

Draft Regulations laid before Parliament under section 80(1)(a) of the Social Security Act 1998 and section 68 of, and paragraph 20(4) of Schedule 7 to, the Child Support, Pensions and Social Security Act 2000, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2001 No.

SOCIAL SECURITY

**The Housing Benefit and Council Tax Benefit
(Decisions and Appeals) Regulations 2001**

Made - - - - 2001
Coming into force - - 2nd July 2001

Whereas a draft of this Instrument was laid before Parliament in accordance with section 80(1)(a) of the Social Security Act 1998⁽¹⁾ and section 68 of, and paragraph 20(4) of Schedule 7 to, the Child Support, Pensions and Social Security Act 2000⁽²⁾ and approved by resolution of each House of Parliament;

Now, therefore, the Secretary of State for Social Security, in exercise of powers conferred by sections 5(1)(hh) and 6(1)(hh) of the Social Security Administration Act 1992⁽³⁾, sections 7(6)(a) and 79(4) to (7) of the Social Security Act 1998 and section 68 of, and paragraphs 3(1), (4) and (6), 4(4) and (6), 6(2)(e), (4), (7) and (8), 8(7)(c) and (8), 10(1), 12, 13, 14(2), 15, 16(3) and (5), 19(1), 20(1)(b) and (3) and 23(1)⁽⁴⁾ and (2) of Schedule 7 to, the Child Support, Pensions and Social Security Act 2000 and all other powers enabling him in that behalf, by this Instrument, which contains only regulations made by virtue of, or consequential upon, those provisions of the Child Support, Pensions and Social Security Act 2000 and which are made before the end of the period of six months beginning with the coming into force of those provisions⁽⁵⁾, after consultation with the Council on Tribunals in accordance with section 8 of the Tribunals and Inquiries Act 1992⁽⁶⁾, and after consultation with organisations appearing to him to be representative of the authorities concerned⁽⁷⁾, hereby makes the following Regulations:

(1) 1998 c. 14.

(2) 2000 c. 19.

(3) 1992 c. 5. Section 5(1)(hh) was inserted by section 74 of the Social Security Act 1998. Section 5(1)(hh) was amended by, and section 6(1)(hh) was inserted by, section 68 of, and paragraph 21 of Schedule 7 to, the Child Support, Pensions and Social Security Act 2000.

(4) Section 23(1) is an interpretation provision and is cited because of the meaning ascribed to the word “prescribed”.

(5) See sections 170 and 173(5) of the Social Security Administration Act 1992 (c. 5).

(6) 1992 c. 53.

(7) See section 176 of the Social Security Administration Act 1992.

PART I

GENERAL

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001 and shall come into force on 2nd July 2001.

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

“the Act” means the Child Support, Pensions and Social Security Act 2000;

“the Administration Act” means the Social Security Administration Act 1992;

“appeal” means an appeal to an appeal tribunal;

“appropriate relevant authority” has the meaning it has in paragraph 4 of Schedule 7 to the Act;

“benefit week” means a period of seven consecutive days commencing on a Monday and ending on a Sunday;

“claimant” means a person claiming housing benefit or council tax benefit or both;

“clerk to an appeal tribunal” means a clerk assigned to an appeal tribunal in accordance with regulation 37 of the Decisions and Appeals Regulations 1999;

“Council Tax Benefit Regulations” means the Council Tax Benefit (General) Regulations 1992(8);

“Decisions and Appeals Regulations 1999” means the Social Security and Child Support (Decisions and Appeals) Regulations 1999(9);

“designated authority” has the meaning it has in regulation 2(1) of the Work-focused Interviews Regulations;

“financially qualified panel member” means a panel member who is an accountant and a member of—

- (a) the Institute of Chartered Accountants in England and Wales;
- (b) the Institute of Chartered Accountants in Scotland;
- (c) the Institute of Chartered Accountants in Ireland;
- (d) the Association of Chartered Certified Accountants;
- (e) the Chartered Institute of Management Accountants; or
- (f) the Chartered Institute of Public Finance and Accountancy;

“Housing Benefit Regulations” means the Housing Benefit (General) Regulations 1987(10);

“legally qualified panel member” means a panel member who—

- (a) has a general qualification (construed in accordance with section 71 of the Courts and Legal Services Act 1990)(11); or
- (b) is an advocate or solicitor in Scotland;

“official error” means an error made by—

- (a) a relevant authority or a person—

(8) S.I.1992/1814.

(9) S.I. 1999/991; relevant amending instruments are S.I. 1999/1466 and 2000/1596.

(10) S.I. 1987/1971.

(11) 1990 c. 41.

- (i) authorised to carry out any function of a relevant authority relating to housing benefit or council tax benefit; or
- (ii) providing services relating to housing benefit or council tax benefit directly or indirectly to a relevant authority;
- (b) an officer of—
 - (i) the Department of Social Security;
 - (ii) the Commissioners of Inland Revenue; or
 - (iii) the Department for Education and Employment, acting as such;
- (c) a person employed by a designated authority acting on behalf of the authority, but excludes any error caused wholly or partly by any person or body not specified in subparagraphs (a) to (c) of this definition and any error of law which is shown to have been an error only by virtue of a subsequent decision of a Commissioner (construed in accordance with paragraph 23(1) of Schedule 7 to the Act) or the court;

“panel member” means a person appointed to a panel constituted under section 6 of the Social Security Act 1998;

“partner” means—

- (a) where a claimant is a member of a married or unmarried couple, the other member of that couple; or
- (b) where a claimant is polygamously married to two or more members of his household, any such member;

“person affected” shall be construed in accordance with regulation 3;

“President” means the President of appeal tribunals appointed under section 5 of the Social Security Act 1998;

“principal parties” has the same meaning as in paragraph 7(4) of Schedule 7 to the Act;

“relevant authority” has the same meaning as in paragraph 1(1) of Schedule 7 to the Act;

“relevant decision” has the same meaning as in paragraph 1(2) of Schedule 7 to the Act;

“work-focused interview” has the same meaning as in regulation 3 of the Work-focused Interviews Regulations;

“the Work-focused Interviews Regulations” means the Social Security (Work-focused Interviews) Regulations 2000(12).

