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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 V**

**APPEAL TRIBUNALS FOR SOCIAL SECURITY CONTRACTING  
OUT OF PENSIONS VACCINE DAMAGE AND CHILD SUPPORT**

**CHAPTER II**

**PROCEDURE IN CONNECTION WITH  
DETERMINATION OF APPEALS AND REFERRALS**

**Consideration and determination of appeals and referrals**

**38 .—**<sup>F1</sup>(1) The procedure in connection with the consideration and determination of an appeal or a referral 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.]

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**Textual Amendments**

- F1** Regs. 35-38 omitted (3.11.2008) by virtue of [Tribunals, Courts and Enforcement Act 2007 \(Transitional and Consequential Provisions\) Order 2008 \(S.I. 2008/2683\)](#) , art. 1 , **Sch. 1 para. 124** (with arts. 3(2)(b) , 4 )
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**Modifications etc. (not altering text)**

- C1** Reg. 38 applied (mods) (29.1.2007) by [Personal Injuries \(NHS Charges\) \(Reviews and Appeals\) and Road Traffic \(NHS Charges\) \(Reviews and Appeals\) \(Amendment\) Regulations 2006 \(S.I. 2006/3398\)](#) , regs. 1(1) , **8**
- C2** Reg. 38 applied (with modifications) (29.1.2007) by [Personal Injuries \(NHS Charges\) \(Reviews and Appeals\) \(Scotland\) Regulations 2006 \(S.S.I. 2006/593\)](#) , regs. 1(1) , **8** (with reg. 8(4) )

## [<sup>F2</sup> Appeals raising issues for decision by officers of Inland Revenue

**38A.**—(1) Where [<sup>F3</sup> a person has appealed to [<sup>F4</sup> the First-tier Tribunal and it appears to the First-tier Tribunal, ] , ] that an issue arises which, by virtue of section 8 of the Transfer Act, falls to be decided by an officer of the Board, that tribunal <sup>F5</sup> ... shall—

- (a) refer the appeal to the Secretary of State pending the decision of that issue by an officer of the Board; and
- (b) require the Secretary of State to refer that issue to the Board;

and the Secretary of State shall refer that issue accordingly.

(2) Pending the final decision of any issue which has been referred to the Board in accordance with paragraph (1) above, the Secretary of State may revise the decision under appeal, or make a further decision superseding that decision, in accordance with his determination of any issue other than one which has been so referred.

(3) On receipt by the Secretary of State of the final decision of an issue which has been referred in accordance with paragraph (1) above, he shall consider whether the decision under appeal ought to be revised under section 9 or superseded under section 10, and—

- (a) if so, revise it or, as the case may be, make a further decision which supersedes it; or
- (b) if not, forward the appeal to the [<sup>F6</sup>First-tier Tribunal] which shall determine the appeal in accordance with the final decision of the issue so referred.

(4) In paragraphs (2) and (3) above, “final decision” has the same meaning as in regulation 11A(3) and (4).]

### Textual Amendments

- F2** Reg. 38A inserted (5.7.1999) by [The Social Security and Child Support \(Decisions and Appeals\) Amendment \(No. 3\) Regulations 1999 \(S.I. 1999/1670\)](#) , regs. 1(1) , **2(4)**
- F3** Words in reg. 38A(1) substituted (20.5.2002) by [Social Security and Child Support \(Decisions and Appeals\) \(Miscellaneous Amendments\) Regulations 2002 \(S.I. 2002/1379\)](#) , regs. 1(1) , **12(a)**
- F4** Words in reg. 38A(1) substituted (3.11.2008) by [Tribunals, Courts and Enforcement Act 2007 \(Transitional and Consequential Provisions\) Order 2008 \(S.I. 2008/2683\)](#) , art. 1 , **Sch. 1 para. 125(a)(i)**
- F5** Words in reg. 38A(1) omitted (3.11.2008) by virtue of [Tribunals, Courts and Enforcement Act 2007 \(Transitional and Consequential Provisions\) Order 2008 \(S.I. 2008/2683\)](#) , art. 1 , **Sch. 1 para. 125(a)(ii)**
- F6** Words in reg. 38A(3)(b) substituted (3.11.2008) by [Tribunals, Courts and Enforcement Act 2007 \(Transitional and Consequential Provisions\) Order 2008 \(S.I. 2008/2683\)](#) , art. 1 , **Sch. 1 para. 125(b)**

## [<sup>F7</sup> Choice of hearing

**39 .**—[<sup>F8</sup>(1) Where an appeal or a referral 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 Secretary of State, whether he wishes to have an oral hearing of the appeal or whether he is content for the appeal or referral to proceed without an oral hearing.

