

## SCHEDULE 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 a person qualified to act as 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 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 questions 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.

### **Respondents'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; and
- (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 23, 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) An application under sub-paragraph (1) shall be made to a Commissioner in writing and shall set out the direction which the applicant is seeking to have made and the grounds for the application.

(4) Unless the Commissioner shall otherwise determine, an application made pursuant to sub-paragraph (1) 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 of 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 or appeal;
- (b) the debtor;
- (c) an adjudication officer;
- (d) a representative of a trade union, employers' association or other association which exists to promote the interest and welfare of its members; or
- (e) 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.

### **Postponement and adjournment**

**29.** A Commissioner may of his own motion postpone an oral hearing, or adjourn it at any time once it has begun.

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

**30.** 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**

**31.** 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**

**32.**—(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) above, a Commissioner may announce his determination or decision at the conclusion of an oral hearing.

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

**33.** A Commissioner may, if he thinks fit—

- (a) except where regulation 10(3) applies, extend the time specified in these Regulations for doing any act, notwithstanding that the time specified may have expired;
- (b) abridge the time specified in these Regulations for doing any act;
- (c) expedite the proceedings in such manner as he thinks fit.

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

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

- (a) making a direction under regulation 10(6) and paragraph 25;
- (b) making orders for oral hearings under paragraphs 26(2) and (3);
- (c) summoning witnesses under paragraph 28 and setting aside any witness summons made by a nominated officer;
- (d) ordering a postponement of oral hearings under paragraph 4(1);
- (e) giving leave for withdrawal of any appeal under paragraph 30;
- (f) making any order for extension of time under regulation 10 or extension or abridgement of time, or expediting proceedings under paragraph 33;
- (g) making an order under sub-paragraph (2).

(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 within his own, that decision but such a request shall not stop the proceedings unless so ordered by the Commissioner.

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