- (3) In these Regulations, unless the context otherwise requires, a reference—
 - (a) to a numbered regulation is to the regulation in these Regulations bearing that number;
 - (b) in a regulation to a numbered paragraph is to the paragraph in that regulation bearing that number.

Service of notices or documents

- 2. Where, by, or in consequence of, any provision of these Regulations or Schedule 7 to the Act—
 - (a) any notice or other document is required to be given or sent to the clerk to an appeal tribunal, the Secretary of State or the relevant authority, 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, the Secretary of State or the relevant authority, as the case may be; and

- (b) any notice (including notification of a decision of a relevant authority) or other document is required to be given or sent to any person other than the clerk to an appeal tribunal, the Secretary of State or the relevant authority, as the case may be, that notice or document shall, if sent by post to that person's last known address, be treated as having been so given or sent on the day it was posted.

Person treated as a person affected by a decision

3.—(1) For the purposes of Schedule 7 to the Act and subject to paragraph (2), a person is to be treated as a person affected by a relevant decision of a relevant authority where that person is—

- (a) a claimant;
- (b) in the case of a person who is liable to make payments in respect of a dwelling and is unable for the time being to act—
 - (i) a receiver appointed by the Court of Protection with power to claim, or as the case may be, receive benefit on his behalf,
 - (ii) in Scotland, a tutor, curator, judicial factor or other guardian acting or appointed in terms of law administering that person's estate, or
 - (iii) an attorney with a general power or a power to receive benefit appointed by the person liable to make those payments under the Powers of Attorney Act 1971⁽¹³⁾ or the Enduring Powers of Attorney Act 1985⁽¹⁴⁾;
- (c) a person appointed by the relevant authority under regulation 71(3) of the Housing Benefit Regulations or regulation 61(3) of the Council Tax Benefit Regulations (appointments for persons unable to act);
- (d) a person from whom the relevant authority determines that an overpayment is recoverable in accordance with Part XIII of the Housing Benefit Regulations or excess benefit is recoverable in accordance with Part XI of the Council Tax Benefit Regulations; or
- (e) a landlord or agent acting on behalf of that landlord and that decision is made under regulation 93 (circumstances in which payment is to be made to a landlord) or 94 (circumstances in which payment may be made to a landlord) of the Housing Benefit Regulations.

(2) Paragraph (1) only applies in relation to a person referred to in paragraph (1) where the rights, duties or obligations of that person are affected by a relevant decision.

PART II

REVISIONS AND SUPERSESSIONS

Revision of decisions

4.—(1) Subject to the provisions in this regulation, a relevant decision (“the original decision”) may be revised or further revised by the relevant authority which made the decision where—

- (a) the person affected makes an application for a revision within—
 - (i) one month of the date of notification of the original decision; or
 - (ii) such extended time as the relevant authority may allow under regulation 5;

⁽¹³⁾ 1971 c. 77.

⁽¹⁴⁾ 1985 c. 29.

- (b) within one month of the date of notification of the original decision that authority has information which is sufficient to show that the original decision was made in ignorance of, or was based upon a mistake as to, some material fact; or
 - (c) an appeal is made under paragraph 6 of Schedule 7 to the Act against the original decision within the time prescribed in regulation 18 or, in a case to which regulation 19 applies the time prescribed in that regulation, but the appeal has not been determined.
- (2) An original decision may be revised or further revised by the relevant authority which made the decision, at any time by that authority, where that 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, the decision was more advantageous to the person affected than it would otherwise have been but for that ignorance or mistake.
- (3) Notwithstanding the provisions in paragraph (1), a relevant decision which adopts a rent officer's determination may be revised or further revised by the relevant authority which made the decision at any time in consequence of a rent officer's redetermination, substitute determination or substitute redetermination made under the Rent Officers (Housing Benefit Functions) Order 1997(15) or the Rent Officers (Housing Benefit Functions) (Scotland) Order 1997(16) which resulted in an increase in the amount which represents the rent for the purposes of calculating entitlement to benefit.
- (4) For the purposes of calculating the period in paragraph (1)(a)(i), where a written statement is requested under regulation 10, no account shall be taken of any period beginning with the day on which the relevant authority received the request for a statement and ending with the day on which that statement was provided to that person.
- (5) Where the relevant authority requires further evidence or information in order to consider all the issues raised by an application under paragraph (1)(a) ("the original application"), that authority shall notify the applicant that further evidence or information is required and, if it does so, the decision may be revised—
- (a) where the evidence or information so requested is provided within one month of the date of the notification or such longer period as the relevant authority may allow; or
 - (b) where such evidence or information is not provided within the period referred to in sub-paragraph (a), on the basis of the original application.
- (6) A relevant decision that is prescribed under paragraph 6(2)(e) or (4)(a) of Schedule 7 to the Act may be revised at any time.
- (7) A relevant decision made in respect of a claim or an award may be revised where—
- (a) a decision in respect of that claim or that award is given by an appeal tribunal, Commissioner or court on appeal against a decision ("decision A");
 - (b) the relevant decision was made after decision A; and
 - (c) the relevant decision would have been made differently had the relevant authority been aware of that appeal decision at the time it made the relevant decision.
- (8) An application for a revision shall be made in writing and delivered, by whatever means, to the relevant authority or, in a case to which the Work-focused Interviews Regulations apply, either to the relevant authority or to an office of a designated authority which displays the ONE logo(17).

