

STATUTORY INSTRUMENTS

1976 No. 962

SOCIAL SECURITY

**The Child Benefit (Determination of Claims and Questions)
Regulations 1976***Made - - - - 18th June 1976**Laid before Parliament 28th June 1976**Coming into Operation 8th August 1976*

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The Secretary of State for Social Services, in exercise of the powers conferred upon him by sections 7, 8 and 20(1) of the Child Benefit Act 1975(a) and of section 119 of the Social Security Act 1975(b), as applied by section 8 of the first mentioned Act, and of all other powers enabling him in that behalf, and after consultation with the Council on Tribunals in so far as required by section 10(1) of the Tribunals and Inquiries Act 1971(c), hereby makes the following regulations:—

PART I

GENERAL

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Child Benefit (Determination of Claims and Questions) Regulations 1976 and shall come into operation on 8th August 1976.

(2) In these regulations, unless the context otherwise requires—

“the Act” means the Child Benefit Act 1975;

“the Social Security Act” means the Social Security Act 1975;

“benefit” means child benefit under the Act;

“claim” means a claim to benefit;

“claimant” means a person who has claimed benefit and the expression includes, in relation to an award or decision, a person entitled to receive benefit under the award or directly affected by the decision;

“Commissioner” means the Chief National Insurance Commissioner or any other National Insurance Commissioner or a tribunal of 3 National Insurance Commissioners constituted in accordance with regulation 6(4);

“hearing” means an oral hearing;

“question” means any question as to the right to benefit other than a special question;

“special question” means any such question as is referred to in section 7(2) of the Act or any question which by virtue of the provisions of regulation 5 of the Child Benefit (Residence and Persons Abroad) Regulations 1976(d) falls to be determined by the Secretary of State in accordance with the provisions of the Social Security Act as if it were a question arising under that Act,

and other expressions have the same meanings as in the Act.

(a) 1975 c. 61.

(b) 1975 c. 14.

(c) 1971 c. 62.

(d) S.I. 1976/963 (1976 II, p. 2507).

(3) Any notice or other document required or authorised to be given or sent to any person under the provisions of these regulations shall be deemed to have been given or sent if it was sent by post to that person at his ordinary or last known address.

(4) Unless the context otherwise requires, any reference in these regulations to—

- (a) a numbered regulation is a reference to the regulation bearing that number in these regulations and any reference in a regulation to a numbered paragraph is a reference to the paragraph of that regulation bearing that number;
- (b) any provision made by or contained in any enactment or instrument shall be construed as a reference to that provision as amended or extended by any enactment or instrument and as including a reference to any provision which may re-enact or replace it, with or without modification.

(5) The rules for the construction of Acts of Parliament contained in the Interpretation Act 1889(a) shall apply for the purposes of the interpretation of these regulations as they apply for the purposes of the interpretation of an Act of Parliament.

Attendance by member of Council on Tribunals

2. Nothing in these regulations shall prevent a member of the Council on Tribunals or of the Scottish Committee thereof in that capacity from attending any hearing before a local tribunal or a Commissioner or, provided that all the members of the local tribunal agree and no person having the right to be heard objects, from being present when a local tribunal are deliberating on their decision or discussing any question of procedure.

PART II

ADJUDICATION BY INSURANCE OFFICERS, LOCAL TRIBUNALS
AND COMMISSIONERS

Claims and questions to be submitted to insurance officer

3.—(1) There shall be submitted forthwith to an insurance officer for determination in accordance with the provisions of these regulations any claim or any question.

(2) Different aspects of the same claim or question may be submitted to different insurance officers and for that purpose the provisions of these regulations shall apply with any necessary modifications.

Decision of insurance officer

4.—(1) An insurance officer to whom a claim or question is submitted under regulation 3 shall take it into consideration and so far as practicable dispose of it in accordance with this regulation within 14 days of its submission to him.

