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STATUTORY RULES OF NORTHERN IRELAND

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**1999 No. 162**

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

**PART IV**

**RIGHTS OF APPEAL AND PROCEDURE FOR BRINGING APPEALS**

*CHAPTER I*

*General appeals matters not including child support appeals*

**Other persons with a right of appeal**

**25.** For the purposes of Article 13(2)(b), the following other persons have a right to appeal to an appeal tribunal—

- (a) any person appointed by the Department under regulation 33(1) of the Claims and Payments Regulations to act on behalf of another;
- (b) any person claiming attendance allowance or disability living allowance on behalf of another under section 66(2)(b) of the Contributions and Benefits Act or, as the case may be, section 76(3) of that Act; and
- (c) in relation to a pension scheme, any person who, for the purposes of Part X of the Pension Schemes Act, is an employer, member, trustee or manager by virtue of section 142(8) of that Act.

**Decisions against which an appeal lies**

**26.** An appeal shall lie to an appeal tribunal against a decision made by the Department—

- (a) as to whether a person is entitled to a relevant benefit for which no claim is required by virtue of regulation 3 of the Claims and Payments Regulations; or
- (b) as to whether a payment be made out of the social fund to a person to meet expenses for heating by virtue of regulations made under section 134(2) of the Contributions and Benefits Act.

**Decisions against which no appeal lies**

**27.—(1)** No appeal lies to an appeal tribunal against a decision set out in Schedule 1.

(2) In paragraph (1) and Schedule 1, “decision” includes determinations embodied in or necessary to a decision.

(3) An appeal brought against a decision specified in paragraph (1) may be struck out in accordance with regulation 46.

### **Notice of decision against which appeal lies**

**28.**—(1) A person with a right of appeal under the Order or these Regulations against any decision of the Department shall—

- (a) be given written notice of the decision against which the appeal lies;
- (b) be informed that, in a case where that written notice does not include a statement of the reasons for that decision, he may, within one month of the date of notification of that decision, request that the Department provide him with a written statement of the reasons for that decision; and
- (c) be given written notice of his right of appeal against that decision.

(2) Where a written statement of the reasons for the decision is not included in the written notice of the decision and is requested under paragraph (1)(b), the Department shall provide that statement within 14 days of receipt of the request.

### **Further particulars required relating to certificate of recoverable benefits appeals or applications**

**29.**—(1) An appeal or application under the Recovery of Benefits Order relating to a certificate of recoverable benefits shall, in addition to any requirements specified in regulation 33, include the following particulars—

- (a) in the case of an appeal, the date of the certificate of recoverable benefits or the decision by the Department on review against which the appeal is brought, the question under Article 13 of the Recovery of Benefits Order to which the appeal relates and a summary of the arguments relied on by the appellant to support his contention that the certificate is wrong; and
- (b) in the case of an application for an extension of time under regulation 32, in relation to the appeal which it is proposed to bring, the particulars required under sub-paragraph (a) together with particulars of the special circumstances on which the application is based.

(2) Where the appeal or the application for an extension of time is made by a person to whom a compensation payment has been made, a copy of the statement given to that person under Article 11 of the Recovery of Benefits Order or if that statement was not in writing, a written summary of it, shall be sent with the appeal or application.

(3) Where it appears to the Department that an appeal or application does not contain the further particulars required under paragraph (1) or is not accompanied by a written statement or summary as required under paragraph (2), it may direct the appellant or applicant to provide such particulars or such a statement or summary.

(4) Where paragraph (3) applies, the time specified for making the appeal or application may be extended by such period, not exceeding 14 days from the date of the Department's direction under paragraph (3), as the Department may determine.

(5) Where further particulars or a written statement or summary are required under paragraph (3), they shall be sent or delivered to the Department within such period as it may direct.

(6) The Department may treat any appeal relating to the certificate of recoverable benefits as an application for review under Article 12 of the Recovery of Benefits Order<sup>(1)</sup>.

