

Reg 10A/Reg 30 Single Payments for furniture
"Misc" items under reg 30

VGHH/MB

Commissioner's File: CSB/241/1987

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Region: London North

SUPPLEMENTARY BENEFITS ACT 1976

APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A QUESTION OF LAW

DECISION OF A TRIBUNAL OF SOCIAL SECURITY COMMISSIONERS

Name:

Social Security Appeal Tribunal:

Case No:

[ORAL HEARING]

1. Our decision is that the decision of the social security appeal tribunal dated 24 October 1986 affirming the decision of an adjudication officer issued on 28 August 1986 is erroneous in point of law, but that (Mr. Sanders dissenting) nevertheless, for the reasons set out in this decision, their conclusion was correct, the decision of the adjudication officer is affirmed and the claimant's appeal from the tribunal is disallowed.

Representation

2. We held oral hearings of this claimant's appeal on 7 and 10 September and 4 and 5 November 1987. The claimant, who did not attend, was represented by Mr. D. Goddard, a Law Lecturer at Bristol University. The adjudication officer was represented by Mr. P. Havers of Counsel, instructed by the Solicitor's Office, Department of Health and Social Security and by Mr. E.O.F. Stocker. In accordance with the usual practice, the Secretary of State for Social Services was not represented and has made no submissions on this appeal.

Nature of the appeal

3. The issue before the appeal tribunal of 24 October 1986 was whether the claimant was entitled under his claim made on 12 August 1986 to a single payment for carpets and curtains. Regulations 10A, 18 and 30 of the Supplementary Benefit (Single Payments) Regulations 1981, as in force on the date of claim were in point on this issue.

4. It is the claimant's submission that the whole of Regulation 10A and the words of exception at the commencement of Regulation 30(1) are invalid. But the adjudication officer now concerned, acting on legal advice, submits:

"JURISDICTION

1. It is not open to the claimant, in these proceedings before the Commissioner, to call in question the validity of any regulations made by Statutory Instrument by the Secretary of State for Social Services (or any other Minister of the Crown). That is the legal effect of the introduction of the procedure under RSC Order 53 by way of judicial review in 1977 and the subsequent case law. The appropriate course is for the person concerned to raise the question of validity in such proceedings for judicial review. In some circumstances the validity of administrative action may be questioned in proceedings not by way of judicial review, that is, in cases where both:-

- a. the private rights of the person challenging validity are threatened; and
- b. that person is defending proceedings brought against him.

Neither of these conditions is met by the claimant in this appeal."

5. The question of the Commissioner's jurisdiction to consider the validity of subordinate social security legislation arises in six other appeals before the present Tribunal, which relate to residential and nursing home regulations, and the jurisdiction of social security appeal tribunals to decide such matters has been questioned by the adjudication officer in appeals to the Commissioner in Scotland. The matter is one of general importance in view of the increasing number of social security appeals where ultra vires questions arise.

The relevant statutory provisions

6. Statutory provisions governing the jurisdiction of the Commissioner are set out in the First Appendix. Regulation 10A and subsection (1) of Regulation 30 are set out in the Second Appendix.

The adjudication officer's decision

7. On 28 August 1986 an adjudication officer issued the following decision:

"The claimant is not entitled to a single payment for miscellaneous household items".

The claimant appealed against that decision to a social security appeal tribunal stating that:

"for one, we have not bought anything before making a claim, 2 we have nothing we can use instead. I mean what can you use instead of carpets, there is nothing on the floors in any of the rooms in the house. We don't have any savings at all, and we are entitled to supplementary benefit, so we must be entitled to something. We have no furniture at all.

We've been living in a house with nothing in it with two children both under five for over 2 weeks now. There is no type of floor covering at all. I've had to borrow bedding and we're sleeping on the floor. Now you've given us money for this, but that still leaves us with no carpets on the floor and no curtains at the windows and nothing at all in the living room, as for paying for all this out of our supplementary benefit we are already having £34 taken out of our money for electricity that leaves us with just over £40 to live on for a week for a family of four, so you can see we have no spare cash for household goods. So we desperately need help with these things.... I can't let my children walk around on bear [sic] floors, and not be able to sit on nothing all day any longer".

8. In his written submission on the appeal, the adjudication officer stated (and these facts are not in dispute) that the claimant was a 36 year old married man with a wife, Susan, aged 26 years and two children, Donna and Daniel, aged 3 and 15 months respectively.

9. The claimant had received supplementary allowance since 10 December 1979. The claimant's wife received child benefit. The family has no savings. On 12 August 1986, the claimant claimed a single payment for miscellaneous household items, stating that he had been granted a new tenancy by the District Council, from 16 August 1986, and was housed under the Housing (Homeless Persons) Act 1977. His previous home was furnished; but his new home was not, and he did not have carpets and curtains, furniture or a three-piece suite.

10. The reasons for the adjudication officer's decision were stated to be that none of the conditions contained in regulation 10A were satisfied in respect of the claimant and regulation 30 could not apply where the claim was for miscellaneous furniture and household equipment needs.

11. The claimant's representative, in her written submission on the appeal, stated that the appeal was now only against the decision not to grant the claimant a single payment for the cost of carpets and curtains and that it was not intended to pursue his claim for the items of furniture which he required for his home, recognising that this would be inappropriate under the conditions of the Single Payments Regulations. While the claimant had received a grant for the purchase of beds and bedding, their new home had neither carpets nor curtains and they should not be regarded as miscellaneous furniture and household equipment, being more in the nature of fixtures and fittings. If this were wrong, regulation 10A should be disregarded. Regulation 30 then applied to the facts of the case. Reliance was also placed on regulation 18.

