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STATUTORY INSTRUMENTS

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**1998 No. 1506**

**The Social Security (Northern Ireland) Order 1998**

**PART II**

**DECISIONS AND APPEALS**

**CHAPTER II**

**SOCIAL SECURITY DECISIONS AND APPEALS**

*Appeals*

**Appeal to appeal tribunal**

**13.**—(1) This Article applies to any decision of the Department under Article 9 or 11 (whether as originally made or as revised under Article 10) which—

- (a) is made on a claim for, or on an award of, a relevant benefit, and does not fall within Schedule 2;
  - (b) is made otherwise than on such a claim or award, and falls within Schedule 3; or
  - (c) relates to statutory sick pay or statutory maternity pay.
- (2) In the case of a decision to which this Article applies—
- (a) if it relates to statutory sick pay or statutory maternity pay, the employee and employer concerned shall each have a right to appeal to an appeal tribunal; and
  - (b) in any other case, the claimant and such other person as may be prescribed shall have a right to do so,

but nothing in this paragraph shall confer a right of appeal in relation to a prescribed decision, or a prescribed determination embodied in or necessary to a decision.

(3) Regulations under paragraph (2) shall not prescribe any decision or determination that relates to the conditions of entitlement to a relevant benefit for which a claim has been validly made or for which no claim is required.

(4) Where the Department has determined that any amount is recoverable under section 69 or 72 of the Administration Act, any person from whom the Department has determined that it is recoverable shall have the same right of appeal to an appeal tribunal as a claimant.

(5) In any case where—

- (a) the Department has made a decision in relation to a claim under Part V of the Contributions and Benefits Act; and
  - (b) the entitlement to benefit under that Part of that Act of any person other than the claimant is or may be, under Part VI of Schedule 7 to that Act, affected by that decision,
- that other person shall have the same right of appeal to an appeal tribunal as the claimant.

(6) A person with a right of appeal under this Article shall be given such notice of a decision to which this Article applies and of that right as may be prescribed.

(7) Regulations may make provision as to the manner in which, and the time within which, appeals are to be brought.

(8) In deciding an appeal under this Article, an appeal tribunal—

- (a) need not consider any issue that is not raised by the appeal; and
- (b) shall not take into account any circumstances not obtaining at the time when the decision appealed against was made.

(9) The reference in paragraph (1) to a decision under Article 11 is a reference to a decision superseding any such decision as is mentioned in sub-paragraph (a) or (b) of paragraph (1) of that Article.

#### **Redetermination, etc. of appeals by tribunal**

**14.**—(1) This Article applies where an application is made to a person under Article 15(10)(a) for leave to appeal from a decision of an appeal tribunal.

(2) If the person considers that the decision was erroneous in point of law, he may set aside the decision and refer the case either for redetermination by the tribunal or for determination by a differently constituted tribunal.

(3) If each of the principal parties to the case expresses the view that the decision was erroneous in point of law, the person shall set aside the decision and refer the case for determination by a differently constituted tribunal.

(4) In this Article and Article 15 “principal parties” means—

- (a) in a case relating to statutory sick pay or statutory maternity pay, the Department and the persons mentioned in paragraph (2)(b) and (c) of that Article;
- (b) in any other case—
  - (i) the Department and the persons mentioned in paragraph (3)(b) of that Article; and
  - (ii) where applicable, the person mentioned in paragraph (3)(d) and such a person as is first mentioned in paragraph (4) of that Article.

#### **Appeal from tribunal to Commissioner**

**15.**—(1) Subject to the provisions of this Article, an appeal lies to a Commissioner from any decision of an appeal tribunal under Article 13 or 14 on the ground that the decision of the tribunal was erroneous in point of law.

(2) In the case of statutory sick pay or statutory maternity pay an appeal lies under this Article at the instance of any of the following—

- (a) the Department;
- (b) the employee concerned;
- (c) the employer concerned;
- (d) a trade union, where—
  - (i) the employee is a member of the union at the time of the appeal and was so immediately before the matter in question arose; or
  - (ii) the matter in question concerns the entitlement of a deceased person who was at the time of his death a member of the union; and

- (e) an association of employers of which the employer is a member at the time of the appeal and was so immediately before the matter in question arose.
- (3) In any other case an appeal lies under this Article at the instance of any of the following—
- (a) the Department;
  - (b) the claimant and such other person as may be prescribed;
  - (c) in any of the cases mentioned in paragraph (5), a trade union; and
  - (d) a person from whom it is determined that any amount is recoverable under section 69 or 72 of the Administration Act.
- (4) In a case relating to industrial injuries benefit an appeal lies under this Article at the instance of a person whose entitlement to benefit is, or may be, under Part VI of Schedule 7 to the Contributions and Benefits Act, affected by the decision appealed against, as well as at the instance of any person or body such as is mentioned in paragraph (3).
- (5) The following are the cases in which an appeal lies at the instance of a trade union—
- (a) where the claimant is a member of the union at the time of the appeal and was so immediately before the matter in question arose;
  - (b) where that matter in any way relates to a deceased person who was a member of the union at the time of his death;
  - (c) where the case relates to industrial injuries benefit and the claimant or, in relation to industrial death benefit, the deceased, was a member of the union at the time of the relevant accident.
- (6) Paragraphs (2), (3) and (5), as they apply to a trade union, apply also to any other association which exists to promote the interests and welfare of its members.
- (7) If each of the principal parties to the appeal expresses the view that the decision appealed against was erroneous in point of law, the Commissioner may set aside the decision and refer the case to a tribunal with directions for its determination.
- (8) Where the Commissioner holds that the decision appealed against was erroneous in point of law, he shall set it aside and—
- (a) he shall have power—
    - (i) to give the decision which he considers the tribunal should have given, if he can do so without making fresh or further findings of fact; or
    - (ii) if he considers it expedient, to make such findings and to give such decision as he considers appropriate in the light of them; and
  - (b) in any other case he shall refer the case to a tribunal with directions for its determination.
- (9) Subject to any direction of the Commissioner, a reference under paragraph (7) or (8)(b) shall be to a differently constituted tribunal.
- (10) No appeal lies under this Article without the leave—
- (a) of the person who constituted, or was the chairman of, the tribunal when the decision was given or, in a prescribed case, the leave of such other person as may be prescribed; or
  - (b) subject to and in accordance with regulations, of a Commissioner.
- (11) Regulations may make provision as to the manner in which, and the time within which, appeals are to be brought and applications made for leave to appeal.
- (12) The Lord Chancellor may pay to any person who attends any proceedings under this Article such travelling and other allowances as he may determine; and in this paragraph the reference to travelling and other allowances includes a reference to compensation for loss of remunerative time.
- (13) The Lord Chancellor may by regulations provide—

- (a) for officers authorised by him to make any determinations which fall to be made by Commissioners;
- (b) for the procedure to be followed by such officers in making such determinations;
- (c) for the manner in which such determinations by such officers may be called in question.