Bulletin 171

THE SOCIAL SECURITY COMMISSIONERS

Commissioners' File Nos: *CI 2107/01 & CI 2540/01*

SOCIAL SECURITY ACTS 1992-1998

APPEAL FROM DECISION OF APPEAL TRIBUNAL ON A QUESTION OF LAW

DECISION OF A TRIBUNAL OF SOCIAL SECURITY COMMISSIONERS

COMMISSIONERS: HH Judge M Harris, P L Howell QC and R J C Angus

13 May 2002

(CI 2107/01)	*Claimant's Name:*	Joseph Pownall
	Claim for:	Disablement Benefit
	Appeal Tribunal:	Newcastle
	Tribunal Case Ref:	U/44/228/2000/05644
	Tribunal date:	12 January 2001
	Reasons issued:	22 March 2001
(CI 2540/01)	*Claimant's Name:*	Alexis Ross
	Claim for:	Disablement Benefit
	Appeal Tribunal:	Blackpool
	Tribunal Case Ref:	U/06/064/2001/00434
	Tribunal date:	11 April 2001
	Reasons issued:	4 May 2001

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[ORAL HEARING]

Introduction

1. In these two appeals by the Secretary of State, similar questions arose on the procedure for reopening past decisions for errors of law and the correct application of section 27 **Social Security Act 1998** (sometimes referred to as the "test case rule"), when disablement percentages have to be aggregated for the purpose of determining entitlement to disablement pension under section 103 **Social Security Contributions and Benefits Act 1992** and related provisions. The two cases were directed to be set down for hearing before a Tribunal of Commissioners under section 16(7) of the 1998 Act, as involving questions of law of special difficulty.

2. We held a combined oral hearing of the two appeals. Jeremy Heath of the solicitor's office, Department of Work and Pensions, appeared for the Secretary of State and Scott McInally, Principal Welfare Rights Officer with the Durham County Council, appeared for both respondents though earlier they had been represented separately. We record our particular thanks to Mr Heath for his careful and comprehensive analysis of the history of the substantive and procedural law in this area, produced in response to the direction given for the lodging of skeleton arguments in advance of the hearing. No skeleton argument was provided for either of the respondents, which we found unfortunate: it meant that time had to be taken up at the hearing itself in eliciting and

identifying what were the real points in issue between the parties on the law, which would have been unnecessary if the process of analysis involved in the preparation of a skeleton argument had been carried out in advance. The use of skeleton arguments has been found of assistance in this jurisdiction, as in virtually all others where points of law have to be argued and determined; and when directed, they must be provided.

3. The decisions at issue in these cases were given by the Secretary of State, reversing for error of law earlier adverse decisions of adjudicating authorities on the aggregation of disablement percentages, which had not been challenged at the time. The reversal (which was to the claimants' advantage) was applied as regards the whole of the future but only part of the past, and the question on the appeal was whether that should have been more. To understand the effect of the later decisions it is necessary to explain a little about the underlying issue of "aggregation" with which they were concerned.

Background: the aggregation issue

4. In each of these cases the claimant was a man who had the misfortune to suffer more than one industrial accident or prescribed disease at different times during his working life, for which separate percentages of continuing disablement had been assessed. In each case the question that arose was the extent to which he was entitled to have these separate percentages added together under the "aggregation" provisions, now in section 103 **Social Security Contributions and Benefits Act 1992**, which have applied from 1 October 1986 to determine whether a claimant qualifies for the disablement pension payable under the industrial injuries scheme for disablements of 14% or more, and if so how much that pension should be.

5. Before 1 October 1986, the industrial injury benefit scheme had contained no provision for the aggregation of separate disablement percentages in this way. Instead, the benefit for less serious cases of disablement from industrial accidents or diseases, which did not by themselves qualify the claimant for disablement benefit in the form of a pension at the (then) threshold of 20%, had been by way of a separate individual lump sum award of "disablement gratuity" for each assessed disablement below that figure, without individual percentages being added together for any purpose: see in particular section 57(5) **Social Security Act 1975**. Each of the claimants with whom we are concerned had already had one or more such gratuities awarded and paid to him under the pre-October 1986 provisions. The particulars of the individual assessments and awards were provided for us in the appeal papers but it is not necessary to set them out in detail here, as they do not affect the point of principle. It is enough to note that each of the claimants' earlier gratuities had been for an assessed percentage of less than 20% for

the individual disablement resulting from a separate accident or disease, and the relevant assessment in each case had been a *final* assessment of continuing disablement for life. So far as the pre-October 1986 industrial injury scheme was concerned, although the disablement thus finally assessed was a continuing one, the benefit to compensate for it had been paid, on a once-for-all basis as a single lump sum.

