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

2002 No.

SOCIAL SECURITY
TAXES
FAMILY LAW

CHILD SUPPORT

The Social Security and Child Support (Decisions and Appeals) (Miscellaneous Amendments) Regulations 2002

Made - - - -	*2002*
Coming into force - -	*20th May 2002*

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 except in relation to working families' tax credit and disabled person's tax credit, and the Commissioners of Inland Revenue in relation to those credits and to regulations 1 to 4, 7, 9 to 11 and 13 to 21 only, in exercise of powers conferred by the enactments set out in the Schedule to this Instrument and now vested in them(**2**), and of all other powers enabling them in that behalf, with the concurrence of the Lord Chancellor in so far as these Regulations are made under section 6(3) of the Social Security Act 1998, and after consultation with the Council on Tribunals in accordance with section 8 of the Tribunals and Inquiries Act 1992(**3**), and after agreement by the Social Security Advisory Committee that proposals to make these Regulations should not be referred to it(**4**), and so far as they concern housing benefit and council tax benefit after consultation with organisations appearing to the Secretary of State to be representative of the authorities concerned(**5**), hereby make the following Regulations:

(**1**) 1998 c. 14.
(**2**) *See* the Tax Credits Act 1999 (c. 10), section 2(1)(c) and (4) and Schedule 2, paragraphs 8(a) and 20(g), by which functions concerning certain benefits were transferred to the Commissioners of Inland Revenue.
(**3**) 1992 c. 53.
(**4**) *See* the Social Security Administration Act 1992 (c. 5), section 173(1)(b).
(**5**) *See* the Social Security Administration Act 1992 (c. 5), section 176(1)(a).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security and Child Support (Decisions and Appeals) (Miscellaneous Amendments) Regulations 2002 and shall come into force on 20th May 2002.

(2) In these Regulations—

(a) "the Housing Benefit (Decisions and Appeals) Regulations" means the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001(**6**); and

(b) unless the context otherwise requires, a reference to a numbered regulation, paragraph or Schedule is a reference to the regulation, paragraph or Schedule bearing that number in the Social Security and Child Support (Decisions and Appeals) Regulations 1999(**7**).

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

2. In regulation 1(3) (interpretation)—

(a) for the definition of "official error"(**8**) there shall be substituted—

> ""official error" means an error made by—
>
> (a) an officer of the Department for Work and Pensions or the Board acting as such which no person outside the Department or the Inland Revenue caused or to which no person outside the Department or the Inland Revenue materially contributed;
>
> (b) a person employed by a designated authority acting on behalf of the authority, which no person outside that authority caused or to which no person outside that authority materially contributed,
>
> but excludes any error of law which is shown to have been an error by virtue of a subsequent decision of a Commissioner or the court;"; and

(b) after the definition of "panel member with a disability qualification " there shall be inserted —

> ""partner" means—
>
> (a) where a person is a member of a married couple or an unmarried couple, the other member of that couple; or
>
> (b) where a person is polygamously married to two or more members of his household, any such member;".

3. In regulation 3 (revision of decisions)—

(a) in paragraph (1)(**9**) for sub-paragraphs (a) and (b) there shall be substituted the following sub-paragraphs—

> "(a) he or they commence action leading to revision within one month of the date of notification of the original decision; or
>
> (b) an application for a revision is received by the Secretary of State or the Board or an officer of the Board at the appropriate office—
>
> (i) subject to regulation 9A(3), within one month of the date of notification of the original decision;

(**6**) S.I. 2001/1002.
(**7**) S.I. 1999/991.
(**8**) The definition of "official error" was substituted by S.I. 2000/897 and 1596 but these amendments did not apply for tax credit purposes.
(**9**) Paragraph (1) was amended by S.I. 1999/2570 and 2677.

