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STATUTORY INSTRUMENTS

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**1992 No. 1814**

**The Council Tax Benefit (General) Regulations 1992**

**PART IX**

**Determination of Questions**

**Who is to make a determination**

**66.**—(1) Unless provided otherwise by these Regulations, any matter required to be determined under these Regulations shall be determined in the first instance by the appropriate authority.

(2) An authority shall be under no duty to determine a claim—

- (a) where the claim has not been made in accordance with regulation 62(1) (time and manner in which claims are to be made) or treated as so made by virtue of regulation 61(8);
- (b) where the claimant has failed to satisfy the provisions of regulation 63 (evidence and information);
- (c) where the claim has been or is treated as withdrawn under regulation 64 (amendment and withdrawal of claim);
- (d) made more than 13 benefit weeks prior to the expiry of the claimant's current benefit period.

(3) Every claim shall be determined by the appropriate authority within 14 days of the provisions of regulations 62 and 63 being satisfied (time and manner for making claims and evidence and information required) or as soon as reasonably practicable thereafter.

**Notification of determinations**

**67.**—(1) Except in cases to which paragraphs (a) and (b) of regulation 83 (excess benefit in consequence of a reduction of an appropriate authority's council tax) refer, an Authority shall notify in writing any person affected by a determination made by it under these Regulations—

- (a) in the case of a determination on a claim, forthwith or as soon as reasonably practicable thereafter;
- (b) in any other case, within 14 days of that determination or as soon as reasonably practicable thereafter,

and every notification shall include a statement as to the matters set out in Schedule 6.

(2) A person to whom an authority sends or delivers a notification of determination may request in writing the authority to provide a written statement setting out the reasons as to its determination of any matter set out in the notice.

(3) The written statement referred to in paragraph (2) shall be sent to the person requesting it within 14 days or as soon as is reasonably practicable thereafter.

### **Time and manner of making notifications, requests or representations**

68.—(1) Any notice or other document that is to be given or sent to an authority shall be deemed to have been given or sent on the day it is received at the designated office.

(2) Any notice or other document that is to be given or sent by an authority to any person shall be deemed to have been given or sent, if sent by post, to that person's last known or notified address, on the date it was posted.

(3) The times specified by regulations 69(2) (review of determinations), and 70 (further review of determinations) for making representations or a request for a further review may be extended for special reasons, by the appropriate authority or where relevant a Review Board, even though the time specified may have already expired.

(4) Any application for an extension of time shall be in writing, shall be sent or delivered to the designated office and shall be determined by the appropriate authority or where relevant decided by a Review Board.

(5) There shall be no review or further review of a determination or decision of a Review Board under paragraph (3) or (4).

### **Review of determinations**

69.—(1) Any determination or decision of a Review Board may be reviewed at any time by the appropriate authority if—

- (a) there has been any relevant change of circumstances since the determination or decision was made; or
- (b) the authority is satisfied and, in the case of a decision, satisfied by fresh evidence, that the determination or decision was made in ignorance of, or was based on a mistake as to, some material fact; or
- (c) except in the case of a decision made by a Review Board, it is satisfied that the determination was based on a mistake as to the law.

(2) Notwithstanding paragraph (1), if a person makes written representations to an authority concerning a determination which it makes in relation to him within 6 weeks of the date of notification to him of the determination, the authority shall review the determination in the light of those representations within 14 days of receiving the representations or as soon as reasonably practicable thereafter.

(3) Subject to paragraph (5), where a determination is revised on review, the determination as revised shall have effect—

- (a) in a case to which paragraph (1)(a) applies, from the date on which the relevant change of circumstances is to have effect, in accordance with regulation 59 (date on which change of circumstances is to take effect);
- (b) in a case to which paragraph (1)(b) or (c) or (2) applies, in place of the original determination;
- (c) in the case of a determination under regulation 62(16) (back dating of late claims), not to allow a claim to be treated as made on a date earlier than it was made, which is revised in favour of the claimant, from the date on which in accordance with regulation 62(16) that claim is treated as made.

(4) For the purposes of calculating the period of 6 weeks mentioned in paragraph (2) no account shall be taken of any period beginning with the receipt by an authority of a request for a statement under regulation 67(2) (notifications of determinations) and ending with the provision to that person of that statement.

