Draft Order laid before the House of Commons under section 124(8) of the Finance Act 2008 (c. 9), for approval by resolution of that House.

DRAFT STATUTORY INSTRUMENTS

2014 No.

TAX CREDITS

SOCIAL SECURITY

The Tax Credits, Child Benefit and Guardian's Allowance Reviews and Appeals Order 2014

Made - - - -	***
Coming into force - -	6th April 2014

The Treasury make this Order in exercise of the powers conferred by section 124(1), (2), (6) and (7) of the Finance Act 2008(**a**).

A draft of this instrument was laid before and approved by resolution of the House of Commons in accordance with section 124(8) of that Act.

Citation, commencement and effect

1.—(1) This Order may be cited as the Tax Credits, Child Benefit and Guardian's Allowance Reviews and Appeals Order 2014 and comes into force on 6th April 2014.

(2) But articles 2(13), 3(2) to (6), 5(2), 5(7)(a), (c), (e), (g), (h), (j) and (l), and 5(9) only come into force on a day appointed by an order of the Treasury made by statutory instrument, and the Treasury may so appoint different days for different purposes.

(3) Articles 2(12) and 3(1) extend to England and Wales and Scotland only.

(4) Articles 2(13) and 3(2) to (6) extend to Northern Ireland only.

(5) Any amendment made by this Order only has effect in relation to an HMRC decision(**b**) made on or after the amendment comes into force.

Amendment of the Tax Credits Act 2002

2.—(1) The Tax Credits Act 2002(**c**) is amended as follows.

(2) In section 18(11), for "19 and 20" substitute: "19, 20, 21A and 21B".

(3) In section 19(12), for "section 20" substitute: "sections 20, 21A and 21B".

(4) In section 20(6)—

(**a**) 2008 c. 9.
(**b**) Section 124(11) of the Finance Act 2008 defines "HMRC decision".
(**c**) 2002 c. 21.

(a) at the end of paragraph (b), insert: "or";

(b) for everything from "including" to the end, substitute—

"(c) a decision within paragraph (a) or (b) as varied under section 21A(5)(b), or

(d) a decision on an appeal against a decision within paragraph (a), (b) or (c).".

(5) In section 20(7) after "section 21" insert: "and to any review under section 21A".

(6) After section 21, insert—

"21A Review of decisions

(1) The Commissioners for Her Majesty's Revenue and Customs must review(**a**) any decision within section 38(1) if they receive a written application to do so that identifies the applicant and decision in question, and—

(a) that application is received within 30 days of the date of the notification of the original decision or of the date the original decision was made if not notified because of section 23(3), or

(b) it is received within such longer period as may be allowed under section 21B.

(2) The Commissioners must carry out the review as soon as is reasonably practicable.

(3) When the review has been carried out, the Commissioners must give the applicant notice of their conclusion containing sufficient information to enable the applicant to know—

(a) the conclusion on the review,

(b) if the conclusion is that the decision is varied, details of the variation, and

(c) the reasons for the conclusion.

(4) The conclusion on the review must be one of the following—

(a) that the decision is upheld;

(b) that the decision is varied;

(c) that the decision is cancelled.

(5) Where—

(a) the Commissioners notify the applicant of further information or evidence that they may need for carrying out the review, and

(b) the information or evidence is not provided to them by the date specified in the notice,

the review may proceed without that information or evidence.

21B Late application for a review

(1) The Commissioners for Her Majesty's Revenue and Customs may in a particular case extend the time limit specified in section 21A(1)(a) for making an application for a review if all of the following conditions are met.

(2) The first condition is that the person seeking a review has applied to the Commissioners for an extension of time.

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

(a) explains why the extension is sought, and

(b) is made within 13 months of the notification of the original decision or of the date the original decision was made if not notified because of section 23(3) .

(**a**) In practice, this review will be known as a "mandatory reconsideration".

(4) The third condition is that the Commissioners are satisfied that due to special circumstances it was not practicable for the application for a review to have been made within the time limit specified in section 21A(1)(a).

(5) The fourth condition is that the Commissioners are satisfied that it is reasonable in all the circumstances to grant the extension.

(6) In determining whether it is reasonable to grant an extension, the Commissioners must have regard to the principle that the greater the amount of time that has elapsed between the end of the time limit specified in section 21A(1)(a) and the date of the application, the more compelling should be the special circumstances on which the application is based.

