement under the National Minimum Wage Act 1998 to be taken into account

R(IB) 7/03

Computation of Earnings Regulations – treating as capable of work – calculation of earnings from provision of board and lodging accommodation

R(IB) 3/07

CONSOLIDATED SUBJECT INDEX

Computation of Earnings Regulations – whether accrued holiday pay “payable in respect of a period” – whether it is “earnings of the same kind” as normal earnings and to be calculated in the same way

Cotton v Secretary of State for Work and Pensions [2009] EWCA 1333

[2010] AACR 17

Councillor’s allowance – income tax and national insurance contributions – whether deductible expenses

R(IB) 3/01

Early retirement pension taken under the NHS Pension Scheme following a personal injury – whether to be disregarded for income support purposes

Malekout v Secretary of State for Work and Pensions [2010] EWCA Civ 162

[2010] AACR 28

Earnings and other income – whether reduction in incapacity benefit because of receipt of occupational pension is “any deduction by way of recovery”

R(H) 2/09

Part of claimant’s occupational pension paid to his former wife under an attachment of earnings order – whether “income” of the claimant

R(IS) 4/01

Payments of structured settlement annuities from personal injury damages – whether capital treated as income

Beattie v Secretary of State for Social Security [2001] EWCA Civ 498

R(IS) 10/01

Payments under pension annuity policy applied to benefit of claimant’s creditors by virtue of Insolvency Act 1986 – whether such payments notional income

R(IS) 2/03

State retirement pension paid gross of income tax – whether income should be computed net of tax

R(IS) 4/05

Student loan to part-time student – whether to be treated as income – whether to be so treated even if not properly paid

R(JSA) 4/04

Whether a loan is income

R(H) 8/08

Whether a loan is income – whether overpayments in consequence of misrepresentation

Morrell v Secretary of State for Work and Pensions [2003] EWCA Civ 526

R(IS) 6/03

Whether on-line application for tax credit constitutes a claim

R(IS) 3/05

Whether sums paid to a claimant by his spouse as a reward for care services provided by him are to be taken into account as household income for benefit purposes

Casewell v Secretary of State for Work and Pensions [2008] EWCA Civ 524

R(IS) 7/08

See also: Child support

Human rights

Incapacity benefit

INCOME SUPPORT AND STATE PENSION CREDIT

Applicable amount – claimant temporarily in a residential care home while his wife was in receipt of attendance allowance – whether applicable amount to include an amount representing a severe disability premium

R(IS) 9/02

Applicable amount – higher pensioner premium – entitlement to qualifying benefit ceased on attaining pensionable age – meaning of “remained continuously entitled to income support”

R(IS) 7/02

Applicable amount – person from abroad – habitual residence – British citizen originally resident in Cyprus coming to the United Kingdom – whether completion of an appreciable period of residence is required – whether ECJ judgment in *Swaddling* applicable to a domestic law case

Gingi v Secretary of State for Work and Pensions [2001] EWCA Civ 1685 R(IS) 5/02

Applicable amount – person from abroad – habitual residence – European Union national – Dutch national settled in the United Kingdom to live near family carrying out voluntary work and receiving services – whether a “worker” for the purpose of Council Directive 68/360/EEC – whether a right to reside pursuant to Council Directive 73/148/EEC

R(IS) 11/01

Applicable amount – person from abroad – whether sponsor’s undertaking relates to grant of leave on re-entry to the United Kingdom – whether Social Security (Persons from Abroad) (Miscellaneous Amendments) Regulations 1996 *ultra vires*

Shah v Secretary of State for Social Security [2002] EWCA Civ 285 R(IS) 2/02

Applicable amount – severe disability premium – exclusion from entitlement where claimant residing with landlord – meaning of “residing with”

R(IS) 12/06

Applicable amount – severe disability premium – whether non-dependant normally residing with claimant

ST v Secretary of State for Work and Pensions (IS) [2009] UKUT 269 (AAC)

[2010] AACR 23

Asylum seeker – break in entitlement after Social Security (Persons from Abroad) Miscellaneous Amendments Regulations 1996 came into force – whether transitional protection applies to fresh claim

Yildiz v Secretary of State for Social Security [2001] EWCA Civ 309 R(IS) 9/01

Housing costs – claimant’s husband charged with offences against children and bailed to another address – whether claimant “abandoned” by him

Secretary of State for Work and Pensions v W [2005] EWCA Civ 570 R(IS) 9/05

Housing costs – “deferred interest” scheme – whether capitalised interest a qualifying loan

R(IS) 14/01

Housing costs – former partner’s business loans secured on home but claimant not continuously living there after former partner left – whether to be treated as if taken out for the purpose of “acquiring an interest in the dwelling”

Ewens v Secretary of State for Social Security [2001] EWCA Civ 270 R(IS) 8/01

Housing costs – ineligible service charges – calculation of proportion of salary costs attributable to provision of accommodation – standard of evidence required

R(PC) 1/07

Housing costs – ineligible service charges – calculation of proportion of salary costs attributable to provision of accommodation – whether contribution to reserve fund for future maintenance of building ineligible as “amount for repairs and improvements”

R(IS) 2/07

Housing costs – interest on qualifying loans – loan taken out for one qualifying purpose but used for another – whether eligible

R(IS) 5/06

Housing costs – move to more expensive property – whether the test that change of dwelling was made solely by reason of the need to provide separate sleeping accommodation for children of different sexes be applied objectively or subjectively – whether the provision is *ultra vires*

Saleem v Secretary of State for Social Security [2001] EWCA Civ 69 R(IS) 5/01

Housing costs – partner’s behaviour caused claimant to leave the matrimonial home – whether amounts to “abandonment”

R(IS) 2/01

CONSOLIDATED SUBJECT INDEX

Housing costs – service charges – supersession of award of state pension credit after estimated service charges finalised **R(PC) 2/08**

Housing costs – whether loan incurred during a period between periods of entitlement to income support – whether a period in respect of which claimant would be entitled to income support if housing costs were allowable must be treated as a period of entitlement **R(IS) 2/09**

Housing costs – whether loan taken out “to acquire alternative accommodation more suited to the special needs of a disabled person” **R(IS) 12/08**

