

2016 No. 208

SOCIAL SECURITY

FAMILY LAW

CHILD SUPPORT

**The Social Security, Child Support and Mesothelioma Lump
Sum Payments (Decisions and Appeals) (Amendment)
Regulations (Northern Ireland) 2016**

Made - - - - - *11th April 2016*

Laid before Parliament *14th April 2016*

Coming into operation in accordance with regulation 1

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by Articles 22(2A), (2C) and (4)(a) (as substituted by section 10 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000(b)), 22(3A), (3C) and (5)(c) (as it has effect apart from section 10 of that Act) and 48(4) of the Child Support (Northern Ireland) Order 1991(d), Articles 13(2A) and (5) and 28(3) of the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997(e) and Articles 2(2), 10(1), 13(3A) and (5A) and 74(3), (5) and (6) of the Social Security (Northern Ireland) Order 1998(f) and sections 4(2), 5(1A) and (4) and 9(1) and (2) of the Mesothelioma, etc., Act (Northern Ireland) 2008(g).

These powers are exercisable by the Secretary of State by virtue of Article 4(1)(b) of the Welfare Reform (Northern Ireland) Order 2015(h).

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- (a) Article 22 was substituted by Article 42 of the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10)) and paragraphs (2A) and (2C) are inserted by paragraph 2 of Schedule 11 to the Welfare Reform (Northern Ireland) Order 2015 (S.I. 2015/2006 (N.I. 1)).
- (b) 2000 c. 4 (N.I.); section 10 of that Act amended Article 22 of the Child Support (Northern Ireland) Order 1991 in relation to certain cases only, *see* Article 3 of S.R. 2003 No. 53 (C. 4).
- (c) Paragraphs (3A) and (3C) are inserted by paragraph 3 of Schedule 11 to the Welfare Reform (Northern Ireland) Order 2015
- (d) S.I. 1991/2628 (N.I. 23).
- (e) S.I. 1997/1183 (N.I. 12); Article 13(2A) is inserted by paragraph 7(2) of Schedule 11 to the Welfare Reform (Northern Ireland) Order 2015.
- (f) S.I. 1998/1506 (N.I. 10); Article 13(3A) and (5A) are inserted respectively by Article 107(3) and (4) of the Welfare Reform (Northern Ireland) Order 2015 and Article 2(2) is cited for the meaning of “prescribe”.
- (g) 2008 c. 9 (N.I.); section 5(1A) is inserted by paragraph 14(2) of Schedule 11 to the Welfare Reform (Northern Ireland) Order 2015.
- (h) S.I. 2015/2006 (N.I. 1).

Citation and commencement

1.—(1) These Regulations may be cited as the Social Security, Child Support and Mesothelioma Lump Sum Payments (Decisions and Appeals) (Amendment) Regulations (Northern Ireland) 2016.

(2) These Regulations come into operation—

- (a) for the purposes of the provisions specified in paragraph (3) on 11th July 2016;
- (b) for all other purposes, on 23rd May 2016.

(3) The specified provisions are—

- (a) regulation 2;
- (b) regulation 3(4), (5)(c) and (e); and
- (c) regulation 5.

Amendment of the Child Support (Maintenance Assessment Procedure) Regulations

2.—(1) The Child Support (Maintenance Assessment Procedure) Regulations (Northern Ireland) 1992(a) are amended in accordance with paragraphs (2) to (4).

(2) In regulation 10(b) (notification of a new or a fresh maintenance assessment) after paragraph (4) add—

“(5) Paragraphs (2) to (4) apply in the case of a decision in respect of which there is no right of appeal as the result of regulation 16A (consideration of revision before appeal) as they apply in the case of a decision which may be appealed under Article 22 of the Order (as it has effect apart from section 10 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000).”.

(3) After regulation 16(c) (revision of decisions) insert—

“Consideration of revision before appeal

16A.—(1) This regulation applies in a case where—

- (a) the Department gives a person written notice of a decision; and
- (b) that notice includes a statement to the effect that there is a right of appeal against the decision only if the Department has considered an application for a revision of the decision.

(2) In a case to which this regulation applies, a person has a right of appeal under Article 22 of the Order against the decision only if the Department has considered on an application whether to revise the decision under Article 18 of the Order.

(3) The notice referred to in paragraph (1) must inform the person of the time limit specified in regulation 16(1) for making an application for a revision.

