

2005 No. 1031

SOCIAL SECURITY

CHILD TRUST FUNDS

The Social Security Commissioners (Procedure) (Child Trust Funds) Regulations 2005

Made - - - - - *24th March 2005*

Coming into force in accordance with regulation 1(1)

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The Lord Chancellor, in exercise of the powers conferred upon him by sections 14, 15, 16, 28, 79(2) and 84 of, and Schedules 4 and 5 to, the Social Security Act 1998(a) as applied and modified by the Child Trust Funds (Non-tax Appeals) Regulations 2005(b), after consultation with the Scottish Ministers(c), and with the Council on Tribunals in accordance with section 8 of the Tribunals and Inquiries Act 1992(d), makes the following Regulations, a draft of which has, in accordance with section 80(1) of the Social Security Act 1998, been laid before and approved by resolution of each House of Parliament:

PART 1
GENERAL PROVISIONS

Citation, commencement and duration

1.—(1) These Regulations may be cited as the Social Security Commissioners (Procedure) (Child Trust Funds) Regulations 2005 and shall come into force on the day after the day on which they are made.

(2) These Regulations shall cease to have effect on such day as is appointed by order made under section 24(1) of the Child Trust Funds Act 2004(e) (temporary modifications).

Interpretation

2. In these Regulations—

“the 1998 Act” means the Social Security Act 1998, as applied and modified by the Child Trust Funds (Non-tax Appeals) Regulations 2005;

“the 2004 Act” means the Child Trust Funds Act 2004;

(a) 1998 c.14. Section 84 is an interpretation provision and is cited because of the meaning assigned to the word “prescribe”.

(b) S.I. 2005/191.

(c) The functions of the Lord Advocate under section 79(2) and paragraph 8 of Schedule 4 were transferred to the Secretary of State by the Transfer of Functions (Lord Advocate and Secretary of State) Order 1999 (S.I. 1999/678), Article 2(1) and the Schedule. Those functions were then treated as being exercisable in or as regards Scotland, for the purposes of section 63 of the Scotland Act 1998 (c. 46), by the Scotland Act 1998 (Functions Exercisable in or as Regards Scotland) Order 1999 (S.I. 1999/1748), Article 3 and paragraph 19 of Schedule 1, and transferred to the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750), Article 2 and Schedule 1.

(d) 1992 c.53.

(e) 2004 c.6.

“appeal” means an appeal which by virtue of section 24 of the 2004 Act is from an appeal tribunal to a Social Security Commissioner;

“appeal tribunal” means an appeal tribunal constituted under Chapter 1 of Part 1 of the Social Security Act 1998;

“authorised officer” means an officer authorised by the Lord Chancellor, or in Scotland by the Secretary of State, in accordance with paragraph 6 of Schedule 4 to the 1998 Act;

“chairman” means—

- (i) the person who was the chairman or the sole member of the appeal tribunal which gave the decision against which leave to appeal is being sought; or
- (ii) any other person authorised to deal with applications for leave to appeal to a Commissioner against that decision under section 14(10)(a) of the 1998 Act;

“funding notice” means the notice or letter from the Legal Services Commission confirming that legal services are to be funded;

“legal aid certificate” means the certificate issued by the Scottish Legal Aid Board confirming that legal services are to be funded;

“legally qualified” means being a solicitor or barrister, or in Scotland, a solicitor or advocate;

“Legal Services Commission” means the Legal Services Commission established under section 1 of the Access to Justice Act 1999(a);

“live television link” means a television link or other audio and video facilities which allow a person who is not physically present at an oral hearing to see and hear proceedings and be seen and heard by all others who are present (whether physically present or otherwise);

“office” means an Office of the Social Security Commissioners;

“party” means a party to the proceedings;

“penalty appeal” means an appeal against a decision under section 21 of the 2004 Act which by virtue of section 24(2) of that Act lies to a Commissioner;

“proceedings” means any proceedings before a Commissioner, whether by way of an application for leave to appeal to, or from, a Commissioner, or by way of an appeal, or otherwise;

“respondent” means—

- (i) any party to the appeal other than the applicant or appellant;
- (ii) any other person taking part in the proceedings at the direction or with the leave of a Commissioner;

“Scottish Legal Aid Board” means the Scottish Legal Aid Board established under section 1 of the Legal Aid (Scotland) Act 1986(b);

“summons”, in relation to Scotland, corresponds to “citation” and regulation 22 shall be construed accordingly.

