

Mandatory consideration of revision before appeal

Public consultation

February 2012

Contents

- Introduction..... 3
 - About this consultation 3
 - How to respond to this consultation 4
 - How we consult..... 4
- Mandatory consideration of revision before appeal 7
 - Summary..... 7
 - Current appeal process..... 7
 - The need for change 11
 - The current improvement programme..... 12
 - New appeal process 13
 - Implementation 18
 - Draft Regulations 18
 - Questions to consider 19
 - Annex A – Current DWP process flow diagram 20
 - Annex B – Benefits and payments to be included..... 22
 - Annex C – Draft Regulations..... 25

Introduction

Clause 100 of the Welfare Reform Bill as introduced enables regulations to be made to require claimants and other persons who disagree with a decision to request consideration of revision before they may appeal against a decision.

Subject to Parliamentary approval, the Department for Work and Pensions (“the Department”) has planned how the powers provided for in the Bill may be implemented and has drafted regulations that would support these plans.

This consultation paper sets out the Department’s plan to implement the measure for existing benefits and invites comments on issues relevant to the implementation plans and comments on the draft regulations.

The new benefits provided for in the Bill, Universal Credit (UC) and Personal Independent Payment (PIP), will include the measure from outset. The measure will be applied to these benefits (UC and PIP) following the same principles as existing benefits, as described in this document.

About this consultation

Who this consultation is aimed at

We would like to hear from all who are interested and in particular we would welcome contributions from claimants of DWP benefits and clients of the Child Maintenance and Enforcement Commission, claimant representative organisations, voluntary organisations, employees of DWP, Her Majesty’s Courts and Tribunals Service and members of the judiciary. Comments from workers and the general public are also welcome.

Purpose of the consultation

This consultation concerns issues relevant to the implementation and operation of the appeals reform provisions in the Welfare Reform Bill and invites comments on the draft regulations. These are powers in clause 100 (of the Welfare Reform Bill as introduced) and Schedule 11 – Power to require consideration of revision before appeal. The regulations will establish a change to the current appeals process. The proposals are subject to Parliamentary approval of the Bill and the associated draft regulations.

Scope of consultation

This consultation applies to England, Wales and Scotland. Northern Ireland will consider parallel legislation. Consultees are asked to note that whether to implement clause 100 is not within the scope of this consultation.

Duration of the consultation

The consultation period begins on 9 February 2012 and runs until 4 May 2012.

How to respond to this consultation

Please send your consultation responses to:

Appeals Reform Consultation
Decision Making and Appeals – Legal Group
Department for Work and Pensions
The Adelphi, 5th Floor
1-11 John Adam Street
London
WC2N 6HT

Fax 0207 962 8541

Email appeals.reform@dwp.gsi.gov.uk

Please ensure your response reaches us by 4 May 2012.

When responding, please state whether you are doing so as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents, and where applicable, how the views of members were assembled. We will acknowledge your response.

Queries about the content of this document

Please direct any queries about the subject matter of this consultation to the email address given above.

How we consult

Freedom of information

The information you send us may need to be passed to colleagues within the Department for Work and Pensions, published in a summary of responses received and referred to in the published consultation report.

All information contained in your response, including personal information, may be subject to publication or disclosure if requested under the Freedom of Information Act 2000. By providing personal information for the purposes of the public consultation exercise, it is understood that you consent to its disclosure and publication. If this is not the case, you should limit any personal information provided, or remove it completely. If you want the information in your response to the consultation to be

kept confidential, you should explain why as part of your response, although we cannot guarantee to do this.

To find out more about the general principles of Freedom of Information and how it is applied within DWP, please contact:

Central Freedom of Information Team
The Adelphi
1-11, John Adam Street
London WC2N 6HT

Freedom-of-information-request@dwp.gsi.gov.uk

The Central FoI team cannot advise on specific consultation exercises, only on Freedom of Information issues. More information about the Freedom of Information Act can be found at www.dwp.gov.uk/freedom-of-information

The consultation criteria

The consultation is being conducted in line with the Government Code of Practice on Consultation – [Government Code of Practice on Consultation](#) (BIS). The seven consultation criteria are:

- **When to Consult.** Formal consultation should take place at a stage when there is scope to influence the outcome.
- **Duration of consultation exercises.** Consultations should normally last for at least 12 weeks, with consideration given to longer timescales where feasible and sensible.
- **Clarity of scope and impact.** Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence, and the expected costs and benefits of the proposals.
- **Accessibility of consultation exercises.** Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is designed to reach.
- **The burden of consultation.** Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
- **Responsiveness of consultation exercises.** Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
- **Capacity to consult.** Officials running consultation exercises should seek guidance in how to run an effective consultation exercise, and share what they have learned from the experience.

Feedback on the consultation process

We value your feedback on how well we consult. If you have any comments on the process of this consultation (as opposed to the issues raised) please contact our Consultation Coordinator:

Roger Pugh
DWP Consultation Coordinator
1st floor, Crown House
2, Ferensway
Hull HU2 8NF

Phone 01482 584681

>> roger.pugh@dwp.gsi.gov.uk

In particular, please tell us if you feel that the consultation does not satisfy the consultation criteria. Please also make any suggestions as to how the process of consultation could be improved further.

If you have any requirements that we need to meet to enable you to comment, please let us know.

We will publish the responses to the consultation by 1 June 2012 in a report on the consultations section of our website www.dwp.gov.uk/consultations. The report will summarise the responses and the action that we will take as a result of them.

Mandatory consideration of revision before appeal

Summary

The Department plans to reform the appeals process so that in future claimants and other persons disputing a decision on their benefit claim, child support case, or other decision related to vaccine damage payments; the recovery of benefits; and payments in respect of mesothelioma, will follow an escalating process of mandatory reconsideration and formal appeal. This will allow the Department to carry out a robust review of the disputed decision, with claimants, or other persons, given an opportunity to provide supporting information.

