Regulations made by the Department for Social Development and laid before the Assembly under Article 75(1) of the Social Security (Northern Ireland) Order 1998 for approval of the Assembly before the expiration of six months from the date of their coming into operation

STATUTORY RULES OF NORTHERN IRELAND

2002 No. 189

SOCIAL SECURITY
HOUSING; RATES
FAMILY LAW
CHILD SUPPORT

The Social Security and Child Support (Decisions and Appeals) (Miscellaneous Amendments) Regulations (Northern Ireland) 2002

Made - - - -	*16th May 2002*
Coming into operation	*20th May 2002*

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**), Article 32 of, and paragraph 4 of Schedule 1 to, the Jobseekers (Northern Ireland) Order 1995(**2**), Article 13(5)(a) and (b) of the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997(**3**), Articles 7(3), 10(1), 11A(1), 13(2) and (7), 15(11), 16(1), 24A(1) and (2)(a), 28(1) and 74(1), (3), (5) and (6) of, and paragraph 12(1) of Schedule 1, paragraph 9 of Schedule 2 and paragraphs 1 to 4, 6 and 7 of Schedule 4 to, the Social Security (Northern Ireland) Order 1998(**4**), and now vested in it(**5**), and paragraphs 3(1), 6(7) and (8), 10(1), 19(1) and 20(1) 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, with the concurrence of the Lord Chancellor in so far as the Regulations are made under Article 7(3) of the Social Security (Northern Ireland) Order 1998, hereby makes the following Regulations:

(**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))
(**2**) S.I. 1995/2705 (N.I. 15); Article 32 was amended by paragraph 112 of Schedule 6 to the Social Security (Northern Ireland) Order 1998 and paragraph 15 of Schedule 7 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11))
(**3**) S.I. 1997/1183 (N.I. 12)
(**4**) S.I. 1998 No. 1506 (N.I. 10); Articles 11A and 24A were inserted respectively by paragraphs 18 and 27 of Schedule 6 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671) and Article13(2) was substituted by paragraph 19(3) of that Schedule
(**5**) *See* Article 8(b) of S.R. 1999 No. 481
(**6**) 2000 c. 4 (N.I.)

Citation and commencement

1. These Regulations may be cited as the Social Security and Child Support (Decisions and Appeals) (Miscellaneous Amendments) Regulations (Northern Ireland) 2002 and shall come into operation on 20th May 2002.

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

2.—(1) The Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999(**7**) shall be amended in accordance with paragraphs (2) to (21).

(2) In regulation 1(2) (interpretation)—

(a) in the definition of "official error"(**8**) for paragraph (a) there shall be substituted the following paragraph—

"(a) an officer of the Department acting as such which no person outside the Department caused or to which no person outside the Department materially contributed;"; and

(b) after the definition of "panel member with a disability qualification" there shall be inserted the following definition—

""partner" means—

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

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

(3) In regulation 3 (revision of decisions)—

(a) in paragraph (1)(**9**) for sub-paragraphs (a) and (b) there shall be substituted the following sub-paragraphs—

"(a) it commences action leading to the revision within one month of the date of notification of the original decision; or

(b) an application for a revision is received by it at the appropriate office—

(i) subject to regulation 9A(3), within one month of the date of notification of the original decision,

(ii) where a written statement is requested under regulation 28(1)(b) and is provided within the period specified in head (i), within 14 days of the expiry of that period,

(iii) where a written statement is requested under regulation 28(1)(b) and is provided after the period specified in head (i), within 14 days of the date on which the statement is provided, or

(iv) within such longer period as may be allowed under regulation 4.";

(b) after paragraph (4) there shall be inserted the following paragraph—

"(4A) Where there is an appeal against an original decision within the time prescribed in regulation 31 or, in a case to which regulation 32 applies, within the time prescribed in that regulation, but the appeal has not been determined, the original decision may be revised at any time.";

(**7**) S.R. 1999 No. 162; relevant amending regulations are S.R. 1999 Nos. 272 and 408, S.R. 2000 No. 215 and S.R. 2001 No. 176
(**8**) The definition of "official error" was substituted by paragraph 2(b) of Schedule 4 to S.R. 2001 No. 176
(**9**) Paragraph (1) was amended by regulation 3(2)(a) of S.R. 1999 No. 408