General powers of a Commissioner

3.—(1) Subject to the provisions of these Regulations, a Commissioner may adopt any procedure in relation to proceedings before him.

(2) A Commissioner may—

- (a) extend or abridge any time limit under these Regulations (including, subject to regulations 9(3) and 13(3), granting an extension where the time limit has expired);
- (b) expedite, postpone or adjourn any proceedings.

(a) 1999 c.22.
(b) 1986 c.47.

(3) Subject to paragraph (4), a Commissioner may, on or without the application of a party, strike out any proceedings for want of prosecution or abuse of process.

(4) Before making an order under paragraph (3), the Commissioner shall send notice to the party against whom it is proposed that it should be made giving him an opportunity to make representations why it should not be made.

(5) A Commissioner may, on application by the party concerned, give leave to reinstate any proceedings which have been struck out in accordance with paragraph (3) and, on giving leave, he may give directions as to the conduct of the proceedings.

(6) Nothing in these Regulations shall affect any power which is exercisable apart from these Regulations.

Transfer of proceedings between Commissioners

4. If it becomes impractical or inexpedient for a Commissioner to continue to deal with proceedings which are or have been before him, any other Commissioner may rehear or deal with those proceedings and any related matters.

Delegation of functions to authorised officers

5.—(1) The following functions of the Commissioners may be exercised by legally qualified authorised officers, to be known as legal officers to the Commissioners—

- (a) postponing a hearing under regulation 3;
- (b) extending or abridging time, directing expedition, giving notices, striking out and reinstating proceedings under regulation 3;
- (c) giving directions under regulation 6;
- (d) giving directions under regulation 18;
- (e) determining requests for or directing hearings under regulation 20;
- (f) summoning witnesses, and setting aside a summons made by a legal officer, under regulation 22;
- (g) giving leave to withdraw or reinstate applications or appeals under regulation 23;
- (h) waiving irregularities under regulation 24 in connection with any matter being dealt with by a legal officer.

(2) Any party may, within 14 days of being sent notice of the direction or order of a legal officer, make a written request to a Commissioner asking him to reconsider the matter and confirm or replace the direction or order with his own, but, unless ordered by a Commissioner, a request shall not stop proceedings under the direction or order.

Manner of and time for service of notices, etc.

6.—(1) A notice to or document for any party shall be deemed duly served if it is—

- (a) delivered to him personally;
- (b) properly addressed and sent to him by prepaid post at the address last notified by him for this purpose, or to his ordinary address;
- (c) subject to paragraph (2), sent by e-mail; or
- (d) served in any other manner a Commissioner may direct.

(2) A document may be served by e-mail on any party if the recipient has informed the person sending the e-mail in writing—

- (a) that he is willing to accept service by e-mail;
- (b) of the e-mail address to which the documents should be sent; and
- (c) if the recipient wishes to so specify, the electronic format in which documents must be sent.

- (3) A notice to or other document for a Commissioner shall be—
- (a) delivered to the office in person;
 - (b) sent to the office by prepaid post;
 - (c) sent to the office by fax; or
 - (d) where the office has given written permission in advance, sent to the office by email.
- (4) For the purposes of any time limit, a properly addressed notice or other document sent by prepaid post, fax or e-mail is effective from the date it is sent.

