STATUTORY RULES OF NORTHERN IRELAND

2007 No. 146

SOCIAL SECURITY

The Social Security and Child Support Commissioners (Procedure) (Amendment) Regulations (Northern Ireland) 2007

Made - - - -	*7th March 2007*
To be laid before Parliament	
Coming into operation	*31st March 2007*

The Lord Chancellor, in exercise of the powers conferred by the provisions set out in the Schedule to these Regulations makes the following Regulations.

Citation, commencement and duration

1.—(1) These Regulations may be cited as the Social Security and Child Support Commissioners (Procedure) (Amendment) Regulations (Northern Ireland) 2007 and shall come into operation on 31st March 2007.

(2) Regulation 4 of 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(**1**) (*Tax credit appeals etc: temporary modifications*).

Amendments to the Social Security Commissioners (Procedure) Regulations (Northern Ireland) 1999(2)

2.—(1) The Social Security Commissioners (Procedure) Regulations (Northern Ireland) 1999 shall be amended in accordance with this regulation.

(2) In the Arrangement of Regulations after the entry for regulation 8 insert—

"**8A.** Legal Aid".

(3) In regulation 4 (*Interpretation*)—

(a) at the beginning insert "– (1)";

(b) after the definition of "the Order" insert—

""the 2000 Act" means the Child Support, Pensions and Social Security Act (Northern Ireland) 2000;";

(**1**) 2002 (c. 21)
(**2**) **S.R. 1999 No. 225**

(c) after the definition of "authorised officer" insert—

""the Board" means the Commissioners for Her Majesty's Revenue and Customs;";

(d) in the definition of "the chairman", in paragraph (ii) after "Article 15 of the Order" insert "or paragraph 8 of Schedule 7 to the 2000 Act;";

(e) after the definition of "the chairman" insert—

""child benefit" means child benefit under Part 9 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**3**);";

(f) for the definition of "the Department" substitute—

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

(g) after the definition of "forfeiture rule question" insert—

""funding notice" means the approval letter or civil aid certificate from the Northern Ireland Legal Services Commission confirming that assistance by way of representation (ABWOR) or legal aid has been granted;";

""guardian's allowance" means guardian's allowance under section 77 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992;";

(h) after the definition of "legally qualified" insert—

""live television link" means a television link or other audio and video 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 all others who are present (whether physically present or otherwise);";

(i) after the definition of "month" insert—

""Northern Ireland Legal Services Commission" means the Northern Ireland Legal Services Commission established under Article 3 of the Access to Justice (Northern Ireland) Order 2003(**4**);";

(j) after the definition of "party" insert—

""person affected" means, subject to paragraph (2), a person who is a person affected under regulation 3 of the Housing Benefit (Decisions and Appeals) Regulations (Northern Ireland) 2001(**5**) provided that he is an appellant against the appeal tribunal's decision or was a party to the appeal tribunal proceedings;";

(k) after the definition of "proceedings" insert—

""relevant authority" has the same meaning as in paragraph 1(1) of Schedule 7 to the 2000 Act;";

(l) for the definition of "respondent" substitute—

""respondent" means—

(i) any person or organisation other than the applicant, appellant or person making the reference who is one of the principal parties as defined in Article 14 of the Order,

(ii) any other person taking part in the proceedings in accordance with Article 15 of the Order or as a person affected or as a relevant authority or at the direction or with the leave of the Commissioner,

(**3**) 1992 c.7; to which relevant amendments have been made by sections 49 and 50 of the Tax Credits Act 2002 c.21.
(**4**) S.I. 2003/ 435 (N.I.10).
(**5**) S.R. 2001 No. 213.

(iii) the Department in any case where it is not otherwise a respondent and has given notice to the Commissioner of its wish to be joined as a party to the proceedings."; and

(m) after the definition of "respondent" insert—

"(2) For the purpose of paragraph 8(2)(c) of Schedule 7 to the 2000 Act "person affected" shall be construed in accordance with regulation 3 of the Housing Benefit (Decisions and Appeals) Regulations (Northern Ireland) 2001 and for the purpose of paragraph 8(3) of Schedule 7 to the 2000 Act "person affected" shall have the meaning given in paragraph (1).".

(4) In regulation 8 (*Manner of and time for service of notices, etc*)—

(a) after paragraph (1)(b) insert—

"(ba) subject to paragraph (1A), sent by e-mail; or";

(b) after paragraph (1) insert—

"(1A) A document may be served by e-mail on any party if the recipient has informed the person sending the e-mail in writing—

(a) that he is willing to accept service by e-mail;

(b) of the e-mail address to which the documents should be sent; and

(c) if the recipient wishes to so specify, the electronic format in which the documents must be sent."; and

(c) in paragraph (2) for "delivered or sent to the office" substitute—

"—

(a) delivered to the office in person;

(b) sent to the office by prepaid post;

(c) sent to the office by fax; or

(d) where the office has given written permission in advance, sent to the office by e-mail.".

(5) After regulation 8 insert—

"**Legal Aid**

8A. If a party is granted assistance by way of representation or legal aid, at any time, he shall—

(a) where funding is granted by the Northern Ireland Legal Services Commission, send a copy of the funding notice to the office; and

(b) notify every other party that it has been granted.".

