2001 No. 1264

SOCIAL SECURITY

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

Made - - - - -	*28th March 2001*
Laid before Parliament	*4th April 2001*
Coming into force - -	*2nd July 2001*

The Secretary of State for Social Security, in exercise of the powers conferred by section 86(5)(b) to (8) of the Child Support, Pensions and Social Security Act 2000(**a**) and section 174(2) to (4) of the Pensions Act 1995(**b**), after consultation with the Council on Tribunals in accordance with section 8(1) of the Tribunals and Inquiries Act 1992(**c**) and consultation with organisations appearing to him to be representative of the authorities concerned(**d**), by this Instrument, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Housing Benefit and Council Tax Benefit (Decisions and Appeals) (Transitional and Savings) 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 Council Tax Benefit Regulations" means the Council Tax Benefit (General) Regulations 1992(**e**);

"the Decisions and Appeals Regulations" means the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001(**f**);

"the Housing Benefit Regulations" means the Housing Benefit (General) Regulations 1987(**g**);

"panel member" means a person appointed to a panel constituted under section 6 of the Social Security Act 1998(**h**);

"person affected" has the meaning as in regulation 3 (person treated as a person affected by a decision) of the Decisions and Appeals Regulations;

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

"relevant date" means 2nd July 2001;

(**a**) 2000 c. 19; section 86(8) is an interpretation provision and is cited because of the meaning ascribed to the words "subordinate legislation".
(**b**) 1995 c. 26; section 174(2) to (4) of the Pensions Act 1995 applies to regulations under section 86(5) of the Child Support, Pensions and Social Security Act 2000 by virtue of section 86(7) of the last mentioned Act.
(**c**) 1992 c. 53.
(**d**) *See* section 176(1)(a) of the Social Security Administration Act 1992 (c. 5).
(**e**) S.I. 1992/1814.
(**f**) S.I. 2001/1002.
(**g**) S.I. 1987/1971.
(**h**) 1998 c. 14.

"Review Board" shall, notwithstanding the revocation of regulation 81(3) of the Housing Benefit Regulations or, as the case may be, regulation 70(3) of the Council Tax Benefit Regulations(**a**), be construed in accordance with those provisions; and

"the Work-focused Interviews Regulations" means the Social Security (Work-focused Interviews) Regulations 2000(**b**).

(3) In these Regulations, unless the context otherwise requires, a reference—

(a) to a numbered regulation is to a regulation in these Regulations bearing that number; and

(b) in a regulation to a numbered paragraph or sub-paragraph is to the paragraph or sub-paragraph in that regulation bearing that number.

Provision in respect of reviews of determinations made by relevant authorities

2.—(1) Subject to the following paragraphs and notwithstanding regulation 4(1)(a) of the Decisions and Appeals Regulations (revision of decisions), where a person affected makes written representations signed by him to a relevant authority concerning a determination made by that authority before the relevant date and—

(a) such representations are made within six weeks of the date on which the person was notified of that determination or within such longer period as may be allowed under paragraph (5), those representations shall be treated as an application duly made for a revision under paragraph 3 of Schedule 7 to the Act (revision of decisions); or

(b) such representations are not made within the period provided by virtue of sub-paragraph (a) or allowed under paragraph (5), those representations shall be treated as an application duly made for a supersession under paragraph 4 of Schedule 7 to the Act (decisions superseding earlier decisions).

(2) Paragraph (1) shall—

(a) apply only in a case to which regulation 79(2) of the Housing Benefit Regulations, or as the case may be, regulation 69(2) of the Council Tax Benefit Regulations could have applied had Schedule 7 to the Act and regulations made thereunder not come into force;

(b) not apply in a case where a review of the determination was made under regulation 79(2) of the Housing Benefit Regulations, or as the case may be, regulation 69(2) of the Council Tax Benefit Regulations before the relevant date.

(3) Where a person makes written representations signed by him to a relevant authority concerning a determination made by them before the relevant date and that authority—

(a) accepted the late submission of those representations in accordance with regulation 78(3) of the Housing Benefit Regulations, or as the case may be, in accordance with regulation 68(3) of the Council Tax Benefit Regulations before the relevant date; and

(b) made no determination in respect of those representations before the relevant date,

those representations shall be treated as an application duly made for a revision under paragraph 3 of Schedule 7 to the Act.

(4) For the purposes of calculating the period of six weeks in paragraph (1)(a), no account shall be taken of any period beginning with the receipt by a relevant authority of a request for a statement under regulation 77(4) of the Housing Benefit Regulations(**c**), or as the case may be, under regulation 67(2) of the Council Tax Benefit Regulations(**d**) (requests for statement of reasons) and ending with the provision to that person of that statement.