Funding of legal services

7. If a party is granted funding of legal services at any time, he shall—
- (a) where funding is granted by the Legal Services Commission, send a copy of the funding notice to the office;
 - (b) where funding is granted by the Scottish Legal Aid Board, send a copy of the legal aid certificate to the office; and
 - (c) notify every other party that funding has been granted.

PART 2

APPLICATIONS FOR LEAVE TO APPEAL AND APPEALS

Application of this Part

8. In this Part—
- (a) regulations 9, 10, and 11 apply to appeals other than penalty appeals;
 - (b) regulations 12, 13 and 14 apply to all appeals.

Application to a Commissioner for leave to appeal

9.—(1) An application to a Commissioner for leave to appeal against the decision of an appeal tribunal may be made only where the applicant has sought to obtain leave from the chairman and leave has been refused or the application has been rejected.

(2) Subject to paragraph (3) an application to a Commissioner shall be made within one month of notice of the refusal or rejection being sent to the applicant by the appeal tribunal.

(3) A Commissioner may for special reasons accept a late application or an application where the applicant failed to seek leave from the chairman within the specified time, but did so on or before the final date.

(4) In paragraph (3) the final date means the end of a period of 13 months from the date on which the decision of the appeal tribunal or, if later, any separate statement of the reasons for it, was sent to the applicant by the appeal tribunal.

Notice of application to a Commissioner for leave to appeal

10.—(1) An application to a Commissioner for leave to appeal shall be made by notice in writing, and shall contain—

- (a) the name and address of the applicant;
- (b) the grounds on which the applicant intends to rely;
- (c) if the application is made late, the grounds for seeking late acceptance; and
- (d) an address for sending notices and other documents to the applicant.

(2) The notice in paragraph (1) shall have with it copies of—

- (a) the decision against which leave to appeal is sought;
- (b) if separate, the written statement of the appeal tribunal's reasons for it; and
- (c) the notice of refusal or rejection sent to the applicant by the appeal tribunal.

(3) Where an application for leave to appeal is made by the Board, it shall send each respondent a copy of the notice of application and any documents sent with it when they are sent to the Commissioner.

Determination of application

11.—(1) The office shall send written notice to the applicant and each respondent of the determination of an application for leave to appeal to a Commissioner.

(2) Subject to a direction by a Commissioner, on an application under regulation 9—

- (a) notice of appeal shall be deemed to have been sent on the date when notice of the determination is sent to the applicant; and
- (b) the notice of application shall be deemed to be a notice of appeal sent under regulation 12.

(3) If a Commissioner grants an application for leave to appeal he may, with the consent of the applicant and each respondent, treat and determine the application as an appeal.

Notice of appeal

12.—(1) Subject to regulation 11(2), an appeal shall be made by notice in writing and shall contain—

- (a) the name and address of the appellant;
- (b) where applicable, the date on which the appellant was notified that leave to appeal had been granted;
- (c) the grounds on which the appellant intends to rely;
- (d) if the appeal is made late, the grounds for seeking late acceptance; and
- (e) an address for sending notices and other documents to the appellant.

(2) The notice in paragraph (1) shall have with it copies of—

- (a) the notice informing the appellant that leave to appeal has been granted;
- (b) the decision against which leave to appeal has been granted;
- (c) if separate, the written statement of the appeal tribunal's reasons for it.

Time limit for appealing

13.—(1) In the case of a penalty appeal, the notice of appeal shall not be valid unless it is sent to a Commissioner within one month of the decision of the appeal tribunal being sent to the applicant.

(2) For all other appeals, a notice of appeal shall not be valid unless it is sent to a Commissioner within one month of the date on which the appellant was sent written notice that leave to appeal had been granted.

(3) A Commissioner may for special reasons accept late notice of appeal.

Acknowledgement of a notice of appeal and notification to each respondent

14. The office shall send—

- (a) to the appellant, an acknowledgement of the receipt of the notice of appeal;
- (b) to each respondent, a copy of the notice of appeal.

