

SCHEDULE 2

Regulation 10(7)

CONDUCT AND PROCEDURE IN RELATION TO APPEALS AND APPLICATIONS

Common provisions in connection with appeals and applications

1.—(1) Subject to the provisions of these Regulations—

- (a) the procedure in connection with the consideration of any appeal or any application in relation to questions to which these Regulations relate, shall be such as the adjudication officer, chairman of the tribunal or the Commissioner may determine;
- (b) any person who by virtue of these Regulations has the right to be heard at a hearing may be accompanied and represented by another person whether having professional qualifications or not, and for the purposes of any proceedings at any hearing any such representative shall have all the rights and powers to which the person whom he represents is entitled under these Regulations.

(2) Nothing in these Regulations shall prevent a member of the Scottish Committee of the Council on Tribunals in his capacity as such from being present at any oral hearing before a tribunal or a Commissioner, notwithstanding that the hearing is not in public.

2. Reasonable notice (being not less than 10 days beginning on the day on which notice is given and ending on the day before the hearing of the appeal) of the time and place of any oral hearing before the tribunal or the Commissioner shall be given to every party to the proceedings, and if such notice has not been given to a person to whom it should have been given under the provisions of this paragraph the hearing may only proceed with the consent of that person.

3. At any oral hearing any party shall be entitled to be present and be heard.

Postponements and adjournments

4.—(1) Where a person to whom notice of an oral hearing has been given wishes to apply for that hearing to be postponed he shall do so in writing to the chairman of the tribunal or the Commissioner stating his reasons for the application and the chairman or the Commissioner may grant or refuse the application as he sees fit.

(2) An oral hearing may be adjourned at any time on the application of any party to the proceedings or of the motion of the tribunal or the Commissioner.

Striking out of proceedings for want of prosecution

5.—(1) The chairman of a tribunal or the Commissioner may, subject to paragraph (2) on the application of any party to the proceedings or of his own motion, strike out any appeal or application for want of prosecution.

(2) Before making an order under paragraph (1) the chairman of a tribunal or the Commissioner, as the case may be, shall send notice to the person against whom it is proposed that any order should be made giving him a reasonable opportunity to show cause why such an order should not be made.

(3) The chairman of a tribunal or the Commissioner, as the case may be, may, on application by the party concerned, give leave to reinstate any application or appeal which has been struck out in accordance with sub-paragraph (1).

APPLICATION AND APPEALS TO THE TRIBUNAL

Procedure in connection with determinations

6. For the purpose of arriving at its decision a tribunal shall, and for the purpose of discussing any question of procedure may, notwithstanding anything in these Regulations, order all persons not being members of the tribunal other than its clerk to withdraw from the sitting of the tribunal except that—

- (a) a member of the Scottish Committee of the Council on Tribunals, the President of Social Security Appeal Tribunals and any full time chairman; and
- (b) with the leave of the chairman of the tribunal, if no person having the right to be heard objects, any person mentioned in paragraph 13(1)(b) and (d) (except a person undergoing training as an adjudicating officer)

may remain present at any such sitting.

Oral hearings

7. A tribunal shall hold an oral hearing of every appeal made to them.

8. If a party to the proceedings to whom notice has been given under paragraph 2 should fail to appear at the hearing, the tribunal may, having regard to all the circumstances, including any explanation offered for the absence, proceed with the case notwithstanding his absence.

9. Any oral hearing before a tribunal shall be in public except where the debtor requests a private hearing, or (in any case) the chairman 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 shall be in private.

10. Any case may with the consent of the debtor or his representative but not otherwise, be proceeded with in the absence of any one member other than the chairman.

11. Where an oral hearing is adjourned and at the hearing after the adjournment the tribunal is differently constituted otherwise than through the operation of paragraph 10 the proceedings at that hearing shall be by way of a complete rehearing of the case.

12.—(1) The decision of the majority of the tribunal shall be the decision of the tribunal but, where the tribunal consists of an even number, the chairman shall have a second or casting vote.

(2) The chairman of a tribunal shall—

- (a) record in writing all its decisions; and
- (b) include in the record of every decision a statement of the reasons for such decision and of their findings on questions of fact material thereto; and
- (c) if a decision is not unanimous, record a statement that one of the members dissented and the reasons given by him for so dissenting.

(3) As soon as may be practicable after a case has been decided by a tribunal, a copy of the record of the decision made in accordance with this paragraph shall be sent to every party to the proceedings who shall also be informed of the conditions governing appeals to a Commissioner.