The appeal tribunal's decision

12(1) The tribunal's majority decision was:

"The claimant is not entitled to a single payment for miscellaneous household items"

(2) Their recorded findings of fact were:

- "1. Date of claim was on 12-8-86.
2. At date of claim the house 21 New Road, Kingham as uncarpeted and uncurtained.
3. At date of claim claimant in receipt of supplementary benefit.
4. Accept evidence given as to state of property.
5. Claimant's children ages 3 yrs and 15 months."

(3) The recorded reasons for the decision were:

"Tribunal decided in their experience and in the interpretation of Reg. 9 & 10. The correct interpretation was to consider carpets and curtains as within the definition other miscellaneous furniture and household equipment. Tribunal consider Mrs. Morrell's argument that carpets and curtains were fixtures and fittings but decided that in common usage this was not so. They also considered 1984 case statement by Lord Diplock referred to decided that in the absence of reference to curtains and carpets elsewhere in regulations they must be included in Regulation 10.

Tribunal then considered whether claim within 10A and decided not. Tribunal did consider 10A(a) but no evidence that claimant had been an in-patient.

Having taken decision within 10A this means that under new regulation 30 not possible to consider the case under this heading i.e. Regulation 30 excluded a payment where claimant does not satisfy 10A.

Therefore Tribunal unable to consider the circumstances of the house and claimant's children's ages under this regulation.

Tribunal then considered case under Regulation 18.

Although tribunal accept that both curtains and carpets are draught proofing, Tribunal did not consider either could be considered "simple" under definition in Regulation 18".

(4) The reasons of the dissenting member were:

"In his view curtains and carpets should not be considered items of miscellaneous furniture and household equipment and therefore not within Regulation 30 and under Regulation 30 he would have found urgent need was shown."

13. The claimant's appeal is brought with the leave of the

chairman.

Jurisdiction

14. Mr. Havers adopted the adjudication officer's submission, from which we have quoted in paragraph 4 above. In his submission, under the relevant legislation the Commissioners have no jurisdiction to decide the vires of statutory instruments. Nowhere in the Supplementary Benefits Act 1975 was it provided that the Social Security Commissioner should determine the vires of regulations. Section 2(1) made it plain that the adjudicating authorities can only decide entitlement to benefit in accordance with regulations and cannot therefore deal with ultra vires. The Commissioner must decide on the basis that the statutory provisions were valid. It was outside their jurisdiction to decide ultra vires points and this was an exception to their jurisdiction under sections 101(1) and (5) of the Social Security Act 1975, which must be construed as one with section 2(1) of the Supplementary Benefits Act 1975.

15. Further, and as a second submission, Mr. Havers submitted that complaints about the vires of statutory instruments fall within the general rule laid down by the House of Lords in O'Reilly v. Mackman [1983] A.C. 47 and should therefore only be made by way of an application for judicial review. Although this general rule does admit of exceptions, complaints about the vires of statutory instruments on which a claimant otherwise seeks to rely is not such an exception. In support of this submission, reliance was placed on Wandsworth London Borough Council v. Winder [1985] A.C.461; Cocks v Thanet District Council [1983] 2 AC 286; QuietLynn v Plymouth County Council [1987] 3 WLR 189.

16. We all reject these submissions. They misconceive the statutory duty of the statutory authorities (the adjudication officer, the social security appeal tribunal and the Commissioner). Where a claimant raises a question relating to the determination of benefit, which is assigned to the statutory authorities and which can only be answered by ruling on the validity of a regulation, the adjudicating authority is obliged so to rule and it is not open to that authority to refuse to do so. Such a refusal would amount to a breach of their statutory duty to determine - and, by virtue of section 117 of the Social Security Act 1975, finally determine (subject to the statutory rights of appeal with leave - the question assigned to them. All questions relating to single payments to meet an exceptional need (including the need for carpets or curtains) are so assigned; see sections 2(1) and 3(1) of the Supplementary Benefits Act 1975.

17. The jurisdiction of the Commissioners in Supplementary benefit appeals and, since 6 April 1987, in all other appeals from social security tribunal lies, and lies only, on the ground that the decision of the tribunal was erroneous in point of law: see section 101(1) of the Social Security Act 1975, as amended. If a social security appeal tribunal base their decision on a statutory regulation which is invalid and ultra vires that is an error of law and it is the duty of the Commissioner, in the event of an appeal to him, so to hold.

18. We can find nothing in the sections cited by Mr. Havers or

in the regulations or anywhere else in the social security legislation which states, or implies, that the statutory authorities have no jurisdiction to rule on the validity of a regulation if this is necessary in order to answer a question assigned to them by statute. It is the settled practice, in fact, to rule on validity: see, for example, numbered decision CS 5/76, and decisions R(S) 8/83 (affirmed by the Court of Appeal in Bhatia v Birmingham on 18 January 1985), R(SB) 26/84, R(SB) 9/87 (affirmed by the Court of Appeal under the name of Kilburn v Chief Adjudication Officer on 5 March 1987). No case has been cited, or is known to us, where this jurisdiction has ever been questioned. We consider this settled practice to be well-founded; and we note that neither in Bhatia case nor in the Kilburn case was there any suggestion to the Court of Appeal that the Commissioners were acting without jurisdiction.

19.(1) Order 53 of the Rules of the Supreme Court is wholly irrelevant to questions of jurisdiction. It is concerned with procedure. As explained by Lord Scarman in Reg. v IRC Ex parte Federation of Self-Employed [1982] AC 617 at 647G:

"The new R.S.C. Order 53 is a procedural reform of great importance in the field of public law, but it does not - indeed, cannot - either extend or diminish the substantive law..."