PART 3 PROCEDURE

Representation

15. A party may conduct his case himself (with assistance from any person if he wishes) or be represented by any person whom he may appoint for the purpose.

Respondent's written observations

16.—(1) A respondent may submit to a Commissioner written observations on an appeal within one month of being sent written notice of it.

(2) Written observations shall include—

- (a) the respondent's name and address and address for sending documents;
- (b) a statement as to whether or not he opposes the appeal; and
- (c) the grounds upon which the respondent proposes to rely.

(3) The office shall send a copy of any written observations from a respondent to every other party.

(4) Where there is more than one respondent, the order of and time for written observations shall be as directed by a Commissioner under regulation 18.

Written observations in reply

17.—(1) Any party may submit to a Commissioner written observations in reply within one month of being sent written observations under regulation 16.

(2) The office shall send a copy of any written observations in reply to every other party.

(3) In the case of an appeal other than a penalty appeal, where—

- (a) written observations have been received under regulation 16; and
- (b) each of the Board and the appellant expresses the view that the decision appealed against was erroneous in point of law,

a Commissioner may make an order under section 14(7) of the 1998 Act setting aside the decision and may dispense with the procedure in paragraphs (1) and (2).

Directions, further particulars and observations

18.—(1) Subject to paragraph (2), where a Commissioner considers that an application or appeal made to him gives insufficient particulars to enable the question at issue to be determined, he may direct the party making the application or appeal, or any respondent, to furnish any further particulars which may reasonably be required.

(2) No person shall be compelled to give any evidence or produce any document or other material that he could not be compelled to give or produce on a trial of an action in a court of law in that part of Great Britain where the hearing takes place.

(3) A Commissioner may, before determining the application or appeal, direct the appeal tribunal to submit a statement of such facts or other matters as he considers necessary for the proper determination of that application or appeal.

(4) At any stage of the proceedings, a Commissioner may, on or without an application, give any directions as he may consider necessary or desirable for the efficient despatch of the proceedings.

(5) Without prejudice to regulations 16 and 17, or to paragraph (4), and subject to paragraph (2), a Commissioner may direct any party before him, to make any written observations as may seem to him necessary to enable the question at issue to be determined.

(6) An application under paragraph (4) shall be made in writing to a Commissioner and shall set out the direction which the applicant seeks.

(7) Unless a Commissioner shall otherwise determine, the office shall send a copy of an application under paragraph (4) to every other party.

Non-disclosure of medical evidence

19.—(1) Where, in any proceedings, there is before a Commissioner medical evidence relating to a person which has not been disclosed to that person and in the opinion of the Commissioner the disclosure to that person of that evidence would be harmful to his health, such evidence shall not be disclosed to that person.

(2) Evidence such as is mentioned in paragraph (1) shall not be disclosed to any person acting for or representing the person to whom it relates, unless the Commissioner considers that it is in the interests of the person to whom the evidence relates to disclose it.

(3) Non-disclosure under paragraphs (1) or (2) does not preclude the Commissioner from taking the evidence concerned into account for the purpose of the proceedings.

Requests for hearings

20.—(1) Subject to paragraphs (2) to (5), a Commissioner may determine any proceedings without a hearing.

(2) In the case of a penalty appeal, where a request for a hearing is made by the party on whom the penalty has been imposed, a Commissioner shall grant the request.

(3) Where a request for a hearing is made by any party other than as provided by paragraph (2), a Commissioner shall grant the request unless he is satisfied that the proceedings can properly be determined without a hearing.

(4) Where a Commissioner refuses a request for a hearing, he shall send written notice to the person making the request, either before or at the same time as making his determination or decision.

(5) A Commissioner may, without an application and at any stage, direct a hearing.

Hearings

21.—(1) This regulation applies to any hearing of an application or appeal to which these Regulations apply.

