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

TAX CREDITS

The Tax Credits (Appeals) (No. 2) Regulations 2002

Made - - - -	*2002*
Coming into force - -	*1st January 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 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 upon him by sections 7(6), 12(2) and (7), 14(10) and (11), 16(1), 28(1), 39(1)(**2**), 79(1) and (3) to (7) and 84(**3**) of, and paragraphs 11 and 12 of Schedule 1 and Schedule 5 to the Social Security Act 1998(**4**) and 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(**5**), hereby makes the following Regulations:

PART 1

GENERAL

Citation, commencement, duration and interpretation

1.—(1) These Regulations may be cited as the Tax Credits (Appeals) (No. 2) Regulations 2002 and shall come into force on 1st January 2003.

(2) These Regulations shall cease to have effect on such day as is appointed by order made under section 63(1) of the Tax Credits Act 2002(**6**) (tax credits appeals etc.: temporary modifications).

(**1**) 1998 c. 14.
(**2**) Section 39(1) as modified by S.I.2002/xxx is cited for the meaning ascribed to the word prescribed.
(**3**) Section 84 is cited for the meaning ascribed to the word prescribed.
(**4**) The powers in sections 12(2) and (7), 14(10) and (11), 16(1), 28(1) and 39(1) of the Social Security Act 1998, exercised in these Regulations, are those which have been applied and modified under the powers contained in section 63(8) of the Tax Credits Act 2002 (c. 21) by S.I.2002/xxx.
(**5**) 1992 c. 53.
(**6**) 2002 c. 21.

(3) In these Regulations, unless the context otherwise requires—

"the Act" means the Social Security Act 1998;

"the 2002 Act" means the Tax Credits Act 2002;

"the Appeals Regulations" means the Tax Credits (Appeals) Regulations 2002(**7**);

"the Decisions and Appeals Regulations" means the Social Security and Child Support (Decisions and Appeals) Regulations 1999(**8**);

"the Working Tax Credit Regulations" means the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002(**9**);

"appeal" means an appeal under section 38 of the 2002 Act;

"an application for a direction" means an application for a direction to close down an enquiry made under section 19(9) of the 2002 Act;

"a case" means, for the purposes of Chapter 3 of Part 3, an appeal or an application for a direction;

"clerk to the appeal tribunal" means a clerk assigned to the appeal tribunal in accordance with regulation 10;

"court" means the High Court, the Court of Appeal, the Court of Session, the High Court or Court of Appeal in Northern Ireland, the House of Lords or the Court of Justice of the European Community;

"the date of notification" means—

(a) the date of the notice of a decision of the Board(**10**) given under section 23(2) of the 2002 Act; or

(b) the date that notification of a decision of the Board, other than notice of a decision given under section 23(2) of the 2002 Act, is treated as having been given or sent in accordance with regulation 2(b);

"decision" means, for the purposes of Chapter 5 of Part 3,—

(a) the decision of an appeal tribunal on an appeal;

(b) a direction under section 19(10) of the 2002 Act(**11**) given in response to an application for a direction, or the refusal to make such a direction; and

(c) a penalty determination made in penalty proceedings;

"financially qualified panel member" means a panel member who satisfies the requirements of paragraph 4 of Schedule 3 to the Decisions and Appeals Regulations;

"joint claim" means a claim made under section 3(3)(a) of the 2002 Act and any reference in these Regulations to "joint claimant" shall be construed accordingly;

"legally qualified panel member" means a panel member who satisfies the requirements of paragraph 1 of Schedule 3 to the Decisions and Appeals Regulations;

"medically qualified panel member" means a panel member who satisfies the requirements of paragraph 2 of Schedule 3 to the Decisions and Appeals Regulations;

"panel" means the panel constituted under section 6 of the Act;

(**7**) S.I. 2002/xxx.

(**8**) S.I. 1999/991; relevant amending instruments are S.I. 1999/1466, S.I. 1999/1623, S.I. 1999/1662, S.I. 1999/1670, S.I. 1999/2570, S.I. 1999/2677, S.I. 1999/3178, S.I. 2000/119, S.I. 2000/127, S.I. 2000/897, S.I. 2000/1596, S.I. 2000/1982, S.I. 2000/3030, S.I. 2001/518, S.I. 2001/1711, S.I. 2001/4022, S.I. 2002/398, S.I. 2002/428, S.I. 2002/490, S.I. 2002/1379 and S.I. 2002/1703.

(**9**) S.I. 2002/2005.

(**10**) "the Board" is defined in section 39 of the Social Security Act 1998 as applied and modified by S.I. 2002/xxx.

(**11**) Section 19(10) of the 2002 Act is modified by section 63(3) of that Act.

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

"panel member with a disability qualification" means a panel member who satisfies the requirements of paragraph 5 of Schedule 3 to the Decisions and Appeals Regulations;

"partner" means, where a person is a member of a married or an unmarried couple, the other member of that couple;

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

(a) who is an appellant in an appeal brought against a decision or determination set out in section 38 of the 2002 Act;

(b) who is an applicant for a direction to close down an enquiry under section 19(9) of the 2002 Act;

(c) who is a defendant (or defender) in penalty proceedings brought under paragraph 3 of Schedule 2 to the 2002 Act;

(d) who is a person with a right of appeal or a right to make an application for a direction under regulation 3;

"penalty determination" means a decision made in accordance with paragraph 3 of Schedule 2 to the 2002 Act;

"penalty proceedings" means proceedings under paragraph 3 of Schedule 2 to the 2002 Act;

"President" means the President of appeal tribunals appointed under section 5 of the Act;

"single claim" means a claim made under section 3(3)(b) of the 2002 Act;

"tax credit" means child tax credit or working tax credit, construing those terms in accordance with section 1(1) and (2) of the 2002 Act, and any reference in these Regulations to "child tax credit" or "working tax credit" shall be construed accordingly.