(2) Subject to regulation 8 (reference of a special question), the insurance officer may in the case of any claim or question so submitted to him—

- (a) decide it in favour of the claimant; or
- (b) decide it adversely to the claimant; or
- (c) refer it to a local tribunal.

(a) 1889 c. 63.

(3) Where an insurance officer refers a case to a local tribunal, notice in writing of the reference shall be given to the claimant.

Appeal to local tribunal

5.—(1) Subject to paragraphs (3) to (8), where the insurance officer has decided a claim or question adversely to the claimant, the claimant may appeal to a local tribunal.

(2) The claimant shall be notified in writing of the insurance officer's decision and the reasons for it, and of his right of appeal under this regulation.

(3) Where an insurance officer has decided any claim or question on an assumption of facts as to which there appeared to him to be no dispute, but concerning which, had a question arisen, that question would have fallen for determination by the Secretary of State in accordance with the provisions of the Social Security Act as if it were a question arising under that Act, it shall be deemed to be a sufficient compliance with the requirements of paragraph (2) as to notification to the claimant, to give him notice in writing informing him of the decision and of the reasons for it and that, if he is dissatisfied with the decision, he should reply to that effect, giving the reasons for his dissatisfaction.

(4) Where such a notice as is referred to in paragraph (3) is given, the decision of the insurance officer shall, for the purposes of paragraph (1), be treated as adverse to the extent only that the following provisions of this regulation so provide.

(5) If the claimant replies to the notice referred to in paragraph (3) and, after any appropriate investigations and explanations have been made, he remains dissatisfied, the decision of the insurance officer (if not reviewed) shall then, subject to the provisions of paragraph (6), be treated as adverse for the purposes of paragraph (1) and the claimant shall be notified of his right of appeal to a local tribunal, the time limit for such an appeal being measured from the date of that notification.

(6) If, where the provisions of paragraph (5) would otherwise apply, an insurance officer certifies that the sole ground of the claimant's dissatisfaction appears to him to be the assumption referred to in paragraph (3), those provisions shall not apply, but the claimant shall be notified in writing of his right to apply for the determination by the Secretary of State of the question arising on the assumption.

(7) If the question so arising is determined by the Secretary of State, then—

- (a) the insurance officer's decision shall thereafter (if not reviewed) be treated as an adverse decision for the purposes of paragraph (1) and the claimant shall be notified of his right of appeal to a local tribunal, the time limit for such appeal being measured from the date of the Secretary of State's decision;
- (b) where the Secretary of State's decision upholds the assumption, paragraph (8) shall apply as if the insurance officer had given the certificate therein referred to;
- (c) where the Secretary of State's decision does not uphold the assumption, it may, at the discretion of the insurance officer, be treated as an application for the review of the insurance officer's decision, and for the purposes of regulation 19 the date of the claimant's application for the Secretary of State's decision shall be treated as the date of the application for review.

(8) Where in connection with the decision of the insurance officer there has arisen a special question and that question having been determined the insurance officer certifies that the decision on that question is the sole ground of his decision, no appeal lies under this regulation without leave of the chairman of the local tribunal.

(9) An appeal under this regulation shall be brought by giving notice of appeal at a local office within 21 days after the date of the decision or within such further time as the chairman of the local tribunal may for good cause allow (whether or not the said 21 days have expired).

(10) A notice of appeal under this regulation shall be in writing and shall contain a statement of the grounds upon which the appeal is made.

(11) In this and the next following regulation, "local office" means any office appointed by the Secretary of State as a local office for the purposes of the Social Security Act.

Appeal from local tribunal to Commissioner

6.—(1) Subject to the provisions of this regulation, an appeal lies to a Commissioner from any decision of a local tribunal.

(2) The persons at whose instance an appeal lies under this regulation are—

- (a) an insurance officer;
- (b) the claimant.

(3) An appeal to a Commissioner must be brought within 3 months from the date of the decision of the local tribunal or within such further period as a Commissioner may in any case for good cause allow (whether or not the said 3 months have expired) and such an appeal shall be brought by giving notice in writing in a form approved by the Secretary of State stating the grounds of the appeal—

- (a) in the case of an appeal by an insurance officer, to the claimant; and
- (b) in the case of an appeal by the claimant, at a local office.

