

SOCIAL SECURITY  
LEGISLATION 2010/11

◀ **VOLUME III** ▶

ADMINISTRATION,  
ADJUDICATION  
AND THE  
EUROPEAN  
DIMENSION

Commentary by  
Mark Rowland and Robin White

**SWEET & MAXWELL**

# **SOCIAL SECURITY LEGISLATION 2010/11**

General Editor  
**David Bonner, LL.B, LL.M**

## **VOLUME III: ADMINISTRATION, ADJUDICATION AND THE EUROPEAN DIMENSION**

Commentary By

**Mark Rowland, LL.B.**

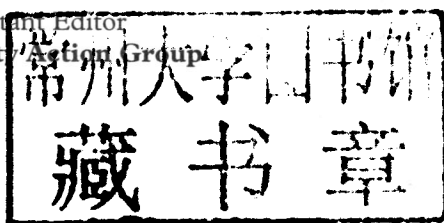
*Judge of the Upper Tribunal*

**Robin White, M.A., LL.M.**

*Professor of Law, University of Leicester*

*Judge of the Upper Tribunal*

Consultant Editor  
**Child Poverty Action Group**



**SWEET & MAXWELL**



**THOMSON REUTERS**

Published in 2010 by  
Thomson Reuters (Legal) Limited (Registered in England and Wales,  
Company No 1679046. Registered office and address for service:  
100 Avenue Road, Swiss Cottage,  
London NW3 3PF, trading as Sweet & Maxwell)

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Typeset by Servis Filmsetting Ltd, Stockport, Cheshire  
Printed and bound in Great Britain  
by Ashford Colour Press, Gosport, Hants

ISBN 978-0-414-04508-8

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## CHILD POVERTY ACTION GROUP

The Child Poverty Action Group (CPAG) is a charity, founded in 1965, which campaigns for the relief of poverty in the United Kingdom. It has a particular reputation in the field of welfare benefits law derived from its legal work, publications, training and parliamentary and policy work, and is widely recognised as the leading organisation for taking test cases on social security law.

CPAG is therefore ideally placed to act as Consultant Editor to this 4-volume work—**Social Security Legislation 2010/11**. CPAG is not responsible for the detail of what is contained in each volume, and the authors' views are not necessarily those of CPAG. The Consultant Editor's role is to act in an advisory capacity on the overall structure, focus and direction of the work.

For more information about CPAG, its rights and policy publications or training courses, its address is 94 White Lion Street, London, N1 9PF (telephone: 020 7837 7979—website: <http://www.cpag.org.uk>).

## FOREWORD

I am especially pleased to be invited to write a Foreword to this work, because I am in a position to offer my personal endorsement of its immense worth, having been an appreciative reader since John Mesher's first edition in 1984.

The statute-derived law of social security is extensive, dynamic and notoriously complex. The case-law is profuse. The European dimension adds a further layer of difficulty. A practitioner's guide which not only assembles the diverse law but also supplies a detailed, lucid and balanced commentary from a widely-respected team of authors is indispensable.

This work is a staple resource for our tribunals. I commend it to all who need a serious understanding of the law of social security.

HHJ Robert Martin  
President of the Social Entitlement Chamber  
First-tier Tribunal

## PREFACE

*Administration, Adjudication and the European Dimension* is Volume III of the four volume series, *Social Security Legislation 2010/11*. The companion volumes are: *Volume I: Non Means Tested Benefits and Employment and Support Allowance*; *Volume II: Income Support, Jobseeker's Allowance, State Pension Credit and the Social Fund*; and *Volume IV: Tax Credits and HMRC-administered Social Security Benefits*. The “year” in the title of the works relates to a tax/contribution year, and conveys the period the books (and the *Supplement*) are designed to cover.

Each of the volumes in the series provides the text of United Kingdom legislation, clearly showing the form and date of amendments, and is up to date to April 15, 2010. The commentary in this volume includes references to some later case law. It also includes significant new European legislation which entered into force on May 1, 2010.

Provisions specific to social security administration or adjudication have been retained as far as possible in this volume, in Parts I and II, but where a separate scheme exists for particular types of payments, it has sometimes been more practical to retain some procedural provisions alongside the substantive provisions in Vol.I (see, for example, the procedural provisions relating to vaccine damage payments and the mesothelioma scheme).

