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STATUTORY INSTRUMENTS

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**2005 No. 907**

**CHILD TRUST FUNDS, NORTHERN IRELAND**

**The Child Trust Funds (Appeals)  
(Northern Ireland) Regulations 2005**

*Made - - - - 24th March 2005*

*Coming into force in accordance with regulation 1(1)*

A draft of this instrument has been laid before Parliament in accordance with Article 75(1A) of the Social Security (Northern Ireland) Order 1998<sup>(1)</sup> and approved by resolution of each House of Parliament.

Accordingly, the Treasury, in exercise of the powers conferred by Articles 6, 8(6), 13(7), 15(10) (a) and (11), 16(1) and (3)(a), 28(1), 74(1), (2B), (5) and (6) of, and paragraphs 7, 11 and 12(1) of Schedule 1 and paragraphs 1 to 6 of Schedule 4 to, the Social Security (Northern Ireland) Order 1998<sup>(2)</sup> and now vested in them<sup>(3)</sup>, make the following Regulations:

**Citation, commencement, duration and interpretation**

1.—(1) These Regulations may be cited as the Child Trust Funds (Appeals) (Northern Ireland) Regulations 2005 and shall come into force on the day after they are made.

(2) These Regulations shall cease to have effect on such day as is appointed by order made under section 24(1) of the Child Trust Funds Act 2004<sup>(4)</sup>.

(3) In these Regulations, unless the context otherwise requires—

“the Order” means the Social Security (Northern Ireland) Order 1998;

“the 2004 Act” means the Child Trust Funds Act 2004;

“appeal” means an appeal under section 22 of the 2004 Act to an appeal tribunal;

“the Board” means the Commissioners of Inland Revenue;

“the clerk to the appeal tribunal” means a clerk assigned to the appeal tribunal in accordance with regulation 7;

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(1) S.I. 1998/1506 (N.I. 10); Article 75(1A) was inserted by paragraph 18(3) of Schedule 4 to the Tax Credits Act 2002 (c. 21).

(2) The powers in the Social Security (Northern Ireland) Order 1998, exercised in these Regulations, are those which have been applied and modified under powers contained in section 24(5) of the Child Trust Funds Act 2004 (c. 6) by S.I. 2005/191. For the definition of “prescribe” see Article 2. Article 74 was amended by paragraph 17(2) and (3) of Schedule 4 to the Tax Credits Act 2002.

(3) See regulation 15(3) of S.I. 2005/ 191.

(4) 2004 c. 6.

“decision notice” has the meaning given in regulation 18(1) and (2);

“financially qualified panel member” means a person appointed to the panel constituted under Article 7 of the Order who satisfies the requirements of paragraph 3 of Schedule 2 to the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999<sup>(5)</sup> (financial qualifications);

“legally qualified panel member” means a person appointed to the panel constituted under Article 7 of the Order who satisfies the requirements of paragraph 1 of Schedule 2 to the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999 (legal qualifications);

“notification period” has the meaning given in regulation 3;

“party to the proceedings” means the Board and any other person who brings an appeal;

“the President” means the President of appeal tribunals appointed under Article 6 of the Order.

(4) In these Regulations any reference to the chairman of the appeal tribunal shall, in the case of an appeal tribunal which has only one member, include a reference to that member.

### **Service of notices or documents**

2. Where by any provision of these Regulations—

- (a) any notice or other document is required to be given or sent to the clerk to the appeal tribunal or to the Board, that notice or document shall be treated as having been so given or sent on the day that it is received by the clerk to the appeal tribunal or by the Board, and
- (b) any notice or other document is required to be given or sent to any person other than the clerk to the appeal tribunal or the Board, that notice or document shall, if sent by post to that person’s last known address, be treated as having been given or sent on the day that it was posted.

### **Disputes about notices of appeal**

3. Where a dispute arises as to whether notice of an appeal was given to the Board within the period of thirty days specified in section 23(1) of the 2004 Act (“the notification period”) the dispute shall be referred to, and be determined by, a legally qualified panel member.

