

**EXPLANATORY MEMORANDUM TO THE
CHILD TRUST FUNDS (APPEALS) REGULATIONS 2005**

2005 No. 990

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

These regulations make procedural rules for appeals to appeal tribunals against decisions made by the Inland Revenue on child trust funds.

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

3.1 The use of the affirmative procedure for these Regulations is required by section 80(1) of the Social Security Act 1998. The regulations which attract affirmative procedure are:

- regulation 6 (under powers in section 7(6) of the 1998 Act) which prescribes the composition of appeal tribunals;
- regulations 8(3) and 9(3) (under powers in paragraph 12 of Schedule 1 to the 1998 Act) which authorise a clerk to an appeal tribunal to give directions;
- regulations 13 and 14 (under powers in paragraph 12 of Schedule 1 and paragraph 2 of Schedule 5 to the 1998 Act) which provide for the striking out and reinstatement of appeals;
- regulation 16 (under powers in section 7(6) of the 1998 Act) which provides for expert assistance to be given to an appeal tribunal; and
- regulation 21 (under powers in paragraph 12 of Schedule 1 to the 1998 Act) which provides for a clerk to an appeal tribunal to correct accidental errors in any decision of an appeal tribunal .

3.2 These regulations are made under powers in the Social Security Act 1998 as applied and modified by the Child Trust Funds (Non-tax appeals) Regulations 2005. The latter Regulations are made under powers in the Child Trust Funds Act 2004. The 2004 Act provides for the Treasury to make regulations which apply and modify provisions in the 1998 Act in relation to child trust fund appeals which are to an appeal tribunal or which lie to a Social Security Commissioner by virtue of section 24 of the 2004 Act (“temporary modifications”).

3.3 The Child Trust Funds (Non-tax Appeals) Regulations 2005 apply and modify sections of the 1998 Act which provide for the composition of appeal tribunals and

procedural rules for appeal tribunals. Those Regulations also apply and modify other powers in the 1998 Act in order to provide for the Secretary of State to make regulations under that Act in respect of child trust fund appeals made under section 24 of the 2004 Act.

4. Legislative Background

4.1 The Child Trust Funds Act 2004 Act introduces child trust funds. It provides for appeals concerning child trust funds to go to the General Commissioners or Special Commissioners appointed under the Taxes Management Act 1970. But, as a temporary measure, the 2004 Act provides for child trust fund appeals to be heard by appeal tribunals constituted under the 1998 Act instead of the General Commissioners or Special Commissioners. As explained in paragraphs 3.2 and 3.3, these Regulations prescribe the procedure for child trust fund appeals heard by appeal tribunals.

4.2 The Social Security Commissioners (Procedure) (Child Trust Funds) Regulations 2005 prescribe the procedure for Social Security Commissioners who hear appeals from decisions of appeal tribunal in respect of a child trust fund. Those Regulations are also subject to affirmative procedure.

5. Extent

These regulations extend to Great Britain.

The Treasury has drafted regulations for Northern Ireland that mirror these provisions – the Child Trust Fund (Appeals) (Northern Ireland) Regulations 2005. Those regulations are also subject to affirmative procedure.

6. European Convention on Human Rights

In the view of Patricia Hollis, Parliamentary Under-Secretary (Lords), the provisions of these draft Regulations are compatible with rights under the European Convention on Human Rights.

7. Policy Background

7.1 The appeals route for child trust funds follows the arrangements for Tax Credits whereby appeals against decisions made by the Inland Revenue will be heard on a transitory basis by appeal tribunals within the Appeals Service until such time as the planned reforms of the Tax Commissioners are complete. During the transitory period there will be a further right of appeal on a point of law to the Social Security Commissioners. Child trust fund tax appeals (appeals against the Inland Revenue's decision on an annual tax claim or against any assessment to recover tax) will not be dealt with under these transitional arrangements but will continue under the usual channels for Tax Appeals, going to the General and Special Commissioners.

7.2 These Regulations are freestanding regulations governing child trust fund appeals. For child trust fund providers and parents of eligible children and their advisers, the relevant appeal procedure regulations will be in one place for easy

reference. The effect of the Regulations will cease when an order is made under section 24(1) of the 2004 Act to transfer child trust fund appeals to the Tax Appeals system. This will avoid the need for amendment of the main Social Security and Child Support (Decisions and Appeals) Regulations 1999 (“the Decisions and Appeals Regulations”) in respect of child trust fund appeals or repeal of these Regulations.

7.3 In so far as is possible under the linked primary legislation, the majority of these regulations mirror for child trust fund purposes the appeals procedure provisions in the extant Decisions and Appeals Regulations as most recently amended. Detailed descriptions are given below only where these regulations differ from the existing main Decisions and Appeals Regulations.

