STATUTORY INSTRUMENTS

1980 No. 1640

SOCIAL SECURITY

The Child Benefit (Determination of Claims and Questions) Amendment (No. 2) Regulations 1980

Made - - - -	30*th October* 1980
Laid before Parliament	3*rd November* 1980
Coming into Operation	24*th November* 1980

The Secretary of State for Social Services after consultation with the Council on Tribunals in so far as is required by section 10 of the Tribunals and Inquiries Act 1971**(a)**, in exercise of the powers conferred upon him by section 7 of the Child Benefit Act 1975**(b)** and section 119(3) and (4) of the Social Security Act 1975**(c)** as applied by section 8 of the first mentioned Act and of all other powers enabling him in that behalf, hereby makes the following regulations:—

Citation, interpretation and commencement

1. These regulations which may be cited as the Child Benefit (Determination of Claims and Questions) Amendment (No. 2) Regulations 1980 amend the Child Benefit (Determination of Claims and Questions) Regulations 1976**(d)** (hereinafter referred to as "the principal regulations") and shall come into operation on 24th November 1980.

Amendment of regulation 5 of the principal regulations

2. In regulation 5(9) of the principal regulations (appeal to local tribunal) for the words "21 days after the date on which the claimant is given notice in writing of the decision" there shall be substituted the words "28 days beginning with the date when the Secretary of State gives to the claimant notice in writing of the decision and for '21' there shall be substituted 28".

Insertion of new regulation 5A in the principal regulations

3. After regulation 5 of the principal regulations there shall be inserted the following regulation:—

"*Application for leave to appeal to a Commissioner*

5A—(1) Section 15 of the Social Security Act 1980**(e)** (leave required for appeal from local tribunal to Commissioner) shall apply in relation to appeals to a Commissioner under the Act.

(2) Subject to the following provisions of this regulation, an application to the chairman of a local tribunal for leave to appeal to a Commissioner from a decision of a local tribunal which is unanimous shall be made in the first instance—

(a) 1971 c. 62. **(b)** 1975 c. 61.
(c) 1975 c. 14; section 119(4) of the Social Security Act 1975 was amended by section 2 of, and paragraph 12 of Schedule 1 to, the Social Security Act 1980 (c. 30).
(d) S.I. 1976/962; relevant amending instrument is S.I. 1978/540.
(e) 1980 c. 30.

(*a*) orally at the hearing after the decision is announced by the tribunal; or

(*b*) in writing within 28 days beginning with the date when a copy of the record of the tribunal's decision was given to the person concerned.

(3) The decision of the chairman on an application for leave to appeal made orally shall be recorded in the record of the proceedings of the tribunal.

(4) A person who has been refused leave to appeal by the chairman of a tribunal may apply for such leave in writing to a Commissioner within 6 weeks beginning with the date when that person is given notice in writing of the chairman's decision refusing leave or within such further time as the Commissioner may for special reasons allow.

(5) Where an application having been made out of time the chairman of the local tribunal refuses leave to appeal, the person concerned may apply for such leave in writing to a Commissioner within 10 weeks beginning with the date when a copy of the record of the tribunal's decision against which he seeks leave to appeal was given to him, or within such further time as the Commissioner may for special reasons allow.

(6) Every application for leave to appeal required by this regulation to be in writing shall be made by giving it or sending it to a local office for transmission either to the chairman of the local tribunal against whose decision it is desired to appeal, or to a Commissioner, as the case may be; and every such application shall contain a statement of the grounds upon which leave to appeal is requested.

(7) Where an application in writing for leave to appeal is made by an insurance officer, the insurance officer shall, as soon as may be practicable, send to the claimant a copy of the application.

(8) Where, in any case, it is impracticable or it would be likely to cause undue delay for an application for leave to appeal against a decision of a local tribunal to be determined under section 15(1) of the Social Security Act 1980 by the person who was chairman of that tribunal, that application shall be determined by any other person appointed to act as a chairman for the particular area or if there is no such person by the chairman of a local tribunal in an adjoining area."

Amendment of regulation 6 *of the principal regulations*

4. In regulation 6 of the principal regulations (appeal from local tribunal to Commissioner)—

(*a*) in paragraph (1) after the words "Subject to the provisions" there shall be inserted the words "of regulation 5A and"

(*b*) in paragraph (3) for the words "from the date of the decision of the local tribunal or" there shall be substituted the words "beginning with the date when notice in writing of the decision of the local tribunal was given or, if leave to appeal is required, within three months beginning with the date when notice of the decision granting leave to appeal was given or in either case".

