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STATUTORY INSTRUMENTS

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**1999 No. 991**

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

**PART IV**

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

**CHAPTER I**

**GENERAL**

***GENERAL APPEALS MATTERS NOT INCLUDING CHILD SUPPORT APPEALS***

**Other persons with a right of appeal**

**25.** For the purposes of section 12(2)(b), the following other persons have a right to appeal to an appeal tribunal—

- (a) any person appointed by the Secretary of State under regulation 33(1) of the Claims and Payments Regulations (persons unable to act) 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 (claims on behalf of terminally ill persons);
- (c) in relation to a pension scheme, any person who, for the purposes of Part X of the Pension Schemes Act 1993(1), is an employer, member, trustee or manager by virtue of section 146(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 Secretary of State—

- (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(2); 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 138(2) of the Contributions and Benefits Act (payments out of the social fund).

**Decisions against which no appeal lies**

**27.—**(1) No appeal lies to an appeal tribunal against a decision set out in Schedule 2.

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

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(1) 1993 c. 48.

(2) The relevant amending instruments are S.I.1989/136, S.I. 1994/2943 and S.I. 1996/1460.

(3) An appeal made 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 Act or these Regulations against any decision of the Secretary of State 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 Secretary of State 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 Secretary of State 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 1997 Act relating to a certificate of recoverable benefits shall, in addition to any requirements imposed by regulations, include also the following particulars—

- (a) in the case of an appeal, the date of the certificate of recoverable benefits or the decision by the Secretary of State on review against which the appeal is brought, the question under section 11 of the 1997 Act to which the appeal relates and a summary of the arguments relied upon by the appellant to support his contention that the certificate is wrong;
- (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 section 9 of the 1997 Act or if that statement was not in writing, a written summary of it, shall be sent with that appeal or application.

(3) Where it appears to the Secretary of State 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) he 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 Secretary of State's direction under paragraph (3), as the Secretary of State may determine.

(5) Where further particulars or a written statement or summary are required under paragraph (3) they shall be sent to or delivered to the Compensation Recovery Unit of the Department of Social Security at Reyrolle Building, Hebburn, Tyne and Wear, NE31 1XB within such period as the Secretary of State may direct.

(6) The Secretary of State may treat any appeal relating to the certificate of recoverable benefits as an application for review under section 10 of the 1997 Act.

## GENERAL APPEALS MATTERS INCLUDING CHILD SUPPORT APPEALS

### Appeal against a decision which has been revised

**30.**—(1) An appeal against a decision of the Secretary of State shall not lapse where the decision is revised under section 16 of the Child Support Act or section 9 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 section 9;
- (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 from receiving, some or all of the benefit;
- (c) as a result of the decision, a denial or disqualification for the receiving of 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 71, 71A or 74 of the Administration Act<sup>(3)</sup> 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 section 16 of the Child Support Act or under section 9 is not more advantageous to the appellant than the decision before it was revised, the appeal shall be treated as though 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 expiration 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 the further representations from the appellant, the Secretary of State further revises his decision and that decision is more advantageous to the appellant than the decision before it was revised.

### Time within which an appeal is to be brought

**31.**—(1) Where an appeal lies from a decision of the Secretary of State to an appeal tribunal, except in the case of a decision of the Secretary of State under section 3 or 3A of the Vaccine Damage Payments Act, the time within which that appeal must be brought is, subject to the following provisions of this Part—

- (a) within 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, within 14 days of the expiry of the period specified in sub-paragraph (a).

(2) Where the Secretary of State—

- (a) revises, or following an application for a revision under regulation 3(1) or (3) does not revise, a decision under section 16 of the Child Support Act or under section 9, or

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(3) Section 71A was inserted by section 18 of the Jobseekers Act 1995 (c. 18).

(b) supersedes a decision under section 17 of the Child Support Act or under section 10, the period of one month specified in paragraph (1) shall begin to 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 the Secretary of State issues a notice that he is not revising the decision.

(3) An appeal against a certificate of recoverable benefits must be brought—

- (a) not later than one month after the date a person making a compensation payment discharges his liability under section 6 of the 1997 Act;
- (b) where the certificate is reviewed by the Secretary of State in accordance with regulations made under section 11(5)(c) of the 1997 Act, not later than one month after the date 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 within which an appeal must be brought 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 expiration 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 panel member is satisfied that—

- (a) if the application is granted there are reasonable prospects that the appeal will be successful;
- (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 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 the application, the panel member shall have regard to the principle that the greater the amount of time that has elapsed between the expiration 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 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.

### **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 Secretary of State or in such other format as the Secretary of State accepts as sufficient for the purpose and shall—

- (a) be signed by—
  - (i) the person who, under section 20 of the Child Support Act as extended by paragraph 3 of Schedule 4C to that Act, section 11(2) of the 1997 Act or section 12(2), has a right of appeal; or
  - (ii) where the person 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 appropriate office;
- (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 the subject of the application, as the case may be, to enable that decision, certificate or subject of the application to be identified.

(2) In this regulation, “an appropriate office” means—

- (a) in the case of an appeal under the 1997 Act against a certificate of recoverable benefits, the Compensation Recovery Unit of the Department of Social Security at Reyrolle Building, Hebburn, Tyne and Wear, NE31 1XB;
- (b) in the case of an appeal against a decision relating to a jobseeker’s allowance, an office of the Department of Social Security or of the Department for Education and Employment;
- (c) in the case of a contributions decision which falls within Part II of Schedule 3 to the Act, any National Insurance Contributions office;
- (d) in the case of an appeal under section 20 of the Child Support Act as extended by paragraph 3 of Schedule 4C to that Act, an office of the Child Support Agency; and
- (e) in any other case, an office of the Department of Social Security.

(3) A form which is not completed in accordance with the instructions on the form—

- (a) except where paragraph (4) applies, does not satisfy the requirements of paragraph (1), and
- (b) may be returned by the Secretary of State to the sender for completion in accordance with those instructions.

(4) Where the Secretary of State 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, he may treat the form as satisfying the requirements of paragraph (1).

(5) 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 Secretary of State may treat the letter as satisfying the requirements of paragraph (1).

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

(7) 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 particulars (as the case may be) are received by the Secretary of State within—

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

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

(8) 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 (7)—

- (a) the Secretary of State 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) the panel member shall determine whether the form or the letter satisfies the requirement of paragraph (1), and shall inform the appellant or applicant and the Secretary of State of his determination.

(9) 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 (7), and
- (b) no decision has been made under paragraph (8) at the time the form or the further particulars are received by the Secretary of State,

that form or 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 (other than the Secretary of State), the Secretary of State may appoint such person as he thinks fit to proceed with the appeal in the place of such deceased party.

(2) A grant of probate, confirmation 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 Secretary of State shall be the day immediately prior to the first day on which such action was taken.