(5) Except as provided by paragraph (3)(c) a determination or decision shall not be revised upon review so as to make council tax benefit payable or to increase the amount of benefit payable in respect of any period which is more than 52 weeks before—

- (a) where written representations were made in accordance with paragraph (2), the date on which those written representations were made; or
- (b) in any other case, the date on which the determination was revised.

(6) Notwithstanding paragraph (1)(a), a determination or a decision shall not be reviewed where the change of circumstances is the repayment of a loan to which regulation 47 (treatment of student loans) applies.

(7) Regulations 67 to 69 shall apply to the revision of any determination as they apply to a determination.

### **Further review of determinations**

**70.**—(1) A person who has made representations under regulation 69(2) (review of determinations) may give or send to the appropriate authority written notice requesting a further review of the determination within 4 weeks of the date on which the determination on those representations was sent to him.

(2) The notice given under paragraph (1) shall set out the grounds on which a further review is requested.

(3) Subject to paragraph (4), the further review shall be conducted by a Review Board appointed by the appropriate authority and constituted in accordance with Schedule 7.

(4) Notwithstanding paragraph (3) where, under this regulation, a person has requested a further review of a determination and has also, in connection with a claim for housing benefit, requested a further review of a determination relating to housing benefit in accordance with regulation 81 of the Housing Benefit (General) Regulations 1987 (further reviews of determinations with respect to housing benefit), a Review Board appointed in accordance with that regulation may also be appointed under this regulation to conduct a further review of the determination in respect of council tax benefit at the same time, provided that the appropriate authority and the person who has made the representation against each determination and any affected partner agree to this course.

(5) Notice of any hearing by the Review Board shall be given by the Board to the persons concerned in accordance with regulation 71(3) (10 days notice of hearing) unless all such persons agree that such notice may be dispensed with.

### **Procedure on further review**

**71.**—(1) Within 6 weeks of receipt by an authority of a notice under regulation 70(1) (further review of determinations) requesting a further review or, if that is not reasonably practicable as soon as possible thereafter, the Review Board shall hold an oral hearing in order to conduct a further review.

(2) Subject to the provisions of these Regulations—

- (a) the procedure in connection with a further review shall be such as the Chairman of the Review Board shall determine;
- (b) any person affected may make representations in writing in connection with the further review and such representations shall be considered by the Review Board;
- (c) at the hearing any person affected has the right—
  - (i) to be heard, and may be accompanied and may be represented by another person whether that person is professionally qualified or not, and for the purposes of the

proceedings at the hearing any representative shall have the rights and powers to which any person affected is entitled under these Regulations,

- (ii) to call persons to give evidence, and
- (iii) to put questions to any person who gives evidence;

(d) the Review Board may call for, receive or hear representations and evidence from any person present as it considers appropriate.

(3) Reasonable notice (being not less than 10 days beginning on the day on which notice is given and ending on the day before the hearing of the further review) of the time and place of the oral hearing before the Review Board shall be given to any person affected, and if such notice has not been given the hearing may proceed only with the consent of every person affected or his representative.

(4) If any person affected should fail to appear at the hearing, notice having been given to him in accordance with paragraph (3), the Review Board may, having regard to all the circumstances including any explanations offered for the absence, proceed with the hearing notwithstanding his absence, or give such directions with a view to the conduct of the further review as it may think proper.

(5) Any person affected to whom notice has been given under paragraph (3) may apply in writing to the Chairman requesting a postponement of the hearing or withdrawing his application for a further review at any time before the decision on further review is given and either before or after the hearing has begun, and the Chairman may grant or refuse the application as he thinks fit.

(6) A hearing may be adjourned by the Review Board at any time during the hearing on the application of any person affected or of its own motion, and if a hearing is adjourned part heard and after the adjournment the Review Board is differently constituted, otherwise than through the operation on that occasion of paragraph (7), the proceedings shall be by way of a complete rehearing of the case.

(7) Any hearing may, with the consent of every person affected or his representative but not otherwise, be proceeded with in the absence of any member of the Review Board provided that at least two members are present and one member is present or acts as the Chairman of the Board.

(8) The decision of the majority of the Review Board shall be the decision of the Board, and where the Board consists of an even number, the Chairman shall have a second or casting vote.