(2) Subject to paragraph (3), the office shall give reasonable notice of the time and place of any hearing before a Commissioner.

(3) Unless all the parties concerned agree to a hearing at shorter notice, the period of notice specified under paragraph (2) shall be at least 14 days before the date of the hearing.

(4) If any party to whom notice of a hearing has been sent fails to appear at the hearing, the Commissioner may proceed with the case in that party's absence, or may give directions with a view to the determination of the case.

(5) Any hearing before a Commissioner shall be in public, unless the Commissioner for special reasons directs otherwise.

(6) Where a Commissioner holds a hearing the following persons shall be entitled to be present and be heard—

- (a) the person making the application or appeal;
- (b) any respondent;
- (c) with the leave of the Commissioner, any other person.

(7) Subject to the direction of a Commissioner—

- (a) any person entitled to be present and be heard at a hearing; and

(b) any representatives of such a person,
may be present by means of a live television link.

(8) Any provision in these regulations which refers to a party or representative being present is satisfied if the party or representative is present by means of a live television link.

(9) Any person entitled to be heard at a hearing may address the Commissioner and—

(a) in the case of a penalty appeal, the party on whom the penalty has been imposed may give evidence, call witnesses and put questions directly to any other person called as a witness;

(b) in all other cases, a person entitled to be heard may with the leave of the Commissioner, give evidence, call witnesses and put questions directly to any other person called as a witness.

(10) Nothing in these Regulations shall prevent a member of the Council on Tribunals or of the Scottish Committee of the Council in his capacity as such from being present at a hearing before a Commissioner which is not held in public.

Summoning of witnesses

22.—(1) Subject to paragraph (2), a Commissioner may summon any person to attend a hearing as a witness, at such time and place as may be specified in the summons, to answer any questions or produce any documents in his custody or under his control which relate to any matter in question in the proceedings.

(2) A person shall not be required to attend in obedience to a summons under paragraph (1) unless he has been given at least 14 days' notice before the date of the hearing or, if less than 14 days, has informed the Commissioner that he accepts such notice as he has been given.

(3) Upon the application of a person summoned under this regulation, a Commissioner may set the summons aside.

(4) A Commissioner may require any witness to give evidence on oath and for this purpose an oath may be administered in due form.

Withdrawal of applications for leave to appeal and appeals

23.—(1) At any time before it is determined, an applicant may withdraw an application to a Commissioner for leave to appeal against a decision of an appeal tribunal by giving written notice to a Commissioner.

(2) At any time before the decision is made, the appellant may withdraw his appeal with the leave of a Commissioner.

(3) A Commissioner may, on application by the party concerned, give leave to reinstate any application or appeal which has been withdrawn in accordance with paragraphs (1) and (2) and, on giving leave, he may make directions as to the conduct of the proceedings.

Irregularities

24. Any irregularity resulting from failure to comply with the requirements of these Regulations shall not by itself invalidate any proceedings, and the Commissioner, before reaching his decision, may waive the irregularity or take steps to remedy it.

PART 4 DECISIONS

Determinations and decisions of a Commissioner

25.—(1) The determination of a Commissioner on an application for leave to appeal shall be in writing and signed by him.

(2) The decision of a Commissioner on an appeal shall be in writing and signed by him and, unless it was a decision made with the consent of the parties or an order setting aside a tribunal's decision under section 14(7) of the 1998 Act, he shall include the reasons.

(3) The office shall send a copy of the determination or decision and any reasons to each party.

(4) Without prejudice to paragraphs (2) and (3), a Commissioner may announce his determination or decision at the end of a hearing.

Correction of accidental errors in decisions

26.—(1) Subject to regulations 4 and 28, the Commissioner who gave the decision may at any time correct accidental errors in any decision or record of a decision.

(2) A correction made to, or to the record of, a decision shall become part of the decision or record, and the office shall send a written notice of the correction to any party to whom notice of the decision has been sent.