(4) If it appears to the Chief National Insurance Commissioner (or, in the case of his inability to act, to such other of the Commissioners as he may have nominated to act for the purpose) that an appeal falling to be heard by one of the Commissioners involves a question of law of special difficulty, he may direct that the appeal be dealt with, not by that Commissioner alone, but by a Tribunal consisting of any 3 of the Commissioners.

(5) If the decision of the Tribunal is not unanimous, the decision of the majority shall be the decision of the Tribunal.

Questions first arising on appeal

7. Where a question first arises in the course of an appeal to a local tribunal or a Commissioner, the tribunal or Commissioner may, if they think fit, proceed to determine the question notwithstanding that it has not been considered by an insurance officer.

Reference of a special question

8.—(1) The following paragraphs apply if on consideration of any claim or question an insurance officer is of opinion that there arises a special question.

(2) Subject to paragraph (3), the insurance officer shall—

- (a) refer the question so arising for determination by the Secretary of State; and

- (b) deal with any other questions as if the question so referred had not arisen.
- (3) The insurance officer may—
 - (a) postpone the reference of, or dealing with, any question until other questions have been determined;
 - (b) in cases where the determination of any question disposes of a claim, or any part of it, make an award or decide that an award cannot be made as to the claim, or that part of it, without referring or dealing with, or before the determination of, any other question.
- (4) Paragraphs (2) and (3) apply to a local tribunal and a Commissioner as they apply to an insurance officer, except that a tribunal or Commissioner shall, instead of referring a question in accordance with paragraph (2)(a), direct it to be so referred by an insurance officer.

Review of decisions

9.—(1) Any decision under the Act of an insurance officer, a local tribunal or a Commissioner may be reviewed at any time by an insurance officer or, on a reference from an insurance officer, by a local tribunal if—

- (a) the insurance officer or tribunal is satisfied and, in the case of a decision of a Commissioner, satisfied by fresh evidence, that the decision was given in ignorance of, or was based on a mistake as to, some material fact; or
 - (b) there has been any relevant change of circumstances since the decision was given; or
 - (c) the decision was based on the decision of a special question and the decision of that question is revised under section 7(3) of the Act or section 96 of the Social Security Act.
- (2) Any decision by an insurance officer may be reviewed at any time by an insurance officer or, on a reference from an insurance officer, by a local tribunal on the ground that the decision was erroneous in point of law.
- (3) A question may be raised with a view to a review under this regulation by means of an application in writing to an insurance officer stating the grounds of the application.
- (4) On receipt of any such application, the insurance officer shall proceed to deal with or refer any question arising thereon in accordance with regulations 4 and 5.
- (5) A decision given on a review under this regulation, regulation 4(2), 17 or 19 of the Child Benefit (Claims and Payments) Regulations 1976(a) or regulation 11(3) of the Child Benefit (Residence and Persons Abroad) Regulations 1976(b) or a decision refusing to review a decision shall be subject to appeal in like manner as an original decision and the provisions of these regulations shall, with the necessary modifications, apply in relation to a decision given on such a review and to a decision refusing to review a decision as they apply to the original decision of a question.

Local referees

10.—(1) Any question of fact arising upon the consideration of any question by an insurance officer or a local tribunal as to the right to benefit may be

(a) S.I. 1976/964 (1976 II, p. 2517).

(b) S.I. 1976/963 (1976 II, p. 2507).

referred by the insurance officer or the chairman of the local tribunal, as the case may be, for previous examination and report to two persons who are persons resident in the neighbourhood in which the claimant resides (hereafter in this regulation referred to as "the local referees") and of whom one shall be drawn from each panel mentioned in section 97(2) of the Social Security Act (constitution of local tribunals): so however that where a question of fact has been referred, the insurance officer or the local tribunal, as the case may be, may determine the question before him or them, notwithstanding that the report of the local referees has not been received, if there has elapsed reasonable time within which the local referees could have submitted their report.