Housing costs – whether paragraph 4(7)–(11) of Schedule 3 to the Income Support (General) Regulations 1987 is subject to paragraph 11(5) **R(IS) 1/07**

Housing costs – whether transitional add back reduced only by increases in housing costs above October 1995 level
Arathoon v Secretary of State for Work and Pensions [2005] EWCA Civ 942
R(IS) 14/05

Prescribed category of person – care for another person for less than 35 hours per week – whether “substantially engaged in caring” **R(IS) 8/02**

Prescribed category of person – claimant found capable of work – duty of the Secretary of State to consider all prescribed categories – correct approach to category of “disabled worker” **R(IS) 10/05**

Prescribed category of person – person appealing against incapacity for work decision – whether entitled to income support for period between date of incapacity decision and date of appeal **R(IS) 2/05**

Prescribed category of person – person looking after child whose parent is ill – whether care arrangement must be temporary **R(IS) 11/08**

Prescribed category of person – *vires* of requirement under regulation 15 that claimant must be in receipt of child benefit to qualify as lone parent **R 1/03 (IS)(T)**

*See also: Capital
Income
European Union law*

INDUSTRIAL DISEASE

Date of onset **R(I) 5/04**

Date of onset – whether determination for disablement benefit binding on subsequent claim for disablement benefit or reduced earnings allowance
Secretary of State for Work and Pensions v Whalley [2003] EWCA Civ 166 **R(I) 2/03**

Date of onset – whether determination for disablement benefit is conclusive for reduced earnings allowance **R(I) 2/04**

Prescribed disease A10 (occupational deafness) – types of audiometry test **R(I) 6/02**

Prescribed disease A11 (vibration white finger) – assessment of disablement **R(I) 2/06**

Prescribed disease A11 (vibration white finger) – diagnosis **R(I) 5/04**

Prescribed disease A11 (vibration white finger) – diagnosis – circumferential blanching – whether disease is due to employment **R(I) 3/04**

- Prescribed disease A11 (vibration white finger) – diagnosis question – whether blanching necessary **R(I) 1/02**
- Prescribed disease A11 (vibration white finger) – forestry worker using hand-held chain saws to carry out tree maintenance in city – whether hand-held chain saws used “in forestry”
Secretary of State for Social Security v Davies [2001] EWCA Civ 105 R(I) 2/01
- Prescribed disease A11 (vibration white finger) – prescribed occupation – whether percussive tool used in the bedding industry a “metal-working tool”
Secretary of State for Work and Pensions v Westgate [2006] EWCA Civ 725 R(1) 1/06
- Prescribed disease A11 (vibration white finger) – whether disability for assessment purposes limited to blanching **R(I) 3/02**
- Prescribed disease A12 (carpal tunnel syndrome) – scissors and wire cutters not containing their own source of vibration but transmitting vibration from an external source – whether hand-held vibrating tools
Janicki v Secretary of State for Social Security R(I) 1/01
- Prescribed disease A12 (carpal tunnel syndrome) – whether a particular degree of flexion required
FR v Secretary of State for Work and Pensions [2008] UKUT 12 (AAC) R(I) 1/09
- Prescribed disease D1 (pneumoconiosis) – diagnosis after death of claimant – medical terminology **R(I) 3/03**
- Prescribed disease D4 (allergic rhinitis) – operation of regulation 4 of the Social Security (Industrial Injuries) (Prescribed Diseases) Regulations 1985 **R(I) 7/02**
- Prescribed disease D7 (occupational asthma) – meaning of “any other sensitising agent” **R(I) 8/02**

INDUSTRIAL INJURY

- Industrial accident – cardiac arrest at work caused by stress – whether necessary to show that injury resulted from a separate external event
Secretary of State for Work and Pensions v Scullion [2010] EWCA Civ 310 [2010] AACR 29

INVALID CARE ALLOWANCE

See: Carer’s allowance

JOBSEEKER’S ALLOWANCE

- Availability for employment – claimant detained in police custody – whether a reasonable restriction “in the light of his physical or mental condition”
Secretary of State for Social Security v David R(JSA) 3/01
- Availability for employment – whether claimant is available if actual pattern of availability is more restrictive than pattern recorded in jobseeker’s agreement – variation of jobseeker’s agreement with retrospective effect **R(JSA) 2/07**
- Availability for work – failure to attend interview – non-receipt of notification of interview sent by post **R(JSA) 1/04**
- Availability for work – failure to attend Jobcentre and provide signed declaration – time at which entitlement is to cease – evidence subsequently produced that conditions of entitlement continued to be satisfied – whether grounds for revision of the decision to terminate the

CONSOLIDATED SUBJECT INDEX

- award **R(JSA) 2/04**
- Availability for work – failure to attend Jobcentre and provide signed declaration – time at which entitlement is to cease – meaning of “evidence which shows that he continues to be entitled to a jobseeker’s allowance”
Ferguson v Secretary of State for Work and Pensions [2003] EWCA Civ 53
R(JSA) 6/03
- Availability for work – failure to attend training course – whether late arrival at course amounts to non-attendance **R(JSA) 2/06**
- Availability for work – jobseeker’s agreement – claimant refusing to apply for work of a type she did not agree to “look for” – whether availability restricted to that kind of work – whether good cause for refusing to apply for other types of work
HS v Secretary of State for Work and Pensions (JSA) [2009] UKUT 177 (AAC)
[2010] AACR 10
- Calculation of earnings of self-employed earner – seasonal worker – whether “gainfully employed” during the “off” season **R(JSA) 1/03**
- Contribution-based jobseeker’s allowance – annual compensation payments following redundancy – whether periodical payments under an occupational pension scheme **R(JSA) 2/01**
- Contribution-based jobseeker’s allowance – annual compensation payments from employer following redundancy – whether periodical payments under an occupational pension scheme **R(JSA) 1/01**
- Contribution-based jobseeker’s allowance – calculation and attribution of earnings – whether earnings of part-time casual supply teacher to be disregarded in period of non-employment **R(JSA) 8/03**
- Contribution-based jobseeker’s allowance — calculation and attribution of earnings – whether term-time worker was “engaged in part-time employment” during “school holidays or similar vacations” **R(JSA) 2/03**
- Contribution-based jobseeker’s allowance – monthly contractual compensation payments for redundancy – whether “pension payments” **R(JSA) 6/02**
- Failure to comply with jobseeking conditions – prescribed period for benefit sanction – whether “preceding 12 months” calculated from date of determination or date of relevant conduct
Secretary of State for Work and Pensions v JB (JSA) [2010] UKUT 4 (AAC)
[2010] AACR 25
- Recoupment of jobseeker’s allowance from employment tribunal awards – whether amount of recoupment could be reduced by working families’ tax credit which the claimant would have received had he not been dismissed **R(JSA) 3/03**
- Refusal to accept place on employment programme operated by private company – “conscientious objection sincerely held” – whether state of mind could be regarded as good cause for refusal **R(JSA) 7/03**
- Remunerative work – averaging of hours worked during a recognisable cycle of work – how public holidays are to be taken into account in the calculation **R(JSA) 3/04**
- Remunerative work – calculation and attribution of holiday pay on termination of part-time employment – whether days of holiday pay to be taken consecutively or attributed to days of claimant’s working week **R(JSA) 1/06**