To support the robust review, the Department plans to make improvements to the decision making process to make the reconsideration more independent, with a different officer taking a fresh look at the decision and re-examining the evidence provided. The outcome of the reconsideration will be communicated more effectively with claimants and others, by phone whenever possible for the main benefits and child support, to provide the claimant with a clear explanation of the benefit decision.

The change will enable the Department to ensure that decisions are changed at the earliest stage in the process, and to provide a clear explanation. Claimants will then be able to make an informed decision on formally appealing to Her Majesty's Courts and Tribunal Service taking the outcome of the reconsideration process into account.

These changes are necessary to deliver timely, proportionate and effective justice for claimants, make the process for disputing a decision fairer and more efficient.

Current appeal process

The options for a claimant and other persons (excluding claims for vaccine damage payments):

This description covers the process for claimants and others who wish to dispute a decision on their benefit claim, child support case, or other decision related to vaccine damage payments; the recovery of benefits; and payments in respect of mesothelioma.

A decision notice includes the options available to a claimant if he or she wishes to dispute the decision. The notice invites the claimant, or someone else who has the authority to act on their behalf to get in touch, by phone or in writing, within one month of the date of the letter. The claimant can do any of the following or all of them:

- ask for an explanation;
- ask for a written statement of reasons for the decision¹;
- ask for the decision to be looked at again to see if it can be changed, pointing out that there may be some facts they think have been overlooked, or that they may have more information which affects the decision (**see revision and supersession below**);
- appeal against the decision.

Revision

A claimant may dispute the original decision by asking the decision maker to look at the decision again. This is often referred to as asking for a reconsideration of the decision (reconsideration is the checking process, it is not a legal term).

A decision may be disputed on any grounds (whether on a point of law or fact) provided the oral or written application for reconsideration is submitted within one month of the date of the original decision. Where the claimant requests and receives a written explanation of the decision (except in child support cases) within the one month the deadline is extended by 14 days; where the explanation is provided outside the one month the claimant is given an extra 14 days from the date on which the explanation is provided.

If the application is successful the revision is effective from the date of the original decision, provided the reconsideration request was submitted within the one month time limit above. Where a revision is made, any arrears are payable from that date. If the original decision is not revised the claimant has one month from the date of refusal in which to make an appeal against the original decision; the refusal is not a separate decision.

The time limit for requesting a revision can be extended by up to a further 12 months in 'special circumstances' (set out in DWP regulations²). Applications for revision that are submitted outside the overall 13 month disputable period will not be allowed. Only supersession (see below) would be considered in this circumstance with any change taking place from the date of the application; this means that arrears would not be paid.

¹Except Child Support

²Social Security and Child Support (Decisions and Appeals) Regulations 1999, Reg. 4

Supersession

This is when, for example, a change has occurred in a claimant's circumstances subsequent to the date the original decision was made or where it can be shown that the decision was made in ignorance or mistake as to a material fact. In such a case a notification of an advantageous change of circumstances must reach the decision maker within one month of it occurring if the customer is to benefit fully from the change.

A notification made outside of one month will only be accepted as made in time if there are special circumstances for not acting within one month. The extended period is a maximum of 12 months. Outside this period the notification can only be effective from the date it is received. No arrears are paid.

Appeals

Appeals to the First-Tier Tribunal are initially sent to DWP. On receipt of an appeal, the decision maker will first reconsider the original decision. This is reflected in Departmental guidance. There is no legal requirement on DWP to consider whether to revise the decision when an appeal is received. If the decision is revised to the claimant's advantage, the appeal is 'lapsed' (it does not proceed and no further action is taken).

There is a right of appeal against the new revised decision. Where the decision is revised to the claimant's disadvantage the claimant has a month from the date of notification of the revised decision to make further representation. If no change is made following representation the appeal is made against the revised decision.

There is a right of appeal, with permission, against a First-tier Tribunal decision to the Upper Tribunal and beyond that to the courts, but on a point of law only.

Vaccine Damage Payments

Vaccine Damage Payments are a one-off payment that can be claimed by claimants who are severely disabled as a result of a vaccination against certain diseases. Claimants who wish to dispute a decision on a claim for Vaccine Damage Payment must currently request a revision within 6 years. However, there is no time limit for appealing a Vaccine Damage Payment decision.

The Department is proposing to remove the time limit for claimants to request reconsideration of a Vaccine Damage Payment decision so that appeal rights are not adversely affected by the requirement to have first applied for the decision to be revised.

Benefits Administered by Her Majesty's Revenue and Customs (HMRC)

Responsibility for the policy, administration and for making regulations for Child Benefit and Guardian's Allowance, including under clause 100 of the Bill lies with HMRC. Child Benefit and Guardian's Allowance appeals are, therefore, not included in the draft regulations attached to this consultation paper.

HMRC however, are proposing that any changes to the DWP appeals process, following the outcome of the consultation, are also applied to the appeals processes for Child Benefit and Guardian's Allowance.

The need for change

The Department and HMCTS are working jointly to make improvements to the process for claimants disputing decisions. In recent years the volume of appeals has been increasing, from 242,300 in 2008/2009 to 418,500 in 2010/2011. This adversely affects the service delivered to claimants and puts pressure on both the Department and HMCTS in administering appeals.

The Department believes the changes proposed will deliver a fair and efficient system for claimants who do not agree with a decision made on their benefit claim or child support case.

Although many other improvements have been put in place by both HMCTS and DWP, the Department wants to resolve more disputes with claimants through the reconsideration process, before the claimant appeals to the tribunal. A claimant can already ask for a decision to be reconsidered by a decision maker, which may result in a revised decision. In practice many people do not do so and instead make an appeal from the outset.

Recent reports, including the review of the Work Capability Assessment by Professor Malcolm Harrington³ and the Work and Pensions Committee report on Incapacity Benefit Reassessment⁴ have also increased the focus on raising the quality of decision making.

Requiring those who disagree with a decision to ask for it to be reconsidered before they are able to appeal will allow a claimant to make an informed decision to appeal based on a clear justification and explanation of the original decision and a robust reconsideration. The claimant would have to make a positive choice to appeal following reconsideration.