Regulation 1 - provides for the Regulations to cease to have effect when an order under section 24(1) of the 2004 Act is made and an interpretation of terms applicable to child trust fund appeals. In particular, the regulation provides an interpretation for the terms “decision notice”, “notification period”, “party to the proceedings” and a definition of a chairman of the appeal tribunal in relation to child trust funds.

Regulation 2 - mirrors the existing provisions in regulation 2 of the Decisions and Appeals Regulations.

Regulation 3 - Section 23(1) of the 2004 Act provides for notice of an appeal against a child trust fund appeal to be given to the Board of Inland Revenue within thirty days of the date on which notice of the decision was given.

Regulation 3 provides for a dispute as to whether or not the notice of appeal was given to the Board within the thirty day time limit to be referred to, and determined by, a legally qualified panel member.

Regulation 4 – Regulation 4(1) makes provision for the thirty day time limit specified in section 23(1) of the Child Trust Funds Act 2004 for giving notice of a child trust fund appeal to be extended by up to one year under the Social Security Act 1998.

Regulation 4(2) prescribes the information which must be contained in an application to bring a late appeal. Amongst other things, for child trust fund appeals, this includes, whether the appellant is a relevant person within the meaning of section 22(3) of the Child Trust Funds Act 2004 or a personal representative of a child under section 22(5).

The remainder of regulation 4 replicates the existing provisions of regulation 32 of the Decisions and Appeals Regulations.

Regulation 5 - prescribes that where a party to the proceedings (other than the Board) has died, the personal representative of that person may proceed with an appeal. This provision does not apply to an appeal made under section 22(1) of the Child Trust Funds Act 2004 where the matter under appeal concerns the right to be an account provider.

Regulations 6 - sets out the composition of an appeal tribunal hearing different types of child trust fund appeals.

Regulation 6 (1) provides for an appeal tribunal to consist of a legally qualified panel member sitting alone, unless regulations 6(2) or (3) apply.

Regulation 6(2) makes provision for an appeal tribunal to comprise a legally qualified panel member and a financially qualified panel member where the President considers that difficult issues have been raised in connection with the administration of a child trust fund. This tribunal composition would be appropriate for an appeal made by a financial institution which had not been granted approval to act as an account provider.

Regulation 6(3) mirrors the provision in regulation 36(5) of the Decisions and Appeals Regulations to enable the President to determine that a one or two person tribunal shall include an additional panel member for the purposes of training or monitoring.

Regulations 7 – 11 mirror the provisions in regulations 37 – 40 and 43 of the Decisions and Appeals Regulations.

Regulation 12 makes provisions for confidentiality in a child trust fund appeal where a party to the proceedings requests it.

Regulation 12(1) prescribes that the address of the eligible child and, in relation to an appeal made under section 22(2) of the 2004 Act, the address of any relevant person (such as a parent entitled to child benefit for the child), should be kept confidential. In addition, it prescribes that any information which could lead to the location of any person specified should also be kept confidential.

Regulation 12(2) provides for the circumstances when confidentiality will apply. This is likely to be used in limited circumstances to prevent an aggrieved parent using the appeals process to trace a child. For example, Parent A is the Child Benefit claimant; Parent B opens the child trust fund and becomes the registered contact. They break up and Parent A moves away with the child and becomes the registered contact for child trust fund purposes. Parent B, under section 22(3)(c) of the 2004 Act, may launch an appeal with the sole motive of tracing the current address of Parent A and the child.

Regulation 13 – Regulation 13(1)(a) provides for the clerk to an appeal tribunal to strike out a child trust fund appeal for want of prosecution, including an appeal made outside the time limits specified in section 23(1) of the 2004 Act and these Regulations.

Regulations 13 (1)(b) and (c), (2) and (3) mirror provisions in regulation 46(1)(c) and (d), (2) and (3) of the Decisions and Appeals Regulations.

Regulations 14 - 25 mirror the provisions in regulations 47, 49 – 51 and 53 – 58 of the Decisions and Appeals Regulations.

Consultation

Council on Tribunals (CoT)

Regulations dealing with tribunal procedure are subject to statutory consultation with CoT. We have formally with consulted with them and, subject to a few minor queries, they were content with the draft regulations.

8. Regulatory Impact

A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business.

9. Contact

Judy Mayo at:

The Department for Work and Pensions
Adjudication and Constitutional Issues
2nd Floor, The Adelphi

Tel (GTN 391) 28100
020 7962 8100

E-mail: Judy.Mayo@dwp.gsi.gov.uk

can answer any queries regarding the instrument.