(2) Except in the case of a referral, 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 46(1).

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

- (a) if given by the appellant or a party to the proceedings other than the Secretary of State, must be sent or given 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 Secretary of State, must be sent or given to the clerk—
- (i) in the case of an appeal, within 14 days of the date on which the form is issued to the appellant; or
  - (ii) in the case of a referral, on the date of referral, 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 46(1).]
- (5) The chairman, or in the case of an appeal tribunal which has only one member, that member, may of his own motion direct that an oral hearing of the appeal or referral be held if he is satisfied that such a hearing is necessary to enable the appeal tribunal to reach a decision.]

#### Textual Amendments

- F7** Reg. 39(1)-(4) and heading substituted (21.12.2004) by [Social Security, Child Support and Tax Credits \(Decisions and Appeals\) Amendment Regulations 2004 \(S.I. 2004/3368\)](#) , regs. 1 , **2(5)**
- F8** Regs. 39-47 omitted (3.11.2008) by virtue of [Tribunals, Courts and Enforcement Act 2007 \(Transitional and Consequential Provisions\) Order 2008 \(S.I. 2008/2683\)](#) , art. 1 , **Sch. 1 para. 126** (with arts. 3(2)(c) , 4 )

#### Modifications etc. (not altering text)

- C3** Reg. 39 applied (with modifications) (29.1.2007) by [Personal Injuries \(NHS Charges\) \(Reviews and Appeals\) \(Scotland\) Regulations 2006 \(S.S.I. 2006/593\)](#) , regs. 1(1) , **8** (with reg. 8(4) )
- C4** Reg. 39 applied (mods) (29.1.2007) by [Personal Injuries \(NHS Charges\) \(Reviews and Appeals\) and Road Traffic \(NHS Charges\) \(Reviews and Appeals\) \(Amendment\) Regulations 2006 \(S.I. 2006/3398\)](#) , regs. 1(1) , **8**

#### Withdrawal of appeal or referral

**40** .—<sup>F8</sup>(1) An appeal may be withdrawn by the appellant or an authorised representative of the appellant and a referral may be withdrawn by the [<sup>F9</sup>Secretary of State]<sup>F9</sup>the Board or an officer of the Board,]], as the case may be, either—

- (a) at an oral hearing; or
- (b) at any other time before the appeal or referral is determined, by giving notice in writing of withdrawal to the clerk to the appeal tribunal.

(2) If an appeal or a referral is withdrawn (as the case may be) 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 or referral is withdrawn, informing him that the appeal or referral (as the case may be) has been withdrawn.

(3) If an appeal or a referral is withdrawn (as the case may be) 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 them that the appeal or referral (as the case may be) has been withdrawn.]

**Textual Amendments**

- F8** Regs. 39-47 omitted (3.11.2008) by virtue of [Tribunals, Courts and Enforcement Act 2007 \(Transitional and Consequential Provisions\) Order 2008 \(S.I. 2008/2683\)](#) , art. 1 , **Sch. 1 para. 126** (with arts. 3(2)(c) , 4 )
- F9** Words in reg. 40(1) inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Tax Credits \(Decisions and Appeals\) \(Amendment\) Regulations 1999 \(S.I. 1999/2570\)](#) , regs. 1 , **25**

**Modifications etc. (not altering text)**

- C5** Reg. 40 applied (mods) (29.1.2007) by [Personal Injuries \(NHS Charges\) \(Reviews and Appeals\) and Road Traffic \(NHS Charges\) \(Reviews and Appeals\) \(Amendment\) Regulations 2006 \(S.I. 2006/3398\)](#) , regs. 1(1) , **8**
- C6** Reg. 40 applied (with modifications) (29.1.2007) by [Personal Injuries \(NHS Charges\) \(Reviews and Appeals\) \(Scotland\) Regulations 2006 \(S.S.I. 2006/593\)](#) , regs. 1(1) , **8** (with reg. 8(4) )

**Medical examination required by appeal tribunal**

<sup>F8</sup> **41** . . . . .

**Textual Amendments**

- F8** Regs. 39-47 omitted (3.11.2008) by virtue of [Tribunals, Courts and Enforcement Act 2007 \(Transitional and Consequential Provisions\) Order 2008 \(S.I. 2008/2683\)](#) , art. 1 , **Sch. 1 para. 126** (with arts. 3(2)(c) , 4 )

**Non-disclosure of medical advice or evidence**

**42** .—<sup>F8</sup>(1) Where, in connection with the consideration and determination of an appeal or referral there is before an appeal tribunal medical advice or medical evidence relating to a person which has not been disclosed to him and in the opinion of the chairman, or in the case of an appeal tribunal which has only one member, in the opinion of that member, the disclosure to that person of that advice or evidence would be harmful to his health, such advice or evidence shall not be required to be disclosed to that person.