³ "An Independent Review of the Work Capability Assessment", Professor Malcolm Harrington, November 2010

⁴ Work and Pensions Committee – Sixth Report: The role of incapacity benefit reassessment in helping claimants into employment, 13 July 2011.

The current improvement programme

The Department, in conjunction with the Ministry of Justice and HMCTS, has an ongoing programme aimed at delivering improvements to the reconsideration and appeals process for social security benefits.

This programme has delivered improvements in a number of areas, including:

Improvements to decision making

- The Jobcentre Plus Director of Benefit Centres hosts a regular conference call for decision makers keeping them informed of initiatives to improve quality and effectiveness.
- Jobcentre Plus has developed new learning and development packages focused on equipping decision makers with the skills they need to consistently make good quality decisions.
- Decision maker training reflects findings from the Harrington report in relation to the decision makers role in the Work Capability Assessment process.

Improvements to the reconsideration process

- Piloted, and subsequently rolled out nationally, a revised reconsideration process for Employment Support Allowance appeals where the disputed decision is reconsidered by a different officer to the one who made the original decision and the outcome of the reconsideration is notified by telephone to the claimant.

Improvements to the appeal process

- The Department has worked with colleagues in HMCTS to deliver capacity to deal with more appeals and reduce the backlog of appeals.

The Department is keen to build on this work.

Question 1

Please give us your views on how the decision making and appeals standards can be further improved.

New appeal process

Under the new approach, the claimant and other persons would go through the reconsideration process before being able to make an appeal to the tribunal. This new approach would increase the likelihood that the decision to appeal would be informed by the claimant's, or other's, view of whether reconsideration had provided them with an adequate 'second opinion', as well as a clear justification for the original decision. It is anticipated that some claimants, and other persons, having followed the reconsideration process, may decide not to appeal. Others might simply have moved on from their original wish to dispute the decision.

In contrast to the current position, after the reconsideration process, claimants and others would have to make a positive choice to appeal. The change may also result, therefore, in fewer appeals proceeding to the tribunal as a result of claimants and other persons not taking action to withdraw appeals they no longer consider necessary. In addition the new power enables any purported appeals sent erroneously in advance of the reconsideration process to be treated as an application for revision.

The Department, in conjunction with HMCTS, is also planning changes that will affect how an appeal is lodged. HMCTS and the Department are planning to introduce legislation that will require appeals to be lodged directly with the First-tier Tribunal, rather than with DWP as they are now. The scope of this change is expected to include social security benefits, child support cases, and other decisions related to vaccine damage payments; the recovery of benefits; and payments in respect of mesothelioma.

This brings the appeals process for Social Security and Child Support in line with other users of HMCTS and allows the Department to focus on its proper role as a party to appeals, rather than being involved in the administration of appeal requests.

Once implemented, this change will mean that all Social Security and Child Support appeals will be sent directly to HMCTS by claimants.

Following implementation of these changes, if a claimant or other person appeals without first asking for the decision to be revised, the Welfare Reform Bill allows for the "purported appeal" to be treated as an application for revision by DWP. Arrangements for handling purported appeals received by HMCTS will be agreed between the Department and HMCTS but are likely to involve HMCTS

returning the purported appeal to the applicant and directing them to apply to DWP for a reconsideration, with advice on how to do so.

The flow chart in **Annex A** demonstrates the current process and how this may look in the future.

The step-by step process would be as follows:

1. A claimant or other person who wishes to dispute a decision on their benefit claim would have an initial choice of requesting an explanation of the decision and a statement of reasons⁵; or could immediately request that the decision is reviewed. This is a change from the existing process since making an appeal at the outset will no longer be an option.
2. In line with the current process, claimants who request a written statement of reasons can subsequently request a review if they still do not agree with the decision⁶.
3. Claimants or other persons, can still request a review by telephone or in writing, as they can under the current process. There is no requirement to complete any particular form.
4. The Department does not propose any change to the existing time limits for requesting a review (except for vaccine damage).
5. The Decision Maker would then reconsider the disputed decision, obtaining any additional evidence required. The outcome of the reconsideration would be notified to the claimant in writing and whenever possible an explanation will be given by telephone. Greater emphasis will be placed on ensuring that claimants, and others, have the opportunity to provide any relevant evidence that may inform the outcome of the reconsideration.

There is currently no time limit for the Department to complete the reconsideration of a decision. Decisions made and reconsidered by Decision Makers can vary considerably in complexity so this activity is not considered suitable for a generic time limit.

⁵ Statement of reasons does not apply in Child Support cases.

⁶ Not applicable in Child Support cases.

6. The outcome of the reconsideration could either be a revision of the original decision, or the decision maker may refuse to revise the decision if there is no reason to revise it.
7. The claimant would now be able to appeal against the original decision. An appeal could be made regardless of the outcome of the reconsideration, so if the decision maker revised the decision, but the claimant still did not agree, the claimant would be able to appeal to an independent tribunal.
8. Appeals against decisions in Social Security benefits, Child Support, or other decisions related to vaccine damage payments; the recovery of benefits; and payments in respect of mesothelioma, will be made directly with HMCTS. The exact requirements of the appeal request, whether it will be in writing and how claimants can show that the decision being appealed has been reconsidered by the Department are being considered by HMCTS and the Department.
9. On receipt of an appeal the Decision Maker will consider whether any additional information has been supplied, that was not available at the reconsideration stage, and will enable him/her to revise the decision. If the decision is revised in the claimant's or other's favour the appeal will lapse in line with the current process.
10. The Department's response to the appeal will be prepared and then copies of the paperwork will be issued to HMCTS, the appellant and their representative.

Currently, there is no specified time limit within which the Department must send the appeal and the response to the HMCTS. The reasons for this are:

- under the current process reconsideration occurs after the appeal has been received and the two processes of reviewing the decision and preparing the appeal response cannot be disaggregated;
- a significant proportion of appeals lapse following reconsideration;
- because the length of time taken by the reconsideration process is unpredictable.