(4) Where, as the result of paragraph (2), there is no right of appeal against a decision, the Department may treat any purported appeal as an application for a revision under Article 18 of the Order.

(5) In this regulation “decision” means a decision mentioned in Article 22 of the Order (as it has effect apart from section 10 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000).”.

(4) In regulation 17 (late application for a revision)—

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- (a) S.R. 1992 No. 340 was revoked, with savings, by regulation 9(2) of, and the Schedule to, S.R. 2012 No. 438 (*see also* regulation 1(1)(c) of those Regulations).
 - (b) Regulation 10 was amended by regulation 4(4) of S.R. 1995 No. 19, regulation 8(4) of S.R. 1995 No. 162, regulation 3(5) of S.R. 1995 No. 475, regulation 50 of S.R. 1996 No. 541, regulation 2(9) of S.R. 1999 No. 167 and Article 8(3) of S.R. 1999 No. 246 (C. 20).
 - (c) Regulations 16 and 17 were substituted by regulation 2(12) of S.R. 1999 No. 167.

- (a) in paragraph (4)(b) at the end insert “except in a case to which regulation 16A applies”;
- and
- (b) in paragraph (6) after “extension of time” insert “, except in a case to which regulation 16A applies”.

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(a) are amended in accordance with paragraphs (2) to (9).

(2) In regulation 3(1)(b)(b) (revision of decisions) for “regulation 28(1)(b)”, in both places, substitute “regulation 3ZA(3)(b) or 28(1)(b)”.

(3) After regulation 3 insert—

“Consideration of revision before appeal

3ZA.—(1) This regulation applies in a case where—

- (a) the Department gives a person written notice of a decision under Article 9 or 11 (whether as originally made or as revised under Article 10); and
- (b) that notice includes a statement to the effect that there is a right of appeal in relation to the decision only if the Department has considered an application for a revision of the decision.

(2) In a case to which this regulation applies, a person has a right of appeal under Article 13(2) in relation to the decision only if the Department has considered on an application whether to revise the decision under Article 10.

(3) The notice referred to in paragraph (1) must inform the person—

- (a) of the time limit specified in regulation 3(1) or (3) for making an application for a revision; and
- (b) that, where the notice does not include a statement of the reasons for the decision (“written reasons”), he may, within one month of the date of notification of the decision, request that the Department provide him with written reasons.

(4) Where written reasons are requested under paragraph (3)(b), the Department must provide them within 14 days of receipt of the request or as soon as practicable afterwards.

(5) Where, as a result of paragraph (2), there is no right of appeal against a decision, the Department may treat any purported appeal as an application for a revision under Article 10.”.

(4) After regulation 3A(c) (revision of child support decisions) insert—

“Consideration of revision before appeal in relation to certain child support decisions

3B.—(1) This regulation applies in a case where—

- (a) the Department gives a person written notice of a decision; and
- (b) that notice includes a statement to the effect that there is a right of appeal against the decision only if the Department has considered an application for a revision of the decision.

(2) In a case to which this regulation applies, a person has a right of appeal under Article 22 of the Child Support Order (as substituted by section 10 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000) against the decision only if the

(a) S.R. 1999 No. 162; relevant amending Regulations are S.R. 2000 No. 215, S.R. 2001 Nos. 23 and 120, S.R. 2002 No. 189, S.R. 2004 No. 516, S.R. 2005 No. 46, S.R. 2008 No. 355 and S.R. 2010 No. 20.
 (b) Paragraph (1)(b) was substituted by regulation 2(3)(a) of S.R. 2002 No. 189.
 (c) Regulation 3A was inserted by regulation 2(4) of S.R. 2001 No. 23.

Department has considered on an application whether to revise the decision under Article 18 of that Order.

(3) The notice referred to in paragraph (1) must inform the person of the time limit specified in regulation 3A(1)(a) for making an application for a revision.

(4) Where, as the result of paragraph (2), there is no right of appeal against a decision, the Department may treat any purported appeal as an application for revision under Article 18 of the Child Support Order.

(5) In this regulation “decision” means a decision mentioned in Article 22(1)(a) or (b) of the Child Support Order (as substituted by section 10 of the Child Support, Pension and Social Security Act (Northern Ireland) 2000).”.

