

2002/3196

# Tax Credits (Appeals) (No 2) Regulations 2002

Made by the Secretary of State for Work and Pensions under SSA 1998 ss 7(6), 12(2) and (7), 14(10) and (11), 16(1), 28(1), 39(1), 79(1) and (3) to (7) and 84, and Sch 1 paras 11, 12 and Sch 5, and after consultation with the Council on Tribunals in accordance with section 8 of the Tribunals and Inquiries Act 1992

*Made 18 December 2002*

*Coming into force 1 January 2003*

[MAIN]

## Part 1 General

### 1 Citation, commencement, duration and interpretation

- (1) These Regulations may be cited as the Tax Credits (Appeals) (No 2) Regulations 2002 and shall come into force on 1st January 2003.
- (2) These Regulations shall cease to have effect on such day as is appointed by order made under section 63(1) of the Tax Credits Act 2002 (tax credits appeals etc: temporary modifications).
- (3) In these Regulations, unless the context otherwise requires—

### [DEFINITIONS]

“the Act” means the Social Security Act 1998;

“the 2002 Act” means the Tax Credits Act 2002;

“the Appeals Regulations” means the Tax Credits (Appeals) Regulations 2002;

“the Decisions and Appeals Regulations” means the Social Security and Child Support (Decisions and Appeals) Regulations 1999;

“the Working Tax Credit Regulations” means the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002;

“appeal” means an appeal under section 38 of the 2002 Act;

“an application for a direction” means an application for a direction to close down an enquiry made under section 19(9) of the 2002 Act;

...<sup>2</sup>

...;<sup>2</sup>

[“couple” means—

- (a) a man and woman who are married to each other and are members of the same household;
- (b) a man and woman who are not married to each other but are living together as husband and wife;
- (c) two people of the same sex who are civil partners of each other and are members of the same household; or
- (d) two people of the same sex who are not civil partners of each other but are living together as if they were civil partners,

and for the purposes of paragraph (d), two people of the same sex are to be regarded as living together as if they were civil partners if, but only if, they would be regarded as living together as husband and wife were they instead two people of the opposite sex;<sup>1</sup>

“court” means the High Court, the Court of Appeal, the Court of Session, the High Court or Court of Appeal in Northern Ireland, the House of Lords or the Court of Justice of the European Community;

...<sup>2</sup>

...<sup>2</sup>

...<sup>2</sup>

“joint claim” means a claim made under section 3(3)(a) of the 2002 Act and any reference in these Regulations to “joint claimant” shall be construed accordingly;

...<sup>2</sup>

...<sup>2</sup>

...<sup>2</sup>

...<sup>2</sup>

...<sup>2</sup>

“partner” means...<sup>1</sup> the other member of [a couple]<sup>1</sup>;

“party to the proceedings” means the Board and any other person—

- (a) who is an appellant in an appeal brought against a decision or determination set out in section 38 of the 2002 Act;
- (b) who is an applicant for a direction to close down an enquiry under section 19(9) of the 2002 Act;
- (c) who is a defendant (or defender) in penalty proceedings brought under paragraph 3 of Schedule 2 to the 2002 Act;
- (d) who is a person with a right of appeal or a right to make an application for a direction under regulation 3;

...<sup>2</sup>

...<sup>2</sup>

...<sup>2</sup>

“single claim” means a claim made under section 3(3)(b) of the 2002 Act;

“tax credit” means child tax credit or working tax credit, construing those terms in accordance with section 1(1) and (2) of the 2002 Act, and any reference in these Regulations to “child tax credit” or “working tax credit” shall be construed accordingly.

**DEFINITIONE**

**#CommentB**

### Amendments—

**#EndnotesB**

- 1 Definition of “couple” inserted, words in definition of “partner” revoked and substituted by the Civil Partnership (Pensions, Social Security and Child Support) (Consequential, etc Provisions) Order 2005, SI 2005/2877 reg 2(2), Sch 3 para 36(2) with effect from 5 December 2005.
- 2 Definitions of “a case”, “clerk to the appeal tribunal”, “the date of notification”, “decision”, “financially qualified panel member”, “legally qualified panel member”, “medically qualified panel member”, “panel”, “panel member”, “panel member with a disability qualification”, “penalty determination”, “penalty proceedings” and “President” revoked, by the Tribunals, Courts and Enforcement Act 2007 (Transitional and Consequential Provisions) Order, SI 2008/2683 art 6(1), Sch 1 paras 204, 205 with effect from 3 November 2008.