Remunerative work – indefinite contract with express provision for employment during university terms but not vacations – whether cycle of work established from commencement of contract **R(JSA) 5/02**

Remunerative work – self-employed claimant having had a long period without work – whether engaged in remunerative work
JC v Secretary of State for Work and Pensions [2008] UKUT 40 (AAC) R(JSA) 1/09

Remunerative work – self-employed seasonal worker – whether cycle of work includes the “off” season **R(JSA) 1/03**

Remunerative work – term-time workers – whether “engaged in remunerative work” during school holidays or similar vacations **R(JSA) 5/03**

Seasonal casual employees – whether engaged in a cycle of work for the whole calendar year **R(JSA) 1/07**

Student at University studying for examinations of professional body – whether course abandoned **R(JSA) 2/02**

Student – claimant on modular course – whether full-time student
McComb v Department for Social Development [2001] NICA 11 R 1/01 (JSA)

Voluntary unemployment – whether just cause for leaving stop-gap employment **R(JSA) 1/08**

See also: Capital

Discrimination on ground of sex

Income

Jurisdiction

Residence and presence conditions

JUDICIAL REVIEW

Judicial review – approach to be taken by Commissioners in considering applications for leave to appeal – whether Commissioner’s refusal of leave should be reduced as erroneous in law

Mooney (Petition for Judicial Review of a decision of a Social Security Commissioner) R(DLA) 5/04

Judicial review in Scotland – application for judicial review of decisions of the First-tier Tribunal (Social Entitlement Chamber) under the Criminal Injuries Compensation Scheme – whether application to be transferred to the Upper Tribunal

Sharon Currie (Petition for Judicial Review of decisions of the First-tier Tribunal) [2009] SOH Civ 45 [2010] AACR 8

Scope of judicial review of refusal of permission to appeal by Social Security Commissioner
R (Wiles) v Social Security Commissioner and another [2010] EWCA Civ 258 [2010] AACR 30

Whether Upper Tribunal’s judicial review jurisdiction should be used to provide interim relief pending decision of First-tier Tribunal in special educational needs case

R (JW through DW as litigation friend) v The Learning Trust (SEN) [2009] UKUT 197 (AAC) [2010] AACR 11

See also: Tribunals

CONSOLIDATED SUBJECT INDEX

JURISDICTION

- Collateral challenge to High Court order – tribunal’s jurisdiction to hear appeal not referred by local authority **R(H) 1/07**
- Commissioner – failure of legally qualified panel member to set aside tribunal decision as required by Article 14(3) of the Social Security (Northern Ireland) Order 1998 **R 1/04 (DLA)**
- Commissioners’ jurisdiction – procedural decision made by legally qualified panel member – whether there is a right of appeal to a Commissioner
Secretary of State for Work and Pensions v Morina and Borrowdale [2007] EWCA Civ 749 **R(IS) 6/07**
- Commissioners’ jurisdiction – procedural decision made by legally qualified panel member – whether there is a right of appeal to a Commissioner – scope of *Secretary of State for Work and Pensions v Morina and Borrowdale* **R(IS) 6/09**
- Commissioners’ jurisdiction – whether a tribunal’s breach of a procedural requirement necessarily renders its decision erroneous in point of law **R(DLA) 3/08**
- Commissioner – whether appeal to a Commissioner on a recoupment issue has been removed **R(JSA) 3/03**
- Departure direction – whether tribunal has jurisdiction when formula assessment is superseded and appealed **R(CS) 9/02**
- Judicial review by Upper Tribunal in Scotland – whether competent to make application direct to the Upper Tribunal
EF v Secretary of State for Work and Pensions [2009] UKUT 92 (AAC) **R(IB) 3/09**
- Misconceived appeal – whether right of appeal to Commissioner **R(CS) 5/02**
- Powers of appeal tribunal on an appeal following a revision or refusal to revise or a supersession or refusal to supersede **R(IB) 2/04**
- Procedure – jurisdiction – strike-out provisions
AW v Essex County Council (SEN) [2010] UKUT 74 (AAC) **[2010] AACR 35**
- Procedure – jurisdiction – strike-out provisions
KC v London Borough of Newham (SEN) [2010] UKUT 96 (AAC) **[2010] AACR 37**
- Question of whether unpaid contributions to be treated as having been paid – whether decision for the Board of Inland Revenue under section 8(1)(e) of the Social Security Act 1999 **R(JSA) 8/02**
- Refusal by tribunal of jurisdiction to reconsider decision of earlier tribunal – whether subject to right of appeal to the Commissioner **R(IS) 12/01**
- Tribunal jurisdiction – appeal against a decision revised under section 16 of the Child Support Act 1991 – effect of section 20(7)(b) of the Child Support Act 1991 **R(CS) 1/03**
- Tribunal jurisdiction – appeal against prospective decision on a renewal claim – whether tribunal entitled to take account of change of circumstances between date of decision and renewal date **R(DLA) 4/05**
- Tribunal jurisdiction – council tax benefit – termination following suspension of award – whether decision appealable **R(H) 4/08**
- Tribunal jurisdiction – habitual residence established from date after decision under appeal –

