

CHAPTER 13

Claims and payments

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 CHAPTER 13

Claims and payments

Part 1: Right to benefit conditional upon claiming within prescribed time

Section 79(a) of the Social Security Act 1975 (hereinafter Part 1 of Chapter 13 referred to as 'the Act').

1 Claims

- i It was emphasised (see paragraph 7) that under the Regulations then in force an increase of benefit in respect of a child or an adult dependent was treated as a separate benefit for which a separate claim had to be made. See now regulation 2(4) of the Social Security (Claims and Payments) Regulations 1975 (as substituted by regulation 5(a) of S.I. 1976 No. 1736). CWS 36/50
- ii When a claim to sickness benefit failed on the ground that a claimant did not satisfy the relevant contribution conditions a subsequent claim cannot be regarded as a first claim for the purposes of time-limits for the claiming of sickness benefit. R(S) 8/52
- iii Where a claim for an award of sickness benefit to an insured person is signed by another person purporting to act on behalf of the insured person, the insurance officer is justified in assuming, in the absence of evidence to the contrary, that the signatory is authorised to sign on the claimant's behalf; or that the claimant will ratify the signature as soon as he is well enough to do so. See also 13.4.3 vi *below*. R(S) 3/53
- iv It was held, for the reasons given in paragraphs 4-6 of the decision, that the question whether a claim for one benefit could be treated in the alternative as a claim for another benefit in accordance with regulations 7-8 of the National Insurance (Claims and Payments) Regulations 1948 was for determination by the Minister (now the Secretary of State) and not by the statutory authority. But see now section 95(e) of the Act and the Social Security (Claims and Payments) Regulations 1975, regulation 9 and Schedule 3. R(I) 79/54
- v There is no requirement which limits a claim for sickness benefit to the period for which evidence of incapacity is produced at the time at which the claim is made, and such evidence may be produced subsequently. Thus, when a man submitted an intermediate medical certificate on form MED 2A (as it was then known) signed by the doctor on 2nd December certifying incapacity for that day it was held that, notwithstanding the certificate was not signed by the claimant on 2nd December, sickness benefit was, nevertheless, held to be payable to him for that day. R(S) 1/60
- vi Under the National Insurance (Claims and Payments) Regulations 1948, as amended, every claim for benefit had to be made in writing to the Minister of Pensions and National Insurance (now the Secretary of State). See now regulation 4 of the Social Security (Claims and Payments) Regulations 1975. A civil servant who was employed by the Home Office contended that his Department, to which he had regularly sent medical certificates, was the agent of the Ministry, or alternatively that both it and the Home Office were Departments of the same administration. There was no evidence that the Home Office were Departments of the same administration. There was no evidence that the Home Office had acted, or agreed to act, as agent for the Ministry of Pensions and National Insurance for the purpose of accepting medical certificates and the claimant's contention was rejected. See also 13.2.3v *below*. R(S) 9/60
- vii An increase of disablement benefit under what was section 14 of the National Insurance (Industrial Injuries) Act 1946 (see now section 60 of the Act) was (is), for the R(I) 6/62
(T)

purpose of claiming, a separate benefit and accordingly must be the subject of a separate claim. A claimant duly claimed, and was awarded, the increase, which was paid to him weekly with payments for sickness benefit while he was incapable of work. He was, however, informed that when the latter benefit ceased to be payable, if he continued to be entitled to an increase of disablement benefit, he should at once notify the local office of the Ministry. He then resumed some employment and it was not until some 4 years later that he again made a claim for an increase of disablement benefit. It was held by a majority of a Tribunal of Commissioners (dissenting from R(I) 18/57 and R(I) 28/59) that, even though entitlement to an increase of disablement benefit may be continuing, the original claim for the increase could not be regarded as a 'standing' or 'continuing' claim and that a fresh claim was necessary so that, in the absence of good cause for delay in the making of a further claim, the increase was not payable for any period before the date of the latest claim.

- R(S) 2/65 viii A married woman, believing that she had no title to sickness benefit, sent a first medical certificate to her employers (who sent it on to the local office of the Ministry of Pensions and National Insurance), but submitted no further medical certificates. A year later, having discovered that she was entitled to sickness benefit, she made a claim for it. The first medical certificate was accepted as having been a claim, but it was held that a claim could not be treated as made in advance otherwise than in accordance with the relevant regulations. See now regulation 11 of the Social Security (Claims and Payments) Regulations 1975. It was held further, for the reasons given in paragraph 14 *et seq.*, that the claimant was disqualified from receiving sickness benefit for each of the days of incapacity after the day certified by her first medical certificate. N.B.: paragraph 19. See also 13.1.1 xi and 13.1.2 iv *below*. Considered in R(U) 7/85.
- R(S) 1/68 ix A man who had made previous claims for sickness benefit submitted 3 medical certificates, each of which was on the appropriate form (i.e. form MED 3), and claimed benefit from 29th August until 12th September. The certificates were dated, respectively, 30th August and 5th and 10th September. It was held that, since each of the 3 forms were expressed to be a claim for sickness benefit, the claimant should be regarded as having made 3 separate claims; that is to say, that each form constituted a claim for the days covered by the doctor's certificate on the form and that the certificate signed on 30th August was a 'first' claim and the other 2 were 'continuation' claims. Consequently, although the claimant was not held to have had good cause for making a late claim, disqualification for the receipt of sickness benefit was imposed from 29th August to 3rd September only and not thereafter. R(S) 19/53 distinguished.
- R(I) 2/71 x Where it is accepted that a claim for benefit has been posted to a local office of the Department of Health and Social Security then, notwithstanding it was never received at the local office, a valid claim has been made. See now section 79(6) of the Act. Accordingly no question of good cause for making a late claim arises.
- R(S) 11/83
(T) xi Section 82(2) of the Social Security Act 1975 eliminates any possibility of entitlement arising in respect of a claim for benefit. See also R 2/85 (NCIP), 18.6.2 i *below*, and R(A) 1/86, para 9, 15.3.1 vii *below*. Followed in R(S) 8/85. Considered in R(U) 7/85. Rejected in R(P) 3/85.
- R(SB) 5/89 xii Whether a claim has been made and, if so, when it was made and when it was received at an appropriate office are all questions for determination by the statutory adjudicating authorities. See now regulations 4 and 6 of the Social Security (Claims and Payments) Regulations 1987.
- R(SB) 8/89 xiii The date of claim is the date the claim is received at an appropriate office. Where, however, the Department's offices are closed on certain days and arrangements are made with the Post Office not to deliver mail on those days, the date of claim will be the date the claim would have been delivered but for those arrangements. See now regulation 6(1) of the Social Security (Claims and Payments) Regulations 1987.

- xiv The Secretary of State issued a certificate on 12 June 1987 to the effect that he was not prepared to accept a claim for UB made in 1983 as a claim in the alternative for sickness benefit. Between 6 April 1987 and 10 April 1988 the question of whether a claim for one benefit could be accepted as a claim in the alternative for another benefit was not specified as being for the Secretary of State. The decision of the Secretary of State was therefore null and void. The Commissioner agreed with the claimant's representative that there is no authority for the proposition that the rules in force when the claim is made should be applied. In procedural matters it is the rules in force when the procedural issue is determined that apply. See also 13.1.1 iv. R(S) 3/93
- xv A claimant was temporarily engaged in short-time working of 37 hours in alternate weeks. He made a claim for IS in order to receive benefit in the weeks when he did no work. The Commissioner held that although the claimant had asserted entitlement only in respect of particular weeks, it was open to an adjudicating authority to treat the claim as made for an indefinite period. The power in reg. 17(3) of the SS (Claims and Payments) Regs. 1987 should not be used solely because hours of work fluctuate. See also 29.2.2 iii. R(IS) 8/95
- xvi A separate claim for CHB has to be made for each eligible child. It is not open to a claimant simply to seek a review of an existing award to take account of the birth of another child. R(F) 3/96
- xvii The claimant claimed severe hardship allowance after the replacement of that benefit by REA on 1 October 1986. The claim from and including 1 October 1986 was treated as a claim for REA. The Commissioner held that a claim in respect of the period before 1 October 1986 was not prevented by the repeal of severe hardship allowance, the claimant being protected by the presumption against retrospectivity in common law and S. 16 of the Interpretation Act 1978, and the continuing existence of the statutory machinery needed to decide the claim. The Commissioner further held that severe hardship allowance was not subject to the twelve month limitation on backdating in S. 1(2) of the Administration Act S. 1(2) of the Act provides an exemption for disablement benefit and severe hardship allowance falls within this. In *Chief Adjudication Officer v. Maguire* [see Appendix 2, part 1 B], the CA rejected an appeal against the Commissioner's decision. The court held that once the claimant had satisfied the substantive conditions of entitlement to severe hardship allowance, he had a right for the purposes of S. 16(1)(c) of the Interpretation Act 1978, even though a claim had not been made. S. 16(1)(c) preserved this right after the repeal of severe hardship allowance and the necessary claim could still be made. R(I) 3/99
- xviii On reaching age 60 in 1986, the claimant claimed and received a Category A RP based on her own NI contributions. The claimant's husband claimed and received a Category A RP from October 1992 when he reached age 65. At that time the claimant could have claimed a Category B RP based on her husband's NI contributions. That Category B RP would have been at a higher rate than the claimant's own Category A RP and would have been payable in its place. The claimant did not in fact claim a Category B RP until March 2000. An award was made but only with effect from 2.12.99. The claimant appealed to a tribunal and then a Commissioner on the grounds that she should have received the Category B RP with effect from the date her husband reached age 65. The Commissioner decided that S. 43(5) of the SS Contributions and Benefits Act 1992 created an express statutory exception to the rule set out in S. 1 of the SS Administration Act 1992 that no person is entitled to benefit without making a claim for it. The Secretary of State appealed to the CA. The Court held that the Commissioner was wrong in his conclusion about S. 43(5). That section simply provided a mechanism for choosing between different pensions to which there was entitlement. In particular it was intended to apply where a claim for one category of pension could be treated as a claim for another under reg. 9 of SS (Claims and Payments) Regs. 1987. The claimant's circumstances did not fall within any of the exceptions to S. 1 of the Admin Act and thus she was not entitled to a Category B RP for any period prior to 2.12.99. See also 13.1.1 xix *below*. R(P) 2/03
- xix Entitlement to an increased Category A RP under s. 51A of the SS Contributions and Benefits Act 1992 depends on entitlement to a Category B RP for which a separate claim must be made. The normal time limits for claiming apply. See also 12.1.1 xviii above. R(P) 1/05

13.1.1

R(G) 2/06 xx The claimant posted a claim form for WB on 4 July 2000. The form did not arrive at a relevant DWP office and the claimant submitted a further claim on 29 October 2001. Benefit was awarded from 29 July by virtue of reg. 6(1)(a) of the SS (Claims and Payments) Regs 1987 which provides that a claim is made on the date on which it is received in appropriate office. The claimant argued that reg. 6(1)(a) was *ultra vires* and that s. 7 of the Interpretation Act also applied to reg. 6(1). That provides that, unless a contrary intention appears, a document required to be served by post will be deemed to have been received in the ordinary course of posting if properly addressed and posted. After two unsuccessful appeals to the Tribunal and Commissioner, the claimant appealed to the CA. The appeal was dismissed on the basis that reg. 6(1)(a) was not *ultra vires* and that s. 7 of the Interpretation Act 1978 has no application to reg. 6(1). Consequently, the date of claim was therefore the date it was received in a relevant office i.e. 29 October 2001.

R(IS) 4/07 xxii The claimant applied for asylum on 9 December 1997 and was granted refugee status on 12 October 2001. Notification was sent to her solicitors on 10 January 2002. The solicitors failed to forward this to the claimant and asked the Home Office to issue a replacement, which they did on 17 July 2003. The claimant applied for IS on 13 August 2003, requesting backdating to the date she claimed asylum under reg. 21ZA(2) of the IS (Gen) Regs 1987. This was refused on the basis that she was outside the 28 day time limit which runs from the date of notification of refugee status. The claimant appealed on the basis that notification to her personally was required. After unsuccessful appeals to the Tribunal and Commissioner, the claimant appealed to the CA. The appeal was dismissed on the basis that receipt of the notification of refugee status by the claimant's solicitor constituted notice to the claimant.