**#EndnotesE**

**#CommentE**

## 2 Service of notices or documents

Where, by any provision of these Regulations—

- (a) any notice or other document is required to be given or sent ...<sup>1</sup> to the Board, that notice or document shall be treated as having been so given or sent on the day that it is received ...<sup>1</sup> by the Board, and
- (b) any notice or other document is required to be given or sent to any person other than ...<sup>1</sup> the Board, that notice or document shall, if sent to that person's last known address, be treated as having been given or sent on the day that it was posted.

**#CommentB**

### Amendments—

**#EndnotesB**

- 1 In sub-para (a), (b), words revoked by the Tribunals, Courts and Enforcement Act 2007 (Transitional and Consequential Provisions) Order, SI 2008/2683 art 6(1), Sch 1 paras 204, 206 with effect from 3 November 2008.

## Part 2

### General Appeal Matters

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

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

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

the following other persons have a right of appeal to [the First-tier Tribunal]<sup>2</sup> or a right to make an application for a direction—

- (i) a receiver appointed by the Court of Protection with power to make a claim for a tax credit on behalf of the person;
- (ii) in Scotland, a [judicial factor, or guardian acting or appointed under the Adults with Incapacity (Scotland) Act 2000 who has power to claim, or as the case may be, receive a tax credit on his behalf]<sup>1</sup> who is administering the estate of the person;
- (iii) a person appointed under regulation 33(1) of the Social Security (Claims and Payments) Regulations 1987 (persons unable to act);
- (iv) where there is no person mentioned in sub-paragraph (iii) in relation to the person who is unable to act, a person who has applied in writing to the Board to be appointed to act on behalf of the person who is unable to act and, if a natural person, is aged 18 years or more and who has been so appointed by the Board for the purposes of this sub-paragraph.

#CommentB

#### Amendments—

#EndnotesB

- 1 Words substituted by the Social Security, Child Support and Tax Credits (Miscellaneous Amendments) Regulations, SI 2005/337 reg 4(1), (2) with effect from 18 March 2005.
- 2 Words substituted by the Tribunals, Courts and Enforcement Act 2007 (Transitional and Consequential Provisions) Order, SI 2008/2683 art 6(1), Sch 1 paras 204, 207 with effect from 3 November 2008.

#### 4 Time within which an appeal is to be brought

(1) Where a dispute arises as to whether an appeal was brought within the time limit specified in section 39(1) of the 2002 Act, the dispute shall be referred to, and be determined by, [the First-tier Tribunal]<sup>1</sup>.

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

**#CommentB**

## Amendments—

**#EndnotesB**

1 Words substituted by the Tribunals, Courts and Enforcement Act 2007 (Transitional and Consequential Provisions) Order, SI 2008/2683 art 6(1), Sch 1 paras 204, 208 with effect from 3 November 2008.

**#EndnotesE**

**#CommentE**

## 5 Late appeals

(1) [The Board may treat a late appeal as made in time]<sup>1</sup> where the conditions specified in paragraphs [(4)]<sup>1</sup> to (8) are satisfied, but no appeal shall in any event be brought more than one year after the expiration of the last day for appealing under section 39(1) of the 2002 Act.

(2), (3) ...<sup>1</sup>

[(4) An appeal may be treated as made in time if the Board is satisfied that it is in the interests of justice.]<sup>1</sup>

(5) For the purposes of paragraph (4) it is not in the interests of justice to [treat the appeal as made in time unless the Board are]<sup>1</sup> satisfied that—

- (a) the special circumstances specified in paragraph (6) are relevant ...<sup>1</sup>; or
- (b) some other special circumstances exist which are wholly exceptional and relevant ...<sup>1</sup>,

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

(6) For the purposes of paragraph (5)(a), the special circumstances are that—

- (a) the applicant or a partner or dependant of the applicant has died or suffered serious illness;
- (b) the [appellant]<sup>1</sup> is not resident in the United Kingdom; or
- (c) normal postal services were disrupted.