- whether circumstances obtaining at date of decision
Secretary of State for Work and Pensions v Bhakta [2006] EWCA Civ 65 R(IS) 7/06
- Tribunal jurisdiction – late claim for Social Fund winter fuel payment – Secretary of State’s discretion to make payment without claim
R(IS) 12/05
- Tribunal jurisdiction – refusal to revise on application for variation – whether appealable
RB v Child Maintenance and Enforcement Commission [2009] UKUT 53 (AAC) R(CS) 5/09
- Tribunal jurisdiction – time limits for appealing – whether a decision wrongly to admit a late appeal can confer jurisdiction on tribunal deciding the issue at a later stage
RS v Secretary of State for Defence [2008] UKUT 1 (AAC) R(AF) 1/09
- Tribunal jurisdiction – whether right of appeal against refusal to give decision on a claim
R(H) 3/05
- Tribunal jurisdiction – whether appeal lies to Upper Tribunal against decision to make case management instruction
LM v London Borough of Lewisham [2009] UKUT 204 (AAC) [2010] AACR 12
- Tribunal procedure – jurisdiction over exercise of a local authority’s discretion as to the person from whom they will recover an overpayment of housing benefit
Secretary of State for Work and Pensions v Chiltern District Council and another [2003] EWCA Civ 508 R(H) 2/03
- Tribunals – whether appealable decision existed
R(JSA) 3/03
- Whether right of appeal against determination of amount recoverable under section 74 of the Social Security Administration Act 1992
R(IS) 14/04

*See also: Contributions and credits
Judicial review*

MATERNITY BENEFITS

- Entitlement to a Sure Start Maternity Grant – partner on income support
R(IS) 13/04

MENTAL HEALTH

- Detention under the Mental Health Act – patient with personality disorder – whether appropriate medical treatment available
MD v Nottinghamshire Health Care NHS Trust [2010] UKUT 59 (AAC) [2010] AACR 34

See also Tribunals

PAYMENT

- Amount of benefit not quantified in earlier Commissioner’s decision on entitlement – payment not obtained – whether right to payment extinguished
R(U) 1/02
- Offset under regulation 5 of the Social Security (Payments on account, Overpayments and Recovery) Regulations 1988 – whether arrears resulting from the suspension of payments pending the making of an award superseding a previous award can be offset against an overpayment arising as a result of the subsequent award
SB v Secretary of State for Work and Pensions [2006] EWCA Civ 89 R(DLA) 2/07
- Overlapping benefits – meaning of “payable” and “paid or payable”
R(IB) 7/04
- Overlapping benefits – status of decisions on payability – whether supersession necessary to

CONSOLIDATED SUBJECT INDEX

resume payment
Secretary of State for Work and Pensions v Adams [2003] EWCA Civ 796 R(G) 1/03

PRACTICE

Application to Commissioner for permission to appeal to Court of Appeal – prospect of success criterion
Fryer-Kelsey v Secretary of State for Work and Pensions [2005] EWCA Civ 511 R(IB) 6/05

Commissioner – appeal to the Court of Appeal – whether court should consider arguments from the Secretary of State which were not developed before the Commissioner
Secretary of State for Work and Pensions v Hughes (a Minor) [2004] EWCA Civ 16 R(DLA) 1/04

Conflicting Commissioners’ decisions – approach to be adopted in deciding which should be followed
R(IS) 13/01

Court of Appeal practice – application for permission to appeal – whether need to show real prospect of success
Cooke v Secretary of State for Social Security [2001] EWCA Civ 734 R(DLA) 6/01

Judicial precedent – *obiter dicta* of Northern Ireland superior courts
R(IB) 4/04

Precedent – Commissioners’ decisions – whether later decision to be followed in preference to earlier reported decision
R(IS) 9/08

See also: Tribunals

PRECEDENT

See: Practice
War pensions

RECOVERY OF OVERPAYMENT

Adequate findings of fact
R(TC) 2/04

Amount recoverable – hypothetical reduction of capital – whether applies to capital of children
R(IS) 10/08

Amount recoverable – hypothetical reduction of capital – whether increases in actual capital during assessed income period to be taken into account
R(PC) 3/08

Bankruptcy order made before recoverability decision – whether liability for overpayment bankruptcy debt
JD v Leeds City Council [2009] UKUT 70 (AAC) R(H) 9/09

Calculation of overpayment – whether offset should be applied before termination of housing benefit where a “passport benefit” ceases
Secretary of State for Work and Pensions v Chiltern District Council and another [2003] EWCA Civ 508 R(H) 2/03

Calculation of overpayment – whether, under the law applicable before 2 January 2000, a deduction could be made for the “amount ... properly payable” in respect a period after the date on which termination of income support had brought the benefit period to an end
Adan v London Borough of Hounslow [2004] EWCA Civ 101 R(H) 5/04

Claim form signed by illiterate claimant – innocent misrepresentation by omission –

