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STATUTORY INSTRUMENTS

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**1987 No. 214**

**SOCIAL SECURITY**

**The Social Security Commissioners Procedure Regulations 1987**

*Made* - - - - *13th February 1987*  
*Laid before Parliament* *18th February 1987*  
*Coming into force* - - *6th April 1987*

The Lord Chancellor, in exercise of the powers conferred by the provisions set out in the Schedule to these Regulations and now vested in him<sup>(1)</sup> and of all other powers enabling him in that behalf, after consultation with the Lord Advocate and, in accordance with section 10 of the Tribunals and Inquiries Act 1971<sup>(2)</sup>, with the Council on Tribunals, hereby makes the following Regulations.

**PART I**  
**INTRODUCTION**

**Citation and commencement**

1. These Regulations may be cited as the Social Security Commissioners Procedure Regulations 1987 and shall come into force on 6th April 1987.

**Interpretation**

2. In these Regulations, unless the context otherwise requires:—

“the Act” means the Social Security Act 1975<sup>(3)</sup>;

“adjudicating authority” means, as the case may be, the Chief or any other adjudication officer, an appeal tribunal, the Attendance Allowance Board, or a medical appeal tribunal and, in cases where a forfeiture rule question arises, includes the Secretary of State;

“adjudication officer” means an officer appointed in accordance with section 97(1) of the Act;

“appeal tribunal” means a social security appeal tribunal constituted in accordance with section 97(2) to (2E) of the Act;

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(1) By virtue of the Transfer of Functions (Social Security Commissioners) Order 1984 (S.I.1984/1818) and paragraph 20 of Schedule 5 to the Social Security Act 1986 (c. 50).

(2) 1971 c. 62.

(3) 1975 c. 14.

“the Attendance Allowance Board” means the Board constituted in accordance with section 105 of the Act and for the purpose of section 106(2) of the Act, unless the context otherwise requires, includes a delegate appointed in pursuance of paragraph 5 of Schedule 11 to the Act;

“the chairman” for the purposes of Regulations 3 and 4 means:

- (i) the person who was the chairman of the appeal tribunal or medical appeal tribunal, as the case may be, when the decision was given against which leave to appeal is being sought; or
- (ii) any other chairman of an appeal tribunal or medical appeal tribunal, as the case may be, duly authorised for the purposes of applications for leave to appeal to a Commissioner under the Social Security (Adjudication) Regulations 1986<sup>(4)</sup>;

“Chief Adjudication Officer” means the Chief Adjudication Officer appointed under section 97(1B) of the Act;

“Chief Commissioner” means the Chief Social Security Commissioner appointed under section 97(3) of the Act;

“Commissioner” means the Chief or any other Social Security Commissioner appointed in accordance with section 97(3) of the Act or section 13(5) of the Social Security Act 1980<sup>(5)</sup> and includes a Tribunal of 3 such Commissioners constituted in accordance with section 116 of the Act;

“forfeiture rule question” means any question referred to in section 4(1) or 4(1A) to 4(1H) of the Forfeiture Act 1982<sup>(6)</sup>;

“medical appeal tribunal” means a medical appeal tribunal constituted in accordance with Schedule 12 to the Act;

“nominated officer” means an officer authorised by the Lord Chancellor (or in Scotland, by the Secretary of State) in accordance with section 114(2C)(7) of the Act;

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

“respondent” means any person or organisation other than the applicant, appellant or person making the reference who would be entitled under Regulation 17(5) to be present and to be heard at any oral hearing;

“the specified time” for the purposes of Regulations 3(2) and 4(3) means the time specified under the Social Security (Adjudication) Regulations 1986 for applying to a chairman of an appeal tribunal or, as the case may be, a medical appeal tribunal for leave to appeal to a Commissioner;

“summons”, in relation to Scotland, means “citation” and Regulation 18 shall be construed accordingly.

(4) S.I. 1986/2218.

(5) 1980 c. 30.

(6) 1982 c. 34. Subsections 4(1A) to 4(1H) of the Forfeiture Act 1982 were inserted by section 76 of the Social Security Act 1986 (c. 50).