(2) If any question of fact shall be so referred, the local referees shall interview the claimant and shall report to the insurance officer or to the local tribunal as the case may be, stating their findings of fact upon the question so referred.

(3) If the local referees do not agree upon their report each referee shall make a separate report.

(4) Any question of fact so referred may, with the consent of the claimant, but not otherwise, be proceeded with in the absence of one of the two local referees by the other referee, who shall interview the claimant and report upon the question of fact referred.

(5) No person shall act as a local referee if he would be prevented by the provisions of paragraph (a) of the proviso to paragraph 1(4) of Schedule 10 to the Social Security Act from sitting upon a local tribunal during the consideration of the case of the claimant.

Finality of decisions

11.—(1) Subject to the provisions of these regulations, the decision of any claim or question in accordance with those provisions shall be final.

(2) Paragraph (1) shall not make any finding of fact or other determination embodied in or necessary to a decision, or on which it is based, conclusive for the purposes of any further decision.

PART III

DETERMINATION OF CLAIMS AND QUESTIONS BY LOCAL TRIBUNALS AND COMMISSIONERS

Procedure at hearings and in connection with determinations; and right to representation

12.—(1) Subject to the provisions of the Act and of these regulations—

- (a) the procedure in connection with the consideration and determination of any claim or question to which these regulations relate shall be such as the chairman of the local tribunal or a Commissioner, as the case may be, shall determine;
- (b) any person who by virtue of the provisions of these regulations has the right to be heard at a hearing may be represented by another person whether having professional qualifications or not and, for the purposes of the proceedings at any such hearing, any such representative shall have all the rights and powers to which the person whom he represents is entitled under the Act and these regulations.

(2) For the purpose of arriving at their decision or discussing any question of procedure, a local tribunal shall, subject to regulation 2, order all persons not being members of the tribunal, other than the person acting as the clerk to the tribunal, to withdraw from the sitting of the tribunal.

(3) Any person having the right to be heard who appears at a hearing before a local tribunal or a Commissioner, as the case may be, may call witnesses and shall be given an opportunity of putting questions directly to any witnesses called at the hearing and of addressing the tribunal or Commissioner as the case may be.

Time and place of hearings before a local tribunal

13.—(1) The claimant and any other person who may appear to the chairman of the local tribunal to be interested shall be given reasonable notice (being not less than 10 days beginning with the date of the notice and ending on the date before the hearing of the case is to take place) of the time and place of any hearing before the tribunal and if such notice has not been given to a person to whom it should have been given under the foregoing provisions of this paragraph the tribunal shall not proceed with the hearing without the consent of that person.

(2) If a person to whom notice of a hearing has been duly given in accordance with paragraph (1) fails to appear at the hearing, the tribunal may proceed to determine the case in the absence of that person or may give such directions with a view to the determination of the case as, having regard to all the circumstances including any explanation offered for that person's absence, they may think proper.

Hearings before a local tribunal

14.—(1) Every hearing by a local tribunal shall be in public except in so far as the chairman of the tribunal may otherwise direct if he is of the opinion that intimate personal or financial circumstances may have to be disclosed or that considerations of public security are involved.

(2) The following persons shall be entitled to be present and to be heard at the hearing of any case by a local tribunal—

- (a) the claimant;
- (b) the insurance officer;
- (c) the Secretary of State;
- (d) any other person to whom notice has been given under regulation 13(1).

(3) Any case may with the consent of the claimant, but not otherwise, be proceeded with in the absence of any one member other than the chairman.

Decisions of a local tribunal

15.—(1) The decision of the majority of the local tribunal shall be the decision of the tribunal, but where the tribunal consists of an even number the chairman shall have a second or casting vote.