See also the remarks of Lord Diplock at page 638A. The question in O'Reilly v Mackman supra related to procedure, not jurisdiction: see page 274 G - H, where Lord Diplock considered the point. The general rule stated at page 285 of that case is referred to at letters F - G in terms of procedure, not jurisdiction. The same point was emphasised by Lord Bridge in Cocks v Thanet District Council supra at page 295G - H.

(2) As regards procedure, there is nothing in the new Order 53 nor in the Supreme Courts Act 1981 nor in any case cited before us that purports, either expressly or by implication, to affect the rights of claimants to pursue the statutory route assigned by Parliament for the determination of claims for benefit by an adjudication officer and, on appeal, a social security appeal tribunal and, on further appeal, a Commissioner, and in the course of so doing to raise any relevant question as to the construction or validity of subordinate legislation relied upon by the claimant or the adjudication officer.

(3) Where judicial review proceedings under Order 53 to determine the validity of a regulation which will be in question in an appeal have already been instituted, it may in some circumstances be appropriate to adjourn the determination of the appeal before the Commissioner pending the conclusion of the proceedings for judicial review. But no such proceedings have been instituted nor, so far as we are aware, are any in contemplation. In those circumstances, it is our duty to consider the validity or otherwise of regulation 10A forthwith, as we now do.

Is regulation 10A ultra vires?
Reasons of Mr. Hallett and Mrs. Heggs

20. Mr. Goddard made two submissions in support of this contention, each of which can aptly be summarised in the words of his final written observations in the appeal:

"[First] Regulation 10A Single Payments Regulations is void as ultra vires the empowering legislation, with which it does not conform. Section 3, Supplementary Benefit Act 1986 enables the Secretary of State to make regulations providing for single payments in prescribed cases, "of a prescribed amount to meet an exceptional need". Regulation 10A does not conform with section 3 as the amounts prescribed are set out without reference to the exceptional need to be met. Section 3 requires that the payments be related to the exceptional needs to be established. The amendment to Regulation 30 Single Payments Regulations falls with the regulation on which it depends, and payments for floor coverings and furniture thus, in so far as they are not covered by Regulation 18, fall to be considered under Regulation 30

[Second] Regulation 10A Single Payments Regulations is ultra vires as even if it is legitimate for the Secretary of State to treat miscellaneous furniture and household equipment as a single "need", the amount prescribed must be one which a reasonable Secretary of State could consider would meet that need: the sum prescribed to meet miscellaneous furniture and household equipment needs is so small that it [sic] no reasonable Secretary of State could believe that it would meet all exceptional needs for miscellaneous furniture and household equipment".

21. The second submission, in our view, cannot succeed. Regulation 10A was inserted into the Supplementary Benefit (Single Payments) Regulations 1981 by the Supplementary Benefit (Miscellaneous Amendments) Regulations 1986 [SI 1986 No. 1259] which were laid before Parliament on 21 July 1986 and came into operation on 11 August 1986. The prescribed amounts are set out in Schedule 1B which was inserted in the 1981 Single Payments Regulations by the 1986 Regulations. They have been approved by Parliament. It is not for the Social Security Commissioners to substitute their judgment of what is reasonable for provisions approved by Parliament. No authority has been cited, or is known to us, in which the validity of subordinate legislation has been successfully questioned on the ground that the Secretary of State acted unreasonably. As Lord Scarman said in R v The Secretary of State for the Environment Ex parte Notts CC [1986] A.C. 240 at page 250 when considering guidance to local authorities on expenditure given by the Secretary of State and approved by the House of Commons:

"If a statute ... requires the House of Commons to approve a Minister's decision before he can lawfully enforce it, and if the action proposed complies with the terms of the statute ... it is not for the judges to say that the action has such unreasonable consequences that the guidance upon which the action is based and of which the House of Commons

has notice was perverse and must be set aside. For that is a question of policy for the Minister and the Commons, unless there is bad faith or misconduct by the Minister."

That citation is taken from a case where the action of the Secretary of State required an affirmative resolution of the House of Commons, whereas the 1986 Regulations were laid before Parliament under the negative procedure. But the quoted principle is equally applicable where that procedure is used.

22. In support of his first submission, Mr. Goddard submits that the amount prescribed by the Secretary of State must meet the need shown to exist. He puts it this way:

"Thus, it would not be open to the Secretary of State to provide in regulations made under Section 3 that if any person had an exceptional need for a toothbrush, that person should be paid £2,000. This would not be a single payment to meet an exceptional need, but rather an irrational bonus going far beyond the need in question and constituting a gift unrelated to, though predicated upon, the need for a toothbrush. Likewise it is submitted that it is not open to the Secretary of State to prescribe a payment of 50p where a claimant showed an exceptional need for a cooker. The essence of this submission then is that where a single payment is to be made under Section 3, the amount of that payment must satisfy two conditions. It must be prescribed that is, set out in regulations made by the Secretary of State under the Supplementary Benefit Act 1976. But the amount must also be an amount to meet an exceptional need; that is, it must be set in relation to the need, not arbitrarily, and it must be neither so small that it could not supply the want shown, nor so large that it constitutes a bonus - a free gift of tax payers money - far in excess of what is required to meet the need in question. Any amount specified in regulations made by the Secretary of State will obviously satisfy the first condition, that is it will be prescribed, but it must also satisfy the second condition as to quantum. If the prescribed amount does not satisfy the quantum condition then that prescription does not comply with Section 3 Supplementary Benefit Act 1978, and so is void for want of authority."