(15) S.I. 1997/1984, amended by S.I. 2000/1.

(16) S.I. 1997/1995, amended by S.I. 2000/3.

(17) Offices displaying the "ONE" logo are identified in a list entitled "ONE sites – a complete list" available from the Department of Social Security, WtWs, 2nd Floor, Adelphi, London WC2N 6HT.

(9) The relevant authority may treat an application for a supersession as an application for a revision.

(10) Paragraph (1) shall not apply in respect of a change of circumstances which occurred since the decision was made or where the relevant authority has evidence or information which indicates that a relevant change of circumstances will occur.

Late application for a revision

5.—(1) The time limit for making an application for a revision specified in regulation 4 may be extended where the conditions specified in the following paragraphs of this regulation are satisfied.

(2) An application for an extension of time (“the application”) shall be made in writing by the person affected by a relevant decision.

(3) The application shall—

- (a) contain particulars of the grounds on which the extension of time is sought and shall contain sufficient details of the decision which it is sought to have revised to enable that decision to be identified;
- (b) be made within 13 months of the date of notification of the decision which it is sought to have revised; and
- (c) be delivered, by whatever means, to the relevant authority or, in a case to which the Work-focused Interviews Regulations apply(18) either to the relevant authority or to an office of a designated authority which displays the ONE logo.

(4) The application shall not be granted unless the person affected satisfies the relevant authority that—

- (a) it is reasonable to grant the application;
- (b) the application for revision has merit; and
- (c) 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 4.

(5) In determining whether it is reasonable to grant the application for an extension of time, no account shall be taken of the following—

- (a) that the person affected 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.

(6) In determining whether it is reasonable to grant an application, the relevant authority shall have regard to the principle that the greater the amount of time that has elapsed between the expiration of the time specified in regulation 4 for applying for a revision 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.

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

(18) The Work-focused Interviews Regulations apply to unemployed persons under the age of 60 living in an area identified in Schedule 1 to those Regulations who make a claim for income support, housing benefit, council tax benefit, bereavement benefit, incapacity benefit, severe disablement allowance or invalid care allowance.

Date from which a revision takes effect

6. Where, on a revision under paragraph 3 of Schedule 7 to the Act, the relevant authority decides that the date from which a relevant decision (“the original decision”) took effect was erroneous, the decision under that paragraph shall take effect on the date the original decision would have taken effect had the error not been made.

Decisions superseding earlier decisions

7.—(1) Subject to the provisions in this regulation, the prescribed cases and circumstances in which a decision may be made under paragraph 4 of Schedule 7 to the Act (decisions superseding earlier decisions) are as set out in paragraph (2).

(2) The appropriate relevant authority may make a decision under paragraph 4 of Schedule 7 to the Act upon its own initiative or on an application made for the purpose on the basis that the decision to be superseded is a decision—

- (a) in respect of which—
 - (i) there has been a change of circumstances; or
 - (ii) it is anticipated that a change of circumstances will occur;
- (b) which is erroneous in point of law or made in ignorance of, or was based upon a mistake as to, some material fact provided that the decision—
 - (i) cannot be revised on the basis of that error, ignorance or mistake; and
 - (ii) is not a decision prescribed in regulations under paragraph 6(2)(e) or (4)(a) of Schedule 7 to the Act;
- (c) which adopts a rent officer’s determination and in consequence of a rent officer’s redetermination, substitute determination or substitute redetermination made under the Rent Officers (Housing Benefit Functions) Order 1997 or the Rent Officers (Housing Benefit Functions) (Scotland) Order 1997 the amount which represents the rent for the purposes of calculating entitlement to benefit is reduced;
- (d) of an appeal tribunal or of a Commissioner that was made in ignorance of, or was based upon a mistake as to, some material fact;
- (e) which is prescribed in regulations made under paragraph 6(2)(e) or (4)(a) of Schedule 7 to the Act;
- (f) in respect of a person who—
 - (i) is subsequently the subject of a separate decision or determination as to whether or not he took part in a work-focused interview; or
 - (ii) had been held not to have taken part in a work-focused interview, but who had, subsequent to the decision to be superseded, attained the age of 60 or ceased to reside in an area in which there is a requirement to take part in a work-focused interview.

(3) The reference to a change of circumstances in paragraph (2)(a) shall include changes of circumstances specified in regulation 75(2) of the Housing Benefit Regulations(19) or regulation 65(2) of the Council Tax Benefit Regulations(20) (changes of circumstances which do not need to be notified).

(4) A decision which may be revised under regulation 4 may not be superseded under this regulation except where—

(19) Relevant amending instruments are S.I. 1990/546 and 1996/1510.

(20) Relevant amending instrument is S.I. 1996/1510.