13.—(1) The following persons shall be entitled to be present at an oral hearing (whether or not it is in private) but shall take no part in the proceedings—

- (a) the President of Social Security Appeal Tribunals;

- (b) any person undergoing training as a chairman or other member of a tribunal, or as a clerk to a tribunal, or as an adjudication officer;
 - (c) any person acting on behalf of the President of the Social Security Appeal Tribunals, the Chief Adjudication Officer appointed under section 97(1B)(1) of the 1975 Act, or the Secretary of State, in the training or supervision of clerks to tribunals or adjudication officers or officers of the Secretary of State or in the monitoring of standards of adjudication by adjudication officers; and
 - (d) with the leave of the chairman of the tribunal and with the consent of every party to the proceedings actually present, any other person.
- (2) Nothing in sub-paragraph (1) affects the rights of any person mentioned in heads (a) and (b) at any oral hearing where he is sitting as a member of the tribunal or acting as its clerk, and nothing in this paragraph prevents the presence at an oral hearing of any witness.

14. Any person entitled to be heard at an oral hearing may address the tribunal, may give evidence, may call witnesses and may put questions directly to any other person called as a witness.

Withdrawal of Appeals

15. Any appeal to the tribunal under these Regulations may be withdrawn by the person who made the appeal—

- (a) before the hearing begins by giving written notice of intention to withdraw to the tribunal and with the consent in writing of the adjudication officer who made the decision; or
- (b) after the hearing has begun with the leave of the chairman of the tribunal at any time before the determination is made.

Application to a Chairman for leave to appeal from a tribunal to a Commissioner

16.—(1) Subject to the following provisions of this paragraph, an application to the chairman of a tribunal for leave to appeal to a Commissioner from a decision of the tribunal shall be made—

- (a) orally at the hearing after the decision is announced by the tribunal; or
- (b) as provided by regulation 10 and Schedule 1.

(2) Where an application in writing for leave to appeal is made by an adjudication officer, the clerk to the tribunal shall, as soon as may be practicable, send a copy of the application to every other party to the proceedings.

(3) The decision of the chairman on an application for leave to appeal made under sub-paragraph (1)(a) shall be recorded in the record of the proceedings of the tribunal, and an application under sub-paragraph (1)(b) shall be recorded in writing and a copy shall be sent to each party to the proceedings.

(4) Where in any case it is impracticable, or it would be likely to cause undue delay for an application for leave to appeal against a decision of a tribunal to be determined by the person who was the chairman of that tribunal, that application shall be determined by any other person qualified under section 97(2D) of the 1975 Act to act as a chairman of tribunals.

(5) A person who has made an application to the chairman of a tribunal for leave to appeal to a Commissioner may withdraw his application at any time before it is determined by giving written notice of intention to the chairman.

(1) Sub-sections 97(1) to (1E) of the 1975 Act were substituted for sub-section 97(1) by the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), Schedule 8, paragraph 2.

APPLICATIONS AND APPEAL TO A COMMISSIONER

Applications to a Commissioner for leave to appeal from a tribunal

17. Subject to paragraph 18, an application may be made to a Commissioner for leave to appeal against a decision of a tribunal only where the applicant has been refused leave to appeal by the chairman of a tribunal.

18. Where there has been a failure to apply to the chairman for leave to appeal during the time specified in Schedule 1, 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.

Notice of Application

19.—(1) Where the applicant has been refused leave to appeal by the chairman of a tribunal otherwise than by a decision recorded in the record of 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.

(2) Where the applicant has failed—

- (a) to apply within the specified time to the chairman of a tribunal for leave to appeal; or
- (b) to comply with paragraph 4 of Schedule 1;

the notice of application for leave to appeal shall, in addition to complying with regulation 10(5) state the grounds relied upon for seeking acceptance of the application notwithstanding that the relevant period has expired.

20. Where an application for leave to appeal is made by an adjudication officer the applicant shall, as soon as may be practicable, send the respondent a copy of the notice of application for leave to appeal.

Determination of applications for leave

21.—(1) The office of the Social Security Commissioners shall notify the applicant and the 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 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 paragraph 5 of Schedule 1.

(3) If on consideration of an application for leave to appeal to him from the decision of a tribunal 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.

Acknowledgement of a notice of appeal and notification to each respondent

22. The office of the Social Security Commissioners shall send—

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

Respondent's written observations

23.—(1) A respondent who wishes to submit to a Commissioner written observations on the appeal 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 for service;
- (b) in the case of observations on an appeal, a statement as to whether or not he opposes the appeal;
- (c) in any case, the grounds upon which the respondent proposes to rely, and

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

24. Any party may, within 30 days of being sent written observations submitted in accordance with paragraph 24 submit to a Commissioner written observations in reply and a copy of any such observations shall be sent by the office of the Social Security Commissioners to the other parties.

Directions

25.—(1) At any stage of the proceedings, a Commissioner may, either of his own motion or on application setting out the direction which the applicant is seeking, give such directions as he considers necessary or desirable for the efficient and effective despatch of the proceedings.