(6) In regulation 10 (*Notice of application to a Commissioner for leave to appeal*), in paragraph (3) for "by the Department, the Department" substitute "by the Department, a relevant authority or the Board, the applicant".

(7) In regulation 14 *(References under the Forfeiture (Northern Ireland) Order 1982*)—

(a) for paragraph (2) substitute—

"(2) Where a forfeiture rule question arises,

(a) the relevant authority, in cases concerning housing benefit;

(b) the Board in cases concerning child benefit or guardian's allowance; or

(c) the Department in any other case,

shall refer that question to a Commissioner to determine, and shall notify the person in relation to whom the question arises that such a reference has been made."; and

(b) in paragraph (3)—

(i) for "The reference shall" substitute "A reference under this regulation or under regulation 15(2) shall"; and

(ii) in sub-paragraph (c) after "the Department" insert "or the relevant authority or the Board'".

(8) In regulation 15 (*Further provisions relating to references under the Forfeiture (Northern Ireland) Order 1982*)—

(a) in paragraph (1)—

(i) after "Article 16(7) of the Order" insert "and paragraph 10(5) of Schedule 7 to the 2000 Act"; and

(ii) for "in relation to an appeal under the Order" substitute "in relation to an appeal under either the Order or the 2000 Act"; and

(b) for paragraph (2) substitute—

"(2) Where the party who referred the forfeiture rule question to a Commissioner under regulation 14(2)—

(a) considers that the decision should be superseded; or

(b) has received a written application for supersession from the person in relation to whom the decision was made,

that party shall refer the decision to a Commissioner to determine whether it should be superseded, and shall notify the person to whom the forfeiture rule question relates that the reference has been made.

(3) A Commissioner may supersede any decision on a forfeiture rule question, whether as originally made or as superseded, if—

(a) the decision was erroneous in point of law;

(b) the decision was made in ignorance of, or was based on a mistake as to, some material fact; or

(c) there has been a relevant change in circumstances since the decision was made.

(4) A determination by a Commissioner under this regulation shall take effect from the date on which it is made, or from such other date as a Commissioner may direct.".

(9) In regulation 18 (*Respondent's written observations*), after paragraph (3) insert—

"(4) Where there is more than one respondent, the order of, and time for, written observations shall be as directed by a Commissioner under regulation 20.".

(10) In regulation 19 (*Written observations in reply*), in paragraph (3)—

(a) omit "from the respondent"; and

(b) after "Article 15(7) of the Order", insert "or paragraph 8(3) of Schedule 7 to the 2000 Act".

(11) In regulation 24 (*Hearings*)—

(a) in paragraph (6)—

(i) omit sub-paragraph (e);

(ii) in sub-paragraph (f) for "section 69 or 72" substitute "section 69, 72 or 73" and at the end of the sub-paragraph omit "and";

(iii) after sub-paragraph (f) insert—

"(ff) in cases concerning housing benefit, the relevant authority and any person affected; and"; and

(b) after paragraph (6) insert—

"(6A) Subject to the direction of a Commissioner—

(a) any person or organisation entitled to be present and be heard at a hearing; and

(b) any representative of such a person or organisation,

may be present by means of a live television link.

(6B) Any provision in these Regulations which refers to a party or representative being present is satisfied if the party or representative is present by means of a live television link.".

(12) In regulation 28 (*Determinations and decisions of a Commissioner*), in paragraph (2) after "Article 15(7) of the Order" insert "or paragraph 8(3) of Schedule 7 to the 2000 Act".

(13) In regulation 29 (*Procedure after determination of a forfeiture rule question*) after "the Department" insert "the relevant authority or the Board".

(14) In regulation 31 (*Setting aside decisions on certain grounds*), in paragraph (1)—

(a) at the end of sub-paragraph (b) omit "or"; and

(b) omit sub-paragraph (c).

(15) In regulation 32 (*Provisions common to regulations 31 and 32*), in paragraph (1) after "Article 15(7) of the Order" insert "or paragraph 8(3) of Schedule 7 to the 2000 Act".

(16) In regulation 33 (*Application to a Commissioner for leave to appeal to the Appellate Court*) —

(a) in paragraph (1) after "section 22 of the Administration Act" insert "or paragraph 9 of Schedule 7 to the 2000 Act";

(b) for paragraph (2) substitute—

"(2) Where—

(a) any decision or record of a decision is corrected under regulation 30; or

(b) an application for a decision to be set aside under regulation 31 is refused for reasons other than that the application was made outside the period specified in regulation 31(2),

the period specified in paragraph (1) shall run from the date on which written notice of the correction or refusal of the application to set aside is sent to the applicant.";

(c) in paragraph (3)—

(i) after "Social Security (Claims and Payments) Regulations (Northern Ireland) 1987" insert "and regulation 80(2) to (6) of the Housing Benefit Regulations (Northern Ireland) 2006 (**6**) and regulation 61(2) to (6) of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006(**7**)";

(ii) after "section 22 of the Administration Act" insert "and paragraph 9 of Schedule 7 to the 2000 Act"; and

(iii) for "as it applies" substitute "as they apply"; and

(**6**) S.R. 2006 No. 405.
(**7**) S.R. 2006 No. 406