CONSOLIDATED SUBJECT INDEX

- application of doctrine of *non est factum* – causation **R(IS) 4/06**
- Diminishing capital rule – whether each 26-week award of working families’ tax credit is separate “overpayment period” for purposes of rule **R(TC) 2/04**
- Failure to disclose and cause of overpayment – failure to comply with notification requirement for exempt work **R(IB) 4/05**
- Failure to disclose – claimant lacking capacity to understand materiality of fact – whether requirement that disclosure be reasonably to be expected
B v Secretary of State for Work and Pensions [2005] EWCA Civ 929 **R(IS) 9/06**
- Failure to disclose material fact – whether disclosure reasonably to be expected of claimant where fact known to one office of Department but not to the office administering the benefit in issue
Hinchy (Respondent) v Secretary of State for Work and Pensions (Appellant) [2005] UKHL 16 **R(IS) 7/05**
- Failure to disclose – requirement to notify Secretary of State of change of circumstances – statement by Secretary of State that claimant “should” disclose – whether amounted to requirement
Hooper v Secretary of State for Work and Pensions [2007] EWCA Civ 495 **R(IB) 4/07**
- Failure to disclose – whether duty to disclose **R(A) 2/06**
- Housing and council tax benefit – official error and separate causation **SN v LB Hounslow (HB) [2010] UKUT 57 (AAC)** **[2010] AACR 27**
- Housing and council tax benefit – official error – local authority tenant – information notified to housing office and not passed on to benefits service **R(H) 10/08**
- Housing and council tax benefit paid due to official error – date at which claimant could reasonably have been expected to realise that there was an overpayment **R(H) 1/02**
- Housing benefit – amendments to legislation on recoverability – whether retrospective
AH v Mendip District Council and Secretary of State for Work and Pensions [2008] UKUT 18 (AAC) **R(H) 3/09**
- Housing benefit – offset of amount properly payable – other benefits wrongly drawn – public authority’s role as respondent **R(H) 1/05**
- Housing benefit – overpayments – scope of appeal rights **R(H) 3/04**
- Housing benefit – scope of appeal rights where an overpayment is recoverable from more than one person **R(H) 6/06**
- Housing benefit – whether landlord has a right of appeal where a determination for recovery is made against the tenant **R(H) 7/04**
- Housing benefit – whether overpayment can be recovered from landlord’s agent **R(H) 10/07**
- Living together as husband and wife – requirement for valid revision or supersession to found recovery of overpayment decision **R(IS) 13/05**
- Meaning of “recoverable” in the pre- and post-1999 legislation – whether tribunal could deal with issue of what part of recoverable overpayment should actually be recovered **R 1/02 (IS)(T)**
- Official error – whether local authority erred in making award based on existing income which was likely to change **R(H) 2/04**

CONSOLIDATED SUBJECT INDEX

Official error – whether local authority under obligation to enquire into correctness of income support award **R(H) 1/04**

Onus of proof in relation to failure to disclose and recoverability of overpayments **R 4/01 (IS)(T)**

Order book declarations and instructions **R 1/05 (ICA)(T)**

Overpayment of housing benefit paid direct to landlord’s agent – whether recoverable from landlord as well as from agent
Walsall Borough Council v GP Ltd (HB) [2009] UKUT 247 (AAC) [2010] AACR 16

Person appointed to proceed with the claim on behalf of deceased’s estate in the absence of a grant of representation – whether power to make recoverability decision **R(IS) 6/01**

Prescribed income paid late **R(IS) 14/04**

Recovery of overpaid supplementary benefit and income support from arrears of Italian retirement pension – whether supplementary benefit and income support to be taken into account when applying Articles 44 to 46 of Council Regulation (EEC) 1408/71
R(IS) 6/02

Whether overpayment recoverable from appointee **R(IS) 5/03**

See also: Human rights

REDUCED EARNINGS ALLOWANCE

More than one industrial accident each causing a change in regular occupation – whether there can be a reduced earnings allowance claim for each accident
Secretary of State for Social Security v Hagan [2001] EWCA Civ 1452 R(I) 2/02

See also: Industrial disease

REMUNERATIVE WORK

Claimant on sick leave and in receipt of statutory sick pay – whether engaged in remunerative work **R(S) 1/02**

School ancillary worker – whether “engaged in remunerative work” during school holidays
Banks v Chief Adjudication Officer [2001] UKHL 33 R(IS) 15/01

See also: Jobseeker’s allowance
Tax credits

RESIDENCE AND PRESENCE CONDITIONS

Applicable amount – Turkish national who had not claimed asylum on arrival – whether person from abroad – application of the European Convention on Social and Medical Assistance **R(JSA) 7/02**

Person from abroad – whether local authority bound by decision on claim for income support or income-based JSA
London Borough of Hillingdon v MJ and another (HB) [2009] UKUT 151 (AAC) [2010] AACR 4

Person subject to immigration control – the right of abode – whether British citizens can be subject to sponsorship agreements **R(PC) 2/07**

Person subject to immigration control – whether declaration that sponsor “able and willing to

- maintain and accommodate” dependant relative constituted maintenance undertaking
Secretary of State for Work and Pensions v Ahmed [2005] EWCA Civ 535 R(IS) 8/05
- Person subject to immigration control – whether for Secretary of State to show that leave to remain in the United Kingdom given as a result of a maintenance undertaking **R(PC) 1/09**
- Presence condition – entitlement to child benefit for child not in Great Britain – meaning of “employed or self-employed person” in Article 1 of Council Regulation (EEC) 1408/71
The Commissioners for Her Majesty’s Revenue and Customs v Ruas [2009] EWCA Civ 1043 [2010] AACR 31
- Presence condition – Turkish asylum seeker – whether “a national of a State with which the Community has established an Agreement under Article 238 of the Treaty establishing the European Community providing, in the field of social security, for the equal treatment of workers who are nationals of the signatory State and their families” **R(FC) 1/01**
- Residence and presence conditions – asylum seeker – meaning of “on arrival”
Kola and another v Secretary of State for Work and Pensions [2007] UKHL 54 R(IS) 1/08
- Residence and presence conditions – exportability of disability living allowance – the relationship between Council Regulations EEC 1612/68 and 1408/71 **R 2/03 (DLA)**
- Residence and presence conditions – exporting of retirement pension to France – Article 10 of Regulation (EEC) 1408/71 – higher rate retirement pension derived from legislation bringing into force an international social security agreement concluded between the UK and a third State
Secretary of State for Work and Pensions v Burley [2008] EWCA Civ 376 R(P) 2/08
- Residence and presence conditions – habitual residence – right to reside
Zalewska v Department for Social Development [2007] NICA 17 and [2008] UKHL 67 R 1/09 (IS)
- Residence and presence conditions – habitual residence test
Collins v Secretary of State for Work and Pensions (C-138/02) [2006] EWCA Civ 376 R(JSA) 3/06
- Residence and presence conditions – pending application for extension of exceptional leave to remain granted outside the immigration rules – whether Immigration (Variation of Leave) Order 1976 applied – whether to be treated as if leave to remain subject to a limitation or condition
R(DLA) 1/01
- Residence and presence conditions – person subject to immigration control – exception for nationals of states which are signatories to certain treaties – meaning of “lawfully present in the United Kingdom”
Szoma v Secretary of State for Work and Pensions [2005] UKHL 64 R(IS) 2/06
- Residence and presence conditions – person subject to immigration control – whether maintenance undertaking made pursuant to the Immigration Rules if not made on official form
R v Secretary of State ex parte Begum [2003] EWHC 3380 (Admin) R(IS) 11/04
- Residence and presence conditions – right to reside – scope of Article 18(1) of the EC Treaty
R(IS) 4/09
- Residence and presence conditions – right to reside – whether EEA citizen may have a right of residence conferred under the Immigration Act 1971
R(IS) 6/08
- Residence and presence conditions – right to reside – whether temporary admission is a right to reside
R(IS) 3/08