(ii) where a written statement is requested under paragraph (1)(b) of regulation 28 and is provided within the period specified in head (i), within 14 days of the expiry of that period;

(iii) where a written statement is requested under paragraph (1)(b) of regulation 28 and is provided after the period specified in head (i), within 14 days of the date on which the statement is provided; or

(iv) within such longer period as may be allowed under regulation 4.";

(b) after paragraph (4) there shall be inserted the following paragraph—

"(4A) Where there is an appeal against an original decision (within the meaning of paragraph (1)) within the time prescribed in regulation 31, or in a case to which regulation 32 applies within the time prescribed in that regulation, but the appeal has not been determined, the original decision may be revised at any time.";

(c) after paragraph (5) there shall be inserted the following paragraph—

"(5A) Where—

(a) the Secretary of State or the Board or an officer of the Board, as the case may be, makes a decision under section 8 or 10, or that decision is revised under section 9, in respect of a claim or award ("decision A") and the claimant appeals against decision A;

(b) decision A is superseded or the claimant makes a further claim which is decided ("decision B") after the claimant made the appeal but before the appeal results in a decision by an appeal tribunal ("decision C"); and

(c) the Secretary of State or the Board or an officer of the Board, as the case may be, would have made decision B differently if he or they had been aware of decision C at the time he or they made decision B,

decision B may be revised at any time.";

(d) after paragraph (7) there shall be inserted the following paragraph—

"(7A) Where a decision as to a claimant's entitlement to a disablement pension under section 103 of the Contributions and Benefits Act is revised by the Secretary of State, or changed on appeal, a decision of the Secretary of State as to the claimant's entitlement to reduced earnings allowance under paragraph 11 or 12 of Schedule 7 to that Act may be revised at any time provided that the revised decision is more advantageous to the claimant than the original decision."; and

(e) in paragraph (11)—

(i) in sub-paragraph (a) for the words "Department of Social Security or the Department for Education and Employment" there shall be substituted the words "Department for Work and Pensions"; and

(ii) in sub-paragraph (c) for the words "Department of Social Security" there shall be substituted the words "Department for Work and Pensions".

4. After regulation 9 there shall be inserted the following regulation—

"**Correction of accidental errors**

9A.—(1) Accidental errors in a decision of the Secretary of State or an officer of the Board under a relevant enactment within the meaning of section 28(3), or in any record of such a decision, may be corrected by the Secretary of State or an officer of the Board, as the case may be, at any time.

(2) A correction made to, or to the record of, a decision shall be deemed to be part of the decision, or of that record, and the Secretary of State or an officer of the Board shall give a written notice of the correction as soon as practicable to the claimant.

(3) In calculating the time within which an application can be made under regulation 3(1)(b) for a decision to be revised, or the time within which an appeal may be brought under regulation 31(1), there shall be disregarded any day falling before the day on which notice was given of a correction of the decision or to the record thereof under paragraph (2).".

5. In regulation 11A(**10**) (issues for decision by officers of Inland Revenue) in paragraph (2)—

(a) in sub-paragraph (b) after the word "supersession" there shall be inserted the words "or an appeal"; and

(b) in sub-paragraph (c) for the words "consideration of the application " there shall be substituted the words "receipt of the application or appeal".

6. After regulation 14 there shall be inserted the following regulation—

"**Termination of award of income support or jobseeker's allowance**

14A.—(1) This regulation applies in a case where an award of income support or a jobseeker's allowance ("the existing benefit") exists in favour of a person and, if that award did not exist and a claim was made by that person or his partner for a jobseeker's allowance or, as the case may be, income support ("the alternative benefit"), an award of the alternative benefit would be made on that claim.

(2) In a case to which this regulation applies, if a claim for the alternative benefit is made the Secretary of State may bring to an end the award of the existing benefit if he is satisfied that an award of the alternative benefit will be made on that claim.

(3) Where, under paragraph (2), the Secretary of State brings an award of the existing benefit to an end he shall do so with effect from the day immediately preceding the first day on which an award of the alternative benefit takes effect.