The most significant new material in this year's edition relates to European Union Law. The Treaty of Lisbon entered into force on December 1, 2009. This has amended the Treaty on European Union, and renamed the EC Treaty as the Treaty on the Functioning of the European Union. There are changes to treaty numbering which will take some time to assimilate. Furthermore the new co-ordinating regulations, Regulation 883/2004 and Regulation 987/2009, entered into force on May 1, 2010. Although this is after our cut-off date of April 15, 2010 for national legislation, the two new co-ordinating regulations are included in this year's volume. These developments have necessitated a wholesale re-write of Part III on European Union Law. Space precludes the reproduction of the predecessor regulations: Regulations 1408/71 and 574/72, and users of this volume should keep their Vol.III from 2009 to hand for the text of the replaced regulations (which will remain relevant in some cases for the reasons stated in the commentary). The case-law developments on citizenship of the Union continue to reverberate around the system as preliminary rulings from the Luxembourg Court related to those benefits where the “right to reside” is a condition of entitlement emerge.

Elsewhere there has been the usual collection of amendments to legislation—many flowing from the entry into force of provisions of the Welfare Reform Act 2009—as well as new case-law from national courts, the Luxembourg Court and the Strasbourg Court to absorb and incorporate into the commentary. On the other hand, the 2009 Act has repealed sections 62 to 66 of the Child Support, Pensions and Social Security Act 2000 because the long-running pilot scheme showed that the costs of reducing

## *Preface*

benefit payable to those who had breached community orders far exceeded any savings (HC, February 27, 2009; cols 36WS to 38WS). The 2000 Act and the Social Security (Breach of Community Order) Regulations 2001 have therefore been removed from this volume.

As always, revising and updating the legislative text and commentary has required considerable flexibility on the part of the publisher and a great deal of help from a number of sources, including CPAG as advisory editor to the series, for which we express sincere thanks. Particular mention must be made here of the debt owed by all of us to John Mesher, who began the provision of annotated legislation for tribunals, has given wise advice on the development of this series, and who happily remains on call as consultant in respect of Vol.II.

To maximise space for explanatory commentary we have provided lists of definitions only where the commentary to the provision is substantial, or where reference to definitions is essential for a proper understanding. Users of this book should always check whether particular words or phrases they are called on to apply have a particular meaning ascribed to them in legislation. Generally the first or second regulation in each set of regulations contains definitions of key terms (check the “Arrangement of Regulations” at the beginning of each set for an indication of the subject matter covered by each regulation or Schedule). There are also definition or “interpretation” sections in each of the Acts (check the “Arrangement of Sections” at the beginning of each Act for an indication of the subject matter covered by each section or Schedule).

Users of the series, and its predecessor works, have over the years provided valuable comments which have invariably been helpful to the editors in ensuring that the selection of legislative material for inclusion and the commentary upon it reflect the sorts of difficulties encountered in practice. In doing so, readers have thus helped to shape the content of each of the volumes in the current series. We hope that readers will maintain that tradition. Please write to the General Editor of the series, David Bonner, School of Law, University of Leicester, University Road, Leicester, LE1 7RH, who will pass on any comments received to the appropriate commentator.

Our gratitude must also go to the President of the Social Entitlement Chamber of the First-tier Tribunal and his staff for continuing the tradition of help and encouragement.

Mark Rowland  
Robin White

## USING THIS BOOK: AN INTRODUCTION TO LEGISLATION AND CASE LAW

### Introduction

This book is not a general introduction to, or general textbook on, the law relating to social security but it is nonetheless concerned with both of the principal sources of social security law—*legislation* (both primary and secondary) and *case law*. It sets out the text of the most important legislation, as currently in force, and then there is added commentary that refers to the relevant case law. Lawyers will be familiar with this style of publication, which inevitably follows the structure of the legislation.

This note is designed primarily to assist readers who are not lawyers to find their way around the legislation and to understand the references to case law, but information it contains about how to find social security case law is intended to be of assistance to lawyers too.

### Primary legislation

*Primary legislation* of the United Kingdom Parliament consists of *Acts of Parliament* (also known as *Statutes*). They will have been introduced to Parliament as *Bills*. There are opportunities for Members of Parliament and peers to debate individual clauses and to vote on amendments before a Bill is passed and becomes an Act (at which point the clauses become sections). No tribunal or court has the power to disapply, or hold to be invalid, an Act of Parliament unless it is inconsistent with European Community law.

An Act is known by its “short title”, which incorporates the year in which it was passed (e.g. the Social Security Contributions and Benefits Act 1992), and is given a chapter number (abbreviated as, for instance, “c.4” indicating that the Act was the fourth passed in that year). It is seldom necessary to refer to the chapter number but it appears in the running heads in this book.

