Draft Regulations laid before Parliament under section 80(1)(a) of the Social Security Act 1998 and section 68 of, and paragraph 20(4) of Schedule 7 to, the Child Support, Pensions and Social Security Act 2000, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2001 No.

SOCIAL SECURITY

The Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001

Made - - - -	*2001*
Coming into force - -	*2nd July 2001*

Whereas a draft of this Instrument was laid before Parliament in accordance with section 80(1)(a) of the Social Security Act 1998(**1**) and section 68 of, and paragraph 20(4) of Schedule 7 to, the Child Support, Pensions and Social Security Act 2000(**2**) and approved by resolution of each House of Parliament;

Now, therefore, the Secretary of State for Social Security, in exercise of powers conferred by sections 5(1)(hh) and 6(1)(hh) of the Social Security Administration Act 1992(**3**), sections 7(6)(a) and 79(4) to (7) of the Social Security Act 1998 and section 68 of, and paragraphs 3(1), (4) and (6), 4(4) and (6), 6(2)(e), (4), (7) and (8), 8(7)(c) and (8), 10(1), 12, 13, 14(2), 15, 16(3) and (5), 19(1), 20(1)(b) and (3) and 23(1)(**4**) and (2) of Schedule 7 to, the Child Support, Pensions and Social Security Act 2000 and all other powers enabling him in that behalf, by this Instrument, which contains only regulations made by virtue of, or consequential upon, those provisions of the Child Support, Pensions and Social Security Act 2000 and which are made before the end of the period of six months beginning with the coming into force of those provisions(**5**), after consultation with the Council on Tribunals in accordance with section 8 of the Tribunals and Inquiries Act 1992(**6**), and after consultation with organisations appearing to him to be representative of the authorities concerned(**7**), hereby makes the following Regulations:

(**1**) 1998 c. 14.
(**2**) 2000 c. 19.
(**3**) 1992 c. 5. Section 5(1)(hh) was inserted by section 74 of the Social Security Act 1998. Section 5(1)(hh) was amended by, and section 6(1)(hh) was inserted by, section 68 of, and paragraph 21 of Schedule 7 to, the Child Support, Pensions and Social Security Act 2000.
(**4**) Section 23(1) is an interpretation provision and is cited because of the meaning ascribed to the word "prescribed".
(**5**) *See* sections 170 and 173(5) of the Social Security Administration Act 1992 (c. 5).
(**6**) 1992 c. 53.
(**7**) *See* section 176 of the Social Security Administration Act 1992.

PART I

GENERAL

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001 and shall come into force on 2nd July 2001.

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

"the Act" means the Child Support, Pensions and Social Security Act 2000;

"the Administration Act" means the Social Security Administration Act 1992;

"appeal" means an appeal to an appeal tribunal;

"appropriate relevant authority" has the meaning it has in paragraph 4 of Schedule 7 to the Act;

"benefit week" means a period of seven consecutive days commencing on a Monday and ending on a Sunday;

"claimant" means a person claiming housing benefit or council tax benefit or both;

"clerk to an appeal tribunal" means a clerk assigned to an appeal tribunal in accordance with regulation 37 of the Decisions and Appeals Regulations 1999;

"Council Tax Benefit Regulations" means the Council Tax Benefit (General) Regulations 1992(**8**);

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

"designated authority" has the meaning it has in regulation 2(1) of the Work-focused Interviews Regulations;

"financially qualified panel member" means a panel member who is an accountant and a member of—

(a) the Institute of Chartered Accountants in England and Wales;

(b) the Institute of Chartered Accountants in Scotland;

(c) the Institute of Chartered Accountants in Ireland;

(d) the Association of Chartered Certified Accountants;

(e) the Chartered Institute of Management Accountants; or

(f) the Chartered Institute of Public Finance and Accountancy;

"Housing Benefit Regulations" means the Housing Benefit (General) Regulations 1987(**10**);

"legally qualified panel member" means a panel member who—

(a) has a general qualification (construed in accordance with section 71 of the Courts and Legal Services Act 1990)(**11**); or

(b) is an advocate or solicitor in Scotland;

"official error" means an error made by—

(a) a relevant authority or a person—

(**8**) S.I.1992/1814.
(**9**) S.I. 1999/991; relevant amending instruments are S.I. 1999/1466 and 2000/1596.
(**10**) S.I. 1987/1971.
(**11**) 1990 c. 41.

(i) authorised to carry out any function of a relevant authority relating to housing benefit or council tax benefit; or

(ii) providing services relating to housing benefit or council tax benefit directly or indirectly to a relevant authority;

(b) an officer of—

(i) the Department of Social Security;

(ii) the Commissioners of Inland Revenue; or

(iii) the Department for Education and Employment,

acting as such;

(c) a person employed by a designated authority acting on behalf of the authority,

but excludes any error caused wholly or partly by any person or body not specified in sub-paragraphs (a) to (c) of this definition and any error of law which is shown to have been an error only by virtue of a subsequent decision of a Commissioner (construed in accordance with paragraph 23(1) of Schedule 7 to the Act) or the court;

"panel member" means a person appointed to a panel constituted under section 6 of the Social Security Act 1998;

"partner" means—

(a) where a claimant is a member of a married or unmarried couple, the other member of that couple; or

(b) where a claimant is polygamously married to two or more members of his household, any such member;

"person affected" shall be construed in accordance with regulation 3;

"President" means the President of appeal tribunals appointed under section 5 of the Social Security Act 1998;

"principal parties" has the same meaning as in paragraph 7(4) of Schedule 7 to the Act;

"relevant authority" has the same meaning as in paragraph 1(1) of Schedule 7 to the Act;

"relevant decision" has the same meaning as in paragraph 1(2) of Schedule 7 to the Act;

"work-focused interview" has the same meaning as in regulation 3 of the Work-focused Interviews Regulations;

"the Work-focused Interviews Regulations" means the Social Security (Work-focused Interviews) Regulations 2000(**12**).