### **Late appeals**

4.—(1) Where the conditions specified in paragraphs (2) to (8) are satisfied, an appeal may be brought within a period of one year after the expiration of the notification period.

(2) An application to bring a late appeal under this regulation shall be made in writing, signed by or on behalf of the appellant and sent to the Board and it shall include sufficient information to determine—

- (a) the identity of the appellant;
- (b) whether the appellant is a relevant person within the meaning of section 22(3) of the 2004 Act or a personal representative of a child in accordance with section 22(5), if the appellant is appealing in either capacity;
- (c) the subject of the appeal to which the application relates;
- (d) the decision against which the appeal is being made; and
- (e) the grounds on which the applicant seeks time to appeal, including details of any relevant special circumstances for the purposes of paragraph (4).

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(5) [S.R. 1999 No. 162](#): the only relevant amending regulations are [S.R. 2002 No. 189](#).

(3) An application to bring a late appeal under this regulation shall be determined by a legally qualified panel member, except that where the Board consider that the conditions in paragraphs (4) (b) to (8) are satisfied, the Board may grant the application.

(4) An application to bring a late appeal shall not be granted unless—

- (a) the panel member is satisfied that, if the application is granted, there are reasonable prospects that the appeal will be successful; or
- (b) the panel member is, or the Board are, satisfied that 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, or the Board are, as the case may be, 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 appeal to be brought within the notification period.

(6) For the purposes of paragraph (5)(a), the special circumstances are that—

- (a) the applicant or a partner 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, regard shall be had to the principle that the greater the amount of time that has elapsed between the expiration of the notification period and the making of the application to bring a late appeal, 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 notification period); 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 a late appeal 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.

(12) In this regulation “Commissioner” includes a Commissioner within the meaning in section 39(1) of the Social Security Act 1998(6).

### **Death of a party to an appeal**

5. In any proceedings relating to an appeal under section 22(2), (4), (5) or (6) of the 2004 Act, on the death of a party to the proceedings (other than the Board) the personal representative of the person who has died may represent him at any hearing.

### **Composition of appeal tribunals**

6.—(1) Subject to paragraphs (2) and (3), an appeal tribunal for the purposes of these Regulations shall consist of one legally qualified panel member.

(2) An appeal tribunal shall consist of a financially qualified panel member and a legally qualified panel member where the appeal may require consideration by members of the appeal tribunal of financial issues which are, in the opinion of the President, difficult and which relate to the administration of a child trust fund.

(3) The President may determine that the appeal tribunal shall include such an additional member drawn from the panel constituted under Article 7 of the Order as he considers appropriate for the purposes of providing further experience for that additional panel member or for assisting the President in the monitoring of standards of decision making by panel members.

### **Clerk to an appeal tribunal**

7. For the purposes of any appeal the Department for Social Development shall assign a clerk to service each appeal tribunal and the clerk so assigned shall be responsible for summoning members of the panel constituted under Article 7 of the Order to serve on the tribunal.

### **Consideration and determination of appeals**

8.—(1) The procedure in connection with the consideration and determination of an appeal shall, subject to the following provisions of these Regulations, be such as a legally qualified panel member shall determine.

(2) A legally qualified panel member may give directions requiring a party to the proceedings to comply with any provision of these Regulations and may at any stage of the proceedings, either of his own motion or on a written application made to the clerk to the appeal tribunal by any party to the proceedings, give such directions as he may consider necessary or desirable for the just, effective and efficient conduct of the proceedings and may direct any party to the proceedings to provide such particulars or to produce such documents as may be reasonably required.

(3) Where a clerk to the appeal tribunal is authorised to take steps in relation to the procedure of the tribunal he may give directions requiring any party to the proceedings to comply with any provision of these Regulations.