(2) A local tribunal shall—

- (a) record in writing all their decisions (whether on an appeal or on a reference from an insurance officer); and
- (b) include in the record of every decision a statement of the grounds of such decision and of their findings on questions of fact material thereto; and
- (c) if a decision is not unanimous, record a statement that one of the members dissented and the reason given by him for so dissenting.

(3) As soon as may be practicable after a case has been decided by a local tribunal, a copy of the record of their decision made in accordance with this regulation shall be sent to the claimant, to the insurance officer and to any other person who appears to the local tribunal to be interested; and if the decision of the tribunal is in whole or in part adverse to the claimant he shall be informed of the conditions governing appeals to a Commissioner.

Procedure before Commissioner on appeal from a local tribunal

16.—(1) If a person to or by whom notice of appeal from a decision of a local tribunal is given makes a request to a Commissioner for a hearing of the appeal, a Commissioner shall grant such request unless, after considering the record of the case and the reasons put forward in the request for the hearing, he is satisfied that the appeal can properly be determined without a hearing, in which event he shall so inform the claimant in writing and may proceed to determine the case without a hearing.

(2) If in accordance with the provisions of paragraph (1) a request for a hearing has been granted or if notwithstanding that no request has been made a Commissioner is otherwise satisfied that a hearing is desirable, reasonable notice of the time and place of the hearing shall be given to every person to or by whom notice of appeal was given and, if a Commissioner thinks fit, to any other person appearing to him to be interested.

(3) The insurance officer and any person to whom notice of the hearing has been given shall be entitled to be present and to be heard at the hearing.

(4) If any person to whom notice of the hearing has been duly given should fail to appear either in person or by representative at the hearing, the Commissioner may proceed to determine the appeal notwithstanding the absence of any such person or representative or may give such directions with a view to the determination of the appeal as he thinks proper.

(5) In any case in which a hearing of an appeal is held it shall be in public except in so far as the Commissioner may otherwise direct if he is of the opinion that intimate personal or financial circumstances may have to be disclosed or that considerations of public security are involved.

(6) The decision of a Commissioner shall be in writing and signed by him and he shall record the reasons for his decision; and a copy of the decision and reasons shall be sent as soon as may be practicable to the claimant and to any other person appearing to the Commissioner to be interested.

PART IV

APPLICATION OF SECTION 119 OF
THE SOCIAL SECURITY ACT*Payment of sums on account of benefit where appeal is pending*

17.—(1) Subject to the provisions of the Act and of these regulations, sums on account of benefit awarded shall be payable notwithstanding that an appeal against the award is pending and, subject as aforesaid, shall be treated as having been properly paid and shall not be recoverable under the provisions of the Social Security Act or otherwise.

(2) Where notice of an appeal by an insurance officer to a Commissioner from an award of a local tribunal is given or sent to the person claiming the benefit within 21 days of the date on which an insurance officer received the record of the decision of the local tribunal, payment of sums on account of benefit affected by the appeal shall be suspended until the appeal has been determined.

Circumstances in which benefit found not to have been payable is to be treated as properly paid

18. Where by a decision on appeal or review benefit paid in respect of a child for any week under an award is found not to have been payable to the person in whose favour that award was made but—

- (a) that benefit has been received by a person who had that child living with him or who was contributing to the cost of providing for that child at a

weekly rate which is not less than the weekly rate of the benefit paid in respect of that child; and

- (b) that person or some other person would have been entitled to benefit in respect of that child had an appropriate claim been made,

the benefit paid for that week in respect of that child shall, unless it is required to be repaid by the person by whom it has been received, be treated as having been properly paid to the person in whose favour the award was made.

Review of decisions involving payment of benefit

19.—(1) Where on review a decision is revised so as to make sums on account of benefit payable, the decision given on the review shall have effect as if a claim to benefit had been made on the date of the application for the review and accordingly no sum on account of benefit shall be payable in respect of any period earlier than 52 weeks before the week in which such application was made.