6. The October 1986 changes to the industrial injury scheme did away with the system of lump sum gratuities, apart from transitional cases with which it is common ground we are not concerned. Instead, the only way in which an assessed percentage of disablement from a less serious injury or disease could now qualify a claimant for any benefit was by being put together with any other percentage assessments from separate injuries or diseases, under the new system of "aggregation", to make up the total percentage for entitlement to disablement pension. That now became the sole form of disablement benefit, payable at or over the reduced threshold of 14% aggregate disablement: cf. sections 94, 103 **Social Security Contributions and Benefits Act 1992** and the corresponding regulations under sections 108-109.

7. The aggregation system operated by reference to assessed percentages of continuing disablement. Many claimants, including these present ones, of course had still subsisting final assessments of disablement for life or shorter periods for which they had already received single lump sum gratuities. To prevent them using the aggregation system as a means of getting extra benefit for a disablement regarded as already fully compensated by the once-for-all lump payment under the old scheme, it was provided that aggregation under the new one should apply only to:

> **"... the assessed percentage of any present disablement of his resulting from any other accident ... in respect of which a disablement gratuity was not paid to him ... after a final assessment of his disablement" [the original form, in para 3 sch 3 Social Security Act 1986]**
>
> **"... the assessed percentage of any present disablement of his – (a) which resulted from any other accident ... and (b) in respect of which a disablement gratuity was not paid to him after a final assessment of his disablement" [the present form, in section 103(2) Social Security Act Contributions and Benefits Act 1992].**

8. The original departmental understanding of these provisions, consistently applied in these and other cases from 1986 onwards, was that disablement percentages for which a gratuity had once been paid on a final assessment were at all times thereafter excluded from aggregation in any calculation of the percentage for a disablement pension. If an earlier final assessment was reviewed after 1986 on medical grounds and an increased assessment for the same accident or disease substituted, then it was only the

amount of the *increase* that could count for aggregation. That was the only part of the reassessed disablement that had not already been compensated by the gratuity.

The decisions on aggregation

9. In each of these cases, there had been earlier decisions given on that basis by adjudicating authorities, applying the departmental understanding of the aggregation rule and refusing or limiting entitlement to disablement pension. Those decisions, given in 1992 in case **CI 2107/01** and at various dates between 1991 and 1995 in **CI 2540/01**, had gone unchallenged at the time as neither claimant appealed against them. They had thus become conclusive against any entitlement to have the earlier percentages for which gratuities had already been paid included in the aggregate disablement percentage for disablement pension, *except* so far as the legislation allows decisions under the social security adjudication system which have become final to be reopened: see section 117 **Social Security Act 1975**, section 60 **Social Security Administration Act 1992**.

10. It is not in dispute that those earlier decisions were in fact reopened, though not till several years later, and in due course the altered (and so far as the claimants were concerned more favourable) decisions in question in these appeals were given instead. Nor is it in dispute as a matter of objective fact that what caused this to happen was that the previous departmental understanding about the aggregation rule reflected and applied in the original decisions had in the meantime been held incorrect as a matter of law. That happened in a series of Commissioners' decisions whose effect was that these past "gratuity" percentages ought after all to have been taken into account in later aggregation decisions, and not excluded from them altogether as the department had thought.

11. The first case in which it was so held was **CI 522/93**, given on 24 July 1995. Later cases which confirmed the availability of such percentages for aggregation, though by reference to different or alternative reasoning, were **CI 1698/97** and **CI 4766/97**, given on 15 and 16 December 1998. We do not need to go into the reasoning which led to this result. For present purposes all that matters is that the Commissioners in those cases did so hold, and accordingly determined that the adjudicating authorities' decisions in question in the appeals before them (applying the departmental understanding of the aggregation rule) had been erroneous in law. The department did not appeal against the Commissioners' decisions, and accordingly does not dispute that earlier decisions given on the basis of the same understanding were likewise erroneous in law.