(7) In determining whether it is in the interests of justice to [treat the appeal as made in time]<sup>1</sup>, regard shall be had to the principle that the greater the amount of time that has elapsed between the expiration of the time within which the appeal is to be brought under section 39(1) of the 2002 Act and the [submission of the notice of appeal, the more compelling should be the special circumstances.]<sup>1</sup>

(8) In determining whether it is in the interests of justice to [treat the appeal as made in time]<sup>1</sup>, no account shall be taken of the following—

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

(9)–(11)<sup>1</sup>

**#CommentB**

### Amendments—

**#EndnotesB**

- 1 In para (1), words substituted, reference substituted, paras (2), (3), (9)–(11) revoked, para (4) substituted, in para (5), words substituted and words revoked in both places, in paras (6) (7),(8) words substituted, by the Tribunals, Courts and Enforcement Act 2007 (Transitional and Consequential Provisions) Order, SI 2008/2683 art 6(1), Sch 1 paras 204, 209 with effect from 3 November 2008.

**#EndnotesE**

**#CommentE**

## 6 Making of an application for an extension of time

**#CommentB**

### Amendments—

Paras 6, 7, 9–27 revoked by the Tribunals, Courts and Enforcement Act 2007 (Transitional and Consequential Provisions) Order, SI 2008/2683 art 6(1), Sch 1 paras 204, 210 with effect from 3 November 2008.

**#CommentE**

## 7 Making an application for a direction

**#CommentB**

### Amendments—

Paras 6, 7, 9–27 revoked by the Tribunals, Courts and Enforcement Act 2007 (Transitional and Consequential Provisions) Order, SI 2008/2683 art 6(1), Sch 1 paras 204, 210 with effect from 3 November 2008.

**#CommentE**

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

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

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

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

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

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

## Part 3

### Appeal Tribunals for Tax Credits

#### Chapter 1

#### Appeal Tribunals

##### 9 Composition of appeal tribunals

#CommentB

##### Amendments—

Paras 6, 7, 9–27 revoked by the Tribunals, Courts and Enforcement Act 2007 (Transitional and Consequential Provisions) Order, SI 2008/2683 art 6(1), Sch 1 paras 204, 210 with effect from 3 November 2008.

#CommentE

##### 10 Assignment of clerks to appeal tribunals: function of clerks

#CommentB

##### Amendments—

Paras 6, 7, 9–27 revoked by the Tribunals, Courts and Enforcement Act 2007 (Transitional and Consequential Provisions) Order, SI 2008/2683 art 6(1), Sch 1 paras 204, 210 with effect from 3 November 2008.

#CommentE

## Chapter 2 Procedure in Connection with Determination of Appeals, Applications for Directions and Penalty Proceedings

### Ch 2: Determination of Appeals, Applications etc

#### 11 Consideration and determination of appeals, applications for a direction and penalty proceedings

#CommentB

##### Amendments—

Paras 6, 7, 9–27 revoked by the Tribunals, Courts and Enforcement Act 2007 (Transitional and Consequential Provisions) Order, SI 2008/2683 art 6(1), Sch 1 paras 204, 210 with effect from 3 November 2008.

#CommentE

#### 12 Choice of hearing

#CommentB

##### Amendments—

Paras 6, 7, 9–27 revoked by the Tribunals, Courts and Enforcement Act 2007 (Transitional and Consequential Provisions) Order, SI 2008/2683 art 6(1), Sch 1 paras 204, 210 with effect from 3 November 2008.

#CommentE

#### 13 Withdrawal of application for a direction or penalty proceedings

#CommentB

##### Amendments—

Paras 6, 7, 9–27 revoked by the Tribunals, Courts and Enforcement Act 2007 (Transitional and Consequential Provisions) Order, SI 2008/2683 art 6(1), Sch 1 paras 204, 210 with effect from 3 November 2008.

#CommentE

#### 14 Non-disclosure of medical advice or evidence

#CommentB

##### Amendments—

Paras 6, 7, 9–27 revoked by the Tribunals, Courts and Enforcement Act 2007 (Transitional and Consequential Provisions) Order, SI 2008/2683 art 6(1), Sch 1 paras 204, 210 with effect from 3 November 2008.

#CommentE

#### 15 Summoning of witnesses and administration of oaths



#CommentB

### Amendments—

Paras 6, 7, 9–27 revoked by the Tribunals, Courts and Enforcement Act 2007 (Transitional and Consequential Provisions) Order, SI 2008/2683 art 6(1), Sch 1 paras 204, 210 with effect from 3 November 2008.

#CommentE

## Chapter 3

### Striking Out Appeals and Applications for a Direction

#### Ch 3: Striking Out Appeals etc

#### 16 Cases which may be struck out

#CommentB

### Amendments—

Paras 6, 7, 9–27 revoked by the Tribunals, Courts and Enforcement Act 2007 (Transitional and Consequential Provisions) Order, SI 2008/2683 art 6(1), Sch 1 paras 204, 210 with effect from 3 November 2008.