CONSOLIDATED SUBJECT INDEX

Residence and presence conditions – right to reside – whether workseeker has a right of residence **R(IS) 8/08**

Residence and presence conditions – Turkish asylum seeker – whether having a right to reside in the United Kingdom

Yesiloz v London Borough of Camden & Secretary of State for Work and Pensions [2009] EWCA Civ 415 **R(H) 7/09**

Residence condition – claimant in receipt of attendance allowance and mother in receipt of invalid care allowance moving to Republic of Ireland in 1991 – whether regulations *ultra vires* – whether entitlement continued by virtue of Council Regulation (EEC) 1408/71

Walsh v Department for Social Development [2001] NICA 14 **R 1 02 (AA)**
R 2-02 (ICA)
R 1-02 (MOB)

Residence condition – claimants resident in both Britain and New Zealand – whether “ordinarily resident” in both countries **R(P) 1/01**

Residence condition – habitual residence – definition of employed or self-employed person in Council Regulation (EEC) 1408/71 **R(IS) 1/06**

Residence condition – habitual residence – length of period of residence required
Secretary of State for Work and Pensions v Bhakta [2006] EWCA Civ 65 **R(IS) 7/06**

Residence condition – habitual residence – meaning of “right to reside” – whether lawful presence in the UK sufficient

Abdirahman and Ullosow v Secretary of State for Work and Pensions [2007] EWCA Civ 657 **R(IS) 8/07**

Residence condition – transitional protection – whether applies on a renewal claim for period
M v Secretary of State for Social Security [2001] UKHL 35 **R(DLA) 7/01**

Right to reside – dependent family member – whether dependency in country of origin required

Pedro v Secretary of State for Work and Pensions [2009] EWCA Civ 1358
[2010] AACR 18

Right to reside – scope of Article 18(1) of the EC Treaty

Kaczmarek v Secretary of State for Work and Pensions [2008] EWCA Civ 1310
R(IS) 5/09

Right to reside – whether indirect right as primary carer of child dependent on father – whether sufficient resources to avoid becoming a burden on the social assistance system

Jeleniewicz v Secretary of State for Work and Pensions [2008] EWCA Civ 1163
R(IS) 3/09

See also: European Union law
Income support
Jobseeker’s allowance

RETIREMENT PENSION

Additional pension – division of decision-making powers between the Secretary of State and the Inland Revenue – rights of appeal **R(P) 1/04**

Additional pension – whether guaranteed minimum pension to be deducted from total additional pension or only from the additional pension attributable to contracted-out employment

Wilkinson v Secretary of State for Work and Pensions [2009] EWCA Civ 1111

[2010] AACR 7

Category A retirement pension – increase by reference to contributions and earnings of deceased spouse – stage in calculation at which guaranteed minimum pension should be deducted **R(P) 1/03**

Category B pension frozen at level in force when spouse ceased to live in Great Britain – higher Category B pension payable on death of spouse – whether should include increases in benefit rates up to date of his death
Secretary of State for Work and Pensions v Yates [2009] EWCA Civ 479 R(P) 3/09

Category B retirement pension – backdating – whether a claim is necessary where Category A pension already in payment
Secretary of State for Work and Pensions v Nelligan [2003] EWCA Civ 555 R(P) 2/03

Claimant undergoing imprisonment – whether disqualification correctly applied and compatible with human rights legislation **R(P) 1/02**

Increase in Category A retirement pension by reference to spouse's contributions – whether claim necessary **R(P) 1/05**

Male-to-female transgender persons obtaining gender recognition certificate after the age of 65 – whether subject to (i) reduction of additional pension to remove earnings factors accrued after age 60 and (ii) increase of pension for deferment – application of section 27 of the Social Security Act
MP v Secretary of State for Work and Pensions (RP) [2009] UKUT 205 (AAC)
[2010] AACR 13

See also: Contributions and credits
Discrimination on ground of sex
Residence and presence conditions

REVIEW

Application made after time limits for reviews were shortened – whether claimant had an accrued right to have the application determined under the former legislation **R(I) 3/01**

Limitation of payment – circumstances and extent of applicability of section 69 of the Social Security Administration Act 1992 where there were potentially two relevant determinations **R(DLA) 5/01**

Limitation of payment – whether limit to backdating if entitlement established retrospectively other than in cases of official error **R(A) 1/02**

Medical opinion providing evidence that circumstances were not as they had previously been accepted to be – whether evidence of change of circumstances
Cooke v Secretary of State for Social Security [2001] EWCA Civ 734 R(DLA) 6/01

Renewal claim providing evidence in support of extension to a limited award – whether an application for review **R(DLA) 3/01**

Unforeseen aggravation – disablement benefit transitional cases **R(I) 4/02**

See also: Human rights

REVISION AND SUPERSESSION

Disablement assessment decisions in transitional cases – whether refused claim can be superseded for change of circumstances **R(I) 5/02**

CONSOLIDATED SUBJECT INDEX

Revision and supersession – child support maintenance – prescribed benefit obtained by fraud – whether Secretary of State has power to revise **R(CS) 3/08**

Revision on the ground of official error – whether right of appeal against refusal to revise
Beltekian v Westminster City Council and another [2004] EWCA Civ 1784 R(H) 8/05

