STATUTORY RULES OF NORTHERN IRELAND

1999 No. 162

SOCIAL SECURITY
FAMILY LAW
CHILD SUPPORT
PENSIONS

The Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999

Made - - - - 29th March 1999
Coming into operation in accordance with regulation 1(1)

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by Articles 18(6), 22(5) and (6), 28ZA(2)(b) and (4)(c), 28ZB(6)(c), 28ZD, 43B and 47(2) of, and paragraph 8 of Schedule 4A to, the Child Support (Northern Ireland) Order 1991(**1**), sections 5(1)(hh), 139 and 139A of the Social Security Administration (Northern Ireland) Act 1992(**2**)section 165(3) of the Pension Schemes (Northern Ireland) Act 1993(**3**), Articles 12(1) and 13(5) of the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997(**4**) and Articles 7(3), 8(6), 10(1), (4) and (6), 11(3) and (6), 12(1), 13(2), (3), (6) and (7), 15(10)(a) and (11), 16(1), 17, 18(1), 20, 21(1) to (3), 22 to 24, 25(3)(b) and (5)(c), 26(6)(c), 28(1), 31(2) and 74(1) and (3) to (6) of, and paragraphs 7, 11 and 12 of Schedule 1, paragraph 9 of Schedule 2, paragraphs 1, 4 and 9 of Schedule 3 and Schedule 4 to, the Social Security (Northern Ireland) Order 1998(**5**) and of all other powersenabling 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, by this statutory rule, which contains only regulations made by virtue of, or consequential upon, that Order, hereby makes the following Regulations:

(**1**) S.I.1991/2628 (N.I. 23); Articles 18 and 22 were substituted respectively by Articles 40 and 42 of the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10)); Articles 28ZA and 28ZB were inserted by Article 43 of that Order; Article 28ZD was inserted by Article 44 of that Order; Article 43B was inserted by paragraph 29 of Schedule 6 to that Order; Article 47(2) was amended by paragraph 31 of Schedule 6 to that Order; Schedule 4A was inserted by Schedule 1 to the Child Support (Northern Ireland) Order 1995 (S.I. 1995/2702 (N.I. 13)) and paragraph 8 of that Schedule was amended by paragraph 36(5) of Schedule 6 to the Social Security (Northern Ireland) Order 1998

(**2**) 1992 c. 8; section 5(1)(hh) was inserted by Article 70 of the Social Security (Northern Ireland) Order 1998 and section 139A was inserted by Article 26 of the Jobseekers (Northern Ireland) Order 1995 (S.I. 1995/2705 (N.I. 15))

(**3**) 1993 c. 49; section 165 was substituted by paragraph 99 of Schedule 6 to the Social Security (Northern Ireland) Order 1998

(**4**) S.I. 1997/1183 (N.I. 12); Article 12(1) was substituted by paragraph 120(1) of Schedule 6 to the Social Security (Northern Ireland) Order 1998

(**5**) S.I. 1998/1506 (N.I. 10)

PART I

GENERAL

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999 and shall come into operation—

(a) in so far as they relate to child support and for the purposes of this regulation and regulation 2, on 1st June 1999;

(b) in so far as they relate to—

(i) industrial injuries benefit, guardian's allowance and child benefit, and

(ii) a decision made under the Pension Schemes Act by virtue of section 165(2) of that Act,

on 5th July 1999;

(c) in so far as they relate to retirement pension, widow's benefit, incapacity benefit, severe disablement allowance and maternity allowance, on 6th September 1999;

(d) in so far as they relate to family credit and disability working allowance, on 5th October 1999;

(e) in so far as they relate to attendance allowance, disability living allowance, invalid care allowance, jobseeker's allowance, credits of contributions or earnings and home responsibilities protection, on 18th October 1999; and

(f) for all other purposes, on 29th November 1999.

