DRAFT STATUTORY INSTRUMENTS

2004 No.

SOCIAL SECURITY
TAX CREDITS
FAMILY LAW
CHILD SUPPORT

The Social Security, Child Support and Tax Credits (Decisions and Appeals) Amendment Regulations 2004

Made - - - - 2004

Coming into force in accordance with regulation 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 paragraph 20(4) of Schedule 7 to the Child Support, Pensions and Social Security Act 2000(**2**), and approved by a resolution of each House of Parliament;

Now, therefore, the Secretary of State for Work and Pensions in exercise of the powers conferred by section 4 (2) and (3) of the Vaccine Damage Payments Act 1979(**3**), section 20(4), (5) and (6) of the Child Support Act 1991(**4**), sections 5(1)(a) and (h), 6(1)(a) and (h), 189(1), (4) and (6) and 191 of the Social Security Administration Act 1992(**5**), section 11(5) of the Social Security (Recovery of Benefits) Act 1997(**6**), sections 7(6)(a), 12(2), 16(1), 79(1), (4), (6) and (7) and 84 of, and paragraphs 1 to 4 of Schedule 5 to, the Social Security Act 1998(**7**) and section 68 of, and paragraphs 6(2)(e), 10(1), 20(1) and (3) and 23(1) of Schedule 7 to, the Child Support, Pensions and Social Security Act 2000(**8**) and of all other powers enabling him in that behalf, after consultation with the Council on Tribunals in accordance with section 8 of the Tribunals and Inquiries Act 1992(**9**), after agreement by the Social Security Advisory Committee that the proposals to make these Regulations should not be referred to it(**10**), and so far as they concern housing benefit and council tax benefit

(**1**) 1998 c. 14.
(**2**) 2000 c. 19.
(**3**) 1979 c. 17; section 4 was substituted by the Social Security Act 1998, section 46.
(**4**) 1991 c. 48; section 20 was substituted by the Social Security Act 1998, section 42 and was further substituted by the Child Support, Pensions and Social Security Act 2000 (c. 19), section 10.
(**5**) 1992 c. 5; section 6(1) was substituted by the Local Government Finance Act 1992 (c. 14), Schedule 9, paragraph 12(1)(a); section 191 is cited because of the meaning it gives to "prescribe".
(**6**) 1997 c. 27.
(**7**) Section 12(2) was substituted by the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), Schedule 7, paragraph 25; the powers in sections 16(1) and paragraphs 1 to 4 and 6 of Schedule 5, which are exercised in these Regulations in respect of Tax Credits, are those which have been applied and modified by S.I.2002/2926 under powers contained in section 63(8) of the Tax Credits Act 2002 (c. 21); section 84 is cited because of the meaning it gives to "prescribe".
(**8**) Paragraph 23(1) is cited because of the meaning it gives to "prescribed".
(**9**) 1992 c. 53.
(**10**) *See* the Social Security Administration Act 1992, sections 172 and 173(1)(b) and Schedule 7, paragraph 9.

after consultation with organisations appearing to the Secretary of State to be representative of the authorities concerned(**11**), hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Social Security, Child Support and Tax Credits (Decisions and Appeals) Amendment Regulations 2004 and shall come into force on the day after the day on which they are made.

Amendment of the Social Security and Child Support (Decisions and Appeals) Regulations 1999

2.—(1) The Social Security and Child Support (Decisions and Appeals) Regulations 1999(**12**) shall be amended in accordance with this regulation.

(2) In regulation 1(3) (interpretation) the definition of "misconceived appeal" shall be omitted.

(3) In regulation 25(**13**) (other persons with a right of appeal) for "section 12(2)(b)"(**14**) there shall be substituted "section 12(2)".

(4) In regulation 36(**15**) (composition of appeal tribunals)—

(a) in paragraph (2) for ", (8) and (9)" substitute "and (8)",

(b) in paragraph (5) for ", (3) or (9)" substitute "or (3)", and

(c) omit paragraph (9) (misconceived appeals).

(5) In regulation 39 (directions concerning oral hearings) for the heading and paragraphs (1) to (4) substitute—

"**Choice of hearing**

39.—(1) Where an appeal or a referral 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 of the appeal or whether he is content for the appeal or referral to proceed without an oral hearing.

(2) Except in the case of a referral, 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 46(1).

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

(a) if given by the appellant or a party to the proceedings other than the Secretary of State, must be sent or given 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 Secretary of State, must be sent or given to the clerk—

(i) in the case of an appeal, within 14 days of the date on which the form is issued to the appellant; or

(**11**) *See* the Social Security Administration Act 1992, section 176(1)(a).
(**12**) S.I. 1999/991.
(**13**) Regulation 25 was amended by S.I. 1999/2570 and 2002/1379.
(**14**) Section 12(2) of the Social Security Act 1998 (c. 14) was substituted by the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), Schedule 7, paragraph 25.
(**15**) Regulation 36 was amended by S.I. 1999/1466 and 2000/1596.

(ii) in the case of a referral, on the date of referral,

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 46(1).".