### **Choice of hearing**

9.—(1) Where an appeal is made to an appeal tribunal the appellant and any other party to the proceedings shall notify the clerk to the appeal tribunal, on a form approved by the Department for Social Development, whether he wishes to have an oral hearing or whether he is content for the appeal to proceed without an oral hearing.

(2) The form shall include a statement informing the appellant that, if he does not notify the clerk to the appeal tribunal as required by paragraph (1) within the period specified in paragraph (3), the appeal may be struck out in accordance with regulation 13(1).

(3) Notification in accordance with paragraph (1)—

- (a) if given by the appellant, must be given or sent to the clerk to the appeal tribunal within 14 days of the date on which the form is issued to him; or
- (b) if given by the Board, must be given or sent to the clerk to the appeal tribunal within 14 days of the date on which the form is issued to the appellant, or within such longer period as the clerk may direct.

(4) Where an oral hearing is requested in accordance with paragraphs (1) and (3) the appeal tribunal shall hold an oral hearing unless the appeal is struck out under regulation 13(1).

(5) The chairman of the appeal tribunal may of his own motion direct that an oral hearing of the appeal be held if he is satisfied that such a hearing is necessary to enable the appeal tribunal to reach a decision.

### **Withdrawal of appeal**

**10.**—(1) At any time before an appeal is determined it may be withdrawn by the appellant either—

- (a) at an oral hearing; or
- (b) by giving notice in writing of withdrawal to the clerk to the appeal tribunal.

(2) If an appeal is withdrawn in accordance with paragraph (1)(a), the clerk to the appeal tribunal shall send a notice in writing to any party to the proceedings who is not present when the appeal is withdrawn informing him that the appeal has been withdrawn.

(3) If an appeal is withdrawn in accordance with paragraph (1)(b), the clerk to the appeal tribunal shall send a notice in writing to every party to the proceedings informing him that the appeal has been withdrawn.

### **Summoning of witnesses and administration of oaths**

**11.**—(1) The chairman of the appeal tribunal may by summons require any person in Northern Ireland to attend as a witness at a hearing of an appeal at such time and place as shall be specified in the summons and, subject to paragraph (2), at the hearing to answer any question or produce any documents in his custody or under his control which relate to any matter in question in that appeal but—

- (a) no person shall be required to attend in obedience to such summons unless he has been given at least 14 days' notice of the hearing or, if less than 14 days' notice is given, he has informed the tribunal that the notice given is sufficient; and
- (b) no person shall be required to attend and give evidence or to produce any document in obedience to such summons unless the necessary expenses of attendance are paid or tendered to him.

(2) No person shall be compelled to give any evidence or produce any document or other material that he could not be compelled to give or produce on a trial of an action in a court of law in Northern Ireland.

(3) In exercising the powers conferred by this regulation, the chairman of the appeal tribunal shall take into account the need to protect any matter that relates to intimate personal or financial circumstances, is commercially sensitive, consists of information communicated or obtained in confidence or concerns national security.

(4) Every summons issued under this regulation shall contain a statement to the effect that the person in question may apply in writing to a legally qualified panel member to vary or set aside the summons.

(5) The chairman of the appeal tribunal may require any witness, including a witness summoned under the powers conferred by this regulation, to give evidence on oath or affirmation and for that purpose there may be administered an oath or affirmation in due form.

### **Confidentiality in appeals**

**12.**—(1) In the circumstances prescribed in paragraph (2), for the purposes of paragraph 7 of Schedule 1 to the Order (confidentiality), in an appeal the prescribed material is—

- (a) the address of the eligible child within the meaning of section 2 of the 2004 Act<sup>(7)</sup> and, in relation to an appeal under section 22(2) of that Act, the address of any relevant person within the meaning of 22(3); and
- (b) information the use of which could reasonably be expected to lead to the location of any person specified in sub-paragraph (a).

(2) Paragraph (1) applies where a relevant person within the meaning of section 22 of the 2004 Act, or an authority with parental responsibility within the meaning of section 3(9) of that Act in relation to the eligible child, notifies the Board that he would like the information specified in paragraph (1) to remain confidential—

- (a) when notice of appeal is given to the Board under section 23(1) of that Act; or
- (b) in response to an enquiry by the Board if notification is within 14 days of the enquiry.