12. It is fair to say it took some time for the implications of the Commissioners' decisions to be assimilated, in the department and elsewhere: but in due course

applications were made on behalf of these and other claimants for the earlier decisions refusing or limiting aggregation to be reopened in the light of them. In case **CI 2107/01**, that was done by a letter from the claimant dated 1 October 1999, requesting "a review of my entitlement to disablement benefit". It referred expressly to decisions **CI 1698/97**, **CI 4766/97** and **CI 522/93**, and also to an earlier reported decision **R(I) 11/67**, given on 25 September 1967.

13. Although the letter in terms spoke of a "review for change of circumstances", the power to reopen earlier decisions by way of administrative review under the **Social Security Act 1992** had ceased to apply to industrial injury cases by the time the letter was sent, the 1998 Act having been brought into force for such cases from 5 July 1999. It was common ground at the appeal hearing before us that the only relevant jurisdiction under that Act to reopen the question of aggregation was the power under section 10 **Social Security Act 1998** and regulation (6)(2)(b)(i) **Social Security and Child Support (Decisions and Appeals) Regulations 1999** SI No. 991, to make a further decision "superseding" for error of law the earlier decision that had refused it. The letter was treated in practice as an application under the 1998 Act and nothing now turns on the wording of the application, or the subsequent decision itself so far as concerns jurisdiction to make it. (The decision, dated 25 May 2000 at page 76c of the file in case **CI 2107/01**, is expressed in terms of a "revision for official error" which suggests use of the Secretary of State's power to revise his own previous decisions under section 9 **Social Security Act 1998** and reg 3 *ibid*; it was common ground by the time the appeal got before us that this was technically incorrect because of the narrowness of the definition of "official error" in reg 1(3), but that the substance of the decision was wholly within section 10 and reg 6(2)(b)(i) which empowered the Secretary of State to make a decision to the identical effect.)

14. In case **CI 2540/01**, the application on behalf of the claimant to have the earlier decision refusing him aggregation reopened was made by a letter on his behalf dated 9 August 2000. This requested simply that the case should be looked at "to see whether or not he qualifies for a payment of disablement benefit in light of the new interpretation of pre-1986 gratuity assessments (aggregation)". Again nothing turns on the form of the application, which was throughout treated as an application for the Secretary of State to make a further decision under section 10 **Social Security Act 1998** superseding the earlier adverse one so as to add in all the claimant's continuing disablement percentages for the purpose of determining entitlement, even where gratuities had been paid. The decision in this case was given under that power: see the copy dated 25 September 2000 added to the file in response to an earlier direction.

15. In each case after due consideration the Secretary of State did reopen the question of aggregation. Fresh decisions were issued adding in the disablement percentages formerly omitted from the calculation and making an award (or an increased award) of disablement pension accordingly. Because the original adverse decisions were accepted as having been erroneous in law, the effect of each new decision, and thus the award of additional benefit, was made retrospective for a substantial period, both before the date of the new decision itself and before that of the application for it.

16. There was no dispute before the tribunal, and there is and can in our view be no dispute on the appeal before us, about the validity of these fresh awards to confer entitlement (or additional entitlement) to disablement pension for the past and future periods they did purport to cover. We record for completeness that a question raised during the written stage of the appeal procedure in case **CI 2107/01** about whether the Secretary of State had been right to reopen the earlier 1992 decision at all on the particular facts of that case was, rightly in our view, not pursued by Mr Heath at the appeal hearing before us.

17. What is in dispute in each case, as already noted, is whether the Secretary of State's new decisions ought also to have conferred the extra benefit even further back in the past, or were correctly limited in time in the way they were.

The time limitation and the test case rule

18. In each case, the Secretary of State's decision was limited so that the backdated effect did not extend back beyond 24 July 1995. That was the date of the Commissioners' decision in case **CI 522/93** in which the department's understanding and practice about how to apply the aggregation rule from 1 October 1986 onwards had been held erroneous in point of law. The limitation by reference to the date of that decision was expressly recorded in the fresh decisions themselves.

19. The basis for the Secretary of State having limited the backwards effect of his new decisions to award additional benefit was that he considered he was obliged to do this by the test case rule in section 27 **Social Security Act 1998**. For this purpose, the decision in case **CI 522/93** given on 24 July 1995 was regarded as the "test case" in which the consistently applied practice of the Secretary of State on the aggregation question had first been held erroneous in law. After that decision, and following others reaching the same conclusion albeit for additional or alternative reasons, it was accepted that all previous decisions depending on the same understanding and practice had been erroneous in law, so that the jurisdiction to reopen them on that ground had arisen. Thus

in all such cases, the giving of fresh decisions to supersede or alter earlier less favourable ones on the aggregation issue had in fact been carried out because of the Commissioners' decisions on that issue, starting with **CI 552/93**, and in accordance with them. Consequently the extent of the retrospective effect of those fresh decisions fell in the view of the Secretary of State to be determined in accordance with section 27.