23. Turning to the regulations, Mr. Goddard points out that under column 2 of Schedule 2B, a claimant who satisfies the conditions of regulation 10A receives the sum of £75 plus £50 for each additional member of the assessment unit, so that with a wife and 2 children he receives £225. It is his submission that the claimant would receive this sum regardless of the actual need he had, provided that the family had needs which fell into the broad range "miscellaneous furniture and household equipment needs". If they had no cutlery they would be given £225 to purchase 4 knives, 4 forks and 4 spoons:

"Their exceptional need would have been for the items of cutlery in question, but the payment they would have received would have been not merely a payment to meet that need but a payment calculated in a way unrelated to that a need, grossly in excess of the amount required to supply

the need, a gratuitous distribution of tax payers money authorised by the Secretary of State. Conversely, an individual with no possessions at all, who moved into a completely bare flat would receive £75 when he satisfied an Adjudication Officer that he had an exceptional need for floor covering, curtains, a table, a chair, crockery, cutlery, cooking utensils, cleaning implements, light fittings, storage units, a host of other items the sum of £75 would not go very far at all towards purchasing the items listed ... the Secretary of State ... was to prescribe an amount to meet an exceptional need, and this he has not done."

24. We cannot agree with this submission, which is, in our view, inconsistent with the wording and purpose of the regulation, as well as effectively disregarding the enabling provisions of section 166(2) of the Social Security Act 1975 (applied to supplementary benefit by section 33(2) of the Supplementary Benefits Act 1976) and expressly referred to in the regulations which introduced the new regulation 10A 1986.

25. The regulation is not designed to enable people who have furniture and household equipment to claim one or two items that they may be short of: see regulation 10A(2)(d) the effect of which is that any claimant or partner (except in domestic violence cases) who come from an unfurnished home is totally excluded from the operation of the regulation. The regulation is directed to persons who have a range of furniture and household equipment needs e.g. persons who have hitherto been in furnished accommodation, or bed and breakfast rooms. They can be expected to have little or nothing. Claimants who satisfy the terms of sub-paragraph (ii) of regulation 10A(2)(d) must show that they have exceptional miscellaneous furniture and household equipment needs. The need for a knife, fork and spoon is plainly out-with this description. It can be met by the claimant out of the allowance for his normal requirements.

26. Nor is the regulation designed to enable people to claim on an item by item basis for floor covering, curtains, a table, a chair, crockery, cutlery, cooking utensils, cleaning implements, light fittings, and storage units. All of these items were included in the old regulation 9 of the Single Payments Regulations which was revoked by the regulations which introduced the new regulation 10A, that is to say the Supplementary Benefit (Miscellaneous Amendments) Regulations 1986. The clear purpose of the new regulations 9, 10 and 10A is that those items shall not be claimed as "Household Expenses" under Part IV of the Single Payments Regulations on an item by item basis. Otherwise, the old regulation 9 would not have been revoked.

27. Regulation 10A does not require a claimant under regulation 10A to establish a need for individual items. What he has to show is that his claim is for "miscellaneous furniture and household equipment needs other than any item to which regulation 9 applies) "[our underlining]. It is for the adjudicating authority to satisfy itself that the claim is of this nature. A good example of such a claim is that in the present case, where

the claim was for carpets, curtains, furniture (including a three-piece suite) and household goods in general, the claimant saying "we must be entitled to something". It will not be necessary for the adjudicating authority to go on, if the claim is of the character described above, to deal with individual items except as evidence that the claimant does have miscellaneous furniture and equipment needs other than under regulation 9.

28. Mr. Goddard attacked the method of prescribing for miscellaneous and household equipment needs (other than under regulation 9) by submitting that the individual claimant would receive the sum prescribed for his size of assessment unit regardless of the actual need that he had, provided that the family had needs which fell into the broad range "miscellaneous furniture and household equipment needs". But the regulation does not purport to satisfy the need for individual items (especially ones which were originally obtainable on the basis of need on an item by item basis). It is looking at the claimant moving from furnished or bed and breakfast and other accommodation which was not unfurnished and provides an allowance to meet (though not necessarily meet in full) those miscellaneous furniture and household equipment needs which are not within the new regulation 9 and accordingly are not provided for on an item by item basis.

29. In order to be within the terms of the enabling power, the sums prescribed must, of course, fall within the four corners of the enabling regulations. Mr. Goddard, in effect, suggests that they do not. We are satisfied that they do.

30. Section 3(1) of the Supplementary Benefits Act 1976 and section 166(2) of the Social Security Act 1975 must be construed together, when considering the extent of the enabling powers under which section 166(2) of the Social Security Act 1975 has been applied to the Supplementary Benefits Act 1976 by section 33(2) of that Act. The new Regulation 10A was introduced into the Single Payments Regulations by the Supplementary Benefit (Miscellaneous Amendments) Regulations 1986, which specifically states that it is made in exercise of section 3 of the Supplementary Benefits Act and section 166(2) of the Social Security Act 1975. The narrow approach adopted by Mr. Goddard in construing section 3(1) of the Supplementary Benefits Act 1976 as though it were the only enabling power is unjustified.

31. The proper approach, in our view, is that adopted by the Divisional Court in the case of R v National Insurance Commissioner ex party Fleetwood. Their decision is reported as the Appendix to decision R(S) 3/78. In that case, the question before the Divisional Court was whether the Commissioner had been correct in construing section 36(7) of the Social Security Act 1975 narrowly, so that it was confined merely to a process of definition. Mr. Justice Kenneth Jones, in giving his judgment, with which the Lord Chief Justice and Mr. Justice Wien agreed, said:

"It is manifest from section 166(2) that regulations may have a far wider effect than that. Indeed, the Act and the wide regulation-making powers conferred by it, looked at as

a whole, reveal the purpose of Parliament here as being to lay down the broad scheme in the Act and to leave it to the Secretary of State by making regulations to adopt the scheme as she may think proper so as to bring it closer to the many and varied cases and sets of circumstances with which it would have to deal".

