Draft Regulations laid before Parliament under section 80(1) of the Social Security Act 1998 for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2005 No.

CHILD TRUST FUNDS

The Child Trust Funds (Appeals) Regulations 2005

Made - - - - 2005

Coming into force in accordance with regulation 1(1)

Whereas a draft of this instrument was laid before Parliament in accordance with section 80(1) of the Social Security Act 1998(**1**) and approved by resolution of each House of Parliament.

Now therefore, the Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by sections 7(6) and (7), 12(7), 14(10)(a) and (11), 16(1) and (3)(a), 28(1), 79(1) and (4) to (7) and 84 of, and paragraphs 7, 11 and 12 of Schedule 1 to, and paragraphs 1 to 6 of Schedule 5 to, the Social Security Act 1998(**2**), after consultation with the Council on Tribunals in accordance with section 8 of the Tribunals and Inquiries Act 1992(**3**), hereby makes the following Regulations:

Citation, commencement, duration and interpretation

1.—(1) These Regulations may be cited as the Child Trust Funds (Appeals) Regulations 2005 and shall come into force on the day after they are made.

(2) These Regulations shall cease to have effect on such day as is appointed by order made under section 24(1) of the Child Trust Funds Act 2004(**4**).

(3) In these Regulations, unless the context otherwise requires—

"the Act" means the Social Security Act 1998;

"the 2004 Act" means the Child Trust Funds Act 2004;

"appeal" means an appeal under section 22 of the 2004 Act to an appeal tribunal;

"the Board" means the Commissioners of Inland Revenue;

"the clerk to the appeal tribunal" means a clerk assigned to the appeal tribunal in accordance with regulation 7;

(**1**) 1998 c. 14.
(**2**) The powers in sections 7(6), 12(7), 14(10)(a) and (11), 16(1) and (3)(a), 28(1), 79(1) and (4) to (7) and 84 of, and paragraphs 7, 11 and 12 of Schedule 1 to, and paragraphs 1 to 6 of Schedule 5 to, the Social Security Act 1998, exercised in these Regulations, are those which have been applied, or applied and modified, under powers contained in section 24(5) of the Child Trust Funds Act 2004 (c. 6) by S.I. 2005/191; section 84 is cited for the definition of "prescribed".
(**3**) 1992 c. 53.
(**4**) 2004 c. 6.

"decision notice" has the meaning given in regulation 18(1) and (2);

"financially qualified panel member" means a person appointed to the panel constituted under section 6 of the Act who satisfies the requirements of paragraph 4 of Schedule 3 to the Social Security and Child Support (Decisions and Appeals) Regulations 1999(**5**) (financial qualifications);

"legally qualified panel member" means a person appointed to the panel constituted under section 6 of the Act who satisfies the requirements of paragraph 1 of Schedule 3 to the Social Security and Child Support (Decisions and Appeals) Regulations 1999 (legal qualifications);

"notification period" has the meaning given in regulation 3;

"party to the proceedings" means the Board and any person who brings an appeal;

"the President" means the President of appeal tribunals appointed under section 5 of the Act.

(4) In these Regulations any reference to the chairman of the appeal tribunal shall, in the case of an appeal tribunal which has only one member, include reference to that member.

Service of notices or documents

2. Where by any provision of these Regulations—

(a) any notice or other document is required to be given or sent to the clerk to the appeal tribunal or to the Board, that notice or document shall be treated as having been so given or sent on the day that it is received by the clerk to the appeal tribunal or by the Board, and

(b) any notice or other document is required to be given or sent to any person other than the clerk to the appeal tribunal or the Board, that notice or document shall, if sent to that person's last known address, be treated as having been given or sent on the day that it was posted.

Disputes about notices of appeal

3. Where a dispute arises as to whether notice of an appeal was given to the Board within the period of thirty days specified in section 23(1) of the 2004 Act ("the notification period") the dispute shall be referred to, and be determined by, a legally qualified panel member.

Late appeals

4.—(1) Where the conditions specified in paragraphs (2) to (8) are satisfied, an appeal may be brought within a period of one year after the expiration of the notification period.

