

1999 No. 1495

SOCIAL SECURITY

**The Social Security Commissioners (Procedure)
Regulations 1999**

<i>Made - - - -</i>	<i>26th May 1999</i>
<i>Laid before Parliament</i>	<i>21st April 1999</i>
<i>Coming into force</i>	<i>1st June 1999</i>

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The Lord Chancellor, in exercise of the powers conferred by sections 14 to 16, 28, 79(2) and 84 of, and Schedules 4 and 5 to, the Social Security Act 1998(a), section 4(2) of the Forfeiture Act 1982(b) and of all other powers enabling him in that behalf, after consultation with the Lord Advocate and, in accordance with section 8 of the Tribunals and Inquiries Act 1992(c), with the Council on Tribunals, 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 I
GENERAL PROVISIONS

Citation and commencement

1. These Regulations may be cited as the Social Security Commissioners (Procedure) Regulations 1999 and shall come into force on 1st June 1999.

Revocation

2. The following Regulations are revoked to the extent that they relate to proceedings before the Social Security Commissioners—
 - (a) the Social Security Commissioners Procedure Regulations 1987(d);
 - (b) the Social Security Commissioners Procedure (Amendment) Regulations 1992(e); and
 - (c) the Social Security (Adjudication) and Commissioners Procedure and Child Support Commissioners (Procedure) Amendment Regulations 1997(f).

(a) 1998 c. 14. Section 84 is an interpretation provision and is cited because of the meaning assigned to the word "prescribe".
(b) 1982 c. 34. Section 4(2) was amended by S.I. 1984/1818.
(c) 1992 c. 53.
(d) S.I. 1987/214.
(e) S.I. 1992/1121.
(f) S.I. 1997/955.

Transitional provisions

3.—(1) Subject to paragraphs (2) to (3), these Regulations shall apply to all proceedings before the Commissioners on or after 1st June 1999.

(2) In relation to any appeal or application for leave to appeal from any social security, disability or medical appeal tribunal constituted under Part II of the Social Security Administration Act 1992**(a)** these Regulations shall have effect with the modifications that—

- (a) “appeal tribunal” includes a reference to any such tribunal;
- (b) “chairman” includes a reference to a person authorised to deal with applications for leave to appeal under the Social Security (Adjudication) Regulations 1995**(b)**;
- (c) “Secretary of State” includes a reference to an adjudication officer;
- (d) “section 14(7) of the Act” includes a reference to sections 23(6A) and 48(4A) of the Social Security Administration Act 1992, as modified by paragraph 4 of Schedule 6 to the Act;
- (e) “42 days” shall be substituted for “one month” in regulations 9(2) and 13(1); and
- (f) under regulation 9 a Commissioner may for special reasons accept an application for leave to appeal even though the applicant has not sought to obtain leave to appeal from the chairman.

(3) Any transitional question arising under any application, appeal or reference in consequence of the coming into force of these Regulations shall be determined by a Commissioner who may for this purpose give such directions as he may think just, including modifying the normal requirements of these Regulations in relation to the application, appeal or reference.

Interpretation

4. In these Regulations, unless the context otherwise requires—

“the Act” means the Social Security Act 1998;

“appeal tribunal” means an appeal tribunal constituted under Chapter I of Part 1 of the Act;

“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 Act;

“the chairman” for the purposes of regulations 9 and 10 means—

- (i) the person who was the chairman or 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 of the Act;

“Commissioner” has the meaning given in section 39 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**(c)**;

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

“month” means a calendar month;

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

“party” means a party to the proceedings;

“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 is one of the principal parties as defined in section 13 of the Act

(a) 1992 c. 5.

(b) S.I. 1995/1801.

(c) 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).

or is otherwise taking part in the proceedings in accordance with section 14 of the Act or regulation 24(6); and

“summons”, in relation to Scotland, corresponds to “citation” and regulation 25 shall be construed accordingly.

General powers of a Commissioner

5.—(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(2), granting an extension where the time limit has expired);

(b) expedite, postpone or adjourn any proceedings.

(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

6. 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

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

(a) giving directions under regulations 8 and 20;

(b) determining requests for or directing hearings under regulation 23;

(c) summoning witnesses, and setting aside a summons made by a legal officer, under regulation 25;

(d) postponing a hearing under regulation 5;

(e) giving leave to withdraw or reinstate applications, appeals or references under regulation 26;

(f) waiving irregularities under regulation 27 in connection with any matter being dealt with by a legal officer;

(g) extending or abridging time, directing expedition, giving notices, striking out and reinstating proceedings under regulation 5.

(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.

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

(a) delivered to him personally; or

(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; or

(c) served in any other manner a Commissioner may direct.

- (2) A notice to or other document for a Commissioner shall be delivered or sent to the office.
- (3) For the purposes of any time limit, a properly addressed notice or other document sent by prepaid post, fax or email is effective from the date it is sent.

PART II

APPLICATIONS FOR LEAVE TO APPEAL, APPEALS AND REFERENCES

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 Secretary of State he 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, where a Commissioner grants leave to appeal 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) 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; and
 - (c) if separate, the written statement of the appeal tribunal's reasons for it.

Time limit for appealing after leave obtained

13.—(1) Subject to paragraph (2), 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.

- (2) A Commissioner may for special reasons accept a late notice of appeal.

References under the Forfeiture Act 1982

14.—(1) For the purposes of section 4(5) of the Forfeiture Act 1982, the Act shall be prescribed as a relevant enactment.

(2) Where in any case a forfeiture rule question arises, the Secretary of State shall refer it to a Commissioner to determine, and shall notify the person in relation to whom the question arises that he has done so.

