

SUBJECT INDEX

Great Britain and N Ireland reported Commissioners'/Upper Tribunal decisions January to December 2009

CAPITAL

Value of a chose in action is an estimate of actual capital **R 2/09 (IS)**

CHILD SUPPORT

Calculation of income – child tax credit payable to non-resident parent’s partner – whether absence of words “shall be treated as the income of the non-resident parent” from paragraph 13A of the Schedule to the Child Support (Maintenance Calculations and Special Cases) Regulations 2000 renders provision meaningless

RH v SSWP [2008] UKUT 19 (AAC) **R(CS) 3/09**

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

Variation – dividend – period in respect of which the conditions in regulation 19(1A) of the Variations Regulations 2000 must be satisfied

SSWP v Wincott [2009] EWCA Civ 13 **R(CS) 4/09**

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

See also: Human rights

CONTRIBUTIONS AND CREDITS

Which government department should decide a dispute about the application of the Earnings Factor Regulations – which tribunal should decide an appeal about such a dispute

R(IB) 1/09

DISCRIMINATION ON GROUND OF SEX

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

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

EUROPEAN UNION LAW

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

R(IS) 4/09

Free movement of workers – whether registration scheme for accession State nationals within permitted derogation from Regulation EEC/1612/68 – whether proportionate

R 1/09 (IS)

Free movement – whether a former worker has a right of residence under Article 18(1) of the EC Treaty

Kaczmarek v SSWP [2008] EWCA Civ 1310

R(IS) 5/09

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

HOUSING AND COUNCIL TAX BENEFIT

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

R(H) 1/09

Housing and council tax benefit – occupation of the home – full-time student

Stroud DC v JG [2009] UKUT 67 (AAC)

R(H) 8/09

Housing and council tax benefit – whether “gross income” means incapacity benefit actually received after deduction by virtue of section 30DD of the SSCBA 1992 or the full notional rate

R(H) 2/09

Housing and council tax benefit – whether reduction in incapacity benefit because of receipt of occupational pension is “any deduction by way of recovery”

R(H) 2/09

Housing benefit – dwelling occupied as the home – whether two tenancies on different properties can constitute a single dwelling

LB Hackney v GA [2008] UKUT 26 (AAC)

R(H) 5/09

Housing benefit – rent restrictions – exemption where housing-related support provided – relevance of support available to tenants generally but not taken advantage of by claimant

R(H) 4/09

See also: Income

HUMAN RIGHTS

Article 14 – whether denial of income support to pregnant student indirect discrimination

CM v Secretary of State for Work and Pensions [2009] UKUT 43 (AAC)

R(IS) 7/09

Unmarried partner of deceased ex-serviceman – whether conditions for entitlement to service pension contrary to Article 14 of the Convention

R(AF) 2/09

Upper age limit for entitlement to mobility component – whether discrimination contrary to Article 14 of the Convention

NT v SSWP [2009] UKUT 37 (AAC)

R(DLA) 1/09

Whether treatment of parent not in receipt of child benefit as non-resident parent in breach of Article 14 of the Convention

R(CS) 1/09

INCAPACITY FOR WORK

Exceptional circumstances – whether test of substantial risk to be evaluated against specific employments or in the abstract

Charlton v Secretary of State for Work and Pensions [2009] EWCA Civ 42 R(IB)2/09

Treated as incapable of work – application of regulation 63 of the Social Security (Incapacity for Work) (General) Regulations 1995 **R(IB) 1/09**

INCOME

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

AR v Bradford MDC [2008] UKUT 30 (AAC) R(H) 6/09

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

SJ v Secretary of State for Work and Pensions [2009] UKUT 23 (AAC) R(G) 1/09

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

INCOME SUPPORT AND STATE PENSION CREDIT

Housing costs – whether loan incurred during a period between periods of entitlement to income support – whether a period in respect of which claimant would be entitled to income support if housing costs were allowable must be treated as a period of entitlement

R(IS) 2/09

INDUSTRIAL DISEASE

Prescribed disease A12 (carpal tunnel syndrome) – whether a particular degree of flexion required

FR v Secretary of State for Work and Pensions [2008] UKUT 12 (AAC) R(I) 1/09

JOBSEEKER'S ALLOWANCE

Remunerative work – self-employed claimant having had a long period without work – whether engaged in remunerative work

JC v Secretary of State for Work and Pensions [2008] UKUT 40 (AAC) R(JSA) 1/09

JURISDICTION

Commissioners' jurisdiction – procedural decision made by legally qualified panel member – whether there is a right of appeal to a Commissioner – scope of *Secretary of State for Work and Pensions v Morina and Borrowdale* **R(IS) 6/09**

Judicial review by Upper Tribunal in Scotland – whether competent to make application direct to the Upper Tribunal
EF v Secretary of State for Work and Pensions SWP [2009] UKUT 92 (AAC)
R(IB) 3/09

Tribunal jurisdiction – refusal to revise on application for variation – whether appealable
RB v child Maintenance and Enforcement Commission and ED [2009] UKUT 53 (AAC)
R(CS) 5/09

Tribunal jurisdiction – time limits for appealing – whether a decision wrongly to admit a late appeal can confer jurisdiction on tribunal deciding the issue at a later stage
RS v Secretary of State for Defence [2008] UKUT 1 (AAC)
R(AF) 1/09

See also: Contributions and credits

RECOVERY OF OVERPAYMENT

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

Housing benefit – amendments to legislation on recoverability – whether retrospective
AH v Mendip District Council and Secretary of State for Work and Pensions [2008] UKUT 18 (AAC) **R(H) 3/09**

RESIDENCE AND PRESENCE CONDITIONS

Persons subject to immigration control – whether for Secretary of State to show that leave to remain in the United Kingdom given as a result of a maintenance undertaking **R(PC) 1/09**

Residence and presence conditions – habitual residence – right to reside **R 1/09 (IS)**

Residence and presence conditions – right to reside – scope of Article 18(1) of the EC Treaty **R(IS) 4/09**

Residence and presence conditions – Turkish asylum seeker – whether having a right to reside in the United Kingdom
Yesiloz v LB Camden & Secretary of State for Work and Pensions [2009] EWCA Civ 415
R(H) 7/09

Right to reside – scope of Article 18(1) of the EC Treaty
Kaczmarek v Secretary of State for Work and Pensions [2008] EWCA Civ 1310
R(IS) 5/09

Right to reside – whether indirect right as primary carer of child dependent on father – whether sufficient resources to avoid becoming a burden on the social assistance system
Jeleniewicz v Secretary of State for Work and Pensions [2008] EWCA Civ 1163
R(IS) 3/09

See also: European Union law

RETIREMENT PENSION

Category B pension frozen at level in force when spouse ceased to live in Great Britain – higher Category B pension payable on death of spouse – whether should include increases in benefit rates up to date of his death

Secretary of State for Work and Pensions v Yates [2009] EWCA Civ 479 R(P) 3/09

See: Discrimination on ground of sex

TRIBUNALS

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

*See also: Human rights
Jurisdiction*

WAR PENSIONS AND ARMED FORCES COMPENSATION

War disablement pension – allowance for lowered standard of occupation – whether to be reduced by amount of Service Attributable Pension

Secretary of State for Defence v DK [2009] UKUT 51 (AAC) R(AF) 4/09

War pension – child allowance – exclusion of death due to consumption of alcohol from definition of “injury” – whether “injury” if death also due to another cause

**Secretary of State for Defence v MR [2009] UKUT 31 (AAC)
R(AF) 3/09**

*See also: Human rights
Jurisdiction*