

This Statutory Instrument has been made in consequence of a defect in SI 2009/713 and is being issued free of charge to all known recipients of that Statutory Instrument.

STATUTORY INSTRUMENTS

2009 No. 751

SOCIAL SECURITY

The Health in Pregnancy Grant (Notices, Revisions and Appeals) (No. 2) Regulations 2009

Made - - - - 20th March 2009

Laid before Parliament 23rd March 2009

Coming into force in accordance with regulation 1(1)

The Commissioners for Her Majesty's Revenue and Customs, in exercise of the powers conferred by sections 9(1), (4) and (6), 12(6) and (7), and 79 (2A),(4) and (7) of the Social Security Act 1998(a), articles 10(1), (4) and (6), 13(7), and 74(2A) and (6) of the Social Security (Northern Ireland) Order 1998(b) and sections 132(8) and 135 (8) and (9) of the Health and Social Care Act 2008(c), make the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Health in Pregnancy Grant (Notices, Revisions and Appeals) (No. 2) Regulations 2009 and shall come into force—

- (a) for the purposes of regulation 11, on 5th April 2009; and
- (b) for all other purposes, on 6th April 2009.

(2) In these Regulations—

“the Administration Regulations” means the Health in Pregnancy Grant (Administration) Regulations 2008(d);

“appeal” means an appeal under section 12 of the 1998 Act or under Article 14 of the 1998 Order;

“appropriate office” means the Health in Pregnancy Grant Office, Waterview Park, Washington, Tyne and Wear, England;

“claimant” means a person who has claimed health in pregnancy grant;

(a) 1998 c. 14.

(b) S.I. 1998/1506.

(c) 2008 c. 14. Section 132 (8) of the Health and Social Care Act 2008 (c.14) provides that “Chapter 2 of Part 1 of the Social Security Act (decisions and appeals) is to have effect as if health in pregnancy grant were a relevant benefit for the purposes of that Chapter; and the functions of the Secretary of State under that Act are, in relation to that grant, exercisable by the Commissioners for Her Majesty's Revenue and Customs” and section 135 (8) provides that “Chapter 2 of Part 2 of the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10)) (decisions and appeals) is to have effect as if health in pregnancy grant were a relevant benefit for the purposes of that Chapter; and the functions of the Northern Ireland Department under that Order are, in relation to that grant, exercisable by the Commissioners for Her Majesty's Revenue and Customs”.

(d) S.I. 2008/3109.

“the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;

“the Entitlement Regulations” means the Health in Pregnancy Grant (Entitlement and Amount) Regulations 2008(a);

“health in pregnancy grant decision” means a decision in respect of health in pregnancy grant made under either section 8 of the 1998 Act or Article 9 of the 1998 Order;

“month” means calendar month;

“the 1998 Act” means the Social Security Act 1998;

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

“official error” means an error made by an officer of Her Majesty’s Revenue and Customs acting as such, or a person providing services to the Commissioners; but does not include an error of law which is shown to have been an error by virtue of a subsequent decision of any Tribunal or Court;

“partner” has the meaning under regulation 1(2) of the Administration Regulations;

“Tribunal” means an appeal tribunal constituted under the Tribunals, Courts and Enforcement Act 2007(b), or, in relation to Northern Ireland, a tribunal constituted under the 1998 Order;

“Tribunal Procedure Rules” means the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999(c).

Notice of decision and right of appeal

- 2.—(1) A person with a right of appeal against a health in pregnancy grant decision must—
- (a) be given written notice of the decision;
 - (b) be informed that, in a case where that written notice does not include a statement of the reasons for that decision, that person may, within one month of the notification of that decision, request that the Commissioners provide them with a written statement of the reasons for that decision; and
 - (c) be given written notice of the right of appeal against that decision.
- (2) If the Commissioners are requested under paragraph (1)(b) to provide a written statement of the reasons for the decision, they shall provide the statement within 14 days of notification of the request or as soon as practicable afterwards.
- (3) Where—
- (a) any notice or other document is required to be given or sent to the Commissioners, that notice or document shall be treated as having been so given or sent on the day that it is received by the Commissioners; and
 - (b) any notice, including notification of a health in pregnancy grant decision, or other document is required to be given or sent to any person other than the Commissioners, 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.

Grounds for revision of decisions

- 3.—(1) A health in pregnancy grant decision may be revised by the Commissioners on any grounds if—
- (a) the Commissioners commence action leading to the revision within one month of the date of notification of the decision; or
 - (b) a request for the revision was received by the Commissioners at an appropriate office—

(a) S.I. 2008/3108.
 (b) 2007 c.15.
 (c) S.I. 1999/162; the corresponding provision for Great Britain is The Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008.

- (i) within one month of the date of notification of the decision; or,
- (ii) if a written statement of the reasons for the decision was requested under regulation 2(1)(b), within one month of the date that it is sent.

(2) Paragraph (1)(b) is subject to regulation 5.

