STATUTORY RULES OF NORTHERN IRELAND

1996 No. 457

SOCIAL SECURITY
CHILD SUPPORT; FAMILY LAW

The Social Security (Adjudication) and Child Support (Amendment No. 2) Regulations (Northern Ireland) 1996

Made - - - - 27th September 1996

Coming into operation 21st October 1996

The Department of Health and Social Services, in exercise of the powers conferred on it by Article 23(2) and (3) of the Child Support (Northern Ireland) Order 1991(**1**) and sections 20(2) and (4), 31(2), 44(2) and 57(1) of, and paragraphs 2 to 5 of Schedule 3 to, the Social Security Administration (Northern Ireland) Act 1992(**2**) and of all other powers enabling it in that behalf, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Adjudication) and Child Support (Amendment No. 2) Regulations (Northern Ireland) 1996 and shall come into operation on 21st October 1996.

(2) The Interpretation Act (Northern Ireland) 1954(**3**) shall apply to these Regulations as it applies to a Measure of the Assembly.

Amendment of the Child Support Appeal Tribunals (Procedure) Regulations

2.—(1) The Child Support Appeal Tribunals (Procedure) Regulations (Northern Ireland) 1993(**4**) shall be amended in accordance with paragraphs (2) to (9).

(2) In regulation 3 (making an appeal or application and time limits)—

(a) for paragraph (1A)(**5**) there shall be substituted the following paragraph—

"(1A) An appeal or application of a kind mentioned in paragraph (1) shall be by notice in writing and, in the case of an appeal, shall be on a form approved by the

(**1**) S.I.1991/2628 (N.I. 23)
(**2**) 1992 c. 8
(**3**) 1954 c. 33 (N.I.)
(**4**) S.R. 1993 No. 50; relevant amending regulations are S.R. 1995 No. 162 and S.R. 1996 No. 24
(**5**) Paragraph (1A) was inserted by regulation 2(3) of S.R. 1995 No. 162

Department and shall be signed by the person making it, or by his representative where it appears to the chairman that he is unable to sign it personally, or by a barrister or solicitor on his behalf.";

(b) for paragraph (9) there shall be substituted the following paragraphs—

"(9) A notice of appeal shall contain particulars of the date of the notification of the decision against which the appeal is made, the subject matter of the decision and a summary of the arguments relied on by the person making the appeal to support his contention that the decision is wrong.

(9A) Where the notice referred to in paragraph (9) is not made on the form approved for the time being, but is made in writing and contains all the particulars required under paragraph (9), the chairman may treat that appeal as duly made.";

(c) in paragraph (10) "notice of appeal or" shall be omitted; and

(d) for paragraph (11) there shall be substituted the following paragraphs—

"(11) Where it appears to the chairman or the clerk to the tribunal that the notice of appeal does not contain all the particulars required under paragraph (9), or that the application does not contain the particulars required under paragraph (10), he may direct the person making the appeal or application to furnish those further particulars.

(11A) Where further particulars are required under paragraph (11), in the case of an appeal they shall be sent or delivered to the clerk to the tribunal at the appropriate office within such period as the chairman or the clerk to the tribunal may direct.

(11B) The date of an appeal or application shall be the date on which all the particulars required under paragraph (9) are received in the appropriate office.".

(3) In regulation 5 (directions)—

(a) the existing provision shall be numbered as paragraph (1); and

(b) after paragraph (1) there shall be added the following paragraph—

"(2) Where under these regulations the clerk to the tribunal is authorised to take steps in relation to the procedure of the tribunal, he may give directions requiring any party to the proceedings to comply with any provision of these regulations.".

(4) In regulation 6 (striking out of proceedings)—

(a) in paragraph (1) for "a direction under regulation 3(11) or 5 or to reply to an enquiry from the clerk to the tribunal about his availability to attend a hearing" there shall be substituted "a direction under regulation 3(11) or 5(1) or (2)";

(b) after paragraph (1) there shall be inserted the following paragraphs—

"(1A) Where the chairman decides not to strike out an appeal or application under paragraph (1) he shall consider whether the appeal or application should be determined forthwith in accordance with these regulations.