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(1) Article 12(1) was substituted by paragraph 120(1) of Schedule 6 to the Social Security (Northern Ireland) Order 1998 (S.I.1998/1506 (N.I. 10))

## CHAPTER II

### *General appeals matters including child support appeals*

#### **Appeals against decisions which have been revised**

**30.**—(1) An appeal against a decision of the Department shall not lapse where the decision is revised under Article 18 of the Child Support Order<sup>(2)</sup> or under Article 10 before the appeal is determined and the decision as revised is not more advantageous to the appellant than the decision before it was revised.

(2) Decisions which are more advantageous for the purposes of this regulation include decisions where—

- (a) any relevant benefit paid to the appellant is greater or is awarded for a longer period in consequence of the decision made under Article 10;
- (b) it would have resulted in the amount of relevant benefit in payment being greater but for the operation of any provision of the Administration Act or the Contributions and Benefits Act restricting or suspending the payment of, or disqualifying a claimant for receiving, some or all of the benefit;
- (c) as a result of the decision, a denial or disqualification for receiving any relevant benefit is lifted, wholly or in part;
- (d) it reverses a decision to pay benefit to a third party;
- (e) in consequence of the revised decision, benefit paid is not recoverable under section 69, 69A or 72 of the Administration Act or regulations made under any of those sections, or the amount so recoverable is reduced; or
- (f) a financial gain accrued or will accrue to the appellant in consequence of the decision.

(3) Where a decision as revised under Article 18 of the Child Support Order or under Article 10 is not more advantageous to the appellant than the decision before it was revised, the appeal shall be treated as if it had been brought against the decision as revised.

(4) The appellant shall have a period of one month from the date of notification of the decision as revised to make further representations as to the appeal.

(5) After the expiry of the period specified in paragraph (4), or within that period if the appellant consents in writing, the appeal to the appeal tribunal shall proceed except where, in the light of any further representations from the appellant, the Department further revises its decision and that decision is more advantageous to the appellant than the decision before it was revised.

#### **Time within which appeals are to be brought**

**31.**—(1) Where an appeal lies from a decision of the Department to an appeal tribunal, the time within which that appeal shall be brought is, subject to the following provisions of this Part—

- (a) one month of the date of notification of the decision against which the appeal is brought; or
- (b) where a written statement of reasons for that decision is requested, 14 days of the expiry of the period specified in sub-paragraph (a).

(2) Where the Department—

- (a) revises, or following an application for a revision under regulation 3(1) or (3) does not revise, a decision under Article 18 of the Child Support Order or under Article 10; or
- (b) supersedes a decision under Article 19 of that Order<sup>(3)</sup> or under Article 11,

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(2) Article 18 was substituted by Article 40 of the Social Security (Northern Ireland) Order 1998

(3) Article 19(3) and (5) was substituted by Article 41 of the Social Security (Northern Ireland) Order 1998

the period of one month specified in paragraph (1) shall run from the date of notification of the revision or supersession of the decision or, following an application for a revision under regulation 3(1) or (3), the date on which the Department issues a notice that it is not revising the decision.

- (3) An appeal against a certificate of recoverable benefits shall be brought—
- (a) not later than one month after the date on which a person making a compensation payment discharges his liability under Article 8 of the Recovery of Benefits Order;
  - (b) where the certificate is reviewed by the Department in accordance with regulations made under Article 13(5)(c) of that Order, not later than one month after the date on which the certificate is confirmed or, as the case may be, a fresh certificate is issued; or
  - (c) where an agreement is made under which an earlier compensation payment is treated as having been made in final discharge of a claim made by or in respect of an injured person and arising out of the accident, injury or disease, not later than one month after the date of that agreement.

(4) Where a dispute arises as to whether an appeal was brought within the time limit specified in this regulation, the dispute shall be referred to, and be determined by, a legally qualified panel member.

(5) The time limit specified in this regulation for bringing an appeal may be extended in accordance with regulation 32.

### **Late appeals**

**32.—**(1) The time for bringing an appeal 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 regulation 31.

(2) An application for an extension of time under this regulation shall be made in accordance with regulation 33 and shall be determined by a legally qualified panel member.

