
DRAFT STATUTORY INSTRUMENTS

2003 No.

**The Child Benefit and Guardian's Allowance
(Decisions and Appeals) Regulations 2003**

PART 2

REVISION OF DECISIONS

Revision of decisions within a prescribed period or on an application

- 5.—(1) Subject to paragraph (3), if the conditions specified in paragraph (2) are satisfied—
- (a) a decision under section 8(1) or 10(2) may be revised by the Board under section 9; and
 - (b) a decision under Article 9(3) or 11(4) may be revised by them under Article 10.
- (2) The conditions specified in this paragraph are that—
- (a) the Board commence action leading to the revision within one month of the date of notification of the decision; or
 - (b) subject to regulation 6, an application for the revision was received by the Board at the appropriate office—
 - (i) within one month of the date of notification of the decision;
 - (ii) if a written statement of the reasons for the decision requested under regulation 26(1)(b) was provided within the period specified in paragraph (i), within 14 days of the expiry of that period; or
 - (iii) if such a statement was provided after the period specified in paragraph (i), within 14 days of the date on which the statement was provided.

(3) Paragraph (1) does not apply in respect of a relevant change of circumstances which occurred since the decision was made or where the Board have evidence or information which indicates that a relevant change of circumstances will occur.

Late applications for revision of decisions

6.—(1) The Board may extend the time limits specified in regulation 5(2)(b)(i) to (iii) if the first and second conditions are satisfied.

(2) The first condition is that an application for an extension of time must be made to the Board by the claimant or a person acting on his behalf.

(3) The second condition is that the application for the extension of time must—

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- (1) The amendments to subsection (3) of section 8 have been noted previously. Subsections (1) and (5) of that section were amended by paragraph 22 of Schedule 7, and Part 1 of Schedule 10, to the Transfer Act 1999 and subsection (4) by paragraph 6(3) of Schedule 1 to the State Pension Credit Act 2002.
- (2) Section 10 was amended by paragraph 23 of Schedule 7, and Part 1 of Schedule 10, to the Transfer Act 1999.
- (3) The amendments to subsection (3) of Article 9 have been noted previously. Subsections (1) and (5) of that section were amended by paragraph 16 of Schedule 6, and Part 1 of Schedule 9, to the Transfer Order 1999.
- (4) Article 11 was amended by paragraph 17 of Schedule 6, and Part 1 of Schedule 9, to the Transfer Order 1999.

- (a) contain particulars of the grounds on which the extension is sought;
 - (b) contain sufficient details of the decision which it is sought to have revised so as to enable it to be identified; and
 - (c) be made within 13 months of the latest date by which the application for revision should have been received by the Board in accordance with regulation 5(2)(b).
- (4) An application for an extension of time must not be granted unless the Board are satisfied that—
- (a) it is reasonable to grant it;
 - (b) the application for revision has merit; and
 - (c) special circumstances are relevant to the application for an extension of time as a result of which it was not practicable for the application for revision to be made within the time limits specified in regulation 5(2)(b)(i) to (iii).
- (5) In determining whether it is reasonable to grant an application for an extension of time, the Board must have regard to the principle that the greater the amount of time that has elapsed between the expiration of the time limits specified in regulation 5(2)(b)(i) to (iii) and the making of the application, the more compelling the special circumstances mentioned in paragraph (4)(c) should be.
- (6) In determining whether it is reasonable to grant an application for an extension of time, the Board must take no account 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 being unaware of, or misunderstanding, 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.
- (7) An application for an extension of time which has been refused may not be renewed.

Procedure for revision of decisions on an application

- 7.—(1) The Board may treat—
- (a) an application for a decision under section 10 as an application for a revision under section 9;
 - (b) an application for a decision under Article 11 as an application for a revision under Article 10.
- (2) Paragraph (3) applies where, in order to consider all the issues raised by an application for such a revision, the Board require further evidence or information from the applicant.
- (3) Where this paragraph applies, the Board must notify the applicant that further evidence or information is required and—
- (a) if the applicant provides relevant further evidence or information within one month of the date of notification or such longer period of time as the Board may allow, the decision may be revised;
 - (b) if the applicant does not provide such evidence or information within that time, the decision may be revised on the basis of the application.