(4) Where an award of a jobseeker's allowance is made in accordance with the provisions of this regulation, paragraph 4 of Schedule 1 to the Jobseekers Act (waiting days) shall not apply.".

7. In regulation 25(**11**) (other persons with a right to appeal) before paragraph (a) there shall be inserted the following paragraphs—

"(ai) any person who has been appointed by the Secretary of State or the Board under regulation 30(1)(**12**) of the Claims and Payments Regulations (payments on death) to proceed with the claim of a person who has made a claim for benefit and subsequently died;

(aii) any person who is appointed by the Secretary of State to claim benefit on behalf of a deceased person and who claims the benefit under regulation 30(5) and (6)(**13**) of the Claims and Payments Regulations;

(aiii) any person who is appointed by the Secretary of State to make a claim for reduced earnings allowance or disablement benefit in the name of a person who has died and who claims under regulation 30(6A) and (6B)(**14**) of the Claims and Payments Regulations;".

(**10**) Regulation 11A was inserted by S.I. 1999/1670.
(**11**) Regulation 25 was amended by S.I. 1999/2570; regulation 25 cites the Social Security Act 1998 (c. 14), section 12(2) which was substituted by the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), Schedule 7, paragraph 25(3).
(**12**) Regulation 30(1) was amended by S.I. 1999/2572.
(**13**) Regulation 30(5) was amended by S.I. 1988/1725, 1990/2208, 1991/2741, 1996/1460 and 1999/2572.
(**14**) Paragraphs (6A) and (6B) were inserted by S.I. 1990/2208.

8. In regulation 29(5)(**15**) (further particulars required relating to certificate of recoverable benefits appeals or applications) for the words " Department of Social Security" there shall be substituted the words " Department for Work and Pensions".

9. In regulation 31(1)(**16**) (time within which an appeal is to be brought) for sub-paragraphs (a) and (b) there shall be substituted the following sub-paragraphs—

"(a) subject to regulation 9A(3), within one month of the date of notification of the decision against which the appeal is brought;

(b) where a written statement of the reasons for that decision is requested and provided within the period specified in sub-paragraph (a), within 14 days of the expiry of that period; or

(c) where a written statement of the reasons for that decision is requested but is not provided within the period specified in sub-paragraph (a), within 14 days of the date on which the statement is provided.".

10. In regulation 32 (late appeals)—

(a) at the end of paragraph (2) there shall be added the words ", except that where the Secretary of State or the Board, as the case may be, consider that the conditions in paragraphs (4) (b) to (8) are satisfied, the Secretary of State or the Board, as the case may be, may grant the application.";

(b) for paragraph (4) there shall be substituted the following paragraph—

"(4) An application for an extension of time 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, the Secretary of State or the Board, as the case may be, are satisfied that it is in the interests of justice for the application to be granted.";

(c) in paragraph (5)—

(i) after the words "panel member" there shall be inserted the words " , the Secretary of State or the Board, as the case may be,"; and

(ii) for the words "application to be made" there shall be substituted the words "appeal to be made";

(d) in paragraph (6)(a) for the word "spouse" there shall be substituted the word "partner"; and

(e) in paragraph (7), for the words "the panel member shall have regard " there shall be substituted the words "regard shall be had".

11. In regulation 33(**17**) (making of appeals and applications)—

(a) in paragraph (2)—

(i) in sub-paragraphs (a) and (c) for the words "Department of Social Security " there shall be substituted the words "Department for Work and Pensions ";

(ii) in sub-paragraph (b) for the words "Department of Social Security or of the Department for Education and Employment" there shall be substituted the words "Department for Work and Pensions the address of which was indicated on the notification of the decision which is subject to appeal"; and

(**15**) Regulation 29(5) was amended by S.I. 2000/3030.
(**16**) Regulation 31(1) was amended by S.I. 1999/2570.
(**17**) Regulation 33 was amended by S.I. 1999/1662, 2570 and 2677 and 2000/897, 1596 and 3030.