(5) In regulation 4 (late application for a revision)—

- (a) in paragraph (3)(b)(a) after “regulation” insert “3ZA(3)(b) or”;
- (b) in paragraph (4)(b) at the end insert “, except in a case to which regulation 3ZA applies”;
- (c) in paragraph (4)(b) after “regulation 3ZA” insert “or 3B”;
- (d) in paragraph (6) after “extension of time” insert “, except in a case to which regulation 3ZA applies”; and
- (e) in paragraph (6) after “regulation 3ZA” insert “or 3B”.

(6) After regulation 9ZA(b) (review of certificates of recoverable lump sum payments) insert—

“Consideration of review before appeal

9ZB.—(1) This regulation applies in a case where—

- (a) the Department has issued a certificate of recoverable benefits or certificate of recoverable lump sum payments; and
- (b) that certificate is accompanied by a notice to the effect that there is a right of appeal in relation to the certificate only if the Department has considered an application for review of the certificate.

(2) In a case to which this regulation applies, a person has a right of appeal under Article 13 of the Recovery of Benefits Order against the certificate only if the Department has considered an application for review of the certificate under Article 12 of that Order.”.

(7) In regulation 25(c) (other persons with a right of appeal) after “Article 13(2)” insert “, but subject to regulation 3ZA”.

(8) In regulation 26(d) (decisions against which an appeal lies) at the beginning insert “Subject to regulation 3ZA,”.

(9) In regulation 29(e) (further particulars required relating to certificate of recoverable benefits or, as the case may be, recoverable lump sum payments appeals or applications) for paragraph (6) substitute—

“(6) The Department may treat any—

- (a) purported appeal (where, as the result of regulation 9ZB(2), there is no right of appeal);
- (b) appeal relating to the certificate of recoverable benefits; or
- (c) appeal relating to the certificate of recoverable lump sum payments,

as an application for review under Article 12 of the Recovery of Benefits Order.”.

(a) Paragraph (3)(b) was amended by regulation 7(3) of S.R. 2005 No. 46.
(b) Regulation 9ZA was inserted by paragraph 3 of Schedule 2 to S.R. 2008 No. 355.
(c) Regulation 25 was amended by regulation 2(7) of S.R. 2002 No. 189 and regulation 3(3) of S.R. 2004 No. 516.
(d) Regulation 26 was amended by regulation 6(9) of S.R. 2000 No. 215, regulation 4(b) of S.R. 2001 No. 120 and Article 3 of S.R. 2010 No. 20.
(e) Regulation 29 was amended by paragraph 4 of Schedule 2 to S.R. 2008 No. 355.

Amendment of the Mesothelioma Lump Sum Payments (Claims and Reconsiderations) Regulations

4.—(1) The Mesothelioma Lump Sum Payments (Claims and Reconsiderations) Regulations (Northern Ireland) 2008(a) are amended in accordance with paragraphs (2) and (3).

(2) In regulation 4 (reconsideration) for paragraph (1) substitute—

“(1) An application made to the Department for reconsideration of a determination that a payment should or should not be made must—

(a) be made—

(i) within one month of the date of notification of the determination,

(ii) where a written statement is requested under regulation 4B(3) (reconsideration before appeal) 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 4B(3) 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 4A (late application for reconsideration); and

(b) specify the ground for the request and give such other relevant information as the Department may require in order to deal adequately with the reconsideration.”.

(3) After regulation 4 insert—

“Late application for reconsideration

4A. Where, in a case to which regulation 4B (reconsideration before appeal) applies, the Department considers there was good cause for not applying for reconsideration of a determination within the time limit specified in regulation 4(1), it may extend the time limit for such period as it considers appropriate in the circumstances.

Reconsideration before appeal

4B.—(1) This regulation applies in a case where—

(a) the Department gives a person written notice of a determination made on a claim; and

(b) that notice includes a statement to the effect that there is a right of appeal against the determination only if the Department has, on an application, decided whether to reconsider the determination.

(2) In a case to which this regulation applies, a person may appeal under section 5 of the Mesothelioma, etc., Act (Northern Ireland) 2008 against the determination only if the Department has decided on an application whether to reconsider the determination under section 4 of that Act.

(3) The notice referred to in paragraph (1) must inform the person—

(a) of the time limit specified in regulation 4(1) for making an application for reconsideration of the determination; and

(b) that, where the notice does not include a statement of the reasons for the determination (“written reasons”), he may, within one month of the date of notification of the determination, request that the Department provide him with written reasons.