- (a) circumstances arise in which the appropriate relevant authority may revise that decision under regulation 4; and
 - (b) further circumstances arise in relation to that decision which are not specified in regulation 4 but are specified in paragraph (2) or (5).
- (5) Where the appropriate relevant authority requires further evidence or information from the applicant in order to consider all the issues raised by an application under paragraph (2) (“the original application”), the authority shall notify the applicant that further evidence or information is required and, if it does so, the decision may be superseded—
- (a) where the applicant provides further relevant evidence or information within one month of the date of notification or such longer period of time as the appropriate relevant authority may allow; or
 - (b) where the applicant does not provide such evidence or information within the time allowed under sub-paragraph (a), on the basis of the original application.
- (6) The appropriate relevant authority may treat an application for a revision or a notification of a change of circumstances as an application for a supersession.
- (7) An application under this regulation shall be made in writing and delivered, by whatever means, to the relevant authority or, in a case to which the Work-focused Interviews Regulations apply, either to the relevant authority or to an office of a designated authority which displays the ONE logo.

Date from which a decision superseding an earlier decision takes effect

8.—(1) A decision made by virtue of paragraph 4 of Schedule 7 to the Act (“the superseding decision”) shall take effect on a date other than the date on which it is made or the date on which the application was made in the cases or circumstances prescribed in paragraphs (2) to (7).

(2) Subject to paragraphs (3) and (6), where the superseding decision is made on the ground that there has been, or it is anticipated that there will be, a change of circumstances, the superseding decision shall take effect on the date on which the change of circumstances is to take effect in accordance with regulations 68 and 68A of the Housing Benefit Regulations⁽²¹⁾ or, as the case may be, regulations 59 and 59A of the Council Tax Benefit Regulations⁽²²⁾.

(3) For the purposes of determining the date on which a superseding decision is to take effect in accordance with paragraph (2), in a case where—

- (a) the change of circumstances is a change of circumstances that is required by regulations to be notified, other than any change of circumstances to which regulation 68A of the Housing Benefit Regulations or regulation 59A of the Council Tax Benefit Regulations applies; and
- (b) that change of circumstances is notified more than one month after it occurs, or such longer period as may be allowed under regulation 9; and
- (c) the superseding decision is advantageous to the claimant,

the date of notification of the change of circumstances shall be treated as the date on which the change of circumstances occurred.

(4) Where the superseding decision is advantageous to the claimant and is made on the ground that the superseded decision was made in ignorance of, or was based upon a mistake as to, some material fact, the superseding decision shall take effect from the first day of the benefit week in which—

(21) Regulation 68 was amended by S.I. 1990/546, 1992/432, 1994/578, 1995/511, 1999/2734 and 2000/897. Regulation 68A was inserted by S.I. 2000/897 and amended by S.I. 2000/1926.

(22) Regulation 59 was amended by S.I. 1993/688, 1994/578, 1995/511 and 2000/897. Regulation 59A was inserted by S.I. 2000/897 and amended by S.I. 2000/1926.

- (a) except where sub-paragraph (b) applies, the appropriate relevant authority first has information which is sufficient to show that the superseded decision was made in ignorance of, or was based upon a mistake as to, some material fact;
- (b) where the superseding decision was made pursuant to an application, that application was received by the appropriate relevant authority.

(5) For the purpose of paragraphs (3)(c) and (4), the reference to the decision which is advantageous to the claimant includes a decision specified in regulation 17(2).

(6) A superseding decision made in consequence of a rent officer's redetermination, substitute determination or substitute redetermination under the Rent Officers (Housing Benefit Functions) Order 1997 or the Rent Officers (Housing Benefit Functions) (Scotland) Order 1997 shall take effect on the date on which a change of circumstances is to take effect in accordance with regulation 68 of the Housing Benefit Regulations as if that determination or redetermination were the relevant change of circumstances.

(7) Where a decision is made superseding a decision of an appeal tribunal or of a Commissioner ("the appeal decision") which—

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

that superseding decision shall take effect on the date on which the appeal decision took or was to take effect.

(8) A superseding decision made as a consequence of a determination which is a relevant determination for the purposes of paragraph 18 of Schedule 7 to the Act (restrictions on entitlement to benefit in certain cases of error) shall take effect from the date of the relevant determination.

Effective date for late notification of change of circumstances

9.—(1) For the purposes of making a decision under paragraph 4 of Schedule 7 to the Act a longer period of time may be allowed for the notification of a change of circumstances in so far as it affects the effective date of the change where the conditions specified in the following provisions of this regulation are satisfied.

(2) An application for the purposes of paragraph (1) shall—

- (a) include particulars of the change of circumstances and the reasons for the failure to notify the change of circumstances on an earlier date; and
- (b) be made within 13 months of the date on which the change occurred.

(3) An application for the purposes of paragraph (1) shall not be granted unless the appropriate relevant authority is satisfied that—

- (a) it is reasonable to grant the application;
- (b) the change of circumstances notified by the applicant is relevant to the decision which is to be superseded; and
- (c) special circumstances are relevant and as a result of those special circumstances it was not practicable for the applicant to notify the change of circumstances within one month of the change occurring.

(4) In determining whether it is reasonable to grant the application, the appropriate relevant authority shall have regard to the principle that the greater the amount of time that has elapsed between the date one month after the change of circumstances occurred and the date the application for a superseding decision is made, the more compelling should be the special circumstances on which the application is based.

