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STATUTORY INSTRUMENTS

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**2003 No. 492**

**The Child Benefit and Guardian's Allowance  
(Administration) Regulations 2003**

**PART 1**

**GENERAL**

**Citation, commencement and effect**

1.—(1) These Regulations may be cited as the Child Benefit and Guardian's Allowance (Administration) Regulations 2003 and shall come into force on 7th April 2003 immediately after the commencement of section 50 of the Tax Credits Act 2002<sup>(1)</sup> for the purposes of entitlement to payment of child benefit and guardian's allowance.

(2) These Regulations have effect only in relation to—

- (a) child benefit and guardian's allowance under the Contributions and Benefits Act; and
- (b) child benefit and guardian's allowance under the Contributions and Benefits (NI) Act.

**Interpretation**

2. In these Regulations—

“the adjudicating authority” means—

- (a) the Board;
- (b) an appeal tribunal constituted under Chapter 1 of Part 1 of the Social Security Act 1998<sup>(2)</sup> or Chapter 1 of Part 2 of the Social Security (Northern Ireland) Order 1998<sup>(3)</sup>; or
- (c) a Commissioner within the meaning of section 39(1) of that Act<sup>(4)</sup> or to whom an appeal lies under Article 15 of that Order<sup>(5)</sup>;

“the Administration Act” means the Social Security Administration Act 1992<sup>(6)</sup>;

“the Administration (NI) Act” means the Social Security Administration (Northern Ireland) Act 1992<sup>(7)</sup>;

“appropriate office” means—

- (a) in relation to child benefit or guardian's allowance under the Contributions and Benefits Act—

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(1) 2002 c. 21.

(2) 1998 c. 14.

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

(4) Section 39(1) was relevantly amended by paragraph 35 of Schedule 7 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2).

(5) Article 15 was amended by Schedule 9 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671).

(6) 1992 c. 5.

(7) 1992 c. 8.

- (i) as regards the Board, the Child Benefit Office, Waterview Park, Washington, Tyne and Wear or any Inland Revenue Enquiry Centre;
- (ii) as regards a relevant authority, any office of the Department for Work and Pensions which is designated by the Secretary of State as a Jobcentre Plus Office;
- (b) in relation to child benefit or guardian's allowance under the Contributions and Benefits (NI) Act—
  - (i) as regards the Board, the Child Benefit Office (Northern Ireland), Windsor House, Bedford Street, Belfast or any Inland Revenue Enquiry Centre;
  - (ii) as regards a relevant authority, any office of the Social Security Agency of the Department for Social Development in Northern Ireland;

“the approved form” has the meaning given by regulation 5(1)(a);

“the Board” means the Commissioners of Inland Revenue;

“the Contributions and Benefits Act” means the Social Security Contributions and Benefits Act 1992<sup>(8)</sup>;

“the Contributions and Benefits (NI) Act” means the Social Security Contributions and Benefits (Northern Ireland) Act 1992<sup>(9)</sup>;

“interim payment” has the meaning given by regulation 22(1);

“married couple” means a man and a woman who are married to each other and are neither—

- (a) separated under a court order, nor
- (b) separated in circumstances in which the separation is likely to be permanent;

“partner” means a member of a married or an unmarried couple;

“relevant authority” means—

- (a) in relation to child benefit or guardian's allowance under the Contributions and Benefits Act, the Secretary of State or a person providing services to the Secretary of State;
- (b) in relation to child benefit or guardian's allowance under the Contributions and Benefits (NI) Act, the Department for Social Development in Northern Ireland or a person providing services to that Department;

“unmarried couple” means a man and a woman who are not a married couple but are living together as husband and wife;

“writing” includes writing produced by electronic communications used in accordance with Schedule 2.

### **Use of electronic communications**

3. Schedule 2 (the use of electronic communications) has effect.

### **Notification for purposes of sections 111A and 112 of the Administration Act and sections 105A and 106 of the Administration (NI) Act**

- 4.—(1) This regulation prescribes the person to whom, and manner in which, a change of circumstances must be notified for the purposes of sections 111A(1A) to (1G) and 112(1A) to

<sup>(8)</sup> 1992 c. 4.

<sup>(9)</sup> 1992 c. 7.

(1F) of the Administration Act(10) and sections 105A(1A) to (1G) and 106(1A) to (1F) of the Administration (NI) Act (offences relating to failure to notify a change of circumstances)(11).

(2) Notice of the change of circumstances must be given to the Board, or, where relevant, a relevant authority, in writing (except where they determine or it determines, in any particular case, that they or it will accept a notice other than in writing) by delivering or sending it to an appropriate office.

## PART 2

### CLAIMS AND AWARDS

#### **Making a claim**

5.—(1) A claim for child benefit or guardian’s allowance must be made to the Board or a relevant authority in writing—

- (a) on a form for the time being approved by the Board (“the approved form”) which has been completed in accordance with the instructions on it; or
- (b) in such other manner as the Board may accept as sufficient in the circumstances of the particular case.

(2) The person making the claim must deliver or send it to an appropriate office.

(3) Subject to regulation 10, the claim is made on the date on which it is received by the appropriate office.