(2) In these Regulations—

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

"the Pension Schemes Act" means the Pension Schemes (Northern Ireland) Act 1993;

"appeal" means an appeal to an appeal tribunal;

"claimant" means—

(a) any person who is a claimant for the purposes of section 167(1) of the Administration Act or Article 2(2) of the Jobseekers Order or any other person from whom benefit is alleged to be recoverable; and

(b) any person subject to a decision of the Department under the Pension Schemes Act;

"the Claims and Payments Regulations" means the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(**6**);

"clerk to the appeal tribunal" means a clerk assigned to an appeal tribunal in accordance with regulation 37;

"the date of notification" means—

(a) the date on which notification of a decision of the Department is treated as having been given or sent in accordance with regulation 2(b); or

(b) in the case of a social fund payment arising in accordance with regulations made under section 134(2) of the Contributions and Benefits Act—

(**6**) S.R. 1987 No. 465; relevant amending regulations are S.R. 1988 Nos. 67 and 141, S.R. 1989 Nos. 40 and 398, S.R. 1991 No. 488, S.R.1992 Nos. 7, 271 and 453, S.R. 1993 Nos. 146, 149, 217 and 375, S.R. 1994 Nos. 345 and 456, S.R. 1995 No. 301, S.R. 1996 Nos. 85, 354 and 432, S.R. 1997 Nos. 155, 156, 417 and 435 and S.R. 1998 No. 182

(i) the date seven days after the date on which the Department makes its decision to make a payment to a person to meet expenses for heating,

(ii) where a person collects an instrument of payment at a post office, the date on which the instrument is collected,

(iii) where an instrument of payment is sent to a post office for collection but is not collected and a replacement instrument is issued, the date on which the replacement instrument is issued, or

(iv) where a person questions his failure to be awarded a payment for expenses for heating, the date on which the notification of the Department's decision made in response to that question is issued;

"financially qualified panel member" means a panel member who satisfies the requirements of paragraph 3 of Schedule 2;

"the Income Support Regulations" means the Income Support (General) Regulations (Northern Ireland) 1987(**7**);

"the Jobseeker's Allowance Regulations" means the Jobseeker's Allowance Regulations (Northern Ireland) 1996(**8**);

"legally qualified panel member" means a panel member who satisfies the requirements of paragraph 1 of Schedule 2;

"medically qualified panel member" means a panel member who satisfies the requirements of paragraph 2 of Schedule 2;

"misconceived appeal" means an appeal which is—

(a) frivolous or vexatious; or

(b) obviously unsustainable and has no prospect of success,

other than an out of jurisdiction appeal;

"official error" means an error made by 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;

"out of jurisdiction appeal" means an appeal brought against a decision which is specified in Schedule 2 to the Order or a decision prescribed in regulation 27;

"panel" means the panel constituted under Article 7;

"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;

"party to the proceedings" means the Department and any person—

(a) who is one of the principal parties for the purposes of Articles 14 and 15; or

(b) who has a right of appeal to an appeal tribunal under Article 22(1) to (3) of the Child Support Order(**9**) (including that Article as extended by paragraph 3 of Schedule 4C to that Order), Article 13(2) of the Recovery of Benefits Order or Article 13(2) of the Order;

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

(**7**) S.R. 1987 No. 459; relevant amending regulations are S.R. 1988 Nos. 146, 193, 274, 318, 324 and 431, S.R. 1989 Nos. 139 and 395, S.R. 1990 Nos. 131 and 297, S.R. 1991 Nos. 46 and 338, S.R. 1992 Nos. 6 and 403, S.R. 1993 Nos. 149, 218 and 373, S.R. 1994 Nos. 65, 327 and 474, S.R. 1995 Nos. 301, 350 and 434, S.R. 1996 Nos. 93, 199 and 405, S.R. 1997 Nos. 3, 165, 435 and 541, S.R. 1998 Nos. 176, 182 and 324 and S.R. 1999 No. 70

(**8**) S.R. 1996 No. 198; relevant amending regulations are S.R. 1996 Nos. 356. 358, 440 and 503, S.R. 1997 Nos. 165, 435 and 541 and S.R. 1998 Nos. 2, 176, 324 and 421

(**9**) Schedule 4C was inserted by paragraph 37 of Schedule 6 to the Social Security (Northern Ireland) Order 1998

"referral" means a referral of an application for a departure direction to an appeal tribunal under Article 28D(1)(b) of the Child Support Order(**10**).

