Draft Regulations laid before Parliament under section 80(1) of the Social Security Act 1998 and Article 75(1A) of the Social Security (Northern Ireland) Order 1998 for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2003 No.

SOCIAL SECURITY

The Child Benefit and Guardian's Allowance (Decisions and Appeals) Regulations 2003

Made - - - -	*2003*
Coming into force - -	*7th April 2003*

Whereas a draft of this instrument was laid before Parliament in accordance with section 80(1) of the Social Security Act 1998(**1**) and Article 75(1A) of the Social Security (Northern Ireland) Order 1998(**2**) and approved by resolution of each House of Parliament;

Now, therefore, the Commissioners of Inland Revenue, in exercise of the powers conferred upon them by the provisions set out in Schedule 1 and, in accordance with section 8 of the Tribunals and Inquiries Act 1992(**3**), after consultation with the Council on Tribunals, hereby make the following Regulations:

PART 1

GENERAL

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Child Benefit and Guardian's Allowance (Decisions and Appeals) Regulations 2003 and shall come into force on 7th April 2003 immediately after the commencement of section 50 of the Tax Credits Act 2002 for the purposes of entitlement to payment of child benefit and guardian's allowance.

(2) These Regulations have effect only in relation to—

(a) child benefit and guardian's allowance under the Contributions and Benefits Act; and

(**1**) 1998 c. 14.
(**2**) S.I. 1998/1506 (N.I. 10). Paragraph (1A) was inserted in Article 75 by paragraph 18(3) of Schedule 4 to the Tax Credits Act 2002 (c. 21).
(**3**) 1992 c. 53. Section 8 was amended by article 335 of S.I. 2001/3949.

(b) child benefit and guardian's allowance under the Contributions and Benefits (NI) Act.

Interpretation

2.—(1) In these Regulations—

"the 1998 Act" means the Social Security Act 1998;

"the Administration Act" means the Social Security Administration Act 1992(**4**);

"the Administration (NI) Act" means the Social Security Administration (Northern Ireland) Act 1992(**5**);

"the Administration Regulations" means the Child Benefit and Guardian's Allowance (Administration) Regulations 2003(**6**);

"appeal tribunal" means—

(a) in relation to child benefit or guardian's allowance under the Contributions and Benefits Act, an appeal tribunal constituted under Chapter 1 of Part 1 of the 1998 Act;

(b) in relation to child benefit or guardian's allowance under the Contributions and Benefits (NI) Act, an appeal tribunal constituted under Chapter 1 of Part 2 of the 1998 Order;

"the appropriate office" means—

(a) in relation to child benefit or guardian's allowance under the Contributions and Benefits Act, the Child Benefit Office, Waterview Park, Washington, Tyne and Wear;

(b) in relation to child benefit or guardian's allowance under the Contributions and Benefits (NI) Act, the Child Benefit Office (Northern Ireland), Windsor House, Bedford Street, Belfast;

(c) any Inland Revenue Enquiry Centre;

"the Board" means the Commissioners of Inland Revenue;

"claimant" means a person who has claimed child benefit or guardian's allowance and includes, in relation to an award or decision, a beneficiary under the award or a person affected by the decision;

"clerk to the appeal tribunal" means—

(a) in relation to child benefit or guardian's allowance under the Contributions and Benefits Act, a clerk assigned to the appeal tribunal in accordance with regulation 37 of the Decisions and Appeals Regulations;

(b) in relation to child benefit or guardian's allowance under the Contributions and Benefits (NI) Act, a clerk assigned to the appeal tribunal in accordance with regulation 37 of the Decisions and Appeals Regulations (NI);

"Commissioner" means—

(a) in relation to child benefit or guardian's allowance under the Contributions and Benefits Act, the Chief Social Security Commissioner or any other Social Security Commissioner appointed under the 1998 Act and includes a tribunal of three or more Commissioners constituted under section 16(7);

(b) in relation to child benefit or guardian's allowance under the Contributions and Benefits (NI) Act, the Chief Social Security Commissioner or any other Social Security Commissioner appointed under the 1998 Order and includes a tribunal of two or more Commissioners constituted under Article 16(7);

(**4**) 1992 c. 5.
(**5**) 1992 c. 8.
(**6**) S.I. 2003/ 492.

