Draft Regulations laid before Parliament under paragraph 37 of Schedule 2 to the Tax Credits Act 1999 for approval by resolution of each House of Parliament

DRAFT STATUTORY INSTRUMENTS

2002 No.

SOCIAL SECURITY, NORTHERN IRELAND
TAXES, NORTHERN IRELAND

The Tax Credits (Decisions and Appeals) (Northern Ireland) (Amendment) Regulations 2002

Made - - - -	*2002*
Coming into force - -	*21st May 2002*

Whereas a draft of this instrument was laid before Parliament in accordance with paragraph 37 of Schedule 2 to the Tax Credits Act 1999(**1**) and approved by resolution of each House Of Parliament:

Now, therefore, the Commissioners of Inland Revenue, in exercise of the powers conferred by the enactments set out in the Schedule to this instrument and now vested in them(**2**), hereby make the following Regulations:

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Tax Credits (Decisions and Appeals) (Northern Ireland) (Amendment) Regulations 2002 and shall come into force on 21st May 2002.

(2) These Regulations have effect with respect only to tax credit.

Interpretation

2. In these Regulations—

"the principal Regulations" means the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999(**3**) and "regulation" means a regulation of the principal Regulations;

"tax credit" means working families' tax credit or disabled person's tax credit, construing those terms in accordance with section 1(1) of the Tax Credits Act 1999.

(**1**) 1999 c. 10.
(**2**) *See* section 2(1)(c) and (4) of, and paragraphs 8(b) and 22(c) of Schedule 2 to, the Tax Credits Act 1999, whereby functions concerning working families' tax credit and disabled person's tax credit were transferred to the Commissioners of Inland Revenue.
(**3**) S.R. 1999 No. 162. Relevant amending instruments are S.R. 1999 Nos. 242, 267, 271 (C.22) and 276, and S.I.1999/2588.

Amendments to the principal Regulations

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

(a) after the definition of "misconceived appeal" insert the following definition—

> ""official error"(**4**) means an error made by an officer of the Board acting as such which no person outside the Inland Revenue caused or to which no person outside the Inland Revenue 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;";

(b) after the definition of "panel member with a disability qualification" insert the following definition—

> ""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;".

4. In regulation 3 (revision of decisions)—

(a) in paragraph (1)(**5**) for sub-paragraphs (a) and (b) substitute the following sub-paragraphs —

> "(a) the Board or an officer of the Board commence action leading to revision within one month of the date of notification of the original decision;
>
> (b) an application for a revision is received by 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;
>
> (ii) where a written statement is requested under regulation 28(1)(b) 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 regulation 28(1)(b) 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) insert 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) insert the following paragraph—

> "(5A) Where—
>
> (a) the Board make, or an officer of the Board makes, a decision under Article 9 or 11, or that decision is revised under Article 10, in respect of a claim or award (decision "A") and the claimant appeals against decision A;

(**4**) The definition of "official error" was inserted by S.R. 2001 No. 176, but not for tax credit purposes.
(**5**) Regulation 3(1) was amended by S.I. 1999/2588.

(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 Board or an officer of the Board would have made decision B differently if they or he had been aware of decision C at the time they or he made decision B,

decision B may be revised at any time.".

5. After regulation 9 insert the following regulation—

"**Correction of accidental errors**

9A.—(1) Accidental errors in a decision by an officer of the Board under a relevant enactment within the meaning of Article 28(3), or in any record of such a decision, may be corrected by that or any other officer of the Board 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 officer of the Board by whom the correction is made 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 of the record of the decision under paragraph (2).".

6. In regulation 25 (other persons with a right of appeal) after paragraph (a) insert the following paragraph—

"(aa) any person appointed by the Board under regulation 30(1) of the Claims and Payments Regulations(**6**) (payments on death) to proceed with the claim of a person who has made a claim for benefit and subsequently died;".

7. In regulation 31(1)(**7**) (time within which appeals are to be brought) for sub-paragraphs (a) and (b) substitute the following sub-paragraphs—

"(a) subject to regulation 9A(3), 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 is provided within the period specified in sub-paragraph (a), 14 days of the expiry of that period;

(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), 14 days of the date on which the statement is provided.".

8. In regulation 32 (late appeals)—

(a) at the end of paragraph (2) add ", except that where the Board consider that the conditions in paragraphs (4)(b) to (8) are satisfied, they may grant the application.";

(b) for paragraph (4) substitute the following paragraph—

"(4) An application for an extension of time shall not be granted unless—

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

(**6**) S.R. 1987 No. 465. Regulation 30(1) was amended by S.I. 1999/2574.
(**7**) Regulation 31(1) was amended by S.I. 1999/2588.

