

Draft Regulations laid before Parliament under paragraph 37 of Schedule 2 to the Tax Credits Act 1999 for approval by resolution of each House of Parliament

DRAFT STATUTORY INSTRUMENTS

2002 No.

**SOCIAL SECURITY, NORTHERN IRELAND
TAXES, NORTHERN IRELAND**

**The Tax Credits (Decisions and Appeals)
(Northern Ireland) (Amendment) Regulations 2002**

Made - - - - 2002
Coming into force - - 21st May 2002

Whereas a draft of this instrument was laid before Parliament in accordance with paragraph 37 of Schedule 2 to the Tax Credits Act 1999(1) and approved by resolution of each House Of Parliament:
Now, therefore, the Commissioners of Inland Revenue, in exercise of the powers conferred by the enactments set out in the Schedule to this instrument and now vested in them(2), hereby make the following Regulations:

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Tax Credits (Decisions and Appeals) (Northern Ireland) (Amendment) Regulations 2002 and shall come into force on 21st May 2002.

(2) These Regulations have effect with respect only to tax credit.

Interpretation

2. In these Regulations—

“the principal Regulations” means the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999(3) and “regulation” means a regulation of the principal Regulations;

“tax credit” means working families' tax credit or disabled person's tax credit, construing those terms in accordance with section 1(1) of the Tax Credits Act 1999.

(1) 1999 c. 10.

(2) See section 2(1)(c) and (4) of, and paragraphs 8(b) and 22(c) of Schedule 2 to, the Tax Credits Act 1999, whereby functions concerning working families' tax credit and disabled person's tax credit were transferred to the Commissioners of Inland Revenue.

(3) S.R. 1999 No. 162. Relevant amending instruments are S.R. 1999 Nos. 242, 267, 271 (C.22) and 276, and S.I.1999/2588.

Amendments to the principal Regulations

3. In regulation 1(2) (interpretation)—

(a) after the definition of “misconceived appeal” insert the following definition—

““official error”(4) means an error made by an officer of the Board acting as such which no person outside the Inland Revenue caused or to which no person outside the Inland Revenue materially contributed, but excludes any error of law which is shown to have been an error by virtue of a subsequent decision of a Commissioner or the court.”;

(b) after the definition of “panel member with a disability qualification” insert the following definition—

““partner” means—

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

4. In regulation 3 (revision of decisions)—

(a) in paragraph (1)(5) for sub-paragraphs (a) and (b) substitute the following sub-paragraphs—

“(a) the Board or an officer of the Board commence action leading to revision within one month of the date of notification of the original decision;

(b) an application for a revision is received by the Board or an officer of the Board at the appropriate office—

- (i) subject to regulation 9A(3), within one month of the date of notification of the original decision;
- (ii) where a written statement is requested under regulation 28(1)(b) and is provided within the period specified in head (i), within 14 days of the expiry of that period;
- (iii) where a written statement is requested under regulation 28(1)(b) and is provided after the period specified in head (i), within 14 days of the date on which the statement is provided; or
- (iv) within such longer period as may be allowed under regulation 4.”;

(b) after paragraph (4) insert the following paragraph—

“(4A) Where there is an appeal against an original decision (within the meaning of paragraph (1)) within the time prescribed in regulation 31 or, in a case to which regulation 32 applies, within the time prescribed in that regulation, but the appeal has not been determined, the original decision may be revised at any time.”;

(c) after paragraph (5) insert the following paragraph—

“(5A) Where—

- (a) the Board make, or an officer of the Board makes, a decision under Article 9 or 11, or that decision is revised under Article 10, in respect of a claim or award (decision “A”) and the claimant appeals against decision A;

(4) The definition of “official error” was inserted by [S.R. 2001 No. 176](#), but not for tax credit purposes.

(5) Regulation 3(1) was amended by [S.I. 1999/2588](#).

- (b) decision A is superseded or the claimant makes a further claim which is decided (decision “B”) after the claimant made the appeal but before the appeal results in a decision by an appeal tribunal (decision “C”); and
- (c) the Board or an officer of the Board would have made decision B differently if they or he had been aware of decision C at the time they or he made decision B, decision B may be revised at any time.”.

5. After regulation 9 insert the following regulation—

“Correction of accidental errors

9A.—(1) Accidental errors in a decision by an officer of the Board under a relevant enactment within the meaning of Article 28(3), or in any record of such a decision, may be corrected by that or any other officer of the Board at any time.

(2) A correction made to, or to the record of, a decision shall be deemed to be part of the decision, or of that record, and the officer of the Board by whom the correction is made shall give a written notice of the correction as soon as practicable to the claimant.