Revision of decisions against which there has been an appeal

- 8.—(1) In the circumstances prescribed by paragraph (2), any of the following decisions may be revised by the Board at any time—
- (a) a decision under section 8 or 10;

(b) a decision under Article 9 or 11.

(2) The circumstances prescribed by this paragraph are circumstances where there is an appeal to an appeal tribunal against the decision within the time prescribed by regulation 28, or in a case to which regulation 29 applies within the time prescribed by that regulation, but the appeal has not been determined.

(3) If—

(a) the Board make one of the following decisions (“the original decision”)—

(i) a decision under section 8 or 10 or one under section 9(1) revising such a decision; or

(ii) a decision under Article 9 or 11 or one under Article 10(1) revising such a decision;

(b) the claimant appeals to an appeal tribunal against the original decision;

(c) after the appeal has been made, but before it results in a decision by the appeal tribunal, the Board make a second decision which—

(i) supersedes the original decision in accordance with section 10 or Article 11; or

(ii) decides a further claim for child benefit or guardian’s allowance by the claimant; and

(d) the Board would have made their second decision differently if, at the time they made it, they had been aware of the decision subsequently made by the appeal tribunal,

the second decision may be revised by the Board at any time.

Revision of decisions against which no appeal lies

9.—(1) In the case prescribed by paragraph (2), any of the following decisions may be revised by the Board at any time—

(a) a decision under section 8 or 10;

(b) a decision under Article 9 or 11.

(2) The case prescribed by this paragraph is the case of decisions which—

(a) are specified in—

(i) Schedule 2 to the 1998 Act⁽⁵⁾; or

(ii) Schedule 2 to the 1998 Order⁽⁶⁾; or

(b) are prescribed by regulation 25 (decisions against which no appeal lies).

Revision of decisions arising from official error etc.

10.—(1) In the circumstances prescribed by paragraph (2), any of the following decisions may be revised by the Board at any time—

(a) a decision under section 8 or 10;

(b) a decision under Article 9 or 11.

(2) The circumstances prescribed by this paragraph are circumstances where the decision—

(a) arose from an official error; or

(b) was made in ignorance of, or was based upon a mistake as to, some material fact and, as a result of that ignorance of, or mistake as to, that fact, is more advantageous to the claimant than it would otherwise have been.

(5) Schedule 2 was amended by paragraph 87 of Schedule 12 to the Welfare Reform and Pensions Act 1999, paragraph 11 of Schedule 1 to the State Pension Credit Act 2002 and paragraph 3(b) of the Schedule to S.I.2002/1457.

(6) Schedule 2 was amended by paragraph 61 of Schedule 9 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)).

- (3) “Official error” means an error made by—
- (a) an officer of the Board acting as such, which no person outside the Inland Revenue caused or to which no such person materially contributed; or
 - (b) a person employed by a person providing services to the Board and acting as such which no other person who was not so employed caused or to which no such other person materially contributed,

but does not include an error of law which is shown to have been an error by virtue of a subsequent decision of a Commissioner or the court.

Revision of decisions following the award of another relevant benefit

11.—(1) In the circumstances prescribed by paragraph (2), any of the following decisions may be revised by the Board at any time—

- (a) a decision under section 8 or 10;
 - (b) a decision under Article 9 or 11.
- (2) The circumstances prescribed by this paragraph are circumstances where—
- (a) the decision awards child benefit or guardian’s allowance to a person; and
 - (b) an award of another relevant benefit, or of an increase in the rate of another relevant benefit, is made to that person or a member of his family for a period which includes the date on which the decision took effect.

Date as from which revised decisions take effect

- 12.** If the Board decide that—
- (a) on a revision under section 9, the date as from which the decision under section 8 or 10 took effect was erroneous; or
 - (b) on a revision under Article 10, the date as from which the decision under Article 9 or 11 took effect was erroneous,

the revision shall take effect as from the date from which the decision would have taken effect had the error not been made.