(3) Any reference in these Regulations to a numbered Article is to the Article of the Order bearing that number.

(4) The Interpretation Act (Northern Ireland) 1954(**11**) shall apply to these Regulations as it applies to a Measure of the Assembly.

Service of notices or documents

2. Where, by any provision of the Order or 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 an officer authorised by the Department, 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, as the case may be, by an officer authorised by the Department; and

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

PART II

REVISIONS, SUPERSESSIONS AND OTHER NOTICES

CHAPTER I

Revisions

Revision of decisions

3.—(1) Subject to the following provisions of this regulation, any decision of the Department under Article 9 or 11 ("the original decision") may be revised by the Department if—

(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) within one month of the date of notification of the original decision,

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

(iii) within such longer period of time as may be allowed under regulation 4.

(2) Where the Department requires further information or evidence from the applicant in order to consider all the issues raised by an application under paragraph (1)(b) ("the original application"), it shall notify the applicant that further information or evidence is required and the decision may be revised—

(a) where the applicant provides further relevant information or evidence within one month of the date of notification or such longer period of time as the Department may allow; or

(**10**) Article 28D was inserted by Article 3(1) of the Child Support (Northern Ireland) Order 1995
(**11**) 1954 c. 33 (N.I.)

(b) where the applicant does not provide such information or evidence within the time allowed under sub-paragraph (a), on the basis of the original application.

(3) In the case of a payment out of the social fund in respect of maternity or funeral expenses, a decision under Article 9 may be revised where the application is made—

(a) within one month of the date of notification; or if later

(b) within the time prescribed for claiming such a payment under regulation 19 of, and Schedule 4 to, the Claims and Payments Regulations(**12**); or

(c) within such longer period of time as may be allowed under regulation 4.

(4) In the case of a decision made under the Pension Schemes Act by virtue of section 165(2) of that Act, the decision may be revised at any time by the Department where it contains an error.

(5) Any decision of the Department under Article 9 or 11—

(a) which arose from an official error; or

(b) where the decision was made in ignorance of, or was based on 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 claimant than it would otherwise have been but for that ignorance or mistake,

may be revised at any time by the Department.

(6) Any decision of the Department under Article 9 or 11 that a jobseeker's allowance is not payable to a claimant for any period in accordance with Article 21 of the Jobseekers Order(**13**) may be revised at any time by the Department.

(7) A decision under Article 9 or 11 may be revised where—

(a) the Department awards a relevant benefit; and

(b) on the date from which benefit is awarded, the claimant or a member of his family is entitled to another relevant benefit or to an increase in the rate of another such benefit.

(8) A decision of the Department which is specified in Schedule 2 to the Order or is prescribed in regulation 27 may be revised at any time.

(9) Paragraph (1) shall not apply in respect of a relevant change of circumstances which occurred since the decision was made or where the Department has information or evidence which indicates that a relevant change of circumstances will occur.

(10) The Department may treat an application for a supersession as an application for a revision.

(11) In this regulation and regulation 7 "appropriate office" means—

(a) an office of the Department, the address of which is indicated on the notification of the original decision; or

(b) in the case of a person who has claimed a jobseeker's allowance, the office specified by the Department in accordance with regulation 23 of the Jobseeker's Allowance Regulations.

Late application for a revision

4.—(1) The time limit for making an application for a revision specified in regulation 3(1) or (3) may be extended where the conditions specified in the following provisions of this regulation are satisfied.

(**12**) Regulation 19 was substituted by regulation 3(7) of S.R. 1997 No. 156 and amended by S.R. 1997 No. 417 and Schedule 4 was amended by S.R. 1988 No. 141, S.R. 1991 No. 488, S.R. 1992 No. 7, S.R. 1996 Nos. 354, 432 and 456 and S.R. 1997 Nos. 155 and 156

(**13**) Article 21 was amended by Schedule 1 to the Employment Rights (Northern Ireland) Order 1996 (S.I. 1996/1919 (N.I. 16))