(7) An application to extend the time limit specified in section 21A(1)(a) which has been refused may not be renewed.".

(7) In section 23(2), after "details of any right", insert: "to a review under section 21A and of any subsequent right".

(8) In sections 28(1) and 30(1), for "21" substitute: "21B".

(9) In section 31(1)(b), after "section 25" insert: "or in response to a notification under section 21A(5)".

(10) In section 38(1)(**a**), after "may", insert: ", subject to subsection (1A),".

(11) After section 38(1), insert—

"(1A) An appeal may not be brought by virtue of subsection (1) against a decision unless a review of the decision has been carried out under section 21A and notice of the conclusion on the review has been given under section 21A(3).

(1B) If in any case the conclusion of a review under section 21A is to uphold the decision reviewed, an appeal by virtue of subsection (1) in that case may be brought only against the original decision.

(1C) If in any case the conclusion of a review under section 21A is to vary the decision reviewed, an appeal by virtue of subsection (1) in that case may be brought only against the decision as varied.".

(12) Section 39(1) and (2) is repealed (for England and Wales and Scotland).

(13) In section 39(1) (for Northern Ireland)—

(a) omit: "to the Board";

(b) from "notice of the decision" to the end, substitute: "notice under section 21A(3) was given of the conclusion on the review of the decision".

Revocation (for Great Britain) and amendment (for Northern Ireland) of the Tax Credits (Notice of Appeal) Regulations 2002

3.—(1) The Tax Credits (Notice of Appeal) Regulations 2002(**b**) are revoked (for England and Wales and Scotland).

(2) Those Regulations are amended (for Northern Ireland) as follows.

(3) In regulations 2(1), omit: "to the Board".

(4) In regulation 2(2)(a), after "writing", insert: "to the appropriate office".

(5) In regulations 2(3) and 2(4), for "Board" substitute: "appropriate office".

(6) In regulation 2(5)—

(a) for "Board", substitute: "appropriate office";

(b) for "the Commissioners of Inland Revenue", substitute: "any office specified in writing for the purpose by the Department for Social Development in Northern Ireland".

(**a**) Section 38(1) was amended by the Welfare Reform Act 2012 (c. 5), section 120(1) and (3).
(**b**) S.I. 2002/3119.

Child benefit and guardian's allowance: amendment of the Social Security Act 1998 and the Social Security (Northern Ireland) Order 1998

4.—(1) After section 12(3C) of the Social Security Act 1998(**a**), insert—

"(3D) In the case of a decision relating to child benefit or guardian's allowance(**b**), the making of any appeal under this section against the decision as originally made must follow the Commissioners for Her Majesty's Revenue and Customs first deciding, on an application made for revision of that decision under section 9, not to revise the decision.".

(2) After Article 13(2) of the Social Security (Northern Ireland) Order 1998(**c**), insert—

"(2A) In the case of a decision relating to child benefit or guardian's allowance(**d**), the making of any appeal under this section against the decision as originally made must follow the Commissioners for Her Majesty's Revenue and Customs first deciding, on an application made for revision of that decision under Article 10, not to revise the decision.".

Amendment of the Child Benefit and Guardian's Allowance (Decisions and Appeals) Regulations 2003

5.—(1) The Child Benefit and Guardian's Allowance (Decisions and Appeals) Regulations 2003(**e**) are amended as follows.

(2) In regulation 2, in the meaning for "the appropriate office", before "means", insert: "(except in regulation 31)".

(3) In regulation 28—

(a) in paragraph (1), omit: "or the First-tier Tribunal";

(b) in paragraph (2)(a) and (c), omit: "section 9 or";

(c) in paragraphs (3), omit: "or, as the case may be, the First-tier Tribunal";

(d) in paragraph (4), omit: "or, as the case may be, regulation 29A".

(4) In regulation 29A, for "regulation 28" substitute: "those Rules".

(5) In regulation 30(1), omit: "specified in regulation 28".

(6) In regulation 30(4), omit: "under regulation 28".