(3) Where the decision on health in pregnancy grant arose from official error, or ignorance of, or mistake as to a material fact, it may be revised by the Commissioners at any time.

In this paragraph, “decision” includes a revised decision.

Procedure for revision of decisions

4.—(1) The Commissioners may request by notice to the claimant further evidence or information as regards any revision under regulation 3.

(2) On a request for further evidence or information in relation to a request for revision from a claimant—

- (a) if the claimant provides relevant further evidence or information within one month of the date of notification or such longer period of time as the Commissioners may allow, the decision may be revised;
- (b) if the claimant does not provide such evidence or information within that time, the decision may be revised on the basis of the request for revision.

(3) The date on which a revised decision is to take effect is the date on which the claimant is notified of the revised decision, and regulation 2(3)(b) applies to the notification of the revised decision.

Appeals against decisions which have been revised

5.—(1) Where a health in pregnancy grant decision has been appealed and is subsequently revised by the Commissioners, unless the revision resulted in an award of health in pregnancy grant—

- (a) the appeal shall be treated as though it had been brought against the decision as revised; and
- (b) the claimant 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.

(2) After the expiration of the period specified in paragraph (1), or within that period if the claimant consents in writing, the appeal shall proceed unless, in the light of further representations from the claimant, the Commissioners further revise their decision, resulting in an award of health in pregnancy grant.

Late applications for revision of decisions

6.—(1) The Commissioners may extend the time limits specified in regulation 3(1)(b) if—

- (a) an application for an extension of time is made to the Commissioners by the claimant or a person acting on her behalf; and
- (b) the application for the extension of time—
 - (i) contains particulars of the grounds on which the extension is sought;
 - (ii) contains sufficient details of the decision which it is sought to have revised so as to enable it to be identified; and
 - (iii) is made within 12 months of the latest date by which an application should have been received by the Commissioners in accordance with regulation 3(1)(b).

(2) An application for an extension of time shall not be granted unless the Commissioners are satisfied that—

- (a) it is reasonable to grant it; and

(b) special circumstances apply.

(3) The special circumstances specified in paragraph (2) are that—

- (a) the claimant or her partner or a dependant of the claimant has died or suffered serious illness;
- (b) the claimant is not resident in the United Kingdom; or
- (c) normal postal services were disrupted.

(4) In determining whether it is reasonable to grant an application for an extension of time, the Commissioners 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 3(1)(b) and the making of the application the more compelling the special circumstances in (3) must be.

(5) In determining whether it is reasonable to grant an application for an extension of time, the Commissioners may take no account of the following—

- (a) that the claimant or any person acting for her was unaware of or misunderstood the law applicable to her case (including ignorance or misunderstanding of the time limits imposed by these Regulations); or
- (b) that any tribunal or Court has taken a different view of the law from that previously understood and applied.

(6) An application for an extension of time which has been refused may not be renewed.

Time within which an appeal is to be brought

7.—(1) The time within which that appeal must be brought is—

- (a) within one month of notification of the decision or revised decision; or
- (b) if a written statement of the reasons for the decision was requested under regulation 2(1)(b), within one month of the date of notification.

(2) If a dispute arises as to whether an appeal was brought within the time limit specified in this regulation, the dispute must be referred to, and be determined by, the Tribunal.

(3) The time limit specified in paragraph (1) for bringing an appeal may be extended—

- (a) by the Commissioners in accordance with regulation 8; or
- (b) in Northern Ireland, by the Tribunal in accordance with the Tribunal Procedural Rules.

Late appeals to the Tribunal

8.—(1) The Commissioners may treat a late appeal as made in time if the conditions in paragraphs (2) to (6) are satisfied.

(2) An appeal may be treated as made in time if the Commissioners are satisfied that it is in the interests of justice to do so.

(3) For the purposes of paragraph (2) it is not in the interests of justice to treat the appeal as made in time unless the Commissioners are satisfied that—

- (a) the special circumstances specified in paragraph (4) are relevant; or
- (b) some other special circumstances exist which are wholly exceptional and relevant,

and as a result of those special circumstances, it was not practicable for the appeal to be made within the time limit specified in regulation 7.

(4) For the purposes of paragraph (3), the special circumstances are that—

- (a) the claimant or her partner or a dependant of the claimant has died or suffered serious illness;
- (b) the claimant is not resident in the United Kingdom; or
- (c) normal postal services were disrupted.

(5) In determining whether it is in the interests of justice to treat the appeal as made in time, regard shall be had to the principle that the greater the amount of time that has elapsed between the expiration of the time limit under regulation 7 and the submission of the notice of appeal, the more compelling should be the special circumstances.

(6) In determining whether it is in the interests of justice to treat the appeal as made in time, no account shall be taken of the following—

- (a) that the claimant or any person acting for her was unaware of or misunderstood the law applicable to her case (including ignorance or misunderstanding of the time limits imposed by regulation 7); or
- (b) that any Tribunal or a court has taken a different view of the law from that previously understood and applied.