(c) after paragraph (5) there shall be inserted the following paragraph—

"(5A) Where—

(a) the Department makes a decision under Article 9 or 11, or that decision is revised under Article 10, in respect of a claim or award ("decision A") and the claimant appeals against decision A;

(b) decision A is superseded or the claimant makes a further claim which is decided ("decision B") after he made the appeal but before the appeal results in a decision by an appeal tribunal ("decision C"); and

(c) the Department would have made decision B differently if it had been aware of decision C at the time it made decision B,

decision B may be revised at any time."; and

(d) after paragraph (7)(**10**) there shall be inserted the following paragraph—

"(7A) Where a decision as to a claimant's entitlement to a disablement pension under section 103 of the Contributions and Benefits Act is revised by the Department, or changed on appeal, a decision of the Department as to the claimant's entitlement to reduced earnings allowance under paragraph 11 or 12 of Schedule 7 to that Act may be revised at any time provided that the revised decision is more advantageous to the claimant than the original decision.".

(4) After regulation 9 (certificates of recoverable benefits) there shall be inserted the following regulation—

"**Correction of accidental errors**

9A.—(1) Accidental errors in a decision of the Department under a relevant statutory provision within the meaning of Article 28(3), or in the record of such a decision, may be corrected by the Department at any time.

(2) A correction made to, or to the record of, a decision shall be deemed to be part of that decision, or of that record, and the Department shall give a written notice of the correction to the claimant as soon as practicable.

(3) In calculating the time within which an application can be made under regulation 3(1)(b) for a decision to be revised, or the time within which an appeal may be brought under regulation 31(1), there shall be disregarded any day falling before the date on which notice was given of a correction of the decision, or to the record thereof, under paragraph (2).".

(5) In regulation 11A(2)(**11**) (issues for decision by officers of the Inland Revenue)—

(a) in sub-paragraph (b) after "supersession" there shall be inserted "or an appeal"; and

(b) in sub-paragraph (c) for "consideration of the application" there shall be substituted "receipt of the application or appeal".

(6) After regulation 14 (effect of alteration in the component rates of income support and jobseeker's allowance) there shall be inserted the following regulation—

"**Termination of award of income support or jobseeker's allowance**

14A.—(1) This regulation applies in a case where an award of income support or a jobseeker's allowance ("the existing benefit") exists in favour of a person and, if that award did not exist and a claim was made by that person or his partner for a jobseeker's allowance

(**10**) Paragraph (7) was substituted by regulation 6(3) of S.R. 2000 No. 215
(**11**) Regulation 11A was inserted by regulation 2(3) of S.R. 1999 No. 272

or, as the case may be, income support ("the alternative benefit"), an award of the alternative benefit would be made on that claim.

(2) In a case to which this regulation applies, if a claim for the alternative benefit is made, the Department may bring to an end the award of the existing benefit if it is satisfied that an award of the alternative benefit will be made on that claim.

(3) Where the Department brings an award of the existing benefit to an end, it shall do so with effect from the day preceding the first day on which an award of the alternative benefit takes effect.

(4) Where an award of a jobseeker's allowance is made in accordance with the provisions of this regulation, paragraph 4 of Schedule 1 to the Jobseekers Order shall not apply.".

(7) In regulation 25 (other persons with a right of appeal) for paragraph (a) there shall be substituted the following paragraph—

"(a) any person appointed by the Department—

(i) under regulation 30(1) of the Claims and Payments Regulations to proceed with the claim of a person who has made a claim for benefit and subsequently died,

(ii) to claim benefit on behalf of a deceased person and who makes a claim under regulation 30(5) and (6)(**12**) of those Regulations,

(iii) to claim reduced earnings allowance or disablement benefit on behalf of a deceased person and who makes a claim under regulation 30(6A) and (6B)(**13**) of those Regulations, and

(iv) under regulation 33(1) of those Regulations to act on behalf of another;".