However, different considerations will apply under the proposed process. The reconsideration process will be completed before an appeal is lodged, and if the claimant chooses to appeal they apply direct to HMCTS. The details of the appeal will then be sent to the Department to prepare its response.

The Department accepts that, under the proposed process, it should be required to send the response to the tribunal within a specified time after receiving a copy of the appeal from the tribunal. Detailed proposals are being discussed with the Tribunal Procedure Committee.

Example

Tom makes a claim for Disability Living Allowance.

The decision maker decides that the residence and presence conditions are not met and the claim is disallowed.

Tom disagrees with the decision and requests that it is reconsidered, providing further information.

A second decision maker looks at the claim again and decides that the residence and presence conditions are met, however the disability conditions are not met and so refuses to revise the decision to disallow the claim.

Tom is contacted by telephone and the decision is explained. A written notification is also issued.

During the conversation, and in the written notification that follows, Tom is notified that he may appeal against the decision not to pay Disability Living Allowance.

Child Support

The process with regard to Child Support decision may vary from the above for some cases as unlike DWP appeals, Child Support cases do not involve a benefit issue between the claimant and the Agency.

Child Support cases are by their very nature complicated in that there are two other parties involved i.e. the Non-Resident Parent (NRP) and Person With Care (PWC). The fact that Child Support is involved usually indicates the relationship has broken down and there can be issues in the parties cooperating and providing information regarding income, domestic arrangements etc.

Either party in a Child Support case will be able to request a review of a decision, and either party will also be able to appeal once the review has been completed, i.e. both parties may appeal, despite only one of them requesting a review.

Because of having to satisfy two parties to a case, as opposed to a single party as in benefit appeals, even "simple" Child Support appeals are inherently more complex than the majority of appeals against State Benefits. HMCTS acknowledge the complexity of cases and for this reason presenting officers attend most hearings.

Question 2

Do the proposed changes go far enough in order to deliver a fair and efficient process?

Types of appeal to which the new measure would apply

It is proposed that the new measure would apply to all Social Security and Child Support decisions that are appealable⁷ (subject to what is said below about business areas, benefits and payments).

Business areas, benefits and payments

Initial proposals are that this new provision (Clause 100 and schedule 11 of the Welfare Reform Bill) would apply to all Social Security Benefit and Child Support decisions which carry appeal rights, with the only exception being Housing Benefit (HB) and Council Tax Benefit (CTB).

This is likely to be on a phased approach across the different benefits. A list of the key benefits and payments that it is proposed to include is at **Annex B**.

It is proposed to exclude HB/CTB because

- HB new claims for working age will transfer to Universal Credit from October 2013 with other existing claims transferring by 2017.
- HB claims for those of pension age will transfer to Pension Credit from October 2014 over a three year period.
- CTB is expected to be replaced with localised support from April 2013 – policy in development
- Funding would need to be made available for 380 individual local authorities responsible for administering HB/CTB. This would be for I.T. changes, training and amendments to existing forms and leaflets.
- Any change would have a long lead in time
- Local authorities already have a number of major changes to implement over the next 2 years, including a need to prepare claims and claimants for transition from HB and CTB onto new benefits e.g. Universal Credit.
- The investment that would be required to update IT systems, train local authority staff and amend forms and leaflets for the remaining time that Housing and Council Tax Benefits will be in payment cannot be justified.

⁷ A full list of appealable decisions can be found in Schedule 3 of the Social Security Act 1998

Implementation

The Department proposes to implement the changes to the appeals process from April 2013.

The change is planned so that the Department may opt to introduce it in stages by benefit as soon as our IT capacity allows. Detailed feasibility work has been carried out by the Department's IT contractors and this will inform our plans.

Changes to child support will align with the new scheme in July 2013.

Individual businesses in the Department have all been involved in planning for the change and are prepared for the move to implementation.

Draft Regulations

Draft Regulations have been included in this consultation document at Annex C. The regulations have been drafted reflecting the assumptions we have noted in this document, for instance excluding Housing Benefit, and are subject to the affirmative procedure in Parliament.

Question 3

Please give us your views on whether the draft regulations (Annex C) meet the intention as described in the summary section of this consultation document.

Question 4

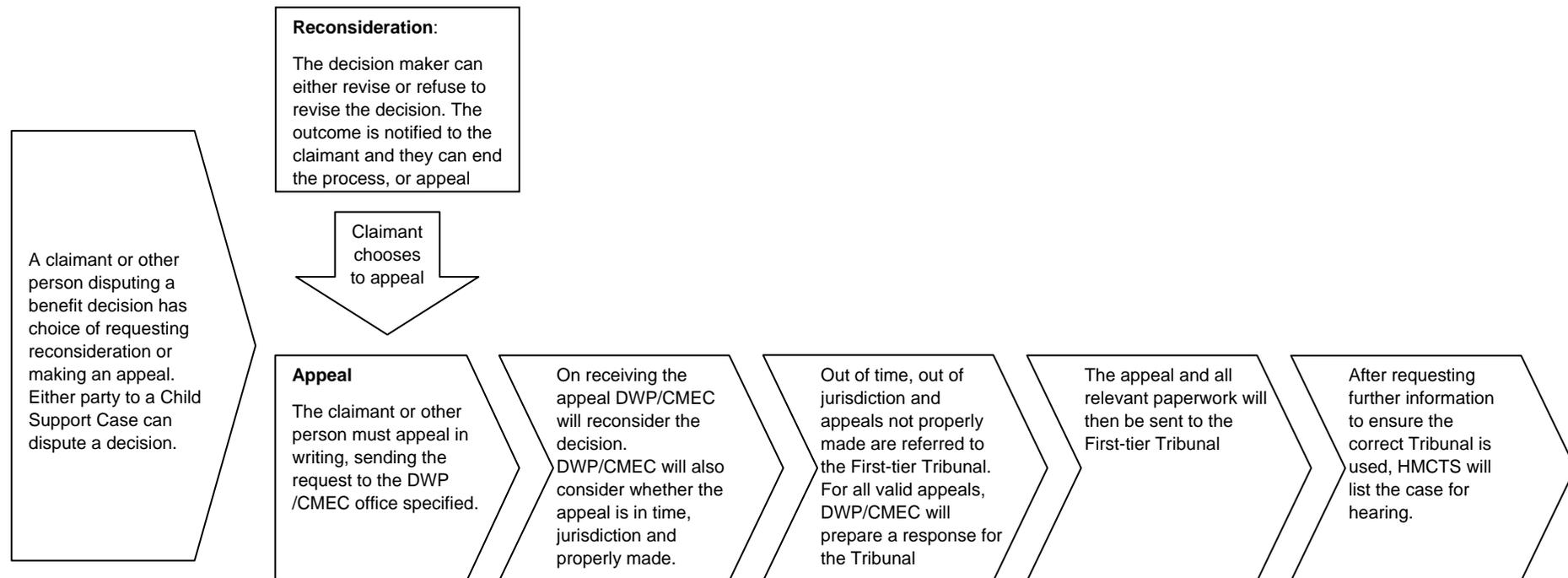
Please let us have any specific comments about the draft regulations the you would like us to consider.