(2) An application to bring a late appeal under this regulation shall be made in writing, signed by or on behalf of the appellant and sent to the Board and it shall include sufficient information to determine—

(a) the identity of the appellant;

(b) whether the appellant is a relevant person within the meaning of section 22(3) of the 2004 Act or a personal representative of a child in accordance with section 22(5), if the appellant is appealing in either capacity;

(c) the subject of the appeal to which the application relates;

(d) the decision against which the appeal is being made; and

(e) the grounds on which the applicant seeks time to appeal, including details of any relevant special circumstances for the purposes of paragraph (4).

(**5**) S.I. 1999/991; paragraph 4 was amended by S.I.2002/1379.

(3) An application to bring a late appeal under this regulation shall be determined by a legally qualified panel member, except that where the Board consider that the conditions in paragraphs (4)(b) to (8) are satisfied, the Board may grant the application.

(4) An application to bring a late appeal shall not be granted unless—

(a) the panel member is satisfied that, if the application is granted, there are reasonable prospects that the appeal will be successful; or

(b) the panel member is, or the Board are, satisfied that it is in the interests of justice for the application to be granted.

(5) For the purposes of paragraph (4) it is not in the interests of justice to grant an application unless the panel member is, or the Board are, as the case may be, satisfied that—

(a) the special circumstances specified in paragraph (6) are relevant to the application; or

(b) some other special circumstances exist which are wholly exceptional and relevant to the application,

and as a result of those special circumstances, it was not practicable for the appeal to be brought within the notification period.

(6) For the purposes of paragraph (5)(a), the special circumstances are that—

(a) the applicant or a partner or dependant of the applicant has died or suffered serious illness;

(b) the applicant is not resident in the United Kingdom; or

(c) normal postal services were disrupted.

(7) In determining whether it is in the interests of justice to grant the application, regard shall be had to the principle that the greater the amount of time that has elapsed between the expiration of the notification period and the making of the application to bring a late appeal, the more compelling should be the special circumstances on which the application is based.

(8) In determining whether it is in the interests of justice to grant an application, no account shall be taken of the following—

(a) that the applicant or any person acting for him was unaware of or misunderstood the law applicable to his case (including ignorance or misunderstanding of the notification period); or

(b) that a Social Security Commissioner or a court has taken a different view of the law from that previously understood and applied.

(9) An application under this regulation for a late appeal which has been refused may not be renewed.

(10) The panel member who determines an application under this regulation shall record a summary of his decision in such written form as has been approved by the President.

(11) As soon as practicable after the decision is made a copy of the decision shall be sent or given to every party to the proceedings.

Death of a party to an appeal

5. In any proceedings relating to an appeal under section 22(2), (4), (5) or (6) of the 2004 Act, on the death of a party to the proceedings (other than the Board) the personal representative of the person who has died may represent him at any hearing.

Composition of appeal tribunals

6.—(1) Subject to paragraphs (2) and (3), an appeal tribunal for the purposes of these Regulations shall consist of one legally qualified panel member.

(2) An appeal tribunal shall consist of a financially qualified panel member and a legally qualified panel member where the appeal may require consideration by members of the appeal tribunal of financial issues which are, in the opinion of the President, difficult and which relate to the administration of a child trust fund.

(3) The President may determine that the appeal tribunal shall include such an additional member drawn from the panel constituted under section 6 of the Act as he considers appropriate for the purposes of providing further experience for that additional panel member or for assisting the President in the monitoring of standards of decision making by panel members.

Clerk to an appeal tribunal

7. For the purposes of an appeal the Secretary of State shall assign a clerk to service each appeal tribunal and the clerk so assigned shall be responsible for summoning members of the panel constituted under section 6 of the Act to serve on the tribunal.

Consideration and determination of appeals

8.—(1) The procedure in connection with the consideration and determination of an appeal shall, subject to the following provisions of these Regulations, be such as a legally qualified panel member shall determine.

(2) A legally qualified panel member may give directions requiring a party to the proceedings to comply with any provision of these Regulations and may at any stage of the proceedings, either of his own motion or on a written application made to the clerk to the appeal tribunal by any party to the proceedings, give such directions as he may consider necessary or desirable for the just, effective and efficient conduct of the proceedings and may direct any party to the proceedings to provide such particulars or to produce such documents as may be reasonably required.