R(IS) 4/07 xxiii The claimant applied for asylum on 25 March 2002. On 10 July 2003 he was notified that he had been accepted as a refugee. He became entitled to IS from the date he claimed asylum. Under reg. 21ZB of the IS (Gen) regs 1987 the time limit for making the claim was 28 days from the date of notification of the asylum decision. His solicitor wrongly advised him that he could claim backdated IS or JSA. He was awarded JSA but did not make a claim for IS until 9 March 2004. This was refused on the grounds that the claim was outside the 28 day limit. After unsuccessful appeals to the Tribunal and Commissioner, the claimant appealed to the CA. The appeal was dismissed on the basis that a breach of reg 4(5) of the SS (Claims and Payments) Regs 1987 does not suspend the time limits for making a claim. Additionally, a claim for backdated JSA cannot be treated as a claim for backdated IS as claims are only interchangeable if they are specified as such in Sch. 1 to the SS (Claims and Payments) Regs. 1987.

[2010] AACR 6 xxiii *Novitskaya v London Borough of Brent and another* [2009] EWCA Civ 1260; [2010] AACR 6. The claimant arrived in the UK in July 1999 and claimed asylum. On 12th May 2004 she was granted refugee status. On 18th May 2004 she became entitled to IS. On 10th June 2004 she was given a HB claim form and gave a statement requesting backdating of her benefits or "whatever else I am entitled to" from the date she became an asylum seeker. She did not return a completed HB claim form until 24th June 2004. The Deputy Commissioner decided that no valid claim for HB had been made in time. The claimant appealed to the CA. The CA upheld the claimant's appeal and decided that

1. any "claim" must make it clear that a claim is being made and that clarity can be obtained from the document itself or that document interpreted in its context
2. there is no requirement that every benefit being claimed must be expressly named provided the official receiving the document can understand which benefits are being claimed
3. the statement of 10th June was a defective claim and was cured by the delivery of the duly completed form on 24th June.

The court also considered R(S) 1/63, CG/3844/2006 (unreported), R(SF) 1/04 and *Investors Compensation Scheme Ltd v West Bromwich Building Society* [1998] 1 WLR 896, followed.

2 Time limits

See the SS (Claims and Payments) Regs. 1975, reg. 13 and Sch. 1.

- i The period of three months from the receivable date of a postal draft does not include that date. R(S) 7/51
- ii In a case where disablement benefit is paid by way of a gratuity, and not by way of a pension, there is no statutory time limit for the making of a claim for disablement benefit. See also R(I) 51/53. R(I) 27/52
- iii A married woman who had no title to a basic RP was entitled to a graduated RP under S. 36(7) of the National Insurance Act 1965, and an application for the determination of her provisional entitlement to a RP on her husband's insurance was treated as a claim for a graduated pension. No time limit for the making of such a claim was laid down, but it was held that an increase of RP by way of graduated pension was "any benefit" within the meaning of Ss. 48(1) and 49(3) of the National Insurance Act 1965 (see now S. 79(1) of the Act). The right to, and the receipt of, a graduated pension were conditional on the making of a claim within the prescribed time. It was held further that the prescribed time for the claiming of an increase of RP for a dependant had always been taken to be that prescribed for the claiming of a basic pension. It had never been doubted that that was also the prescribed time for the claiming of an increase of RP by way of graduated pension. Accordingly it was held that that must also be the prescribed time for the claiming of a graduated pension. In the case of the claimant, therefore, a graduated pension was payable from the date on which application was made for the provisional determination of her entitlement to RP on her husband's insurance. See para. 4 to 5. See now para. 5 of Sch. 1 to the SS (Claims and Payments) Regs. 1975. R(P) 1/74
- iv The effect of the twelve months rule in S. 82(2) of the SS Act 1975 is to create a disentitlement to the benefit claimed. See also R 2/85 (NCIP), 18.6.2 i. Considered in R(U) 7/85. Followed in R(S) 8/85. Rejected in R(P) 3/85. R(S) 11/83 (T)
- v Reg. 5(2)(b) of the Supp Ben (Claims and Payments) Regs. provides for the backdating of a Supp Ben claim in certain circumstances to the date of an earlier claim under the SS or Family IS Acts. The requirement that the Supp Ben claim be made as soon as reasonably practicable after receipt of the decision on the claim for the other benefit was held merely to impose a time limit within which the Supp Ben claim must be brought; it did not prevent the Supp Ben claim from being made at an earlier date. R(SB) 5/86

3 Computation of time limits

- i Under the regs. then in force the prescribed time for making a claim for sickness benefit was a period of three days from the earliest day in respect of which the claim was made (see now para. 2 of Sch. 1 to the SS (Claims and Payments) Regs. 1975). It was held that "a period of three days" meant three consecutive days and that, when the period of three days was being computed, Sundays should be disregarded. See also CI 14/49 and compare CG 47/49. CWS 3/48
- ii Under the regs. then in force the prescribed time for the making of a claim for disablement benefit in the case of a person who was not in receipt of injury benefit was a period of one month after the commencement of the injury benefit period. It was held that "month" means "calendar" month. See para. 13, but see now, as to the prescribed time for claiming disablement benefit, para. 7 of Sch. 1 to the SS (Claims and Payments) Regs. 1975. See also CU 66/49. R (I) 16/51
- iii The claimant, who was an in-patient in hospital, could have been deemed to have had good cause for his failure to make a claim for sickness benefit for three weeks after his discharge from hospital (see now regs. 2(5) and 13 of para. 2 of Sch. 2 to the SS (Claims and Payments) Regs. 1975). In fact, the claimant did not make a claim for sickness benefit until the 25th day after his discharge from hospital, and it was held that, although Sundays were to be disregarded when any period of consecutive days were being computed, Sundays could not be disregarded when the number of weeks were being calculated. R(S) 3/56

13.1.3-4

R(IS) 3/01 iv The phrase “subject to a maximum extension of 3 months” in reg. 19(4) of the SS (Claims and Payments) Regs. 1987 means that benefit cannot be awarded for any period falling more than three months before the date of claim. Also the provisions for extending the time for claiming under reg. 19(4) and (6) cannot be aggregated. See also 13.6.1 viii.

R(IS) 16/04 v The claimant made a defective claim on 22 November. Further information about savings was requested and the claim form was received back on 28 November. On 5 December it was returned again to the claimant asking for details of money held in trust. The correctly completed claim form was received on 31 December. The claimant maintained that the claim had been delayed because the letter dated 5 December was not received until 14 December upon which he had taken prompt action to obtain the necessary information and send it to the Department. The question arose as to the extent to which the time for claiming could be extended under reg. 19(6) of the SS (Claims and Payments) Regs. 1987. The Commissioner held that:

1. when considering backdating the maximum period of extension should be calculated backwards from the actual date of claim, not forwards from the first day of the period claimed for;
2. an unjustified failure to make a claim before the beginning of the period of claim does not prevent the operation of reg. 19(4) or (6);
3. claimants should not be disadvantaged by circumstances occurring immediately before the date of claim simply because there might have been an earlier unjustified delay in claiming.

On that basis the Commissioner decided that the time for claiming could be extended to 14 December (but no earlier) because adverse postal conditions over the Christmas period were partly responsible for the claim of 31 December not being made earlier.

R(IS) 10/06 vi The claimant requested an IS claim form on 21 July. This was received on 2 August but without the verification of CHB and so was a defective claim. The verification of child benefit was returned on 31 August. The Commissioner held that reg. 6(1A)(b) of the SS (Claims and Payments) Regs. 1987 contain two possibilities for backdating:

1. if a properly completed claim form is received within one month from when the intention to claim was notified, the claim can be treated as made on the date of the earlier notification;
2. if a properly completed claim form is received within one month of the receipt of a defective claim, the claim can be treated as made on the date of the defective claim.

In this case, a properly completed claim form was received within one month of the receipt of the defective claim and so the Commissioner decided that the date of claim was 2 August. See also R(IS) 16/04.

4 Period of disqualification

CU 19/48 i The commencing date of a period of disqualification for the receipt of UB should normally be the day following the end of the employment, except where the claimant had received, or was entitled to, benefit. In that case disqualification should commence on the first day of the benefit week following the date of the decision.

R(U) 27/52 ii At para. 9 of the decision it was said that the statutory authorities have a discretion as to the length of the period of disqualification for the receipt of UB, subject to a limit of six weeks. But they should exercise the discretion judicially and, unless there are mitigating circumstances in the nature of the misconduct, they should not impose a period of disqualification which in effect afforded no real protection to the NI fund. But see R(U) 8/74, 13.1.4 vii *below*.

- iii A man made a delayed claim for UB and the local tribunal found that he did not have good cause for his failure to make a claim for UB within the prescribed time but purported to reduce the period of disqualification for the receipt of benefit. It was held that they had no power to do so and that the claimant must be disqualified for the receipt of UB for the whole period covered by his late claim. R(U) 35/56
- iv If a claimant proves good cause for the delay in claiming benefit during the whole period of delay he can escape disqualification for the receipt of benefit altogether. If he proves good cause for the delay during the latter part of the period he can escape disqualification for that part. But if he proves good cause for the delay only for the earlier part of the delay he cannot escape disqualification for the receipt of benefit. See also 13.3.1 xi, R(I) 1/84, 13.2.2 *v below*, and R(S) 2/84, 17.3.8 xi *below*. R(S) 2/63
- v It was held that a bus driver who was convicted of a motoring offence should have been disqualified for the receipt of UB for the maximum period of six weeks on the ground that he lost his employment through misconduct. In the absence of mitigating circumstances “in the nature of the misconduct itself” the period of disqualification should not be reduced. See R(U) 27/52, 13.1.2 ii *above*, and compare R(U) 1/71 and R(U) 10/71. R(U) 24/64
- vi It was held that the reduction of a period of disqualification for the receipt of UBs is justified only by a finding of mitigating circumstances or by a common sense exercise of discretion, not by a conflict of evidence, which it is the determining authority’s duty to resolve. R(U) 2/72
- vii In a case where a girl of 21 voluntarily left her employment as a mother’s help it was held by a tribunal of Commissioners that disqualification for six weeks was not necessarily appropriate only in the most serious cases. To say that there are only two possible approaches to the determination of the period of disqualification, one starting at the top and working down, the other starting at the bottom and working up, is wrong. References in earlier decisions to disqualification not being a penalty may have been misunderstood. S. 22(2) of the NI Act 1965 (see now s. 20(1)(a) of the Act) gave the statutory authority a completely unfettered discretion, provided it was exercised judicially, as to the period of disqualification to be imposed. The statement in para. 3 of decision R(U) 17/54 (q.v.) that the burden of proving that there are circumstances justifying a reduction in the period of disqualification will seldom be a light one is erroneous. The correct approach is to regard each case as one in which a sensible discretion has to be exercised in such a manner as the justice of the case requires. R(U) 8/74 (T)

5 Interchange with claims for other benefits

- i The Secretary of State refused to treat a claim for Supp. Ben. made in 1970 as a claim for AA under reg. 9(5), SS (Claims and Payments) Regs. 1979. The reg., which is permissive not mandatory, did not apply to that particular claim, which was made under the Supp. Ben. Act 1966 not the Supp. Ben. Act 1976. The continuing payments of Supp. Ben. did not constitute a claim to which reg. 9(5) applied. The Supp. Ben. (Claims and Payments) Regs. 1977 did not assist for treating the original claim as a continuing one. R(A) 3/81
- ii Reg. 9(5) of the SS (Claims and Payments) Regs. 1979 stated that a claim for Supp. Ben. may also be treated as a claim for AA. This provision was revoked with effect from 1988. Two claimants had applied for Supp. Ben. before 1988. They both claimed AA in the 1990s and asked for their claims to be backdated to the date of their first applications for Supp. Ben. On appeal the Commissioner held that the Secretary of State still had the power to treat a claim for Supp. Ben. The CA held that the power to treat a claim for Supp. Ben. as a claim for AA had been discretionary. As a result no rights that might have been preserved by S. 16 of the Interpretation Act 1978 had accrued and that the power could no longer be exercised. The CA also held that the Commissioner had no jurisdiction to determine the issue since it had been for the Secretary of State under s. 95(1)(e) of the SS Act 1975. R(A) 1/97

Part 2: Extinguishment of right to payment

Reg. 22 of the SS (Claims and Payments) Regs. 1979 ("the regs.").

