STATUTORY RULES OF NORTHERN IRELAND

2004 No. 516

SOCIAL SECURITY
FAMILY LAW
CHILD SUPPORT

The Social Security, Child Support and Tax Credits (Decisions and Appeals) (Amendment) Regulations (Northern Ireland) 2004

Made - - - -	*20th December 2004*
Coming into operation	*21st December 2004*

The Department for Social Development, in exercise of the powers conferred by Article 22(4) to (6) of the Child Support (Northern Ireland) Order 1991(**1**), sections 5(1)(a) and (h) and 165(1), (4) and (6) of the Social Security Administration (Northern Ireland) Act 1992(**2**), Article 13(5) of the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997(**3**), Articles 8(6)(a), 13(2), 16(1) and 74(1), (3), (5) and (6) of, and paragraph 9 of Schedule 2 and paragraphs 1 to 4 of Schedule 4 to, the Social Security (Northern Ireland) Order 1998(**4**), and now vested in it(**5**) and paragraphs 6(2)(c), 10(1) and 20(1)(b) and (3) of Schedule 7 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000(**6**), and of all other powers enabling it in that behalf, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Social Security, Child Support and Tax Credits (Decisions and Appeals) (Amendment) Regulations (Northern Ireland) 2004 and shall come into operation on 21st December 2004.

(**1**) S.I. 1991/2628 (N.I. 23); Article 22 was substituted by Article 42 of the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10)) and is substituted by section 10 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4)

(**2**) 1992 c. 8; section 165(1) was amended by paragraph 49(2) of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671)

(**3**) S.I. 1997/1183 (N.I. 12)

(**4**) S.I. 1998/1506 (N.I. 10); Article 13(2) was substituted by paragraph 19(3) of Schedule 6 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 and Article 74(1) was amended by paragraph 17(2) of Schedule 4 to the Tax Credits Act 2002 (c. 21). The powers in Chapter II of Part II, exercised in these Regulations in respect of tax credits, are applied and modified under section 63(8) of the Tax Credits Act 2002 by S.I. 2002/2926

(**5**) *See* Article 8(b) of S.R. 1999 No. 481

(**6**) 2000 c. 4

Amendment of the Housing Benefit (General) Regulations

2.—(1) The Housing Benefit (General) Regulations (Northern Ireland) 1987(**7**) shall be amended in accordance with paragraphs (2) and (3).

(2) In regulation 72 (time and manner in which claims are to be made) –

(a) in paragraph (1)(**8**) for "and be accompanied by or supplemented by such certificates, documents, information and evidence as are required in accordance with regulation 73(1) (evidence and information) or paragraph 5 of Schedule A1 (treatment of claims for housing benefit by refugees)" there shall be substituted "having regard to the sufficiency of the written information and evidence";

(b) in paragraph (7)(**9**) –

(i) in sub-paragraph (a) for "in a written form sufficient in the circumstances of the case" there shall be substituted "properly completed",

(ii) in sub-paragraph (b) at the end there shall be added "having regard to the sufficiency of the written information and evidence",

(iii) for "refer the defective claim to the claimant" there shall be substituted "request the claimant to complete the defective claim", and

(iv) at the end there shall be added "or request further information or evidence";

(c) for paragraph (8) there shall be substituted the following paragraph –

"(8) The relevant authority shall treat a defective claim as if it had been validly made in the first instance if –

(a) where paragraph (7)(a) applies, the authority receives at the designated office the properly completed claim or the information requested to complete it within 4 weeks of the request to complete, or such longer period as the relevant authority may consider reasonable; or

(b) where paragraph (7)(b) applies –

(i) the approved form sent to the claimant is received at the designated office properly completed within 4 weeks of it having been sent to him; or, as the case may be,

(ii) the claimant supplies whatever information or evidence was requested under paragraph (7) within 4 weeks of the request,

or within such longer period as the relevant authority may consider reasonable."; and

(d) in paragraph (9) at the end there shall be added ", including any instructions to provide information and evidence in connection with the claim".

(3) In regulation 76 (who is to make a decision) for the heading and paragraphs (1) to (3)(**10**) there shall be substituted –

"**Decisions by a relevant authority**

76.—(1) Unless provided otherwise by these Regulations, any matter required to be determined under these Regulations shall be determined in the first instance by the relevant authority.

(**7**) S.R. 1987 No. 461; relevant amending regulations are S.R. 1996 No. 448, S.R. 2001 No. 215 and S.R. 2004 No. 144
(**8**) Paragraph (1) was amended by regulation 7(d) of S.R. 1996 No. 448 and regulation 3(1) of S.R. 2001 No. 215
(**9**) Paragraphs (7) and (8) were amended by regulation 3(1) of S.R. 2001 No. 215
(**10**) Regulation 76(1) to (3) was amended by regulation 7(f) of S.R. 1996 No. 448, regulations 3(1) and 4(j) of S.R. 2001 No. 215 and regulation 16(a) of S.R. 2004 No. 144

(2) The relevant authority shall make a decision on each claim within 14 days of the provisions of regulations 72 and 73 being satisfied or as soon as reasonably practicable thereafter.".

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

3.—(1) The Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999(**11**) shall be amended in accordance with paragraphs (2) to (9).

(2) In regulation 1(2) (interpretation) the definition of "misconceived appeal" shall be omitted.