(3) In calculating the time within which an application can be made under regulation 3(1)(b) for a decision to be revised, or the time within which an appeal may be brought under regulation 31(1), there shall be disregarded any day falling before the day on which notice was given of a correction of the decision or of the record of the decision under paragraph (2).”.

6. In regulation 25 (other persons with a right of appeal) after paragraph (a) insert the following paragraph—

“(aa) any person appointed by the Board under regulation 30(1) of the Claims and Payments Regulations(6) (payments on death) to proceed with the claim of a person who has made a claim for benefit and subsequently died;”.

7. In regulation 31(1)(7) (time within which appeals are to be brought) for sub-paragraphs (a) and (b) substitute the following sub-paragraphs—

- “(a) subject to regulation 9A(3), one month of the date of notification of the decision against which the appeal is brought;
- (b) where a written statement of the reasons for that decision is requested and is provided within the period specified in sub-paragraph (a), 14 days of the expiry of that period;
- (c) where a written statement of the reasons for that decision is requested but is not provided within the period specified in sub-paragraph (a), 14 days of the date on which the statement is provided.”.

8. In regulation 32 (late appeals)—

- (a) at the end of paragraph (2) add “, except that where the Board consider that the conditions in paragraphs (4)(b) to (8) are satisfied, they may grant the application.”;
- (b) for paragraph (4) substitute the following paragraph—
 - “(4) An application for an extension of time shall not be granted unless—
 - (a) the legally qualified panel member is satisfied that, if the application is granted, there are reasonable prospects that the appeal will be successful; or

(6) S.R. 1987 No. 465. Regulation 30(1) was amended by S.I. 1999/2574.

(7) Regulation 31(1) was amended by S.I. 1999/2588.

- (b) the legally qualified panel member is, or the Board are, satisfied that it is in the interests of justice for the application to be granted.”;
 - (c) in paragraph (5)—
 - (i) after the words “panel member is” insert “, or the Board are,”;
 - (ii) for the words “application to be made” substitute “appeal to be made”;
 - (d) in paragraph (6)(a) for the word “spouse” substitute “partner”;
 - (e) in paragraph (7) for the words “the legally qualified panel member shall have regard” substitute “regard shall be had”.
- 9.** In regulation 33(8) (making of appeals and applications)—
- (a) for paragraph (6) substitute the following paragraphs—
 - “(6) Where a person to whom a form is returned by the Board duly completes and returns the form within 14 days of the date on which it 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 by the Board.
 - (6A) Where a person from whom further particulars are requested by the Board sends the further particulars within 14 days of the date on which the request was made, the time for making the appeal shall be extended by 14 days from the date of the request.
 - (6B) Where—
 - (a) a person to whom a form is returned by the Board duly completes and returns the form within such longer period as the Board may direct; or
 - (b) a person from whom further particulars are requested by the Board sends the further particulars within such longer period as the Board may direct,
 the time for making the appeal shall be extended by a period equal to that longer period.”;
 - (b) after paragraph (8) add the following paragraph—
 - “(9) (9) The Board may discontinue action on an appeal where the appeal has not been forwarded to the clerk to the appeal tribunal or to a legally qualified panel member and the appellant or an authorised representative of the appellant has given written notice that he does not wish the appeal to continue.”.
- 10.** Renumber regulation 47 (reinstatement of struck out appeals) as paragraph (2) of that regulation, and immediately before paragraph (2) (as so renumbered) insert the following paragraph as paragraph (1) of that regulation—
- “(1) The clerk to the appeal tribunal may reinstate an appeal which has been struck out in accordance with regulation 46(1)(c) where—
 - (a) the appellant has made representations to him or, as the case may be, further representations in support of his appeal with reasons why he considers that his appeal should not have been struck out;
 - (b) the representations are made in writing within one month of the order to strike out the appeal being issued; and
 - (c) the clerk is satisfied in the light of those representations that there are reasonable grounds for reinstating the appeal,

(8) Regulation 33 was amended by S.I. 1999/2588.

(9) Paragraph (9) was added by S.R. 2000 No. 215 but not for tax credit purposes.

but if the clerk is not satisfied that there are reasonable grounds for reinstatement a legally qualified panel member shall consider whether the appeal should be reinstated in accordance with paragraph (2).”.