20. The material provisions of the rule as set out in that section are as follows:

> **"27. (1) ... this section applies where –**
>
> **(a) the effect of the determination, whenever made, of an appeal to a Commissioner or the court ("the relevant determination") is that the adjudicating authority's decision out of which the appeal arose was erroneous in point of law; and**
>
> **(b) after the date of the relevant determination a decision falls to be made by the Secretary of State in accordance with that determination ...**
>
> **(ii) as to whether to revise, under section 9 above, a decision as to a person's entitlement to benefit; or**
>
> **(iii) on an application made under section 10 above for a decision as to a person's entitlement to benefit to be superseded.**
>
> **....**
>
> **(3) In so far as the decision relates to a person's entitlement to a benefit in respect of –**
>
> **(a) a period before the date of the relevant determination; ...**
>
> **it shall be made as if the adjudicating authority's decision had been found by the Commissioner or court not to have been erroneous in point of law."**

21. The purpose (and the effectiveness) of the rule so far as concerns the reopening of earlier adverse decisions in the light of later authority in another case showing them to have been wrong in law has been explained in **Bate v Chief Adjudication Officer** [1996] 1 WLR 814 by Lord Slynn, with whom all their Lordships concurred, at pages 820G, 821G:

> **"The provisions allowing for decisions to be reopened on review ... are in a sense a concession since, contrary to the practice in the courts, they allow cases closed by, for example, the decision of an adjudication officer to be reopened before an adjudication officer or, on a reference by him, by a social security appeal tribunal. It is, therefore, perhaps not surprising that some limit was introduced in the regulations to the retrospective effect of subsequent decisions on the law. ...**
>
> **I do not see that this is in any way interfering with the proper functioning of the judicial hierarchy or of preventing the proper interpretation of the law. The decision in case A above was wrong; for the future the law as declared in case B must apply; entitlement to benefit in respect of the past, however, has been excluded by Parliament."**

22. Those observations of the House of Lords on the test case rule (in its previous incarnation as sections 104(7)-(8) **Social Security Act 1975,** section 69 **Social Security Administration Act 1992**) were concerned only with its use in the kind of case with which their Lordships in **Bate,** and we in these present cases, are concerned: where the ability to reopen individual cases for past errors of law allows an inroad into the ordinary principle of finality of past decisions, in the general law known as the principle of *res judicata* and in the social security field made statutory in (now) section 17 **Social Security Act 1998**. The House of Lords were not concerned with any possible wider use of the rule outside that context, or the effectiveness of any more recent additions in section 27 as it now appears (in particular subsections (5)-(6)); and neither in these cases are we.

23. The Secretary of State applied the test case rule in these cases on the basis that "the relevant determination" had been that of the Commissioner in **CI 522/93,** holding the adjudication officer's decision on aggregation that had given rise to the appeal in that case erroneous in law. In accordance with the determination of the Commissioner in that case, aggregation on the basis previously denied fell to be allowed; and the earlier decisions denying it in the present cases fell to be reopened as having been erroneous in law. Consequently it followed that the fresh decisions allowing aggregation after all were decisions of the Secretary of State within section 27(1)(b): their practical effect in favour of the claimant was therefore required by section 27(3) to be limited to the period from and after the date of the "test case" decision, which was 24 July 1995.

24. Each claimant appealed to the tribunal against the refusal to make him a retrospective award of benefit even further back before that date. In each of the tribunal decisions under appeal to us, the claimant's contentions succeeded and he was held entitled to further backdating. The reasoning of the tribunals was expressed as follows.