(9) An authority may pay travelling expenses in respect of attendance at the hearing to any person affected and to one other person representing or accompanying him at the hearing.

### **Decisions upon further review**

**72.**—(1) Upon further review the Review Board shall decide whether to confirm or revise the determination of the appropriate authority and, where the determination has been reviewed and revised under regulation 69 (review of determinations), it shall decide whether to confirm or revise the determination so revised.

(2) In reaching its decision the Review Board shall apply the provisions of these Regulations as though any duty imposed on, or power or discretion conferred on, an authority were imposed or conferred upon the Review Board.

(3) In its application to a decision of a Review Board, the 52 week period referred to in regulation 69(5) (review of determinations) shall be calculated from the date that the appropriate authority either confirmed or revised its determination on review.

(4) The Chairman of the Review Board shall—

- (a) record in writing all its decisions; and
- (b) include in the record of every decision a statement of the reasons for such decisions and of its findings on questions of fact material thereto.

(5) Within 7 days of the Review Board’s decision or, if that is not reasonably practicable, as soon as possible thereafter, a copy of the record of that decision made in accordance with this regulation shall be given or sent to every person affected.

#### **Effect of revising a determination**

73. Where a Review Board has decided that a determination or, as the case may be, a revised determination of an authority shall be revised, the authority shall alter its determination or, as the case may be, revised determination in accordance with that decision with effect from the date of determination or, as the case may be, revised determination.

#### **Correction of accidental errors in determinations and decisions**

74.—(1) Subject to regulation 76 (provisions common to regulations 74 and 75), accidental errors in any determination or record of a decision may at any time be corrected by the determining authority who gave the determination or decision or by an authority of like status.

(2) A correction to a determination or to the record of a decision shall be deemed to be part of that determination or of that record and written notice of it shall be given as soon as practicable to any person affected.

#### **Setting aside of determinations and decisions on certain grounds**

75.—(1) Subject to regulation 76 (provisions common to regulations 74 and 75), on an application made by any person affected by the determination or decision, a determination or decision may be set aside by the determining authority which gave the determination or decision or by an authority of like status, in a case where it appears just to set the determination or decision aside on the grounds that—

- (a) a document relating to the matters relevant to the determination or decision was not sent to, or was not received at an appropriate time by, any person affected by the determination or decision, his representative, or the determining authority which gave the determination or decision; or
- (b) in the case of a hearing before the Review Board, any person affected or his representative was not present; or
- (c) the interests of justice so require.

(2) An application under this regulation shall be made in writing and sent or delivered to the determining authority which gave the determination or decision, within 13 weeks of the day on which notice of that determination or decision was given.

(3) Where an application to set aside a decision of the Review Board is entertained under paragraph (1), any person affected shall be sent a copy of the application and shall be afforded a reasonable opportunity of making representations on it before the application is determined.

(4) Notice in writing of a determination or decision on an application to set aside a determination or decision shall be given to any person affected, as soon as may be practicable, and the notice shall contain a statement giving reasons for the determination or decision.

(5) For the purposes of determining under these Regulations an application to set aside a determination or decision there shall be disregarded regulation 68(2) (time and manner of making notifications, requests or representations) and any provision in any enactment or instrument to the effect that any notice or document required or authorised to be given or sent to any person shall be deemed to have been given or sent if it was sent by post to that person’s last known or notified address.

**Provisions common to regulations 74 and 75**

76.—(1) In regulations 74 and 75—

“authority of like status” means a Review Board of different composition to that giving the decision where it is inexpedient for that same Review Board to correct or set aside its decision;

“determining authority” means an appropriate authority or a Review Board.

(2) In calculating the time specified in regulations 69(2) (review of determinations), 70(1) (further review of determinations), and 75(2) (setting aside of determinations and decisions on certain grounds) there shall be disregarded any day before the day on which notice was given of a correction to a determination or to the record of a decision under regulation 74 (correction of accidental errors in determinations and decisions) or a refusal to make such a correction, or on which notice is given of a determination or decision that a determination or decision shall not be set aside following an application made under regulation 75 as the case may be.

(3) There shall be no review or further review of a correction made under regulation 74 or a refusal to make such a correction or against a determination or decision given under regulation 75.