(b) the legally qualified panel member is, or the Board 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 is" insert ", or the Board are,";

(ii) for the words "application to be made" substitute "appeal to be made";

(d) in paragraph (6)(a) for the word "spouse" substitute "partner";

(e) in paragraph (7) for the words "the legally qualified panel member shall have regard" substitute "regard shall be had".

9. In regulation 33(**8**) (making of appeals and applications)—

(a) for paragraph (6) substitute the following paragraphs—

"(6) Where a person to whom a form is returned by the Board duly completes and returns the form within 14 days of the date on which it was returned to him, the time for making the appeal shall be extended by 14 days from the date on which the form was returned by the Board.

(6A) Where a person from whom further particulars are requested by the Board sends the further particulars within 14 days of the date on which the request was made, the time for making the appeal shall be extended by 14 days from the date of the request.

(6B) Where—

(a) a person to whom a form is returned by the Board duly completes and returns the form within such longer period as the Board may direct; or

(b) a person from whom further particulars are requested by the Board sends the further particulars within such longer period as the Board may direct,

the time for making the appeal shall be extended by a period equal to that longer period.";

(b) after paragraph (8) add the following paragraph—

"(9) (**9**) The Board may discontinue action on an appeal where the appeal has not been forwarded to the clerk to the appeal tribunal or to a legally qualified panel member and the appellant or an authorised representative of the appellant has given written notice that he does not wish the appeal to continue.".

10. Renumber regulation 47 (reinstatement of struck out appeals) as paragraph (2) of that regulation, and immediately before paragraph (2) (as so renumbered) insert the following paragraph as paragraph (1) of that regulation—

"(1) The clerk to the appeal tribunal may reinstate an appeal which has been struck out in accordance with regulation 46(1)(c) where—

(a) the appellant has made representations to him or, as the case may be, further representations in support of his appeal with reasons why he considers that his appeal should not have been struck out;

(b) the representations are made in writing within one month of the order to strike out the appeal being issued; and

(c) the clerk is satisfied in the light of those representations that there are reasonable grounds for reinstating the appeal,

(**8**) Regulation 33 was amended by S.I. 1999/2588.
(**9**) Paragraph (9) was added by S.R. 2000 No. 215 but not for tax credit purposes.

but if the clerk is not satisfied that there are reasonable grounds for reinstatement a legally qualified panel member shall consider whether the appeal should be reinstated in accordance with paragraph (2).".

11. In regulation 49 (procedure at oral hearings)—

(a) for paragraph (6) substitute the following paragraph—

"(6) An oral hearing shall be in public except where the chairman or, in the case of an appeal tribunal which has only one member, that member, is satisfied that it is necessary to hold the hearing, or part of the hearing, in private—

(a) in the interests of national security, morals, public order or children;

(b) for the protection of the private or family life of one or more parties to the proceedings; or

(c) in special circumstances, because publicity would prejudice the interests of justice.";

(b) for paragraph (7) substitute the following paragraph—

"(7) At an oral hearing—

(a) any party to the proceedings shall be entitled to be present and to be heard; and

(b) the following persons may be present by means of a live television link—

(i) any party to the proceedings or his representative or both; or

(ii) where an appeal tribunal consists of more than one member, a tribunal member other than the chairman,

provided that the chairman or, where an appeal tribunal has only one member, that member gives permission and the appellant consents.";

(c) in paragraph (9)—

(i) in sub-paragraph (b) omit the word "panel";

(ii) in sub-paragraph (d) omit the words "and the consent of every party to the proceedings actually present,";

(d) for paragraph (10)(**10**) substitute the following paragraph—

"(10) Nothing in paragraph (9) affects the rights of—

(a) any person mentioned in sub-paragraphs (a) and (b) of that paragraph where he is sitting as a member of a tribunal or acting as its clerk; or

(b) the clerk to the appeal tribunal,

and nothing in this regulation prevents the presence at an oral hearing of any witness or of any person whom the chairman, or in the case of an appeal tribunal which has only one member, that member, permits to be present in order to assist the appeal tribunal or the clerk."; and

(e) after paragraph (12) add the following paragraph—

"(13) In this regulation "live television link" means a live television link or other 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 those physically present.".

12. In regulation 51 (postponement and adjournment) omit paragraph (5).

(**10**) Amended by S.R. 2000 No. 215 but not for tax credit purposes.