Questions to consider

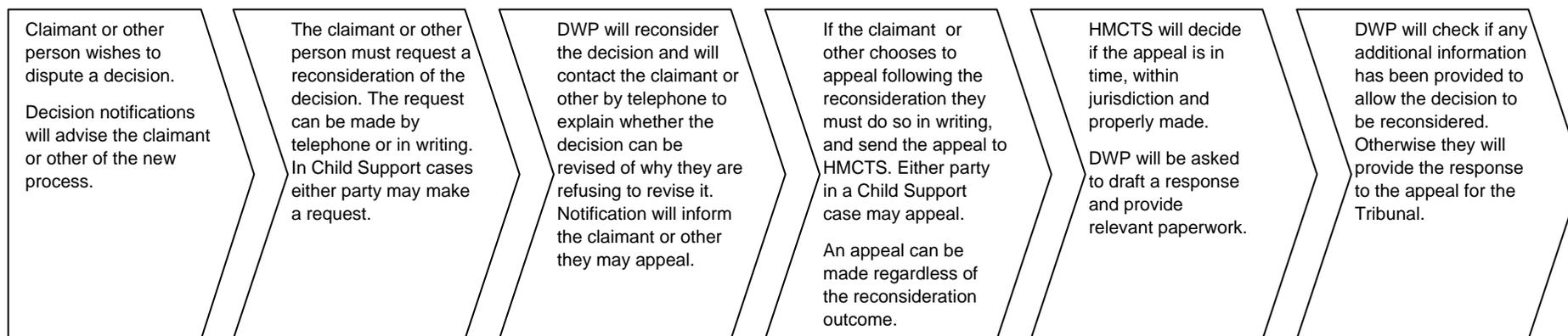
- 1. Please give us your views on how the decision making and appeals standards can be further improved.**
- 2. Do the proposed changes go far enough in order to deliver a fair and efficient process?**
- 3. Please give us your views on whether the draft regulations (Annex C) meet the intention as described in the summary section of this consultation document.**
- 4. Please let us have any specific comments about the draft regulations that you would like us to consider.**

Annex A – Process flow diagrams

Current process flow



Proposed process flow



Annex A – Process flow (text version)

Current process flow:

- A claimant or other person disputing a benefit decision has choice of requesting reconsideration or making an appeal. Either party to a Child Support Case can dispute a decision.

Reconsideration:

- The decision maker can either revise or refuse to revise the decision. The outcome is notified to the claimant and they can end the process, or appeal.

Appeal:

- The claimant or other person must appeal in writing, sending the request to the DWP /CMEC office specified.
- On receiving the appeal DWP/CMEC will reconsider the decision. DWP/CMEC will also consider whether the appeal is in time, jurisdiction and properly made.
- Out of time, out of jurisdiction and appeals not properly made are referred to the First-tier Tribunal.
For all valid appeals, DWP/CMEC will prepare a response for the Tribunal.
- The appeal and all relevant paperwork will then be sent to the First-tier Tribunal.
- After requesting further information to ensure the correct Tribunal is used, HMCTS will list the case for hearing.

Proposed process flow:

- Claimant or other person wishes to dispute a decision.
Decision notifications will advise the claimant or other of the new process.
- The claimant or other person must request a reconsideration of the decision.
The request can be made by telephone or in writing. In Child Support cases either party may make a request.
- DWP will reconsider the decision and will contact the claimant or other by telephone to explain whether the decision can be revised or why they are refusing to revise it. Notification will inform the claimant or other they may appeal.
- If the claimant or other chooses to appeal following the reconsideration they must do so in writing and send the appeal to HMCTS. Either party in a Child Support case may appeal.
An appeal can be made regardless of the reconsideration outcome.
- HMCTS will decide if the appeal is in time, within jurisdiction and properly made.
DWP will be asked to draft a response and provide relevant paperwork.
- DWP will check if any additional information has been provided to allow the decision to be reconsidered. Otherwise they will provide the response to the appeal for the Tribunal.

Annex B – Principal list of Benefits and payments to be included

Employment Support Allowance
Disability Living Allowance/Attendance Allowance
Carer's Allowance
Carer's Credit
Jobseeker's Allowance
Income Support
Industrial Injuries Disablement Benefit
Social Fund Payments:

- Sure Start Maternity Payments
- Funeral Payments
- Cold Weather Payments

Child Support
Pension Credit
Personal Independence Payment
State Pension
Bereavement Benefit
Widowed Parent's Allowance
Bereavement Allowance & Bereavement Payment
Compensation Recovery
Vaccine Damage Payments
Mesothelioma Scheme
Universal Credit

Note: Housing Benefit and Council Tax to be excluded

Annex C – Draft Regulations

Draft Regulations laid before Parliament under section 80(1) of the Social Security Act 1998, section 4(2A)(b) of the Vaccine Damage Payments Act 1979, section 52(2)(a) of the Child Support Act 1991, section 30(2A) of the Social Security (Recovery of Benefits) Act 1997 and section 53(3) of the Child Maintenance and Other Payments Act 2008, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2012 No.