#### **Time within which claims to be made**

6. The time within which a claim for child benefit or guardian’s allowance is to be made is 3 months beginning with any day on which, apart from satisfying the conditions for making the claim, the person making the claim is entitled to the benefit or allowance.

#### **Evidence and information**

7.—(1) A person making a claim for child benefit or guardian’s allowance must furnish such certificates, documents, information and evidence in connection with the claim, or any question arising out of it, as may be required by the Board.

(2) A person required under paragraph (1) to furnish certificates, documents, information and evidence must do so—

- (a) within one month of being required by the Board to do so; or
- (b) within such longer period as the Board may consider reasonable.

#### **Amending claims**

8.—(1) A person who has made a claim for child benefit or guardian’s allowance may amend it by giving to the Board or a relevant authority notice in writing in accordance with paragraph (2).

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(10) Section 111A was inserted by section 13 of the Social Security Administration Fraud Act 1997 (c. 47) and subsections (1A) to (1G) of that section, and subsections (1A) to (1F) of section 112, were substituted by section 16 of the Social Security Fraud Act 2001 (c. 11).

(11) Section 105A was inserted by Article 12 of the Social Security Administration (Fraud) (Northern Ireland) Order 1997 (S.I. 1997/1182 (N.I. 11)) and subsections (1A) to (1G) of that section, and subsections (1A) to (1F) of section 106, were substituted by section 15 of the Social Security Fraud Act (Northern Ireland) 2001 (c. 17).

(2) A notice under paragraph (1) must be delivered or sent to an appropriate office at any time before a determination has been made on the claim.

(3) The Board may treat a claim amended in accordance with this regulation as if it had been so amended when first made.

### **Withdrawing claims**

**9.**—(1) A person who has made a claim for child benefit or guardian’s allowance may withdraw it by giving notice in writing to the Board or a relevant authority.

(2) A notice of withdrawal given in accordance with paragraph (1) has effect when it is received by an appropriate office.

### **Defective applications**

**10.**—(1) If an appropriate office receives a defective application, the Board or the relevant authority may refer it back to the person making it or supply him with the approved form for completion.

(2) Where—

(a) in accordance with paragraph (1), a defective application has been referred back, or an approved form supplied, to a person; and

(b) a claim is received by an appropriate office—

(i) within the period of one month beginning with the date on which the defective application was referred back or the approved form was supplied; or

(ii) within such longer period as the Board may consider reasonable,

the claim shall be treated as having been made on the date on which the appropriate office received the defective application.

(3) “Defective application” means an intended claim which—

(a) is made on an approved form which has not been completed in accordance with the instructions on it; or

(b) is in writing but is not made on the approved form.

### **Claims for child benefit treated as claims for guardian’s allowance and vice versa**

**11.**—(1) Where it appears to the Board that a person who has made a claim for child benefit in respect of a child may be entitled to guardian’s allowance in respect of the same child, the Board may treat, either in the alternative or in addition, the claim as being a claim for guardian’s allowance by that person.

(2) Where it appears to the Board that a person who has made a claim for guardian’s allowance in respect of a child may be entitled to child benefit in respect of the same child, the Board may treat, either in the alternative or in addition, the claim as being a claim for child benefit by that person.

### **Advance claims and awards**

**12.**—(1) This regulation applies where a person who has made a claim for child benefit or guardian’s allowance does not satisfy the requirements for entitlement on the date on which the claim is made.

(2) If the Board are of the opinion that, unless there is a change of circumstances, the person will satisfy those requirements for a period beginning with a date (“the relevant date”) not more than 3 months after the date on which the claim is made, they—

- (a) may treat the claim as if made for a period beginning with the relevant date; and
  - (b) may award the benefit or allowance accordingly, subject to the condition that the person satisfies the requirements for entitlement when the benefit or allowance becomes payable under the award.
- (3) If the requirements for entitlement are found not to have been satisfied on the relevant date, a decision under paragraph (2)(b) to award benefit may be revised under—
- (a) in relation to child benefit and guardian’s allowance under the Contributions and Benefits Act, section 9 of the Social Security Act 1998<sup>(12)</sup>;
  - (b) in relation to child benefit and guardian’s allowance under the Contributions and Benefits (NI) Act, Article 10 the Social Security (Northern Ireland) Order 1998<sup>(13)</sup>.

#### **Date of entitlement under an award for the purposes of payability**

**13.**—(1) This regulation applies where child benefit or guardian’s allowance is awarded for a period of a week or weeks and the earliest date on which entitlement would commence is not a Monday.

(2) For the purposes of determining the day from which the benefit or allowance is to become payable, entitlement shall be treated as beginning on the Monday next following the earliest date referred to in paragraph (1).

#### **Effective date of change of rate**

**14.** Where a change in the rate of child benefit or guardian’s allowance would take effect, but for this regulation, on a day which would not be the appropriate pay day for the benefit or allowance, the change shall take effect from the appropriate pay day next following.

#### **Duration of claims and awards**

**15.**—(1) Subject to paragraphs (2) and (3), a claim for child benefit or guardian’s allowance shall be treated as made for an indefinite period and any award shall be made for an indefinite period.