### **Appeals which may be struck out**

**13.**—(1) Subject to paragraphs (2) and (3), an appeal may be struck out by the clerk to the appeal tribunal—

- (a) for want of prosecution including an appeal not made within the time specified in section 23(1) of the 2004 Act and regulation 4;
- (b) for failure of the appellant to comply with a direction given under these Regulations where the appellant has been notified that failure to comply with the direction could result in the appeal being struck out; or
- (c) for failure of the appellant to notify the clerk to the appeal tribunal, in accordance with regulation 9, whether or not he wishes to have an oral hearing of his appeal.

(2) Where the clerk to the appeal tribunal determines to strike out the appeal, he shall notify the appellant that his appeal has been struck out and of the procedure for reinstatement of the appeal as specified in regulation 14.

(3) The clerk to the appeal tribunal may refer any matter for determination under this regulation to a legally qualified panel member for decision by the panel member rather than the clerk to the appeal tribunal.

### **Reinstatement of struck out appeals**

**14.**—(1) The clerk to the appeal tribunal may reinstate an appeal which has been struck out in accordance with regulation 13(1)(c) where—

- (a) the appellant has made representations to him or, as the case may be, further representations in support of his case with reasons why he considers that his appeal should not have been struck out;
- (b) the representations are made in writing within one month of the order to strike out the appeal being issued; and
- (c) the clerk is satisfied in the light of those representations that there are reasonable grounds for reinstating the appeal,

but if the clerk is not satisfied that there are reasonable grounds for reinstatement a legally qualified panel member shall consider whether the appeal should be reinstated in accordance with paragraph (2).

(2) A legally qualified panel member may reinstate an appeal which has been struck out in accordance with regulation 13 where—

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(7) 2004 c. 6.

- (a) the appellant has made representations or, as the case may be, further representations in support of his case with reasons why he considers that his appeal should not have been struck out, to the clerk to the appeal tribunal, in writing within one month of the order to strike out the appeal being issued, and the panel member is satisfied in the light of those representations that there are reasonable grounds for reinstating the appeal;
- (b) the panel member is satisfied that the appeal is not one which may be struck out under regulation 13; or
- (c) the panel member is satisfied that notwithstanding that the appeal is one which may be struck out under regulation 13, it is not in the interests of justice for the appeal to be struck out.

### **Procedure at oral hearings**

15.—(1) Subject to regulations 16, 17 and 20, the procedure for an oral hearing shall be such as the chairman of the appeal tribunal shall determine.

(2) Except where paragraph (4) applies, not less than 14 days' notice (beginning with the day on which notice is given and ending on the day before the hearing of the appeal is to take place) of the time and place of any oral hearing of an appeal shall be given to every party to the proceedings.

(3) If such notice has not been given to a person to whom it should have been given under the provisions of paragraph (2) the hearing may proceed only with the consent of that person.

(4) Any party to the proceedings may waive his right under paragraph (2) to receive not less than 14 days' notice of the time and place of any oral hearing by giving notice to the clerk to the appeal tribunal.

(5) If a party to the proceedings to whom notice has been given under paragraph (2) fails to appear at the hearing the chairman of the appeal tribunal may, having regard to all the circumstances including any explanation offered for the absence—

- (a) proceed with the hearing notwithstanding his absence; or
- (b) give such directions with a view to the determination of the appeal as he may think proper.

(6) If a party to the proceedings has waived his right to be given notice under paragraph (2) the chairman of the appeal tribunal may proceed with the hearing notwithstanding his absence.

(7) An oral hearing of an appeal shall be in public except where the chairman of the appeal tribunal is satisfied that it is necessary to hold the hearing, or part of the hearing, in private—

- (a) in the interests of national security, morals, public order or children;
- (b) for the protection of private or family life of one or more parties to the proceedings; or
- (c) in special circumstances, because publicity would prejudice the interests of justice.