Each *section* (abbreviated as “s.” or, in the plural, “ss.”) of an Act is numbered and may be divided into *subsections* (abbreviated as “subs.” and represented by a number in brackets), which in turn may be divided into *paragraphs* (abbreviated as “para.” and represented by a lower case letter in brackets) and *subparagraphs* (abbreviated as “subpara.” and represented by a small roman numeral in brackets). Subparagraph (ii) of para.(a) of subs.(1) of s.72 will usually be referred to simply as “s.72(1)(a)(ii)”. Upper case letters may be used where additional sections or subsections are inserted by amendment and additional lower case letters may be used where new paragraphs and subparagraphs are inserted. This accounts for the rather ungainly s.171ZS of the Social Security Contributions and Benefits Act 1992 (in Vol.IV).

Sections of a large Act may be grouped into a numbered *Part*, which may even be divided into *Chapters*. It is not usual to refer to a Part or a Chapter unless referring to the whole Part or Chapter.



Where a section would otherwise become unwieldy because it is necessary to include a list or complicated technical provisions, the section may simply refer to a *Schedule* at the end of the Act. A Schedule (abbreviated as “Sch.”) may be divided into paragraphs and subparagraphs and further divided into heads and subheads. Again, it is usual to refer simply to, say, “para.23(3)(b)(ii) of Schedule 3”. Whereas it is conventional to speak of a section *of* an Act, it is usual to speak of a Schedule *to* an Act.

When Parliament wishes to change the law, it may do so by passing a new Act that amends a previous Act or it may do so by passing a freestanding Act, although even then consequential amendments to other legislation are usually required. Thus, for instance, when incapacity benefit was introduced by the Social Security (Incapacity for Work) Act 1994, the changes were largely made by inserting sections 30A to 30E and Part XIIA into the Social Security Contributions and Benefits Act 1992 and repealing the provisions in that Act dealing with sickness and invalidity benefit. In contrast, when jobseeker’s allowance was introduced by the Jobseekers Act 1995, it was decided that the main provisions relating to the new benefit would be found in the 1995 Act itself and the 1992 Act was amended only so as to repeal, or amend, the provisions dealing with, or referring to, unemployment benefit.

When there has been a proliferation of Acts or Acts have been very substantially amended, the legislation may be consolidated in a new Act, for which there is a fast track procedure in Parliament. Only limited amendments may be made by a consolidation Act but such an Act reorganises and tidies up the legislation. Because social security law is so frequently amended, it tends to be consolidated every decade or two. The last consolidation Acts relevant to this book were the Social Security Contributions and Benefits Act 1992 (in Vols I and II) and the Social Security Administration Act 1992 (in this volume).

## **Secondary legislation**

*Secondary legislation* (also known as *subordinate legislation* or *delegated legislation*) is made by *statutory instrument* in the form of a set of *Regulations* or a set of *Rules* or an *Order*. The power to make such legislation is conferred on ministers and other persons or bodies by Acts of Parliament. To the extent that a statutory instrument is made beyond the powers (in Latin, *ultra vires*) conferred by primary legislation, it may be held by a tribunal or court to be invalid and ineffective. Secondary legislation must be laid before Parliament. However, most secondary legislation is not debated in Parliament and, even when it is, it cannot be amended although an entire statutory instrument may be rejected.

A set of Regulations or Rules or an Order has a name indicating its scope and the year it was made and also a number, as in the Social Security (Disability Living Allowance) Regulations 1991 (SI 1991/2890) (the 2890th statutory instrument issued in 1991). Because there are over 3,000 statutory instruments each year, the number of a particular statutory instrument is important as a means of identification and it should usually be cited the first time reference is made to that statutory instrument.

Sets of Regulations or Rules are made up of individual *regulations* (abbreviated as “reg.”) or *rules* (abbreviated as “r.” or, in the plural, “rr.”). An Order is made up of *articles* (abbreviated as “art.”). Regulations, rules and articles may be divided into paragraphs, subparagraphs and heads. As

in Acts, a set of Regulations or Rules or an Order may have one or more Schedules attached to it. The style of numbering used in statutory instruments is the same as in sections of, and Schedules to, Acts of Parliament. As in Acts, a large statutory instrument may have regulations or rules grouped into Parts and, occasionally, Chapters. Statutory instruments may be amended in the same sort of way as Acts.

