

MEDICAL
AND
DISABILITY
APPEAL
TRIBUNALS:
THE
LEGISLATION

COMMENTARY
BY
MARK ROWLAND



Sweet & Maxwell

How to

MEDICAL AND DISABILITY APPEAL TRIBUNALS: THE LEGISLATION

By

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Tribunals, Medical Appeal Tribunals and
Disability Appeal Tribunals*

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PREFACE

The purpose of this book is to present in one volume all the legislation which is relevant to hearings before medical appeal tribunals and disability appeal tribunals. These tribunals deal with some, but by no means all, appeals on medical issues arising on claims for social security benefits. This book therefore complements two other books published by Sweet & Maxwell, *Income-Related Benefits: The Legislation* edited by John Mesher and *Non-means-tested Benefits: The Legislation* edited by David Bonner, Ian Hooker and Robin White, which both present legislation relevant to social security appeal tribunals. I hope this book will be of some assistance to chairmen and members of medical appeal tribunals and disability appeal tribunals, to those who appear before those tribunals, whether as claimants or as adjudication officers or representatives of the Secretary of State, and to anyone else concerned with claims for the relevant benefits.

Medical appeal tribunals, which consist of a legally qualified chairman with two consultant medical members, have been hearing appeals on questions relating to industrial injury benefits since 1948. They also assess disablement for the purpose of severe disablement allowance. Disability appeal tribunals, which consist of a legally qualified chairman, a doctor (usually a general practitioner) and a person with experience of disability either through being disabled or as a carer, are new tribunals established in 1992 to deal with certain issues arising on claims for attendance allowance, disability living allowance and disability working allowance. Outstanding appeals concerning mobility allowance may be heard by either tribunals.

Because of delays in the social security adjudication process, many cases heard by tribunals are concerned with claims made many months beforehand. For this reason, this first edition contains not only current legislation but also much legislation that has been repealed as the result of two major developments in 1992 but which remains relevant to old cases. The first of those developments was the coming into force of the Disability Living Allowance and Disability Working Allowance Act 1992 which made substantial amendments to existing legislation and introduced the two benefits named in its title. The second development was the consolidation of all the main statutes covering social security to give us the Social Security Contributions and Benefits Act 1992 and the Social Security Administration Act 1992.

Provisions which were repealed or revoked on or before April 6, 1992, appear in italics. The Acts of Parliament which were in force from then until June 30, 1992, appear with annotations to each section or schedule which include the "destination" in the new 1992 Acts. With one or two exceptions, the sections and schedules of the 1992 Acts appear with no annotations save to indicate their "derivation" from the old legislation. The appropriate annotation explaining my understanding of the section or schedule of the 1992 Acts can then be found by looking at the equivalent provision in the old legislation.

The detailed annotations to the old statutes and to the Regulations represent my personal attempts at comprehending the legislation. Any tribunal must, of course, reach its own view, aided by any relevant decisions

of Commissioners or the courts. I have made reference in the annotations to some such decisions but there are countless others. Comments on the annotations and suggestions for their improvement would be welcomed. Please write to me c/o Sweet & Maxwell Limited, South Quay Plaza, 183 Marsh Wall, South Quay, London E14 9FT.

Finally, I wish to record my debt to all those at Sweet & Maxwell who have been involved in the production of this book and to my wife and daughters who have had to put up with my writing of it.

March 1993

Mark Rowland

STOP PRESS

At the time of going to press, the Social Security (Introductions of Disability Living Allowance) Regulations 1991 (S.I. 1991 No. 2891) were amended by S.I. 1993 No. 408 as follows:

In regulation 13 (treatment of two awards of disability living allowance)—

(a) in paragraph (1)—

(i) for the words “4th April 1993” there shall be substituted the words “26th December 1993”; and

(ii) the words “5th April 1993”, in each place where they occur, there shall be substituted the words “27th December 1993”;

(b) in paragraph (2) for the words “5th April 1993”, in each place where they occur, there shall be substituted the words “27th December 1993”.

(3) In regulation 26 (payments of disability living allowance)—

(a) in paragraphs (3), (9) and (10) for the words “6th April 1993” there shall be substituted the words “28th December 1993”; and

(b) in paragraph (13) for the words “5th April 1993” there shall be substituted the words “27th December 1993”.

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