1 Right to payment held to be extinguished

- i The pension order book of a woman who was in a mental hospital was mislaid by the person appointed to act for her. It was held that the claimant's right to payment of any sums the receivable dates of which were more than six months before the orders were presented for payment was extinguished. See also R(P) 2/85. CWG 6/50
- ii A claimant and his wife received drafts in payment of claims for sickness benefit which were put into a drawer and were forgotten. Payment of the sums receivable on the date of the first two drafts was held to be extinguished as it was not obtained within the period prescribed by the regs. then in force. See now the reg. mentioned above and compare R(S) 14/51. CS 524/50
- iii When the son of a widow left school widowed mother's allowance ceased to be payable to her and, although the son later became an apprentice, application for reinstatement of the allowance was not made until more than six months after the son had ceased to be a "child" for the purposes of his mother's entitlement to the allowance. It was held that no further payment could be made. R(G) 9/53
- iv When a widow failed to obtain payment of a draft for death grant within six months of the receivable date it was held that the right to payment was extinguished. See also R(G) 3/58. R(G) 5/55
- v A woman was in the habit of taking her pension order book to the post office at monthly intervals, but on one occasion a monthly order was overlooked, having, it was said, become folded back under a counterfoil. It was not noticed until more than six months after the receivable date and it was held that the relevant reg. prevented extending the time for payment of it. R(P) 7/59
- vi The claimant's wife was awarded RP and an order book containing orders payable weekly was sent to her, but none of them were cashed before she died a little over a year later. The provisions of reg. 12 of the NI (Claims and Payments) Regs. 1948 enabling the extinguishment date to be extended could not be invoked. See now reg. 20 of the regs. R(P) 6/61
- vii A woman who was entitled to family allowance failed to cash the orders in her family allowance order book within six months of the receivable dates. It was held that the time limit laid down by the statutory provisions then in force (see now reg. 8 of the CHB (Claims and Payments) Regs. 1976) was a rigid one and was not qualified in any way. Accordingly the statutory authorities had no discretion to extend it in any way, with the result that the claimant's right to payment of the uncashed orders was extinguished. R(F) 5/63
- viii A family allowance order book was held at a post office waiting collection by the claimant. The records of (what was then) the Ministry of Pensions and NI showed that an award notice had been sent to the claimant, in compliance with the relevant statutory requirement, explaining what she should do to obtain her order book and the allowance on the orders in it. The claimant denied having received the notice and did not collect the order book, which was sent back to the Ministry six months later. It was held there was no reason to doubt that the award notice had been duly sent to the claimant; and further then the effect of the relevant statutory provisions relating to the period, which was then a period of six months (now 12 months, see reg. 8(1) of the Child Benefit (Claims and Payments) Regs. 1976), at the end of which the right to payment of an allowance became extinguished, began to run from the date on which each order was payable and that the period was not affected by the non-receipt of an official intimation. The claimant's right to payment of the orders in the order-book she failed to collect from the post office was therefore extinguished. R(F) 1/64

13.2.1-2

R(P) 2/65 ix It was held that the word 'receive' in reg. 12(2A) of the NI Claims and Payments) Regs. 1948, as amended, should be given its ordinary and natural meaning and not be construed as meaning 'receive with understanding'. (R(S) 18/54 not followed.) Thus it was held that the right to certain sums payable to a claimant who, it was contended, was unable to act by reason of mental incapacity was extinguished when payment was not obtained within six months of the receivable dates. But see now reg. 20 of the Regs.

R(U) 5/65 x Written notice was sent to a man by post informing him that a sum payable by way of UB was available for collection, but the notice was never received by him and he did not learn of the award until 18 months later. It was held, for the reasons given in paras. 10-12, that the claimant's right to the sum was extinguished under the Regulations then in force. But see now reg. 20 of the Regulations. See also paragraph 11 of the decision as to the application of s. 26 of the Interpretation Act 1889.

2 Right to payment held not to be extinguished

R(P) 3/51 i A man was in the habit of cashing his pension orders every three months, but was five days later in doing so because his holiday had been prolonged by reason of illness. It was held that he had had good cause for delay and that his right to payment of the orders was not extinguished.

R(P)7/55 ii A man aged 70 who was entitled to an increase of his RP for his wife was not given an order-book for the increase at the local post office and thought that the withholding of the book was correct, although he had had a somewhat obscure notice authorising him to receive his own pension order-book and a book for the increase for his wife. It was found that an official at the post office had been at fault and, since the claimant sought to obtain payment of the amounts payable by way of the increase for his wife within six months after the due dates of the orders, his right to payment of them was not extinguished. See also R(SB) 7/83.

R(P) 2/58 iii Under the relevant provisions of the NI (Claims and Payments) Regs. 1948, as amended, when it was being determined whether the right to any sum payable by way of benefit had become extinguished no account was to be taken of any period during which a serial order was in the possession of a post office unless notice had been given that it was available for collection. (See now reg. 20(2) of the Regs.) It was held that the form of application for a renewal book contained in an old order-book could not constitute notice that a new order-book was ready for collection and that the right of a woman in receipt of a RP to payment of certain orders in her pension order-book was not extinguished.

R(G)5/62 iv A claimant was awarded widowed mother's allowance and was provided with successive order-books. It was her practice to cash several orders at a time and so obtain a lump sum, but she failed to obtain payment within six months of the receivable dates of two orders in her pension order-book. It was held that the claimant's right to payment was not extinguished on the ground that she was a person who was for the time being unable to act by reason of mental incapacity within the meaning of reg. 12(1) of the NI (Claims and Payments) Amendment Regs. 1952. See now reg. 20 of the Regs.

R(I) 1/84 v In relation to the extinguishment under reg. 22(1)(c) of the Regs. of right to sums payable by way of benefit which are not obtained within the prescribed time, it was held that, in the absence of either the issue of an instrument of payment or of a notice that payment is available for collection, the right to payment of benefit may not be extinguished unless the Secretary of State has determined when the right is to be treated as having arisen; and, in determining when the right to payment is to be treated as having arisen the Secretary of State must specify a date (paras 11 and 12). See R(S) 2/63, 13.1.41 *v above*, 13.3.1 xi *below*. R(G) 3/53, 13.3.2 vi, R(G) 1/75, 13.3.1 xiv, 13.4.1 iii, and R(S) 3/79, 13.3.2 xi *below*.

3 Payment of benefit may be statute barred

N.B.: By force of section 82(2) of the Act no sum on account of benefit -save in certain circumstances death grant - shall be paid in respect of any period more than 12 months before the date on which the claim is made. When the decisions referred to in paragraphs (1) - (7) below were given the statutory time-limit was 6 months.

- i Although it was accepted that a man had had good cause for delay in claiming his retirement pension, it was held that, since the claim was made in respect of a period more than 6 months before it was made, the payment was statute barred. See also C.U. 128/49 and R(P) 6/51. C.P. 30/50
- ii The claimant took all the relevant papers relating to the death of her husband to her solicitors, who failed to make a claim for death grant within 6 months of the deceased's death. Admittedly the delay was due entirely to neglect on the part of the solicitors, but it was held that by force of regulation 11(3) of the National Insurance (Claims and Payments) Regulations 1948 no sum could be payable to the claimant by way of death grant. See now section 82(2)(b) of the Act. See also 13.4.3 iv - v *below*. C.G.76/50
- iii A woman who became incapable of work by reason of tuberculosis went to a sanatorium in Switzerland and gave a power of attorney to a solicitor, but no claim for sickness benefit was made until more than 6 months later. It was held that payment of benefit was statute barred in respect of any period more than 6 months before the date of the claim. C.S. 166/50
- iv A widow who would have been entitled to a retirement pension on the coming into force of the National Insurance Act 1948 did not make a claim for pension until 6 years later. It was held that a retirement pension could not be payable to her in respect of any period more than 6 months before the date on which the claim was made. R(P) 2/55
- v A civil servant who was incapable of work received full pay for 3 months, at the end of which he was not informed by his employing Department that he was released from his undertaking not to claim sickness benefit, and it was not until a year later that the Ministry of Pensions and National Insurance became aware of his incapacity. It was accepted that the claimant had had good cause for making a late claim for sickness benefit, but it was held that benefit could not be payable for any period more than 6 months before the date on which the claim was made. See also 13.1.1 vi *above*. R(S) 9/60
- vi The word 'month' means calendar month. See paragraphs 7-8 as to the calculation of a period of 6 months when it is being considered whether a claim is statute barred. R(S) 5/63
- vii A claim for injury benefit was made in December in respect of a period of two months ending in the middle of the previous February. It was accepted that the claimant had good cause for making a late claim but that payment of benefit was statute barred. See paras 11 *et seq.* R(I) 9/68
- viii A woman claimed a non-contributory invalidity pension some 15 months after she had attained pensionable age and, through counsel, submitted that she could show good cause for the delay in making the claim. The Commissioner held that, if a person fails to make a claim within the time prescribed by regulation 14 of the Social Security (Claims and Payments) Regulations 1979, he fails to make out title *ab initio* (para. 14). The effect of section 82(2)(c) of the Act (no sum to be paid on account of certain benefits in respect of any period more than 12 months before date of claim) was to take away the claimant's entitlement to a non-contributory invalidity pension for any period of more than 12 months before her claim for it. Accordingly, she was not entitled to that pension immediately before she attained pensionable age and so, by virtue of section 36(4) *ibid*, she could not make a valid claim for it at any time thereafter (paras 11-18). See also 17.4.1 xii and 17.4.4 vii *below*, and also R(S) 11/83, and, at 18.6.2 i, R 2/85 (NCIP) (The Northern Ireland 'McCaffrey Case'). Followed in R(S) 8/85. R(S) 6/83

Part 3: Good cause for delay in claiming

Regulation 14 of the Social Security (Claims and Payments) Regulations 1979 (hereinafter in Part 3 of Chapter 13 referred to as 'the Regulations'). (Note: Prior to 1966 the expression 'reasonable cause' for delay in claiming benefit was used in relation to industrial injury benefits, but in 2 decisions (ie. CSI 10/50 and R(U) 6/62) it was accepted that the principles for deciding whether there was reasonable cause for delay in claiming industrial injury benefits were the same as those for deciding whether there was good cause for delay in national insurance cases. Accordingly in all following instances the expression 'good cause' only is used.)

1 General principles

- CS 34/49 i Good cause for delay in claiming benefit must be shown to have existed throughout the whole period of delay. But see and compare R(S) 2/63, 13.3.1 xi *below*.
- CG 207/49 ii When a claimant is seriously ill and unable to attend to a claim when it should have been attended to, in order to comply with the relevant statutory requirements relating to the making of claims for benefit under the National Insurance Acts the question to be considered when it is being determined whether or not there was good cause for the failure to make a claim within the prescribed time depends upon the answer to the question: 'Has the claimant done all that could reasonably be expected to have been done in the interval?' A person is not entitled to leave to others the making of a claim and then take no further interest in the matter. It is a claimant's duty to follow up the matter for himself so far as he can reasonably be expected to do so having regard to all the circumstances. See also R(I) 28/54 and R(P) 2/85 *below*.
- CS 371/49 iii The onus of proving good cause for making a late claim is on the claimant, and it was pointed out that the expression used is 'good cause' and not 'good cause'. It was said further that 'good cause' means some fact which, having regard to all circumstances (including the claimant's state of health and the information he had received and that which he might have obtained), would probably have caused a reasonable person of his age and experience to act (or fail to act) as the claimant did. See also R(S) 2/63, 13.3.1 xi *below* and R(U) 9/74. See also R(P) 5/61, R(I) 25/61, and R(SB) 6/83.
- CS 537/49 iv It was said that a distinction has to be drawn between what constituted good cause for the failure to give notice of incapacity and what constituted good cause for the failure to make a claim for benefit. If a claimant had no intention of claiming benefit, then, as a reasonable man, he would not give notice of incapacity; but it would be quite a different thing to say that he had good cause for making a late claim for benefit which had accrued during the period of delay. (But see R(S) 19/52, para. 4, where it was pointed out that an amendment made by the National Insurance (Claims and Payments) Amendments Regulations 1951 rendered out of date the distinction that was drawn between good cause for failure to give notice of incapacity and failure to claim benefit.)
- CS 554/49 v A deliberate election not to claim benefit, even for altruistic reasons, cannot constitute good cause for making a late claim. A railway employee thought that his wages would be paid in full during a period of incapacity for work and that it would help the national insurance fund if he refrained from claiming sickness benefit. It was held that he did not have good cause for making a late claim. See also R(U) 34/51.
- CG 1/50 vi In a case when it is practicable for the beneficiary of a death grant to make a claim for the grant but he has delegated the task of doing so to another person, who fails to make the claim within the prescribed time, good cause for the delay in the making of the claim can be shown by providing that, having regard to all the circum-

stances, including the beneficiary's education and experience of affairs, a reasonable person in the same position would not have thought it necessary to send the claim to the local insurance officer himself but would have relied on the other person to send it in time and would not have taken any steps beyond those, if any, which the beneficiary took to ensure that the other person had sent the claim in time. Compare CG 207/49, 13.3.1 ii *above*; R(G) 9/52, 13.6.3 v and R(P) 2/85 *below*.