Those remarks are equally applicable when considering the broad scheme relating to the single payments that has been authorised by Parliament.

32. (1) The Secretary of State has considerable latitude in making regulations to decide upon the way in which provision should be made by way of single payment to meet exceptional need.

(2) First, the Secretary of State on exercising his powers to prescribe single payments is under no obligation to prescribe amounts for every exceptional need that a claimant may have for items of furniture and household equipment. The wording of section 3(1) of the Supplementary Benefits Act 1976 imposes no such requirement. The power conferred on the Secretary of State in making regulations authorises him to prescribe "cases" where "there shall be payable supplementary benefit by way of a single payment of a prescribed amount to meet an exceptional need". There is nothing here to suggest that every case of exceptional need must be catered for. If there were any doubt on this point, it is resolved by section 166(2)(a) of the Social Security Act 1975, which has been specifically applied to the Supplementary Benefits Act 1976 by section 33(2) of that Act. That paragraph provides that regulations may be exercised in relation to all cases to which the power extends or in relation to any specified cases or classes of cases. (There is no relevant exception to the provision of this paragraph).

(3) Secondly, the Secretary of State, in exercising his power to prescribe an amount to meet an exceptional need, is under no obligation to make full provision to meet it. Section 3(1) of the 1976 Act does not stipulate that any amount that is prescribed must meet the exceptional need in full. If the Secretary of State prescribed the sum of £75 as the single payment for a person in need of a cooker, that sum might not, on its own, be adequate to finance its purchase. It might not meet the need in full. But it would meet it in part. Any doubt as to whether it would be within the power conferred on the Secretary of State to prescribe a lesser sum than that required to meet the need in full is, in our view, resolved by section 166(2)(b)(i) of the 1975 Act (which has also been applied to the 1976 Act by section 33(2)) which provides that in respect of the cases in which the power is exercised the regulations may be exercised so as to make

"the full provision to which the power extends or any less provision (whether by way of exception or otherwise)"

(4) Thirdly, the Secretary of State in exercising his power to prescribe an amount to meet an exceptional need, can make the same provision for different cases. He has, on many occasions prescribed the same amount for different items, each of which constitutes a different case e.g. £14 for a boiler suit and £14

for a cardigan. The same provision can be made for all cases, whether different or not; see section 166(2)(b)(ii) of the 1975 Act. Thus the Secretary of State has power to make the same provision to meet exceptional needs for furniture and household equipment in the case of a claimant entering an unfurnished new home or a partly furnished new home, although they are different cases.

33. There is accordingly, in our view, no doubt that the Secretary of State has power, in prescribing for a single payment to meet an exceptional need, to prescribe a single amount for a miscellany of furniture and household equipment needs, notwithstanding that he may be making a lesser provision than the full provision required to satisfy such needs in full. He is further empowered to prescribe the same amount for the case of a claimant who has just moved into an unfurnished house as for the different case of a claimant who has just moved in to a partly furnished house, where the prescribed amount may go further.

34. The Supplementary Benefit (Single Payments) Regulations 1981 in their original form provided for single payments in respect of an exceptional need for essential furniture and household equipment on an item by item basis. As regards items defined in regulation 9, as it finally stood prior to its final amendment by the Supplementary Benefit (Miscellaneous Amendments) Regulations 1986, there was detailed list, lettered (a) to (b) of 20 items. A claimant could qualify for a single payment in respect of any item if he or his partner satisfied prescribed conditions which differed according to whether he or his partner had, or had recently, become a tenant or owner of an unfurnished or partly furnished home, and the amount of the payment was related to the cost of the individual item. Where the claimant requested a single payment for a variety of items, that was in fact a separate claim in respect of each item; and there was a series of claims for determination, not a single composite claim; so that a claimant could appeal against the decision on one or more items, without appealing against the others : see decision R(SB) 42/83, which is that of a Tribunal of Commissioners.

35.(1) The scheme of the 1986 regulations as regards furniture and household equipment needs is (as already pointed out) different. There is a reduced list of items which are defined, in the new regulation 9, as essential furniture and household equipment. To qualify for a single payment in respect of a listed item one of six alternative qualifying conditions must be satisfied, each of which is subject to the satisfaction of additional conditions. The first qualifying condition is set out in the new regulation 10(1)(a) and relates to a case where the claimant or his partner has within the 28 days immediately preceding the date of claim become the tenant or owner of an unfurnished or partly furnished home. It is only a claimant who, or whose partner, satisfies this first alternative condition (and additional conditions) who can claim any additional payment for unlisted items on the basis of satisfaction of the prescribed conditions.

(2) The new Regulation 10A provides, in effect, that persons who also satisfy the first qualifying condition in the new regulation 10(1)(a) may qualify for an additional payment for

"miscellaneous furniture and household needs (other than any item to which regulation 9 applies)." Thus a person who comes from furnished property and within the prescribed 28 days takes an unfurnished (or partly furnished) home and who has nothing in the way of furniture or household equipment finds himself in this position. Subject to prescribed conditions (which vary from item to item) and to establishing a need for the item in question, he can obtain the cost of the items listed in the new regulation 9, namely bed bases and mattresses, waterproof protective sheets, a cooker, space heating appliances, fire-guards, a washing-machine, a vacuum cleaner, a refrigerator, a hot water cylinder, safety gates, a pushchair and a high chair. No other items are now listed under regulation 9. If the claimant can then show that he has

"miscellaneous furniture and household equipment needs [our underlining] (other than any item to which regulation 9 applies)"

then, subject to satisfying the other conditions in the regulations, he will receive a sum of money which is proportionate to the number of members in his assessment unit (£75 for himself and £50 for each additional member) for those needs.