11. In regulation 49 (procedure at oral hearings)—

(a) for paragraph (6) substitute the following paragraph—

“(6) An oral hearing shall be in public except where the chairman or, in the case of an appeal tribunal which has only one member, that member, is satisfied that it is necessary to hold the hearing, or part of the hearing, in private—

- (a) in the interests of national security, morals, public order or children;
- (b) for the protection of the private or family life of one or more parties to the proceedings; or
- (c) in special circumstances, because publicity would prejudice the interests of justice.”;

(b) for paragraph (7) substitute the following paragraph—

“(7) At an oral hearing—

- (a) any party to the proceedings shall be entitled to be present and to be heard; and
- (b) the following persons may be present by means of a live television link—
 - (i) any party to the proceedings or his representative or both; or
 - (ii) where an appeal tribunal consists of more than one member, a tribunal member other than the chairman,

provided that the chairman or, where an appeal tribunal has only one member, that member gives permission and the appellant consents.”;

(c) in paragraph (9)—

- (i) in sub-paragraph (b) omit the word “panel”;
- (ii) in sub-paragraph (d) omit the words “and the consent of every party to the proceedings actually present.”;

(d) for paragraph (10)(10) substitute the following paragraph—

“(10) Nothing in paragraph (9) affects the rights of—

- (a) any person mentioned in sub-paragraphs (a) and (b) of that paragraph where he is sitting as a member of a tribunal or acting as its clerk; or
- (b) the clerk to the appeal tribunal,

and nothing in this regulation prevents the presence at an oral hearing of any witness or of any person whom the chairman, or in the case of an appeal tribunal which has only one member, that member, permits to be present in order to assist the appeal tribunal or the clerk.”; and

(e) after paragraph (12) add the following paragraph—

“(13) In this regulation “live television link” means a live television link or other facilities which allow a person who is not physically present at an oral hearing to see and hear proceedings and be seen and heard by those physically present.”.

12. In regulation 51 (postponement and adjournment) omit paragraph (5).

13. In regulation 53 (decisions of appeal tribunals) for paragraph (4)(11) substitute the following paragraph—

“(4) A party to the proceedings may apply in writing to the clerk to the appeal tribunal for a statement of the reasons for the tribunal’s decision within one month of the sending or giving of the decision notice to every party to the proceedings or within such longer period as may be allowed in accordance with regulation 54 and following that application the chairman, or in the case of a tribunal with only one member, that member shall record a statement of the reasons and a copy of that statement shall be given to every party to the proceedings as soon as may be practicable.”.

14. In regulation 54 (late applications for statement of reasons for tribunal decision)—

- (a) in paragraph (6)(a) for the word “spouse” substitute “partner”;
- (b) in paragraphs (10), (11) and (12) for the word “decision” in each place where it occurs substitute “determination”;
- (c) in paragraph (11) for the words “a copy” substitute “notice”;
- (d) in paragraph (12) for the words “a copy”, in the first place where they occur, substitute “notice”;
- (e) after paragraph (12) insert the following paragraph—

“(12A) (12) In calculating the time specified for applying in writing for a statement of the reasons for the tribunal’s decision there shall be disregarded any day which falls before the day on which notice was given of—

- (a) a correction of a decision or the record thereof pursuant to regulation 56; or
- (b) a determination that a decision shall not be set aside following an application made under regulation 57, except where the decision was not set aside because of a refusal to extend the time for applying.”.

15. In regulation 57 (setting aside decisions on certain grounds)—

- (a) in paragraph (2) for the words from “the chairman” to “member,” substitute “that member”;
- (b) for paragraph (3)(13) substitute the following paragraph—

“(3) An application under this regulation shall—

- (a) be made within one month of the date on which—
 - (i) a copy of the decision notice is sent or given to the parties to the proceedings in accordance with regulation 53(3); or
 - (ii) the statement of the reasons for the decision is given or sent in accordance with regulation 53(4),

whichever is later;

- (b) be in writing and signed by a party to the proceedings or, where the party has provided written authority to a representative to act on his behalf, that representative;
- (c) contain particulars of the grounds on which it is made; and
- (d) be sent to the clerk to the appeal tribunal.”;

(c) after paragraph (5) add the following paragraphs(14)—

(11) Amended by [S.R. 2000 No. 215](#) but not for tax credit purposes.

(12) Paragraph (12A) was inserted by [S.R. 2000 No. 215](#) but not for tax credit purposes.

(13) Paragraph (3) was previously substituted by [S.R. 2000 No. 215](#) but not for tax credit purposes.

(14) Paragraphs (6) to (12) were added by [S.R. 2000 No. 215](#) but not for tax credit purposes.

“(6) The time within which an application under this regulation must be made may be extended by a period not exceeding one year where the conditions specified in paragraphs (7) to (11) are satisfied.