SOCIAL SECURITY

PUBLIC HEALTH

The Social Security, Child Support, Vaccine Damage and Other Payments (Consideration of Revision before Appeal) Regulations 2012

Made - - - - - ***
Coming into force - - - - - ***

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by:

- sections 9(1), 12(3A), (7)(b), 79(4), (6) and (7) and 84 of the Social Security Act 1998(**a**),
- sections 3A(3), 4(1B), (2)(c), 8(1), (2)(b) and (5) of the Vaccine Damage Payments Act 1979(**b**),
- sections 20(2A) and (4)(c) (as substituted by section 10 of the Child Support, Pensions and Social Security Act 2000)(**c**) and 52(4) of the Child Support Act 1991(**d**),
- sections 20(3A) and (5)(c) (as it has effect apart from section 10 of the Child Support, Pensions and Social Security Act 2000) and 52(4) of the Child Support Act 1991(**e**),

(a) 1998 c. 79 (“the 1998 Act”). Section 12 was amended by S.I. 2008/2833 and by sections 18 and 26(3) of and Schedule 7 to, the Social Security (Transfer of Functions etc.) Act 1999 (c. 2) Regulation 84 is cited for the meaning of “prescribe”.
(b) 1979 c. 17. Section 3A was inserted by section 45 of the 1998 Act and was amended by S.I. 2008/2833 and section 67 of , and Schedule 8 to, the Welfare Reform Act 2007 (c. 5) (“the 2007 Act”). Regulation 4 was substituted by section 46 of the 1998 Act and was amended by amended by sections 57 and 63 of, and Schedule 7 to, the 2007 Act, S.I. 2008/2833,
(c) 2000 c.19.
(d) 1991 c. 48. Section 20 was amended by S.I. 2008/2833.
(e) 1991 c. 48.. Section 20 was amended by S.I. 2008/2833.

–sections 11(2A), (5)(c) and 30(4) of the Social Security (Recovery of Benefits) Act 1997(f), and

–sections 49(2), 50(1A), (4)(c) 53(1), (2)(b), (2A) and 53(2) and (2A) of the Child Maintenance and Other Payments Act 2008(g).

In so far as these regulations are made under a relevant enactment for the purposes of section 172 of the Social Security Administration Act 1992(h), this instrument contains only regulations made by virtue of, or consequential upon, section 100 of the Welfare Reform Act 2011(i) and is made before the end of the period of six months beginning with the coming into force of that section(j).

[A draft of this instrument was laid before Parliament in accordance with section 80(1) of the Social Security Act 1998, section 4(2A)(b) of the Vaccine Damage Payments Act 1979, section 52(2)(a) of the Child Support Act 1991, section 30(2A) of the Social Security (Recovery of Benefits) Act 1997 and section 53(3) of the Child Maintenance and Other Payments Act 2008 and approved by resolution of each House of Parliament.]

Citation and commencement

1. These Regulations may be cited as the Social Security, Child Support, Vaccine Damage and Other Payments (Consideration of Revision before Appeal) Regulations 2012 and come into force 28 days after the day on which they are made.

Amendment of the Social Security and Child Support (Decisions and Appeals) Regulations 1999

2.—(1) The Social Security and Child Support (Decisions and Appeals) Regulations 1999(k) are amended as follows.

(2) In regulation 3(1)(b) (revision of decisions)(l) after “regulation 28” in both places it occurs, insert “or regulation 24A(3)(b)”.

(3) After regulation 3A (revision of child support decisions)(m), insert—

“Consideration of revision before appeal

3B.—(1) This regulation applies in a case where—

- (a) the Commission gives a person written notice of a decision; and
- (b) that notice includes a statement to the effect that an appeal lies to the First-tier Tribunal against the decision only if the Commission has first considered whether to revise the decision.

(2) In a case to which this regulation applies, a person has a right of appeal against the decision only if the Commission has considered on an application whether to revise the decision under section 16 of the Child Support Act.

(3) Where, as the result of the application of this regulation, there is no right of appeal against a decision, the Commission may treat any purported appeal as an application for revision under section 16 of that Act.

(f) 1997 c. 27. Section 11 was amended by section 86 of, and Schedule 7 to, the 1998 Act, section 59 of, and Schedule 11 to, the Constitutional Reform Act 2005 (c. 4) and S.I. 2008/2833.

(g) 2008 c. 6.

(h) 1992 c. 5 (“the 1992 Act”). See section 170 for the relevant enactments.

(i) 2011 c. [].

(j) See section 173(5) of the 1992 Act.

(k) S.I. 1999/991.

(l) Relevant instruments are S.I. 1999/2570 and S.I. 2002/1379. Regulation 3 was revoked, in so far as it relates to child benefit and guardian’s allowance, by S.I. 2003/916.

(m) Regulation 3A was inserted by S.I. 2000/3185 and was revoked, in so far as it relates to child benefit and guardian’s allowance, by S.I. 2003/916.

(4) In this regulation, “decision” has the same meaning as in regulation 3A(3) (revision of child support decisions).”.

(4) In regulation 4 (late application for a revision)—

(a) in paragraph (3)(b), after “28(1)(b)” insert “or 24A(3)(b)”;

(b) at the end of paragraph (4)(b) insert “, except in a case to which regulation 3B or 24A applies”.

(5) After regulation 9ZA (review of certificates)(n), insert—

“Consideration of review before appeal

9ZB.—(1) This regulation applies in a case where—

(a) the Secretary of State has issued a certificate of recoverable benefits or certificate of recoverable lump sum payments; and

(b) that certificate is accompanied by a notice to the effect that an appeal lies to the First-tier Tribunal against the certificate only if the Secretary of State has reviewed the certificate.