36. Mr. Goddard's case is that the prescribed sums do not meet an exceptional need in terms of Section 3(1) of the 1976 Act. But that is not so. The situation that regulation 10A is designed to meet is that of an assessment unit which has not been in an unfurnished home before and has never before had a single payment for what is claimed. Such an assessment unit can be expected to be without furniture or household equipment. After obtaining his entitlement under regulation 9, such a claimant's remaining furniture and household equipment needs can reasonably be said to increase in relation to the number of members - thus a four member assessment unit will have more furniture and household equipment needs than a one member assessment unit. Their needs will be greater. Those miscellaneous furniture and household equipment needs of a single member of the assessment unit are met by a fixed prescribed sum so that each single member unit is treated equally. The more members of the assessment unit the larger the sum. The regulation so closely prescribes the conditions under which a single payment may be made at all (only an outline has been given above) that the needs of any particular assessment unit with the same number of members who succeed in qualifying at all can, in our view, be sensibly equated with one another. In our view the mechanism adopted is not out-with the prescription in regulation 3(1) and regulation 10A is wholly valid. It follows that the exception in regulation 30 "except where the claim is for miscellaneous furniture and household equipment" which was introduced by regulation 13 of the 1986 Regulations at the same time as regulation 10A and which it was conceded by the adjudication officer must fall if regulation 10A were invalid, is itself valid.

Is the decision of the appeal tribunal erroneous in law?

37. Yes, it is. The tribunal failed to deal with the written submission put before them by the claimant's representative that

regulation 10A was invalid, which formed the basis of the argument that the exception of cases where the claim was for furniture and miscellaneous equipment introduced into regulation 30 was also invalid, as a consequence of which entitlement to single payments for carpets and curtains could be considered under the latter regulation. Either the tribunal did not consider the point at all or, if they did, they have failed to indicate what conclusion they reached and on what grounds. There has been a clear breach of regulation 19(2)(b) of the Social Security (Adjudication) Regulations 1984.

38. There was no error of law by the appeal tribunal in their not giving detailed consideration to the question whether the conditions set out in regulation 10A had been satisfied by the claimant. It was not suggested before them that they had been satisfied and it is obvious that the withdrawal of the claim so far as regards furniture was not based on the lack of need for such items but the inability to satisfy any of sub-paragraphs (a) to (e) of paragraph (1) of regulation 10A. The whole argument before the tribunal was based on the contention that regulation 30, or alternatively regulation 18, applied.

Should we give the decision or refer the case to another tribunal?

39. In our judgment, we can and should give this decision ourselves. There is no evidence or suggestion that the claimant can bring himself within any of sub-paragraphs (a) to (e) of paragraph (1) of regulation 10A. The whole argument has proceeded on the basis that he does not do so. There is no point in sending the case back to another tribunal to decide a question that is not in issue.

Does regulation 30 assist the claimant?

40. If the "claim is for miscellaneous furniture and household equipment needs", the answer to this question must be "No", for regulation 13 of the Supplementary Benefit (Miscellaneous Amendments) Regulations 1986 inserted the words:

"Except where a claim is for miscellaneous furniture and household equipment needs"

at the beginning of paragraph (1) of regulation 30.

41. The claim made in this case on 12 August 1986, upon which the adjudication officer issued his decision of 28 August 1986, was for carpets, curtains furniture (including a three-piece suite), and household goods in general. The claimant's point in making the claim was, indeed, "we must be entitled to something": see paragraph 7 above. "Miscellaneous" is an ordinary word in the English language and in the context of the expression quoted in paragraph 32 has its usual dictionary meaning of "of mixed composition or character", "of various kinds" (Shorter Oxford English Dictionary); "mixed or mingled", "consisting of various kinds" (Chambers Twentieth Century Dictionary). In our judgment, it is quite clear that the claim in this case was for what can properly be described as miscellaneous furniture and household equipment needs. That being the case, the claim under section 30

must fail.

42. The claimant, through his representative, argued, both before the appeal tribunal and before us, that certain types of floor covering might not fall within the description of miscellaneous furniture and household equipment needs because when bonded to the floor they would become fixtures. There is nothing in this point, because at the date of claim, which is when "need" is determined (see decision R(SB) 26/83 and R(SB) 47/83, both of which are decisions of Tribunals of Commissioners) the object under consideration cannot have been acquired (otherwise there could be no need for it at the date of claim) and accordingly cannot have become a fixture.

43. We should emphasise that nothing that we have written precludes a claim from being made for an individual item under regulation 30 (Part VIII) of the Single Payments Regulations on the ground that without it there is a serious risk to health or safety. Such a claim is not a claim for miscellaneous furniture and household equipment needs. Where more than one item is requested, that is in fact a separate claim in respect of each item. Tentative suggestions were made in argument that one could "dress up" what is in reality a claim for miscellaneous furniture and household equipment needs in this way. It will be for the adjudicating authority, in each case, to determine the nature of the claim or claims in this connection. A claim for example, for a cooker guard (not being a fireguard within regulation 9) on the ground that it was needed for safety of small children, would clearly be out-with regulation 10A and could be entertained under regulation 30. On the other hand, the miscellaneous collection of items listed by Mr. Goddard at paragraph 23 above, if included in one claim, or a series of contemporaneous claims, might well be concluded to fall within the excepting words in regulation 30. "Claim", in the excepting words of regulation 30, clearly includes, in this context, a number of such claims: see section 6(c) of the Interpretation Act 1978. On which side of the line the claim falls will be a matter for the adjudication authority, in the exercise of commonsense and in the light of the particular facts, to decide.

Does regulation 18 assist the claimant?