(2) If it would be inappropriate to treat a claim as made and to make an award for an indefinite period (for example, where a relevant change of circumstances is reasonably to be expected in the near future), the claim shall be treated as made for a definite period which is appropriate in the circumstances and any award shall be made for that period.

(3) In any case where benefit or allowance is awarded in respect of days subsequent to the date on which the claim was made, the award shall be subject to the condition that the person by whom the claim was made satisfies the requirements for entitlement.

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<sup>(12)</sup> Section 9 is contained in Chapter 2 of Part 1 of the Social Security Act 1998 (social security decisions and appeals: Great Britain) and the functions of the Secretary of State under that Chapter, so far as relating to child benefit and guardian’s allowance, are transferred to the Commissioners of Inland Revenue by section 50(1) and (2)(e) of the Tax Credits Act 2002.

<sup>(13)</sup> Article 10 is contained in Chapter 2 of Part 2 of the Social Security (Northern Ireland) Order 1998 (social security decisions and appeals: Northern Ireland) and the functions of the Department for Social Development in Northern Ireland under that Chapter, so far as relating to child benefit and guardian’s allowance, are transferred to the Commissioners of Inland Revenue by section 50(1) and (2)(f) of the Tax Credits Act 2002.

## PART 3

### PAYMENTS

#### **Manner of payment**

**16.**—(1) Subject to regulation 17, child benefit or guardian’s allowance shall be paid by means of an instrument of payment or by such other means as appears to the Board to be appropriate in the circumstances of the particular case.

(2) If a person entitled to child benefit is also entitled to guardian’s allowance, the allowance shall be paid in the same manner as that in which the child benefit is paid under this regulation.

(3) Instruments of payment which have been issued by the Board remain their property.

(4) A person who has an instrument of payment must on ceasing to be entitled to the benefit or allowance to which the instrument relates, or when required to do so by the Board, deliver it to the Board or such person as the Board may direct.

#### **Direct credit transfers**

**17.**—(1) The Board may make an arrangement with a person claiming, or entitled to, child benefit or guardian’s allowance for the payment of the benefit or allowance by way of direct credit transfer in accordance with paragraphs (2) to (4).

(2) The direct credit transfer shall be into a bank account or other account—

(a) in the name of—

- (i) the person entitled to the benefit or allowance,
- (ii) that person’s partner, or
- (iii) a person acting on behalf of that person; or

(b) in the joint names of the person entitled to benefit and—

- (i) that person’s partner, or
- (ii) a person acting on that person’s behalf.

(3) Subject to paragraph (4), the benefit or allowance shall be paid within seven days of the last day of each successive period of entitlement.

(4) The Board may make a particular payment by direct credit transfer otherwise than is provided by paragraph (3) if it appears to them appropriate to do so for the purpose of—

- (a) paying any arrears of benefit or allowance, or
- (b) making a payment in respect of a terminal period of an award for any similar purpose.

(5) Where an arrangement is made under paragraph (1)—

- (a) in relation to child benefit, any guardian’s allowance to which the person entitled to the child benefit is entitled shall be paid in the same manner as the child benefit;
- (b) in relation to guardian’s allowance, the child benefit to which the person entitled to the guardian’s allowance is entitled shall be paid in the same manner as the guardian’s allowance.

(6) An arrangement made under paragraph (1) may be terminated—

- (a) by the person entitled to benefit, or by a person acting on behalf of that person, giving a notice in writing to the Board; or
- (b) by the Board if the arrangement seems to them to be no longer appropriate to the circumstances of the particular case.

(7) A person giving a notice under paragraph (6)(a) must deliver or send it to an appropriate office as regards the Board.

### **Time of payment**

**18.**—(1) Subject to paragraphs (2) to (4), child benefit and guardian’s allowance shall be paid in accordance with an award as soon as reasonably practicable after the award has been made.

(2) Child benefit shall be paid—

- (a) if a person entitled to it makes an election under regulation 19 or 20, weekly beginning with the first convenient date after the election has been made;
- (b) in any other case, in the last week of each successive period of four weeks of the period of entitlement.

(3) Where benefit is paid at four-weekly intervals in accordance with paragraph (2)(b), the Board must arrange for it to be paid weekly if they are satisfied that payment at intervals of four weeks is causing hardship.

(4) If a person who has made a claim for child benefit is also entitled to guardian’s allowance, the allowance shall be paid at the same intervals as the child benefit.

(5) The Board must take steps to notify persons to whom child benefit or guardian’s allowance is payable of the arrangements they have made for payment in so far as those arrangements affect those persons.

### **Persons who may elect to have child benefit paid weekly**

**19.**—(1) A person may make an election under this regulation to have child benefit paid weekly if—

- (a) he is a lone parent; or
- (b) he or his partner is receiving—
  - (i) income support; or
  - (ii) an income-based allowance payable under Part 1 of the Jobseekers Act 1995(14) or Part 2 of the Jobseekers (Northern Ireland) Order 1995(15).

(2) “Lone parent” means a person who has no partner and is entitled to child benefit in respect of a child for whom he is responsible.