(5) In determining whether it is reasonable to grant an application, no account shall be taken of the following—

- (a) that the applicant 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.
- (6) An application under this regulation which has been refused may not be renewed.

Notice of a decision against which an appeal lies

10.—(1) A person affected who has a right of appeal against a relevant decision shall be given written notice—

- (a) of the decision against which the appeal lies;
- (b) in a case where that notice does not include a statement of reasons for the decision, that he may request the relevant authority to provide him with a written statement of the reasons for that decision; and
- (c) of his right of appeal against that decision.

(2) Where a written statement of the reasons for the decision is not included in the written notice of the decision and is requested under paragraph (1)(b), the relevant authority shall, so far as practicable, provide that statement within 14 days.

PART III

SUSPENSION AND TERMINATION OF BENEFIT AND OTHER MATTERS

Cases where a relevant authority may suspend

11.—(1) A relevant authority may suspend, in whole or in part—

- (a) any payment of housing benefit or council tax benefit;
- (b) any reduction (by way of council tax benefit) in the amount that a person is or will become liable to pay in respect of council tax,

in the circumstances prescribed in paragraph (2).

(2) The prescribed circumstances are where—

- (a) it appears to the relevant authority that an issue arises whether—
 - (i) the conditions for entitlement to housing benefit or council tax benefit are or were fulfilled; or
 - (ii) a decision as to an award of such a benefit should be revised under paragraph 3 of Schedule 7 to the Act or superseded under paragraph 4 of that Schedule;
- (b) an appeal is pending against—
 - (i) a decision of an appeal tribunal, a Commissioner or a court; or
 - (ii) a decision given by a Commissioner or a court in a different case, and it appears to the relevant authority that if the appeal were to be determined in a particular way an issue would arise whether the award of housing benefit or council tax benefit in the case itself ought to be revised or superseded; or
- (c) an issue arises whether—

- (i) an amount of housing benefit is recoverable under section 75 (overpayments) of the Administration Act or regulations made under that section; or
- (ii) an excess payment of council tax benefit under section 76 of the Administration Act or regulations made under that section has occurred.

Making or restoring of payments or reductions suspended

12.—(1) Subject to paragraph (2), the prescribed circumstances for the purposes of paragraph 13(1)(c) of Schedule 7 to the Act (the subsequent making, or restoring, of any or all of the payments or reductions so suspended) are—

- (a) in a case to which regulation 11(2)(a) applies, where the relevant authority is satisfied that the benefit so suspended is properly payable and no outstanding issues remain to be resolved;
- (b) in a case to which regulation 11(2)(b) applies, an appeal is no longer pending and the benefit suspended remains payable following the determination of that appeal.

(2) Where any of the circumstances in paragraph (1) is satisfied, the relevant authority shall, so far as practicable, make the payment, or as the case may be, restore the reduction within 14 days of the decision to make or restore that payment or reduction.

Suspension for failure to furnish information etc.

13.—(1) The relevant authority may suspend in whole or in part—

- (a) any payment of housing benefit or council tax benefit;
- (b) any reduction (by way of council tax benefit) in the amount that a person is or will become liable to pay in respect of council tax,

in relation to persons who fail to comply with the information requirements (as defined in paragraph 14 of Schedule 7 to the Act) as provided for in regulations made pursuant to section 5(1)(hh) and 6(1)(hh) of the Administration Act (person required to satisfy the information provisions).

(2) For the purposes of section 5(1)(hh) in so far as it applies to housing benefit and section 6(1)(hh) of the Administration Act the prescribed persons are—

- (a) a person in respect of whom payment of benefit or a reduction has been suspended under regulation 11(2)(a);
- (b) a person who has made an application for a decision of the relevant authority to be revised or superseded;
- (c) a person in respect of whom a question has arisen in connection with his award of benefit and who fails to comply with the requirement in regulation 73 of the Housing Benefit Regulations or regulation 63 of the Council Tax Benefit Regulations to furnish information or evidence needed for a determination whether a decision on an award should be revised under paragraph 3 or superseded under paragraph 4 of Schedule 7 to the Act.

(3) The relevant authority shall notify any person to whom paragraph (2) refers of the requirements of this regulation.

(4) A person to whom paragraph (2) refers must—

- (a) furnish the information or evidence needed within a period of—
 - (i) one month beginning with the date on which the notification under paragraph (3) was sent to him; or
 - (ii) such longer period as the relevant authority considers necessary in order to enable him to comply with the requirement; or

- (b) satisfy the relevant authority within the period provided for in paragraph (4)(a) that—
 - (i) the information or evidence so required does not exist; or
 - (ii) it is not possible for him to obtain the information or evidence so required.

(5) Where a person satisfies the requirements in paragraph (4), the relevant authority shall, so far as practicable, make, or as the case may be restore, the payment within 14 days of the decision to make or restore that payment.

Termination in cases of a failure to furnish information

14.—(1) A person in respect of whom payment of benefit or a reduction has been suspended—

- (a) under regulation 11 and who subsequently fails to comply with an information requirement; or
- (b) under regulation 13 for failing to comply with such a requirement,

shall cease to be entitled to the benefit from the date on which the payments or reduction were so suspended, or such earlier date on which entitlement to benefit ceases.

(2) Paragraph (1) does not apply—

- (a) subject to sub-paragraph (b), where not more than one month has elapsed since the end of the period under regulation 13(4) for the provision of information;
- (b) where payment of benefit or a reduction has been suspended in part under regulation 11 or regulation 13.

