
STATUTORY INSTRUMENTS

2002 No. 3196

The Tax Credits (Appeals) (No. 2) Regulations 2002

PART 2

GENERAL APPEAL MATTERS

Other persons with a right of appeal or a right to make an application for a direction

3. For the purposes of section 12(2) of the Act⁽¹⁾ (as applied and modified by the Appeals Regulations), where—

- (a) a person has made a claim for a tax credit but is unable for the time being to make an appeal against a decision in respect of that tax credit; or
- (b) a person is the person in respect of whom an enquiry has been initiated under section 19(1) of the 2002 Act, but is unable for the time being to make an application for a direction,

the following other persons have a right of appeal to an appeal tribunal or a right to make an application for a direction—

- (i) a receiver appointed by the Court of Protection with power to make a claim for a tax credit on behalf of the person;
- (ii) in Scotland, a tutor, curator or other guardian acting or appointed in terms of law who is administering the estate of the person;
- (iii) a person appointed under regulation 33(1) of the Social Security (Claims and Payments) Regulations 1987⁽²⁾ (persons unable to act);
- (iv) where there is no person mentioned in sub-paragraph (iii) in relation to the person who is unable to act, a person who has applied in writing to the Board to be appointed to act on behalf of the person who is unable to act and, if a natural person, is aged 18 years or more and who has been so appointed by the Board for the purposes of this sub-paragraph.

Time within which an appeal is to be brought

4.—(1) Where a dispute arises as to whether an appeal was brought within the time limit specified in section 39(1) of the 2002 Act, the dispute shall be referred to, and be determined by, a legally qualified panel member.

(2) The time limit specified in section 39(1) of the 2002 Act may be extended in accordance with regulation 5.

(1) Section 12(2) of the Act was substituted by paragraph 25(3) of Schedule 7 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2).
(2) S.I.1987/1968; the relevant amending instrument is S.I. 1999/2572.

Late appeals

5.—(1) The time within which an appeal must be brought may be extended where the conditions specified in paragraphs (2) to (8) are satisfied, but no appeal shall in any event be brought more than one year after the expiration of the last day for appealing under section 39(1) of the 2002 Act.

(2) An application for an extension of time under this regulation shall be made in accordance with regulation 6 and shall be determined by a legally qualified panel member, except that where the Board consider that the conditions in paragraphs (4)(b) to (8) are satisfied, the Board may grant the application.

(3) An application under this regulation shall contain particulars of the grounds on which the extension of time is sought, including details of any relevant special circumstances for the purposes of paragraph (4).

(4) An application for an extension of time shall not be granted unless—

- (a) the panel member is satisfied that, if the application is granted, there are reasonable prospects that the appeal will be successful; or
- (b) the panel member is, or the Board are, satisfied that it is in the interests of justice for the application to be granted.

(5) For the purposes of paragraph (4) it is not in the interests of justice to grant an application unless the panel member is, or the Board are, as the case may be, satisfied that—

- (a) the special circumstances specified in paragraph (6) are relevant to the application; or
- (b) some other special circumstances exist which are wholly exceptional and relevant to the application,

and as a result of those special circumstances, it was not practicable for the appeal to be made within the time limit specified in section 39(1) of the 2002 Act.

(6) For the purposes of paragraph (5)(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.

(7) In determining whether it is in the interests of justice to grant the application, regard shall be had to the principle that the greater the amount of time that has elapsed between the expiration of the time within which the appeal is to be brought under section 39(1) of the 2002 Act and the making of the application for an extension of time, the more compelling should be the special circumstances on which the application is based.

(8) In determining whether it is in the interests of justice to grant an application, no account shall be taken of the following—

- (a) that the applicant or any person acting for him was unaware of or misunderstood the law applicable to his case (including ignorance or misunderstanding of the time limit imposed by section 39(1) of the 2002 Act); or
- (b) that a Commissioner or a court has taken a different view of the law from that previously understood and applied.

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

(10) The panel member who determines an application under this regulation shall record a summary of his decision in such written form as has been approved by the President.

(11) As soon as practicable after the decision is made a copy of the decision shall be sent or given to every party to the proceedings.

Making of an application for an extension of time

6. An application for an extension of time for making an appeal to an appeal tribunal shall be made in writing to the Board and shall—

- (a) include sufficient information to determine—
 - (i) the identity of the appellant;
 - (ii) the subject of the application in respect of which an extension of time is sought; and
 - (iii) the grounds on which an extension of time is sought; and
- (b) be signed by or on behalf of the appellant.

Making an application for a direction

7. An application for a direction to be made by an appeal tribunal shall—

- (a) be made in writing to the Board;
- (b) contain sufficient information for the Board to determine the identity of the applicant; and
- (c) be signed by or on behalf of the applicant.

Death of a party to an appeal or an application for a direction

8.—(1) In any proceedings relating to an appeal or an application for a direction, on the death of a party to those proceedings (other than the Board) the following persons may proceed with the appeal or application for a direction in the place of such deceased party—

- (a) where the proceedings are in relation to a single claim, the personal representatives of the person who has died;
- (b) where the proceedings are in relation to a joint claim, where only one of the persons by whom the claim was made has died, the other person with whom the claim was made;
- (c) where the proceedings are in relation to a joint claim where both the persons by whom the claim was made have died, the personal representatives of the last of them to die;
- (d) for the purposes of paragraph (c), where persons have died in circumstances rendering it uncertain which of them survived the other—
 - (i) their deaths shall be presumed to have occurred in order of seniority; and
 - (ii) the younger shall be treated as having survived the elder.

(2) Where there is no person mentioned in paragraphs (1)(a) to (1)(c) to proceed with the appeal or application for a direction, the Board may appoint such person as they think fit to proceed with that appeal or that application in the place of such deceased party referred to in paragraph (1).

(3) A grant of probate, confirmation or letters of administration to the estate of the deceased party, whenever taken out, shall have no effect on an appointment made under paragraph (2).

(4) Where a person appointed under paragraph (2) has, prior to the date of such appointment, taken any action in relation to the appeal or application for a direction on behalf of the deceased party, the effective date of appointment by the Board shall be the day immediately prior to the first day on which such action was taken.