(7) Section 114(2C) of the Social Security Act 1975 was inserted by paragraph 16 of Schedule 5 to the Social Security Act 1986.

## PART II

### MAKING APPLICATIONS, APPEALS AND REFERENCES

#### **Application to a Commissioner for leave to appeal**

3.—(1) Subject to paragraph (2) of this Regulation, an application may be made to a Commissioner for leave to appeal against a decision of an appeal tribunal or a medical appeal tribunal only where the applicant has been refused leave to appeal by the chairman of an appeal tribunal or, as the case may be, of a medical appeal tribunal.

(2) Where there has been a failure to apply to the chairman for such leave within the specified time, an application for leave to appeal may be made to a Commissioner who may, if for special reasons he thinks fit, accept and proceed to consider and determine the application.

(3) An application for leave to appeal under paragraph (1) above must be made within 42 days from the date on which notice in writing of the refusal of leave to appeal was given to the applicant.

(4) An application to a Commissioner for leave to appeal against a determination by the Attendance Allowance Board of any question of law arising

(i) on a review by the Board in pursuance of section 106(1) of the Act; or

(ii) in connection with a refusal by the Board to review a determination made in pursuance of section 105(3) of the Act,

must be made within 3 months from the date on which notice in writing of the determination was given to the applicant.

(5) A Commissioner may accept and proceed to consider and determine an application for leave to appeal under paragraphs (1) and (4) above notwithstanding that the period specified for making the application has expired, if for special reasons he thinks fit.

#### **Notice of application to a Commissioner for leave to appeal**

4.—(1) Subject to the following provisions of this Regulation, an application to a Commissioner for leave to appeal shall be brought by a notice to a Commissioner containing:

(a) the name and address of the applicant;

(b) the grounds on which the applicant intends to rely;

(c) an address for service of notices and other documents on the applicant;

and the notice shall have annexed to it a copy of the decision against which leave to appeal is being sought.

(2) Where the applicant has been refused leave to appeal by the chairman of an appeal tribunal or of a medical appeal tribunal, otherwise than by a decision recorded in the record of the proceedings of the tribunal, the notice shall also have annexed to it a copy of the decision refusing leave and shall state the date on which the applicant was given notice in writing of the refusal of leave.

(3) Where the applicant has failed:

(i) to apply within the specified time to the chairman of an appeal tribunal or of a medical appeal tribunal for leave to appeal; or

(ii) to comply with Regulation 3(3) above; or

(iii) to apply within the period specified in Regulation 3(4) to a Commissioner for leave to appeal against a determination by the Attendance Allowance Board

the notice of application for leave to appeal shall, in addition to complying with paragraphs (1) and (2) above, state the grounds relied upon for seeking acceptance of the application notwithstanding that the relevant period has expired.

(4) Where an application for leave to appeal is made by an adjudication officer or by the Secretary of State the applicant shall, as soon as may be practicable, send each respondent a copy of the notice of application for leave to appeal.

### **Determination of application**

5.—(1) The office of the Social Security Commissioners shall notify the applicant and each respondent in writing of the determination by a Commissioner of the application.

(2) Subject to a direction by a Commissioner to the contrary, where a Commissioner grants leave to appeal on an application made in accordance with Regulation 4 above, notice of appeal shall be deemed to have been duly given on the date when notice of the determination is given to the applicant and the notice of application shall be deemed to be a notice of appeal duly served under Regulation 7 below.

(3) If on consideration of an application for leave to appeal to him from the decision of an adjudicating authority the Commissioner grants leave he may, with the consent of the applicant and each respondent, treat the application as an appeal and determine any question arising on the application as though it were a question arising on an appeal.

### **Notice of appeal**

6. Subject to Regulation 5(2) above, an appeal shall be brought by a notice to a Commissioner containing:

- (a) the name and address of the appellant;
- (b) the date on which leave to appeal was granted;
- (c) the grounds on which the appellant intends to rely;
- (d) an address for service of notices and other documents on the appellant;

and the notice shall have annexed to it a copy of the determination granting leave to appeal and a copy of the decision against which leave to appeal has been granted.