25. In case **CI 2107/01**, the tribunal said in their statement of reasons at page 31 of the appeal file:

> **"'The Tribunal ... considered the case of CI/522/93 which was signed on 24 July 1995, hence the restriction. The tribunal noted that Mr Commissioner Henty stated quite specifically at paragraph 8 of his decision in CI/522/93 that the decision in R(I) 11/67 is authority that a gratuity expires after 7 years and he followed that decision. R(I) 11/67 is the authority for that proposition and the Commissioner in this case specifically stated that he followed the 1967 case. The Commissioner did not reinterpret the law he simply at best restated it. Hence his comment that he confirmed the decision in R(I) 11/67.**
>
> **The Secretary of State's decision to restrict the payment of benefit to July 1995 is on the grounds that the Commissioner was reinterpreting the law. That is not correct and the tribunal therefore allowed the appeal.'**

26. And in case **CI 2540/01** the tribunal said, at page 58 of the appeal file:

> **This appeal concerns how far backdating is possible in respect of aggregable assessments.**
>
> **The argument of the Benefits Agency is that the case CI/1698/97 *[sic]* established a "principle" and that therefore the date of this decision being 24 July 1995 became the base date for the consideration of such questions.**
>
> **The appellant argued that this case in CI/522/93 were but affirmation of existing principles and statute which highlighted an error in the application of the law. He also refers to R(I) 11/67 which was quoted by the Commissioner in CI/522/93. Clearly R(I) 11/67 could not consider aggregation as statute did not introduce this until 1.10.86.**
>
> **On reading CI/1698/97 it is clear that the Commissioner was considering the interpretation of section 103(2) of the Social Security Contributions and Benefits Act 1992. The tribunal saw no reason why the appellant should not have the benefit of this interpretation.**
>
> **Therefore, on consideration of the law the tribunal were persuaded that that view of the appellant was correct and allowed the appeal.".**

The present limits on reopening past decisions

27. The jurisdiction to reopen past decisions with retrospective effect under the **Social Security Act 1998** is very limited. The scope of the Secretary of State's ability to do so is now not defined in the primary legislation itself, as it used to be under section 25 **Social Security Administration Act 1992** and its predecessors, but left by sections 9 and 10 of the **Social Security Act 1998** almost wholly at large, to be prescribed by regulations made by the Secretary of State himself. The general flavour of this method of legislation can be gathered from subsections (3) and (6) of section 10 ("Decisions superseding earlier decisions") which empower him in these broad terms:

> **"(3) Regulations may prescribe the cases and circumstances in which, and the procedure by which, a decision may be made under this section. ...**
>
> **(6) Regulations may provide that in prescribed cases or circumstances, a decision under this section shall take effect as from such other date as may be prescribed."**

28. In contrast with the express provision laid down by the previous primary legislation for review of earlier decisions shown to have been erroneous in law, the *only* relevant provision under the regulations made by the Secretary of State that now permits a fresh decision to be given superseding an earlier one on this ground in such a way as to affect entitlement for any date before the fresh decision was applied for or given, is in regulation 7(6) of the **Decisions and Appeals Regulations** which prescribes that:

> **"(6) A decision made under section 10 in consequence of a decision which is a relevant determination for the purposes of section 27 shall take effect as from the date of the relevant determination."**

29. In *no* other circumstances, under the law in force at the date the fresh decisions in question in these appeals were given, is there any provision for a decision superseding an earlier decision for error of law to have any retrospective effect. The corresponding provision for "revision" under section 9 for "official error" was agreed not to be applicable in this case; but in any event it is similarly limited so as to prevent effective backdating before the date of a test case identifying the error if this was one of law: see reg 3(5)(a) **Decisions and Appeals Regulations**; section 9(3) **Social Security Act 1998**.

The single issue on which these appeals depend

30. The sole question on which the correctness of the tribunal's decision in each case depended was therefore whether, given that it was necessary to identify a "relevant determination" within section 27 **Social Security Act 1998** before any backdating under reg 7(6) of the **Decisions and Appeals Regulations** could be permissible at all, it was possible to identify any earlier decision than that of the Commissioner in **CI 522/93** "in consequence of which" the previous adverse decisions given in the present cases had been altered so as to award aggregation previously refused.

31. In our judgment it is beyond argument necessary for this purpose that to fall within section 27(1)(a) as a "relevant determination", the authority relied on as the test case must have held an adjudicating authority's decision erroneous in law on the same basic issue as was determined in, or was the basis of, the original adverse decision given in the instant case. Otherwise the fresh decision of the Secretary of State, reversing the effect of the original decision as now seen to have been erroneous in law, could not properly be said to have been given "in consequence of" or to have "fallen to be made in accordance with" the authority of the test case: there is in our view no material difference between those two formulations so far as these cases are concerned.