(a) S.R. 2008 No. 353, to which there are amendments not relevant to these Regulations.

(4) Where written reasons are requested under paragraph (3)(b), the Department must provide them within 14 days of receipt of the request or as soon as practicable afterwards.

(5) Where, as the result of paragraph (2), there is no right of appeal against a determination made on a claim, the Department may treat any purported appeal as an application for reconsideration of the determination under section 4 of that Act.”.

Amendment of the Child Support Maintenance Calculation Regulations

5.—(1) The Child Support Maintenance Calculation Regulations (Northern Ireland) 2012(a) are amended in accordance with paragraphs (2) and (3).

(2) After regulation 14(b) (grounds for revision) insert—

“Consideration of revision before appeal

14A.—(1) This regulation applies in a case where—

- (a) the Department gives a person written notice of a decision; and
- (b) that notice includes a statement to the effect that there is a right of appeal against the decision only if the Department has considered an application for a revision of the decision.

(2) In a case to which this regulation applies, a person has a right of appeal under Article 22 against the decision only if the Department has considered on an application whether to revise the decision under Article 18.

(3) The notice referred to in paragraph (1) must inform the person of the time limit specified in regulation 14(1) for making an application for a revision.

(4) Where, as the result of paragraph (2), there is no right of appeal against a decision, the Department may treat any purported appeal as an application for revision under Article 18.

(5) In this regulation, “decision” means a decision mentioned in Article 22(1)(a) or (b) (as substituted by section 10 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000).”.

(3) In regulation 15 (late application for a revision)—

- (a) in paragraph (4)(b) at the end insert “, except in a case to which regulation 14A applies”; and
- (b) in paragraph (6) after “extension of time” insert “, except in a case to which regulation 14A applies”.

Signed by authority of the Secretary of State for Work and Pensions

11th April 2016

Priti Patel
Minister of State,
Department for Work and Pensions

(a) S.R. 2012 No. 427, relevant amending Regulations are S.R. 2015 No. 116.
(b) Regulation 14 was amended by regulation 8(2) of S.R. 2015 No. 116.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Child Support (Maintenance Assessment Procedure) Regulations (Northern Ireland) 1992, the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999 (“the Decisions and Appeals Regulations”), the Mesothelioma Lump Sum Payments (Claims and Reconsiderations) Regulations (Northern Ireland) 2008 (“the Mesothelioma Regulations”) and the Child Support Maintenance Calculation Regulations (Northern Ireland) 2012.

Regulation 3(3) amends the Decisions and Appeals Regulations to enable the Department for Social Development (“the Department”) to require a person to apply for a decision to be revised pursuant to Article 10 of the Social Security (Northern Ireland) Order 1998 before the person is permitted to appeal to an appeal tribunal.

The restriction applies where the Department gives a person written notice to that effect and, in such cases, a person has a right to appeal only if the Department has considered on an application whether to revise the decision. These Regulations also make provision for the Department to treat a purported appeal as an application for a revision.

The Regulations also make similar changes to Regulations regarding other appeals relating to—
certain child support decisions;
certificates of recoverable benefits and certificates of recoverable lump sum payments;
and
payments in respect of mesothelioma.

In relation to appeals relating to child support decisions the changes come into operation on 11th July 2016. For all other appeals the changes come into operation on 23rd May 2016.

These Regulations also make related amendments to enable a person who must apply for a decision to be revised before they are permitted to appeal to request a written statement of reasons for the decision, specify the time within which that statement is to be provided and for extending the time in which a person is able to make an application for a decision to be revised.

Regulation 4 inserts regulation 4A into the Mesothelioma Regulations to enable the Department to extend the time by which a person must apply for reconsideration of a determination.

An assessment of the impact of this instrument has been carried out. Copies of the impact assessment may be obtained from the Better Regulation Unit of the Department for Work and Pensions, 2D Caxton House, Tothill Street, London, SW1 9NA. It is also available alongside this instrument and the Explanatory Memorandum on www.legislation.gov.uk.

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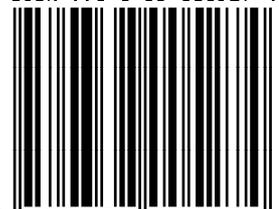
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