(8) In regulation 31(1) (time within which appeals are to be brought) for sub-paragraphs (a) and (b) there shall be substituted the following sub-paragraphs—

"(a) subject to regulation 9A(3), one month of the date of notification of the decision against which the appeal is brought;

(b) where a written statement of the reasons for that decision is requested and is provided within the period specified in sub-paragraph (a), 14 days of the expiry of that period; or

(c) where a written statement of the reasons for that decision is requested and is provided after the period specified in sub-paragraph (a), 14 days of the date on which the statement is provided.".

(9) In regulation 32 (late appeals)—

(a) in paragraph (2) at the end there shall be added ", except where the Department considers that the conditions in paragraphs (4)(b) to (8) are satisfied, it may grant the application";

(b) for paragraph (4) there shall be substituted the following paragraph—

"(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 or, as the case may be, the Department is satisfied that it is in the interests of justice for the application to be granted.";

(c) in paragraph (5)—

(**12**) Paragraph (5) was amended by regulation 3(6) of S.R. 1988 No. 369, regulation 7(5)(a) of S.R. 1990 No. 398, regulation 15 of S.R. 1992 No. 7 and regulation 2(15) of S.R. 1996 No. 354 and paragraph (6) was amended by regulation 3(7)(a) of S.R. 1993 No. 375

(**13**) Paragraphs (6A) and (6B) were inserted by regulation 7(5)(b) of S.R. 1990 No. 398 and paragraph (6B) was amended by regulation 3(7)(a) of S.R. 1993 No. 375 and regulation 2(5) of S.R. 1994 No. 345

(i) after "panel member" there shall be inserted "or, as the case may be, the Department", and

(ii) for "application to be made" there shall be substituted "appeal to be made";

(d) in paragraph (6)(a) for "spouse" there shall be substituted "partner"; and

(e) in paragraph (7) for "the legally qualified panel member shall have regard" there shall be substituted "regard shall be had".

(10) In regulation 33 (making of appeals and applications)—

(a) for paragraph (6) there shall be substituted the following paragraph—

"(6) Where a person to whom a form is returned, or from whom further particulars are requested, duly completes and returns the form or sends the further particulars, and the form is, or, as the case may be, the particulars are, received by the Department within—

(a) 14 days of the date on which the form was returned to him by the Department, the time for making the appeal shall be extended by 14 days from the date on which the form was returned;

(b) 14 days of the date on which the Department's request was made, the time for making the appeal shall be extended by 14 days from the date of the request; or

(c) such longer period as the Department may direct, the time for making the appeal shall be extended by a period equal to that longer period directed by the Department."; and

(b) in paragraph (9)(**14**) after "the appellant" there shall be inserted "or an authorised representative of the appellant".

(11) In regulation 38A(1)(**15**) (appeals raising issues for decision by officers of the Inland Revenue)—

(a) for ", on consideration of any appeal, it appears to an appeal tribunal" there shall be substituted "a person has appealed to an appeal tribunal and it appears to the tribunal, or a legally qualified panel member,"; and

(b) after "Board, the tribunal" there shall be inserted "or, as the case may be, the legally qualified panel member".

(12) Regulation 47(**16**) (reinstatement of struck out appeals) shall be renumbered paragraph (2) of regulation 47 and immediately before that paragraph there shall be inserted the following paragraph —

"(1) The clerk to the appeal tribunal may reinstate an appeal which has been struck out in accordance with regulation 46(1)(c) where—

(a) the appellant has made representations or, as the case may be, further representations to him in support of his appeal with reasons why he considers that his appeal should not have been struck out;

(b) the representations are made in writing within one month of the order to strike out the appeal being issued; and

(c) the clerk to the appeal tribunal is satisfied in the light of those representations that there are reasonable grounds for reinstating the appeal,

(**14**) Paragraph (9) was added by regulation 6(10) of S.R. 2000 No. 215
(**15**) Regulation 38A was inserted by regulation 2(4) of S.R. 1999 No. 272
(**16**) Regulation 47 was amended by regulation 6(13) of S.R. 2000 No. 215