32. So far as the single issue on which the cases before us depend is concerned, Mr Heath on behalf of the Secretary of State contended that the Commissioner's decision in **CI 522/93** had to be the "relevant determination" for the purposes of section 27, since it was the first judicial decision which had held an adjudicating authority's decision applying the previous less favourable departmental practice about aggregation to have been erroneous in law. Since aggregation had been introduced into the industrial injuries benefit scheme for the first time only on 1 October 1986 and had never been a feature of that scheme before, the decisive issue could by definition never have arisen before that date. Thus it was impossible for any earlier decision on a different issue to be a "relevant determination" for this purpose. Consequently, the maximum possible backdating of the fresh decisions given here was to 24 July 1995.

33. It was initially contended on behalf of the claimants that these were not cases within the proper scope of section 27 **Social Security Act 1998** at all, or that if they were the "relevant determination" should be the reported decision in **R(I) 11/67**: admittedly not a case deciding anything about aggregation, but one referred to by the Commissioner in **CI 522/93** as supporting the reasoning that led him to give the decision he did. However in the course of oral argument Mr McInally very properly conceded that under the regulations any question of backdating in these cases was governed by section 27, without which there could be none. He further conceded that it was not possible to point to any case earlier than **CI 522/93** in which the department's practice of refusing aggregation in comparable cases after 1 October 1986 had been held erroneous in law; and that it was the giving of *that* decision, and the subsequent confirmation of its effect in other Commissioners' decisions, that had as a matter of objective fact caused the applications to be made to the Secretary of State for the earlier decisions excluding aggregation in these cases to be reopened, and caused the fresh decisions to be given by the Secretary of State reversing their effect.

34. He was also undeniably right in our judgment to concede, as he did, that the decision of the Chief Commissioner in **R(I) 11/67**, given on 25 September 1967, did not and could not have determined anything about the way a disablement percentage was to be taken into account for aggregation after 1986. Aggregation was not and could not have been the issue in that case. It was concerned only with certain provisions then in force about the payment of benefit where there were successive overlapping assessments for the same injury or disease, and with the effect for that purpose of a notional "payment period" attributed under the regulations to gratuities paid, even though the assessment of disablement was (for all purposes other than payment) one for a longer period of years, or for life.

Conclusion

35. In our judgment the concessions made by Mr McInally in the course of argument were inevitable, and the appeals by the Secretary of State unanswerable. Each tribunal misdirected itself in purporting to award benefit or to direct aggregation for any period before 24 July 1995, contrary to the express requirements of the legislation. There can be no question of the reported decision of the Chief Commissioner in **R(I) 11/67** on 25 September 1967 having been a "relevant determination" for the present purpose, for the simple reason that in Mr McInally's apt phrase it has "nothing to tell us on the issue of aggregation", which was determined judicially by a Commissioner on appeal for the first time in **CI 522/93**.

36. The Secretary of State has in each of these cases very properly taken the retrospective effect of his fresh decisions back to the date of the decision in **CI 522/93**, as being the *earliest* decision by a Commissioner holding the post-October 1986 departmental practice on aggregation to have been erroneous in law. We consider that is in accordance with the Parliamentary intention, and the proper way of applying the test case rule where successive judicial decisions have held the decisions of adjudicating authorities on the same issue to have been erroneous in point of law; even where, as here, those decisions rely on different or alternative reasoning to reach the same practical result, and it takes some time for the implications of the original one to be digested by departmental and/or claimants' advisers and translated into action. It is not necessary for us to comment on whether anything in section 27 as it now stands (for example the phrase "in accordance with", which differs from previous formulations of the rule) would have enabled the Secretary of State to seek to apply the rule in some more questionable way, to the disadvantage of claimants. He has not at any stage sought to do so in these cases and we have no reason to suppose he ever would. Similarly we express no view on the validity or propriety of any use of the present section 27 outside the purpose affirmed and explained by the House of Lords in **Bate**, paragraph 21 supra.

37. The appeals by the Secretary of State in each of these cases are accordingly allowed and the decisions of the two tribunals set aside. In exercise of the power in section 14(a) **Social Security Act 1998** we substitute in each case the decision we are satisfied the tribunal should have given, namely that the decision of the Secretary of State awarding aggregation of the disablement percentages previously excluded, but limiting the retrospective effect to the period from and after 24 July 1995, was correct and is confirmed. In case **CI 2107/01** that decision is to have effect as a decision superseding the earlier adverse decisions under section 10 **Social Security Act 1998**, instead of a "revision" under section 9.

(Signed)

HH Judge M Harris
Chief Commissioner

P L Howell

R J C Angus

Commissioners
13 May 2002