(3) A person making an election under this regulation—

- (a) must furnish, in such manner and at such times as the Board may determine, such certificates, documents, other information or facts as the Board may require which may affect his right to receive payment of the benefit weekly; and
- (b) as soon as reasonably practicable after any change of circumstances which he might reasonably be expected to know might affect that right, must notify the Board in writing of that change in accordance with paragraph (4).

(4) A notification under paragraph (3)(b) must be delivered or sent to an appropriate office as regards the Board.

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(14) 1995 c. 18.

(15) S.I. 1995/2705 (N.I. 15).

**Elections for weekly payment by persons to whom child benefit was payable for a period beginning before and ending after 15th March 1982**

**20.**—(1) This regulation applies to a person to whom child benefit is payable for an uninterrupted period beginning before and ending after 15th March 1982.

(2) A person to whom this regulation applies may make an election to have the benefit paid weekly after 15th March 1982 if—

- (a) he makes it before the end of the period of 26 weeks beginning with the day on which benefit was payable for the first four weeks in respect of which arrangements for four-weekly payment were made;
- (b) in the case of benefit under the Contributions and Benefits Act, he was absent from Great Britain on 15th March 1982 for any of the reasons specified in paragraph (3) and he makes the election before the end of the period of 26 weeks beginning with the first week in respect of which benefit became payable to him in Great Britain on his return; or
- (c) in the case of benefit under the Contributions and Benefits (NI) Act, he was absent from Northern Ireland on 15th March 1982 for any of the reasons specified in paragraph (3) and he makes the election before the end of the period of 26 weeks beginning with the first week in respect of which benefit became payable to him in Northern Ireland on his return.

(3) The reasons specified in this paragraph are that the person—

- (a) was a serving member of the forces;
- (b) was the spouse of such a serving member; or
- (c) was living with such a serving member as husband or wife.

(4) “Serving member of the forces” means a person, other than one mentioned in Part 2 of Schedule 6 to the Social Security (Contributions) Regulations 2001<sup>(16)</sup>, who, being over the age of 16 years, is a member of any establishment or organisation specified in Part 1 of that Schedule (being a member who gives full pay service) but does not include any such person while absent on desertion.

**Manner of making elections under regulations 19 and 20**

**21.**—(1) This regulation applies to elections under regulations 19 and 20.

(2) An election—

- (a) must be made by notice in writing to the Board; and
- (b) must be delivered or sent to an appropriate office as regards the Board.

(3) An election is made on the date on which it is received by the appropriate office.

(4) Where a person has made an election, child benefit is payable weekly so long as—

- (a) he remains continually entitled to it; and
- (b) in the case of an election under regulation 19, the conditions specified in paragraph (1)(a) or (b) of that regulation continue to be satisfied.

(5) A person who has made an election may cancel it at any time by giving to the Board a notice in writing which must be sent or delivered to an appropriate office as regards the Board.

(6) The Board must give effect to a notice given in accordance with paragraph (5) as soon as reasonably practicable after receiving it.

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(16) S.I. 2001/1004.



### **Interim payments**

**22.**—(1) The Board may make a payment on account of any child benefit or guardian’s allowance to which it appears to them that a person is or may be entitled (“an interim payment”) if—

- (a) a claim for the benefit or allowance has not been made in accordance with these Regulations and it is impracticable for such a claim to be made immediately;
- (b) a claim for the benefit or allowance has been so made but it is impracticable for it, or an application or appeal relating to it, to be determined immediately; or
- (c) an award of the benefit or allowance has been made but it is impracticable for the person entitled to it to be paid immediately other than by means of an interim payment.

(2) Paragraph (1) does not apply pending the determination of an appeal unless the Board are of the opinion that there is entitlement to benefit.

(3) On or before the making of an interim payment, the Board must give the person to whom payment is to be made notice in writing of his liability under regulations 41 and 42 to have it brought into account and to repay any overpayment.

### **Information to be given and changes to be notified**

**23.**—(1) This regulation applies to any person entitled to child benefit or guardian’s allowance and any person by whom, or on whose behalf, payments of such benefit or allowance are receivable.

(2) A person to whom this regulation applies must furnish in such manner and at such times as the Board may determine such information or evidence as the Board may require for determining whether a decision on an award—

- (a) in relation to benefit or allowance under the Contributions and Benefits Act, should be revised under section 9 or superseded under section 10 of the Social Security Act 1998<sup>(17)</sup>;
- (b) in relation to benefit or allowance under the Contributions and Benefits (NI) Act, should be revised under Article 10 or superseded under Article 11 of the Social Security (Northern Ireland) Order 1998<sup>(18)</sup>.

(3) A person to whom this regulation applies must furnish in such manner and at such times as the Board may determine such information and evidence as the Board may require in connection with the payment of the benefit or allowance.

(4) A person to whom this regulation applies must notify the Board or a relevant authority of any change of circumstances which he might reasonably be expected to know might affect—

- (a) the continuance of entitlement to the benefit or allowance; or
- (b) the payment of it,

as soon as reasonably practicable after the change occurs.

(5) A notification under paragraph (4)—

- (a) must be given by notice in writing or orally; and
- (b) must be sent, delivered or given to the appropriate office.