(3) In regulation 25(**12**) (other persons with a right of appeal) for "Article 13(2)(b)" there shall be substituted "Article 13(2)".

(4) In regulation 36(**13**) (composition of appeal tribunals) –

(a) in paragraph (2) for ", (8) and (9)" there shall be substituted "and (8)";

(b) in paragraph (5) for ", (3) or (9)" there shall be substituted "or (3)"; and

(c) paragraph (9) shall be omitted.

(5) In regulation 39 (directions concerning oral hearings) for the heading and paragraphs (1) to (4) there shall be substituted –

"**Choice of hearing**

39.—(1) Where an appeal or a referral is made to an appeal tribunal the appellant and any other party to the proceedings shall notify the clerk to the appeal tribunal, on a form approved by the Department, whether he wishes to have an oral hearing of the appeal or whether he is content for the appeal or referral to proceed without an oral hearing.

(2) Except in the case of a referral, the form shall include a statement informing the appellant that, if he does not notify the clerk to the appeal tribunal as required by paragraph (1) within the period specified in paragraph (3), the appeal may be struck out in accordance with regulation 46(1).

(3) Notification in accordance with paragraph (1) –

(a) if given by the appellant or a party to the proceedings other than the Department, must be sent or given to the clerk to the appeal tribunal within 14 days of the date on which the form is issued to him; or

(b) if given by the Department, must be sent or given to the clerk to the appeal tribunal –

(i) in the case of an appeal, within 14 days of the date on which the form is issued to the appellant, or

(ii) in the case of a referral, on the date of referral,

or within such longer period as the clerk may direct.

(4) Where an oral hearing is requested in accordance with paragraphs (1) and (3) the appeal tribunal shall hold an oral hearing unless the appeal is struck out under regulation 46(1).".

(6) In regulation 46 (appeals which may be struck out) –

(a) in paragraph (1) –

(i) the word "or" after sub-paragraph (b) shall be omitted,

(**11**) S.R. 1999 No. 162; relevant amending regulations are S.R. 1999 Nos. 242 and 473, S.R. 2000 No. 215, S.R. 2002 No. 189 and S.R. 2003 No. 312

(**12**) Regulation 25 was amended by regulation 2(7) of S.R. 2002 No. 189

(**13**) Regulation 36 was amended by regulation 2 of S.R. 1999 No. 242, regulation 2(4) of S.R. 1999 No. 473 and regulation 6(11) of S.R. 2000 No. 215

(ii) in sub-paragraph (c) the words "subject to regulation 39(2)," shall be omitted, and

(iii) after sub-paragraph (c) there shall be added – "or

(d) for failure of the appellant to notify the clerk to the appeal tribunal, in accordance with regulation 39, whether or not he wishes to have an oral hearing of his appeal."; and

(b) paragraph (4) shall be omitted.

(7) In regulation 47(**14**) (reinstatement of struck out appeals) –

(a) in paragraph (1) for "46(1)(c)" there shall be substituted "46(1)(d)"; and

(b) in paragraph (2) –

(i) the words "or 48", and

(ii) sub-paragraph (b),

shall be omitted.

(8) Regulation 48 (misconceived appeals) shall be omitted.

(9) In Schedule 1 (decisions against which no appeal lies) in paragraph 5(**15**) (claims and payments) –

(a) for sub-paragraph (a) there shall be substituted the following sub-paragraph –

"(a) regulation 4(3) or (3B) (as to which partner should make a claim for income support or jobseeker's allowance);";

(b) sub-paragraphs (b) and (c) shall be omitted; and

(c) for sub-paragraph (bb)(**16**) there shall be substituted the following sub-paragraph –

"(bb) regulation 4C(7) (as to which partner should make a claim for state pension credit);".

Amendment of the Housing Benefit (Decisions and Appeals) Regulations

4.—(1) The Housing Benefit (Decisions and Appeals) Regulations (Northern Ireland) 2001(**17**) shall be amended in accordance with paragraphs (2) to (4).

(2) In regulation 22 (composition of appeal tribunals) paragraph (3) shall be omitted.

(3) In regulation 23 (procedure in connection with appeals) –

(a) in paragraph (1)(**18**) for "amended by the Social Security and Child Support (Decisions and Appeals) (Miscellaneous Amendments) Regulations (Northern Ireland) 2002" there shall be substituted "amended by the Social Security, Child Support and Tax Credits (Decisions and Appeals) (Amendment) Regulations (Northern Ireland) 2004"; and

(b) in paragraph (3)(a) after "except in regulations" there shall be inserted "39(1) (choice of hearing),".

(4) In paragraph 1 of the Schedule (decisions against which no appeal lies) for sub-paragraph (a) there shall be substituted the following sub-paragraph –

"(a) regulations 72 (time and manner in which claims are to be made) and 72A(1) and (4) (date of claim);".

(**14**) Regulation 47 was amended by regulation 6(13) of S.R. 2000 No. 215 and regulation 2(12) of S.R. 2002 No. 189
(**15**) Paragraph 5 was substituted by regulation 2(20) of S.R. 2002 No. 189 and amended by regulation 2 of S.R. 2003 No. 312
(**16**) Sub-paragraph (bb) was inserted by regulation 2(a) of S.R. 2003 No. 312
(**17**) S.R. 2001 No. 213; relevant amending regulations are S.R. 2002 No. 189
(**18**) Paragraph (1) was amended by regulation 3(7)(a) of S.R. 2002 No. 189