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STATUTORY INSTRUMENTS

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**1987 No. 214**

**The Social Security Commissioners Procedure Regulations 1987**

**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.

(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>(1)</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;
  - (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.

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(1) 1986 c. 50.

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.