(5) The period of six weeks specified in paragraph (1)(a) may be extended where an application for such an extension is made before 2nd August 2002 by a person affected and the application contains—

(a) the grounds on which an extension of time is sought; and

(**a**) *See* article 2(2) and (3) of the Child Support, Pensions and Social Security Act 2000 (Commencement No.8) Order 2001. Section 34 of the Social Security Act 1998 is saved for specified purposes relating to further review of a determination.

(**b**) S.I. 2000/897; the relevant amending instrument is S.I. 2000/1926. The Social Security (Work-focused Interviews) Regulations 2000 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.

(**c**) Paragraph (4) was added to regulation 77 by S.I. 1992/432 and amended by S.I. 1994/2137.

(**d**) Relevant amending instrument is S.I. 1994/2137.

(b) sufficient details of the determination to enable it to be identified.

(6) An application for an extension of time shall be made in writing by the person affected 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(**a**).

(7) An application for an extension of time shall not be granted unless the relevant authority which made the determination to which the representations relate is satisfied that—

(a) it is reasonable to grant that application;

(b) the representations have merit; and

(c) special circumstances are relevant to the application for an extension of time as a result of which it was not practicable for the representations to be made within the six week period specified in paragraph (1)(a).

(8) In deciding whether to grant an extension of time no account shall be taken of the following factors—

(a) that the person affected was unaware of or misunderstood the law applicable to his case (including ignorance or misunderstanding of the time limits specified in paragraph (1)(a)); or

(b) that a court has taken a different view of the law from that previously understood and applied by the relevant authority.

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

Provision in respect of requests for further review of determinations

3.—(1) Subject to the following paragraphs and notwithstanding regulation 23 of the Decisions and Appeals Regulations (procedure in connection with appeals), where a person affected gives or sends written notice signed by him to a relevant authority requesting a further review of a determination ("reviewed determination"), that notice shall be treated as an application duly made for an appeal to an appeal tribunal from a relevant decision.

(2) Paragraph (1) shall—

(a) apply only in a case to which regulation 81(3) of the Housing Benefit Regulations or, as the case may be, regulation 70(3) of the Council Tax Benefit Regulations could have applied had Schedule 7 to the Act and regulations made thereunder not come into force;

(b) not apply in a case where a further review of the determination was made under regulation 81(3) of the Housing Benefit Regulations or, as the case may be, regulation 70(3) of the Council Tax Benefit Regulations before the relevant date.

(3) For the purposes of paragraph (1), the written notice must be given or sent within—

(a) four weeks of the date the person was notified of the reviewed determination; or

(b) the period allowed for under paragraph (5).

(4) Where written notice is given or sent –

(a) before the relevant date and the provisions in regulation 81(1), (1A) and (2) of the Housing Benefit Regulations, or as the case may be, regulation 70(1) and (2) of the Council Tax Benefit Regulations were satisfied before that date; or

(b) by the person affected more than four weeks after the date on which the person was notified of the reviewed determination and a Review Board extended the time before the relevant date for giving such notice under regulation 78(3) of the Housing Benefit Regulations, or as the case may be, regulation 68(3) of the Council Tax Benefit Regulations,

that notice shall be treated as an application duly made for an appeal from a relevant decision.

(5) The period of four weeks referred to in paragraph (3)(a) may be extended where an application for such an extension is made before 2nd August 2002 by a person affected and the application contains—

(a) the grounds on which an extension is sought; and

(**a**) 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.

(b) sufficient details of the decision to enable it to be identified.

(6) An application for an extension of time shall be made in writing by the person affected 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.

(7) An application for an extension of time within which written notice may be given or sent shall be determined by a legally qualified panel member.

(8) An application for an extension of time shall not be granted unless the panel member is satisfied that the requirements imposed by regulation 19(5) to (9) of the Decisions and Appeals Regulations have been met.

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

(10) Regulation 16 of, and the Schedule to, the Decisions and Appeals Regulations, save for paragraph 3 of that Schedule, shall not apply in respect of a reviewed determination.

Provision in respect of the abolition of Review Boards

4.—(1) Where a Review Board has held an oral hearing in accordance with—

(a) regulation 82 of the Housing Benefit Regulations (procedure on further review) before the relevant date—

(i) regulation 83(4) and (5) (decisions upon further review),

(ii) regulation 84 (effect of revising a decision), and

(iii) regulation 85 (correction of accidental errors in determinations and decisions)

of those Regulations shall continue to have effect in relation to any decision of that Review Board as if section 68 of, and paragraph 22(1) of Schedule 7 to, the Act had not come into force; or

(b) regulation 71 of the Council Tax Benefit Regulations (procedure on further review) before the relevant date—

(i) regulation 72(4) and (5) (decisions upon further review),

(ii) regulation 73 (effect of revising a determination), and

(iii) regulation 74 (correction of accidental errors in determinations and decisions)

of those Regulations shall continue to have effect in relation to any decision of that Review Board as if section 68 of, and paragraph 22(1) of Schedule 7 to, the Act had not come into force.