(8) At an oral hearing—

- (a) any party to the proceedings shall be entitled to be present and be heard; and
- (b) the following persons may be present by means of a live television link—
  - (i) a party to the proceedings or his representative or both; or
  - (ii) where an appeal tribunal consists of more than one member, a tribunal member other than the chairman,

provided that the chairman of the appeal tribunal gives permission.

(9) A person who has the right to be heard at a hearing may be accompanied and may be represented by another person whether having professional qualifications or not and, for the purposes of the proceedings at the hearing, any such representative shall have all the rights and powers to which the person whom he represents is entitled.

(10) The following persons shall also be entitled to be present at an oral hearing (whether or not it is otherwise in private) but shall take no part in the proceedings—

- (a) the President;
- (b) any person undergoing training as a chairman or member of an appeal tribunal or as a clerk to an appeal tribunal;
- (c) any person acting on behalf of the President in the training or supervision of panel members or in the monitoring of standards of decision-making by panel members; and
- (d) with the leave of the chairman of the appeal tribunal, any other person.

(11) Nothing in paragraph (10) affects the rights of—

- (a) any person mentioned in sub-paragraphs (a) and (b) of that paragraph where he is sitting as a member of a tribunal or acting as its clerk; or
- (b) the clerk to the tribunal,

and nothing in this regulation prevents the presence at an oral hearing of any witness or of any person whom the chairman of the appeal tribunal permits to be present in order to assist the appeal tribunal or the clerk.

(12) Any person entitled to be heard at an oral hearing may address the tribunal, may give evidence, may call witnesses and may put questions directly to any other person called as a witness.

(13) For the purpose of arriving at its decision an appeal tribunal shall, and for the purpose of discussing any question of procedure may, notwithstanding anything contained in these Regulations, order all persons not being members of the tribunal, other than the person acting as clerk to the appeal tribunal, to withdraw from the hearing except that—

- (a) the President or any other person mentioned in paragraph (10)(c); and
- (b) with the leave of the chairman of the appeal tribunal, any person mentioned in paragraph (10)(b) or (d),

may remain present at any such sitting.

(14) In this regulation “live television link” means a live television link or other facilities which allow a person who is not physically present at an oral hearing to see and hear proceedings and be seen and heard by those physically present.

### **Manner of providing expert assistance**

16.—(1) Where an appeal tribunal requires one or more experts to provide assistance to it in dealing with a question of fact of special difficulty under Article 8(4) of the Order, such an expert shall, if the chairman of the appeal tribunal so requests, attend at the hearing and give evidence.

(2) If the chairman of the appeal tribunal considers it appropriate, the expert shall enquire into and provide a written report on the question to be dealt with in accordance with paragraph (1).

(3) A copy of any written report received from an expert in accordance with paragraph (2) shall be supplied to every party to the proceedings.

### **Postponement and adjournment**

17.—(1) Where a person to whom notice of an oral hearing is given wishes to request a postponement of that hearing he shall do so in writing to the clerk to the appeal tribunal stating his reasons for the request, and the clerk may grant or refuse the request as he thinks fit or may pass the request to a legally qualified panel member who may grant or refuse the request as he thinks fit.

(2) Where the clerk to the appeal tribunal or the panel member, as the case may be, refuses a request to postpone the hearing he shall—



- (a) notify in writing the person making the request of the refusal; and
  - (b) place before the appeal tribunal at the hearing both the request for the postponement and notification of its refusal.
- (3) A panel member or the clerk to the appeal tribunal may of his own motion at any time before the beginning of the hearing postpone the hearing.
- (4) An oral hearing may be adjourned by the appeal tribunal at any time on the application of any party to the proceedings or of its own motion.

### **Decisions of appeal tribunals**

**18.**—(1) Every decision of an appeal tribunal shall be recorded in summary by the chairman of the appeal tribunal and shall be referred to as a decision notice.