(1B) Where the chairman decides that an appeal or application should not be determined forthwith under paragraph (1A) he shall consider whether he should make further directions with a view to expediting the hearing of the appeal or application.";

(c) after paragraph (2) there shall be inserted the following paragraph—

"(2A) Paragraph (2) shall not apply where the address of the person against whom it is proposed that an order under paragraph (1) should be made is unknown to the chairman or to the clerk to the tribunal and cannot be ascertained by reasonable enquiry."; and

(d) in paragraph (3)—

(i) for "one year" there shall be substituted "3 months", and

(ii) after "that Order" there shall be inserted "where he is satisfied that the party concerned did not receive a notice under paragraph (2) and that the conditions in paragraph (2A) were not met".

(5) In regulation 7 (withdrawal of appeals and applications)—

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

"(b) at any other time, provided that the clerk to the tribunal has not received notice under paragraph (1A), by giving written notice of intention to withdraw to the clerk to the tribunal and either—

(i) with the consent in writing of every other party to the proceedings other than the child support officer, or

(ii) with the leave of the chairman after every other party to the proceedings other than the child support officer has had a reasonable opportunity to make representations."; and

(b) after paragraph (1) there shall be inserted the following paragraph—

"(1A) An appeal shall not be withdrawn under paragraph (1)(*b*) where the clerk to the tribunal has received notice opposing a withdrawal of such appeal from the child support officer.".

(6) In regulation 8 (postponement)—

(a) for paragraph (1) there shall be substituted the following paragraph—

"(1) Where a person to whom notice of a hearing has been given wishes to apply for a postponement of that hearing he shall do so in writing to the clerk to the tribunal stating his reasons for the application, and the clerk to the tribunal may grant or refuse the application as he thinks fit or may pass the application to the chairman, who may grant or refuse the application as he thinks fit."; and

(b) in paragraph (2) for "A chairman" there shall be substituted "The chairman or the clerk to the tribunal".

(7) In regulation 11 (hearings)—

(a) for paragraph (1) there shall be substituted the following paragraphs—

"(1) Where an appeal or application is made to a tribunal, the clerk to the tribunal shall direct every party to the proceedings to notify him if that party wishes an oral hearing of that appeal or application.

(1A) A notification under paragraph (1) shall be in writing and shall be made within 21 days of receipt of the direction from the clerk to the tribunal or within such other period as the clerk to the tribunal or the chairman may direct.

(1B) Where the clerk to the tribunal receives notification in accordance with paragraph (1A) the tribunal shall hold an oral hearing.

(1C) The chairman may of his own motion require an oral hearing where he is satisfied that such a hearing is necessary to enable the tribunal to reach a decision.

(1D) Subject to the provisions of these regulations the procedure in connection with an oral hearing shall be such as the chairman shall determine.";

(b) in paragraph (2)—

(i) at the beginning there shall be inserted "Except where paragraph (2C) applies,", and

(ii) for "the time and place of any hearing" there shall be substituted "the time and place of any oral hearing";

(c) after paragraph (2) there shall be inserted the following paragraphs—

"(2A) The chairman may give notice for the determination forthwith, in accordance with the provisions of these regulations, of an appeal or application notwithstanding that any party to the proceedings has failed to indicate his availability for a hearing or to provide all the information which may have been requested, where the chairman is satisfied that such party—

(a) has failed to comply with a direction regarding his availability or requiring information under regulation 3(11) or 5(1) or (2); and

(b) has not given any explanation for his failure to comply with such a direction,

provided that the chairman is satisfied that the tribunal has sufficient particulars in order for the appeal or application to be determined.

(2B) The chairman may give notice for the determination forthwith, in accordance with the provisions of these regulations, of an appeal or application which he believes has no reasonable prospect of success.

(2C) Any party to the proceedings may waive his right to receive not less than 10 days notice of the time and place of any oral hearing as specified in paragraph (2).";

(d) in paragraph (6) after "including any explanation offered for the absence" there shall be inserted "and where applicable the circumstances set out in paragraph (2A)(*a*) or (*b*)"; and

(e) after paragraph (6) there shall be inserted the following paragraph—

"(6A) Where any party to the proceedings has waived his right to be given notice under paragraph (2C) the tribunal may proceed with the hearing notwithstanding his absence.".