### **Fractional amounts of benefit or allowance**

**24.** Where the amount of any child benefit or guardian’s allowance payable includes a fraction of a penny, that fraction—

- (a) if it is less than a half, shall be disregarded;

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<sup>(17)</sup> Section 10 was amended by paragraph 23 of Schedule 7, and Part 1 of Schedule 10, to the Social Security Contributions (Transfer of Functions, etc.) Act 1999.

<sup>(18)</sup> Article 11 was amended by paragraph 17(a) of Schedule 6, and Schedule 9, to S.I. 1999/671.

- (b) if it is a half or more, shall be treated as a whole penny.

### **Payments to persons under the age of 18 years**

**25.** Where a sum of child benefit or guardian's allowance is paid to a person under the age of 18 years (whether on his own behalf or on behalf of another), either of the following is a sufficient discharge to the Board for the sum paid—

- (a) a direct credit transfer under regulation 17 into the person's account;
- (b) the receipt by the person of a payment made by some other means.

### **Extinguishment of right to payment if payment is not obtained within the prescribed period**

**26.—**(1) The right to payment of any sum of child benefit or guardian's allowance shall be extinguished if payment of that sum is not obtained within the period of 12 months from the date on which the right is treated as having arisen.

(2) Subject to paragraph (5), the right to payment of a sum is treated as having arisen—

- (a) if the Board have given or sent an instrument of payment in respect of the sum to the person to whom it is payable or have sent such an instrument to a place approved by them for collection by that person—
  - (i) on the date of the instrument, or
  - (ii) if a replacement instrument of payment has been so given or sent, on the date of the last such instrument;
- (b) in relation to any sum to which sub-paragraph (a) does not apply, if the Board have given or sent a notice (orally or in writing) that the sum is available for collection—
  - (i) on the date of the notice, or
  - (ii) if more than one such notice has been given or sent, on the date of the first notice;
- (c) in relation to any sum to which neither sub-paragraph (a) nor (b) applies, on such date as the Board may determine.

(3) The giving or sending by the Board of an instrument of payment under sub-paragraph (a) of paragraph (2), or a notice under sub-paragraph (b) of that paragraph, shall be effective even if the sum contained in the instrument, or the notice, is more or less than the sum which the person concerned has the right to receive.

(4) The date of an instrument of payment is—

- (a) the date of issue of that instrument; or
- (b) if later, the earliest date specified in the instrument on which payment may be obtained.

(5) Where a question arises as to whether a right to payment of a sum has been extinguished under this regulation, the period of 12 months referred to in paragraph (1) shall be extended to the date on which the Board decide the question, and the right shall be treated for the purposes of this regulation as having arisen on that date, if the Board are satisfied that—

- (a) a notice in writing requesting payment of the sum was first received by them after the expiration of the period of 12 months from the date on which, ignoring this paragraph, the right would be treated as having arisen;
- (b) from a day within that period until the date on which the notice in writing was given there was good cause for not giving the notice; and
- (c) no payment of the sum has been made by way of direct credit transfer in accordance with regulation 17 and—

- (i) no instrument of payment has been given or sent to the person to whom the sum is payable; or
- (ii) any such instrument has been produced to them and no replacement instrument of payment has been given or sent to that person.

(6) This regulation has effect in relation to a person authorised or appointed to act on behalf of a person entitled to child benefit or guardian's allowance in the same manner as it has effect in relation to such a person.

## PART 4

### THIRD PARTIES

#### **Persons who may act on behalf of those unable to act**

**27.**—(1) Anything required by these regulations to be done by or to any person who is for the time being unable to act may be done by or to—

- (a) in England and Wales, a receiver appointed by the Court of Protection with power to claim, or, as the case may be, receive, the benefit or allowance on behalf of the person;
- (b) in Scotland, a tutor, curator or other guardian acting or appointed in terms of law who is administering the estate of the person;
- (c) in Northern Ireland, a controller appointed by the High Court, with power to claim, or, as the case may be, receive, the benefit or allowance on behalf of the person; or
- (d) a person appointed under regulation 28(2) to act on behalf of the person.

(2) Where a sum of child benefit or guardian's allowance is paid to a receiver or other person mentioned in paragraph (1)(a), (b), (c) or (d), either of the following is a sufficient discharge to the Board for the sum paid—

- (a) a direct credit transfer under regulation 17 into the person's account;
- (b) the receipt by the person of a payment made by some other means.

#### **Appointment of persons to act on behalf of those unable to act**

**28.**—(1) This regulation applies where—

- (a) a person is for the time being unable to act;
- (b) the person is, or is alleged to be, entitled to child benefit or guardian's allowance (whether or not a claim for the benefit or allowance has been made by him or on his behalf); and
- (c) no receiver or other person mentioned in regulation 27(1)(a), (b) or (c) has been appointed in relation to the person.

(2) The Board may appoint a person who—

- (a) has applied in writing to them to act on behalf of the person who is unable to act, and
- (b) if a natural person, is over the age of 18 years,

to exercise, on behalf of the person who is unable to act, any right relating to child benefit or guardian's allowance to which that person may be entitled and to receive and deal on his behalf with any sums payable to him in respect of the benefit or allowance.

(3) Where an appointment has been made under paragraph (2)—

- (a) the Board may at any time revoke it; and

(b) the person appointed may resign from the appointment after having given one month's notice in writing to the Board of his intention to do so.

