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.

SOCIAL SECURITY
CHILD TRUST FUNDS

The Social Security Commissioners (Procedure) (Child Trust Funds) Regulations 2005

Made - - - - 2005

Coming into force in accordance with regulation 1(1)

The Lord Chancellor, in exercise of the powers conferred upon him by sections 14, 15, 16, 28, 79(2) and 84 of, and Schedules 4 and 5 to, the Social Security Act 1998(**1**) as applied and modified by the Child Trust Funds (Non-tax Appeals) Regulations 2005(**2**), after consultation with the Scottish Ministers(**3**), and with the Council on Tribunals in accordance with section 8 of the Tribunals and Inquiries Act 1992(**4**), makes the following Regulations, a draft of which has, in accordance with section 80(1) of the Social Security Act 1998, been laid before and approved by resolution of each House of Parliament:

PART 1

GENERAL PROVISIONS

Citation, commencement and duration

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

(**1**) 1998 c.14. Section 84 is an interpretation provision and is cited because of the meaning assigned to the word "prescribe".
(**2**) S.I. 2005/191.
(**3**) () The functions of the Lord Advocate under section 79(2) and paragraph 8 of Schedule 4 were transferred to the Secretary of State by the Transfer of Functions (Lord Advocate and Secretary of State) Order 1999 (S.I. 1999/678), Article 2(1) and the Schedule. Those functions were then treated as being exercisable in or as regards Scotland, for the purposes of section 63 of the Scotland Act 1998 (c. 46), by the Scotland Act 1998 (Functions Exercisable in or as Regards Scotland) Order 1999 (S.I. 1999/1748), Article 3 and paragraph 19 of Schedule 1, and transferred to the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750), Article 2 and Schedule 1.
(**4**) 1992 c.53.

(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(**5**) (temporary modifications).

Interpretation

2. In these Regulations—

"the 1998 Act" means the Social Security Act 1998, as applied and modified by the Child Trust Funds (Non-tax Appeals) Regulations 2005;

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

"appeal" means an appeal which by virtue of section 24 of the 2004 Act is from an appeal tribunal to a Social Security Commissioner;

"appeal tribunal" means an appeal tribunal constituted under Chapter 1 of Part 1 of the Social Security Act 1998;

"authorised officer" means an officer authorised by the Lord Chancellor, or in Scotland by the Secretary of State, in accordance with paragraph 6 of Schedule 4 to the 1998 Act;

"chairman" means—

(i) the person who was the chairman or the sole member of the appeal tribunal which gave the decision against which leave to appeal is being sought; or

(ii) any other person authorised to deal with applications for leave to appeal to a Commissioner against that decision under section 14(10)(a) of the 1998 Act;

"funding notice" means the notice or letter from the Legal Services Commission confirming that legal services are to be funded;

"legal aid certificate" means the certificate issued by the Scottish Legal Aid Board confirming that legal services are to be funded;

"legally qualified" means being a solicitor or barrister, or in Scotland, a solicitor or advocate;

"Legal Services Commission" means the Legal Services Commission established under section 1 of the Access to Justice Act 1999(**6**);

"live television link" means a television link or other audio and video facilities which allow a person who is not physically present at an oral hearing to see and hear proceedings and be seen and heard by all others who are present (whether physically present or otherwise);

"office" means an Office of the Social Security Commissioners;

"party" means a party to the proceedings;

"penalty appeal" means an appeal against a decision under section 21 of the 2004 Act which by virtue of section 24(2) of that Act lies to a Commissioner;

"proceedings" means any proceedings before a Commissioner, whether by way of an application for leave to appeal to, or from, a Commissioner, or by way of an appeal, or otherwise;

"respondent" means—

(i) any party to the appeal other than the applicant or appellant;

(ii) any other person taking part in the proceedings at the direction or with the leave of a Commissioner;

"Scottish Legal Aid Board" means the Scottish Legal Aid Board established under section 1 of the Legal Aid (Scotland) Act 1986(**7**);

(**5**) 2004 c.6.
(**6**) 1999 c.22.
(**7**) 1986 c.47.

"summons", in relation to Scotland, corresponds to "citation" and regulation 22 shall be construed accordingly.

General powers of a Commissioner

3.—(1) Subject to the provisions of these Regulations, a Commissioner may adopt any procedure in relation to proceedings before him.

(2) A Commissioner may—

(a) extend or abridge any time limit under these Regulations (including, subject to regulations 9(3) and 13(3), granting an extension where the time limit has expired);

(b) expedite, postpone or adjourn any proceedings.

(3) Subject to paragraph (4), a Commissioner may, on or without the application of a party, strike out any proceedings for want of prosecution or abuse of process.

(4) Before making an order under paragraph (3), the Commissioner shall send notice to the party against whom it is proposed that it should be made giving him an opportunity to make representations why it should not be made.

(5) A Commissioner may, on application by the party concerned, give leave to reinstate any proceedings which have been struck out in accordance with paragraph (3) and, on giving leave, he may give directions as to the conduct of the proceedings.

(6) Nothing in these Regulations shall affect any power which is exercisable apart from these Regulations.