- vii The question to be considered when it is being determined whether or not a claimant had good cause for making a late claim for sickness benefit is whether he has done all that he could reasonably be expected to do in the interval between the commencement of incapacity and the date on which the claim is made. But a person who is about to enter hospital cannot be expected to make enquiries, or to claim benefit, before incapacity begins. See also 13.4.3 iii *below* and see CS 51/49. CS 42/50
- viii Prior to his death the claimant's husband had been certified to be incapable of work. A month after he died a claim for sickness benefit was made on behalf of the widow by his brother-in-law, who had been appointed to deal with the matter under (what was then) regulation 18(1) of the National Insurance (Claims and Payments) Regulations 1948. It was held that there was no requirement for good cause to be shown between a person's death and the date on which an appointment was made by the Minister, since no valid claim could have been made until the appointment was confirmed. The question of good cause did not therefore arise. See now regulation 27(1) of the Regulations as to appointments made by the Secretary of State. CS 453/50
- ix A person may be 'deemed' to have good cause for making a late claim for sickness benefit under (what is now) para. 2 of Schedule 2 to the Regulations after being an in-patient in hospital. Thus a man who made a claim for personal benefit while he was in hospital, but failed to make a claim for an increase for his wife, was held to be deemed to have had good cause for making the claim within 3 weeks of being discharged from the hospital. R(S) 12/54
- x A claimant goes to a doctor for medical and not for legal advice. He has no right to rely upon his doctor to advise him as to what he has to do to claim sickness benefit. Such information can be obtained, if needed, from the local office of (what is now) the Department of Health and Social Security. If doctors were under a duty to give such advice they might find themselves involved in actions for negligence for giving incorrect advice on such matters. But see R(I) 40/59, 13.4.5 vii *below*. R(S) 5/56
- xi If a claimant proved good cause for delay in claiming benefit during the whole period of delay he can escape disqualification altogether. If he proves good cause for the delay during the latter part of the period he can escape disqualification for that part. But if he proves good cause for delay only for the earlier part of the delay he cannot escape disqualification for the receipt of benefit (see para. 9). It was held further that there should be held to be good cause for delay in claiming sickness benefit; (1) during any period during which the claimant did not claim because he had reasonable grounds for believing, and believed, that he was being, or would be, paid his salary or wages in full during sickness and he believed that it was not permissible for him to claim sickness benefit whilst being so paid; and (2) during such further brief period thereafter as may be reasonably necessary to enable him to claim promptly. The Tribunal of Commissioners affirmed the definition of good cause in CS 371/49, 13.3.1 iii *above*. See also R(U) 35/56, 13.1.4 iii *above* and R(S) 9/54. In addition see R(SB) 6/83, R(I) 1/84, 13.2.2 v *above*, and R(S) 2/84, 17.3.8 xi *below*. Affirmed in R(SB) 39/85. R(S) 2/63 (T)
- xii A self-employed man made a late claim for sickness benefit because he did not know that as a self-employed person he would be entitled to benefit, and was held not to have had good cause for making a late claim. See in particular paragraphs 7-8 where reference is made to the case of *Eley v. Bedford* [1971] 3 WLR 563. The Commissioner explains why what was said in that case is not apposite in determining whether a person has good cause for delay in claiming national insurance benefits. See also R(S) 8/81. R(S) 1/73

- R(G) 2/74 xiii Whether a person had good cause for making a late claim depends upon the facts and circumstances of the particular case, and an *a priori* approach to the question - an approach which avoids considering the facts and circumstances but seeks to apply some fixed and automatic principle - can in many cases lead to injustice. See also 13.4.1 ii *below*.
- R(G) 1/75 xiv Difficulty over language is not in itself good cause for making a delayed claim for benefit. Persons who are claiming social security benefits should be diligent in seeking and obtaining interpretation of language and proper advice. It is not enough simply to rely on ignorance of the language any more than it is good cause to prove mere illiteracy or ignorance of statutory provisions. But see CS 100/49, 13.4.3 ii *below* and R(I) 1/84, 13.2.2 v *above*.
- R(S) 5/79 xv The claimant made a claim for sickness benefit by means of a medical certificate which he first sent to his employer. The employer delayed forwarding the certificate to the local office of the Department with the result that the claim was outside the time limit. It was held that the claimant did not have good cause for the delay. It is the claimant's responsibility to ensure that his claim gets to the appropriate office of the Department. The acquiescence of the Department in the practice of submitting claims via the employer is accepted as good cause for some not inordinate delay, but where no payment or acknowledgement of the claim is received, a time may arrive when the claimant may reasonably be expected to make enquiry.
- R(S) 8/81 xvi Failure by the authorities to give appropriate publicity to the rights of self-employed persons to claim sickness benefit does not by itself constitute a good cause for delay in claiming benefit. *Walls' Meat Co Ltd v. Khan* [1979] ICR 52 discussed. See also R(SB) 6/83.
- R(IS) 5/91 xvii The problem which will face the claimant is whether or not he can establish good cause for delay between when a claim for income support was lodged on his behalf and when a request was made on his behalf for backdating. It could be said that although good cause had been shown up to the date the claim was lodged, from then onwards the management of his financial affairs had been unequivocally taken over by his wife, with the aid of his solicitor, and it was incumbent upon her to show that, after putting foot to the claim, she had good cause continually up to the date that the request was made for backdating.
- R(U) 2/92 xviii A claimant who considers that his first priority is to try and find other work is not necessarily to be taken as deliberately electing not to claim benefit so as to fail to show good cause for the delay in his claim. An adjudicating authority considering a case where late claim is made should carefully consider all the facts of the case to establish whether there is good cause for the delay.
- R(I) 3/96 xix The claimant made a late claim for REA. The tribunal considered that he could have done more to make enquiries about claiming. Held that they had applied the wrong test. They asked themselves whether the claimant could have claimed earlier rather than whether it was reasonable for him not to have claimed earlier. For another synopsis of this decision see 10.2.9.i.

2 Ignorance of rights and duties and duty to make enquiries

- CS 35/48 i The fact that a claimant was not aware of statutory requirements as to claiming benefit cannot, of itself, be good cause for not complying with those requirements. A claimant who is ignorant of the procedure must take proper steps to obtain the necessary information. Thus a claimant who, although there were clear directions on the medical certificates she was given, made a late claim for sickness benefit, was held not to have had good cause for her failure to claim within the prescribed time.
- CWG 2/49 ii A woman made a late claim for a maternity allowance because of her ignorance of what was required of her in order to the claim the allowance. It was held that she did not have good cause for making a late claim on the ground that ignorance of an Act or Regulation cannot constitute good cause for non-observance of their requirements. It is the duty of claimants who are ignorant of their rights and duties under the legislation to take reasonable steps to obtain the necessary information by, for example, enquiring at a local office of (what is now) the Department of Health and Social Security. See also CS/G 9/49 and CS/270/50.

- iii Ignorance of entitlement to death grant was held not to constitute good cause for the failure to make a claim within the prescribed time. See also CS 414/50. CG 125/50
- iv A woman who delayed making a claim for unemployment benefit because she was ignorant of the procedure, and because she thought that in any case her claim would be unsuccessful, was held not to have had good cause for making a late claim. R(U) 5/52
- v A teacher at a grammar school was certified to have been in contact with an infectious disease and, as a result, had been unable to follow his employment. He was ignorant of the Regulations (see now regulation 3 of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1975) and in consequence made a late claim for sickness benefit. His employers paid his salary in full during his absence from school and it was held on the facts that good cause for making a late claim for sickness benefit had been established. See paragraph 5. (As to 'deemed incapacity' see R(S) 24/54 and compare R(S) 1/72). R(S) 18/52
- vi Persons who do not know their rights under the National Insurance Acts (and now the Social Security Acts), or what they have to do in order to obtain them, are expected to make reasonable enquiries to ascertain the true position. A person outside Great Britain is, however, at a disadvantage in pursuing such enquiries and a liberal view should be taken of any delay caused by pursuing them. Compare R(S) 11/59, 13.6.1 *i below* and see R(I) 1/84 13.2.2 *v above*. R(G) 3/53
- vii When speaking of the requirement that an insured person should make reasonable enquiries to ascertain what his rights are under the Acts, it is implicit that there were grounds for thinking that he ought to have known that there were some rights about which to enquire. See also 13.4.2 *iii below*. R(P) 5/58
- viii A man who was deemed under the legislation then in force to have retired from regular employment in 1958 claimed a retirement pension, but the amount of it was extinguished by his earnings. Some time later he re-married. On reaching the age of 70 a pension became payable to him irrespective of the amount of his earnings, but it was not until 6 months later that he claimed an increase of retirement pension for his wife. It was held that it would have been reasonable to expect him to have made some enquiries about his potential entitlement when he re-married and, when he received his pension after attaining the age of 70, to enquire whether the sum he received was correct in view of the fact that he was then a married man. Good cause for making a late claim for the increase for his wife was held not to have been established. See paragraph 12. R(P) 5/61
- ix There is a distinction between ignorance of the current rate of benefit on the part of a man who had not previously been in receipt of benefit and ignorance of the requirement of the Act and Regulations as to the making of a claim for benefit. Thus a man who failed to indicate, on his first medical certificate, that he wished to claim an increase of sickness benefit for his dependants was held to have good cause for making a late claim for the increase since his attention was not drawn to his omission to do so by the local office. Furthermore, there was some delay on the part of his employers in making deductions from his monthly salary of the amount he should have received by way of sickness benefit. See also 13.6.1 *v below*. R(S) 3/63
- x The claimant, who retired in April 1971, was awarded retirement pension at the personal rate from May 1971. At that time he ascertained that he was not entitled to an increase for his wife because of her earnings. Owing to a subsequent relaxation of the earnings rule he would have been entitled to an increase from April 1976 but he did not make a claim until March 1977. The delay was due to the fact that the claimant was unaware of the earnings limit change. The insurance officer found that good cause for the delay in claiming was not established and awarded increase of retirement pension from December 1976 only. It was held that ignorance of one's rights may be good cause for delay in claiming if a consideration of all the facts leads to a conclusion that the ignorance was reasonable. It was further held that a failure to make enquiries will not of itself defeat a plea of good cause if the claiming can show R(P) 1/79

that he could not reasonably have been expected to have been aware of his rights or that his failure was due to a mistaken belief reasonably held. See also R(G) 2/74, 13.3.1 xiii *above* and R(SB) 6/83, and see 30.8.1 iii, 30.8.4 i *below*.

- R(S) 3/79 xi The claimant was aware of the earnings limit for the payment of an increase of sickness benefit in respect of his wife, which had precluded payment in his case, but said he was unaware of the different conditions and earnings limit which applied to an increase of invalidity benefit until some 6 months after he had received that benefit. He claimed promptly once he knew he was entitled to an increase of invalidity benefit. The Department of Health and Social Security had sent him a form and leaflet about invalidity benefit shortly before he was due to receive it. It was held that having been informed that the limit to his wife's earnings was £3.70 per week the claimant, in the absence of anything to alert him to the fact, could not be expected to enquire if the position was different in relation to invalidity benefit, and the state of his health at the time the form and leaflet were sent to him excused his failure to attend to them promptly or later when he had a backlog of matters to attend to. See R(I) 1/84, 13.2.2 *v above*.
- R(I) 8/81 xii Only special circumstances can remove the requirement of a self-employed claimant to make reasonable enquiries at a social security office as to his rights to benefit. Ignorance of such rights does not in itself constitute a good cause for a delay in claiming benefit. See R(S) 1/73.