(7) An application for an extension of time shall be made in accordance with paragraph (3)(b) to (d), shall include details of any relevant special circumstances for the purposes of paragraph (9) and 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—

- (a) if the application is granted there are reasonable prospects that the application to set aside will be successful; and
- (b) it is in the interests of justice for the application for an extension of time to be granted.

(9) For the purposes of paragraph (8) it is not in the interests of justice to grant an application for an extension of time unless the panel member is satisfied that—

- (a) the special circumstances specified in paragraph (10) are relevant to that application; or
- (b) some other special circumstances exist which are wholly exceptional and relevant to that application,

and as a result of those special circumstances, it was not practicable for the application to set aside to be made within the time limit specified in paragraph (3)(a).

(10) For the purposes of paragraph (9)(a) the special circumstances are that—

- (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.

(11) In determining whether it is in the interests of justice to grant an application for an extension of time, the panel member shall have regard to the principle that the greater the amount of time that has elapsed between the expiry of time within which the application to set aside is to be made and the making of the application for an extension of time, the more compelling should be the special circumstances on which the application for an extension is based.

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

16. After regulation 57 insert the following regulation(15)—

“Provisions common to regulations 56 and 57

57A.—(1) In calculating any time specified for appealing to a Commissioner from a decision of an appeal tribunal there shall be disregarded any day falling before the day on which notice was given of—

- (a) a correction of a decision or the record thereof pursuant to regulation 56; or
- (b) a determination that a decision shall not be set aside following an application made under regulation 57, except where the decision was not set aside because of a refusal to extend the time for applying.

(15) Regulation 57A was inserted by S.R. 2000 No. 215 but not for tax credit purposes.

(2) There shall be no appeal against a correction made under regulation 56 or a refusal to make such a correction or against a determination made under regulation 57.

(3) Nothing in this Chapter shall be construed as derogating from any power to correct errors or set aside decisions which is exercisable apart from these Regulations.”.

17. In regulation 58 (application for leave to appeal to a Commissioner from an appeal tribunal)—

(a) in paragraph (1)(a) for the words from “made” to “applicant is” substitute “sent to the clerk to the appeal tribunal within the period of one month of the date of the applicant being”;

(b) omit paragraph (3);

(c) for paragraph (4) substitute the following paragraph—

“(4) person determining an application for leave to appeal to a Commissioner shall record his determination in writing and send a copy to every party to the proceedings.”; and

(d) for paragraph (6) substitute the following paragraph—

“(6) Where an application for leave to appeal against a decision of an appeal tribunal is made—

(a) if the person who constituted, or was the chairman of, the appeal tribunal when the decision was given was a fee-paid legally qualified panel member, the application may be determined by a salaried legally qualified panel member; or

(b) if it is impracticable, or it would be likely to cause undue delay, for the application to be determined by a person who constituted, or was the chairman of, the appeal tribunal when the decision was given, the application may be determined by another legally qualified panel member.”.

18. In Schedule 1 (decisions against which no appeal lies) for paragraph 5 (claims and payments) substitute the following paragraph—

“**5.** A decision of the Board under the following provisions of the Claims and Payments Regulations~~(16)~~—

(a) regulation 4~~(17)~~ (decision of the Board as to making a claim for benefit);

(b) regulation 7~~(18)~~ (decision by the Board as to evidence and information required);

(c) regulation 9~~(19)~~ and Schedule 1 (decision by the Board as to interchange of claims with claims for other benefits);

(d) regulations 20 to 21~~(20)~~ (decision by the Board as to the time or manner of payments);

(e) regulation 27~~(21)~~ (decision by the Board as to the manner and time of payment of tax credits);

(f) regulation 30~~(22)~~ (decision by the Board as to claims or payments after death of claimant);

(g) regulation 32~~(23)~~ (decision by the Board as to information to be given when obtaining payment of benefit);

(16) S.R. 1987 No. 465.

(17) Regulation 4 was amended by S.R. 1992 No. 7, 1992 No. 83, 1996 Nos. 354 and 449, 1997 No. 156, and S.I. 1999/2574.

(18) Regulation 7 was amended by S.R. 1992 No. 7, 1995 No. 367, 1996 No. 354, and S.I. 1999/2574.

(19) Regulation 9 was amended by S.R. 1992 No. 83, 1996 No. 288, and S.I. 1999/2574.

(20) Regulations 20 to 21 were amended by S.R. 1992 No. 83, 1993 No. 217, 1994 Nos.345 and 484, 1996 No. 85 and S.I. 1999/2574.

(21) Regulation 27 was amended by S.R. 1992 No. 7, 1993 No. 375, 1994 No. 484, and S.I. 1999/2574.

(22) Regulation 30 was amended by S.R. 1988 No. 369, 1990 No. 398, 1993 No. 375, 1994 No. 345, 1996 No. 354 and S.I. 1999/2574.