(6) In regulation 46 (appeals which may be struck out)—

(a) in paragraph (1)—

(i) at the end of sub-paragraph (b) omit "or",

(ii) in sub-paragraph (c) omit "subject to regulation 39(4)," and after "struck out" add "; or", and

(iii) after sub-paragraph (c) add—

"(d) for failure of the appellant to notify the clerk to the appeal tribunal, in accordance with regulation 39, whether or not he wishes to have an oral hearing of his appeal.", and

(b) omit paragraph (4) (misconceived appeals).

(7) In regulation 47(**16**) (reinstatement of struck out appeals)—

(a) in paragraph (1) for "46(1)(c)" substitute "46(1)(d)",

(b) in paragraph (2)—

(i) omit "or 48", and

(ii) omit sub-paragraph (b).

(8) Omit regulation 48 (misconceived appeals).

(9) In Schedule 2 (decisions against which no appeal lies), in paragraph 5(**17**) (claims and payments)—

(a) for sub-paragraph (a) substitute—

"(a) regulation 4(3) or (3B)(**18**) (which partner should make a claim for income support or jobseeker's allowance);",

(b) omit sub-paragraphs (b), (c), (d) and (e), and

(c) for sub-paragraph (bb)(**19**) substitute—

"(bb) regulation 4D(7)(**20**) (which partner should make a claim for state pension credit);".

Amendment of the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001

3.—(1) The Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001(**21**) shall be amended in accordance with this regulation.

(2) In regulation 22 (composition of appeal tribunals) omit paragraph (3) (misconceived appeals).

(3) In regulation 23(**22**) (procedure in connection with appeals)—

(**16**) Regulation 47 was amended by S.I. 2000/1596 and 2002/1379.
(**17**) Paragraph 5 was substituted by S.I. 2002/1379 and amended by S.I. 2003/1581.
(**18**) Paragraph (3) was amended by S.I. 1996/2431 and paragraph (3B) was inserted by S.I. 1996/1460.
(**19**) Sub-paragraph (bb) was inserted by S.I. 2003/1581.
(**20**) Regulation 4D was inserted by S.I. 2002/3019.
(**21**) S.I. 2001/1002.
(**22**) Regulation 23 was amended by S.I. 2002/1379.

(a) in paragraph (1) for "the Social Security and Child Support (Decisions and Appeals) (Miscellaneous Amendments) Regulations 2002" substitute "the Social Security, Child Support and Tax Credits (Decisions and Appeals) Amendment Regulations 2004(**23**)", and

(b) in paragraph (3) after "except in regulations" insert "39(1)(**24**) (choice of hearing),".

(4) In the Schedule (decisions against which no appeal lies)—

(a) in paragraph 1 (no right of appeal: exceptions) for sub-paragraph (a) substitute—

"(a) regulations 72(**25**) (time and manner in which claims are to be made), 72A (1)(**26**) and 72B(1) and (4)(**27**) (date of claim).", and

(b) in paragraph 2 (no right of appeal: exceptions) for sub-paragraph (a) substitute—

"(a) regulations 62(**28**) (time and manner in which claims are to be made), 62A(1)(**29**) and 62B(1) and (4)(**30**) (date of claim).".

Amendment of the Housing Benefit (General) Regulations 1987

4.—(1) The Housing Benefit (General) Regulations 1987(**31**) shall be amended in accordance with this regulation.

(2) In regulation 72 (time and manner in which claims are to be made)—

(a) in paragraph (1)(**32**) for "and be accompanied by or supplemented by such certificates, documents, information and evidence as are required in accordance with regulation 73(1) (evidence and information) or paragraph 5 of Schedule A1 (treatment of claims for housing benefit by refugees)", substitute "having regard to the sufficiency of the written information and evidence",

(b) in paragraph (7)(**33**)—

(i) in sub-paragraph (a) for "in a written form sufficient in the circumstances of the case" substitute "properly completed",

(ii) in sub-paragraph (b) after "circumstances of the case" insert "having regard to the sufficiency of the written information and evidence",

(iii) for "refer the defective claim to the claimant" substitute "request the claimant to complete the defective claim" and

(iv) after "supply the claimant with the approved form" add "or request further information or evidence",

(c) for paragraph (8)(**34**) substitute—

"(8) The relevant authority shall treat a defective claim as if it had been validly made in the first instance if—

(a) where paragraph (7)(a) applies, the authority receives at the designated office the properly completed claim or the information requested to complete it

(**23**) S.I. 2004/ .
(**24**) Regulation 39 was amended by S.I. 2004/ .
(**25**) Relevant amendments to regulation 72 were made by S.I 1996/2432, 2000/897, and 2001/1605.
(**26**) Regulation 72A was inserted by S.I. 1999/1539 and amended by S.I. 2002/1397.
(**27**) Regulation 72B was substituted by S.I. 2000/897.
(**28**) Relevant amendments to regulation 62 were made by S.I. 1996/462, 1510 and 2432, 2000/897, 2001/1605 and 2003 /48, 325 and 1632.
(**29**) Regulation 62A was inserted by S.I. 1999/1539 and amended by 2000/897.
(**30**) Regulation 62B was substituted by S.I. 2000/897.
(**31**) S.I. 1987/1971.
(**32**) Paragraph (1) was amended by S.I. 1996/2432, 2000/897 and 2001/1605.
(**33**) Paragraph (7) was amended by S.I. 2001/1605.
(**34**) Paragraph (8) was amended by S.I. 2001/1605.