STATUTORY RULES OF NORTHERN IRELAND

1997 No. 430

SOCIAL SECURITY

The Social Security (Recovery of Benefits) (Appeals) Regulations (Northern Ireland) 1997

Made - - - -	*23rd September 1997*
Coming into operation	*6th October 1997*

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by sections 21(9) and (10) and 165(4) to (6) of the Social Security Administration (Northern Ireland) Act 1992(**1**) and Articles 13(5) and 14(6) of the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997(**2**) and of all other powers enabling it in that behalf, by this statutory rule, which contains only regulations made by virtue of the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Recovery of Benefits) (Appeals) Regulations (Northern Ireland) 1997 and shall come into operation on 6th October 1997.

(2) In these Regulations—

"the Order" means the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997;

"clerk to the tribunal" means a clerk to a medical appeal tribunal appointed in accordance with section 48 of, and paragraph 4 of Schedule 2 to, the Administration Act;

"Commissioner" has the meaning given in section 167(1) of the Administration Act;

"full-time chairman" means a full-time chairman of medical appeal tribunals appointed under section 49(1) of the Administration Act;

"President" means the President of social security appeal tribunals, medical appeal tribunals and disability appeal tribunals appointed under section 49(1) of the Administration Act.

(3) In these Regulations—

(a) a reference to a numbered Article is to the Article of the Order bearing that number; and

(b) a reference to the parties to the proceedings is to the Department and any person entitled under Article 13(2) to make an appeal.

(**1**) 1992 c. 8
(**2**) S.I.1997/1183 (N.I. 12)

(4) Where, by any provision of these Regulations—

(a) any notice or other document is required to be given or sent to the Department or the clerk to, or a chairman of, a tribunal, that notice or document shall be treated as having been so given or sent on the day that it is received by the Department or the clerk to the tribunal, as appropriate; and

(b) any notice or other document is required to be given or sent to any other person, that notice or document shall, if sent by ordinary post to that person's last known or notified address, be treated as having been given or sent on the day that it was posted.

(5) Subject to regulation 13(3), where any power is conferred by these Regulations on a chairman of a tribunal then—

(a) where that power is to be exercised at the hearing of an appeal or application, it shall be exercised by the chairman of the tribunal hearing the appeal or considering the application; and

(b) otherwise, it shall be exercised by a person who is eligible to be nominated to act as a chairman of a medical appeal tribunal under section 48(4) of the Administration Act.

(6) The Interpretation Act (Northern Ireland) 1954(**3**) shall apply to these Regulations as it applies to a Measure of the Assembly.

Manner of making appeals and time limits

2.—(1) Subject to paragraph (11), any appeal against a certificate of recoverable benefits shall be in writing on a form approved by the Department and shall be given or sent to the Department—

(a) not later than 3 months after the date on which the compensator discharged the liability under Article 8;

(b) where the certificate is reviewed by the Department in accordance with regulations made under Article 13(5)(*c*), not later than 3 months 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 an injured person and arising out of the accident, injury or disease, not later than 3 months after the date of that agreement.

(2) The time specified by this regulation for the making of any appeal may be extended, even though the time so specified may have already expired, provided the conditions set out in paragraphs (3) to (7) are satisfied; and any application for an extension of time under this paragraph shall be made to the Department and shall be determined by a chairman of a medical appeal tribunal.

(3) Where the time specified for the making of an appeal has already expired, an application for an extension of time for making an appeal shall not be granted unless the applicant has satisfied the chairman considering the application that—

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

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

(4) For the purposes of paragraph (3) it shall not be considered to be in the interests of justice to grant an application unless the chairman considering the application is satisfied that—

(a) special reasons exist, which are wholly exceptional and which relate to the history or facts of the case;

(**3**) 1954 c. 33 (N.I.)

(b) such special reasons have existed throughout the period beginning with the day on which the time specified by paragraph (1) for the making of an appeal expires and ending with the day on which the application for an extension of time is made; and

(c) such special reasons manifestly constitute a reasonable excuse of compelling weight for the applicant's failure to make an appeal within the time specified.

(5) In determining whether there are special reasons for granting an application for an extension of time for making an appeal under paragraph (2) the chairman considering the application shall have regard to the principle that the greater the amount of time that has elapsed between the expiry of the time specified for the making of the appeal and the making of the application for an extension of time, the more cogent should be the special reasons on which the application is based.

(6) In determining whether facts constitute special reasons for granting an application for an extension of time for making an appeal under paragraph (2) no account shall be taken of the following —

(a) that the applicant or anyone acting for him or advising him was unaware of or misunderstood the law applicable to his case (including ignorance or misunderstanding of any time limits imposed by paragraph (1));

(b) that a Commissioner (including a Commissioner within the meaning of section 191 of the Social Security Administration Act 1992(**4**)) or a court has taken a different view of the law from that previously understood and applied.

(7) Notwithstanding paragraph (2), no appeal may in any event be brought later than 6 years after the beginning of the period specified in paragraph (1) or, if more than one such period is relevant, the one beginning later or latest.

(8) An application under paragraph (2) for an extension of time which has been refused may not be renewed.

(9) Any appeal or application under these Regulations shall contain the following particulars—

(a) in the case of an appeal, the date of the certificate of recoverable benefits or review decision of the Department against which the appeal is made, the question under Article 13 to which the appeal relates, and a summary of the arguments relied on by the person making the appeal to support his contention that the certificate is wrong;

(b) in the case of an application under paragraph (2) for an extension of time in which to appeal, in relation to the appeal which it is proposed to bring, the particulars required under sub-paragraph (*a*) together with particulars of the special reasons on which the application is based.

(10) Where the appeal, or application under paragraph (2) for an extension of time, is made by the injured person or other person to whom a compensation payment has been made, there shall be sent with that appeal or application a copy of the statement given to that person under Article 11 or if that statement was not in writing, a written summary of it.

