
STATUTORY INSTRUMENTS

2000 No. 124

**The Health Service Medicines (Price
Control Appeals) Regulations 2000**

PART VI
THE HEARING

Arrangements for the hearing

21.—(1) The regulations in this Part apply where the appeal is to be decided following an oral hearing.

(2) When the tribunal has received the notice of appeal, the additional material and the reply, the tribunal must without delay fix a date for the hearing, bearing in mind—

- (a) the seriousness and complexity of the case;
- (b) the convenience of the parties;
- (c) whether there is to be a pre-hearing review under regulation 25;
- (d) whether representations are to be (or have been) invited under regulation 17.

(3) The tribunal must serve on the parties a notice informing each of them—

- (a) of the time and place of the hearing of the appeal;
- (b) where there is to be a pre-hearing review, of the time and place of the review and the powers of the chairman in relation to the review.

(4) The date fixed for the hearing must be no less than 21 days and no more than 6 weeks after the date of the notice under paragraph (3).

(5) The notice must include guidance in a form approved by the chairman, regarding the procedure which will apply to the hearing, including in particular information about—

- (a) attending the hearing and bringing documents and evidence,
- (b) calling witnesses and the power of the tribunal to summon or cite witnesses,
- (c) the right to be represented or assisted at the hearing,
- (d) the right to receive reasons in writing for the determination made by the tribunal,
- (e) the limitation imposed by regulation 33 on any award of costs which the tribunal is able to make, and
- (f) the right to appeal on a question of law arising from the decision of the tribunal.

Action by appellant and the Secretary of State on receiving notice of hearing

22.—(1) Not less than 14 days before the date fixed for the hearing, the appellant and the Secretary of State—

- (a) must each inform the tribunal whether or not he intends to appear or be represented at the hearing, and which, if any, witnesses he intends to call, and

(b) may each, if he does not intend to appear or be represented at the hearing, send to the tribunal further written representations in support of material already sent to the tribunal.

(2) The tribunal must as soon as practicable send to each of the parties a copy of any representations received under this regulation.

Alteration of place or time of the hearing

23.—(1) The tribunal may alter the time and place of the hearing—

- (a) where both the appellant and the Secretary of State agree, or
- (b) in exceptional circumstances, provided that the altered date of the hearing is not earlier than the original date.

(2) Where the tribunal alters the time or place of the hearing under paragraph (1)(b), it must without delay inform the appellant and the Secretary of State in writing of the alteration and the reasons for it.

Publication of notice of hearings

24.—(1) The tribunal must publish in such manner as the chairman may direct, taking into account the need for transparency, the importance of each appeal and the degree of public interest in each appeal, a list of all appeals for which an oral hearing is to be held and of the time and place fixed for each hearing.

(2) The tribunal must, subject to paragraph (3), make available on request the material supplied by each party in relation to each appeal for which an oral hearing is to be held.

(3) Where any material supplied by either party contains any matter which is confidential, the party may request that for that reason it is not made available under this regulation, or is made available in an amended form, and in such a case the material must be made available to such extent and in such form as the chairman thinks appropriate, and the chairman may make such deletions from any material as may be necessary for the purposes of complying with this paragraph.

(4) For the purposes of this regulation, a matter is confidential if—

- (a) it relates to intimate personal or financial circumstances, is commercially sensitive, or consists of information communicated or obtained in confidence, or
- (b) its disclosure would be contrary to the interests of national security.

(5) This regulation does not affect any duty of confidentiality imposed by or under any other enactment or by any rule of law.

Pre-hearing review

25.—(1) Where the tribunal has received the notice of appeal, the additional material and the reply, the chairman must without delay decide whether it is appropriate to conduct a pre-hearing review with a view to—

- (a) identifying the issues which are likely to be material to the tribunal's decision,
- (b) expediting the proceedings at the hearing, and
- (c) assisting his management of the appeal.

(2) The chairman may, if he is satisfied that to do so will produce a substantial saving in the cost of the appeal, determine at the pre-hearing review any question of law arising in relation to the appeal which he is satisfied will significantly affect its outcome.

(3) The tribunal must as soon as practicable send to each of the parties a copy of any determination made under paragraph (2).

(4) A determination under paragraph (2) may be varied or reversed by the tribunal at the hearing of the appeal, but otherwise it shall have effect throughout the hearing.

Hearing to be in public

26.—(1) The hearing must be in public except where the tribunal is satisfied that, because the subject matter to be considered by the tribunal—

(a) relates to intimate personal or financial circumstances, is commercially sensitive, or consists of information communicated or obtained in confidence; or

(b) is a matter whose disclosure would be contrary to the interests of national security or for any other reason, it is fair and reasonable for the hearing, or any part of the hearing, to be conducted in private.