(4) An appointment made under paragraph (2) shall terminate when the Board are notified that a receiver or other person mentioned in regulation 27(1)(a), (b) or (c) has been appointed.

#### **Persons who may proceed with a claim made by a person who has died**

**29.**—(1) The Board may appoint such person as they think fit to proceed with a claim for child benefit or guardian's allowance which has been made by a person who has died.

(2) Subject to regulation 32(2), the Board may pay or distribute any sum payable under an award on a claim proceeded with under paragraph (1) to or among—

(a) persons over the age of 16 years claiming as personal representatives, legatees, next of kin or creditors of the person who has died; and

(b) if the person who has died was illegitimate, any other persons over that age.

(3) "Next of kin" means—

(a) in England and Wales, and in Northern Ireland, the persons who would take beneficially on an intestacy;

(b) in Scotland, the persons entitled to the moveable estate of the deceased on intestacy.

(4) Where a sum is paid under paragraph (2) to a person, either of the following is a sufficient discharge to the Board for the sum paid—

(a) a direct credit transfer under regulation 17 into the person's account;

(b) the receipt by the person of a payment made by some other means.

(5) If the Board consider that a sum or part of a sum which may be paid or distributed under paragraph (2) is needed for the benefit of a person under the age of 16 years, they may obtain a good discharge for that sum by paying it to a person over that age whom they are satisfied will apply the sum for the benefit of the person under that age.

(6) Regulation 26 (extinguishment of right) applies to a payment or distribution made under paragraph (2).

#### **Persons who may receive payments which a person who has died had not obtained**

**30.**—(1) This regulation applies where a person who has died had not obtained at the date of his death a sum of child benefit or guardian's allowance which was payable to him.

(2) Subject to regulation 32(2), the Board may, unless the right to payment had already been extinguished at the date of death, pay or distribute the sum to or amongst the persons mentioned in regulation 29(2)(a) and (b).

(3) Regulation 26 (extinguishment of right) applies to a payment or distribution made under paragraph (2), except that, for the purposes of paragraph (1) of that regulation, the period of 12 months shall be calculated from the date on which the right to payment is treated as having arisen to the person to whom the payment or distribution is made (and not from the date on which that right is treated as having arisen in relation to the person who has died).

#### **Person who may make a claim on behalf of a person who has died**

**31.**—(1) If the conditions specified in paragraph (2) are satisfied, a claim may be made in the name of a person who has died for any child benefit or guardian's allowance to which he would have been entitled if he had claimed it in accordance with these Regulations.

(2) Subject to paragraph (3), the following conditions are specified in this paragraph—

- (a) within 6 months of the date of death an application must have been made in writing to the Board for a person, whom the Board think fit to be appointed to make the claim, to be so appointed;
- (b) a person must have been appointed by the Board to make the claim; and
- (c) the person so appointed must have made the claim not more than 6 months after the appointment.

(3) Subject to paragraphs (4) and (5), if the Board certify that to do so would be consistent with the proper administration of the Contributions and Benefits Act, the period of 6 months mentioned in paragraph (2)(a) or (c) shall be extended by such period (not exceeding 6 months) as may be specified in the certificate.

(4) If a certificate given under paragraph (3) specifies a period by which the period of 6 months mentioned in paragraph (2)(a) shall be extended, the period of 6 months mentioned in paragraph (2)(c) shall be shortened by a period corresponding to the period so specified.

(5) No certificate shall be given under paragraph (3) which would enable a claim to be made more than 12 months after the date of death.

For the purposes of this paragraph, any period between the date on which the application for a person to be appointed to make the claim is made and the date on which that appointment is made shall be disregarded.

(6) A claim made in accordance with this regulation shall be treated for the purposes of these Regulations as if it had been made on the date of his death by the person who has died.

#### **Regulations 29, 30 and 31: supplementary**

**32.**—(1) The Board may dispense with strict proof of the title of a person claiming in accordance with regulation 29, 30 or 31.

(2) Neither paragraph (2) of regulation 29 nor paragraph (2) of regulation 30 applies unless written application for payment of the sum under that paragraph is made to the Board within 12 months from the date of death or such longer period as the Board may allow.

#### **Payment to one person on behalf of another**

**33.**—(1) Subject to paragraph (2), the Board may direct that child benefit or guardian's allowance shall be paid, wholly or in part, to another natural person on behalf of the person entitled to it.

(2) The Board may not make a direction under paragraph (1) unless they are satisfied that it is necessary for protecting the interests of—

- (a) the person entitled to the benefit or allowance; or
- (b) any child or dependant in respect of whom the benefit or allowance is payable.

#### **Payment to partner as alternative payee**

**34.**—(1) Subject to paragraph (2), where a member of a married couple or an unmarried couple is entitled to child benefit or guardian's allowance, the Board may make arrangements whereby that benefit or allowance, as well as being payable to the person entitled to it, may, in the alternative, be paid to that person's partner on behalf of that person.

(2) Paragraph (1) does not apply to guardian's allowance where a wife has elected that the allowance is not to be paid to her husband in accordance with regulation 10 of the Guardian's Allowance (General) Regulations 2003 (prescribed manner of making an election under

section 77(9) of the Contributions and Benefits Act and section 77(9) of the Contributions and Benefits (NI) Act(19).