(8) In regulation 13 (decisions) for paragraphs (2) to (3A)(**6**) there shall be substituted the following paragraphs—

"(2) Every decision of a tribunal shall be recorded in summary by the chairman in such written form of decision notice as shall have been approved by the President, and such decision notice shall be signed by the chairman.

(3) As soon as may be practicable after a case has been decided by a tribunal, a copy of the decision notice made in accordance with paragraph (2) shall be sent or given to every party to the proceedings who shall also be informed of—

(a) his right under paragraph (3C); and

(b) the conditions governing appeals to a Commissioner.

(3A) A statement of the reasons for the tribunal's decision, of its findings on questions of fact material thereto and of the terms of any direction under Article 22(4) of the Order may be given—

(a) orally at the hearing; or

(b) in writing at such later date as the chairman may determine.

(3B) Where the statement referred to in paragraph (3A) is given orally, it shall be recorded in such medium as the chairman may determine.

(3C) A copy of the statement referred to in paragraph (3A) shall be supplied to the parties to the proceedings if requested by any of them within 21 days after the decision notice has been sent or given and if the statement is one to which sub-paragraph (*a*) of that paragraph applies, that copy shall be supplied in such medium as the chairman may direct.

(**6**) Paragraph (3A) was inserted by regulation 3 of S.R. 1996 No. 24

(3D) Where a decision is not unanimous, the statement referred to in paragraph (3A) shall record that one of the members dissented and the reasons given by him for dissenting.

(3E) A record of the proceedings at the hearing shall be made by the chairman in such medium as he may direct and preserved by the clerk to the tribunal for 18 months, and a copy of such record shall be supplied to the parties if requested by any of them within that period.".

(9) In regulation 15 (setting aside) after paragraph (1) there shall be inserted the following paragraph—

"(1A) In determining whether it is just to set aside a decision on the ground set out in paragraph (1)(*b*) the tribunal shall determine whether the party making the application gave notice that he wished an oral hearing, and where the party did not give such notice the tribunal shall not set the decision aside unless it is satisfied that there has been some procedural irregularity or mishap.".

Amendment of the Social Security (Adjudication) Regulations

3.—(1) The Social Security (Adjudication) Regulations (Northern Ireland) 1995(**7**) shall be amended in accordance with paragraphs (2) to (13).

(2) In regulation 1(2) (interpretation) after the definition of "claimant" there shall be inserted the following definition—

""clerk to the tribunal" means, as the case may be, a clerk to a social security appeal tribunal, a clerk to a disability appeal tribunal or a clerk to a medical appeal tribunal appointed in accordance with section 39, 41 or 48 of, and paragraph 4 of Schedule 2 to, the Administration Act, or a person acting as the clerk to a medical board constituted in accordance with these Regulations;".

(3) In regulation 2(1) (procedure in connection with determinations; and right to representation) after sub-paragraph (*a*) there shall be inserted the following sub-paragraphs—

"(aa) the chairman of a tribunal or board may give directions requiring any party to the proceedings to comply with any provision of these Regulations and may further at any stage of the proceedings either of his own motion or on a written application made to the clerk to the tribunal by any party to the proceedings give such directions as he may consider necessary or desirable for the just, effective and efficient conduct of the proceedings and may direct any party to provide such further particulars or to produce such documents as may reasonable be required;

(ab) where under these Regulations the clerk to the tribunal is authorised to take steps in relation to the procedure of the tribunal or board, he may give directions requiring any party to the proceedings to comply with any provision of these Regulations;".

(4) In regulation 3 (manner of making applications, appeals or references; and time limits)—

(a) in paragraph (1) after "in writing" there shall be inserted "and, in the case of an appeal, shall be on a form approved by the Department";

(b) for paragraph (3) there shall be substituted the following paragraph—

"(3) The time specified by this regulation and Schedule 2 for the making of any application, appeal or reference (except an application to the chairman of an appeal tribunal, a medical appeal tribunal or a disability appeal tribunal for leave to appeal to a Commissioner) may be extended, even though the time so specified may already have expired—

(a) in the case of an application or reference, for special reasons; and

(**7**) S.R. 1995 No. 293; relevant amending regulations are S.R. 1996 No. 24