### **Time limit for appealing**

7.—(1) Subject to paragraph (2) below, a notice of appeal shall not be valid unless it is served on a Commissioner within 42 days of the date on which the applicant was given notice in writing that leave to appeal had been granted.

(2) A Commissioner may accept a notice of appeal served after the expiry of the period prescribed by paragraph (1) above if for special reasons he thinks fit.

### **References**

8.—(1) Where a forfeiture rule question arises in a case before an adjudicating authority and that authority is not satisfied that the case can be disposed of without that question being determined, the adjudicating authority shall—

- (a) if not the Secretary of State, require the Secretary of State to arrange for the case to be referred to a Commissioner to determine the forfeiture rule question; and
- (b) if the Secretary of State, refer the case to a Commissioner to determine that question,

and shall inform the person in relation to whom the forfeiture rule question arises that his case is being referred to a Commissioner to determine that question.

(2) Any reference to a Commissioner under the Forfeiture Act 1982<sup>(8)</sup> or from a medical appeal tribunal shall be made in writing and shall include:

- (a) a statement of the question for determination by the Commissioner and the facts upon which it arises;
- (b) the grounds upon which the reference is made;
- (c) the address for service of notices and other documents on the person making the reference and on any respondent.

#### **Acknowledgement of a notice of appeal or a reference and notification to each respondent**

9. There shall be sent by the office of the Social Security Commissioners:

- (a) to the appellant or person making the reference an acknowledgement of the receipt of the notice of appeal or the reference; and
- (b) to each respondent a copy of the notice of appeal or of the reference.

## **PART III**

### **GENERAL PROCEDURE**

#### **Respondent's written observations**

10.—(1) A respondent who wishes to submit to a Commissioner written observations on the appeal or on the reference shall do so within 30 days of being given notice in writing of it.

(2) Any such written observations shall include:

- (a) the respondent's name and address and address for service; and
- (b) in the case of observations on an appeal, a statement as to whether or not he opposes the appeal; and
- (c) in any case, the grounds upon which the respondent proposes to rely.

(3) A copy of any written observations from a respondent shall be sent by the office of the Social Security Commissioners to the other parties.

#### **Written observations in reply**

11.—(1) Any party may, within 30 days of being sent written observations submitted in accordance with Regulation 10 above, submit to a Commissioner written observations in reply.

(2) Regulation 10(3) above shall apply in relation to written observations in reply as it does in relation to written observations under Regulation 10 above.

#### **Directions**

12.—(1) Where it appears to a Commissioner that an application, appeal or reference which is made to him gives insufficient particulars to enable the question at issue to be determined, he may direct the party making the application, appeal or reference, or any respondent, to furnish such further particulars as may reasonably be required.

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(8) 1982 c. 34.

(2) In the case of an application for leave to appeal, or an appeal, from the Attendance Allowance Board, or of an application for leave to appeal or an appeal from, or of a reference by, a medical appeal tribunal, a Commissioner may, before determining the application, appeal or reference, direct the Board or tribunal, as the case may be, to submit a statement of such facts as he considers necessary for the proper determination of that application, appeal or reference.

(3) At any stage of the proceedings, a Commissioner may, either of his own motion or on application, give such directions as he may consider necessary or desirable for the efficient and effective despatch of the proceedings.

(4) Without prejudice to the provisions of Regulations 10 and 11, or to paragraph (3) above, a Commissioner may direct any party to any proceedings before him to make such written observations as may seem to him necessary to enable the question at issue to be determined.

(5) An application under paragraph (3) above shall be made in writing to a Commissioner and shall set out the direction which the applicant is seeking to have made and the grounds for the application.

(6) Unless a Commissioner shall otherwise determine, an application made pursuant to paragraph (3) above shall be copied by the office of the Social Security Commissioners to the other parties.

### **Medical references**

**13.** A Commissioner may refer to a medical practitioner for examination and report any question arising in proceedings before him except in proceedings on an application for leave to appeal, or an appeal, from a medical appeal tribunal or the Attendance Allowance Board or on a reference by a medical appeal tribunal.