(2) In a case to which this regulation applies, an appeal may be made under section 11 of the 1997 Act against the certificate only if the Secretary of State has on an application reviewed the certificate under section 10 of that Act.”.

(6) Immediately before regulation 25 (other persons with a right of appeal), insert—

“Consideration of revision before appeal

24A.—(1) This regulation applies in a case where—

(a) the Secretary of State gives a person written notice of a decision; and

(b) that notice includes a statement to the effect that an appeal lies to the First-tier Tribunal in relation to the decision only if the Secretary of State has first considered an application for a revision of the decision.

(2) In a case to which this regulation applies, a person has a right of appeal under section 12(2) in relation to the decision only if the Secretary of State has considered on an application whether to revise the decision under section 9.

(3) The notice referred to in paragraph (1) must inform the person—

(a) of time limit for making an application for a revision;

(b) that, where the notice does not include a statement of the reasons for the decision, he may, within one month of the date of notification of the decision, request that the Secretary of State provide him with a written statement of the reasons for the decision.

(4) Where a written statement of the reasons for a decision is requested under paragraph (3)(b), the Secretary of State must provide that statement within 14 days of receipt of the request or as soon as practicable afterwards.

(5) Where, as the result of the application of this regulation, there is no right of appeal against a decision, the Secretary of State may treat any purported appeal as an application for a revision under section 9. ”.

(7) In regulation 25 (other persons with a right of appeal), after “section 12(2) insert “, but subject to regulation 24A,”(o).

(8) In regulation 26 (decisions against which an appeal lies), at the beginning insert “Subject to regulation 24A,”(p).

(n) Regulation 9ZA was inserted by S.I. 2008/1596 and was amended by S.I. 2008/2365 and S.I. 2008/2683.

(o) Regulation 25 was amended by S.I. 1999/2570, 2002/1379, 2004/3368 and by S.I. 2008/12683 and was revoked, in so far as it relates to child benefit and guardian’s allowance, by S.I. 2003/916.

(p) Regulation 26 was amended by S.I. 1999/2570, 2000/1596, 2001/518, 2008/2683 and by S.I. 2009/2715. Regulation 26 was revoked, in so far as it relates to child benefit and guardian’s allowance, by S.I. 2003/916.

(9) For regulation 29(6) (further particulars required relating to certificate of recoverable benefits or recoverable lump sum payments appeals)(q), substitute—

“(6) The Secretary of State may treat any—

- (a) purported appeal (where, in accordance with regulation 9ZB (consideration of review before appeal), there is no right of appeal);
 - (b) appeal relating to the certificate of recoverable benefits; or
 - (c) appeal relating to the certificate of recoverable lump sum payments,
- as an application for review under section 10 of the 1997 Act.”.

Amendment of the Vaccine Damage Payments Regulations 1979

3.—(1) The Vaccine Damage Payments Regulations 1979(r) are amended as follows.

(2) In regulation 11(2)(b) (decisions reversing earlier decisions made by the Secretary of State or appeals tribunals), for “within six years of the date on which notification of that decision was given” substitute, “at any time after notification of that decision was given but before a decision of an appeal tribunal has been made”.

(3) After regulation 11 (decisions reversing earlier decisions)(s), insert—

“Consideration of reversal before appeal

11A.—(1) This regulation applies in a case where—

- (a) the claimant’s address is not in Northern Ireland;
- (b) the Secretary of State gives a person written notice of a decision; and
- (c) that notice includes a statement to the effect that an appeal lies to the First-tier Tribunal in relation to the decision only if the Secretary of State has first considered an application to reverse the decision.

(2) In a case to which this regulation applies, a person has a right of appeal under section 4 of the Act in relation to the decision only if the Secretary of State has considered on an application whether to reverse the decision under section 3A of the Act.

(3) The notice referred to in paragraph (1) must inform the person that, where the notice does not include a statement of the reasons for the decision, he may, within one month of the date of notification of the decision, request that the Secretary of State provide him with a written statement of the reasons for the decision.

(4) Where a written statement of the reasons for a decision is requested under paragraph (3), the Secretary of State must provide that statement within 14 days of receipt of the request or as soon as practicable afterwards.]

(5) Where, as the result of the application of this regulation, there is no right of appeal against a decision, the Secretary of State may treat any purported appeal as an application to reverse the decision under section 3A of the Act.”.

Amendment of the Child Support (Maintenance Assessment Procedure) Regulations 1992

4.—(1) The Child Support (Maintenance Assessment Procedure) Regulations 1992(t) are amended as follows.

(2) In regulation 10 (notification of a new or a fresh maintenance assessment)(u), omit “under paragraph (1)”.

(q) Regulation 26(6) was amended by S.I. 2008/1596 was revoked, in so far as it relates to child benefit and guardian’s allowance, by S.I. 2003/916.

(r) S.I. 1979/432.

(s) Regulation 11 was substituted by S.I. 1999/2677.

(t) S.I. 1992/1813.

(3) After regulation 17 (revision of decision)(v), insert—

“Consideration of revision before appeal

17A.—(1) This regulation applies in a case where—

- (a) the Secretary of State gives a person written notice of a decision; and
- (b) that notice includes a statement to the effect that an appeal lies to the First-tier Tribunal against the decision only if the Secretary of State has first considered whether to revise the decision.

(2) In a case to which this regulation applies, a person has a right of appeal against the decision only if the Secretary of State has considered on an application whether to revise the decision under section 16 of the Child Support Act.

(3) Where, as the result of the application of this regulation, there is no right of appeal against a decision, the Secretary of State may treat any purported appeal as an application for revision under section 16 of that Act.

(4) In this regulation, “decision” has the same meaning as in regulation 17(7) (revision of decision).”.

(4) At the end of regulation 18(4)(b) (late application for a revision)(w), insert “, except in a case to which regulation 17A applies”.