3 Unaware of the nature of the disease

- R(I) 6/54 i A labourer in a steel works who had been a coalminer made a claim for disablement benefit after being advised by a mass radiography unit that he was suffering from pneumoconiosis. He had left the coalmining industry and obtained lighter work because of failing strength, but, although experiencing shortness of breath and tiredness, he never consulted a doctor. It was held that he had good cause for delay in claiming disablement benefit as he did not know or suspect that he was suffering from pneumoconiosis until after his examination by the mass radiography unit. See paragraph 6.
- R(I) 51/54 ii A man injured his knee in an industrial accident and some 9 months later was found to be suffering from a tubercular hip joint, but he did not claim disablement benefit until over 12 months later. A medical board then found that his disablement was due to the accident. It was held that good cause for delay in claiming disablement benefit had been shown on the ground that the claimant had not realised the connection between the condition of his hip and the accident throughout the period of delay.

4 Members of religious orders

- R(S) 2/51 i When a person withdraws herself, as the claimant did, from ordinary human affairs, she must be regarded as having authorised the person, or persons, who normally conduct, on her behalf, any necessary contacts with the outside world to deal with her affairs. Thus when the prioress of the convent of which the claimant was a member made a late claim for sickness benefit on the claimant's behalf it was not accepted that good cause for the delay has been shown and the claimant was disqualified for receiving the benefit. See also R(P) 2/85.
- R(U) 33/58 ii A Jewish rabbi who was forbidden by the law of his faith to engage in any occupation on certain days of the Jewish Passover was held to have had good cause for making a late claim for unemployment benefit for the first and second days of the Passover.

Part 4: Good cause for delay accepted

See also part 6.

1 Maternity, widow's and death benefits

- i A widow who did not know where her husband had died, and who had made a previous unsuccessful claim based on presumption of death before the National Insurance Act 1948 came into force, was held to have had good cause for delay in making a claim for widow's pension after the Act was in force. CG 153/49
- ii A widow was entitled under the legislation then in force to widow's allowance for 13 weeks, but she was not entitled to a widow's pension. Some 10 years later the legislation was amended and, subject to making a claim, the widow became entitled to an age-related widow's pension. She did not then make a claim, the widow became entitled to an age-related widow's pension. She did not then make a claim, but on attaining the age of 60 she made a claim for retirement pension which was treated as a claim for widow's pension. It was held that she had good cause for making a late claim and that widow's pension was payable to her for a period of 12 months immediately preceding the date of the claim. See also 13.3.1xiii *above*. R(G) 2/74
- iii A woman who understood very little English and relied upon her husband, who in turn relied upon the help of friends, was held to have had good cause for making a late claim for maternity allowance. See also 13.3.1xiv and R(1) 1/84, 13.2.2v *above*. R(G) 1/75
- iv Maternity allowance - effect of EEC Regulations and of late claim - a woman lived and worked from time to time in Great Britain and from time to time in Eire. She was confined in Eire and she claimed maternity allowance in Great Britain where she subsequently came to live. The European Court gave judgement concerning the application of Council Regulations No 1408/71 and No 574/72 and the Commissioner held that the allowance was payable in the country where the confinement did not take place (England) in respect of any period for which it would not be obtained in the country where it did (Eire) (paragraphs 1-5). The Commissioner also held that proviso (b) of regulation 13(2) of the Social Security (Claims and Payments) Regulations 1975 did not apply to claims made after confinement (paragraph 11). R(G) 3/83

2 Retirement pensions

- i A man who had no birth certificate and had been born before the marriage of his parents was held to have had reasonable grounds for supposing that he was a year younger than he was and to have had good cause for delay in claiming a pension. CP 48/49
- ii A claimant's mother died when he was a child and he lived with his father and stepmother until his marriage. He was always told that the date of his birth was in June 1884, though in fact it was in June 1883. He claimed a retirement pension based on the former date. It was held that it was not a case of a man who, not knowing his age, assumed that he had been born in a particular year and neglected to make a proper enquiry, and it was accepted that he had good cause for making a late claim for a retirement pension. CP 1/50
- iii A widow who had emigrated to America before the statutory provisions relating to retirement pensions came into operation, and who did not know that she was entitled to claim a pension until she read an article in an American magazine, was held to have had good cause for not making a claim before she did. It was not R(P) 5/58

reasonable to expect a person who was wholly out of touch with legislation in England, and whose qualification for pension depended upon a repealed Act of Parliament, to realise that there were rights about which enquiry might be made. See also 13.3.2vii above and see and compare R(G) 3/53, 13.3.2vi above.

- R(P) 10/59 iv A woman of a limited education, on attaining the age of 60, applied for a provisional determination of her entitlement to a retirement pension, but she did not then retire from regular employment. It was decided that she satisfied the conditions for a pension but she never received a form notifying her of that decision. Some 5 years later, by which time the claimant had moved to a different place, her son made enquiries as to her entitlement to a retirement pension and explained her limitations. It was held that allowances should be made in the circumstances and that good cause for delay in claiming her retirement pension had been established.

3 Sickness benefit

- CS 80/49 i An employee of the War Office *bona fide* believed that his Department had made arrangements to submit claims for sickness benefit on his behalf. It was held that he had good cause for making a late claim for sickness benefit. See also CS 613/49.
- CS 100/49 ii A Latvian who lived in a camp and was unable to speak English made a late claim for sickness benefit. He relied on a recognised procedure whereby an interpreter sent medical certificates to the employers, who sent them on to the local office of what was then the Ministry of National Insurance. The employers failed to do so and it was held that the claimant had good cause for making a late claim. See R(G) 1/75, 13.4.1iii above.
- CS 42/50 iii A claimant who was seriously ill after an operation was held to have had good cause for making a late claim for sickness benefit. See also 13.3.1vii above.
- R(S) 4/52 iv A girl aged 15 left the making of a claim for sickness benefit for her to her parents, who mishandled the matter. It was held that the girl (i.e. the claimant) had good cause for the claim being delayed and that sickness benefit was payable to her.
- R(S) 25/52 v The reason for a man making a late claim for sickness benefit was that, after showing his final certificate to his employers and addressing it to the local national insurance office, he put it in his office 'out-tray', where it got underneath other papers, with the result that the clerk responsible for posting it failed to find it. Ten days later the claimant made enquiries and it was held that he had good cause for making a late claim for sickness benefit. See also R(P) 2/85.
- R(S) 3/53 vi When a mother made a late claim for sickness benefit on behalf of her son, who had been in a mental hospital and who later said that the claim had been made without his knowledge, it was held that good cause for the delay had been established. See paragraphs 14-15. See also 13.1.1iii above.

Claims and payments: good cause accepted

13.4.3-4

- vii A self-employed man made a late claim for sickness benefit and gave as his reason for not making an earlier claim that he had misunderstood what he had been told when, on a former occasion, he had been informed that he was not entitled to unemployment benefit. He believed that he was also not entitled to any form of benefit, and it was held that his delay in claiming sickness benefit was due to a genuinely held belief based on proper enquiries and that he had accordingly shown good cause for making a late claim. R(S) 14/54
- viii A claimant suffering from trachea bronchitis who lived alone in a new district and who had no-one to look after her was held to have had good cause for making a late claim for sickness benefit. R(S) 21/54
- ix A young woman who had formerly been employed paid contributions as a non-employed person for some 8 months before she became incapable of work. She knew that contributions as a non-employed person could not qualify her for sickness benefit but she did not suspect that she would still have some residual rights to benefit by virtue of her earlier contributions. Accordingly she made a late claim for sickness benefit and it was held that she had good cause for doing so on the ground that her belief was not unreasonable and it reasonably appeared to her that she had no rights about which to enquire. R(S) 10/59
- x A woman who had recently entered Government service became ill but did not make a claim for sickness benefit for 3 weeks because she did not realise that, unlike the older persons with whom she was working, she was not entitled to sick leave on full pay. She was paid her full wage for the first week of her incapacity, but thereafter her pay was reduced by the amount to which she would have been entitled by way of sickness benefit. It was held that the claimant's misunderstanding of the position was not unreasonable and that she had good cause for delay in claiming sickness benefit. R(S) 2/60
- xi A man declined a medical certificate when he became incapable of work because he expected to be able to return to work in 3 days. On the third day of the prescribed period for making a claim for sickness benefit he decided to make a claim, but was prevented from doing so by his illness. It was held that he had good cause for making a late claim. R(S) 6/60
- xii It was accepted that a man who had a genuine phobia which took the form of an aversion to doctors and hospitals, and because it could not be persuaded to see a doctor for 4 months after becoming ill, had good cause for making as delayed claim for sickness benefit. R(S) 7/61

4 Unemployment benefit

- i A miner was held to have had good cause for making a late claim for unemployment when he relied upon the branch secretary of his union to make a claim on his behalf in accordance with an informal arrangement for that to be done. See also R(P) 2/85. CU 78/49

- R(U) 6/52 ii A woman did not make a claim for unemployment benefit within the prescribed time because a previous claim had been disallowed by the insurance officer, and on appeal by the local tribunal, on the ground that she was a seasonal worker who did not satisfy the relevant statutory conditions for the receipt of unemployment benefit. Subsequently, however, the local tribunal's decision was reversed by the Commissioner (see R(U) 7/51) and the claimant then made a late claim for unemployment benefit. It was held that she had good cause for the delay in making a claim. See paragraphs 12-14.
- R(U) 1/54 iii A woman who was unemployed and available for work failed to make a claim for unemployment benefit within the prescribed time because she expected to receive 3 weeks' wages in lieu of notice. As soon as she realised the true position she made a claim for benefit and it was held that she had good cause for making a late claim.
- R(U) 20/56 iv A builder's labourer was paid off on a Friday but did not make a claim for unemployment benefit under the following Monday because he attended a meeting on the Saturday at the request of his union in the hope of getting work. It was held that he had good cause for making a late claim for unemployment benefit. CS 554/49 and R(U) 334/51 distinguished.
- R(U) 9/74 v The claimant, whose unemployment came to an end on the last day of December, expected to start employment on the following 1st January, but it fell through. He then sought advice from the Citizens' Advice Bureau and was advised to take his 'N.H.I. card' to the local Employment Office. There was no unreasonable delay between his receiving his card from his employers and taking it to the Employment Office and it was held that he had good cause for making a delayed claim for unemployment benefit.

5 Benefit following an industrial accident

- CI 273/50 i An iron-plater who had reasonable grounds for supposing that his injury would not lead to a loss of faculty was held to have had good cause for delay in claiming disablement benefit.
- R(I) 69/52 ii A claimant made a claim for disablement benefit during the injury benefit period and thus brought it to an end. The assessment of the extent of his disablement made by the medical board would not, however, have given him title to disablement benefit and accordingly he withdrew his claim, as he was entitled to under the Regulations then in force. Six months later he made a further claim for disablement benefit which again operated to bring the injury benefit period to an end, and it was held that good cause for the delay in claiming disablement benefit was established.
- R(I) 28/54 iii A claimant who suffered an industrial accident was informed by a wages clerk at the hospital at which she was employed that she should hand her medical certificates to the wages department, who would claim benefit for her. In the result she made a late claim for injury benefit and it was held that she had good cause for the delay in making the claim.