Revision – refusal to extend time for an application for revision – whether decision appealable – whether decision delays time running for appeal against original decision
R(TC) 1/05

Revision – whether local authority has power under Schedule 7 to the Child Support, Pensions and Social Security Act to revise a decision taken prior to 2 July 2001 **R(H) 6/04**

Supersession – date of effect of supersession decision – transitional award of incapacity benefit – whether decision being superseded “incapacity benefit decision”
Hooper v Secretary of State for Work and Pensions [2007] EWCA Civ 495 R(IB) 4/07

Supersession – decision to be superseded set aside on appeal – whether appeal against refusal to supersede lapses **R(DLA) 2/04**

Supersession – effective date of superseding decision where Secretary of State knows of termination of prescribed benefit but not of the reason for the termination **R(CS) 2/07**

Supersession – failure of Secretary of State to refer tribunal to previous adjudication history
R 1/04 (IB)(T)

Supersession following second or subsequent assessment of incapacity – whether necessary to identify decision to be superseded **R(IB) 2/05**

Supersession – incapacity credits – regulation 28 of the Incapacity for Work Regulations – change of circumstances **R(IB) 1/05**

Supersession – satisfaction of grounds – removal of existing award of benefit
Wood v Secretary of State for Work and Pensions [2003] EWCA Civ 53 R(DLA) 1/03

Supersession – whether failure to give notice of intended supersession on Secretary of State’s own initiative invalidates superseding decision **R(CS) 2/07**

Supersession – whether level of needs can be a relevant change of circumstances
R 1/05 (DLA)

Supersession – whether scope to refuse to supersede and to supersede at same rate
R(DLA) 6/02

Supersession – wrong advice by Departmental official on notice requirement where permitted work undertaken – whether power to supersede entitlement decision discretionary – whether supersession abuse of power or prevented by estoppel **R 1/07 (IB)**

Whether tribunal has power to make final decision on a reference of an application for a variation **R(CS) 5/06**

*See also: Child support
Human rights
Income support
Jurisdiction
Payment
Recovery of overpayment*

SOCIAL FUND

See: European Union law
Funeral payment
Jurisdiction
Maternity benefits

SPECIAL EDUCATIONAL NEEDS

Child for whom local education authority responsible – cessation of statement where child seeks provision under section 319 but meanwhile enrolls at further education college
KC v London Borough of Newham (SEN) [2010] UKUT 96 (AAC) [2010] AACR 36

Child for whom local education authority responsible – continuation of statement beyond 19th birthday
AW v Essex County Council (SEN) [2010] UKUT 74 (AAC) [2010] AACR 35

Residential placement – whether required on educational grounds or social care grounds
Hampshire County Council v JP [2009] UKUT 239 (AAC) [2010] AACR 15

See also: Judicial review

STATUTORY SICK PAY

See: Remunerative work

TAX CREDITS

Couple – calculation of income when there are earnings for period before they became a couple
R(TC) 1/08

Couples and joint claims – trial separation – whether “likely to be permanent” **R(TC) 2/06**

Couples and joint claims – whether claim by single person can be treated as a joint claim by a cohabitee
R(TC) 2/07

Disabled person’s tax credit – remunerative work – whether bank holidays to be disregarded in calculating average hours worked
Taylor v Commissioners of the Inland Revenue [2004] EWCA Civ 174 R(TC) 1/04

Working families’ tax credit – calculation of earnings – effect of recovery of previous overpayment of salary
R(TC) 2/03

Working families’ tax credit – remunerative work – claimant receiving training allowance – whether employed at the date of claim
R(TC) 1/03

Working tax credit – childcare element – whether non-eligibility of care provided in employer’s home was contrary to the European Convention on Human Rights
R 1/07 (TC)(T)

Working tax credit – disabled workers – disability living allowance as passport to satisfying qualifying remunerative work condition – whether entitlement on any day of tax year sufficient
R(TC) 1/06

See also: Income
Revision and supersession
Human rights

CONSOLIDATED SUBJECT INDEX

TRANSPORT

Traffic Commissioner case – revocation of Public Service Vehicle Operator’s licence – scope of appeal to Transport Tribunal – relevance of pending criminal proceedings
Bradley Fold Travel Ltd and another v Secretary of State for Transport
[2010] EWCA Civ 695 [2010] AACR 43

TRIBUNALS

Issues not expressly raised **R 3/05 (DLA)**

Practice – additional grounds for departure added following referral – whether within tribunal’s jurisdiction **R(CS) 3/01**

Practice – adequacy of reasons – assessment of war disablement – whether tribunal should explain why its percentage assessment for a past period is substantially lower than that for period immediately following
R (Viggers) v Secretary of State for Defence [2009] EWCA 1321 [2010] AACR 19

Practice – appeal against decision that claimant is not entitled to benefit – whether tribunal required to determine entitlement **R(IS) 2/08**

Practice – claimant arguing that a conclusive determination is wrong – whether duty to adjourn to allow supersession of that determination **R(I) 2/04**

Practice – Company Secretary failing to attend tribunal to give evidence relating to company’s financial affairs and to produce relevant documentary evidence in default of witness summons – whether tribunal able to make findings of fact on such issues
Denson v Stevenson and another **R(CS) 2/01**

Practice – decision by tribunal awarding benefit in respect of one period of claim and adjourning consideration of later period – whether a final decision in relation to period for which award made and if so whether later tribunal has power to reconsider that decision
R(IS) 12/01

Practice – extent of duty to give reasons for refusal to grant adjournment
Carpenter v Secretary of State for Work and Pensions [2003] EWCA Civ 33 **R(IB) 6/03**

Practice – fair hearing – confidentiality – masking of papers **R(CS) 3/06**

Practice – fair hearing – whether overpayment appeal should be adjourned pending criminal proceedings
Mote v Secretary of State for Work and Pensions and another [2007] EWCA Civ 1324
R(IS) 4/08

Practice – fair hearing – whether unfair for tribunal chairman who decided entitlement issue to decide same issue in overpayment appeal **R(IS) 1/09**

Practice – inquisitorial role and burden of proof – failure of Secretary of State to attend hearing **R(IS) 17/04**