44. It was argued before us that a single payment for carpets or curtains might be made under regulation 18 of the Single Payments Regulations on the ground that the home was draughty and the draughts would be reduced by simple measures, within the meaning of that regulation. In our unanimous view, Commissioner's decision CSB 437/1987, which is addressed to this point, and where it is decided that neither carpets nor curtains fall within regulation 18, was correctly decided and for the right reasons, which we adopt as our own.

Can the claimant now make a claim for carpets or curtains under regulation 30?

45. Yes, he can, see paragraph 43 above. (We have not seen or heard from the claimant or his wife and have insufficient evidence to form any view as to the prospects of success of such a claim.)

Reasons of Mr. Sanders

46. Prior to the coming into operation of the Supplementary Benefit (Miscellaneous Amendments) Regulations 1986 [1986/1259] regulations 9 and 10 of the Single Payments Regulations made provision for payments to be made for the purchase, repair and installation of "essential furniture and household equipment" defined by reference to the list of items in regulation 9 and subject to the conditions imposed by regulation 10 which also determined the amount to be paid. That amount was, in general, the actual cost of acquiring the item or the service but limited in the case of some items to their cost, second-hand or reconditioned. That, no doubt, was an expensive scheme and was to be drastically cut back by virtue of regulation 5 of the 1986 Regulations which substituted in the 1981 Regulations new regulations 9, 10 and 10A for the regulations 9 and 10 to which I have referred. The new regulation 9 contains a very much shorter list of items of "essential furniture and household equipment" compared with its predecessor. The conditions required to be satisfied for a payment are imposed by regulations 10(1) and (2). Paragraph (3) determines the amount to be paid which, in the case of the purchase of items on the list (as distinct from their repair), is fixed by reference to whichever is the lesser of the amounts specified in sub-paragraph (b)(i), (ii) and (iii) so that the amounts specified in column 2 of Schedule 1A operate as a maximum. Then new regulation 10A(1) provides, subject to the further conditions in paragraph (2), for a single payment to be made "in respect of miscellaneous furniture and household equipment needs (other than any item to which regulation 9 applies)" where the claimant satisfies the conditions imposed by that paragraph. The amount to be paid "in respect of miscellaneous furniture and household equipment needs under this regulation" is fixed by paragraph (3) with reference to column 2 of Schedule 1B which provides for payment of £75 to the claimant and £50 for each additional member of the assessment unit. These are the sums payable whatever the cost of meeting the need in question. Mr Goddard contends that regulation 5 of the 1986 Regulations is ultra vires because the amount to be paid for miscellaneous furniture and household equipment is an arbitrary amount which does not take account of the actual need.

47. The 1986 Regulations amended the 1981 Regulations in a number of different respects including the amendment substituting the new regulations 9, 10 and 10A. Several enabling powers are cited in the preamble to the Regulations. Regulation 5 which substituted the new provisions was made or at least partly made under section 3(1) of the 1976 Act which provides that -

"3.-(1) There shall be payable in prescribed cases to a person who is entitled or would if he satisfied prescribed conditions be entitled to a supplementary pension or allowance, supplementary benefit by way of a single payment of a prescribed amount to meet an exceptional need".

This provision follows on from section 1(1) (right to supplementary benefit) in which the principle is stated that subject to the provisions of the Act every person in Great Britain of or over 16 years of age whose resources are insufficient to meet his requirements is to be entitled to a

supplementary pension or a supplementary allowance "and to such benefit by way of a single payment to meet an exceptional need as may be determined under section 3 of this Act." Mr. Goddard contends that regulation 5 of the 1986 Regulations is, in so far as it substitutes new regulation 10A, invalid as being outside the power in section 3(1) because (1) it makes provision for payments to be made in a manner not authorised by the power and (2) the amounts of the payment specified are so unreasonable that no reasonable Secretary of State could have specified them. His second point is easily disposed of. It cannot in my view succeed for the reasons given above by the majority.

48. Mr. Goddard's primary submission is that regulation 10A of the 1981 Regulations as substituted by regulation 5 of the 1986 Regulations suffers from what Lord Diplock in F. Hoffman - La Roche and Co., A.G. v. Secretary of State for Trade and Industry [1975] AC 295 referred to as a patent defect and is invalid on that account. Regulation 5 of the 1986 Regulations is as I have said made under section 3(1) of the 1976 Act and there is a question which I will come to that it might also be made under section 166(2) of the Social Security Act 1975 (which applies in relation to the exercise of powers to make regulations under the Supplementary Benefits Act by virtue of section 33(2) of that Act). Section 3(1) confers a power to prescribe the cases in which and the conditions on which there is to be payable a single payment of "a prescribed amount to meet an exceptional need". It is Mr. Goddard's submission that because regulation 10A provides for a single payment of an amount determined by reference to the number of members of the assessment unit regardless of the extent to which the amount meets the needs of the assessment unit the regulation (or at least regulation 5 of the 1986 Regulations which made the substitution) is ultra vires; the regulation provides for a system which ignores the essential need of a claimant who satisfies the conditions for an award and gives him an entirely arbitrary amount unrelated to that need. To demonstrate the arbitrary nature of the system Mr. Goddard submits, and this is not in dispute, that an assessment unit consisting of two adults and two children would receive under regulation 10A and Schedule 1B the sum of £225 whether the claim was for a few items of cutlery or for a whole range of items (not included in regulation 9) such as a table, chairs, cooking utensils, cleaning implements, storage units and so forth. Mr Havers contended that the words in regulation 10A "a single payment shall be made in respect of miscellaneous furniture and household equipment needs" together with the words "except where a claim is for miscellaneous furniture and household equipment needs" (my emphasis in both cases) meant that to get a payment under regulation 10A the claim must be for more than one miscellaneous item. While nothing may in the end turn on that I do not think it is right. The scheme would appear to be that "essential" items on the list are paid for under regulation 9 and items of furniture and household equipment which are miscellaneous in the sense they are not on that list are paid for under regulation 10A.