(2) Advice or evidence such as is mentioned in paragraph (1) shall not be disclosed to any person acting for or representing the person to whom it relates or, in a case where a claim for benefit is made by reference to the disability of a person other than the claimant and the advice or evidence relates to that other person, shall not be disclosed to the claimant or any person acting for or representing him, unless the chairman, or in the case of an appeal tribunal which has only one member, that member, is satisfied that it is in the interests of the person to whom the advice or evidence relates to do so.

(3) A tribunal shall not be precluded from taking into account for the purposes of the determination advice or evidence which has not been disclosed to a person under the provisions of paragraph (1) or (2).]

**Textual Amendments**

- F8** Regs. 39-47 omitted (3.11.2008) by virtue of [Tribunals, Courts and Enforcement Act 2007 \(Transitional and Consequential Provisions\) Order 2008 \(S.I. 2008/2683\)](#) , art. 1 , **Sch. 1 para. 126** (with arts. 3(2)(c) , 4 )

**Modifications etc. (not altering text)**

- C7** Reg. 42 applied (with modifications) (29.1.2007) by [Personal Injuries \(NHS Charges\) \(Reviews and Appeals\) \(Scotland\) Regulations 2006 \(S.S.I. 2006/593\)](#) , regs. 1(1) , **8** (with reg. 8(4) )
- C8** Reg. 42 applied (mods) (29.1.2007) by [Personal Injuries \(NHS Charges\) \(Reviews and Appeals\) and Road Traffic \(NHS Charges\) \(Reviews and Appeals\) \(Amendment\) Regulations 2006 \(S.I. 2006/3398\)](#) , regs. 1(1) , **8**

**Summoning of witnesses and administration of oaths**

**43 .—**<sup>F8</sup>(1) A chairman, or in the case of an appeal tribunal which has only one member, that member, may by summons, or in Scotland, by citation, require any person in Great Britain to attend as a witness at a hearing of an appeal, application or referral at such time and place as shall be specified in the summons or citation 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 the appeal, application or referral but—

- (a) no person shall be required to attend in obedience to such summons or citation 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 or citation 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 that part of Great Britain where the hearing takes place.

(3) In exercising the powers conferred by this regulation, the chairman, or in the case of an appeal tribunal which has only one member, that member, 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 or citation issued under this regulation shall contain a statement to the effect that the person in question may apply in writing to a chairman to vary or set aside the summons or citation.

(5) A chairman, or in the case of an appeal tribunal which has only one member, that member, 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.]

**Textual Amendments**

- F8** Regs. 39-47 omitted (3.11.2008) by virtue of [Tribunals, Courts and Enforcement Act 2007 \(Transitional and Consequential Provisions\) Order 2008 \(S.I. 2008/2683\)](#) , art. 1 , **Sch. 1 para. 126** (with arts. 3(2)(c) , 4 )

**Modifications etc. (not altering text)**

- C9** Reg. 43 applied (with modifications) (29.1.2007) by [Personal Injuries \(NHS Charges\) \(Reviews and Appeals\) \(Scotland\) Regulations 2006 \(S.S.I. 2006/593\)](#) , regs. 1(1) , **8** (with reg. 8(4) )
- C10** Reg. 43 applied (mods) (29.1.2007) by [Personal Injuries \(NHS Charges\) \(Reviews and Appeals\) and Road Traffic \(NHS Charges\) \(Reviews and Appeals\) \(Amendment\) Regulations 2006 \(S.I. 2006/3398\)](#) , regs. 1(1) , **8**

## Confidentiality in child support appeals or referrals

<sup>F8</sup> 44 . . . . .

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### Textual Amendments

**F8** Regs. 39-47 omitted (3.11.2008) by virtue of Tribunals, Courts and Enforcement Act 2007 (Transitional and Consequential Provisions) Order 2008 (S.I. 2008/2683) , art. 1 , **Sch. 1 para. 126** (with arts. 3(2)(c) , 4 )

## Procedure following a referral under section 28D(1)(b) of the Child Support Act

<sup>F8</sup> 45 . . . . .

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### Textual Amendments

**F8** Regs. 39-47 omitted (3.11.2008) by virtue of Tribunals, Courts and Enforcement Act 2007 (Transitional and Consequential Provisions) Order 2008 (S.I. 2008/2683) , art. 1 , **Sch. 1 para. 126** (with arts. 3(2)(c) , 4 )

**Changes to legislation:**

There are currently no known outstanding effects for the The Social Security and Child Support (Decisions and Appeals) Regulations 1999, CHAPTER II.