(2) Where a part-heard hearing by a Review Board stands adjourned before the relevant date an appeal tribunal shall completely rehear the case as if it were an appeal under paragraph 6 of Schedule 7 to the Act.

(3) Subject to paragraph (1), any decision that would, but for the coming into force of section 68 of, and paragraph 22(1) of Schedule 7 to, the Act, fall to be made by a Review Board shall be made by an appeal tribunal.

(4) Subject to paragraph (5), a decision of a Review Board shall be treated for the purposes of paragraph 4 of Schedule 7 to the Act (decisions superseding earlier decisions) as if it were a decision of a tribunal made under paragraph 6 of Schedule 7 to the Act.

(5) Notwithstanding the coming into force of section 68 of, and paragraph 22 of Schedule 7 to, the Act, regulations made in accordance with section 34(4) and (5) of the Social Security Act 1998, as in force immediately before the relevant date, shall continue to have effect for the purpose of any claim for judicial review of a decision made by a Review Board and any appeal from a decision on such a claim.

(6) Subject to paragraph (7), where—

(a) an application to set aside a decision of a Review Board is made by a person affected by that decision within 13 weeks of the day on which notice of that decision was given; and

(b) the application is not determined before the relevant date,

the application to set aside shall be treated as if it were an application duly made to set aside a decision of an appeal tribunal made under regulation 23 of the Decisions and Appeals Regulations and regulation 57 of the Social Security and Child Support (Decisions and Appeals) Regulations 1999(**a**).

(7) A legally qualified panel member may set aside the decision of a Review Board as if it were a decision of an appeal tribunal on the grounds—

(a) specified in regulation 57(1) of the Social Security and Child Support (Decisions and Appeals) Regulations 1999; or

(b) that the interests of justice so require.

Suspension and withholding

5. Where, immediately before the relevant date—

(a) a payment of housing benefit was withheld under regulation 95(4) or (4A)(**b**) (withholding of benefit) or suspended by virtue of regulation 96A(**c**) (suspension of benefit) of the Housing Benefit Regulations; or

(b) in the case of a claim for council tax benefit—

(i) a payment of council tax benefit was withheld under regulation 80(1), (2) or (2A) of the Council Tax Benefit Regulations(**d**) (withholding of benefit), or

(ii) a payment of that benefit or a reduction in the amount that a person is or will be liable to pay in respect of council tax was suspended by virtue of regulation 81A of the Council Tax Benefit Regulations(**e**) (suspension of benefit),

the provisions of Part III of the Decisions and Appeals Regulations (suspension and termination of benefit) shall apply with respect to that suspension or withholding as if it were a suspension imposed by virtue of those provisions.

Decisions of relevant authorities outstanding at the relevant date

6. Subject to regulations 2 to 5, where a determination by a relevant authority—

(a) fell to be made before the relevant date;

(b) is made after the relevant date;

(c) is to the advantage of the claimant, and

(d) takes effect from a date later than the date ("the earlier date") from which benefit, or an increase in benefit, would have been payable had the decision been made immediately before the relevant date,

that decision shall take effect on the earlier date.

Signed by authority of the Secretary of State for Social Security.

Angela Eagle
Parliamentary Under-Secretary of State,
Department of Social Security

28th March 2001

(**a**) S.I. 1991/991; relevant amending instrument is S.I. 2000/1596.
(**b**) Relevant amending instruments are S.I. 1995/560 and 1999/3178.
(**c**) Relevant amending instrument is S.I. 1997/2434.
(**d**) Relevant amending instruments are S.I. 1995/560 and 1999/3178.
(**e**) Relevant amending instrument is S.I. 1997/2434.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make transitional and saving provisions in consequence of the coming into force of Schedule 7 (housing benefit and council tax benefit: revisions and appeals) to the Child Support, Pensions and Social Security Act 2000 (c.19) which introduces new arrangements for decision-making in relation to housing benefit and council tax benefit. In particular, they provide for the manner in which matters are to be dealt with on or after 2nd July 2001 which are awaiting determination under the existing arrangements for decision-making immediately before that date.

These Regulations do not impose a charge on business.

STATUTORY INSTRUMENTS

2001 No. 1264

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

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