Setting aside decisions on certain grounds

27.—(1) Subject to regulations 4 and 28, on an application made by any party, the Commissioner who gave the decision in proceedings may set it aside where it appears just to do so on the ground that—

- (a) a document relating to the proceedings was not sent to, or was not received at an appropriate time by, a party or his representative or was not received at an appropriate time by the Commissioner; or
- (b) a party or his representative was not present at a hearing before the Commissioner.

(2) An application under this regulation shall be made in writing to a Commissioner within one month from the date on which the office gave written notice of the decision to the party making the application.

(3) Unless the Commissioner considers that it is unnecessary for the proper determination of an application made under paragraph (1), the office shall send a copy of it to each respondent, who shall be given a reasonable opportunity to make representations on it.

(4) The office shall send each party written notice of a determination of an application to set aside a decision and the reasons for it.

Provisions common to regulations 26 and 27

28.—(1) In regulations 26 and 27, the word “decision” shall include determinations of applications for leave to appeal, orders setting aside tribunal decisions under section 14(7) of the 1998 Act and decisions on appeals.

(2) There shall be no appeal against a correction or a refusal to correct under regulation 26 or a determination given under regulation 27.

PART 5

APPLICATIONS FOR LEAVE TO APPEAL TO THE APPELLATE COURT

Application to a Commissioner for leave to appeal to the Appellate Court

29.—(1) Subject to paragraph (2), an application to a Commissioner under section 15 of the 1998 Act for leave to appeal against a decision of a Commissioner shall be made in writing, stating the grounds of the application, within three months from the date on which the applicant was sent written notice of the decision.

(2) Where—

- (a) any decision or record of a decision is corrected under regulation 26; or

(b) an application for a decision to be set aside under regulation 27 is refused for reasons other than that the application was made outside the period specified in regulation 27(2), the period specified in paragraph (1) shall run from the date on which written notice of the correction or refusal of the application to set aside is sent to the applicant.

(3) Regulations 23(1) and 23(3) shall apply to an application to a Commissioner for leave to appeal from a Commissioner's decision as they apply to the proceedings in that regulation.

Signed by authority of the Lord Chancellor

24th March 2005

Cathy Ashton
Parliamentary Under Secretary of State
Department for Constitutional Affairs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations regulate the procedure of the Social Security Commissioners in determining appeals and applications arising from decisions of appeal tribunals in relation to child trust funds.

The Child Trust Funds (Non-tax Appeals) Regulations 2005 (S.I. 2005/191) are made under section 24(5) of the Child Trust Funds Act 2004 (c.6) and apply and modify provisions in the Social Security Act 1998 (c.14) to provide for a temporary route of appeal in respect of Child Trust Funds. Appeals are heard initially by the appeal tribunal constituted under Chapter 1 of Part 1 of the Social Security Act 1998, and a further right of appeal will exist to by the Social Security Commissioners.

These Regulations will apply until the Treasury makes an order under section 24(1) of the Child Trust Fund Act 2004.

In particular, these Regulations provide for:

- (a) general powers of the Commissioners to regulate procedure (regulations 3, 4 and 5);
- (b) notice to be given where a party receives funding of legal services (regulation 7);
- (c) appeals involving penalties not to be subject to the requirement of leave to appeal (regulation 8);
- (d) the Commissioners to deal with applications for leave to appeals and for the procedure in connection with commencing appeals (regulations 9 to 14);
- (e) the procedure in connection with applying for directions, dealing with evidence and summoning witnesses (regulations 16 to 19 and 22);
- (f) requests for hearings, hearings and withdrawal of appeals (regulations 20, 21 and 23);
- (g) determination and decisions by Commissioners (regulation 25);
- (h) correcting accidental errors and setting aside decisions (regulations 26 and 27);
- (i) applications for leave to appeal the decision of the Commissioners to the Court of Appeal (England and Wales) or the Court of Session (Scotland) (regulation 29).

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