### **Northern Ireland legislation**

Most of the legislation set out in this book applies only in Great Britain, social security not generally being an excepted or reserved matter in relation to Northern Ireland. However, Orders in Council, which are statutory instruments but have the effect of primary legislation in Northern Ireland, largely replicate the primary legislation in Great Britain and enable subordinate legislation to be made that, again, largely replicates the subordinate legislation in Great Britain. Much of the commentary in this book will therefore be relevant to the equivalent provision in Northern Ireland legislation.

### **European Union legislation**

The United Kingdom is a Member State of the European Union, and European Union legislation has effect within the United Kingdom. The primary legislation is in the form of the *Treaties* agreed by the Member States. Relevant subordinate legislation is in the form of *Regulations*, adopted to give effect to the provisions of the Treaties, and *Directives*, addressed to Member States and requiring them to incorporate certain provisions into their domestic laws. Directives are relevant because, where a person brings proceedings against an organ of the State, as is invariably the case where social security is concerned, that person may rely on the Directive as having direct effect if the Member State has failed to comply with it. European Union Treaties, Regulations and Directives are divided into *Articles* (abbreviated as “Art.”) United Kingdom legislation that is inconsistent with European Union legislation may be disapplied. The most relevant provisions of European Union legislation are set out in Part III of this volume.

### **Finding legislation in this book**

If you know the name of the piece of legislation for which you are looking, use the list of contents at the beginning of each volume of this book which lists the pieces of legislation contained in the volume. That will give you the paragraph reference to enable you to find the beginning of the piece of legislation. Then, it is easy to find the relevant section, regulation, rule, article or Schedule by using the running heads on the right hand pages. If you do not know the name of the piece of legislation, you will probably need to use the index at the end of the volume in order to find the relevant paragraph number but will then be taken straight to a particular provision.

The legislation is set out as amended, the amendments being indicated by numbered sets of square brackets. The numbers refer to the numbered entries under the heading “AMENDMENTS” at the end of the relevant section, regulation, rule, article or Schedule, which identify the amending statute or statutory instrument. Where an Act has been consolidated, there is a list of “DERIVATIONS” identifying the provisions of earlier legislation from which the section or Schedule has been derived.

## Finding other legislation

Legislation in its unamended form may be found on <http://www.opsi.gov.uk/legislation/>. Obscure provisions of Great Britain social security legislation not included in this book may be found, as amended, but without commentary, at <http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/>. Northern Ireland social security legislation may be found at [http://www.dsni.gov.uk/law\\_relating\\_to\\_social\\_security](http://www.dsni.gov.uk/law_relating_to_social_security). European Community legislation may be found at <http://eur-lex.europa.eu/en/index.htm>.

## Interpreting legislation

Legislation is written in English and generally means what it says. However, more than one interpretation is often possible. Most legislation itself contains definitions. Sometimes these are in the particular provision in which a word occurs but, where a word is used in more than one place, any definition will appear with others. In an Act, an interpretation section is usually to be found towards the end of the Act or of the relevant Part of the Act. In a statutory instrument, an interpretation provision usually appears near the beginning of the statutory instrument or the relevant Part of it. In the more important pieces of legislation in this book, there is included after every section, regulation, rule, article or Schedule a list of “DEFINITIONS”, showing where definitions of words used in the provision are to be found.

However, not all words are statutorily defined and there is in any event more to interpreting legislation than merely defining its terms. Decision-makers and tribunals need to know how to apply the law in different types of situations. That is where case law comes in.

## Case law and the commentary in this book

In deciding individual cases, courts and tribunals interpret the relevant law and incidentally establish legal principles. Decisions on questions of legal principle of the superior courts and appellate tribunals are said to be binding on decision-makers and the First-tier Tribunal, which means that decision-makers and the First-tier Tribunal must apply those principles. Thus the judicial decisions of the superior courts and appellate tribunals form part of the law. The commentary to the legislation in this book, under the heading “GENERAL NOTE” after a section, regulation, rule, article or Schedule, refers to this *case law*.

The largest part of the case law regarding social security benefits is still in the form of decisions of Social Security Commissioners and Child Support Commissioners. However, while there are still Commissioners in Northern Ireland which has a largely separate judiciary and tribunal system, the functions of Commissioners in Great Britain were transferred to the Upper Tribunal and allocated to the Administrative Appeals Chamber of that tribunal on November 3, 2008. Consequently, social security case law is increasingly to be found in decisions of the Upper Tribunal.