Service of notices or documents

2. Where, by any provision of these Regulations—

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

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

PART 2

GENERAL APPEAL MATTERS

Other persons with a right of appeal or a right to make an application for a direction

3. For the purposes of section 12(2) of the Act(**12**) (as applied and modified by the Appeals Regulations), where—

(a) a person has made a claim for a tax credit but is unable for the time being to make an appeal against a decision in respect of that tax credit; or

(**12**) Section 12(2) of the Act was substituted by paragraph 25(3) of Schedule 7 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2).

(b) a person is the person in respect of whom an enquiry has been initiated under section 19(1) of the 2002 Act, but is unable for the time being to make an application for a direction,

the following other persons have a right of appeal to an appeal tribunal or a right to make an application for a direction—

(i) a receiver appointed by the Court of Protection with power to make a claim for a tax credit on behalf of the person;

(ii) in Scotland, a tutor, curator or other guardian acting or appointed in terms of law who is administering the estate of the person;

(iii) a person appointed under regulation 33(1) of the Social Security (Claims and Payments) Regulations 1987(**13**) (persons unable to act);

(iv) where there is no person mentioned in sub-paragraph (iii) in relation to the person who is unable to act, a person who has applied in writing to the Board to be appointed to act on behalf of the person who is unable to act and, if a natural person, is aged 18 years or more and who has been so appointed by the Board for the purposes of this sub-paragraph.

Time within which an appeal is to be brought

4.—(1) Where a dispute arises as to whether an appeal was brought within the time limit specified in section 39(1) of the 2002 Act, the dispute shall be referred to, and be determined by, a legally qualified panel member.

(2) The time limit specified in section 39(1) of the 2002 Act may be extended in accordance with regulation 5.

Late appeals

5.—(1) The time within which an appeal must be brought may be extended where the conditions specified in paragraphs (2) to (8) are satisfied, but no appeal shall in any event be brought more than one year after the expiration of the last day for appealing under section 39(1) of the 2002 Act.

(2) An application for an extension of time under this regulation shall be made in accordance with regulation 6 and shall be determined by a legally qualified panel member, except that where the Board consider that the conditions in paragraphs (4)(b) to (8) are satisfied, the Board may grant the application.

(3) An application under this regulation shall contain particulars of the grounds on which the extension of time is sought, including details of any relevant special circumstances for the purposes of paragraph (4).

(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 is, or the Board are, satisfied that it is in the interests of justice for the application to be granted.

(5) For the purposes of paragraph (4) it is not in the interests of justice to grant an application unless the panel member is, or the Board are, as the case may be, satisfied that—

(a) the special circumstances specified in paragraph (6) are relevant to the application; or

(b) some other special circumstances exist which are wholly exceptional and relevant to the application,

(**13**) S.I. 1987/1968; the relevant amending instrument is S.I. 1999/2572.

and as a result of those special circumstances, it was not practicable for the appeal to be made within the time limit specified in section 39(1) of the 2002 Act.

(6) For the purposes of paragraph (5)(a), the special circumstances are that—

(a) the applicant or a partner or dependant of the applicant has died or suffered serious illness;

(b) the applicant is not resident in the United Kingdom; or

(c) normal postal services were disrupted.

(7) In determining whether it is in the interests of justice to grant the application, regard shall be had to the principle that the greater the amount of time that has elapsed between the expiration of the time within which the appeal is to be brought under section 39(1) of the 2002 Act and the making of the application for an extension of time, the more compelling should be the special circumstances on which the application is based.

(8) In determining whether it is in the interests of justice to grant an application, no account shall be taken of the following—

(a) that the applicant or any person acting for him was unaware of or misunderstood the law applicable to his case (including ignorance or misunderstanding of the time limit imposed by section 39(1) of the 2002 Act); or

(b) that a Commissioner or a court has taken a different view of the law from that previously understood and applied.

(9) An application under this regulation for an extension of time which has been refused may not be renewed.

(10) The panel member who determines an application under this regulation shall record a summary of his decision in such written form as has been approved by the President.

(11) As soon as practicable after the decision is made a copy of the decision shall be sent or given to every party to the proceedings.

Making of an application for an extension of time

6. An application for an extension of time for making an appeal to an appeal tribunal shall be made in writing to the Board and shall—

(a) include sufficient information to determine—

(i) the identity of the appellant;

(ii) the subject of the application in respect of which an extension of time is sought; and

(iii) the grounds on which an extension of time is sought; and

(b) be signed by or on behalf of the appellant.

Making an application for a direction

7. An application for a direction to be made by an appeal tribunal shall—

(a) be made in writing to the Board;

(b) contain sufficient information for the Board to determine the identity of the applicant; and

(c) be signed by or on behalf of the applicant.

Death of a party to an appeal or an application for a direction

8.—(1) In any proceedings relating to an appeal or an application for a direction, on the death of a party to those proceedings (other than the Board) the following persons may proceed with the appeal or application for a direction in the place of such deceased party—