(7) In regulation 31—

(a) for each use of "Board" (except in regulation 31(7)(b)), substitute: "appropriate office";

(b) in paragraph (1)(b)(i), omit: "section 12(2) or";

(c) in paragraph (1)(c), for "an", substitute: "the";

(d) paragraphs (1A) and (1B) are revoked;

(e) in paragraph (3), for "are" substitute: "is"; and for "they" substitute: "it";

(**a**) 1998 c. 14. Section 12(3C) was inserted by the Welfare Reform Act 2012, section 102(1) and (3). By sections 50(1) and 50(2)(e) of the Tax Credits Act 2002, the functions of the Secretary of State under Chapter 2 of Part 1 of the Social Security Act 1998, so far as they relate to child benefit and guardian's allowance, were transferred to the Board of the Inland Revenue. By paragraphs 12 and 15 of Schedule 4 to the 2002 Act, relevant references in Chapter 2 of Part 1 of the 1998 Act are to be construed as references to the Board or an officer of the Board. Section 5(2) of the Commissioners for Revenue and Customs Act 2005 (c. 11) provides that those Commissioners have these functions of the Commissioners of Inland Revenue, and section 50(1) of that Act provides that references to "the Commissioners of Inland Revenue" (however expressed) must be taken accordingly.

(**b**) Guardian's allowance falls within section 8(3)(a) of the Social Security Act 1998.

(**c**) S.I. 1998/1506 (N.I. 10). Article 13(2) was substituted by S.I. 1999/671, Schedule 6, paragraph 19. By sections 50(1), 50(2)(f) and 67 of the Tax Credits Act 2002, the functions of the Department for Social Development in Northern Ireland under Chapter 2 of Part 2 of S.I. 1998/1506 (N.I. 10), so far as they relate to child benefit and guardian's allowance, were transferred as noted in footnote (a). Paragraphs 16 and 19 of Schedule 4 to the 2002 Act make provision corresponding to paragraphs 12 and 15 as noted there.

(**d**) Guardian's allowance falls within Article 9(3)(a) of S.I. 1998/1506 (N. I 10).

(**e**) S.I. 2003/916; relevant amending instruments are S.I. 2008/2683, 2009/3268.

(f) in paragraphs (3), (4) and (7)(a), omit: "or, as the case may be, Tribunal Procedure Rules";

(g) in paragraph (6)(a) and (b), omit: "by them";

(h) in paragraph (6)(c), for "they" substitute: "it";

(i) in paragraph (7), omit: ", or, as the case may be, the First-tier Tribunal which,";

(j) in paragraph (7)(b), omit: "and the Board";

(k) in paragraph (8), omit: ", or, as the case may be, First-tier Tribunal which,";

(l) after paragraph (8), insert—

"(9) In this regulation, "appropriate office" refers to any office specified in writing for the purpose by the Department for Social Development in Northern Ireland.".

(8) In regulation 32 omit: "or to the First-tier Tribunal" and "or, as the case may be, the First-tier Tribunal".

(9) Regulation 32 is revoked.

Date

Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for compulsory reviews of HM Revenue and Customs' decisions about tax credits, child benefit and guardian's allowance before an appeal may be made to the First-tier Tribunal or Northern Ireland equivalents(**a**). It also repeals and revokes the rules requiring notice of such appeals to be given, sent or delivered to HM Revenue and Customs(**b**).

For tax credits, article 2 provides that an application within 30 days of notification of the decision triggers a review (or, if notification is dispensed with, within 30 days of the decision). This time is extendable by HM Revenue and Customs in special circumstances where reasonable to do so, but only if an application is made within 12 months of the initial 30-day deadline(**c**).

A full Impact Assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Department for Work and Pensions website at http://www.dwp.gov.uk/docs/consideration-of-revision-wr2011-ia.pdf .

© Crown copyright 2014

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

(**a**) Articles 2 and 4.

(**b**) Articles 1(2), 2(12) and (13), 3 and 5. For Northern Ireland, these rules come into force on a day to be appointed by the Treasury under article 1(2) and provide for the notices to be lodged as specified by the Department for Social Development.

(**c**) Article 2 provides for this in the new sections 21A(1) and 21B inserted into the Tax Credits Act 2002.

£4.00

UK2014021135 02/2014 19585

http://www.legislation.gov.uk/id/ukdsi/2014/9780111109571

ISBN 978-0-11-110957-1

9 780111 109571