

**EXPLANATORY MEMORANDUM TO THE
CHILD BENEFIT AND GUARDIAN'S ALLOWANCE (MISCELLANEOUS
AMENDMENTS) REGULATIONS 2005**

2005 No. 343

1. This explanatory memorandum has been prepared by the Inland Revenue and is to be laid before Parliament by Command of Her Majesty.

2. Description

This is a package of miscellaneous amendments to the Child Benefit and Guardian's Allowance (Decisions & Appeals) Regulations 2003 and the Child Benefit and Guardian's Allowance (Administration) Regulations 2003. Most of the amendments mirror the changes that DWP is making to the equivalent social security regulations. A new provision on the recovery of overpaid Child Benefit (ChB) and Guardian's Allowance (GA) was also included in the Child Benefit and Guardian's Allowance (Administration) Regulations 2003.

3. Matters of special interest to the Joint Committee on Statutory Instruments.

None.

4. Legislative Background

This instrument amends the Child Benefit and Guardian's Allowance (Decisions and Appeals) Regulations 2003, and the Child Benefit and Guardian's Allowance (Administration) Regulations 2003. Most of the amendments reflect the changes that DWP is making to the corresponding social security regulations.

5. Extent

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

These regulations are subject to annulment and do not amend primary legislation.

7 Policy background

7.1 Revision and Supersession of decisions - Part 2 & 3 of the Child Benefit and Guardian's Allowance (Decisions & Appeals) Regulations 2003

- **Regulations 3, 4 and 5(1) & (2)** - These regulations address a problem (generic to all benefits) identified in a Disability Living Allowance (DLA) commissioner's case, where the current provisions do not allow an advance award made on a renewal claim for DLA (which would be effective from a forward renewal date) to be superseded following a change of circumstances which occurred between the date the award is made, and the date when it becomes effective. The existing provisions to supersede can only apply to changes occurring since the decision had effect. The amendment regulations provide that an advance award of ChB or GA

can be superseded where there is a change of circumstances between the date when the award was made, and when it is due to take effect.

- **Regulation 5(3)** adds a new effective date provision to regulation 16 so as to give decision makers an alternative approach to handling appeals to the Social Security Commissioners and the courts. It specifies the date from which a decision by the Board shall take effect where there has been an appeal against that decision, the result of which is to reverse the determination in whole or in part.

This would enable the Board to choose the option of deciding "lookalike" cases on the basis of the Commissioner's or court's decision, but suspend the payment of any benefit due until the outcome of the appeal.

Currently the Board is unable to apply this option as there is no effective date provision in regulation 16 which would allow the Board to reverse the decision to an earlier effective date other than to apply the decision on the date of the appeal decision itself. So, if for example, the Board were to win the case, it cannot apply the appeal decision to the earlier effective date. This means that it would have to pay benefit between this earlier effective date and the date of the appeal decision. So although the Board have ultimately won the case, it would have to pay benefit for this period as though it has lost case. Regulation 5(3) is therefore inserted to enable the Board to use the correct effective date.

7.2 Rights of appeal and procedure for bringing appeals - Part 6 of the Child Benefit and Guardian's Allowance (Decisions & Appeals) Regulations 2003.

Regulation 6 - Currently, claimants with a right of appeal can request a written statement of reasons for a decision within one month of the decision being made. Where such a request is made, reg 26(2) of the Decision & Appeals) Regulation says that the Board *shall* provide it within 14 days of the receipt of the request. However, this mandatory provision is at odds with regulation 28(1)(c) of the Decision and Appeals Regulations, which allow this period to be extended. The amendment in **Regulation 6** will ensure consistency amongst these provisions.

7.3 Interim payments - Part 3 of the Child Benefit and Guardian's Allowance (Administration) Regulations 2003.

- **Regulation 8(1),(2) and (4)** clarify that interim payments can be considered by the Board even if the individual concerned has yet to satisfy the condition of making a claim for benefit or comply with the requirements in relation to National Insurance numbers. In these circumstances the Board can still take a view as to potential entitlement and make a payment on account.
- **Regulation 8(3)** provides that interim payments are not payable pending the determination of an appeal. Regulation 22(1)(c) as currently drafted, appears to give the Board, the discretion to override normal decision-making procedures and make interim payments if, for example, there is a decision disallowing benefit and the claimant appeals. This is not the policy intention, and Reg 8(c) clarifies this point.

7.4 Extinguishment - Part 3 of the Child Benefit and Guardian's Allowance (Administration) Regulations 2003.

Regulation 9 - There is a general rule that the right to payment of any sum of benefit is extinguished if payment of that sum is not obtained within 12 months. In applying that rule it is necessary to determine the date on which the right to that payment arose and therefore the date upon which the computation of the 12-month period should start. **Regulation 9** introduces specific provision for determining a start date in cases where payment of benefit is made directly to the individual beneficiary's bank or building society account.

7.5 Third parties - Part 4 Child Benefit and Guardian's Allowance (Administration) Regulations 2003.

- **Regulation 10** reflects changes introduced by the Adults with Incapacity (Scotland) Act 2000 in respect of persons who can act on behalf of a person entitled to benefit. Under regulation 27(1)(b) of the Administration Regulations, the Board is prohibited from making such an appointment where the estate is being administered by a "tutor" or "curator". Following the introduction of the Adults with Incapacity (Scotland) Act 2000, it is no longer legitimate to appoint either a "tutor" or a "curator". Existing "curators" or "tutors" appointed prior to April 01 are still valid but will be known as Guardians. Regulation 27 is being amended to reflect this change.
- **Regulation 11** - Currently Regulation 29(1) allows the Board to appoint a person to **only** "proceed with the claim". But this does not sit well with section 8(2) of the Social Security Act 1998, which provides that once a claim has been determined, it ceases to exist. In reality the Board may want to appoint a person to act for a deceased person where the claim may have been made some while beforehand (and therefore no longer exists) but where there has been an ongoing award. Regulation 11 extends the remit of the appointed person, enabling him/her to "proceed with the claim" after the claimant's death if there is a question of superseding, revising and appealing the award.

8. Impact

A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9. Contact

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