STATUTORY RULES OF NORTHERN IRELAND

2001 No. 299

ROAD TRAFFIC

The Road Traffic (Health Services Charges) (Appeals) Regulations (Northern Ireland) 2001

Made - - - -	*13th August 2001*
Coming into operation	*10th September 2001*

The Department of Health, Social Services and Public Safety in exercise of the powers conferred upon it by sections 29(4), 30(5), 31 and 57(1) and (3) of the Health and Personal Social Services Act (Northern Ireland) 2001(**1**), and of all other powers enabling it in that behalf, hereby makes the following Regulations:

Part I

General

Citation, commencement, interpretation and extent

1.—(1) These Regulations may be cited as the Road Traffic (Health Services Charges) (Appeals) Regulations (Northern Ireland) 2001 and shall come into operation on 10th September 2001.

(2) In these Regulations—

"the Act" means the Health and Personal Social Services Act (Northern Ireland) 2001 and any reference to a numbered section is to the section so numbered in the Act;

"the 1998 Order" means the Social Security (Northern Ireland) Order 1998;

"appeal" means, except in regulation 17, an appeal against a certificate under section 29;

"chairman" means a panel member nominated to be chairman of an appeal tribunal in accordance with Article 8(3) of the 1998 Order;

"clerk to the appeal tribunal" means a clerk assigned to the appeal tribunal in accordance with regulation 37 of the Decisions and Appeals Regulations;

"compensator" means a person making a compensation payment within the meaning of section 23(3);

(**1**) 2001 c. 3 (N.I.)

"the Decisions and Appeals Regulations" means the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999(**2**);

"Department" means the Department for Social Development;

"legally qualified panel member" means a panel member who satisfies the requirements of paragraph 1 of Schedule 2 to the Decisions and Appeals Regulations;

"panel" means the panel constituted under Article 7 of the 1998 Order in accordance with regulation 35 of and Schedule 2 to the Decisions and Appeals Regulations;

"panel member" means a person appointed to the panel;

"party to the proceedings" means the Department and any person entitled under section 29 to make an appeal;

"President" means the President of appeal tribunals appointed under Article 6 of the 1998 Order.

Service of notices and documents

2. Where, by any provision of these Regulations—

(a) any notice or other document is required to be given or sent to the clerk to the appeal tribunal or to an officer authorised by the Department, that notice or document shall be treated as having been so given or sent on the day that it is received by the clerk to the appeal tribunal or, as the case may be, by an officer authorised by the Department; and

(b) any notice (including notification of a decision of the Department) or other document is required to be given or sent to any person other than the clerk to the appeal tribunal or, as the case may be, to an officer authorised by the Department, that notice or document shall, if sent by ordinary post to that person's last known address, be treated as having been so given or sent on the day that it is posted.

Part II

Treatment of Appeal as Application for Review

Application

3. The Department may treat any appeal under section 29 as an application for review under section 28.

Part III

Rights of appeal and procedure for Bringing Appeals

Notice of right of appeal

4. A person with a right of appeal under section 29 shall be given written notice of his right of appeal against the certificate.

Time within which an appeal is to be brought

5.—(1) Any appeal against a certificate shall be brought—

(**2**) S.R. 1999 No. 162; the relevant amending instruments are S.R. 1999 No. 242 and S.R. 2000 No. 215

(a) not later than one month after the date on which the compensator discharged the liability under section 23;

(b) where the certificate is reviewed by the Department in accordance with section 28, not later than one month after the date on which the certificate is confirmed or, as the case may be, a fresh certificate is issued; or

(c) where an agreement is made under which an earlier compensation payment is treated as having been made in final discharge of a claim made by, or in respect of, a traffic casualty and arising out of the injury or death, not later than one month after the date of that agreement.

(2) Where a dispute arises as to whether an appeal was brought within the time limit specified in this regulation, the dispute shall be referred to, and be determined by a legally qualified panel member.

(3) The time limit specified in this regulation for bringing an appeal may be extended in accordance with regulation 6.

Late appeals

6.—(1) The time within which an appeal must be brought may be extended where the conditions specified in paragraphs (2) to (7) are satisfied, but no appeal shall in any event be brought more than one year after the expiration of the last day for appealing under regulation 5.

(2) An application for an extension of time under this regulation shall be made in accordance with regulation 7 and shall be determined by a legally qualified panel member.

(3) An application under this regulation shall contain particulars of the grounds on which the extension of time is sought.

(4) An application for an extension of time shall not be granted unless the legally qualified panel member is satisfied that—

(a) if the application is granted there are reasonable prospects that the appeal will be successful; and

(b) it is in the interests of justice for the application to be granted.

(5) For the purposes of paragraph (4), it is not in the interests of justice to grant an application unless the legally qualified panel member is satisfied that special circumstances exist which are wholly exceptional and relevant to the application and as a result of those special circumstances it was not practicable for the application to be made within the time limit specified in regulation 5.

(6) In determining whether it is in the interests of justice to grant an application, the legally qualified panel member shall have regard to the principle that the greater the amount of time that has elapsed between the expiry of the time within which the appeal is to be brought under regulation 5 and the making of the application for an extension of time, the more compelling should be the special circumstances on which the application is based.