Appeals procedure

9.—(1) A notice of appeal shall be—

- (a) made, in Northern Ireland, in accordance with Tribunal Procedure Rules;
- (b) on a form approved by the Commissioners; and
- (c) sent or delivered to an appropriate office.

(2) Where a form does not contain the information required under the Tribunal Procedure Rules, the form may be returned by Commissioners to the sender for completion in accordance with the Tribunal Procedure Rules.

(3) Where a notice of appeal made in writing otherwise than on the approved form does not include sufficient information to enable the appeal to continue, the Commissioners may request further information in writing (“further particulars”) from the claimant.

(4) Where a claimant to whom a notice of appeal is returned, or from whom further particulars are requested, duly completes and returns the notice or sends the further particulars, if the notice or particulars, as the case may be, are received by the Commissioners within—

- (a) 14 days of the date on which the notice was returned to her by the Commissioners, the time for making the appeal shall be extended by 14 days from the date on which the notice was returned;
- (b) 14 days of the date on which the Commissioners’ request was made, the time for making the appeal shall be extended by 14 days from the date of the request; or
- (c) such longer period as the Commissioners may direct, the time for making the appeal shall be extended by a period equal to that longer period directed by the Commissioners.

(5) Where a claimant to whom a notice of appeal is returned or from whom further particulars are requested does not complete and return the notice or send further particulars within the period of time identified under paragraph (4)—

- (a) the Commissioners shall forward a copy of the notice, together with any other relevant documents or evidence to the Tribunal, and
- (b) the Tribunal, in Northern Ireland, shall determine whether the notice satisfies the requirements of Tribunal Procedure Rules.

(6) Where—

- (a) a notice of appeal is duly completed and returned or further particulars are sent after the expiry of the period of time allowed in accordance with paragraph (4), and
- (b) no determination has been made under paragraph (5) at the time the form or the further particulars are received by the Commissioners,

that notice or further particulars shall also be forwarded to the Tribunal which shall take into account any further information or evidence set out in the form or further particulars.

(7) The Commissioners may discontinue action on an appeal where—

- (a) the notice of appeal has not been forwarded to the Tribunal and the claimant or an authorised representative of the claimant has given written notice that she does not wish the appeal to continue; or
- (b) the decision against which the appeal was made has been revised by the Commissioners in favour of the claimant.

Death of a party to an appeal

10.—(1) On the death of the claimant, the Commissioners may appoint such person as they think fit to proceed with the appeal in her place.

(2) If 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 Commissioners shall be the day immediately prior to the first day on which such action was taken.

Revocation

11. The Health in Pregnancy (Notices, Revisions and Appeals) Regulations 2009(a) are revoked.

*Steve Lamey
Mike Eland*

20th March 2009

Two of the Commissioners for Her Majesty's Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These regulations provide for a new appeal regime for health in pregnancy grant. Decisions on health in pregnancy grant will be taken by the Commissioners for Her Majesty's Revenue and Customs under section 8 of the Social Security Act 1998 (or, in Northern Ireland, under Article 9 of the Social Security (Northern Ireland) Order 1998). For this reason these regulations do not cover decisions. Provision is made for the revision of such decisions, but not for the supersession of decisions because of the simplicity of the grant (including the grounds for eligibility) and because it is a one-off payment.

Regulation 1 makes provision for interpretation, citation and commencement.

Regulation 2 makes a written notice of decision against health in pregnancy grant obligatory, and provides for the giving and sending of documents to and from the Commissioners of Her Majesty's Revenue and Customs. It also provides the opportunity to request a written statement of reasons for the health in pregnancy grant decision.

Regulation 3 gives the grounds on which a health in pregnancy grant may be revised. This is either by the Commissioners, on their own behest, or as a result of a request for a revision. Both these grounds for revision are limited to within a month of the health in pregnancy grant decision, subject to prescribed exceptions. The third ground for revision can be taken at any time; this is where the decision arose from official error, or mistake of fact.

Regulation 4 allows the Commission to request further evidence on receipt of a request for revision, and provides the procedure and time limits for such a request and for a revision.

Regulation 5 provides that it is still possible to appeal against a decision which has been revised, if that revision has not resulted in an award of health in pregnancy grant.

(a) S.I. 2009 No. 713.

Regulation 6 allows late applications for revised decisions in special circumstances.

Regulation 7 prescribes the time within which an appeal against a health in pregnancy decision is to be brought.

Regulation 8 allows for late appeals to the Tribunal in special circumstances.

Regulation 9 provides the procedure for making an appeal.

Regulation 10 provides the procedure in the event of the death of the claimant.

Regulation 11 revokes an earlier version of these regulations.

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

This Statutory Instrument has been made in consequence of a defect in SI 2009/713 and is being issued free of charge to all known recipients of that Statutory Instrument.

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£5.00