Decisions involving issues that arise on appeal in other cases

15.—(1) For the purposes of paragraph 16(3)(b) of Schedule 7 to the Act (prescribed cases and circumstances in which a decision may be made) the prescribed cases and circumstances are those in which the claimant would be entitled to benefit to which the decision which falls to be made relates, even if the appeal in the other case referred to in paragraph 16(1)(b) of that Schedule were decided in the way which is most unfavourable to him.

(2) For the purposes of paragraph 16(3)(b) of Schedule 7 to the Act (prescribed basis) the prescribed basis on which the relevant authority may make a decision is as if—

- (a) the appeal in the other case referred to in paragraph 16(1)(b) of that Schedule 7 had already been determined; and
- (b) the appeal had been decided in the way which is most unfavourable to the claimant.

PART IV

RIGHTS OF APPEAL AND PROCEDURE FOR BRINGING APPEALS

Decisions against which no appeal lies

16.—(1) No appeal shall lie against a decision specified in the Schedule to these Regulations.

(2) An appeal made against a decision specified in the Schedule to these Regulations may be struck out in accordance with the provisions in regulation 23 of these Regulations and regulation 46 of the Decisions and Appeals Regulations 1999.

(3) In this regulation references to a decision include references to a determination embodied in or necessary to a decision.

Appeal against a decision which has been revised

17.—(1) An appeal against a decision of the relevant authority shall not lapse where the decision is revised under paragraph 3 of Schedule 7 to the Act before the appeal is determined and the decision as revised is not more advantageous to the appellant than the decision before it was so revised.

(2) For the purposes of this regulation, a decision which is more advantageous includes any decision where—

- (a) any housing benefit or council tax benefit paid or any reduction in the amount that a person is liable to pay in respect of council tax is greater or is awarded for a longer period in consequence of a decision made under paragraph 3 of Schedule 7 to the Act;
- (b) the amount of housing benefit or council tax benefit in payment or reduction in the amount a person is liable to pay in respect of council tax would have been greater but for the operation of the Administration Act in suspending the payment of, or disqualifying a claimant from receiving, some or all of the benefit;
- (c) as a result of the decision, a denial of, or disqualification for the receiving of, housing benefit or council tax benefit is lifted, wholly or in part; or
- (d) in consequence of the revised decision, housing benefit or council tax benefit paid is not recoverable by virtue of or as a consequence of section 75 or 76 of the Administration Act, or an amount so recoverable is reduced.

(3) Where a decision as revised under paragraph 3 of Schedule 7 to the Act is not more advantageous to the appellant than the decision before it was revised, the appeal shall be treated as though it had been brought against the decision as revised.

(4) The appellant 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.

(5) After the expiration of the period specified in paragraph (4), or within that period if the appellant consents in writing, the appeal to the appeal tribunal shall proceed except where, in the light of further representations from the appellant, the relevant authority further revises its decision and that decision is more advantageous to the appellant than the decision before it was revised.

Time within which an appeal is to be brought

18.—(1) Subject to the following paragraphs and regulation 19, an appeal which lies from a relevant decision must be brought within one month of the date of notification of that decision.

(2) For the purposes of calculating the period in paragraph (1), where a written statement is requested under regulation 10, no account shall be taken of any period beginning with the day on which the relevant authority received the request for a statement and ending with the day on which that statement was provided to that person.

(3) Where the relevant authority—

- (a) revises a decision under paragraph 3 of Schedule 7 to the Act;
- (b) following an application for a revision under regulation 4, does not revise; or
- (c) supersedes a decision under paragraph 4 of Schedule 7 to the Act,

subject to paragraph (2), the period of one month shall begin to run from the date of notification of that revision or supersession, or following an application for a revision, the date the authority issues a notice that it is not revising the decision.

(4) Where a dispute arises as to whether an appeal was brought within the time limit specified in this regulation, the dispute shall be referred to, and be determined by, a legally qualified panel member.

(5) The time limit specified in this regulation for bringing an appeal may be extended in accordance with regulation 19.

Late appeals

19.—(1) Subject to the following paragraphs, the time limit referred to in regulation 18 may be extended only if the conditions set out in this regulation are satisfied.

(2) No appeal shall be brought more than one year after the expiration of the last day for appealing under regulation 18.

(3) An application for an extension of time within which an appeal may be brought (“an application”) shall be determined by a legally qualified panel member.

(4) An application 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 (7).

(5) An application shall not be granted unless the panel member is satisfied that—

- (a) if the application is granted there are reasonable prospects that the appeal will be successful; or
- (b) it is in the interests of justice for the application to be granted.

(6) For the purposes of paragraph (5)(b), it is not in the interests of justice to grant an application unless the panel member is satisfied that—

- (a) any of the special circumstances specified in paragraph (7) 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 made within the time limit referred to in regulation 18.

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

- (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.

(8) 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 appeal is to be brought under regulation 18 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.

(9) 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 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.

(10) An application under this regulation which has been refused may not be renewed.

(11) The panel member who determines an application shall record a summary of his decision in such written form as has been approved by the President.

(12) As soon as practicable after the decision is made, a copy of the decision shall be sent or given to the principal parties to the proceedings.