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- iv A man developed a psycho-neurotic condition and affection of the skin due to the work he was employed to do, but he did not make a claim for the injury benefit for some 2 years. It was held (see paragraph 20) that, even if his physical and mental health had been good, he could not have been expected to grasp and act upon the possibility that he was suffering injury caused by accident and that he had good cause for making a late claim for injury benefit. R(I) 43/55
- v An iron-moulder claimed and received sickness benefit when his doctor certified incapacity as being due to bronchitis, myocarditis or asthma. Later the claimant made a claim for disablement benefit for pneumoconiosis, but the medical board decided that he was not suffering from that disease. Nevertheless, after his death, pneumoconiosis was revealed at the post-mortem examination and the medical board then decided that he had been suffering from the disease. It was held that he had had reasonable cause for delay in claiming disablement benefit since it would have been unreasonable to have expected him to claim when his doctor was certifying him to be suffering from diseases other than pneumoconiosis. R(I) 24/58
- vi A man was in receipt of a special hardship allowance until the final assessment of his disablement ended. He applied unsuccessfully to a medical board for a review of the final assessment, but on appeal the medical appeal tribunal made a life assessment. He then made a further claim for a special hardship allowance and was held to have had good cause for the delay in the making of the claim. See paragraphs 7 as to the necessity for a fresh claim when the right to the allowance is not continuous. R(I) 28/59
- vii An ex-coal miner who suffered from active pulmonary tuberculosis was treated for a number of years by a chest physician who considered it to be necessary to wait for a considerable time before it became clear whether the claimant was also suffering from pneumoconiosis. Later he was advised by his doctor to make a claim for disablement benefit and it was held that he had good cause for making a late claim. See paragraph 5 where R(S) 5/56 is distinguished. R(I) 40/59
- viii The claimant met with an industrial accident in November 1955 and after being incapable of work for 3 months resumed his regular occupation. He claimed disablement benefit but was correctly advised at the local office of what was then a special hardship allowance in addition to disablement benefit. He worked in his pre-accident employment for some 2 years, but then took up lighter and lower-paid work. At the end of 1961, and again about the middle of 1962, he called at the local office and applied, successfully for a review of the extent of his disablement benefit on the ground of unforeseen aggravation. On each occasion he was told, in answer to his express enquiry, that he would not be entitled to any other benefits. In March 1970 he made a claim for special hardship allowance and it was accepted that at all times after he gave up his regular occupation he satisfied the basic requirements for entitlement to an award of special hardship allowance. It was held, for the reasons given in paragraphs 12 and 19, that from the time of his first application for a review in November 1961 he had had good cause for not making an earlier claim for a special hardship allowance. The decision was subsequently upheld by the Divisional Court of the High Court. See also 18.1.1 x *below*. R(I) 10/74

6 Attendance Allowance

R(A) 2/81 i A mother of a daughter who was incapable of managing her own affairs had been appointed in 1968 to act for her supplementary benefit matters. She genuinely thought that this appointment applied also to matters under the National Insurance and, subsequently, the Social Security Acts and in 1974, without making further application for the appointment, as an appointed person she claimed attendance allowance on behalf of her daughter. The Delegated Medical Practitioner (DMP) found none of the medical conditions to be satisfied and the claim was disallowed. In 1977 the mother made another claim for the allowance. The DMP found the day conditions to be satisfied and likely to remain satisfied from the date of the second claim for life and an award at the lower rate was made as from the date of that claim. In 1979, at the instigation of a newspaper on the basis that the second claim should have been treated as a request for a review of the first decision, both the previous decisions were reviewed by another DMP. On 15 May 1979 that DMP found that the day condition satisfied until 14 May 1979. In May 1979 under regulation 2 of the Social Security (Attendance Allowance) (No. 2) Regulations 1975, as it then was, the DMP was under a duty to give the claimant the reasons for his decision and the claimant had no (prescribed) power to require him to do so. The DMP failed to do so, except to indicate that he had based his decision on the grounds that there had been a mistake as to a material fact, but he did not indicate what that fact was. (Those were grounds in respect of which there was no time limit for applying for a review - see Social Security Act 1975, section 106(1)(a).) The insurance officer under regulation 31 of the Social Security (Determination of Claims and Questions) Regulations 1975 limited the award to a period starting on the date of the second claim in 1977 because he was not satisfied that the claimant had proved good cause for delaying her application for a review of that or the previous claim. The Commissioner held that:

(1) The mother had not at law been appointed to make the above claims etc.; but in the circumstances of the case it should be accepted that she had lawfully been acting on her daughter's behalf and, if in the event it had been relevant to the decision, he would find that any delay by the mother should be imputed to the daughter (the claimant). (paragraph 20);

(2) It was difficult to see what the fact was in respect of which there had been a mistake: a different interpretation by the DMP of medical and other evidence did not mean that the previous decision was given in ignorance of or as a result of a material fact (cf. R(I) 3/75). (paragraph 15);

(3) However, in the absence of any appeal against the 1979 decision, it had to be accepted that there were grounds for that decision; and

(4) as there had been no appeal and the authorities did not know what were the grounds upon which the 1979 DMP had power to review and none could be inferred from the documents, an artificial situation arose in which it was impossible to say that the claimant's mother knew or could reasonably have been expected to know any earlier grounds for review existed; and accordingly she had good cause for failing to apply for the review earlier.

See R(M) 2/84, 15.4.3 *iv below*.

Part 5: Good cause not accepted

See also part 6.

1 Maternity benefit

- i A claimant who had mislaid her claim for an attendance allowance under section 14 of the National Insurance Act 1946, and who thought she could claim at any time, made a late claim, but was held not to have had good cause for doing so. See also CSG 6/48. CG 15/48
- ii A woman who failed to make a claim for a maternity grant until two months after her discharge from hospital was held not to have had good cause for making a late claim. See also 13.3.1 ii *above*, and R(P) 2/85 *below*. CG 207/49
- iii A woman who had been married 3 months earlier made a claim for a maternity allowance in the expected week of her confinement and alleged that she had been misled by the relevant leaflet into thinking that only married women paying contributions were eligible for the allowance. It was held that it could not reasonably be inferred from the leaflet that an unmarried contributor was not eligible; that it had not been shown that the claimant had reasonably misunderstood information from an official source; nor had she sought information as soon as she should have done. It was held that she did not have good cause for making a delayed claim for a maternity allowance. Compare R(S) 11/59, 13.6.1 i *below*. R(G) 15/56

2 Retirement pensions

- i A man aged 78 feared that a claim for a retirement pension would lead to the disclosure of his true age and jeopardise his employment. Accordingly he delayed making a claim for a retirement pension and it was held that he did not have good cause for making a late claim. CP 127/50
- ii It was held that a deliberate election not to claim a retirement pension was good cause for delay in giving notice of retirement but not for the delay in claiming a retirement pension, although the claimant was entitled to a reasonable period in which to consider the matter after the coming into force of new Regulations. R(P) 3/59
- iii Some 4 months before reaching pensionable age, a woman was sent a claim form for a retirement pension and a leaflet advising her how to claim, warning her that if she claimed late she might lose some pension and inviting her to consult her local office if she was in doubt about any point. About a month later she was sent a reminder to send in her claim. All these documents she gave to her husband to deal with for her as she did not understand them. He delayed some 3½ years before putting in the claim because first he wanted to satisfy himself that his wife's contribution record satisfied the second contribution condition for the pension sufficiently to obtain a reduced rate pension, but he never consulted the local office about this. The question in issue was whether the pension could be paid from the date on which the claimant attained pensionable age. The Commissioner held that a claimant could not be treated as having retired from a date earlier than 12 months before the date on which notice of retirement had been given (para 1(2)); it was for the claimant, not her husband to show good cause for the delay in giving notice and claiming (para 18); and, although on the facts it was initially reasonable for the claimant to have delegated the dealing with her claim to her husband, in having done nothing further for 3½ years to ensure that the claim was made the claimant had not shown good cause for the delay (para 19). The Commissioner also summarised the principles to be applied when considering the question of 'good cause' in cases where the claimant has delegated the making of a claim or the giving of notice of retirement (paras 16 and 17). CU 78/49 (KL), CG 207/49 (KL), CG 1/50 (KL), CWG 6/50 (KL), R(S) 2/51, R(G) 17/52, R(S) 25/52 and R(SB) 17/83 referred to. R(P) 2/85

3 Sickness benefit

- CS 99/49 i A claimant who was given private medical certificates by her doctor sent them to her employers on the assumption that they would continue their pre-1948 practice of forwarding the certificates to the proper authority. She made no enquiries of her employers as to whether or not they would do so and it was held that she did not have good cause for making a late claim for sickness benefit. But compare R(S) 25/52, 13.4.3 v and R(S) 2/60, 13.4.3 x, *above*.
- CS 156/49 ii A civil servant who had signed an agreement not to claim sickness benefit failed to read the office instructions that former voluntary contributors could draw both full pay and sickness benefit for a time under the new Act. It was held that he did not have good cause for making a late claim. But compare CS 613/49.
- CS 537/49 iii A claimant who did not expect to be ill for long was held to have had good cause for not giving notice of incapacity but not for his failure to make a claim for benefit within the prescribed period. See also 13.3.1 iv, *above*.
- CS 596/49 iv A police officer who made a late claim for sickness benefit gave as his reason for doing so that he thought he would be well in a fortnight. It was held that he did not have good cause for making a delayed claim.
- CS 414/50 v A woman who ignored the instructions on the medical certificates she sent to her employers was held not to have had good cause for making a late claim.
- R(S) 19/52 vi A man did not know that during a period of incapacity his employers would make a deduction from his wages and he thought that he would not be entitled to sickness benefit while in receipt of full wages. Accordingly he failed to make a claim for sickness benefit for several weeks. It was held that good cause for making a late claim was not established and further that, as a result of the National Insurance (Claims and Payments) Amendment Regulations 1951, the distinction between good cause for not giving notice of incapacity, (see 537/49, 13.3.1 iv *above*) and not making a claim for benefit was out of date. But see now R(S) 2/63, 13.3.1 xi.
- R(S) 1/73 vii A self-employed travel agent made a late claim for sickness benefit because he did not know that as a self-employed person he would be entitled to benefit. It was held that he did not have good cause for making a late claim. See also 13.3.1 xii.

4 Unemployment benefit

- R(U) 5/52 i A woman delayed making a claim for unemployment benefit because she was ignorant of the procedure and because she thought that in any case a claim would be unsuccessful. It was held that she did not have good cause for making a late claim.
- R(U) 6/75 ii A claimant was required to attend at the local Employment Office on Wednesday each week, but failed to do so on one particular Wednesday. On the

following day he made a claim for UB for the previous week but it was held that he did not have good cause for his failure to make his claim on the Wednesday. See paras. 5 to 7 where the Commissioner explains that (what is now) Sch. 2 to the SS (Claims and Payments) Regs. 1975 does not change UB from a daily to a weekly benefit, but merely exempts a claimant from disqualification for making a late claim provided that he makes his claim on each specified day.

5 Benefit following an industrial accident

- i A claimant delayed for over two years before making a claim for disablement benefit because his doctor had mistakenly taken the view that the disability from which the claimant was suffering was only temporary and, although the claimant did not agree with the doctor, he did not know how to claim or even if there was a time-limit for making a claim. It was held that good cause for delay had not been established. See R(I) 69/52. R(I) 16/53
- ii A dockworker was engaged in unloading chemicals which had been damaged by fire. He developed a rash and, after attending the medical centre conducted by the Port Authority for some nine months, he was examined by a dermatologist. Although the claimant did not know the exact nature of his trouble until it was diagnosed by a dermatologist, he was aware that it was the result of handling damaged chemical cargo, and it was held that he did not have good cause for making a late claim for disablement benefit. R(I) 82/53
- iii A brickyard labourer who retired from regular employment after seven months incapacity due to bronchitis had worked for 40 years in a coal mine until he had been compelled by ill-health to leave the mine. Some five years later, while being treated for bronchitis, he was advised by his doctor on three occasions to have an X-ray examination, but he did not consent to do so as he feared that he might be suffering from pneumoconiosis. Some months later he made a claim for disablement benefit in respect of pneumoconiosis, but it was held that his failure to attend for medical examination because it might have confirmed his suspicions of pneumoconiosis, was not good cause for delay in making his claim. R(I) 25/56
- iv The claimant claimed REA on 3 September 1992 having claimed disablement benefit on 6 August 1992. In June 1993 disablement was assessed at 5% from 1 January 1960 for life. The AO decided that the claimant did not have good cause for the delay in claiming REA and so was not entitled before 3 June 1992. The tribunal upheld the decision but the claimant's appeal to the Commissioner was allowed. The Commissioner held that the fact that there had been no assessment of disablement automatically amounted to good cause. The CAO appealed to the CA which held that the question of good cause had to be determined on the facts of each case and that a claimant did not automatically have good cause for delaying a claim for REA until an assessment of disablement had been made. R(I) 3/98

