
STATUTORY INSTRUMENTS

2002 No. 3237

**The Social Security Commissioners (Procedure)
(Tax Credits Appeals) Regulations 2002**

**PART 3
PROCEDURE**

Representation

13. 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

14.—(1) A respondent may submit to a Commissioner written observations on an appeal 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) a statement as to whether or not he opposes the appeal; and
- (c) 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.

(4) Where there is more than one respondent, the order of and time for written observations shall be as directed by a Commissioner under regulation 16.

Written observations in reply

15.—(1) Any party may submit to a Commissioner written observations in reply within one month of being sent written observations under regulation 14.

(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 under regulation 14; 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 1998 Act setting aside the decision and may dispense with the procedure in paragraphs (1) and (2).

Directions

16.—(1) Subject to paragraph (2), where a Commissioner considers that an application or appeal made to him gives insufficient particulars to enable the question at issue to be determined, he may

direct the party making the application or appeal, or any respondent, to furnish any further particulars which may be reasonably required.

(2) No person shall be compelled to give any evidence or produce any document or other material that he could not be compelled to give or produce on a trial of an action in a court of law in that part of Great Britain where the hearing takes place.

(3) A Commissioner may, before determining the application or appeal, direct the appeal tribunal to submit a statement of such facts or other matters as he considers necessary for the proper determination of that application or appeal.

(4) 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.

(5) Without prejudice to regulations 14 and 15, or to paragraph (4), and subject to paragraph (2), 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.

(6) An application under paragraph (4) shall be made in writing to a Commissioner and shall set out the direction which the applicant seeks.

(7) Unless a Commissioner shall otherwise determine, the office shall send a copy of an application under paragraph (4) to every other party.

Non-disclosure of medical evidence

17.—(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) shall not be disclosed to a joint claimant of the person to whom it relates or any person acting for or representing that joint claimant;
- (c) in a case where a claim for a tax credit is made by reference to the disability of a person other than the claimant or joint claimant and the evidence relates to that other person, shall not be disclosed to the claimant, joint claimant or any person acting for or representing the claimant or joint 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

18.—(1) Subject to paragraphs (2), (3), (4) and (5), a Commissioner may determine any proceedings without a hearing.

(2) In appeals against a determination in penalty proceedings, where a request for a hearing is made by the party on whom the penalty has been imposed, a Commissioner shall grant the request.

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

(4) 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.

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

Hearings

19.—(1) This regulation applies to any hearing of an application or appeal 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 or appeal;
- (b) the claimant;
- (c) the Board;
- (d) a trade union, employers' association or other association which would have had a right of appeal under the 1998 Act;
- (e) a person acting for another in making a claim for a tax credit, or acting for another in making an application for a direction under section 19(9) of the 2002 Act;
- (f) a person acting for another in giving notification of a change of circumstances;
- (g) a person acting for another in response to a notice given under section 17 of the 2002 Act; and
- (h) with the leave of the Commissioner, any other person.

(7) Any person entitled to be heard at a hearing may address the Commissioner and—

- (a) in the case of an appeal against a determination in penalty proceedings, the party on whom the penalty has been imposed may give evidence, call witnesses and put questions directly to any other person called as a witness;
- (b) in all other cases, a person entitled to be heard may 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

20.—(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 and appeals

21.—(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 may withdraw his appeal with the leave of a Commissioner.

(3) A Commissioner may, on application by the party concerned, give leave to reinstate any application or appeal 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

22. 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.