STATUTORY RULES OF NORTHERN IRELAND

2002 No. 403

SOCIAL SECURITY

The Tax Credits (Appeals) Regulations (Northern Ireland) 2002

Made - - - - 19th December 2002

Coming into operation 1st January 2003

The Department for Social Development, in exercise of the powers conferred by Articles 8(6), 13(1) and (7), 15(10) and (11), 16(1), 28(1) and 74(1) and (3) to (6) of, and paragraphs 11 and 12 of Schedule 1 and Schedule 4 to the Social Security (Northern Ireland) Order 1998(**1**), and now vested in it(**2**), and all other powers enabling it in that behalf, hereby makes the following Regulations:

PART I

GENERAL

Citation, commencement, duration and interpretation

1.—(1) These Regulations may be cited as the Tax Credits (Appeals) Regulations (Northern Ireland) 2002 and shall come into operation 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 Act (tax credits appeals etc.: temporary modifications).

(3) In these Regulations–

"the Act" means the Tax Credits Act 2002(**3**);

"the Order" means the Social Security (Northern Ireland) Order 1998;

"the Appeals Regulations" means the Tax Credits (Appeals) Regulations 2002(**4**);

"the Decisions and Appeals Regulations" means the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999(**5**);

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

(**1**) S.I.1998/1506 (N.I. 10); the powers in Chapter II of Part II, exercised in these regulations, are applied and modified under section 63(8) of the Tax Credits Act 2002 (c. 21) by S.I. 2002/2926
(**2**) *See* Article 8(b) of S.R. 1999 No. 481
(**3**) 2002 c. 21
(**4**) S.I. 2002/2926
(**5**) S.R. 1999 No. 162

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

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

"clerk to the appeal tribunal" means a clerk assigned to an 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 England and Wales, 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 given under section 23(2) of the Act; or

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

"decision", for the purposes of Chapter V of Part III, means–

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

(b) a direction under section 19(10) of the Act 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 3 of Schedule 2 to the Decisions and Appeals Regulations(**6**);

"joint claim" means a claim made under section 3(3)(a) of the 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 2 to the Decisions and Appeals Regulations;

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

"panel" means the panel constituted under Article 7 of the Order;

"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 4 of Schedule 2 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 Act;

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

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

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

(**6**) Paragraph 3 was amended by regulation 2(21) of S.R. 2002 No. 189

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

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

"President" means the President of appeal tribunals appointed under Article 6 of the Order;

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

"tax credit" means child tax credit or working tax credit, construing those terms in accordance with section 1(1) and (2) of the 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 II

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 Article 13(1) of the Order (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

(b) a person is the person in respect of whom an enquiry has been initiated under section 19(1) of the 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 controller appointed by the High Court with power to make a claim for a tax credit on behalf of the person,

(ii) a person appointed under regulation 33(1) of the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(**7**) (persons unable to act),

(iii) where there is no person mentioned in sub-paragraph (ii) 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 an individual, is aged 18 years or more and who has been so appointed by the Board for the purposes of this sub-paragraph.

(**7**) S.R. 1987 No. 465

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 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 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 expiry of the last day for appealing under section 39(1) of the 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 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 legally qualified panel member is satisfied that, if the application is granted, there are reasonable prospects that the appeal will be successful; or

(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.

(5) For the purposes of paragraph (4) it is not in the interests of justice to grant an application unless the legally qualified 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,

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 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 expiry of the time within which the appeal is to be brought under section 39(1) of the 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 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 legally qualified 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.

(12) In this regulation "Commissioner" includes a Commissioner within the meaning of section 39(1) of the Social Security Act 1998(**8**).

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 the 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 appellant.

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–

(a) where the proceedings are in relation to a single claim, the personal representatives of the person who has died;

(b) where the proceedings are in relation to a joint claim, where only one of the persons by whom the claim was made has died, the other person with whom the claim was made;

(c) where the proceedings are in relation to a joint claim where both the persons by whom the claim was made have died, the personal representatives of the last of them to die;

(d) for the purposes of sub-paragraph (c), where persons have died in circumstances rendering it uncertain which of them survived the other–

(i) their deaths shall be presumed to have occurred in order of seniority, and

(ii) the younger shall be treated as having survived the elder.

(**8**) 1998 c. 14