(2) Whether or not the hearing is held in public, a member of the Council on Tribunals or its Scottish Committee is entitled to attend the hearing and may remain present during the deliberations of the tribunal, but must not take part in the deliberations.

Procedure at the hearing

27.—(1) At the beginning of the hearing the chairman must explain the order of proceedings which the tribunal proposes to adopt.

(2) The tribunal must conduct the hearing in the manner which it considers most suitable to clarification of the issues before it and generally to fair handling of the proceedings; it shall so far as appears appropriate seek to avoid formality in its proceedings.

(3) The appellant and the Secretary of State may appear at the hearing and may be represented or assisted by any person.

(4) If the appellant or the Secretary of State fails to attend or be represented at the hearing, the tribunal may hear and, provided they have considered any representations made by the party under regulation 21(1)(b), determine the appeal in that party's absence.

(5) The tribunal must consider any representations made by an interested person under regulation 17.

(6) Subject to paragraph (7), the appellant and the Secretary of State are entitled to give evidence, to call witnesses, to question any witnesses and to address the tribunal both on the evidence and generally on the subject matter of the appeal.

(7) The tribunal may at any point in the hearing limit the rights of either party under paragraph (6), provided that it is satisfied that to do so will not prevent the appeal from being decided fairly.

(8) The tribunal may adjourn the hearing, but must not do so unless it is satisfied that it is necessary to do so in order for the appeal to be decided fairly.

(9) The time and place fixed for an adjourned hearing must be—

(a) announced before the adjournment, or

(b) published in accordance with regulation 24.

Absence of a member of the tribunal

28. The tribunal may continue to hear the appeal in the absence of one member of the tribunal other than the chairman, and the tribunal shall be taken to be properly constituted in those circumstances.

Evidence

29.—(1) Evidence before the tribunal may be given orally or, if the tribunal so orders, by sworn or written statement, but the tribunal may at any stage of the proceedings require the personal attendance of any deponent or maker of a written statement.

(2) The tribunal may receive evidence of any fact which appears to the tribunal to be relevant, whether or not the evidence—

- (a) would be admissible in a court of law, or
- (b) was available to the Secretary of State when the disputed action was taken.

(3) The tribunal may require any witness to give evidence on oath or affirmation which may be administered for the purpose by the chairman.

Summoning or citing of witnesses

30.—(1) Subject to paragraphs (2) and (3), the tribunal may on the application of either party issue a summons, or in relation to Scottish proceedings a citation, requiring any person—

- (a) to attend as a witness at the hearing, at the time and place set out in the summons or citation, and
- (b) to answer any questions or produce any documents or other material in his possession or under his control which relate to any matter in question in the appeal.

(2) No person may be required to attend in compliance with a summons or citation under this regulation unless—

- (a) he has been given at least 7 days' notice of the hearing, and
- (b) he is paid the necessary expenses of his attendance.

(3) No person may be required in compliance with a summons or citation under this regulation to give any evidence or produce any document or other material that he could not be required to produce in legal proceedings.

(4) Where a person summoned under paragraph (1)—

- (a) refuses or neglects, without sufficient cause, to appear or to produce any documents required by the summons to be produced, or
- (b) having been so summoned, refuses to be sworn or to give evidence, a judge may, on the application of the chairman, exercise his powers under section 55 of the County Courts Act 1984⁽¹⁾ or, in relation to matters arising in Northern Ireland, Article 54 of the County Courts (Northern Ireland) Order 1980⁽²⁾ in relation to that person as though the person had been summoned in pursuance of county court regulations as a witness in a county court.

(5) Where a person cited in paragraph (1)—

- (a) refuses or neglects, without sufficient cause, to appear or to produce any documents required by the citation to be produced, or
- (b) having been so cited, refuses to be sworn or to give evidence,

a sheriff may, on the application of the chairman, exercise in relation to that person any power which is for the time being conferred on the sheriff in the Ordinary Cause Rules set out in the First Schedule to the Sheriff Courts (Scotland) Act 1907⁽³⁾ to ordain a witness to forfeit and pay a penalty and to grant decree for that penalty in favour of the party on whose behalf the witness was cited, as though

(1) 1984 c. 28.

(2) S.I.1980/397 (N.I. 3).

(3) 1907 c. 51; the First Schedule was substituted by S.I. 1993/1956.

the person had been duly cited and had demanded and been paid his travelling expenses and had failed to attend a Proof in a cause to which the said Ordinary Cause Rules apply.

- (6) In this regulation, “legal proceedings” means—
- (a) in the case of proceedings relating to an appeal which relates to matters arising in England or Wales or Northern Ireland, proceedings in a county court, and
 - (b) in the case of Scottish proceedings, proceedings in an ordinary cause before the sheriff.