Making of appeals and applications

20.—(1) An appeal or application for an extension of time must—

- (a) be in writing on a form approved for the purpose by the relevant authority or in such other format as the relevant authority may accept;
- (b) be signed by the person who has a right of appeal under paragraph 6(3) of Schedule 7 to the Act;
- (c) be delivered, by whatever means, to the relevant authority, or in a case to which the Work-focused Interviews Regulations apply, either to the relevant authority or to an office of a designated authority which displays the ONE logo;
- (d) contain particulars of the grounds on which it is made; and
- (e) contain sufficient particulars of the decision or subject of the application to enable that decision or subject of the application to be identified.

(2) A form which is not completed in accordance with the instructions on the form, except where paragraph (3) applies, does not satisfy the requirements of paragraph (1), and may be returned by the relevant authority to the sender for completion in accordance with those instructions.

(3) Where the relevant authority is satisfied that the form, although not completed in accordance with the instructions on it, includes sufficient information to enable the appeal or application to proceed, it may treat the form as satisfying the requirements of paragraph (1).

(4) Where an appeal or application is made in writing otherwise than on the approved form (“the letter”), and the letter includes sufficient information to enable the appeal or application to proceed, the relevant authority may treat the letter as satisfying the requirements of paragraph (1).

(5) Where the letter does not include sufficient information to enable the appeal or application to proceed, the relevant authority may request, in writing, further particulars.

(6) Where a person to whom a form is returned or from whom further particulars are requested duly completes and returns the form or sends the further particulars and the form or particulars, as the case may be, are received by the relevant authority within—

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

(7) Where a person to whom a form is returned or from whom further particulars are requested does not complete and return the form or send further particulars within the period of time specified in paragraph (6)—

- (a) the relevant authority shall forward a copy of the form, or as the case may be, the letter, together with any other relevant documents or evidence to a legally qualified panel member; and
- (b) the panel member shall determine whether the form or the letter satisfies the requirements of paragraph (1), and shall inform the relevant authority and appellant or applicant of his determination.

(8) Where—

- (a) a form is duly completed and returned or further particulars are sent after the expiry of the period of time allowed in accordance with paragraph (6); and
- (b) no decision has been made under paragraph (7) at the time the form or the further particulars are received by the relevant authority,

the form or further particulars shall also be forwarded to the legally qualified panel member who shall take into account any further information or evidence set out in the form or further particulars.

(9) The relevant authority may discontinue action on an appeal where the appeal has not been forwarded to the clerk to an appeal tribunal or to a legally qualified panel member and the appellant or an authorised representative of the appellant has given written notice that the appellant does not wish the appeal to continue.

Death of a party to an appeal

21.—(1) In any proceedings, on the death of a party to those proceedings, the relevant authority may appoint such person as it thinks fit to proceed with the appeal in the place of the deceased.

(2) A grant of probate, confirmation or letters of administration in respect of the deceased, whenever taken out, shall have no effect on an appointment made under paragraph (1).

(3) Where 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, the effective date of appointment shall be treated as the day immediately prior to the first day on which such action was taken.

PART V

APPEAL TRIBUNALS

Composition of appeal tribunals

22.—(1) Subject to paragraph (2), for the purposes of Schedule 7 to the Act and Regulations made thereunder, an appeal tribunal shall consist of—

- (a) a financially qualified panel member and a legally qualified panel member where the appeal may require consideration by members of the appeal tribunal of issues which are, in the opinion of the President, difficult and which relate to—
 - (i) profit and loss accounts, revenue accounts or balance sheets relating to any enterprise;
 - (ii) an income and expenditure account in the case of an enterprise not trading for profit; or
 - (iii) the accounts of any trust fund; and
- (b) in any other case, a legally qualified panel member.

(2) The President may determine that an appeal tribunal constituted in accordance with paragraph (1) shall include an additional member drawn from the panel constituted under section 6 of the Social Security Act 1998 for the purposes of providing experience for that additional member or for assisting the President in the monitoring of standards of decision making by panel members.

(3) Subject to paragraph (2), an appeal tribunal determining a misconceived appeal as a preliminary issue in accordance with regulation 23(1) of these Regulations and regulation 48 of the Decisions and Appeals Regulations 1999 shall consist of a legally qualified panel member.

Procedure in connection with appeals

23.—(1) Subject to paragraphs (2) and (3), the provisions in Chapters II to V of Part V of the Decisions and Appeals Regulations 1999⁽²³⁾ as in force on the date these Regulations are made shall apply in relation to the procedure to be followed in respect of appeals under Schedule 7 to the Act.

(23) S.I. 1999/991; relevant amending instruments are S.I. 1999/1466 and 2000/1596.

(2) Regulations 38A(24), 41(25), 44, 45, 52 and 57B(26) of the Decisions and Appeals Regulations 1999 shall not apply in relation to the procedure to be followed in respect of appeals under Schedule 7 to the Act.

(3) The provisions of the Decisions and Appeals Regulations 1999 referred to in paragraph (1) shall have effect as if a reference to—

- (a) the Secretary of State, except in regulations 40(27) (withdrawal of appeal or referral) and 58(28) (application for leave to appeal to a Commissioner from an appeal tribunal), were a reference to a relevant authority;
- (b) party to the proceedings were a reference to principal parties;
- (c) “these Regulations” in regulations 46(1)(b) (appeals which may be struck out) and 57A(29) (provisions common to regulations 56 and 57) were a reference to the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001;
- (d) a person in regulation 51 (postponement and adjournment) included a reference to a relevant authority;
- (e) a relevant enactment, in regulations 56 and 57 (correction of accidental errors and setting aside decisions) were a reference to Schedule 7 to the Act; and
- (f) in regulation 58—
 - (i) section 12 and 13 were a reference to paragraphs 6 and 7 of Schedule 7 to the Act; and
 - (ii) the Board were a reference to a relevant authority.