Part 6: The effect of reliance on official and professional information and advice

1 Official information

- R(S) 11/59 i A married woman delayed making a claim for sickness benefit and gave as her reason for not having made an earlier claim that she thought, having exercised her right as a married woman not to pay NI contributions, that she would not be entitled to benefit, although in fact she had a residual right to it. It was said that it was not a case of a person who, being ignorant of her rights, failed to make a claim because she did not trouble to make enquiry into the matter, since the claimant was fully aware of her right to sickness benefit as an employed contributor and had, in fact, claimed benefit on more than one occasion before she made her election as a married woman. Failure to make a claim after her election was due to the fact that she misunderstood the exact effect of it and made no earlier enquiry as to her rights because it seemed to her that there was nothing about which to enquire. It was held that she might reasonably be excused for failing to appreciate a single sentence embedded in a lengthy document the whole tendency of which would be to impress upon her mind that she had renounced her right to sickness benefit; and that she had good cause for making a late claim. Compare R(G) 15/56.
- R(U) 3/60 ii After 38 years in the police force an inspector called at the Employment Exchange on the day after his retirement to enquire about the possibility of obtaining further employment. He was advised that he would have a better chance of getting work through the Metropolitan Police Welfare Bureau than through the Employment Exchange, but he was not asked whether he wished to claim UB, nor was he advised to sign the unemployed register. In this result he did not make a claim for UB until some four months later although during that period he visited the Employment Exchange on various occasions, on none of which was any mention made of the possibility of his being entitled to UB. It was held that, although he did not make any specific enquiry about UB, he had, nevertheless, made some enquiry of someone competent to give information and advice, that he had been insufficiently advised and that he had good cause for making a late claim. See paras. 9 to 13. See R(SB) 6/83.
- R(F) 3/61 iii A claimant who made a delayed claim for family allowance alleged that her failure to make an earlier claim was the result of the advice she had received from an official of (what was then) the Ministry of Pensions and NI; *viz.* that she could make a claim for family allowances in respect of an adopted child. It was held that any such misleading advice, or a failure to provide the means of making a claim, could not operate (by *estoppel* or otherwise) to defeat the purpose of the Act and the Regs. made thereunder whereby allowances could, under the statutory provisions then in force, accrue only from a date not more than six months before the date of claim. See also R(SB) 8/83, 17.2.2 iv, 17.10.10 iv, 30.3.7 vi.
- R(I) 25/61 iv A married woman made a late claim for an increase of injury benefit in respect of her children, the reason being that she did not know that, as a married woman living with her husband, who was in work, she could claim in respect of her children. It was held that she had good cause for delay in making her claim since, from what was said in a leaflet she had been given, she was led to believe that there was a general rule which precluded payment of benefit in respect of children to a married woman living with her husband who was in work. In the circumstances it was held that it was not unreasonable for her to have refrained from making any further enquiry. But see now s. 65(4) of the Act.
- R(S) 3/63 v A man who failed to indicate on his first medical certificate that he wished to claim an increase of benefit for his dependants was held to have had good cause for making a late claim on the ground that, when he was at the local office, his attention had not been drawn to his omission to indicate on his first medical certificate that he wished to make such a claim. See also 13.3.2 ix, *above*.

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- vi A woman gave up work in June, which was seven months before the expected date of her confinement. The prescribed time for the making of a claim for maternity allowance was, in her case, between 3 and 23 October, but she did not make a claim for the allowance until the beginning of December. She had read the appropriate leaflet (leaflet N.I.17), but did not consider that, having stopped working in June, she could properly say in October that she had been working “recently”. It was accepted that it was natural for the claimant to conclude that she could not say that she had “recently” been doing paid work and that it was also reasonable for her to conclude that there was nothing about which she should make an enquiry. Good cause for making a delayed claim for maternity allowance was accordingly accepted. R(G) 4/68
- vii On first claiming UB a man was given a card which contained directions that it should be produced at the Employment Exchange every Thursday, and there was a warning on the card that if that was not done benefit might be lost. Later, and before his next attendance at the Employment Exchange, he received a printed form telling him that payment of benefit was suspended pending enquiries being made and advising him how his claim should be maintained. The claimant mistakenly believed that he had done all that was necessary to claim benefit and did not return to the Employment Exchange until two months later, when he made a retrospective claim from the day following the first visit. It was held that the form that had been sent to him was misleading in that it failed to explain that the prescribed time for claiming UB was the day for which the claim was made, and that a claim could not be made retrospectively. In the circumstances it was held that the claimant had had good cause for the whole period of the delay in claiming benefit. R(U) 3/70
- viii The claimant’s entitlement to IS had ceased following an increase in IB. In January 1997 he began to receive the long-term rate of IB. Had he claimed IS he would have been entitled because the disability premium would have been due. He claimed IS in June 1998 and requested backdating to January 1997. He contended that at this time an officer of the DSS had advised that he was receiving his maximum entitlement. It was contended that under reg. 19(5)(d) of the SS (Claims and Payments) Regs. 1987 this was information which had led him to believe that his claim could not succeed. Consequently he could not reasonably have been expected to claim earlier and the time for claiming should be extended. A tribunal dismissed his appeal and the claimant appealed to the Commissioner. The Commissioner allowed the appeal. He held that the information referred to in reg. 19(5)(d) was not restricted to information given on the claim in question but could include information given on the ending of previous entitlement. He also held that there is a requirement under reg. 19(5)(d) to establish what the claimant was actually led to believe not what a reasonable claimant would have been led to believe. R(IS) 3/01
- 2 Medical advice**
- i A self-employed man who relied upon his doctor’s advice was held to have had good cause for making a late claim for sickness benefit. See paras. 4 to 5. CS 286/49
- ii A man employed at an iron works had his thumb crushed in the course of his employment and reported the accident at the ambulance station. He attended for treatment at his doctor’s surgery but continued to work, and was never at any time incapacitated for work by reason of the injury. After the bandage was removed there was still some stiffness in his thumb, but both he and his doctor expected that it would pass off gradually. Later the claimant made a claim for disablement benefit and it was held that he had had reasonable cause for not making an earlier claim. CI 273/50
- iii A man had been incapable of work for some four years when his doctor died. An assistant was of the opinion that the claimant was no longer incapable of work and gave him a final certificate. The claimant then consulted another doctor, who agreed that he was not fit for work, and that opinion was endorsed by an examining medical officer of what was then the Ministry of NI. The claimant then made a claim for sickness benefit and it was held that he had good cause for making a late claim since “Without some medical support for his claim he could not reasonably R(S) 29/52

13.6.2-3

expect to be able to make a successful claim while the final certificate given to him by his former doctor's assistant was the only medical evidence of which he was in possession."

- R(S) 36/52 iv Good cause for delay in claiming sickness benefit may be proved by showing that the delay has been substantially caused, not by the claimant's mistake or omission, but by that of the doctor. A labourer asked his doctor for a medical certificate of incapacity for work on his first visit to the doctor, but, through error, the doctor did not give him a certificate, with the result that the claimant's claim for sickness benefit was not made within the prescribed time. It was held that good cause for delay has been established.
- R(I) 16/53 v A man who strained his wrist in an industrial accident did not make a claim for disablement benefit until some two years later because his family doctor had mistakenly taken the view that the disability was only a temporary one. The claimant thought that before he could submit a claim for disablement benefit he must first establish his claim on medical grounds with his own doctor and that if he took any other course it might be prejudicial to his future relations with his family doctor. It was held that good cause for making a late claim had not been established. See paras. 5 to 14 and see also 13.5.5i, *above*.
- R(S) 5/56 vi A woman was held not to have had good cause for making a late claim for sickness benefit on the ground that she had relied on the advice given to her by her doctor that there was no need for her to visit another doctor while she was away on a convalescent holiday. She did not, therefore, submit medical certificates until her return from her holiday. See also R(I) 6/54, 13.3.3i *above* and R(I) 51/54.
- R(I) 40/59 vii The claimant delayed claiming disablement benefit on account of pneumoconiosis until advised by his doctor to do so. A chest physician who had treated the claimant for pulmonary tuberculosis for several years stated that the delay was not due to lack of interest on the claimant's part but to lack of certainty of the presence of pneumoconiosis in addition to tuberculosis. It was held that the claimant had had good cause for delay in claiming disablement benefit. See para. 5 for comparison with R(S) 5/56, 13.3.1x *above*. See also 13.4.5vii *above*.

3 Legal advice

- CG 1/50 i An executrix entrusted the making of a claim for the death grant to the solicitor who was obtaining probate of the deceased's will, but the solicitor failed to make a claim within the prescribed time. It was held that, although it could not be said that the solicitor had good cause for making a late claim, it was reasonable for the claimant to rely on him and that she had good cause for failure to make a claim within the prescribed time. See also R(P) 2/85.
- CSI 10/50 ii After an industrial accident a man was apprehensive that a claim for benefit under the NI (Industrial Injuries) Act 1946 would prejudice his

claim at common law and it appeared to him that his solicitor was inclined to take the same view. The solicitor advised the claimant to go to the office of the National Assistance Board, which he duly did, and the solicitor subsequently stated in a written statement that 'it was understood both by the claimant and by his solicitor that he should call at the National Assistance Board, explain his case and abide by their decision'. It was accepted that the claimant acted reasonably in relying upon his solicitor's advice and that he had good cause for making a delayed claim for injury benefit.

- iii Executors of the deceased's will asked their sister, with whom the deceased had been living, to employ a local solicitor to wind up the estate. She did not, however, instruct the solicitor to make a claim for death grant until 4 months after the date of the deceased's death and it was held that the executors could not prove good cause for the delay in making the claim since it was not inevitable that they should delegate the making of the claim to their sister. CG 184/50
- iv A man who was injured in a road accident made a late claim for sickness benefit, his explanation for the delay in making the claim being that he thought he could not claim benefit because he was suing an omnibus company for damages and had been advised by both his solicitor and the local life insurance collector that that was correct. Thus it was not until he went to the local national insurance office about another matter that he discovered that such was not the case. It was held that he had good cause for making a late claim. Referred to in R(P) 2/85. CS 50/50
- v An estate was being administered by a solicitor, to whom the executor gave no specific instructions as to claiming a death grant, but assumed that the solicitor would take the necessary steps to ensure that the claim for the grant would be duly made. In the result it was not made within the prescribed time and it was held by a Tribunal of Commissioners that good cause for the delay had not been established. See paragraphs 8-13. Had the claimant consulted his solicitor with reference to death grant and had the solicitor undertaken to deal with the matter different considerations would apply for the reasons explained in decision CGB 1/50, 13.6.3i *above*. See also and compare R(G) 17/52. R(G) 9/52 (T)

Part 7: Withdrawal of claim

1 Unemployment Benefit

R(U) 2/79 i The claimant claimed unemployment benefit from December 1975 to April 1976 and again from May 1976. In February the insurance office decided that benefit was not payable because the claimant did not satisfy the necessary contribution conditions. In the grounds of appeal to the Commissioner the claimant sought to withdraw his claim for the period prior to 5 January 1976 so that he might become entitled to earnings related supplement as from 3 May 1976, the date from which he satisfied the contribution conditions for the payment of unemployment benefit. It was held that, in accordance with basic legal principles, the claimant was not entitled to withdraw his claim once it had been adjudicated upon. See R(U) 2/89, 1.20.3 i above, R(U) 7/83, 13.7.1iii and 17.4.2ix *below*.

R(U) 11/80 ii A claim for unemployment benefit for 6 and 6 October 1978 was disallowed by an insurance officer at the benefit computer centre at Reading in respect of 6 October for failure to comply with the contribution conditions. A forward disallowance for future claims was also imposed. A different insurance officer at the local benefit office disallowed the claim for both days. Held only the first decision for 6 October was effective and the forward disallowance was a nullity. The claim for 7 October had not been adjudicated and it was open to the claimant to withdraw that and later claims to as to break the relevant period of interruption of employment. See also 1.18.1i above.