(2) Without prejudice to paragraphs 23 and 24 or to sub-paragraph (1) 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.

(3) Unless a Commissioner shall otherwise determine, an application made pursuant to sub-paragraph (2) above shall be copied by the office of the Social Security Commissioners to the other parties.

Requests for oral hearing

26.—(1) Subject to sub-paragraphs (2) and (3) a Commissioner may determine an application for leave to appeal or an appeal without an oral hearing.

(2) Where, in any proceedings before a Commissioner, a request is made by any party 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 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.

Oral hearings

27.—(1) If any party to the proceedings to whom notice of an oral hearing has been given under paragraph 2 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 his absence, or the Commissioner may give such directions with a view to the determination of the case as he thinks fit.

(2) Any oral hearing 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 of it shall be in private.

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

- (a) the person making the application, appeal or reference;
- (b) the debtor;
- (c) an adjudication officer; or
- (d) any other person with the leave of the Commissioner.

Summoning of witnesses

28.—(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 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 paragraph set the summons aside.

Withdrawal of applications for leave to appeal and appeals

29. At any time before it is determined—

- (a) an application for leave to appeal may be withdrawn by the applicant by giving written notice to a Commissioner of his intention to do so,
- (b) an appeal may be withdrawn by the appellant with leave of the Commissioner, and

a Commissioner may, on application by the party concerned give leave to reinstate any application or appeal which has been withdrawn and on giving leave he may give such directions as he thinks fit.

Irregularities

30. Any irregularity resulting from failure to comply with the requirements of these Regulations before a Commissioner has determined the application or appeal 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.

Determinations and decisions of a Commissioner

31.—(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, except in respect of a decision made with the consent of the parties, he shall record 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 sub-paragraphs (2) and (3), a Commissioner may announce his determination or decision at the conclusion of an oral hearing.

General Powers of a Commissioner

32. A Commissioner may, if he thinks fit—

- (a) abridge the time specified in these Regulations for doing any act by him; or
- (b) expedite the proceedings in such manner as he thinks fit.

Delegation of functions to nominated officers

33.—(1) All or any of the following functions of a Commissioner may be exercised by a nominated officer authorised by the Secretary of State in accordance with section 114(2C)(2) of the 1975 Act—

- (a) making a direction under regulation 10(6) and paragraph 25;
- (b) making orders for oral hearings under paragraph 26(2) and (3);
- (c) summoning witnesses under paragraph 28;
- (d) ordering a postponement of oral hearings under paragraph 4(1);
- (e) giving leave for withdrawal of any appeal under paragraph 29;
- (f) making any order for extension of time under regulation 10 or abridgment of time under paragraph 32;
- (g) making an order under sub-paragraph (2) below.

(2) Any party may, within 10 days of being given the decision of a nominated officer, in writing request the 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.

APPLICATION TO A COMMISSIONER FOR LEAVE TO APPEAL TO THE COURT OF SESSION

34.—(1) In a case where the Chief Social Security Commissioner considers that it is impracticable, or would be likely to cause undue delay, for an application for leave to appeal to the Court of Session 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 Social Security Commissioner or a Commissioner selected by him, and
- (b) where the decision was a decision of a Tribunal of 3 Commissioners, by a differently constituted Tribunal of 3 Commissioners selected by the Chief Social Security Commissioner.

(2) If the office of Chief Social Security Commissioner is vacant, or if the Chief Social Security Commissioner is unable to act, paragraph (1) above shall have effect as if the expression “the Chief Social Security Commissioner” referred to such other of the Commissioners as may have been nominated to act for the purpose either by the Chief Social Security Commissioner or, if he has not made such a nomination, by the Lord Chancellor.

35.—(1) For the purposes of making an application for leave to appeal where—

- (a) a debtor is unable for the time being to act; and
- (b) his estate is not being administered by any tutor, curator or other guardian acting or appointed in terms of law,

(2) Section 114(2C) of the Social Security Act 1975 was inserted by section 52 of and Schedule 5, paragraph 16 to the Social Security Act 1986 (c. 50).

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

the Secretary of State may, upon written application made to him by a person who, if a natural person, is over the age of 18, appoint that person to exercise, on behalf of the person who is unable to act, any right to which that person may be entitled.

(2) Where the Secretary of State has made an appointment under paragraph (1)–

- (a) he may at any time revoke it;
- (b) the person appointed may resign his office after having given one month's notice in writing to the Secretary of State of his intention to do so;
- (c) any such appointment shall terminate when the Secretary of State is notified that a person to whom sub-paragraph (1)(b) applies has been appointed.

36. Paragraph 29 shall apply to a Commissioner in an application for leave to appeal as it applies to the proceedings therein set out.