STATUTORY RULES OF NORTHERN IRELAND

2001 No. 214

HOUSING; RATES

The Housing Benefit (Decisions and Appeals) (Transitional and Savings) Regulations (Northern Ireland) 2001

Made . . . . . 18th May 2001

Coming into operation . . 2nd July 2001

The Department for Social Development, in exercise of the powers conferred on it by Article 166 of the Pensions (Northern Ireland) Order 1995(**a**) and section 68(3)(b) to (5) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000(**b**) and now vested in it(**c**) and of all other powers enabling it in that behalf, with the consent of the Department of Finance and Personnel(**d**), by this statutory rule, which contains only regulations made by virtue of, or consequential upon, section 68(3)(b) to (5) of that Act, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Housing Benefit (Decisions and Appeals) (Transitional and Savings) Regulations (Northern Ireland) 2001 and shall come into operation on 2nd July 2001.

(2) In these Regulations—

"the Act" means the Child Support, Pensions and Social Security Act (Northern Ireland) 2000;

"the Decisions and Appeals Regulations" means the Housing Benefit (Decisions and Appeals) Regulations (Northern Ireland) 2001(**e**);

"the Housing Benefit Regulations" means the Housing Benefit (General) Regulations (Northern Ireland) 1987(**f**);

"panel member" means a person appointed to a panel constituted under Article 7 of the Social Security (Northern Ireland) Order 1998(**g**);

(**a**) S.I. 1995/3213 (N.I. 22); Article 166 of the Pensions (Northern Ireland) Order 1995 applies to regulations under section 68(3) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 by virtue of section 68(5) of that Act

(**b**) 2000 c. 4

(**c**) *See* Article 8(b) of S.R. 1999 No. 481

(**d**) *See* section 171(6A) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 as inserted by Article 3(3) of the Social Security (Amendment) (Northern Ireland) Order 1993 (S.I. 1993/1579 (N.I. 8)); *see* also Article 6(b) of S.R. 1999 No. 481

(**e**) S.R. 2001 No. 213

(**f**) S.R. 1987 No. 461; relevant amending Regulations are S.R. 1992 No. 141, S.R. 1993 No. 218, S.R. 1994 No. 335, S.R. 1995 No. 89, S.R. 1996 No. 334, S.R. 1997 No. 452, S.R. 1999 No. 472 (C. 36) and S.R. 2001 No. 176

(**g**) S.I. 1998/1506 (N.I. 10)

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

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

"relevant date" means 2nd July 2001;

"Review Board" shall, notwithstanding the revocation of regulation 81(3) of the Housing Benefit Regulations(**a**) (further review of determinations), be construed in accordance with that provision;

"the Work-focused Interviews Regulations" means the Social Security (Work-focused Interviews) Regulations (Northern Ireland) 2001(**b**).

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(**c**) (review of determinations) could have applied had Schedule 7 to the Act and regulations made thereunder not come into operation;

(*b*) not apply in a case where a review of the determination was made under regulation 79(2) of the Housing 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**) Regulation 81(3) was amended by paragraph 5(*a*) of Schedule 2 to S.R. 2001 No. 176

(**b**) S.R. 2001 No. 176; the Social Security (Work-focused Interviews) Regulations (Northern Ireland) 2001 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 or incapacity benefit

(**c**) Regulation 79(2) was amended by regulation 11(*a*) of S.R. 1992 No. 141, regulation 2(2)(*c*) of S.R. 1993 No. 218 and regulation 7(*a*) of S.R. 1994 No. 335

(*a*) accepted the late submission of those representations in accordance with regulation 78(3) of the Housing Benefit Regulations(**a**) (extension of time limit) 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, and including, the receipt by a relevant authority of a request for a statement under regulation 77(4) of the Housing Benefit Regulations(**b**) (request 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

(*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(**c**).

(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.