(2) For the purposes of this regulation, where a decision is reviewed at the instance of an insurance officer, the date on which it was first decided by the insurance officer that the decision should be reviewed shall be deemed to be the date of the application for the review.

Recovery of sums required to be repaid

20. Where by a decision on appeal or review benefit is required to be repaid to the Secretary of State, then, without prejudice to any other method of recovery, it shall be recoverable by deduction from benefit to which the person by whom it is to be repaid is then or thereafter entitled.

Modification of section 119(2) of the Social Security Act

21.—(1) Section 119(2) of the Social Security Act shall apply in relation to child benefit as modified in paragraph (2).

(2) At the end of the said section 119(2) there shall be added the following proviso:—

“Provided that—

- (a) for any week in which a person entitled under the original decision to child benefit in respect of a child was one of two spouses residing together and arrangements had been made whereby benefit in respect of that child as well as being payable to the spouse entitled to it might, in the alternative, be paid to the other spouse on behalf of the spouse entitled to it; or
- (b) in a case (not being one to which paragraph (a) above applies) where payment of child benefit has been made not to the person entitled to it but to another person (whether or not the spouse of the person entitled) on his behalf,

if the spouse or person entitled does, but the other spouse or other person does not, satisfy the person or tribunal determining the appeal or review that in the obtaining and receipt of the benefit he has throughout used due care and diligence to avoid overpayment, repayment shall be required not from the spouse or person entitled but from the other spouse or other person.”

Overpaid benefit to be treated as properly paid where additional supplementary benefit would otherwise have been payable

22.—(1) Subject to paragraph (2), where—

- (a) by a decision given on appeal or review it is decided that the whole or part of any sum paid by way of benefit for any week was not payable and but for this regulation repayment thereof would be required; and

- (b) the Supplementary Benefits Commission certify that the person awarded benefit or some other person would have been paid supplementary benefit additional to that which was paid to him for that period had there been no overpayment of benefit,

the decision on appeal or review shall direct that benefit overpaid shall be treated as properly paid to the extent of the additional amount shown in the certificate.

(2) Where benefit overpaid was in respect of a child not living with the person awarded benefit in respect of that child, paragraph (1) shall not apply in respect of any week unless either—

- (a) the person awarded benefit in respect of that child has, or is treated as having, contributed to the cost of providing for that child at a weekly rate not less than the weekly rate of benefit paid to him in respect of that child; or
- (b) it appears from the certificate that less supplementary benefit was paid than would have been the case had there been no overpayment of benefit in respect of that child and, where the payment of supplementary benefit was to some other person, that either he was a member of the same household as the person awarded benefit or the latter was his spouse and they were residing together.

(3) In this regulation supplementary benefit means benefit under the Supplementary Benefit Act 1966(a).

PART V
TRANSITIONAL PROVISION

Recovery from benefit of overpaid interim benefit under section 16 of the Act or of overpaid family allowances

23. Where in accordance with a decision given on appeal or review benefit under section 16 of the Act (interim benefit for unmarried or separated parents with children) or any sum by way of an allowance under the Family Allowances Acts 1965 to 1975 is required to be repaid to the Secretary of State, then, without prejudice to any other method of recovery, it shall be recoverable by deduction from benefit to which the person required to repay it is then or thereafter entitled.

David Ennals,

Secretary of State for Social Services.

18th June 1976.

(a) 1966 c. 20 (enacted as the Ministry of Social Security Act 1966).

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations, made after consultation with the Council on Tribunals, deal with the determination of claims and questions relating to child benefit under the Child Benefit Act 1975.

Part I of the Regulations relates to their citation, commencement and interpretation. Part II concerns adjudication by insurance officers, local tribunals and Commissioners. Part III contains procedural matters relating to the determination of claims and questions by local tribunals and Commissioners. Part IV contains provisions relating to the application of section 119 of the Social Security Act 1975 (effect of adjudication on payment and recovery) to child benefit. Part V contains a transitional provision. The subject matter of each regulation is shown in the table of arrangement at the beginning of the Regulations.

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