Amendment of regulation 14 *of the principal regulations*

5. In regulation 14 of the principal regulations (hearings before local tribunals), at the end of paragraph (3) there shall be added the words "but such consent may only be given if the claimant is first informed of the effect

of the provisions requiring leave to appeal to a Commissioner from a decision of a tribunal which is unanimous".

Amendment of regulation 17 *of the principal regulations*

6. In regulation 17 of the principal regulations (payment of sums on account of benefit where appeal is pending) for paragraph (2) there shall be substituted the following:—

"(2) Subject to paragraph (4), where notice of an appeal by an insurance officer to a Commissioner from an award of a local tribunal is given to the person claiming the benefit within a period of 28 days beginning on the date when the insurance officer was given notice in writing of the local tribunal's decision, payment of the benefit to which the appeal relates shall be suspended until the appeal has been determined.

(3) Where leave is necessary for such an appeal and either—

(*a*) application for leave having been made by an insurance officer to the chairman of the local tribunal, notice of the application is given to the claimant within the 28 day period referred to in paragraph (2) above, or

(*b*) such an application having been refused and an application for leave to appeal having been made by the insurance officer to the Commissioner, notice of the latter application is given to the claimant within six weeks of the date on which the insurance officer was notified of the refusal of the chairman of the local tribunal to give leave to appeal,

payment of the benefit to which the application for leave to appeal relates shall be suspended until a decision on the application (whether refusing or allowing leave to appeal) is given.

(4) In a case where leave to appeal is given on an application referred to in paragraph (3) above, paragraph (2) shall have effect as if the 28 day period to which it refers began on the date on which notice was given to the insurance officer that leave to appeal had been given."

Amendment of regulation 22 *of the principal regulations*

7.—(1) In paragraph (1) of regulation 22 of the principal regulations (certificate of the Supplementary Benefits Commission showing that more supplementary benefit would have been paid had benefit under the Act not been overpaid),—

(*a*) in sub-paragraph (*b*) for the words "the Supplementary Benefits Commission certify that the person awarded benefit or some other person would have been paid supplementary benefit" there shall be substituted the words "a statement in writing of a supplementary benefit officer shows that in his opinion the person awarded benefit or some other person would have been paid a supplementary pension or allowance";

(*b*) at the end of the said paragraph (1) for the word "certificate" there shall be substituted the word "statement".

(2) In paragraph (2)(*b*) (benefit under the Act treated as properly paid), for the words "the certificate" there shall be substituted the words "the statement of the supplementary benefit officer" and for the words "supplementary benefit," there shall be substituted, wherever these words appear, the words "supplementary pension or allowance".

(3) For the purposes of paragraphs (1) and (2) of the said regulation 22, a certificate of the Supplementary Benefits Commission issued before the date when this regulation comes into operation shall have effect on or after that date as if the amendments made by paragraphs (1) and (2) above had not been made.

(4) For paragraph (3) there shall be substituted the following paragraph—

'(3) In this regulation "supplementary pension" and "supplementary allowance" mean such a pension or allowance under the Supplementary Benefits Act 1976**(a)** and "supplementary benefit officer" means a person appointed under that Act to perform the functions conferred by it on benefit officers.'

Patrick Jenkin,
Secretary of State for Social Services.

30th October 1980.

EXPLANATORY NOTE

(*This Note is not part of the Regulations.*)

These Regulations amend the Child Benefit (Determination of Claims and Questions) Regulations 1976 (the principal regulations) by prescribing new time limits for appeals to local tribunals, and from such tribunals to a Commissioner. They insert in the principal regulation a new regulation 5A which provides for section 15 of the Social Security Act 1980, requiring leave to appeal to a Commissioner from a decision of a tribunal which is unanimous, to apply to appeals under the Child Benefit Act 1975. That regulation also makes provision for the time within which and the manner in which applications for such leave should be made, and for the procedure for dealing with such applications.

The Regulations provide for a claimant to be informed of the effect of the provisions requiring such leave to appeal before he consents to a hearing by a local tribunal in the absence of one of its members.

The Regulations amend regulation 17 of the principal regulations, which provides for suspension of benefit under a local tribunal award if the insurance officer gives notice of appeal to the Commissioner within 21 days, by extending that period to 28 days. They also provide for suspension of benefit, in cases where leave to appeal is required, pending the determination of an application for such leave.

Regulation 7 amends a provision of the principal regulations whereby benefit is exempt from recovery as being overpaid if the Supplementary Benefits Commission certify that, but for the overpayment, more supplementary benefit would have been awarded. The amendment provides for a statement in writing showing the opinion of a benefit officer on that matter to replace the Commission's certificate.

(a) 1976 c. 71.

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