### **Non-disclosure of medical evidence**

**14.—(1)** Where, in connection with any application, appeal or reference there is before a Commissioner medical advice or 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 advice or evidence would be harmful to his health, such advice or evidence shall not be required to be disclosed to that person.

(2) Advice or evidence such as is mentioned in paragraph (1) above:

- (a) shall not be disclosed to any person acting for or representing the person to whom it relates
- (b) in a case where a claim for benefit is made by reference to the disability of a person other than the claimant

and the advice or evidence relates to that other person, shall not be disclosed to the claimant or any person acting for or representing the claimant unless the Commissioner is satisfied that it is in the interests of the person to whom the advice or evidence relates to do so.

(3) The Commissioner shall not by reason of non-disclosure under paragraphs (1) or (2) above be precluded from taking the advice or evidence concerned into account for the purpose of the proceedings.

### **Requests for oral hearings**

**15.—(1)** Subject to paragraphs (2) and (3) below, a Commissioner may determine an application for leave to appeal or an appeal or a reference without an oral hearing.

(2) Where, in any proceedings before a Commissioner, a request is made by any party thereto for an oral hearing the Commissioner shall grant the request unless, after considering all the circumstances of the case and the reasons put forward in the request for the hearing, he is satisfied

that the application or appeal or reference can properly be determined without a hearing, in which event he may proceed to determine the case without a hearing and he shall in writing either before giving his determination or decision, or in it, inform the person making the request that it has been refused.

(3) A Commissioner may of his own motion at any stage, if he is satisfied that an oral hearing is desirable, direct such a hearing.

### **Representation at an oral hearing**

**16.** At any oral hearing 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.

### **Oral hearings**

**17.—(1)** This Regulation applies to any oral hearing of an application, appeal or reference to which these Regulations apply.

(2) Reasonable notice (being not less than 10 days beginning with the day on which notice is given and ending on the day before the hearing of the case is to take place) of the time and place of any oral hearing before a Commissioner shall be given to the parties by the office of the Social Security Commissioners.

(3) If any party to whom notice of an oral hearing has been given in accordance with these Regulations should fail to appear at the hearing, the Commissioner may, having regard to all the circumstances including any explanation offered for the absence, proceed with the case notwithstanding that party's absence, or may give such directions with a view to the determination of the case as he thinks fit.

(4) Any oral hearing before a Commissioner shall be in public except where the Commissioner is satisfied that intimate personal or financial circumstances may have to be disclosed or that considerations of public security are involved, in which case the hearing or any part thereof shall be in private.

(5) Where a Commissioner holds an oral hearing the following persons or organisations shall be entitled to be present and be heard:—

- (a) the person or organisation making the application, appeal or reference;
  - (b) the claimant;
  - (c) the Secretary of State;
  - (d) an adjudication officer;
  - (e) a trade union, employers association or other association which would have had a right of appeal under sections 101(2) and 101(4) of the Act (including those sections as substituted by section 52(7)(d) of the Social Security Act 1986<sup>(9)</sup>);
  - (f) in cases concerning statutory sick pay and statutory maternity pay, the alleged employer and the alleged employee concerned;
  - (g) a person from whom it is determined that any amount is recoverable under or by virtue of section 27 or 53 of the Social Security Act 1986;
  - (h) any other person with the leave of a Commissioner.
- (6) Any person entitled to be heard at an oral hearing may:
- (i) address the Commissioner;

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(9) 1986 c. 50.

(ii) with the leave of the Commissioner but not otherwise, give evidence, call witnesses and put questions directly to any other person called as a witness.

(7) 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 an oral hearing before a Commissioner, notwithstanding that the hearing is not in public.

### **Summoning of witnesses**

**18.**—(1) A Commissioner may summon any person to attend as a witness, at such time and place as may be specified in the summons, at an oral hearing of an application to a Commissioner for leave to appeal, or of an appeal or of a reference, 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.

Provided that no person shall be required to attend in obedience to such a summons unless he has been given at least 7 days notice of the hearing or, if less than 7 days, has informed the Commissioner that he accepts such notice as he has been given.

(2) A Commissioner may upon the application of a person summoned under this Regulation set the summons aside.