R(U) 7/83 iii Late claims made for unemployment benefit for period overlapping into two consecutive benefit years. In the contribution year preceding the first of the benefit years the contribution conditions for unemployment benefit were not satisfied. In that preceding the second they were. The local tribunal found good cause for the late claim back to a date in the first benefit year. On appeal the claimant claimed that there was only good cause back to a date in the second benefit year. The Commissioner observed that the only way in which the claimant could have avoided the contribution condition trap would have been to have substituted for the original period of her back claim a lesser period extending only from the beginning of the second benefit year. He held, though, that having made a claim for a specific period and having had it adjudicated upon, it was not open to the claimant to withdraw it (R(U) 2/79) and substitute for it another period altogether, nor was it open to her to achieve the same result indirectly by appealing against a decision which was favourable to her (in the sense that good cause has been accepted) and asking for the period allowed by the tribunal to be shortened. (Paragraph 7). See 1.20.3 i above, 13.7.1i *above* and 17.4.2ix *below*.

2 General

R(H)2/06 i In May 2001 a claim was made to HB and CTB. Claims to these benefits were subsequently withdrawn. In February 2004, the claimant asked the LA to reinstate his claim for HB and CTB on the basis that they had been withdrawn under duress. The LA refused and an AT dismissed his appeal. The claimant appealed to the Commissioner. Dismissing his appeal, the Commissioner held that:

1. The claimant had expressed an unambiguous and unequivocal intention to withdraw his claims.

2. The consequence of a genuine and effective withdrawal is to prevent any award from being made on the claim after the withdrawal took effect.

3. A claimant who can fully manage his affairs and understand the consequence of their actions have to establish that the withdrawal of a claim was induced by some factor such as threatening or overbearing behaviour, deception or similar improper conduct in order to show that notice of withdrawal of a claim was not a genuine expression of the claimant's intention at the time and there was no evidence of any such conduct in this case.

Part 8: Prospective claims

1 Secretary of State's powers

i Section 99 requires an insurance officer's decision to dispose of the whole of a claim. Part of a decision may be in favour of a claimant and part may be decided adversely to the claimant provided the whole claim is disposed of. In deciding a prospective claim for benefit an insurance officer may decide the claim in favour of the claimant for a period of up to 13 weeks and leave the remainder of the claim for a further decision or disallow the whole claim. A partial disallowance cannot be made. See R(S) 14/81 and R(S) 1/83.

R(S) 5/80
(T)

ii A claimant for invalidity benefit submitted a series of open-ended medical certificates and subsequently a medical certificate for a specific period. It was held that in such a case an insurance officer was entitled to treat a subsequent open-ended certificate as superseding the previous certificates in so far as it overlapped them and they had not already been fully adjudicated. The position regarding the subsequent submission of a certificate for a specific period was also considered (see para. 8 of the decision).

R(S) 14/81

The decision of the tribunal of Commissioners R(S) 5/80 modified and explained and in an Appendix to the decision, the position regarding forward certificates and decisions in ordinary cases also explained.

2 Effect of decisions on prospective 'open-ended' claims

i The claimant appealed to the Commissioner against a disallowance of an open-ended prospective claim for non-contributory invalidity pension. By a decision dated 19.2.80 the Commissioner had decided that benefit was not payable from 13.9.78. Subsequent claims were made for the period beginning 13.9.78 and a question arose as to the effect of the decision of 19.2.80 and the correct approach to the disposal of the subsequent claims. A tribunal of Commissioners held that:

R(S) 1/83
(T)

1. a disallowance of an open-ended claim is effective to the date of the decision and disposes of the claim;
2. if such a disallowance is appended, the claim must be treated as persisting until the date of final disposal or appeal unless earlier terminated in one of the ways referred to in paras. 8 and 11 of the decision;
3. if the final disposal is a disallowance, it must exhaust the claim period; the decision will be *res judicata* for that period and, subject only to review, it will preclude subsequent further adjudication upon the merits in relation to that period (para. 10-13).

3 Advance claims

i A tribunal of Commissioners considered the effects of reg. 13C of the SS (Claims and Payments) Regs. 1987 which allows renewal claims to DLA to be made up to six months before the end of existing awards. The Commissioners held that:

R(DLA)4/05

1. S. 8(2)(a) of the SS Act 1998 provides that a claim ceases to exist once it is decided and this applies to a decision made in advance just as it applies to any other case;
2. S. 8(2)(b) of the 1998 Act prevents the Secretary of State from taking account of anticipated changes of circumstances when deciding a renewal claim. Similarly S. 12(8)(b) prevents a tribunal from taking account of changes of circumstances occurring between the date of decision and the renewal date. In this context decision R(IB) 2/04 which suggested that a prediction be made as to the claimant's condition between the date of decision and the renewal date should not be followed;
3. there is nothing to prevent a renewal claim from being disallowed in advance. This is in keeping with the general duty under Ss. 1 and 8(1) of the 1998 Act to decide claims without undue delay. But the Secretary of State may in

13.8.3

exceptional cases defer deciding a case where a significant change of circumstances in the claimant's condition is anticipated.

R(IS) 7/06 ii The claimant came to the UK intending to settle permanently. She claimed IS within a short period of arrival. The Secretary of State disallowed her claim on the grounds that she was not habitually resident in the UK at the date of the decision. The claimant's appeal to the Commissioner was allowed and he held that the tribunal should have made an advance award. The Secretary of State appealed to the CA, submitting that an advance award could not have been made because to do so would have entailed the type of prediction or speculation forbidden by s. 8(2)(b) of the SS Act 1998. The Court dismissed the appeal on the basis that:

1. the provisions for making an advance award under reg. 13 of the SS (Claims and Payments) Regs 1987 may apply to cases in which a claimant has a settled intention to reside in the UK and where the only issue is as to the length of period of actual residence necessary to establish habitual residence;

2. reg. 13 does not require the certain prediction that the conditions of entitlement will be fulfilled at a future date, but rather a judgment as to the likely continuance of circumstances obtaining at the time of the Secretary of State's decision that will give rise to entitlement to benefit at the projected date if they do continue.

See also R(DLA) 4/05 at 13.8.3 *i above*.

Part 9: Persons unable to act

1 Appointment to exercise rights etc.

i A mother of a daughter who was incapable of managing her own affairs was appointed in 1968 to act for her under the Ministry of Social Security Act 1966. In 1974 and 1977, believing that that appointment was valid for the purposes of the National Insurance and, later, the Social Security Acts, she claimed AA for her daughter and in 1979 she acted for her in respect of a review of the decisions of those claims. Throughout she was accepted by the authorities as validly acting for her daughter. In an appeal to the Commissioner regarding the last decision and the question whether the delay in applying for the review could be imputed to the daughter, it was held that, although an appointment under the last two Acts did not have to be in writing, an application for such an appointment had to be made in writing (see now the SS (Claims and Payments) Regs. 1979, reg. 28), but, as the claim could not have been got on its feet in the first place, if the daughter had not adopted the claim expressed to have been made on her behalf by her mother, it would have had to be found, if, in the event, it had been relevant to the decision, that any delay by the mother should be imputed to the daughter. See R(M) 2/84, 15.4.3 *iv below*. R(A) 2/81

ii When considering whether the doctrine of relation back applies to the title of administratrix under a Grant of Letters of Administration made after the date of application for review of an earlier decision and appeal to the Commissioner against the review decision neither the application for a review of an earlier delegated medical practitioner's decision nor an appeal to the Commissioner is to be regarded as analogous to actions in Court. Reg. 30 of the SS (Claims and Payments) Regs. 1987 headed "payments in death" is not exclusive but merely provides one mode by which matters may be proceeded with. Provided the Secretary of State gets a good receipt for any payment of benefit that may be made then no problem exists. There is no reason why the doctrine of relation back already propounded by the Courts in cases of Grants of Letters of Administration should not apply to Social Security cases. The rules as to issuing of writs to institute action in Courts are of necessity strict and technical but they should not be applied to Social Security matters. R(SB) 8/88 and R(SB) 5/90 considered. R(A) 1/92

Part 10: Abatement of claim

1 Subsequent award

- R(SB) 38/84 i A person claimed a single payment of supplementary benefit in respect of three specific items. The claim was disallowed. The disallowance was upheld by the appeal tribunal and the claimant appealed to the Commissioner. At or about the same time he made another claim for a single payment in respect of the same three items, albeit on different grounds. On that claim the award was made. The claimant however did not withdraw his appeal against the rejection of his previous claim. The Commissioner held that the previous claim was automatically abated as from the date of the award on the second claim and that nothing remained which was appealable.

Part 11: Accrued right to benefit

1 Interpretation Act

i The Commissioners held that the claimant of a daily benefit had not accrued a right to that benefit before amending legislation came into force because a claim is made for each day and therefore the event (a day of unemployment) which gives rise to such a right had not occurred when the amending legislation came into force (para. 15). No person can be entitled to any benefit unless a claim is made for it. A person who has not become entitled to any benefit cannot be said to have acquired a right to that benefit. Accordingly there was no “right” which could be preserved by s. 16(1)(c) of the Interpretation Act 1978 (para. 16). R(U) 1/91

Part 12: Extinguishment of benefit

1 Amount of benefit not quantified

- R(U) 1/02 i In 1994 a Commissioner substituted his own decision for that made by a tribunal in respect of the claimant's UB. That decision was that "unemployment benefit is payable to the claimant for an inclusive period from 27 December 1989 to 3 February 1990". No payment was made in respect of this decision and in 1998 the claimant made various inquiries as to the non-payment. An AO decided that payment could not be made because reg. 38 of the SS (Claims and Payments) Regs. 1987 applied. The AO's view was that the right to the payment had extinguished because the sum had not been obtained within the period of 12 months "from the date on which the right to it is treated as having arisen". On appeal the tribunal confirmed this decision. The Commissioner held that, if the amount of a payment has not been quantified then there is no "sum" under reg. 38(1), even if a basis for quantifying the payment has been identified. It followed therefore that, if there is no sum, the right of payment to it cannot arise and thus cannot be extinguished under reg. 38.

Part 13: Posthumous claims

1 Validity of posthumous claim

- i A claim form for IS was requested by a hospital social worker on behalf of a claimant thus notifying an intention to claim benefit for the purposes of reg. 4(5) of the Claims and Payments Regs. 1987. Following the claimant's death the form was completed and signed by the claimant's executor and returned to the relevant office within the permitted time limit of one month. The Commissioner held that a valid claim had not been made:

1. a person who by the date of their death has merely given notification of intention to claim has not in fact made a claim;
2. a claim cannot be made on behalf of a deceased person unless permitted by express or implied statutory authority since all agency is terminated by death;
3. there is nothing in the 1987 Regs. allowing a claim for income support to be made in respect of a deceased person. Nor is there any implied authority allowing an executory to perfect a claim.

The decisions listed below are not included in chapter
13

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| CS 33/49 | Relates to the giving of notice of incapacity |
| CS 51/49 | Relates mainly to pre-5th July 1948 |
| CS 174/49 | Whether a claim can be made retrospectively (N.B. paragraphs 4-8.) Considered in R(U) 7/85 |
| CSP 13/49 | No longer relevant |
| CS 537/50 | Relates to the giving of notice of incapacity |
| CWS 14/50 | |
| R(P) 6/51 | Relates to adjudication |
| R(S) 4/51 | No longer of relevance |
| R(S) 38/52 | Effect of amending regulations no longer in force |
| R(S) 9/54 | Relates to the giving of notice of incapacity |
| R(G) 3/58 | Effect of the coming into force of amending regulations no longer in force |
| R(A) 2/93 | Relates to extinguishment provisions before amendment to regulations |
| R(F) 1/92 | Relates to extinguishment provisions before amendment to regulations |
| R(SB) 1/94 | Relates to regulations no longer in force |

R(IS) 3/04

Part 14: National Insurance Number

1 Provision of National Insurance Number

i The claimant married a Thai national who did not have a NI number and had no access to public funds. His entitlement to IS, HB and CTB was terminated on the grounds that his wife did not meet the conditions of s. 1 (IB) of the SS Admin Act 1992 - provision of a NI number. S. 1 (1A) of the act applies that requirement to both the claimant and “any other person in respect of whom the claimant is claiming benefit”. The claimant won his appeal and the Secretary of State appealed to the CA. The appeal was upheld. The CA decided that benefit is claimed “in respect of a person” if the benefit is referable in some way to that person. In this case the partner is taken into account in the quantification of benefits. It therefore follows that the NI requirement had to be satisfied in respect of the claimant’s partner as well as himself. R(H) 7/06