(23) Regulation 32 was amended by S.R. 1992 No. 453, 1995 No.367, 1996 No. 354, and S.I. 1999/2574.

- (h) regulation 33(**24**) (appointment by the Board where person unable to act);
- (i) regulation 34(**25**) (decision by the Board as to paying another person on the beneficiary's behalf);
- (j) regulation 35(**26**) (decision by the Board to pay partner as alternative payee);
- (k) regulation 37(**27**) (decision by the Board as to extinguishment of right to payment of sums by way of benefit where payment not obtained within the prescribed period, except a decision under paragraph (2A) (payment request after expiration of prescribed period));
- (l) regulation 46(2) and (3)(**28**) (return of instruments of payment etc. to the Board).".

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(24) Regulation 33 was amended by S.R. 1992 No. 7.

(25) Regulation 34 was amended by S.R. 1992 No. 453 and S.I. 1999/2574.

(26) Regulation 35 was amended by S.R. 1992 No. 7 and S.I. 1999/2574.

(27) Regulation 37 was amended by S.R. 1989 No. 398, 1993 No. 375, 1996 No. 85, and S.I. 1999/2574.

(28) Regulation 46 was amended by S.R. 1994 No. 484 and S.I. 1999/2574.

SCHEDULE

ENACTMENTS CONFERRING POWERS
EXERCISED IN MAKING THESE REGULATIONS

<i>Column (1)</i>	<i>Column (2)</i>
Social Security (Northern Ireland) Order 1998 (29)	Article 2(2) (30) Article 10(1) Article 13(2) and (7) Article 15(11) Article 16(1) Article 28(1) Article 74(1), (3), (5) and (6) Schedule 2, paragraph 9 Schedule 4, paragraphs 1, 2, 4, 6 and 7.
Tax Credits Act 1999 (31)	Section 2(1)(c) and (4) Schedule 2, paragraphs 8(b), 9, 22(c) and 36.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999 (S.R. 1999 No. 162) (“the principal Regulations”) in relation to working families’ tax credit and disabled person’s tax credit.

Regulation 1 provides for citation, commencement and effect, and regulation 2 for interpretation. The Schedule to these Regulations sets out the powers exercised in making these Regulations.

Regulation 3 inserts the definitions of “official error” and “partner” in regulation 1(2) of the principal Regulations.

Regulation 4 amends regulation 3 of the principal Regulations (revision of decisions).

(29) S.I. 1998/1506 (N.I. 10).

(30) Article 2(2) is cited because of the definition it contains of the word “prescribe”.

(31) 1999 c. 10.

Regulation 5 inserts an additional regulation (9A) in the principal Regulations dealing with the correction of accidental errors in a decision by an officer of the Board of Inland Revenue (“the Board”).

Regulation 6 extends regulation 25 of the principal Regulations (other persons with a right of appeal) so as to add any person appointed by the Board to proceed with the claim of a person who has died.

Regulations 7 and 9 amend regulations 31 and 33 of the principal Regulations so as to clarify the time limits for making an appeal.

Regulation 8 amends regulation 32 of the principal Regulations in relation to the circumstances for allowing late appeals.

Regulation 10 extends regulation 47 of the principal Regulations so as to allow the clerk to an appeal tribunal to reinstate an appeal which has been struck out for failure to comply with a direction.

Regulation 11 amends regulation 49 of the principal Regulations so as to provide for oral hearings to be in public except in specified circumstances and for participation in an oral hearing by means of a live television link.

Regulation 12 amends regulation 51 of the principal Regulations so as to remove rules about the constitution of an appeal tribunal after an adjournment.

Regulation 13 amends regulation 53 of the principal Regulations so as to require applications for statements of appeal tribunals' reasons to be sent to the clerk.

Regulation 14 amends regulation 54 of the principal Regulations (late applications for a statement of reasons for tribunal decision).

Regulation 15 amends regulation 57 of the principal Regulations (setting aside decisions on certain grounds).

Regulation 16 inserts an additional regulation (57A) in the principal Regulations dealing with the effect of regulations 56 and 57 (correction of errors in decisions and setting aside decisions) on appeals from decisions of an appeal tribunal to a Social Security and Child Support Commissioner.

Regulation 17 amends regulation 58 of the principal Regulations (application for leave to appeal to a Social Security Commissioner from an appeal tribunal).

Regulation 18 substitutes paragraph 5 of Schedule 1 to the principal Regulations listing decisions of the Board under the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987 (S.R. 1987 No. 465) against which no appeal lies to an appeal tribunal.