### **Postponement and adjournment**

**19.**—(1) A Commissioner may, either of his own motion or on an application by any party to the proceedings, postpone an oral hearing.

(2) An oral hearing, once commenced, may be adjourned by the Commissioner at any time either on the application of any party to the proceedings or of his own motion.

### **Withdrawal of applications for leave to appeal, appeals and references**

**20.**—(1) At any time before it is determined, an application to a Commissioner for leave to appeal against a decision of an appeal tribunal, a medical appeal tribunal or the Attendance Allowance Board may be withdrawn by the applicant by giving written notice to a Commissioner of his intention to do so.

(2) At any time before the decision is made, an appeal or reference made to a Commissioner under these Regulations may be withdrawn by the appellant or person making the reference, with the leave of a Commissioner.

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

### **Irregularities**

**21.** Any irregularity resulting from failure to comply with the requirements of these Regulations before a Commissioner has determined the application, appeal or reference shall not by itself invalidate any proceedings, and the Commissioner, before reaching his decision, may waive the irregularity or take such steps as he thinks fit to remedy the irregularity whether by amendment of any document, or the giving of any notice or directions or otherwise.



## PART IV DECISIONS

### **Determinations and decisions of a Commissioner**

**22.**—(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 or on a reference shall be in writing and signed by him and, except in respect of a decision made with the consent of the parties, he shall record the reasons.

(3) A copy of the determination or decision and any reasons shall be sent to the parties by the office of the Social Security Commissioners.

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

### **Procedure after determination of a forfeiture rule question**

**23.**—(1) Subject to paragraph (2) below, the Commissioner who has determined a forfeiture rule question shall remit the case to the adjudicating authority which caused it to be referred to him together with a copy of his decision on that question and that authority shall then dispose of the case in the light of the Commissioner's decision on the forfeiture rule question.

(2) Where, disregarding the forfeiture rule question, the case referred to a Commissioner is one where an appeal tribunal has, or in the event of an appeal from a decision of an adjudication officer would have, jurisdiction to dispose of the case, the Commissioner may, with the consent of the parties, dispose of the case.

### **Correction of accidental errors in decisions**

**24.**—(1) Subject to Regulation 26, accidental errors in any decision or record of a decision may at any time be corrected by the Commissioner who gave the decision.

(2) A correction made to, or to the record of, a decision shall become part of the decision or record thereof and written notice thereof shall be given by the office of the Social Security Commissioners to any party to whom notice of the decision had previously been given.

### **Setting aside of decisions on certain grounds**

**25.**—(1) Subject to this Regulation and Regulation 26, on an application made by any party a decision may be set aside by the Commissioner who gave the decision in a case 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 had not been present at an oral hearing which had been held in the course of the proceedings; or
- (c) the interests of justice so require.

(2) An application under this Regulation shall be made in writing to a Commissioner, within 30 days from the date on which notice in writing of the decision was given by the office of the Social Security Commissioners to the party making the application.

(3) Where an application to set aside a decision is made under paragraph (1), each party shall be sent by the office of the Social Security Commissioners a copy of the application and shall be afforded a reasonable opportunity of making representations on it before the application is determined.

(4) Notice in writing of a determination of an application to set aside a decision shall be given by the office of the Social Security Commissioners to each party and shall contain a statement giving the reasons for the determination.

### **Provisions common to Regulations 24 and 25**

**26.—**(1) In Regulations 24 and 25 the word“decision” shall include determinations of applications for leave to appeal as well as decisions on appeals and on references.

(2) Subject to a direction by a Commissioner to the contrary, in calculating any time for applying for leave to appeal against a Commissioner’s decision there shall be disregarded any day falling before the day on which notice was given of a correction of a decision or the record thereof pursuant to Regulation 24 or on which notice was given of a determination that a decision shall not be set aside under Regulation 25, as the case may be.

(3) There shall be no appeal against a correction or a refusal to correct under Regulation 24, or a determination given under Regulation 25.

(4) If it is impracticable or likely to cause undue delay for a decision or record of a decision to be dealt with pursuant to Regulation 24 or 25 by the Commissioner who gave the decision, the Chief Commissioner or another Commissioner may deal with the matter.