(7) In determining whether it is in the interests of justice to grant an application, no account shall be taken of the following—

(a) that the applicant or any person acting for him was unaware of, or misunderstood, the law applicable to his case (including ignorance or misunderstanding of the time limits imposed by these Regulations); or

(b) that a court has taken a different view of the law from that previously understood and applied.

(8) An application under this regulation for an extension of time which has been refused may not be renewed.

(9) The legally qualified panel member who determines an application under this regulation shall record a summary of his decision in such written form as has been approved by the President.

(10) As soon as practicable after the decision is made a copy of the decision shall be sent or given to every party to the proceedings.

Making of appeals and applications

7.—(1) An appeal, or an application for an extension of time for making an appeal to an appeal tribunal, shall be in writing either on a form approved for the purpose by the Department or in such other format as it accepts as sufficient for the purpose and shall—

(a) be signed by—

(i) the person who, under section 29, has a right of appeal; or

(ii) where the person mentioned in head (i) has provided written authority to a representative to act on his behalf, that representative;

(b) be sent or delivered to the Department;

(c) contain the following particulars—

(i) the date of the certificate against which the appeal is made;

(ii) the ground under section 29 to which the appeal relates; and

(iii) a summary of the reasons relied on by the person making the appeal to support his contention that the certificate is wrong.

(2) A form which is not completed in accordance with the instruction on it—

(a) except where paragraph (3) applies, does not satisfy the requirements of paragraph (1); and

(b) may be returned by the Department to the sender for completion in accordance with those instructions.

(3) Where the Department is satisfied that the form, although not completed in accordance with the instructions on it, includes sufficient information to enable the appeal or application to proceed, it may treat the form as satisfying the requirements of paragraph (1).

(4) Where an appeal or application is made in writing otherwise than on the approved form ("the letter"), and the letter includes sufficient information to enable the appeal or application to proceed, the Department may treat the letter as satisfying the requirements of paragraph (1).

(5) Where the letter does not include sufficient information to enable the appeal or application to proceed, the Department may request further information in writing ("further particulars") from the person who wrote the letter.

(6) Where a form is returned under paragraph 2(*b*) or where further particulars are requested under paragraph (5) and such form and particulars are completed and returned to the Department within 14 days, or within such other period as the Department directed, the time for making the appeal shall be extended by 14 days or by such other period as the Department may direct.

(7) Where a person to whom a form is returned or from whom further particulars are requested does not complete and return the form or send further particulars within the period of time specified in paragraph (6)—

(a) the Department shall forward a copy of the form or, as the case may be, the letter, together with any other relevant documents or evidence to a legally qualified panel member; and

(b) the legally qualified panel member shall determine whether the form or the letter satisfies the requirements of paragraph (1), and shall inform the appellant or applicant and the Department of his determination.

(8) Where—

(a) a form is duly completed and returned or further particulars are sent after the expiry of the period of time allowed in accordance with paragraph (6); and

(b) no decision has been made under paragraph (7) at the time the form or the further particulars are received by the Department;

that form or those further particulars shall also be forwarded to the legally qualified panel member who shall determine whether the form or the letter satisfies the requirements of paragraph (1), and shall inform the appellant or applicant and the Department of his determination.

(9) The date of an appeal shall be the date on which all the particulars required under paragraph (1) are received by the Department.

(10) The particulars referred to in paragraph (9) shall be forwarded to the clerk to the appeal tribunal.

Part IV

Procedure in Connection with Determination of Appeals

Consideration and determination of appeals

8.—(1) A legally qualified panel member may give directions requiring a party to the proceedings to comply with any provision of these Regulations and may at any stage of the proceedings, either of his own motion or on a written application made to the clerk to the appeal tribunal by any party to the proceedings, give such directions as he may consider necessary or desirable for the just, effective and efficient conduct of the proceedings and may direct any party to the proceedings to provide such particulars or to produce such documents as may be reasonably required.

(2) Where a clerk to the appeal tribunal is authorised to take steps in relation to the procedure of the tribunal he may give directions requiring any party to the proceedings to comply with any provision of these Regulations.

Directions concerning oral hearings

9.—(1) Where an appeal is made to an appeal tribunal, the clerk to the appeal tribunal shall direct every party to the proceedings to notify the clerk to the appeal tribunal in writing whether he wishes to have an oral hearing of the appeal or whether he is content for the appeal to proceed without an oral hearing.

(2) A notification given in accordance with paragraph (1) shall be sent to the clerk to the appeal tribunal within 14 days of the date of issue of the direction under that paragraph or within such longer period as the clerk to the appeal tribunal may direct.

(3) Where a party to the proceedings notifies the clerk to the appeal tribunal in accordance with paragraph (2) that he wishes to have an oral hearing of the appeal, the appeal tribunal shall hold an oral hearing.

(4) The chairman or, in the case of an appeal tribunal which has only one member, that member, may of his own motion direct that an oral hearing of the appeal be held if he is satisfied that such a hearing is necessary to enable the appeal tribunal to reach a decision.

Withdrawal of appeal

10.—(1) An appeal may be withdrawn by the appellant or his representative either—

(a) at an oral hearing; or