Signed by authority of the Secretary of State for Social Security

Parliamentary Under-Secretary of State,
Department of Social Security

(24) Regulation 38A was inserted by S.I. [1999/1670](#).
(25) Regulation 41 was amended by S.I. [1999/1670](#).
(26) Regulation 57B was inserted by S.I. [2000/1596](#).
(27) Regulation 40 was amended by S.I. [1999/2570](#).
(28) Regulation 58 was amended by S.I. [1999/2570](#).
(29) Regulation 57A was inserted by S.I. [2000/1596](#).

SCHEDULE

Regulation 16(1)

DECISIONS AGAINST WHICH NO APPEAL LIES

1. No appeal shall lie against a decision made by virtue of, or as a consequence of, any of the provisions in Part X (claims), Part XII (payments) and Part XIII (overpayments) of the Housing Benefit Regulations except a decision under—

- (a) regulations 72(5), (11), (15)(30), 72A(1)(31), 72B(1) and (4)(32) (date of claim);
- (b) regulation 91(3) (adjustments to payments to take account of underpayment or overpayment on account of rent allowance);
- (c) regulation 93(33) (circumstances in which payment is to be made to a landlord);
- (d) regulation 94(34) (circumstances in which payment may be made to a landlord);
- (e) regulation 99(35) (recoverable overpayments);
- (f) regulation 101 (person from whom recovery may be sought);
- (g) regulation 103 (diminution of capital); or
- (h) regulation 104 (sums to be deducted in calculating recoverable overpayments).

2. No appeal shall lie against a decision made by virtue of, or as a consequence of, any of the provisions in Part VIII (claims), Part X (awards or payments of benefit) and Part XI (excess benefit) of the Council Tax Benefit Regulations except a decision under—

- (a) regulations 62(5), (10), (11), (12) and (16)(36) and 62A(1)(37), 62B(1) and (4)(38) (date of claim);
- (b) regulation 84(39) (recoverable excess benefit);
- (c) regulation 86 (person from whom recovery may be sought);
- (d) regulation 89 (diminution of capital); or
- (e) regulation 90 (sums to be deducted in calculating recoverable excess benefit).

3. Subject to paragraphs 1(f) and 2(c), no appeal shall lie against a decision as to the exercise of discretion to recover an overpayment of housing benefit or, as the case may be, excess council tax benefit.

4. No appeal shall lie against a decision of a relevant authority under paragraph 16(3)(a) or (b) and (4) of Schedule 7 to the Act (decisions involving issues that arise on appeal in other cases).

5. No appeal shall lie against a decision under Part III of these Regulations of a relevant authority relating to—

- (a) suspension of a payment of benefit or of a reduction; or
- (b) restoration following a suspension of payment of benefit or of a reduction,

except a decision that entitlement to benefit is terminated under regulation 14.

(30) Regulation 72(5) was amended by S.I. 1990/671, 1991/235 and 1599, 1996/1510 and 1999/1539 and regulation 72(15) was amended by S.I. 1996/462.

(31) Regulation 72A was inserted by S.I. 1999/1539.

(32) Regulation 72B was substituted by S.I. 2000/897.

(33) Regulation 93 was amended by S.I. 1990/546, 1992/2432, 1996/1510, 1997/65 and 2434.

(34) Regulation 94 was amended by S.I. 1994/2137, 1996/965 and 1997/65 and 2434.

(35) Regulation 99 was amended by S.I. 1988/1843, 1991/235 and 1599, 1995/2986, 1997/65 and 1999/3108.

(36) Regulation 62(5) was amended by S.I. 1996/1510 and regulation 62(16) was amended by S.I. 1996/462.

(37) Regulation 62A was inserted by S.I. 1999/1539.

(38) Regulation 62B was substituted by S.I. 2000/897.

(39) Regulation 84 was amended by S.I. 1995/2986, 1997/65 and 1999/3108.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made by virtue of, or in consequence of, provisions in the Child Support, Pensions and Social Security Act 2000 (c. 19) (“the Act”). The Regulations supplement changes introduced by the Act to the decision-making process for housing benefit and council tax benefit and to the new appeals system.

The Regulations are made before the end of the period of six months beginning with the coming into force of the relevant provisions in the Act and are therefore exempt from the requirement in section 172(1) of the Social Security Administration Act 1992 (c. 5) to refer proposals to make these Regulations to the Social Security Advisory Committee and are made without reference to that Committee. The Regulations are made after consultation with organisations appearing to the Secretary of State to be representative of the authorities concerned in accordance with section 176(1) of the Social Security Administration Act, and after consultation with the Council on Tribunals in accordance with section 8 of the Tribunal and Inquiries Act 1992 (c. 53).

Part I contains provisions relating to citation, commencement, interpretation and service of documents. It also includes a provision as to treating a person as a person affected by a decision.

Part II makes provision as to the circumstances in which a relevant authority may revise or supersede decisions, when such decisions take effect and related procedural matters.

Part III makes provision for the suspension and termination of housing benefit and council tax benefit and decisions involving issues that arise in appeals in other cases.

Part IV and the Schedule make provision in respect of rights of appeal and procedure for bringing appeals.

Part V makes provision in respect of appeal tribunal composition and procedure.

These Regulations do not impose a charge on business.