## **PART V**

### **MISCELLANEOUS AND SUPPLEMENTARY**

#### **General powers of a Commissioner**

**27.—**(1) Subject to the provisions of these Regulations, and without prejudice to Regulation 12, a Commissioner may adopt such procedure in relation to any proceedings before him as he sees fit.

(2) A Commissioner may, if he thinks fit:—

- (a) subject to Regulations 3(5) and 7(2) above, extend the time specified by or under these Regulations for doing any act, notwithstanding that the time specified may have expired;
- (b) abridge the time so specified;
- (c) expedite the proceedings in such manner as he thinks fit.

(3) A Commissioner may, if he thinks fit, either on the application of a party or of his own motion, strike out for want of prosecution any application for leave to appeal, appeal or reference.

Provided that before making any such order, the Commissioner shall send notice to the party against whom it is proposed that it shall be made giving him an opportunity to show cause why it should not be made.

(4) A Commissioner may, on application by the party concerned, give leave to reinstate any application, appeal or reference which has been struck out in accordance with paragraph (3) above and, on giving leave, he may make such directions as to the future conduct of the proceedings as he thinks fit.

(5) Nothing in these Regulations shall be construed as derogating from any inherent or other power which is exercisable apart from these Regulations.

### **Miscellaneous provisions relating to references of forfeiture rule questions**

**28.**—(1) Section 116 of the Act (tribunal of Commissioners to deal with cases involving questions of law of special difficulty) shall apply in relation to forfeiture rule questions as it applies in relation to the Act.

(2) Section 104(1) of the Act (review of decisions) shall apply to a decision on a forfeiture rule question by a Commissioner with the modification that the power of review shall be exercisable only by a Commissioner, to whom any application for review shall be made.

(3) Subject to paragraph (2) above and section 14 of the Social Security Act 1980(10), the decision of a Commissioner on any reference of a forfeiture rule question shall be final, but any finding of fact or other determination embodied in or necessary to the decision or on which it is based shall not be conclusive for the purpose of any further decision.

### **Delegation of functions to nominated officers**

**29.**—(1) All or any of the following functions of a Commissioner may be exercised by a nominated officer, that it so say:

- (a) making any direction under Regulations 12(1), (3) and (4);
- (b) making orders for oral hearings under Regulations 15(2) and (3);
- (c) summoning witnesses under Regulation 18(1) and setting aside a summons made by a nominated officer under Regulation 18(2);
- (d) ordering the postponement of oral hearings under Regulation 19(1);
- (e) giving leave for the withdrawal of any appeal or reference under Regulation 20(2);
- (f) making any order for the extension or abridgement of time, or for expediting the proceedings, under Regulations 27(2)(a), (b) and (c);
- (g) making an order under paragraph (2) of this Regulation.

(2) Any party may, within 10 days of being given the decision of a nominated officer, in writing request a Commissioner to consider, and confirm or replace with his own, that decision, but such a request shall not stop the proceedings unless so ordered by the Commissioner.

### **Manner of and time for service of notices, etc**

**30.**—(1) Any notice or other document required or authorised to be given or sent to any party under the provisions of these Regulations shall be deemed to have been given or sent if it was sent by post properly addressed and pre-paid to that party at his ordinary or last notified address.

(2) Any notice or other document given, sent or served by post shall be deemed to have been given on the day on which it was posted.

(3) Any notice or document required to be given, sent or submitted to or served on a Commissioner:—

- (a) shall be given, sent or submitted to an office of the Social Security Commissioners;
- (b) shall be deemed to have been given, sent or submitted if it was sent by post properly addressed and pre-paid to an office of the Social Security Commissioners.

**Application to a Commissioner for leave to appeal to the Courts**

**31.**—(1) An application to a Commissioner under section 14(3) of the Social Security Act 1980 for leave to appeal against a decision of a Commissioner shall be made in writing and shall be made within 3 months from the date on which the applicant was given written notice of the decision.