(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 the legally qualified panel member is satisfied that—

- (a) if the application is granted there are reasonable prospects that the appeal will be successful; and
- (b) 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 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 application to be made within the time limit specified in regulation 31.

(6) For the purposes of paragraph (5)(a), the special circumstances are that—

- (a) the applicant or a spouse 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 an application, the legally qualified panel member shall have regard 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 regulation 31 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 limits imposed by these Regulations); 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) a Commissioner within the meaning of section 39(1) of the Social Security Act 1998<sup>(4)</sup>; and
- (b) a Child Support Commissioner appointed under section 22 or 23 of the Child Support Act 1991<sup>(5)</sup>.

### **Making of appeals and applications**

**33.**—(1) An appeal, or an application for an extension of time for making an appeal to an appeal tribunal, shall be in writing either on a form approved for the purpose by the Department or in such other format as it accepts as sufficient for the purpose and shall—

- (a) be signed by—
    - (i) the person who has a right of appeal to an appeal tribunal under Article 22(1) to (3) of the Child Support Order (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, or
    - (ii) where the person mentioned in head (i) has provided written authority to a representative to act on his behalf, by that representative;
  - (b) be sent or delivered to an office of the Department;
  - (c) contain particulars of the grounds on which it is made; and
  - (d) contain sufficient particulars of the decision, the certificate of recoverable benefits or, as the case may be, the subject of the application to enable that decision, certificate or subject of the application to be identified.
- (2) A form which is not completed in accordance with the instructions on it—
- (a) except where paragraph (3) applies, does not satisfy the requirements of paragraph (1); and

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(4) 1998 c. 14  
(5) 1991 c. 48

(b) may be returned by the Department to the sender for completion in accordance with those instructions.

(3) Where the Department is satisfied that the form, although not completed in accordance with the instructions on it, includes sufficient information to enable the appeal or application to proceed, it may treat the form as satisfying the requirements of paragraph (1).

(4) Where an appeal or application is made in writing otherwise than on the approved form (“the letter”), and the letter includes sufficient information to enable the appeal or application to proceed, the Department may treat the letter as satisfying the requirements of paragraph (1).

(5) Where the letter does not include sufficient information to enable the appeal or application to proceed, the Department may request further information in writing (“further particulars”) from the person who wrote the letter.

(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 or, as the case may be, further particulars are received by the Department within—

- (a) 14 days of the date on which the form was returned to him by the Department;
- (b) 14 days of the date on which the Department’s request was made (“the date of request”); or
- (c) such longer period as the Department may direct,

the time for making the appeal shall be extended by 14 days from the date on which the form was returned, the date of request or, as the case may be, the date of the Department’s direction.

(7) Where a person to whom a form is returned or from whom further particulars are requested does not complete and return the form or send further particulars within the period of time specified in paragraph (6)—

- (a) the Department shall forward a copy of the form or, as the case may be, the letter, together with any other relevant documents or evidence to a legally qualified panel member; and
- (b) that panel member shall determine whether the form or the letter satisfies the requirements of paragraph (1), and shall inform the appellant or applicant and the Department of his determination.

(8) Where—

- (a) a form is duly completed and returned or further particulars are sent after the expiry of the period of time allowed in accordance with paragraph (6); and
- (b) no decision has been made under paragraph (7) at the time the form or the further particulars are received by the Department,

that form or those further particulars shall also be forwarded to the legally qualified panel member who shall take into account any further information or evidence set out in the form or further particulars.

### **Death of a party to an appeal**

**34.**—(1) In any proceedings, on the death of a party to those proceedings, the Department may appoint such person as it thinks fit to proceed with the appeal in the place of such deceased party.

(2) A grant of probate or letters of administration to the estate of the deceased party, whenever taken out, shall have no effect on an appointment made under paragraph (1).

(3) Where a person appointed under paragraph (1) has, prior to the date of such appointment, taken any action in relation to the appeal on behalf of the deceased party, the effective date of appointment by the Department shall be the day immediately prior to the first day on which such action was taken.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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