"the Contributions and Benefits Act" means the Social Security Contributions and Benefits Act 1992(**7**);

"the Contributions and Benefits (NI) Act" means the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**8**);

"the Decisions and Appeals Regulations" means the Social Security and Child Support (Decisions and Appeals) Regulations 1999(**9**);

"the Decisions and Appeals Regulations (NI)" means the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999(**10**);

"family" has—

(a) in relation to child benefit and guardian's allowance under the Contributions and Benefits Act, the meaning given by section 137 of that Act;

(b) in relation to child benefit and guardian's allowance under the Contributions and Benefits (NI) Act, the meaning given by section 133 of that Act;

"legally qualified panel member" means—

(a) in relation to child benefit or guardian's allowance under the Contributions and Benefits Act, a panel member who satisfies the requirements of paragraph 1 of Schedule 3 to the Decisions and Appeals Regulations;

(b) in relation to child benefit or guardian's allowance under the Contributions and Benefits (NI) Act, a panel member who satisfies the requirements of paragraph 1 of Schedule 2 to the Decisions and Appeals Regulations (NI);

"the Northern Ireland Department" means the Department for Social Development in Northern Ireland;

"the 1998 Order" means the Social Security (Northern Ireland) Order 1998;

"panel" means the panel constituted under section 6(**11**) or Article 7;

"panel member" means a person appointed to the panel;

"party to the proceedings" means the Board and any other person who—

(a) is one of the principal parties for the purposes of sections 13 and 14(**12**) or Articles 14 and 15(**13**); or

(b) has a right of appeal to an appeal tribunal under section 12(2)(**14**) or Article 13(2)(**15**);

"relevant benefit" means child tax credit under the Tax Credits Act 2002 and—

(a) in relation to child benefit or guardian's allowance under the Contributions and Benefits Act, any of the benefits mentioned in section 8(3)(**16**);

(**7**) 1992 c. 4.
(**8**) 1992 c. 7.
(**9**) S.I. 1999/991.
(**10**) S.R. 1999 No. 162.
(**11**) Section 6 was amended by paragraph 4 of Schedule 3 to S.I. 1999/1042 and paragraph 3 of Schedule 5 to S.I. 2000/253.
(**12**) Sections 13 and 14 were amended by paragraphs 26 and 27 of Schedule 7, and Part 1 of Schedule 10, to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2) ("the Transfer Act 1999").
(**13**) Articles 14 and 15 were amended by paragraphs 20 and 21 of Schedule 6, and Part 1 of Schedule 9, to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671) ("the Transfer Order 1999").
(**14**) Section 12(2) was substituted by paragraph 25(3) of Schedule 7 to the Transfer Act 1999.
(**15**) Article 13(3) was substituted by paragraph 19(3) of Schedule 6 to the Transfer Order 1999.
(**16**) Section 8(3) was amended by paragraphs 1 and 6(q) of Schedule 1 to the Tax Credits Act 1999 (c. 10), Part 6 of Schedule 13 to the Welfare Reform and Pensions Act 1999 (c. 30), paragraph 6(2) of Schedule 1 to the State Pension Credit Act 2002 (c. 16) and Schedule 6 to the Tax Credits Act 2002.

(b) in relation to child benefit or guardian's allowance under the Contributions and Benefits (NI) Act, any of the benefits mentioned in Article 9(3)(**17**);

"superseding decision" has the meaning given by regulation 13(1);

"writing" includes writing produced by electronic communications used in accordance with regulation 4.

(2) In these Regulations—

(a) a reference to a numbered section without more is a reference to the section of the 1998 Act bearing that number;

(b) a reference to a numbered Article without more is a reference to the Article of the 1998 Order bearing that number.

Service of notices or documents

3.—(1) Where, under any provision of these Regulations—

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

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

(2) In these Regulations, "the date of notification", in relation to a decision of the Board, means the date on which notification of the decision is treated under paragraph (1)(b) as having been given or sent.