Transfer of proceedings between Commissioners

4. If it becomes impractical or inexpedient for a Commissioner to continue to deal with proceedings which are or have been before him, any other Commissioner may rehear or deal with those proceedings and any related matters.

Delegation of functions to authorised officers

5.—(1) The following functions of the Commissioners may be exercised by legally qualified authorised officers, to be known as legal officers to the Commissioners—

(a) postponing a hearing under regulation 3;

(b) extending or abridging time, directing expedition, giving notices, striking out and reinstating proceedings under regulation 3;

(c) giving directions under regulation 6;

(d) giving directions under regulation 18;

(e) determining requests for or directing hearings under regulation 20;

(f) summoning witnesses, and setting aside a summons made by a legal officer, under regulation 22;

(g) giving leave to withdraw or reinstate applications or appeals under regulation 23;

(h) waiving irregularities under regulation 24 in connection with any matter being dealt with by a legal officer.

(2) Any party may, within 14 days of being sent notice of the direction or order of a legal officer, make a written request to a Commissioner asking him to reconsider the matter and confirm or replace the direction or order with his own, but, unless ordered by a Commissioner, a request shall not stop proceedings under the direction or order.

Manner of and time for service of notices, etc.

6.—(1) A notice to or document for any party shall be deemed duly served if it is—

(a) delivered to him personally;

(b) properly addressed and sent to him by prepaid post at the address last notified by him for this purpose, or to his ordinary address;

(c) subject to paragraph (2), sent by e-mail; or

(d) served in any other manner a Commissioner may direct.

(2) A document may be served by e-mail on any party if the recipient has informed the person sending the e-mail in writing—

(a) that he is willing to accept service by e-mail;

(b) of the e-mail address to which the documents should be sent; and

(c) if the recipient wishes to so specify, the electronic format in which documents must be sent.

(3) A notice to or other document for a Commissioner shall be—

(a) delivered to the office in person;

(b) sent to the office by prepaid post;

(c) sent to the office by fax; or

(d) where the office has given written permission in advance, sent to the office by email.

(4) For the purposes of any time limit, a properly addressed notice or other document sent by prepaid post, fax or e-mail is effective from the date it is sent.

Funding of legal services

7. If a party is granted funding of legal services at any time, he shall—

(a) where funding is granted by the Legal Services Commission, send a copy of the funding notice to the office;

(b) where funding is granted by the Scottish Legal Aid Board, send a copy of the legal aid certificate to the office; and

(c) notify every other party that funding has been granted.

PART 2

APPLICATIONS FOR LEAVE TO APPEAL AND APPEALS

Application of this Part

8. In this Part—

(a) regulations 9, 10, and 11 apply to appeals other than penalty appeals;

(b) regulations 12, 13 and 14 apply to all appeals.

Application to a Commissioner for leave to appeal

9.—(1) An application to a Commissioner for leave to appeal against the decision of an appeal tribunal may be made only where the applicant has sought to obtain leave from the chairman and leave has been refused or the application has been rejected.

(2) Subject to paragraph (3) an application to a Commissioner shall be made within one month of notice of the refusal or rejection being sent to the applicant by the appeal tribunal.

(3) A Commissioner may for special reasons accept a late application or an application where the applicant failed to seek leave from the chairman within the specified time, but did so on or before the final date.

(4) In paragraph (3) the final date means the end of a period of 13 months from the date on which the decision of the appeal tribunal or, if later, any separate statement of the reasons for it, was sent to the applicant by the appeal tribunal.

Notice of application to a Commissioner for leave to appeal

10.—(1) An application to a Commissioner for leave to appeal shall be made by notice in writing, and shall contain—

(a) the name and address of the applicant;

(b) the grounds on which the applicant intends to rely;

(c) if the application is made late, the grounds for seeking late acceptance; and

(d) an address for sending notices and other documents to the applicant.

(2) The notice in paragraph (1) shall have with it copies of—

(a) the decision against which leave to appeal is sought;

(b) if separate, the written statement of the appeal tribunal's reasons for it; and

(c) the notice of refusal or rejection sent to the applicant by the appeal tribunal.

(3) Where an application for leave to appeal is made by the Board, it shall send each respondent a copy of the notice of application and any documents sent with it when they are sent to the Commissioner.

Determination of application

11.—(1) The office shall send written notice to the applicant and each respondent of the determination of an application for leave to appeal to a Commissioner.

(2) Subject to a direction by a Commissioner, on an application under regulation 9—

(a) notice of appeal shall be deemed to have been sent on the date when notice of the determination is sent to the applicant; and

(b) the notice of application shall be deemed to be a notice of appeal sent under regulation 12.

(3) If a Commissioner grants an application for leave to appeal he may, with the consent of the applicant and each respondent, treat and determine the application as an appeal.

Notice of appeal

12.—(1) Subject to regulation 11(2), an appeal shall be made by notice in writing and shall contain—

(a) the name and address of the appellant;

(b) where applicable, the date on which the appellant was notified that leave to appeal had been granted;

(c) the grounds on which the appellant intends to rely;

(d) if the appeal is made late, the grounds for seeking late acceptance; and

(e) an address for sending notices and other documents to the appellant.