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STATUTORY RULES OF NORTHERN IRELAND

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**2003 No. 224**

**The Social Security and Child Support (Miscellaneous Amendments) Regulations (Northern Ireland) 2003**

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

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

(2) In regulation 1(2) (interpretation) for the definition of “out of jurisdiction appeal” there shall be substituted the following definition –

““out of jurisdiction appeal” means an appeal brought against a decision which is –

- (a) specified in Schedule 2 to the Order or prescribed in regulation 27; or
- (b) specified in paragraph 6(2) of Schedule 7 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 or prescribed in regulation 16 of the Housing Benefit (Decisions and Appeals) Regulations (Northern Ireland) 2001;”.

(3) In regulation 3(9)(a)<sup>(2)</sup> (revision of decisions) for “was made” there shall be substituted “had effect”.

(4) In regulation 6(2)<sup>(3)</sup> (supersession of decisions) –

- (a) in sub-paragraph (a)(i) for “was made” there shall be substituted “had effect”;
- (b) for sub-paragraph (c) there shall be substituted the following sub-paragraph –

“(c) is a decision of an appeal tribunal or of a Commissioner –

- (i) that was made in ignorance of, or was based on a mistake as to, some material fact, or
- (ii) that was made in accordance with Article 26(4)(b), in a case where Article 26(5) applies;”;

(c) the word “or” after sub-paragraphs (f) and (g) shall be omitted.

(5) In regulation 6A<sup>(4)</sup> (supersession of child support decisions) after paragraph (4) there shall be inserted the following paragraph –

“(4A) A decision may be superseded by a decision made by the Department –

- (a) where an application is made on the basis that; or
- (b) acting on its own initiative where,

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(1) S.R. 1999 No. 162; relevant amending regulations are S.R. 1999 Nos. 267 and 408, S.R. 2000 Nos. 215 and 365, S.R. 2001 Nos. 23 and 176, S.R. 2002 Nos. 67, 80 and 164 and S.R. 2003 Nos. 84 and 191

(2) Paragraph (9) was substituted by regulation 3(2)(b) of S.R. 1999 No. 408

(3) Paragraph (2) was amended by regulation 2(4) of S.R. 1999 No. 267, regulation 3(3)(a) of S.R. 1999 No. 408, regulation 6(4) of S.R. 2000 No. 215, regulation 4(b) of S.R. 2000 No. 365, paragraph 4 of Schedule 4 to S.R. 2001 No. 176, regulation 3(3) of S.R. 2002 No. 67 and regulation 7(4) of S.R. 2002 No. 80

(4) Regulation 6A was inserted by regulation 2(7) of S.R. 2001 No. 23

the decision to be superseded is a decision of an appeal tribunal or of a Child Support Commissioner that was made in accordance with Article 28ZB(4)(b) of the Child Support Order, in a case where Article 28ZB(5) of that Order applies.”.

- (6) In regulation 7 (date from which a decision superseded under Article 11 takes effect) –
- (a) in paragraph (1)(a)(5) for “and (28)” there shall be substituted “, (28) and (29)”;
  - (b) in paragraph (2) for “was made” there shall be substituted “had effect”;
  - (c) in paragraph (5)(6) for “regulation 6(2)(c)” there shall be substituted “regulation 6(2)(c)(i)”;
  - (d) in paragraph (9)(7) for sub-paragraph (a) there shall be substituted the following sub-paragraph –
    - “(a) where the decision is made on the Department’s own initiative –
      - (i) the date on which it commenced action with a view to supersession; or
      - (ii) subject to paragraph (29), in a case where the relevant circumstances are that there has been a change in the legislation in relation to attendance allowance or disability living allowance, the date on which that change in the legislation had effect;”;
  - (e) after paragraph (28)(8) there shall be added the following paragraphs –
 

“(29) Where a decision is superseded in accordance with regulation 6(2)(a)(i) and the relevant circumstances are that there has been a change in the legislation in relation to a relevant benefit, the decision under Article 11 shall take effect from the date on which that change in the legislation had effect.

(30) Where a decision is superseded in accordance with regulation 6(2)(a)(ii) and the relevant circumstances are that –

    - (a) a personal capability assessment has been carried out in the case of a person to whom section 167C(4) of the Contributions and Benefits Act applies; and
    - (b) the own occupation test remains applicable to him under section 167B(3) of that Act,

the decision under Article 11 shall take effect on the day immediately following the day on which the own occupation test is no longer applicable to that person.

(31) For the purposes of paragraph (30) –

“own occupation test” has the same meaning as in section 167B(2) of the Contributions and Benefits Act;

“personal capability assessment” has the same meaning as in regulation 24 of the Incapacity for Work Regulations.

(32) A decision to which regulation 6(2)(c)(ii) applies shall take effect from the date on which the appeal tribunal or the Commissioner’s decision would have taken effect had it been decided in accordance with the determination of the Commissioner or the court in the appeal referred to in Article 26(1)(b).”.
- (7) In regulation 7B(9) (date from which a decision superseded under Article 19 of the Child Support Order takes effect) after paragraph (21) there shall be inserted the following paragraph –

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(5) Paragraph (1)(a) was substituted by regulation 18(a) of S.R. 2003 No. 191

(6) Paragraph (5) was substituted by regulation 6(5)(c) of S.R. 2000 No. 215

(7) Paragraph (9) was substituted by regulation 2(2) of S.R. 2000 No. 3 and amended by regulation 6(5)(e) of S.R. 2000 No. 215

(8) Paragraph (28) was added by regulation 18(g) of S.R. 2003 No. 191

(9) Regulation 7B was inserted by regulation 2(8) of S.R. 2001 No. 23 and amended by regulation 6(4) of S.R. 2002 No. 164 and regulation 7 of S.R. 2003 No. 84

“(21A) Where a superseding decision is made in a case to which regulation 6A(4A) applies the decision shall take effect from the first day of the maintenance period following the date on which the appeal tribunal or the Child Support Commissioner’s decision would have taken effect had it been decided in accordance with the determination of the Child Support Commissioner or the court in the appeal referred to in Article 28ZB(1)(b) of the Child Support Order.”