

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY, CHILD SUPPORT AND TAX CREDITS
(DECISIONS AND APPEALS) AMENDMENT REGULATIONS 2004

2004 No.3368

1. This Explanatory Memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

This Memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

This is a package of miscellaneous amendments to the Social Security and Child Support (Decisions and Appeals) Regulations 1999 in respect of appeals to appeal tribunals. There are similar amendments to:

- The Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001
- The Tax Credits (Appeals) (No.2) Regulations 2002

which mirror amendments made to the principal Decisions and Appeals Regulations. There are consequential or supplementary amendments to the Housing Benefit (General) Regulations 1987 and the Council Tax Benefit (General) Regulations 1992.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 Many of the amendments require affirmative procedure. The amendments in regulations 2 and 6 relating to misconceived appeals and the choice of an oral appeal hearing are made partly under paragraph 2 of schedule 5 to the Social Security Act 1998 (c. 14) (“the 1998 Act”) which provides for striking out an appeal and attracts affirmative procedure. The misconceived appeals provisions in regulations 2(4) and 3(2) are made under section 7 of the 1998 Act which also attracts affirmative procedure. The amendments in regulation 2(9) providing for a right of appeal against a decision that a benefit claim is defective are made under section 12(2) of the 1998 Act which attracts affirmative procedure. In the case of defective claims for Housing Benefit and Council Tax Benefit, there are similar amendments in regulation 3(4) made under paragraph 6(2)(e) of Schedule 7 to the Child Support, Pensions and Social Security Act 2000 (c.19) which attracts affirmative procedure.

3.2 The amendments in regulations 4 and 5 use powers in the Social Security Administration Act 1992 (c.5) to clarify when a claim for Housing Benefit and Council Tax Benefit is defective. The amendments are consequential on, or supplementary to, the amendments in regulation 3(4) mentioned above.

3.3 The amendments in regulation 2 use powers in the Social Security Act 1998. They provide for appeals about specified social security benefits. The amendments in regulation 6 in respect of tax credit appeals are made by the Secretary of State using powers in the 1998 Act which have been modified and applied to tax credits by S.I. 2002/2926 under powers contained in the Tax Credits Act 2002 (c. 21).

4. Legislative Background

4.1 In this instrument each amendment relates, directly or indirectly, to appeals to appeal tribunals constituted under the Social Security Act 1998.

4.2 The main purposes of the instrument are to amend the legislation described in section 2 above to:

- remove provisions for striking out misconceived appeals,
- clarify appeal rights in relation to defective benefit claims, and
- change the procedure for an appellant to opt for an oral or paper hearing.

Each of these amendments is made in the light of a particular Social Security Commissioner's decision.

4.3 The instrument also makes minor consequential and associated amendments.

5. Extent

5.1 This instrument applies to Great Britain.

5.2 The Department for Social Development in Northern Ireland, will be making Regulations for Northern Ireland that mirror these amendments

6. European Convention on Human Rights

The Parliamentary Under Secretary of State for the Department for Work and Pensions in the House of Lords (Baroness Hollis of Heigham) has made the following statement regarding Human Rights.

“In my view, the provisions of the Social Security, Child Support and Tax Credits (Decisions and Appeals) Amendment Regulations 2004, are compatible with the Convention rights.”

7. Policy Background

7.1 Misconceived appeals

The Decisions and Appeals Regulations 1999 provided for misconceived appeals to be struck out.

A Social Security Commissioner found in CCS/2962/2000 that the form which gave notice of intention to strike out the appeal was invalid as it was not issued by the person who can strike out the appeal. As a result the misconceived appeals procedures have been suspended since the 18th March 2002. The Department, Appeals Service and the President of appeal tribunals have decided that they do not want or need any misconceived appeals procedures, and the Council on Tribunals agreed with this decision.

7.2 Appeal rights on defective claims

Claims that are not properly completed are referred back to the claimant as defective. Following a Commissioner's decision in which it was held that the lack of an appeal right on whether a claim for Income Support or Incapacity Benefit was defective was in breach of Article 6 of the European Convention on Human Rights, the regulations are being amended so that the legislative bar purporting to deny appeal rights on such decisions is removed. An equivalent change is being made in respect of claims for Housing Benefit and Council Tax Benefit on the grounds that a consistent approach to dealing with claims for benefit is required.

A recent decision by a Tribunal of Social Security Commissioners in respect of four cases involving claims for Housing Benefit or Council Tax Benefit has necessitated a related amendment to the legislation governing the determination of claims. The Commissioners held that regulation 76(2) of the Housing Benefit (General) Regulations, and its Council Tax equivalent, is ultra vires. This provision prescribes the circumstances in which the Local Authority is under no obligation to determine a claim, including where the claim is defective. The amendment effectively removes the provision from the statute book.

7.3 Consultation

Amendments to regulations dealing with tribunal procedure are subject to statutory consultation with the Council on Tribunals (CoT). The remaining regulations are subject to statutory consultation with the Social Security Advisory Committee (SSAC). Both of these bodies have been consulted on the regulations. Subject to one or two queries and suggestions, these bodies have indicated that they are content with the draft regulations and welcome the changes being made.

In relation to the changes being made in respect of Housing Benefit and Council Tax Benefit to deal with appeal rights on defective claims, the Local Authority Associations, which represent the authorities which administer these benefits, have also been consulted on the proposed changes. Although agreeing in principle, they

expressed some concerns about the effects of granting a right of appeal in these circumstances in connection, in particular, with the format of the LA's claim form and the type of information or evidence requested to make good any deficiency in the claim. However they were advised that as the position with regard to the ECHR had been clarified by the Commissioner, it was considered important for there to be a consistent approach across the benefits, thus allowing redress to an appeal tribunal in those occasional instances where a defective claim is not remedied as requested and an appeal is lodged.

8. Regulatory Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The removal of the misconceived appeals provisions will have no public sector impact as they are not being used. The impact on the public sector of the introduction of appeal rights against defective claims, is that there will be a small increase in the numbers of benefit appeals.

9. Contact

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can answer any queries regarding the instrument.