- (3) The reference shall be made in writing and shall include—
- (a) a statement of the question for determination by the Commissioner and the relevant facts;
 - (b) the grounds upon which the reference is made; and
 - (c) the address for sending notices and other documents to the Secretary of State and to each respondent.

Further provisions relating to references under the Forfeiture Act 1982

15.—(1) Section 16(7) of the Act (tribunal of Commissioners to deal with cases involving questions of law of special difficulty) shall apply in relation to a forfeiture rule question as it applies in relation to an appeal under the Act.

(2) Sections 9 and 10 of the Act (revision and superseding of decisions) shall apply to a decision on a forfeiture rule question by a Commissioner with the modification that those powers shall be exercisable only by a Commissioner, to whom any application for the purpose shall be made.

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

16. The office shall send—

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

PART III
PROCEDURE

Representation

17. 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

18.—(1) A respondent may submit to a Commissioner written observations on an appeal or reference 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) 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) The office shall send a copy of any written observations from a respondent to every other party.

Written observations in reply

19.—(1) Any party may submit to a Commissioner written observations in reply within one month of being sent written observations under regulation 18.

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

(3) Where—

- (a) written observations have been received from the respondent under regulation 18; and
- (b) each of the principal parties 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 Act setting aside the decision and may dispense with the procedure in paragraphs (1) and (2).

Directions

20.—(1) Where a Commissioner considers that an application, appeal or reference 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 any further particulars which may be reasonably required.

(2) In the case of an application for leave to appeal, or an appeal from an appeal tribunal, a Commissioner may, before determining the application or appeal, direct the tribunal to submit a statement of such facts or other matters as he considers necessary for the proper determination of that application or appeal.

(3) 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.

(4) Without prejudice to regulations 18 and 19, or to paragraph (3), 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.

(5) An application under paragraph (3) shall be made in writing to a Commissioner and shall set out the direction which the applicant seeks.

(6) Unless a Commissioner shall otherwise determine, the office shall send a copy of an application under paragraph (3) to every other party.

Procedure on linked case notice from the Secretary of State

21. Any notice from the Secretary of State to a Commissioner under section 26 of the Act (Appeal involving issues that arise on appeal in other cases) shall be sent by notice in writing signed by or on behalf of the Secretary of State and shall identify, by its file reference or the names of the parties involved, each appeal or application to which it relates.

Non-disclosure of medical evidence

22.—(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)—

- (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 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 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

23.—(1) Subject to paragraphs (2), (3) and (4), a Commissioner may determine any proceedings without a hearing.

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

(3) 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.

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

Hearings

24.—(1) This regulation applies to any hearing of an application, appeal or reference 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 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) a trade union, employers' association or other association which would have had a right of appeal under the Act;

- (e) in cases concerning statutory sick pay and statutory maternity pay, the employer and the employee concerned;
 - (f) a person from whom it is determined that any amount is recoverable under or by virtue of section 71 or 74 of the Social Security Administration Act 1992; and
 - (g) with the leave of a Commissioner, any other person.
- (7) Any person entitled to be heard at a hearing may—
- (a) address the Commissioner;
 - (b) with the leave of the Commissioner, give evidence, call witnesses and put questions directly to any other person called as a witness.
- (8) 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

25.—(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, appeals and references

26.—(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 or person making a reference to a Commissioner may withdraw his appeal or 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) and, on giving leave, he may make directions as to the conduct of the proceedings.

Irregularities

27. 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 IV

DECISIONS

Determinations and decisions of a Commissioner

28.—(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 reference 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 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.

Procedure after determination of a forfeiture rule question

29. A Commissioner who has determined a forfeiture rule question shall remit the case to the Secretary of State for any necessary determination on entitlement to benefit to be made in the light of the decision on the forfeiture rule question.

Correction of accidental errors in decisions

30.—(1) Subject to regulations 6 and 32, 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

31.—(1) Subject to regulations 6 and 32, 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; or
- (c) there has been some other procedural irregularity or mishap.

(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 30 and 31

32.—(1) In regulations 30 and 31, the word “decision” shall include determinations of applications for leave to appeal, orders setting aside tribunal decisions under section 14(7) of the Act and decisions on appeals and references.

(2) There shall be no appeal against a correction or a refusal to correct under regulation 30 or a determination given under regulation 31.

PART V

APPLICATIONS FOR LEAVE TO APPEAL TO THE APPELLATE COURT

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

33.—(1) Subject to paragraph (2), an application to a Commissioner under section 15 of the 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) Subject to a direction by a Commissioner, in calculating any time for applying for leave to appeal under paragraph (1), there shall be disregarded any day before the day—

- (a) on which notice was sent of a correction of a decision or the record of it under regulation 30; or

(b) on which notice was sent of a determination that a decision shall not be set aside under regulation 31.

(3) Regulation 33 of the Social Security (Claims and Payments) Regulations 1987^(a) (persons unable to act) shall apply to the right of appeal conferred by section 15 of the Act (appeal from Commissioner on point of law) as it applies to rights arising under the Social Security Acts generally.

(4) A person in respect of whom a forfeiture rule question arises and the Secretary of State, shall be authorised to apply for leave to appeal from a Commissioner's decision on a forfeiture rule question.

(5) Regulations 26(1) and 26(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.

Dated 26th May 1999

Irvine of Lairg, C.

^(a) S.I. 1987/1968; the relevant amending instrument is S.I. 1991/2741.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations regulate the procedure of the Social Security Commissioners in determining claims and questions arising from decisions of the unified appeals tribunals established under section 7 of the Social Security Act 1998. These Regulations also prescribe the procedure to be followed in the case of a reference made under the Forfeiture Act 1982. These Regulations revoke the Social Security Commissioners (Procedure) Regulations 1987 and amending instruments and are necessary as a result of the introduction of the unified appeals tribunals established under the 1998 Act.

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