#CommentE

#### 17 Reinstatement of struck out cases

#CommentB

### Amendments—

Paras 6, 7, 9–27 revoked by the Tribunals, Courts and Enforcement Act 2007 (Transitional and Consequential Provisions) Order, SI 2008/2683 art 6(1), Sch 1 paras 204, 210 with effect from 3 November 2008.

#CommentE

## Chapter 4

### Oral Hearings

#### 18 Procedure at oral hearings

#CommentB

### Amendments—

Paras 6, 7, 9–27 revoked by the Tribunals, Courts and Enforcement Act 2007 (Transitional and Consequential Provisions) Order, SI 2008/2683 art 6(1), Sch 1 paras 204, 210 with effect from 3 November 2008.

#CommentE

#### 19 Manner of providing expert assistance

#CommentB

## **Amendments—**

Paras 6, 7, 9–27 revoked by the Tribunals, Courts and Enforcement Act 2007 (Transitional and Consequential Provisions) Order, SI 2008/2683 art 6(1), Sch 1 paras 204, 210 with effect from 3 November 2008.

#CommentE

### **20 Postponement and adjournment**

#CommentB

## **Amendments—**

Paras 6, 7, 9–27 revoked by the Tribunals, Courts and Enforcement Act 2007 (Transitional and Consequential Provisions) Order, SI 2008/2683 art 6(1), Sch 1 paras 204, 210 with effect from 3 November 2008.

#CommentE

## **Chapter 5**

### **Decisions of Appeal Tribunals and Related Matters**

#### **Ch 5: Appeal Tribunals: Decisions/Related Matters**

### **21 Decisions of appeal tribunals**

#CommentB

## **Amendments—**

Paras 6, 7, 9–27 revoked by the Tribunals, Courts and Enforcement Act 2007 (Transitional and Consequential Provisions) Order, SI 2008/2683 art 6(1), Sch 1 paras 204, 210 with effect from 3 November 2008.

#CommentE

### **22 Late applications for a statement of reasons of tribunal decision**

#CommentB

## **Amendments—**

Paras 6, 7, 9–27 revoked by the Tribunals, Courts and Enforcement Act 2007 (Transitional and Consequential Provisions) Order, SI 2008/2683 art 6(1), Sch 1 paras 204, 210 with effect from 3 November 2008.

#CommentE

### **23 Record of tribunal proceedings**

#CommentB

## **Amendments—**

Paras 6, 7, 9–27 revoked by the Tribunals, Courts and Enforcement Act 2007 (Transitional and Consequential Provisions) Order, SI 2008/2683 art 6(1), Sch 1 paras 204, 210 with effect from 3 November 2008.

#CommentE

## 24 Correction of accidental errors

#CommentB

### Amendments—

Paras 6, 7, 9–27 revoked by the Tribunals, Courts and Enforcement Act 2007 (Transitional and Consequential Provisions) Order, SI 2008/2683 art 6(1), Sch 1 paras 204, 210 with effect from 3 November 2008.

#CommentE

## 25 Setting aside decisions on certain grounds

#CommentB

### Amendments—

Paras 6, 7, 9–27 revoked by the Tribunals, Courts and Enforcement Act 2007 (Transitional and Consequential Provisions) Order, SI 2008/2683 art 6(1), Sch 1 paras 204, 210 with effect from 3 November 2008.

#CommentE

## 26 Provisions common to regulations 24 and 25

#CommentB

### Amendments—

Paras 6, 7, 9–27 revoked by the Tribunals, Courts and Enforcement Act 2007 (Transitional and Consequential Provisions) Order, SI 2008/2683 art 6(1), Sch 1 paras 204, 210 with effect from 3 November 2008.

#CommentE

## 26A [Service of decision notice by electronic mail

#CommentB

### Amendments—

Paras 6, 7, 9–27 revoked by the Tribunals, Courts and Enforcement Act 2007 (Transitional and Consequential Provisions) Order, SI 2008/2683 art 6(1), Sch 1 paras 204, 210 with effect from 3 November 2008.

#CommentE

## 27 Application for leave to appeal to a Commissioner from a decision of an appeal tribunal

#CommentB

### Amendments—

Paras 6, 7, 9–27 revoked by the Tribunals, Courts and Enforcement Act 2007 (Transitional and Consequential Provisions) Order, SI 2008/2683 art 6(1), Sch 1 paras 204, 210 with effect from 3 November 2008.