Amendment of the Mesothelioma Lump Sum Payments (Claims and Reconsiderations) Regulations 2008

5.—(1) The Mesothelioma Lump Sum Payments (Claims and Reconsiderations) Regulations 2008(x) are amended as follows.

(2) At the end of sub-paragraph (a) of regulation 4(1) (reconsideration), omit “and”;

(3) After that sub-paragraph, insert—

“(aa) where a written statement is requested under regulation 4B(3) (reconsideration before appeal) and is provided within the period specified in sub-paragraph (a) above, be made within 14 days of the expiry of that period,

(bb) where a written statement is requested under regulation 4B(3) (reconsideration before appeal) and is provided after the period specified in sub-paragraph (a) above, be made within 14 days of the date on which the statement is provided, or

(cc) be made within such longer period as may be allowed under regulation 4A (late application for reconsideration), and.”.

(4) After regulation 4 (reconsideration), insert—

“Late application for reconsideration

4A. Where, in a case to which regulation 4B (reconsideration before appeal) applies, the Secretary of State considers there was good cause for not applying for reconsideration of a determination within the time limit specified in regulation 4(1) (reconsideration), he may extend the time limit for such period as he considers appropriate in the circumstances.

(u) Regulation 10(1) was substituted by S.I. 1999/1047, revoked (with savings) by S.I. 2001/157 and was amended by S.I. 2008/2693. Except in so far as relating to reduced benefit decisions under section 46 of the [1991 Act, the Secretary of State's functions under regulation 10](#) transferred to the Child Maintenance and Enforcement Commission by [section 13\(3\)](#) of, and [Schedule 2](#) and [3 to, the 2008 Act](#).

(v) Regulation 17 was substituted by S.I. 1999/1047. It was revoked (with savings) by S.I. 2001/157 and was amended by S.I. 2000/1596, 2004/2415 and by S.I. 2008/2543. Except in so far as relating to reduced benefit decisions under section 46 of the [1991 Act, the Secretary of State's functions under regulation 17](#) transferred to the Child Maintenance and Enforcement Commission by [section 13\(3\)](#) of, and [Schedule 2](#) and [3 to, the 2008 Act](#).

(w) Regulation 18 was substituted by S.I. 1999/1407, was revoked (with savings) by S.I. 2001/157 and was amended by S.I. 2008/2683. Except in so far as relating to reduced benefit decisions under section 46 of the [1991 Act, the Secretary of State's functions under regulation 18](#) transferred to the Child Maintenance and Enforcement Commission by [section 13\(3\)](#) of, and [Schedule 2](#) and [Schedule 3, to the 2008 Act](#).

(x) S.I. 2008/1595.

Reconsideration before appeal

4B.—(1) This regulation applies in a case where—

- (a) the Secretary of State gives a person written notice of a determination made on a claim; and
- (c) that notice includes a statement to the effect that an appeal lies to the First-tier Tribunal against the determination only if the Secretary of State has, first decided on an application whether to reconsider the determination.

(2) In a case to which this regulation applies, a person may appeal against the determination made on the claim only if the Secretary of State has decided on an application whether to reconsider the determination under section 49 of the Child Maintenance and Other Payments Act 2008 (“the 2008 Act”).

(3) The notice referred to in paragraph (1) must inform the person—

- (a) of time limit for making an application for reconsideration of the determination;
- (b) that, where the notice does not include a statement of the reasons for the determination, he may, within one month of the date of notification of the determination, request that the Secretary of State provide him with a written statement of the reasons for the determination.

(4) Where a written statement of the reasons for a decision is requested under paragraph (3)(b), the Secretary of State must provide that statement within 14 days of receipt of the request or as soon as practicable afterwards.

(5) Where, as the result of the application of this regulation, there is no right of appeal against a determination, the Secretary of State may treat any purported appeal as an application for reconsideration of the determination under section 49 of the 2008 Act.”.

Signed by authority of the Secretary of State for Work and Pensions

Date

Name
Parliamentary Under-Secretary of State
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Social Security and Child Support (Decisions and Appeals) Regulations 1999 (S.I.1999/991) (“the Decisions and Appeals Regulations”) to enable the Secretary of State to require a person to apply for a social security decision to be revised pursuant to section 9 of that Act before the person is permitted to appeal to the First-tier Tribunal (*see* new regulation 24A of the Decisions and Appeals Regulations, as inserted by regulation 2(6) of these Regulations).

The restriction applies where the Secretary of State gives a person written notice to that effect. In such cases, a person has a right to appeal only if the Secretary of State has considered whether to revise the decision.

These Regulations also make provision for the Secretary of State to treat a purported appeal as an application for a revision in such cases (regulation 24A(5) of the Decisions and Appeals Regulations, as inserted by regulation 2(6) of these Regulations).

They also amend regulations so as to make similar provision in the case of certain other appeals. These are:

- child support appeals (regulations 2(3) and 4)

- appeals against certificates of recoverable benefits and certificates of recoverable lump sum payments (regulation 2(5))
- appeals relating to vaccine damage payments (regulation 3)
- appeals relating to payments in respect of mesothelioma (regulation 5).

These Regulations also make consequential provision enabling a person who must apply for a decision to be revised before being permitted to appeal to request a written statement of reasons for the decision, specifying the time within which that statement is to be provided (new regulation 24A(3) and (4) of the Decisions and Appeals Regulations) and for extending the time in which a person is able to make an application for a decision to be revised (see regulation 2(2)).

Regulations 3 and 5 make similar amendments to, respectively, the Vaccine Damage Payments Regulations 1979 (S.I. 1979/432) and the Mesothelioma Lump Sum Payments (Claims and Reconsiderations) Regulations 2008 (S.I. 2008/1595), except that in the case of vaccine damage decisions, the regulations make provision for an application for a decision to be reversed to be made at any time irrespective of whether the person is required to make such an application before being permitted to appeal.

A full impact assessment has not been produced for this instrument as it has no impact on the private sector or civil society organisations.