The commentary in this book is not itself binding on any decision-maker or tribunal because it is merely the opinion of the author. It is what is actually said in the legislation or in the judicial decision that is important. The legislation is set out in this book, but it will generally be necessary to look elsewhere for the precise words used in judicial decisions. The way that decisions are cited in the commentary enables that to be done.

## The reporting of decisions of the Upper Tribunal and Commissioners

About 50 of the most important decisions of the Administrative Appeals Chamber of the Upper Tribunal are selected to be “reported” each year in the Administrative Appeals Chamber Reports, using the same criteria as were formerly used for reporting Commissioners’ decisions in Great Britain. The selection is made by an editorial board of judges and decisions are selected for reporting only if they are of general importance and command the assent of at least a majority of the relevant judges (i.e. currently, the former Commissioners). The term “reported” simply means that they are published in printed form as well as on the Internet (see *Finding case law*, below) with headnotes (i.e. summaries) and indexes, but there are two other important consequences of a decision being reported. Reported decisions are available in all tribunal venues and can be consulted in local social security offices and some main libraries. They also have a greater precedential status than ordinary decisions (see *Judicial precedent* below).

A handful of Northern Ireland Commissioners’ decisions are also selected for reporting in the Administrative Appeals Chamber Reports each year, the selection being made by the Chief Social Security Commissioner in Northern Ireland.

### Citing case law

As has been mentioned, the largest part of social security case law is still to be found in decisions of Social Security Commissioners and Child Support Commissioners, even though the Commissioners have now effectively been abolished in Great Britain.

Reported decisions of Commissioners were known merely by a number or, more accurately, a series of letters and numbers beginning with an “R”. The type of benefit in issue was indicated by letters in brackets (e.g. “IS” was income support, “P” was retirement pension, and so on) and the year in which the decision was selected for reporting or, from 2000, the year in which it was published as a reported decision, was indicated by the last two digits, as in *R(IS) 2/08*. In Northern Ireland there was a similar system until 2009, save that the type of benefit was identified by letters in brackets after the number, as in *R 1/07 (DLA)*.

Unreported decisions of the Commissioners in Great Britain were known simply by their file numbers, which began with a “C”, as in *CIS/2287/2008*. The letters following the “C” indicated the type of benefit in issue in the case. Scottish and, at one time, Welsh cases were indicated by a “S” or “W” immediately after the “C”, as in *CSIS/467/2007*. The last four digits indicated the calendar year in which the case was registered, rather than the year it was decided. A similar system operated in Northern Ireland until 2009, save that the letters indicating the type of benefit appeared in brackets after the numbers and, from April 1999, the financial year rather than the calendar year was identified, as in *C 10/06-07 (IS)*.

Decisions of the Upper Tribunal, of courts and, since 2010, of the Northern Ireland Commissioners are generally known by the names of the parties (or just two of them in multi-party cases). Individuals are anonymised through the use of initials in the names of decisions of the Upper Tribunal and the Northern Ireland Commissioners and occasionally in the names of decisions of courts. In this book, the names of official bodies may also be abbreviated (e.g. “SSWP” for the Secretary of State for Work and Pensions,

“HMRC” for Her Majesty’s Revenue and Customs, “CMEC” for the Child Maintenance and Enforcement Commission and “DSD” for the Department for Social Development in Northern Ireland). Since 2010, decisions of the Upper Tribunal and of Northern Ireland Commissioners have also been given a “flag” in brackets to indicate the subject matter of the decision, which in social security cases indicates the principal benefit in issue in the case. Thus, the name of one jobseeker’s allowance case is *SSWP v JB* (JSA).

Any decision of the Upper Tribunal, of a court since 2001 or of a Northern Ireland Commissioner since 2010 that has been intended for publication has also given a *neutral citation number* which enables the decision to be more precisely identified. This indicates, in square brackets, the year the decision was made (although in relation to decisions of the courts it sometimes merely indicates the year the number was issued) and also indicates the court or tribunal that made the decision (e.g. “UKUT” for the Upper Tribunal, “NICom” for a Northern Ireland Commissioner, “EWCA Civ” for the Civil Division of the Court of Appeal in England and Wales, “NICA” for the Court of Appeal in Northern Ireland, “CSIH” for the Inner House of the Court of Session (in Scotland), “UKSC” for the Supreme Court and so on). A number is added so that the reference is unique and finally, in the case of the Upper Tribunal or the High Court in England and Wales, the relevant chamber of the Upper Tribunal or the relevant division or other part of the High Court is identified (e.g. “(AAC)” for the Administrative Appeals Chamber, “(Admin)” for the Administrative Court and so on). Examples of decisions of the Upper Tribunal and a Northern Ireland Commissioner with their neutral citation numbers are *SSWP v JB* (JSA) [2010] UKUT 4 (AAC) and *AR v DSD* (IB) [2010] NCom 6.