(11) Where an appeal is not made on the form approved for the time being, but is made in writing, contains all the particulars required under paragraph (9) and, where applicable, is accompanied by the document required under paragraph (10), the Department may treat that appeal as duly made.

(12) Where it appears to the Department that an appeal or application does not contain all the particulars required under paragraph (9) or is not accompanied by the document required under paragraph (10), it may direct the person making the appeal or application to provide such particulars or such document.

(13) Where paragraph (12) applies, the Department may extend the time specified by this regulation for making the appeal or application by a period of not more than 14 days.

(**4**) 1992 c. 5

(14) Where further particulars or a document are required under paragraph (12) they shall be sent or delivered to the Department within such period as it may direct.

(15) The date of an appeal shall be the date on which all the particulars required under paragraph (9) and, where applicable, the document required under paragraph (10) are received by the Department.

(16) In the case of an application under paragraph (2) for an extension of time for making an appeal, the chairman who determines that application shall record his decision in writing together with a statement of the reasons for the decision.

(17) As soon as practicable after the decision has been made, it shall be communicated to the applicant and to the Department and if, within 3 months of such communication being sent, the applicant or the Department so requests in writing, a copy of the record referred to in paragraph (16) shall be supplied to him or it.

(18) The Department may treat any appeal as an application for review under Article 12, notwithstanding that a condition specified in paragraph (1)(*a*) or (*b*) of that Article is not satisfied.

General provisions relating to the procedure of tribunals

3.—(1) Subject to the provisions of the Order and of these Regulations—

(a) the procedure in connection with the consideration and determination of any reference to a medical appeal tribunal under Article 14 shall be such as the chairman of the tribunal shall determine;

(b) the Chairman of the tribunal may give directions requiring any party to the proceedings to comply with any provision of these Regulations and may further at any stage of the proceedings, either of his own motion or on a written application made to the clerk to the tribunal by any such party, 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 provide such further particulars or to produce such documents as may reasonably be required;

(c) where under these Regulations the clerk to the 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;

(d) any person who, by virtue of the provisions of these Regulations, has the right to be heard at a hearing may be accompanied and may be represented by another person whether having professional qualifications or not and, for the purposes of the proceedings at any such hearing, any such representative shall have all the rights and powers to which the person whom he represents is entitled under the Order and these Regulations.

(2) For the purpose of arriving at its decision a tribunal shall, and for the purpose of discussing any question of procedure may, notwithstanding anything contained in these Regulations, order all persons not being members of the tribunal, other than the clerk to the tribunal, to withdraw from the sitting of the tribunal, except that—

(a) the President and any full-time chairman; and

(b) with the leave of the chairman of the tribunal—

(i) any person undergoing training as a chairman or other member of a medical appeal tribunal or as a clerk to such a tribunal, and

(ii) any other person to whose presence every party to the proceedings actually present consents,

may remain present at any such sitting.

(3) Where a reference is made to a tribunal by the Department, the clerk to the tribunal shall give notice of it to every other party to the proceedings.

Requirement for oral hearings

4.—(1) Where a reference is made to a tribunal, the clerk to the tribunal shall direct every party to the proceedings to notify him if that party wishes an oral hearing of that reference.

(2) A notification under paragraph (1) shall be in writing and shall be made within 10 days of receipt of the direction from the clerk to the tribunal or within such other period as the clerk to the tribunal or the chairman of the tribunal may direct.

(3) Where the clerk to the tribunal receives notification in accordance with paragraph (2) the tribunal shall hold an oral hearing.

(4) The chairman of a tribunal may of his own motion require an oral hearing if he is satisfied that such a hearing is necessary to enable the tribunal to reach a decision.

Procedure at oral hearings

5.—(1) Except where paragraph (4) applies, not less than 7 days notice, beginning with the day on which the notice is given and ending on the day before the hearing, of the time and place of any oral hearing before a tribunal shall be given to every party to the proceedings, and if such notice has not been given to a person to whom it should have been given under the provisions of this paragraph the hearing may proceed only with the consent of that person.

(2) The chairman of a tribunal may give notice before or during an oral hearing for the determination at that hearing by the tribunal, in accordance with the provisions of these Regulations, of any question referred under Article 14 notwithstanding that a party to the proceedings has failed to indicate his availability for a hearing or to provide all the information which may have been requested, if the chairman is satisfied that such party—

(a) has failed to comply with a direction regarding his availability or requiring information under regulation 3(1)(*b*) or (*c*); and

(b) has not given any explanation for his failure to comply with such a direction,

provided that the chairman is satisfied that the tribunal has sufficient particulars in order for the question to be determined.

(3) The chairman of a tribunal may give notice before or during an oral hearing for the determination at that hearing by the tribunal, in accordance with the provisions of these Regulations, of any question where he believes the appeal on that ground has no reasonable prospect of success.

(4) Any party to the proceedings may waive his right to receive not less than 7 days notice of the time and place of any oral hearing as specified in paragraph (1).

(5) If a party to the proceedings to whom notice has been given under paragraph (1) fails to appear at the hearing the tribunal may, having regard to all the circumstances including any explanation offered for the absence and, where applicable, the circumstances set out in paragraph (2)(*a*) and (*b*), proceed with the hearing notwithstanding his absence, or give such directions with a view to the determination of any question referred to it as it may think proper.

(6) If a party to the proceedings has waived his right to be given notice under paragraph (4), the tribunal may proceed with the hearing notwithstanding his absence.

(7) Any oral hearing before a tribunal shall be in public except where the person making the appeal requests a private hearing or the chairman 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 shall be in private.

(8) At any oral hearing any party to the proceedings shall be entitled to be present and be heard.