## PART 5

### OVERPAYMENTS AND RECOVERY

#### Recovery of overpayments by direct credit transfer

**35.**—(1) If the adjudicating authority determines that—

- (a) a payment of child benefit or guardian's allowance in excess of entitlement has been credited to a bank account or other account under an arrangement for direct credit transfer made in accordance with regulation 17; and
- (b) the conditions specified in paragraph (2) are satisfied,

the excess, or the specified part of it to which the certificate referred to in sub-paragraph (a) of that paragraph relates, shall be recoverable.

(2) The following conditions are specified in this paragraph—

- (a) the Board must have certified that the payment in excess of entitlement, or a specified part of it, is materially due to the arrangement for payments to be made by direct credit transfer; and
- (b) subject to paragraph (3), notice of the effect which this regulation would have, in the event of an overpayment, must have been given in writing to the person entitled to the benefit or allowance, or to a person acting in his behalf, before he agreed to the arrangement.

(3) In the case of an arrangement relating to child benefit which was agreed to before 6th April 1987, the condition specified in paragraph (2)(b) need not be satisfied in any case where the application for the benefit to be paid by direct credit transfer contained a statement, or was accompanied by a written statement made by the applicant, which complied with the provisions specified in paragraph (4).

(4) The provisions specified in this paragraph are—

- (a) in relation to child benefit under the Contributions and Benefits Act, regulation 7(2)(b) and (6) of the Child Benefit (Claims and Payments) Regulations 1984(20);
- (b) in relation to child benefit under the Contributions and Benefits (NI) Act, regulation 7(2)(b) and (6) of the Child Benefit (Claims and Payments) Regulations (Northern Ireland) 1985(21).

#### Circumstances in which determination need not be reversed, varied, revised or superseded

**36.**—(1) This regulation applies where, whether fraudulently or otherwise, a person has misrepresented, or failed to disclose, material facts which do not provide a basis for the determination in pursuance of which an amount of child benefit or guardian's allowance was paid—

- (a) in relation to benefit or allowance under the Contributions and Benefits Act, to be revised under section 9 or superseded under section 10 of the Social Security Act 1998;

(19) S.I. 2003/495.

(20) S.I. 1984/1960. Regulation 7 was revoked, together with other parts of the instrument, by the Schedule to S.I. 1987/491 and Schedule 10 to S.I. 1987/1968.

(21) S.R. 1985 No. 124. Regulation 7 was revoked, together with other parts of the instrument, by the Schedule to S.R. 1987 No. 122 and Schedule 9 to S.R. 1987 No. 465.

- (b) in relation to benefit or allowance under the Contributions and Benefits (NI) Act, to be revised under Article 10 or superseded under Article 11 of the Social Security (Northern Ireland) Order 1998.
- (2) Where this regulation applies—
  - (a) in relation to an amount mentioned in paragraph (1) relating to child benefit or guardian's allowance under the Contributions and Benefits Act, neither subsection (5) nor (5A) of section 71 of the Administration Act (recoverability dependent on reversal, variation, revision or supersession of determination)(22) applies;
  - (b) in relation to an amount mentioned in paragraph (1) relating to child benefit or guardian's allowance under the Contributions and Benefits (NI) Act, neither subsection (5) nor (5A) of section 69 of the Administration (NI) Act (recoverability dependent on reversal, variation, revision or supersession of determination)(23) applies.

### **Calculating recoverable amounts**

37. Where there has been an overpayment of child benefit or guardian's allowance, in calculating the amounts recoverable under section 71(1) of the Administration Act, section 69(1) of the Administration (NI) Act or regulation 35, the adjudicating authority must deduct any amount which is offset under regulation 38.

### **Offsetting prior payments of child benefit and guardian's allowance against arrears payable by virtue of a subsequent determination**

- 38.—(1) Subject to regulation 40, in either of the cases specified in paragraphs (2) and (3)—
- (a) a sum of child benefit paid for a period covered by a subsequent determination shall be offset against any arrears of entitlement to the benefit payable for that period by virtue of the subsequent determination;
  - (b) a sum of guardian's allowance paid for a period covered by a subsequent determination shall be offset against any arrears of entitlement to the allowance payable for that period by virtue of the subsequent determination,

and, except to the extent that it exceeds them, the sum so paid shall be treated as properly paid on account of the arrears.

(2) The case specified in this paragraph is where a person has been paid a sum pursuant to a determination which subsequently—

- (a) is revised under section 9 or superseded under section 10 of the Social Security Act 1998;
- (b) is revised under Article 10 or superseded under Article 11 of the Social Security (Northern Ireland) Order 1998; or
- (c) is overturned on appeal.

(3) The case specified in this paragraph is where a person has been paid a sum for a period by way of an increase in respect of a dependent person and it is subsequently determined that—

- (a) the dependent person is entitled to the benefit or allowance for that period; or
- (b) a third person is entitled to the increase for that period in priority to the person who has been paid.