If the case is reported in the Administrative Appeals Chamber Reports or another series of law reports, a reference to the report usually follows the neutral citation number. Conventionally, this includes either the year the case was decided (in round brackets) or the year in which it was reported (in square brackets), followed by the volume number (if any), the name of the series of reports (in abbreviated form, so see the Table of Abbreviations at the beginning of each volume of this book) and either the page number or the case number. However, before 2010, cases reported in the Administrative Appeals Chamber Reports or with Commissioners’ decisions were numbered in the same way as reported Commissioners’ decisions. *Abdirahman v Secretary of State for Work and Pensions* [2007] EWCA Civ 657; [2008] 1 W.L.R. 254 (also reported as *R(IS) 8/07*) is a Court of Appeal decision, decided in 2007 but reported in 2008 in volume 1 of the Weekly Law Reports at page 254 and also in the 2007 volume of reported Commissioners’ decisions. *NT v SSWP* [2009] UKUT 37 (AAC), *R(DLA) 1/09* is an Upper Tribunal case decided in 2009 and reported in the Administrative Appeals Chamber Reports in the same year. *Martin v SSWP* [2009] EWCA Civ 1289; [2010] AACR 9 is a decision of the Court of Appeal that was decided in 2009 and was the ninth decision reported in the Administrative Appeals Chamber Reports in 2010.

It is usually necessary to include the neutral citation number or a reference to a series of reports only the first time a decision is cited in any document. After that, the name of the case is usually sufficient.

All decisions of the Upper Tribunal on the Tribunals Service website have neutral citation numbers. If you wish to refer a tribunal or decision-maker to a decision of the Upper Tribunal that does not have a neutral

citation number, contact the office of the Administrative Appeals Chamber ([adminappeals@tribunals.gsi.gov.uk](mailto:adminappeals@tribunals.gsi.gov.uk)) who will provide a number and add the decision to the website.

Decision-makers and claimants are entitled to assume that judges of both the First-tier Tribunal and the Upper Tribunal have immediate access to reported decisions of Commissioners or the Upper Tribunal and they need not provide copies, although it may sometimes be helpful to do so. However, where either a decision-maker or a claimant intends to rely on an unreported decision, it will be necessary to provide a copy of the decision to the judge and other members of the tribunal. A copy of the decision should also be provided to the other party before the hearing because otherwise it may be necessary for there to be an adjournment to enable that party to take advice on the significance of the decision.

### **Finding case law**

The extensive references described above are used so as to enable people easily to find the full text of a decision. Most decisions of any significance since the late 1990s can be found on the Internet.

Decisions of the Upper Tribunal and of the Commissioners in Great Britain may be found on the Tribunals Service website at <http://www.administrativeappeals.tribunals.gov.uk/Decisions/decisions.htm>. This includes reported decisions since 1991 and other decisions considered likely to be of interest to tribunals and tribunal users since about 2000, together with a few older decisions. Decisions of Commissioners in Northern Ireland may be found on [http://www.dsdni.gov.uk/index/law\\_and\\_legislation.htm](http://www.dsdni.gov.uk/index/law_and_legislation.htm).

The Administrative Appeals Chamber Reports, which include not only reported decisions of the Administrative Appeals Chamber of the Upper Tribunal but also reported decisions of the Northern Ireland Commissioners and decisions of the courts in related areas of law, are available on the Tribunals Service website at <http://www.administrativeappeals.tribunals.gov.uk/Decisions/adminAppealsChamberReports.htm>. They are also published by the Stationery Office in bound volumes which follow on from the bound volumes of Commissioners' decisions published from 1948.

Copies of decisions of the Administrative Appeals Chamber of the Upper Tribunal or of Commissioners that are otherwise unavailable may be obtained from the offices of the Upper Tribunal (Administrative Appeals Chamber) or, in Northern Ireland, from the Office of the Social Security and Child Support Commissioners.