49. That is the scheme and method of payment for furniture and household equipment needs. Is regulation 10A invalid for patent defect as submitted by Mr. Goddard? That of course is a matter of construction. The Secretary of State's power is to prescribe an "amount to meet an exceptional need" which is payable in the qualifying cases. Mr. Goddard contended that "a prescribed amount to meet an exceptional need" means that the amount prescribed must satisfy the need or at least be directed towards doing so. And the prescription of an amount which is on any view unrelated to the need for a particular item or items but determined by reference to the number of persons in the assessment unit not only does not satisfy the need but is not directed to doing so. One can see that the prescription of a fixed sum for miscellaneous furniture and household equipment needs has the merit of simplicity and no doubt of administrative convenience in that it avoids having to fix a sum for each of a whole range of miscellaneous and no doubt in many cases quite small items of furniture and household equipment. Indeed it may be quite impossible to identify in advance all the items which could come within the description of "miscellaneous furniture and household equipment". But, said Mr. Goddard, the attempt must be made and if it is impossible to put sums against items in a Schedule then the power could have been lawfully exercised by providing for payment of the reasonable cost of each item or items, as has been the case in other cases where the section 3(1) power has been exercised. In answer to this Mr. Havers submitted that taken in its context "a prescribed amount to meet an exceptional need" did not mean and in relation to the range of needs contemplated by "miscellaneous furniture and household equipment needs" could not mean meet the need in full. Section 3(1) left it to the Secretary of State to decide the prescribed cases and the prescribed conditions and also the prescribed amount. The words "to meet an exceptional need" followed on from the words "a prescribed amount" and if the intention had been that the need had to be met in full that was inconsistent with giving the Secretary of State the power to decide what amounts were to be prescribed. No amount prescribed in advance could, be said, meet a need in full. If 'meet in full' had been the intention the section would have so provided. I do not find this compelling. It is true that the words "in full" are not in the provision but "to meet" undoubtedly means to satisfy and it seems to me that Mr. Havers' approach gives "to meet" no meaning at all, or, at least, it gives those words a meaning which they do not in my view bear namely "for" or "to go towards". Those last words will not of course do because they would not accommodate the overpayment which would occur where the need is for example for two saucepans. Mr. Havers conceded that on his construction it would, (subject to good faith), be within the Secretary of State's power to prescribe £1 as the amount of the single payment to meet miscellaneous furniture and household equipment needs. He did not in fact concede that the amounts prescribed were arbitrary. He said that realistically it was unlikely that a family would be paid more than they needed to satisfy their miscellaneous furniture and household equipment needs. Regulation 10A was designed to cover not an isolated need but a range of needs and the only sensible way of dealing with that was to prescribe a sum which was sensible over all. That may explain why the Secretary of State chose to prescribe the

amounts which he did but one comes back to the words "a prescribed amount to meet an exceptional need" and they seem to me to require that the amount prescribed bears at the very least a sensible relation to the need in question. As I have said the words in section 3(1) repeat the words in section 1(1) ("... and to such benefit by way of a single payment to meet an exceptional need...") and I do not see how a payment which is unrelated to need could be said to fulfil that objective. Mr. Havers contended that it was not for the Courts or the Commissioners to consider the reasonableness of the amount prescribed by the Regulations. That however is not the question. It is not a matter of reasonableness of the prescribed amount. In my view the power does not give the Secretary of State a free hand to prescribe an amount merely because it is administratively convenient. It is perhaps worth noting that whereas the power in section 3(1) has been used to provide payments for many different kinds of needs this is the only occasion where the amount prescribed has been unrelated to the reasonable cost of meeting the actual need in question. In all other cases of the exercise of the power the amount prescribed is plainly directed to meeting the actual need either because the actual cost of the item or service is allowed or because a price related to cost has in advance been put on each payable item.

50. Sub-sections (2) and (3) of section 166 of the Social Security Act 1975 are among the powers cited in the preamble to the 1986 Regulations. Section 166 contains general provisions in relation to the making of Orders and Regulations under the Social Security Act and is set out in the First Appendix. Mr. Havers submits that section 166(2)(b)(i) enables the Secretary of State to make any less provision than is required by the power and, in particular, enables the Secretary of State to prescribe an amount which is not directed at meeting the need in question. I reject that proposition. Section 166(2)(b)(i) in my view allows the Secretary of State to make less than the full provision he is empowered to make but not a totally different provision. Section 3(1), if I am correct, requires the Secretary of State to prescribe an amount which will meet or satisfy or is at least directed to meeting or satisfying the particular need and if the amount prescribed is not prescribed in relation to that but in relation to the size of the assessment unit that, in my view, is not by way of "less provision" under section 166(2)(b)(i) but is a different thing entirely. In my view Mr. Goddard's contentions are correct and regulation 5 of the 1986 Regulations is, in relation to its substitution of regulation 10A, ultra vires and invalid.

51. A difficult question then arises as to what law applies in respect of a claim for miscellaneous furniture and household equipment if regulation 10A is invalid. I do not propose to deal with that matter however because, as the majority have decided that the regulation is not invalid, little purpose would be served by my doing so.

CONCLUSION

52. This appeal fails. Our decision is set out in paragraph 1.

(Signed) V.G.H. HALLETT
COMMISSIONER

R.F.M. HEGGS
COMMISSIONER

R.A. SANDERS
COMMISSIONER

Date: 9 December, 1987