(2) The decision notice specified in paragraph (1) shall be in such written form as shall have been approved by the President and shall be signed by the chairman of the appeal tribunal.

(3) As soon as may be practicable after an appeal has been decided by an appeal tribunal, a copy of the decision notice shall be sent or given to every party to the proceedings who shall also be informed of—

- (a) his right under paragraph (4); and
- (b) the conditions governing appeals to a Social Security Commissioner.

(4) Subject to paragraph (5), a party to the proceedings may apply in writing to the clerk to the appeal tribunal for a statement of the reasons for the tribunal's decision within one month of the sending or giving of the decision notice to every party to the proceedings or within such longer period as may be allowed in accordance with regulation 19.

(5) Where—

- (a) the decision notice is corrected in accordance with regulation 21; or
- (b) an application under regulation 22 for the decision to be set aside is refused for reasons other than a refusal to extend the time for making the application,

the period specified in paragraph (4) shall run from the date on which notice of the correction or the refusal of the application for setting aside is sent to the applicant.

(6) Following the application made under paragraph (4), the chairman of the appeal tribunal shall record a statement of the reasons and a copy of that statement shall be given or sent to every party to the proceedings as soon as may be practicable.

(7) If the decision is not unanimous, the decision notice specified in paragraph (1) shall record that one of the members dissented and the statement of reasons referred to in paragraph (6) shall include the reasons given by the dissenting member for dissenting.

### **Late applications for statements of reasons for tribunal decisions**

**19.**—(1) The time for making an application for the statement of reasons for an appeal tribunal's decision may be extended where the conditions specified in paragraphs (2) to (8) are satisfied, but, subject to regulation 18(5), no application shall in any event be brought more than three months after the date of the sending or giving of the notice of the decision of the appeal tribunal.

(2) An application for an extension of time under this regulation shall be made in writing 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) The application for an extension of time shall not be granted unless the panel member is satisfied that 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 the 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 are 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 18(4).

(6) For the purposes of paragraph (5)(a), the special circumstances are that—

- (a) the applicant or a partner 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 application for a copy of the statement of reasons for a tribunal's decision is to be made 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 the application, no account shall be taken of the following—

- (a) that the person making the application 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 determination in such written form as has been approved by the President.

(11) As soon as practicable after the determination is made, notice of the determination shall be sent or given to every party to the proceedings.

(12) Any person who under paragraph (11) receives notice of the determination may, within one month of the determination being sent to him, apply in writing for a copy of the reasons for that determination and a copy shall be supplied to him.

(13) In this regulation "Commissioner" includes a Commissioner within the meaning in section 39(1) of the Social Security Act 1998(8).

### **Record of tribunal proceedings**

**20.**—(1) A record of the proceedings at an oral hearing, which is sufficient to indicate the evidence taken, shall be made by the chairman of the appeal tribunal in such medium as he may direct.

(2) The clerk to the appeal tribunal shall preserve—

- (a) the record of proceedings;
- (b) the decision notice; and

(c) any statement of the reasons for the tribunal's decision, for the period specified in paragraph (3).

(3) The period is six months from the date of—

- (a) the decision made by the appeal tribunal;
- (b) any statement of reasons for the tribunal's decision;
- (c) any correction of the decision in accordance with regulation 21;
- (d) any refusal to set aside the decision in accordance with regulation 22; or
- (e) any determination of an application under regulation 25 for leave to appeal against the decision,

or until those documents are sent to the office of the Social Security Commissioners in connection with an appeal against the decision, or an application to a Social Security Commissioner for leave to appeal, if either occurs within the six months.

(4) Any party to the proceedings may within the period specified in paragraph (3) apply in writing for a copy of the record of proceedings and a copy shall be supplied to him.

#### **Correction of accidental errors**

**21.—**(1) The clerk to the appeal tribunal or a legally qualified panel member may at any time correct accidental errors in the notice of any decision of an appeal tribunal made under the 2004 Act.