Decisions of a wide variety of courts and tribunals in the United Kingdom may be found on the free website of the British and Irish Legal Information Institute, <http://www.bailii.org>. It includes all decisions of the Supreme Court and provides fairly comprehensive coverage of decisions given since about 1996 by the House of Lords and Privy Council and most of the higher courts in England and Wales, decisions given since 1998 by the Court of Session and decisions given since 2000 by the Court of Appeal and High Court in Northern Ireland. Some earlier decisions have been included, so it is always worth looking and, indeed, those decisions dating from 1873 or earlier and reported in the English Reports may be found through a link to <http://www.commonlii.org/uk/cases/EngR/>.

Decisions of the European Court of Justice (concerned with the law of the European Community) are all to be found on <http://www.curia.eu.int>.



Decisions of the European Court of Human Rights are available at <http://www.echr.coe.int>.

Most decisions of the courts in social security cases, including decisions of the European Court of Justice on cases referred by United Kingdom courts and tribunals, are reported in the Administrative Appeals Chamber Reports or with the reported decisions of Commissioners and may therefore be found on the same websites and in the same printed series of reported decisions. So, for example, *R(I)1/00* contains Commissioner's decision *CSI/12/1998*, the decision of the Court of Session upholding the Commissioner's decision and the decision of the House of Lords in *Chief Adjudication Officer v Faulds*, reversing the decision of the Court of Session. The most important decisions of the courts can also be found in the various series of law reports familiar to lawyers (in particular, in the *Law Reports*, the *Weekly Law Reports*, the *All England Law Reports*, the *Public and Third Sector Law Reports*, the *Industrial Cases Reports* and the *Family Law Reports*) but these are not widely available outside academic or other law libraries, although the *All England Law Reports* are occasionally to be found in the larger public libraries. See the Table of Cases at the beginning of each volume of this book for all the places where a decision mentioned in that volume is reported.

If you know the name or number of a decision and wish to know where in a volume of this book there is a reference to it, use the Table of Cases or the Table of Commissioners' Decisions 1948–2009 in the relevant volume to find the paragraph(s) where the decision is mentioned.

## Judicial precedent

As already mentioned, decisions of the Upper Tribunal, the Commissioners and the higher courts in Great Britain become *case law* because they set binding precedents which must be followed by decision-makers and the First-tier Tribunal in Great Britain. This means that, where the Upper Tribunal, Commissioner or court has decided a point of legal principle, decision-makers and appeal tribunals must make their decisions in conformity with the decision of the Upper Tribunal, Commissioner or court, applying the same principle and accepting the interpretation of the law contained in the decision. So a decision of the Upper Tribunal, a Commissioner or a superior court explaining what a term in a particular regulation means, lays down the definition of that term in much the same way as if the term had been defined in the regulations themselves. The decision may also help in deciding what the same term means when it is used in a different set of regulations, provided that the term appears to have been used in a similar context.

Only decisions on points of law set precedents that are binding and, strictly speaking, only decisions on points of law that were necessary to the overall conclusion reached by the Upper Tribunal, Commissioner or court are binding. Other parts of a decision (which used to be known as *obiter dicta*) may be regarded as helpful guidance but need not be followed if a decision-maker or the First-tier Tribunal is persuaded that there is a better approach. It is particularly important to bear this in mind in relation to older decisions of Social Security Commissioners because, until 1987, the right of appeal to a Commissioner was not confined to points of law.

Where there is a conflict between precedents, a decision-maker or the

First-tier Tribunal is generally free to choose between decisions of equal status. For these purposes, most decisions of the Upper Tribunal and decisions of Commissioners are of equal status. However, a decision-maker or First-tier Tribunal should generally prefer a reported decision to an unreported one unless the unreported decision was the later decision and the Commissioner or Upper Tribunal expressly decided not to follow the earlier reported decision. This is simply because the fact that a decision has been reported shows that at least half of the relevant judges of the Upper Tribunal or the Commissioners agreed with it at the time. A decision of a Tribunal of Commissioners (i.e. three Commissioners sitting together) or a decision of a three-judge panel of the Upper Tribunal must be preferred to a decision of a single Commissioner or a single judge of the Upper Tribunal.

A single judge of the Upper Tribunal will normally follow a decision of a single Commissioner or another judge of the Upper Tribunal, but is not bound to do so. A three-judge panel of the Upper Tribunal will generally follow a decision of another such panel or of a Tribunal of Commissioners, but similarly is not bound to do so, whereas a single judge of the Upper Tribunal will always follow such a decision.