(2) In a case where the Chief Commissioner considers that it is impracticable, or would be likely to cause undue delay, for such an application to be determined by the Commissioner who decided the case, that application shall be determined—

- (a) where the decision was a decision of an individual Commissioner, by the Chief Commissioner or a Commissioner selected by the Chief Commissioner, and
- (b) where the decision was a decision of a Tribunal of Commissioners, by a differently constituted Tribunal of Commissioners selected by the Chief Commissioner.

(3) If the office of Chief Commissioner is vacant, or if the Chief Commissioner is unable to act, paragraph (2) above shall have effect as if the expression “the Chief Commissioner” referred to such other of the Commissioners as may have been nominated to act for the purpose either by the Chief Commissioner or, if he has not made such a nomination, by the Lord Chancellor.

(4) Regulation 28 of the Social Security (Claims and Payments) Regulations 1979<sup>(11)</sup> (persons unable to act) shall apply to the right of appeal conferred by section 14 of the Social Security Act 1980<sup>(12)</sup> (appeal from Commissioners etc. on point of law) as it applies to rights arising under the Act.

(5) In relation to a decision of a Commissioner which was given in consequence of a reference under section 112(4) of the Act (references of questions of law by medical appeal tribunals), section 14(3) of the Social Security Act 1980 shall have effect with the modification that an application for leave to appeal against the Commissioner’s decision may be made only by—

- (a) the claimant in relation to whose claim the question of law arose before the medical appeal tribunal; or
- (b) a person appointed to apply on behalf of the claimant under paragraph (4) above; or
- (c) a trade union of which the claimant is a member at the material time; or
- (d) any other association which exists to promote the interests and welfare of its members and of which the claimant is a member at the material time; or
- (e) an adjudication officer; or
- (f) the Secretary of State.

(6) In paragraph (5)(c) and (d), “the material time” means, where the question of law arose in relation to—

- (a) an accident, the time of that accident; or
- (b) a prescribed disease, the date of onset (within the meaning of the Social Security (Industrial Injuries) (Prescribed Diseases) Regulations 1985<sup>(13)</sup>) of that disease; or
- (c) a claim for mobility allowance, the date on which the reference was made.

(7) In relation to such a decision of a Commissioner as is referred to in paragraph (5), section 14(5) of the Social Security Act 1980 shall have effect with the modification that “the relevant place” means the premises where the medical appeal tribunal which has referred the question of law to the Commissioner usually exercises its functions.

<sup>(11)</sup> S.I. 1979/628.

<sup>(12)</sup> 1980 c. 30.

<sup>(13)</sup> S.I. 1985/967.

(8) A person in respect of whom a forfeiture rule question arises and, as appropriate, an adjudication officer or the Secretary of State shall be authorised to apply for leave to appeal from a Commissioner's decision of a forfeiture rule question.

(9) Regulations 20(1) and 20(3) shall apply to applications to a Commissioner for leave to appeal from a Commissioner as they do to the proceedings therein set out.

### **Revocation**

**32.** The following Regulations are hereby revoked to the extent that they relate to proceedings before the Commissioners:

- (i) the Statutory Sick Pay (Adjudication) Regulations 1982(**14**);
- (ii) the Social Security (Adjudication) Regulations 1984(**15**);
- (iii) the Social Security (Adjudication) Amendment Regulations 1984(**16**);
- (iv) the Social Security (Adjudication) Amendment (No. 2) Regulations 1984(**17**).

### **Transitional provisions**

**33.**—(1) Subject to paragraphs (2) and (3) below, these Regulations shall apply to proceedings before the Commissioners commenced before the date on which they come into operation as well as to proceedings commenced on or after that date.

(2) Where he considers that the application of these Regulations to proceedings before a Commissioner would be inappropriate, a Commissioner may give such directions for the future conduct of the proceedings as he thinks fit and, in particular, he may order the proceedings to continue as if the Social Security (Adjudication) Regulations 1984(**18**) were still applicable to the proceedings to such extent as he may specify.

(3) Notwithstanding paragraphs (1) and (2) above, where before these Regulations came into operation the time limit for making an application, appeal or reference to a Commissioner had begun to run, then nothing in these Regulations shall operate so as to reduce that time limit.