(2) A correction made to a decision notice shall be deemed to be part of the decision notice and written notice of it shall be given as soon as practicable to every party to the proceedings.

#### **Setting aside decisions on certain grounds**

**22.—**(1) On an application made by a party to the proceedings, a decision of an appeal tribunal made on an appeal may be set aside by a legally qualified panel member in a case where it appears just to set the decision aside on the ground that—

- (a) a document relating to the proceedings in which the decision was made was not sent to, or was not received at an appropriate time by, a party to the proceedings or the party's representative or was not received at an appropriate time by the person who made the decision;
- (b) a party to the proceedings in which the decision was made or the party's representative was not present at a hearing relating to the proceedings.

(2) In determining whether it is just to set aside a decision on the ground set out in paragraph (1)(b), the panel member shall determine whether the party making the application gave notice that he wished to have an oral hearing, and if that party did not give such notice the decision shall not be set aside unless that member is satisfied that the interests of justice manifestly so require.

(3) An application under this regulation shall—

- (a) be made within one month of the date on which—
  - (i) a copy of the decision notice is sent or given to the parties to the proceedings in accordance with regulation 18(3); or
  - (ii) the statement of the reasons for the decision is given or sent in accordance with regulation 18(6),

whichever is the later;

- (b) be in writing and signed by a party to the proceedings or, where the party has provided written authority to a representative to act on his behalf, that representative;

- (c) contain particulars of the grounds on which it is made; and
- (d) be sent to the clerk to the appeal tribunal.

(4) Where an application to set aside a decision is entertained under paragraph (1), every party to the proceedings shall be sent a copy of the application and shall be afforded a reasonable opportunity of making representations on it before the application is determined.

(5) Where a legally qualified panel member refuses to set aside a decision he may treat the application to set aside the decision as an application under regulation 18(4) for a statement of the reasons for the tribunal's decision, subject to the time limits set out in regulation 18(4) and (5).

(6) Notice in writing of a determination on an application to set aside a decision shall be sent or given to every party to the proceedings as soon as may be practicable and the notice shall contain a statement giving the reasons for the determination.

(7) The time within which an application under this regulation must be made may be extended by a period not exceeding one year where the conditions specified in paragraphs (8) to (12) are satisfied.

(8) An application for an extension of time shall be made in accordance with paragraph (3)(b) to (d), shall include details of any relevant special circumstances for the purposes of paragraph (10) and shall be determined by a legally qualified panel member.

(9) 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 application to set aside will be successful; and
- (b) it is in the interests of justice for the application for an extension of time to be granted.

(10) For the purposes of paragraph (9) it is not in the interests of justice to grant an application for an extension of time unless the panel member is satisfied that—

- (a) the special circumstances specified in paragraph (11) are relevant to the application; or
- (b) some other special circumstances exist which are wholly exceptional and relevant to that application,

and as a result of those special circumstances, it was not practicable for the application to set aside to be made within the time limit specified in paragraph (3)(a).

(11) For the purposes of paragraph (10)(a), the special circumstances are that—

- (a) the applicant or a partner 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.

(12) In determining whether it is in the interests of justice to grant an application for an extension of time, the panel member shall have regard to the principle that the greater the amount of time that has elapsed between the expiry of the time within which the application to set aside is to be made and the making of the application for an extension of time, the more compelling should be the special circumstances on which the application for an extension is based.

(13) An application under this regulation for an extension of time which has been refused may not be renewed.

### **Provisions common to regulations 21 and 22**

**23.—**(1) There shall be no appeal against a correction made under regulation 21 or a refusal to make such a correction or against a determination made under regulation 22.

(2) Nothing in regulation 21 or 22 shall be construed as derogating from any power to correct errors or set aside decisions which is exercisable apart from these Regulations.

### **Service of decision notice by electronic mail**

24. For the purposes of the time limits in regulations 18 to 22, a properly addressed copy of a decision notice sent by electronic mail is effective from the date it is sent.