Use of electronic communications

4.—(1) Schedule 2 to the Administration Regulations (the use of electronic communications) applies to the delivery of information to or by the Board which is authorised or required by these Regulations in the same manner as it applies to the delivery of information to or by the Board which is authorised or required by the Administration Regulations.

(2) References in paragraph (1) to the delivery of information shall be construed in accordance with section 132(8) of the Finance Act 1999(**18**).

PART 2

REVISION OF DECISIONS

Revision of decisions within a prescribed period or on an application

5.—(1) Subject to paragraph (3), if the conditions specified in paragraph (2) are satisfied—

(a) a decision under section 8(**19**) or 10(**20**) may be revised by the Board under section 9; and

(**17**) Article 9(3) was amended by paragraphs 1 and 6(r) of Schedule 1 to the Tax Credits Act 1999, Part 7 of Schedule 13 to the Welfare Reform and Pensions Act 1999 and Schedule 6 to the Tax Credits Act 2002.

(**18**) 1999 c. 16.

(**19**) The amendments to subsection (3) of section 8 have been noted previously. Subsections (1) and (5) of that section were amended by paragraph 22 of Schedule 7, and Part 1 of Schedule 10, to the Transfer Act 1999 and subsection (4) by paragraph 6(3) of Schedule 1 to the State Pension Credit Act 2002.

(**20**) Section 10 was amended by paragraph 23 of Schedule 7, and Part 1 of Schedule 10, to the Transfer Act 1999.

(b) a decision under Article 9(**21**) or 11(**22**) may be revised by them under Article 10.

(2) The conditions specified in this paragraph are that—

(a) the Board commence action leading to the revision within one month of the date of notification of the decision; or

(b) subject to regulation 6, an application for the revision was received by the Board at the appropriate office—

(i) within one month of the date of notification of the decision;

(ii) if a written statement of the reasons for the decision requested under regulation 26(1)(b) was provided within the period specified in paragraph (i), within 14 days of the expiry of that period; or

(iii) if such a statement was provided after the period specified in paragraph (i), within 14 days of the date on which the statement was provided.

(3) Paragraph (1) does not apply in respect of a relevant change of circumstances which occurred since the decision was made or where the Board have evidence or information which indicates that a relevant change of circumstances will occur.

Late applications for revision of decisions

6.—(1) The Board may extend the time limits specified in regulation 5(2)(b)(i) to (iii) if the first and second conditions are satisfied.

(2) The first condition is that an application for an extension of time must be made to the Board by the claimant or a person acting on his behalf.

(3) The second condition is that the application for the extension of time must—

(a) contain particulars of the grounds on which the extension is sought;

(b) contain sufficient details of the decision which it is sought to have revised so as to enable it to be identified; and

(c) be made within 13 months of the latest date by which the application for revision should have been received by the Board in accordance with regulation 5(2)(b).

(4) An application for an extension of time must not be granted unless the Board are satisfied that—

(a) it is reasonable to grant it;

(b) the application for revision has merit; and

(c) special circumstances are relevant to the application for an extension of time as a result of which it was not practicable for the application for revision to be made within the time limits specified in regulation 5(2)(b)(i) to (iii).

(5) In determining whether it is reasonable to grant an application for an extension of time, the Board must have regard to the principle that the greater the amount of time that has elapsed between the expiration of the time limits specified in regulation 5(2)(b)(i) to (iii) and the making of the application, the more compelling the special circumstances mentioned in paragraph (4)(c) should be.

(6) In determining whether it is reasonable to grant an application for an extension of time, the Board must take no account of the following—

(**21**) The amendments to subsection (3) of Article 9 have been noted previously. Subsections (1) and (5) of that section were amended by paragraph 16 of Schedule 6, and Part 1 of Schedule 9, to the Transfer Order 1999.

(**22**) Article 11 was amended by paragraph 17 of Schedule 6, and Part 1 of Schedule 9, to the Transfer Order 1999.