Dated 13th February 1987

*Hailsham of St Marylebone, C.*

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(14) S.I. 1982/1400.

(15) S.I. 1984/451.

(16) S.I. 1984/613.

(17) S.I. 1984/1991.

(18) S.I. 1984/451, as amended by the Social Security (Adjudication) Amendment Regulations 1984 (S.I. 1984/613) and the Social Security (Adjudication) Amendment (No. 2) Regulations 1984 (S.I. 1984/1991).

*Status: This is the original version (as it was originally made).*

## SCHEDULE

### PROVISIONS CONFERRING POWERS EXERCISED IN MAKING THESE REGULATIONS

Section 6 of the National Insurance Act 1974**(19)**.

Sections 101(5A), 101(5B), 106(2), 112(3), 114(2C) and (5) and 115(1), (5) and (6) of, and the definitions of “prescribed” and “regulations” in Schedule 20 to, the Social Security Act 1975**(20)**.

Sections 14 and 15 of the Social Security Act 1980**(21)**.

Section 4 of the Forfeiture Act 1982**(22)**.

### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

1. These Regulations regulate the procedure of the Social Security Commissioners in determining claims and questions, generally arising from decisions of social security appeal tribunals, medical appeal tribunals or the Attendance Allowance Board, under social security legislation including the Family Income Supplements Act 1970 (c. 55), the Social Security Act 1975, the Child Benefit Act 1975, the Supplementary Benefits Act 1976 and the Social Security Act 1986. The Regulations take account of changes made in the system of social security adjudication by section 52 of, and Schedules 5 and 7 to, the Social Security Act 1986.

2. Hitherto, the procedure before the Social Security Commissioners has been governed by Regulations—principally the Social Security (Adjudication) Regulations 1984 (as amended)—which have applied also to procedures before the other adjudicating authorities. The present Regulations apply only to the Social Security Commissioners, and proceedings before the other adjudicating authorities are the subject of separate Regulations made by the Secretary of State.

3. Part II contains provisions for making applications, appeals and references, Part III provides for the procedure to be followed on appeals and references, Part IV contains provisions relating to the decisions of Commissioners and Part V contains miscellaneous and supplementary provisions (including the procedure for seeking leave from a Commissioner to appeal to the Courts), transitional provisions and revocations.

4. The Regulations reflect, with modifications, the procedure before the Commissioners under the 1984 Regulations. Principal changes include the following:—

- (i) initiating documents will be lodged directly with the Office of the Social Security Commissioners, rather than at local offices of the Department of Health and Social Security;

**(19)** 1974 c. 14; section 6 was amended by the Social Security (Consequential Provisions) Act 1975 (c. 18) Schedule 2, paragraph 70, the Social Security Pensions Act 1975 (c. 60) Schedule 4, paragraph 35, the Child Benefit Act 1975 (c. 61) Schedule 4, paragraph 85, the Supplementary Benefits Act 1976 (c. 71) Schedule 7, paragraph 36, the Social Security and Housing Benefits Act 1982 (c. 24) Schedule 4, paragraph 7 and the Social Security Act 1986 (c. 50) Schedule 11.

**(20)** 1975 c. 14; sections 101, 106, 112 and 114 and the definition of “regulations” in Schedule 20 were amended by section 52 of and Schedule 5 to the Social Security Act 1986.

**(21)** 1980 c. 30; section 15(1) was amended by the Health and Social Services and Social Security Adjudications Act 1983 (c. 41) Schedule 8, paragraph 18.

**(22)** 1982 c. 34.

- (ii) time limits for certain interlocutory matters have been reduced;
- (iii) Regulation 29 provides for certain interlocutory matters to be dealt with on behalf of the Commissioners by officers authorised by the Lord Chancellor in England and Wales or, in Scotland, by the Secretary of State.

**5.** These Regulations revoke the 1984 Regulations (as amended) in their application to proceedings before the Social Security Commissioners, and will apply, subject to the provisions of Regulation 33 (transitional provisions), to all proceedings before the Commissioners whether they were started before, on or after 6th April 1987.