(3) Where a clerk to the appeal tribunal is authorised to take steps in relation to the procedure of the tribunal he may give directions requiring any party to the proceedings to comply with any provision of these Regulations.

Choice of hearing

9.—(1) Where an appeal is made to an appeal tribunal the appellant and any other party to the proceedings shall notify the clerk to the appeal tribunal, on a form approved by the Secretary of State, whether he wishes to have an oral hearing or whether he is content for the appeal to proceed without an oral hearing.

(2) The form shall include a statement informing the appellant that, if he does not notify the clerk to the appeal tribunal as required by paragraph (1) within the period specified in paragraph (3), the appeal may be struck out in accordance with regulation 13(1).

(3) Notification in accordance with paragraph (1)—

(a) if given by the appellant, must be given or sent to the clerk to the appeal tribunal within 14 days of the date on which the form is issued to him; or

(b) if given by the Board, must be given or sent to the clerk to the appeal tribunal within 14 days of the date on which the form is issued to the appellant,

or within such longer period as the clerk may direct.

(4) Where an oral hearing is requested in accordance with paragraphs (1) and (3) the appeal tribunal shall hold an oral hearing unless the appeal is struck out under regulation 13(1).

(5) The chairman of the appeal tribunal may of his own motion direct that an oral hearing of the appeal be held if he is satisfied that such a hearing is necessary to enable the appeal tribunal to reach a decision.

Withdrawal of appeal

10.—(1) At any time before an appeal is determined it may be withdrawn by the appellant either—

(a) at an oral hearing; or

(b) by giving notice in writing of withdrawal to the clerk to the appeal tribunal.

(2) If an appeal is withdrawn in accordance with paragraph (1)(a), the clerk to the appeal tribunal shall send a notice in writing to any party to the proceedings who is not present when the appeal is withdrawn informing him that the appeal has been withdrawn.

(3) If an appeal is withdrawn in accordance with paragraph (1)(b), the clerk to the appeal tribunal shall send a notice in writing to every party to the proceedings informing him that the appeal has been withdrawn.

Summoning of witnesses and administration of oaths

11.—(1) The chairman of the appeal tribunal may by summons, or in Scotland, by citation, require any person in Great Britain to attend as a witness at a hearing of an appeal at such time and place as shall be specified in the summons or citation and, subject to paragraph (2), at the hearing to answer any question or produce any documents in his custody or under his control which relate to any matter in question in that appeal but—

(a) no person shall be required to attend in obedience to such summons or citation unless he has been given at least 14 days' notice of the hearing or, if less than 14 days' notice is given, he has informed the tribunal that the notice given is sufficient; and

(b) no person shall be required to attend and give evidence or to produce any document in obedience to such summons or citation unless the necessary expenses of attendance are paid or tendered to him.

(2) No person shall be compelled to give any evidence or produce any document or other material that he could not be compelled to give or produce on a trial of an action in a court of law in that part of Great Britain where the hearing takes place.

(3) In exercising the powers conferred by this regulation, the chairman of the appeal tribunal shall take into account the need to protect any matter that relates to intimate personal or financial circumstances, is commercially sensitive, consists of information communicated or obtained in confidence or concerns national security.

(4) Every summons or citation issued under this regulation shall contain a statement to the effect that the person in question may apply in writing to a legally qualified panel member to vary or set aside the summons or citation.

(5) The chairman of the appeal tribunal may require any witness, including a witness summoned under the powers conferred by this regulation, to give evidence on oath or affirmation and for that purpose there may be administered an oath or affirmation in due form.

Confidentiality in appeals

12.—(1) In the circumstances prescribed in paragraph (2), for the purposes of paragraph 7 of Schedule 1 to the Act (confidentiality), in an appeal the prescribed material is—

(a) the address of the eligible child within the meaning of section 2 of the 2004 Act and, in relation to an appeal under of 22(2) of that Act, the address of any relevant person within the meaning of section 22(3); and

(b) information the use of which could reasonably be expected to lead to the location of any person specified in sub-paragraph (a).