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

(a) to a numbered regulation is to the regulation in these Regulations bearing that number;

(b) in a regulation to a numbered paragraph is to the paragraph in that regulation bearing that number.

Service of notices or documents

2. Where, by, or in consequence of, any provision of these Regulations or Schedule 7 to the Act—

(a) any notice or other document is required to be given or sent to the clerk to an appeal tribunal, the Secretary of State or the relevant authority, 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, the Secretary of State or the relevant authority, as the case may be; and

(**12**) S.I. 2000/897.

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

Person treated as a person affected by a decision

3.—(1) For the purposes of Schedule 7 to the Act and subject to paragraph (2), a person is to be treated as a person affected by a relevant decision of a relevant authority where that person is—

(a) a claimant;

(b) in the case of a person who is liable to make payments in respect of a dwelling and is unable for the time being to act—

(i) a receiver appointed by the Court of Protection with power to claim, or as the case may be, receive benefit on his behalf,

(ii) in Scotland, a tutor, curator, judicial factor or other guardian acting or appointed in terms of law administering that person's estate, or

(iii) an attorney with a general power or a power to receive benefit appointed by the person liable to make those payments under the Powers of Attorney Act 1971(**13**) or the Enduring Powers of Attorney Act 1985(**14**);

(c) a person appointed by the relevant authority under regulation 71(3) of the Housing Benefit Regulations or regulation 61(3) of the Council Tax Benefit Regulations (appointments for persons unable to act);

(d) a person from whom the relevant authority determines that an overpayment is recoverable in accordance with Part XIII of the Housing Benefit Regulations or excess benefit is recoverable in acordance with Part XI of the Council Tax Benefit Regulations; or

(e) a landlord or agent acting on behalf of that landlord and that decision is made under regulation 93 (circumstances in which payment is to be made to a landlord) or 94 (circumstances in which payment may be made to a landlord) of the Housing Benefit Regulations.

(2) Paragraph (1) only applies in relation to a person referred to in paragraph (1) where the rights, duties or obligations of that person are affected by a relevant decision.

PART II

REVISIONS AND SUPERSESSIONS

Revision of decisions

4.—(1) Subject to the provisions in this regulation, a relevant decision ("the original decision") may be revised or further revised by the relevant authority which made the decision where—

(a) the person affected makes an application for a revision within—

(i) one month of the date of notification of the original decision; or

(ii) such extended time as the relevant authority may allow under regulation 5;

(**13**) 1971 c. 77.
(**14**) 1985 c. 29.

(b) within one month of the date of notification of the original decision that authority has information which is sufficient to show that the original decision was made in ignorance of, or was based upon a mistake as to, some material fact; or

(c) an appeal is made under paragraph 6 of Schedule 7 to the Act against the original decision within the time prescribed in regulation 18 or, in a case to which regulation 19 applies the time prescribed in that regulation, but the appeal has not been determined.

(2) An original decision may be revised or further revised by the relevant authority which made the decision, at any time by that authority, where that decision—

(a) arose from an official error; or

(b) was made in ignorance of, or was based upon a mistake as to, some material fact and as a result of that ignorance of or mistake as to that fact, the decision was more advantageous to the person affected than it would otherwise have been but for that ignorance or mistake.

(3) Notwithstanding the provisions in paragraph (1), a relevant decision which adopts a rent officer's determination may be revised or further revised by the relevant authority which made the decision at any time in consequence of a rent officer's redetermination, substitute determination or substitute redetermination made under the Rent Officers (Housing Benefit Functions) Order 1997(**15**) or the Rent Officers (Housing Benefit Functions) (Scotland) Order 1997(**16**) which resulted in an increase in the amount which represents the rent for the purposes of calculating entitlement to benefit.

(4) For the purposes of calculating the period in paragraph (1)(a)(i), where a written statement is requested under regulation 10, no account shall be taken of any period beginning with the day on which the relevant authority received the request for a statement and ending with the day on which that statement was provided to that person.

(5) Where the relevant authority requires further evidence or information in order to consider all the issues raised by an application under paragraph (1)(a) ("the original application"), that authority shall notify the applicant that further evidence or information is required and, if it does so, the decision may be revised—

(a) where the evidence or information so requested is provided within one month of the date of the notification or such longer period as the relevant authority may allow; or

(b) where such evidence or information is not provided within the period referred to in sub-paragraph (a), on the basis of the original application.

(6) A relevant decision that is prescribed under paragraph 6(2)(e) or (4)(a) of Schedule 7 to the Act may be revised at any time.

(7) A relevant decision made in respect of a claim or an award may be revised where—

(a) a decision in respect of that claim or that award is given by an appeal tribunal, Commissioner or court on appeal against a decision ("decision A");

(b) the relevant decision was made after decision A; and

(c) the relevant decision would have been made differently had the relevant authority been aware of that appeal decision at the time it made the relevant decision.

(8) An application for a revision shall be made in writing and delivered, by whatever means, to the relevant authority or, in a case to which the Work-focused Interviews Regulations apply, either to the relevant authority or to an office of a designated authority which displays the ONE logo(**17**).

(**15**) S.I. 1997/1984, amended by S.I. 2000/1.
(**16**) S.I. 1997/1995, amended by S.I. 2000/3.
(**17**) Offices displaying the "ONE" logo are identified in a list entitled "ONE sites – a complete list" available from the Department of Social Security, WtWs, 2nd Floor, Adelphi, London WC2N 6HT.