Practice – inquisitorial role – duties of tribunal when claimant professionally represented
R 4/01 (IS)(T)

Practice – leave to appeal granted and then purportedly rescinded by chairman – whether chairman had power to rescind **R(IS) 12/01**

Practice – natural justice – apparent bias – membership of appeal tribunal including doctor who also acted as an examining medical practitioner for the Benefits Agency – whether

- breach of principles of independence and impartiality – test of fair-minded and informed observer
Gillies v Secretary of State for Work and Pensions [2006] UKHL 2 **R(DLA) 5/06**
- Practice – natural justice – fair and impartial tribunal – actual or apparent bias – tests to be applied
Secretary of State for Work and Pensions v Cunningham **R(DLA) 7/04**
- Practice – natural justice – perception of bias – chairman had sat on three occasions with the examining doctor whose report was under consideration **R(DLA) 3/07**
- Practice – paper hearing – whether failure of clerk to appeal tribunal to issue a direction under regulation 39(1) of the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999 fatal to tribunal’s decision **R 3/04 (IB)**
- Practice – period within which application for statement of reasons must be made **R(IB) 4/02**
- Practice – power to require information – adverse inference **R(CS) 6/05**
- Practice – record of proceedings – whether note of submissions required **R(DLA) 3/08**
- Practice – request for adjournment by absent parent allegedly unable to attend on account of migraine in default of direction by earlier tribunal to attend and to produce documentary evidence – whether refusal to adjourn unlawful
Denson v Stevenson and another **R(CS) 2/01**
- Practice – requirement for the statement of reasons for the tribunal’s decision to be issued “as soon as may be practicable” – date of statement **R(IS) 5/04**
- Practice – review – whether original decision clearly wrong
R (RB) v First-tier Tribunal (Review) [2010] UKUT 160 (AAC) **[2010] AACR 41**
- Practice – statement of reasons – where should a request be sent – when is it received **R(DLA) 3/05**
- Practice – statement of reasons – whether there is a duty to explain assessment of credibility **R 3/01 (IB)(T)**
- Practice – statement of reasons – whether there is a duty to record reasons for preferring one piece of evidence to another – whether there is a duty to record findings of fact **R 2/01 (IB)(T)**
- Practice – weighing evidence and fact-finding – function of appellate court
Fryer-Kelsey v Secretary of State for Work and Pensions [2005] EWCA Civ 511 **R(IB) 6/05**
- Practice – weighing evidence – fact-finding for tribunals – role of appellate court – effect of previous award
Quinn v Department for Social Development [2004] NICA 22 **R 3/04 (DLA)**
- Practice – whether medical appeal tribunal bound by findings of social security appeal tribunal – obligations of medical appeal tribunal in relation to other documents and Court decisions
Eagle Star Insurance v Department for Social Development **R 1/01 (CRS)**
- Practice – whether request from claimant for tribunal to view his knee was request for tribunal to carry out physical examination **R 1/01 (IB)(T)**
- Practice – whether requirement to give compensator notice of social security appeal tribunal hearing

CONSOLIDATED SUBJECT INDEX

Eagle Star Insurance v Department for Social Development **R 1/01 (CRS)**

Practice – whether tribunal chairman under obligation to treat application for leave to appeal as application for statement of reasons – whether possible for Commissioner to grant leave in the absence of a statement of reasons – power of Commissioner to direct tribunal to provide statement **R 3/02 (IB)(T)**

Procedure and practice – legal advice and litigation privilege – disclosure of instructions to expert
LM v London Borough of Lewisham [2009] UKUT 204 (AAC) **[2010] AACR 12**

Procedure where national insurance contribution issue arises on benefit appeal
Secretary of State for Work and Pensions v TB and HMRC (RP) [2010] UKUT 88 (AAC) **[2010] AACR 38**

Tribunal hearing – power of tribunal – physical examination and physical test **R(DLA) 5 /03**

Tribunal procedure – fair hearing – failure of tribunal to warn claimant of provision at issue **R(H) 3/03**

*See also: Evidence
Jurisdiction*

WAR PENSIONS

Armed Forces Compensation Scheme – correct application of the Scheme – injuries resulting from medical treatment – meaning of “complex injury”, “covering” a certain area and “permanent functional limitation or restriction”– relationship between Table 4 and the other tables

Secretary of State for Defence v Duncan and another [2009] EWCA Civ 1043
[2010] AACR 5

War disablement pension – allowance for lowered standard of occupation – alternative suitable occupation with equivalent gross income – whether London weighting allowance to be included in “gross income” **R(AF) 4/07**

War disablement pension – allowance for lowered standard of occupation – whether to be reduced by amount of Service Attributable Pension
Secretary of State for Defence v DK [2009] UKUT 51 (AAC) **R(AF) 4/09**

War disablement pension – attributability to service – psychiatric injury accepted – whether disablement due to self-inflicted physical injury attributable to service **R(AF) 2/08**

War disablement pension – claimant discharged on medical grounds – whether claim necessary for assessment for different disablement **R(AF) 2/07**

War disablement pension – commencement date of award – application for backdating – whether application for review for which grounds for delay must be shown **R(AF) 3/08**

War disablement pension – commencement date of award on review – acceptance of additional condition as attributable to service – whether award made on new claim or review **R(AF) 1/08**

War disablement pension – commencement date of award on review – official error – reliance on erroneous medical advice **R(AF) 5/07**

War disablement pension – constant attendance allowance – whether attendance includes supervision – meaning of “continual” – nature of appeal to tribunal
MC v Secretary of State for Defence (AF) [2009] UKUT 173 (AAC) **[2010] AACR 20**

War disablement pension – gratuity replaced by pension following successful assessment appeal – whether gratuity to be treated as payment on account of pension **R(AF) 3/07**

War disablement pension – structure of the scheme – distinction between entitlement appeals and assessment appeals – burden of proof – precedential status of decisions of nominated judges **R(AF) 1/07**

War pension – child allowance – exclusion of death due to consumption of alcohol from definition of “injury”– whether “injury” if death also due to another cause
Secretary of State for Defence v MR [2009] UKUT 31 (AAC) **R(AF) 3/09**

See also: Tribunals