### **Application for leave to appeal to a Commissioner from an appeal tribunal**

25.—(1) Subject to paragraph (2), an application for leave to appeal to a Social Security Commissioner from a decision on an appeal shall—

- (a) be sent to the clerk to the appeal tribunal within the period of one month of the date of the applicant being sent a written statement of the reasons for the decision against which leave to appeal is sought;
- (b) be in writing and signed by the applicant or, where he has provided written authority to a representative to make the application on his behalf, by that representative;
- (c) contain particulars of the grounds on which the applicant intends to rely;
- (d) contain sufficient particulars of the decision of the appeal tribunal to enable the decision to be identified; and
- (e) if the application is made late, contain the grounds for seeking late acceptance.

(2) Where after the written statement of the reasons for the decision has been sent to the parties to the proceedings—

- (a) the decision notice is corrected in accordance with regulation 21; or
- (b) an application under regulation 22 for the decision to be set aside is refused for reasons other than a refusal to extend the time for making the application,

the period specified in paragraph (1)(a) shall run from the date on which notice of the correction or the refusal of the application for setting aside is sent to the applicant.

(3) Where an application for leave to appeal to a Social Security Commissioner is made by the Board, the clerk to an appeal tribunal shall, as soon as may be practicable, send a copy of the application to every other party to the proceedings.

(4) A person determining an application for leave to appeal to a Social Security Commissioner shall record his determination in writing and send a copy to every party to the proceedings.

(5) Where there has been a failure to apply for leave to appeal within the period of time specified in paragraph (1)(a) or (2) but an application is made within one year of the last date for making an application within that period, a legally qualified panel member may, if for special reasons he thinks fit, accept and proceed to consider and determine the application.

(6) Where an application for leave to appeal against a decision of an appeal tribunal is made—

- (a) if the chairman of the appeal tribunal when the decision was given was a fee-paid legally qualified panel member, the application may be determined by a salaried legally qualified panel member; or
- (b) if it is impracticable, or would be likely to cause undue delay, for the application to be determined by whoever was the chairman of the appeal tribunal when the decision was given, the application may be determined by another legally qualified panel member.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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24th March 2005

*Nick Ainger*  
*John Heppell*  
Two of the Lords Commissioners of Her  
Majesty's Treasury

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations are made in consequence of the Child Trust Funds Act 2004 which provides that persons with a right of appeal under section 22 of the Act may appeal to an appeal tribunal constituted under provisions in the Social Security (Northern Ireland) Order 1998, as applied and modified by other regulations for child trust fund appeals made by the Treasury (*i.e.* the Child Trust Funds (Non-tax Appeals) Regulations 2005 (S.I.2005/191)). These Regulations provide for the procedure for such child trust fund appeals. The procedure is almost the same as that prescribed for other appeals to such appeal tribunals.

Regulation 1 provides for citation, commencement, duration and interpretation. Regulation 2 provides for the service of notices and documents. Regulations 3 and 4 make provision in connection with the timing of child trust fund appeals. Regulation 5 provides for representation on the death of a party. Regulation 6 provides for the composition of appeal tribunals hearing child trust fund appeals. Regulation 8 enables procedural directions to be given by the tribunal, or a clerk to the tribunal assigned under regulation 7.

Regulations 9 to 14 make provision for preparing for the hearing, including provision for choice of an oral hearing, withdrawal of appeals, summoning of witnesses, confidentiality in appeals and striking out and reinstatement of appeals.

Regulations 15 to 17 provide for the procedure at oral hearings, including the use of experts and granting an adjournment.

Regulations 18 to 24 make provision relating to decisions of appeal tribunals (including recording and correcting them), reasons for the decisions and setting aside the decisions.

Regulation 25 provides for applications for leave to appeal to a Social Security Commissioner.

A full Regulatory Impact Assessment was prepared and issued on the introduction to Parliament of the Child Trust Funds Bill (passed as the 2004 Act) in November 2003. This instrument has no impact on the costs of business.