Strictly speaking, the Northern Ireland Commissioners do not set binding precedent that must be followed in Great Britain but their decisions are relevant, due to the similarity of the legislation in Northern Ireland, and are usually regarded as highly persuasive with the result that, in practice, they are generally given as much weight as decisions of the Great Britain Commissioners. The same approach is taken in Northern Ireland to decisions of the Upper Tribunal on social security matters and to decisions of the Great Britain Commissioners.

Decisions of the superior courts in Great Britain and Northern Ireland on questions of legal principle are almost invariably followed by decision-makers, tribunals and the Upper Tribunal, even when they are not strictly binding because the relevant court was in a different part of the United Kingdom or exercised a parallel – but not superior – jurisdiction.

Decisions of the European Court of Justice come in two parts: the Opinion of the Advocate General and the decision of the Court. It is the decision of the Court which is binding. The Court is assisted by hearing the Opinion of the Advocate General before itself coming to a conclusion on the issue before it. The Court does not always follow its Advocate General. Where it does, the Opinion of the Advocate General often elaborates the arguments in greater detail than the single collegiate judgment of the Court. Decision-makers, tribunals and Commissioners must apply decisions of the European Court of Justice, where relevant to cases before them, in preference to other authorities binding on them.

The European Court of Human Rights in Strasbourg is quite separate from the European Court of Justice in Luxembourg and serves a different purpose: interpreting and applying the European Convention on Human Rights, which is incorporated into United Kingdom law by the Human Rights Act 1998. Since October 2, 2000, public authorities in the United Kingdom, including courts, Commissioners, tribunals and decision-makers have been required to act in accordance with the incorporated provisions of the Convention, unless statute prevents this. They must take into account the Strasbourg case law and are required to interpret domestic legislation, so far as it is possible to do so, to give effect to the incorporated Convention rights. Any court or tribunal may declare secondary legislation incompat-



ible with those rights and, in certain circumstances, invalidate it. Only the higher courts can declare a provision of primary legislation to be incompatible with those rights, but no court, tribunal or Upper Tribunal can invalidate primary legislation. The work of the Strasbourg Court and the impact of the Human Rights Act 1998 on social security are discussed in the commentary in Part IV of this volume.

See the note to s.3(2) of the Tribunals, Courts and Enforcement Act 2007 in Part V of this volume for a more detailed and technical consideration of the rules of precedent.

### **Other sources of information and commentary on social security law**

For a comprehensive overview of the social security system in Great Britain, CPAG's *Welfare Benefits and Tax Credits Handbook*, published annually each spring, is unrivalled as a practical introduction from the claimant's viewpoint.

From a different perspective, the Department for Work and Pensions publishes a number of guides to the law and to the way it applies the law, available at <http://www.dwp.gov.uk/publications/specialist-guides/>, the most important of which is the 14-volume *Decision Makers' Guide*. Similarly, Her Majesty's Revenue and Customs publish manuals relating to tax credits, child benefit and guardian's allowance, which they administer, see <http://www.hmrc.gov.uk/thelibrary/manuals-subjectarea.htm>. (Note that the *Child Benefit Technical Manual* (also dealing with guardian's allowance) is found under the heading "personal taxation".) These guides and manuals are extremely useful but their interpretation of the law is not binding on tribunals and the courts, being merely internal guidance for the use of decision-makers.

There are a number of other sources of valuable information or commentary on social security case law: see in particular publications such as the *Journal of Social Security Law*, CPAG's *Welfare Rights Bulletin*, *Legal Action* and the *Adviser*. As far as online resources go there is little to beat *Rightsnet* (<http://www.rightsnet.org.uk>). This site contains a wealth of resources for people working in the welfare benefits field but of special relevance in this context are Commissioners'/Upper Tribunal Decisions section of the "Toolkit" area and also the "Briefcase" area which contains summaries of the decisions (with links to the full decisions). Sweet and Maxwell's online subscription service *Westlaw* is another valuable source (<http://www.westlaw.co.uk>), as is the Merrill Corporation's *Casetrack* (<http://www.casetrack.com/ct/casetrack.nsf/index?openframeset>) and LexisNexis *Lexis* (<http://www.lexis.com>).

### **Conclusion**

The internet provides a vast resource but a search needs to be focused. Social security schemes are essentially statutory and so in Great Britain the legislation which is set out in this book forms the basic structure of social security law. However, the case law shows how the legislation should be interpreted and applied. The commentary in this book should point the way to the case law relevant to each provision and the Internet can then be used to find it where that is necessary.