(**a**) Regulation 78(3) was amended by regulation 10 of S.R. 1992 No. 141

(**b**) Paragraph (4) was added by regulation 9 of S.R. 1992 No. 141 and amended by regulation 6 of S.R. 1994 No. 335

(**c**) The **one** service was introduced in postcode areas specified in Schedule 1 to S.R. 2001 No. 175 and the **one** office is located at Crown Building, Thomas Street, Dungannon, Co. Tyrone BT70 1EN

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 (further review by Review Board) could have applied had Schedule 7 to the Act and regulations made thereunder not come into operation;

(*b*) not apply in a case where a further review of the determination was made under regulation 81(3) of the Housing 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(**a**) (further review of determinations) 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(**b**) (time and manner of making notifications, requests or representations),

that notice shall be treated as an application 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

(*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

(**a**) Regulation 81(1) was amended and paragraph (1A) was inserted by regulation 8 of S.R. 1994 No. 335
(**b**) Regulation 78(3) was amended by regulation 10 of S.R. 1992 No. 141

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 (late appeals) 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 (decisions against which no appeal lies), save for paragraph 1, but only in so far as it relates to regulation 10A of the Housing Benefit Regulations(**a**) (decisions), and 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 regulation 82 of the Housing Benefit Regulations (procedure on further review) before the relevant date—

(*a*) regulation 83(4) and (5) (decisions upon further review);

(*b*) regulation 84 (effect of revising a decision), and

(*c*) 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 (commencement and transitional provisions) of, and paragraph 22(2) of Schedule 7 (consequential amendments of the Social Security (Northern Ireland) Order 1998) to, the Act had not come into operation.

(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 operation of section 68 of, and paragraph 22(2) 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 operation of section 68 of, and paragraph 22 of Schedule 7 to the Act, regulations made in accordance with Article 34(4) and (5) of the Social Security (Northern Ireland) Order 1998

(**a**) Regulation 10A was inserted by regulation 6 of S.R. 1996 No. 111 and amended by regulation 3 of S.R. 1996 No. 181, regulation 2 of S.R. 1996 No. 221 and regulation 2(2) of S.R. 1998 No. 114

(reviews of determinations), as in operation 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 (Northern Ireland) 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 (Northern Ireland) 1999, or

(*b*) that the interests of justice so require.

Suspension and withholding

5. Where, immediately before the relevant date, 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, the provisions of Part III of the Decisions and Appeals Regulations (suspension and termination of benefit and other matters) 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.

(**a**) S.R. 1999 No. 162; relevant amending Regulations are S.R. 2000 No. 215

(**b**) Regulation 95(4A) was inserted by regulation 9(*a*) of S.R. 1995 No. 89 and amended by regulation 17 of S.R. 1996 No. 334 and Article 8(3) of S.R. 1999 No. 472 (C. 36)

(**c**) Regulation 96A was inserted by regulation 5 of S.R. 1997 No. 452

Sealed with the Official Seal of the Department for Social Development on 18th May 2001.

(L.S.) *John O'Neill*
Senior Officer of the Department for Social Development

The Department of Finance and Personnel hereby consents to the foregoing Regulations.

Sealed with the Official Seal of the Department of Finance and Personnel on 18th May 2001.

(L.S.) *David Sterling*
Senior Officer of the Department of Finance and Personnel

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations make transitional and savings provisions in consequence of the coming into operation of Schedule 7 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (housing benefit: revisions and appeals) ("the Act") which introduces new arrangements for decision making in relation to housing 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.

As these Regulations are made by virtue of, or are consequential upon, provisions of the Act, which were brought into operation on 22nd November 2000, and are made before the end of the period of 6 months beginning with the coming into operation of those provisions, they are, accordingly, exempt, by virtue of section 150(5)(b) of the Social Security Administration (Northern Ireland) Act 1992, from prior reference to the Social Security Advisory Committee.

These Regulations do not impose any charge on business.

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