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(22) Subsection (5) of section 71 was amended, and subsection (5A) of that section inserted, by section 1(3) and (4) of the Social Security (Overpayments) Act 1996 (c. 51) and both those subsections were amended by paragraph 81(2) and (3) of the Social Security Act 1998.

(23) Subsection (5) of section 69 was amended, and subsection (5A) of that section inserted, by section 2(3) and (4) of the Social Security (Overpayments) Act 1996 and both those subsections were amended by paragraph 62(2) and (3) of Schedule 6 to S.I. 1998/1506 (N.I. 10).

(4) Where child benefit which has been paid under an award in favour of a person (“the first claimant”) is subsequently awarded to another (“the second claimant”) for any week, the benefit shall nevertheless be treated as properly paid if it was received by someone (other than the first claimant) who—

- (a) had the child living with him or was contributing towards the cost of providing for the child at a weekly rate which was not less than the weekly rate under the original award; and
- (b) could have been entitled to child benefit in respect of that child for that week had a claim been made in time.

(5) Any amount which is treated under paragraph (4) as properly paid shall be deducted from the amount payable to the second claimant under the subsequent award.

**Offsetting prior payments of income support or jobseeker’s allowance against arrears of child benefit or guardian’s allowance payable by virtue of a subsequent determination**

**39.**—(1) This regulation applies where—

- (a) a person has been paid a sum by way of income support or jobseeker’s allowance; and
- (b) it is subsequently determined that—
  - (i) child benefit or guardian’s allowance should be awarded or is payable in lieu of the income support or jobseeker’s allowance; and
  - (ii) the income support or jobseeker’s allowance was not payable.

(2) Subject to regulation 40, any sum of income support or jobseeker’s allowance in respect of the period covered by the subsequent determination—

- (a) shall be offset against any arrears of entitlement to the child benefit or guardian’s allowance payable for that period by virtue of that determination; and
- (b) except to the extent that it exceeds them, the sum so paid shall be treated as properly paid on account of the arrears.

**Exception from offset of recoverable overpayment**

**40.** No amount may be offset under regulation 38(1) or 39(2) which has been determined to be a recoverable overpayment for the purposes of section 71(1) of the Administration Act or section 69(1) of the Administration (NI) Act.

**Bringing interim payments into account**

**41.**—(1) Subject to paragraph (2), if it is practicable to do so—

- (a) any interim payment made in anticipation of an award of child benefit or guardian’s allowance shall be offset by the adjudicating authority in reduction of the benefit or allowance to be awarded;
- (b) any interim payment (whether or not made in anticipation of an award) which is not offset under sub-paragraph (a) shall be deducted by the Board from—
  - (i) the sum payable under the award of benefit or allowance on account of which the interim payment was made; or
  - (ii) any sum payable under any subsequent award of the benefit or allowance to the same person.

(2) Paragraph (1) does not apply unless the Board have given the notice required by regulation 22(3).



### **Recovery of overpaid interim payments**

**42.**—(1) Subject to paragraph (2), if the adjudicating authority, in the circumstances specified in either of paragraphs (3) and (4), has determined that an interim payment has been overpaid, it shall determine the amount of the overpayment.

(2) Paragraph (1) does not apply unless the Board have given the notice required by regulation 22(3).

(3) The circumstances specified in this paragraph are where an interim payment has been made under regulation 22(1)(a) and (b) and—

- (a) the recipient has failed to make a claim in accordance with these Regulations as soon as practicable;
- (b) the recipient has made a defective application and the Board have not treated the claim as duly made under regulation 10;
- (c) it has been determined that—
  - (i) there is no entitlement on the claim;
  - (ii) the entitlement is less than the amount of the interim payment; or
  - (iii) the benefit or allowance on the claim is not payable; or
- (d) the claim has been withdrawn.

(4) The circumstances specified in this paragraph are where an interim payment has been made under regulation 22(1)(c) which exceeds the entitlement under the award of benefit on account of which the interim payment was made.

(5) The amount of any overpayment determined under paragraph (1) shall be recoverable by the Board in the same manner as it would be if it were recoverable under—

- (a) in relation to child benefit or guardian’s allowance under the Contributions and Benefits Act, section 71(1) of the Administration Act;
- (b) in relation to child benefit or guardian’s allowance under the Contributions and Benefits (NI) Act, section 69(1) of the Administration (NI) Act.

## **PART 6**

### **REVOCATIONS AND TRANSITIONAL PROVISIONS**

#### **Revocations**

**43.** The subordinate legislation specified in column (1) of Parts 1 and 2 of Schedule 3, in so far as it relates to child benefit or guardian’s allowance, is revoked to the extent mentioned in column (3) of that Schedule.

#### **Transitional provisions**

**44.**—(1) Anything done or commenced under any provision of the instruments revoked by regulation 43, so far as relating to child benefit or guardian’s allowance, is to be treated as having been done or as being continued under the corresponding provision of these Regulations.

(2) The revocation by regulation 43 of an instrument which itself revoked an earlier instrument subject to savings does not prevent the continued operation of those savings, in so far as they are capable of continuing to have effect.

(3) “Instrument” includes a Statutory Rule of Northern Ireland.

5th March 2003

*Tim Flesher*  
*Dave Hartnett*  
Two of the Commissioners of Inland Revenue