STATUTORY INSTRUMENTS

1980 No. 1321

SOCIAL SECURITY

The Social Security Commissioners (Appeals to the Courts) Regulations 1980

Made - - - -	*3rd September* 1980
Laid before Parliament	*11th September* 1980
Coming into Operation	*24th November* 1980

The Secretary of State for Social Services, in exercise of powers conferred by section 14(2), (3) and (7) of the Social Security Act 1980**(a)**, and of all other powers enabling him in that behalf, after consultation with the Council on Tribunals in so far as is required by section 10 of the Tribunals and Inquiries Act 1971**(b)**, hereby makes the following regulations:—

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Social Security Commissioners (Appeals to the Courts) Regulations 1980, and shall come into operation on 24th November 1980.

(2) In these regulations, unless the context otherwise requires—

"the Act" means the Social Security Act 1980;

"the Chief Commissioner" means the Chief Social Security Commissioner;

and other expressions have the same meanings as in the Social Security Act 1975**(c)**.

(3) Any reference in any of these regulations to a numbered paragraph is a reference to the paragraph of that regulation bearing that number.

Selection of Commissioner

2.—(1) In a case where the Chief Commissioner considers that it is impracticable, or would be likely to cause undue delay, for an application for leave to appeal against a decision of a Commissioner to be determined by that Commissioner, that application shall be determined—

(*a*) where the decision was a decision of an individual Commissioner, by the Chief Commissioner or a Commissioner selected by the Chief Commissioner; and

(*b*) where the decision was a decision of a Tribunal of 3 Commissioners, by a differently constituted Tribunal of 3 Commissioners selected by the Chief Commissioner.

(2) If the Chief Commissioner is unable to act, paragraph (1) shall have effect as if the expression "the Chief Commissioner" referred to such other of the Commissioners as he may have nominated to act for the purpose.

(a) 1980 c. 30. **(b)** 1971 c. 62. **(c)** 1975 c. 14.

Persons unable to act

3.—(1) Where in the case of any person—

(*a*) benefit is payable to him or he is alleged to be entitled to it, or a claim for benefit has been made by him or on his behalf;

(*b*) he is a child or is unable for the time being to act; and

(*c*) either—

(i) no receiver has been appointed by the Court of Protection with power to claim, or as the case may be, receive benefit on his behalf, or

(ii) in Scotland, his estate is not being administered by any tutor, curator, factor or other person acting or appointed in terms of law,

the Secretary of State may, upon written application made to him by a person who, if a natural person, is over the age of 18, appoint that person to apply, on behalf of the child or the person who is unable to act, for leave to appeal against a Commissioner's decision.

(2) Where the Secretary of State has made an appointment under paragraph (1)—

(*a*) he may at any time in his absolute discretion revoke any such appointment;

(*b*) the person appointed may resign his office after having given one month's notice in writing to the Secretary of State of his intention to do so; and

(*c*) any such appointment shall terminate when the Secretary of State is notified that a receiver or other person to whom paragraph (1)(*c*) above applies has been appointed.

(3) In this regulation, "benefit" means benefit under the Family Income Supplements Act 1970**(a)**, the Social Security Acts 1975 to 1980, Part I of Schedule 3 to the Social Security (Consequential Provisions) Act 1975**(b)**, the Child Benefit Act 1975**(c)**, the Supplementary Benefits Act 1976**(d)**, the Family Income Supplements Act (Northern Ireland) 1971**(e)**, the Social Security (Northern Ireland) Acts 1975 to 1980, the Child Benefit (Northern Ireland) Order 1975**(f)** or the Supplementary Benefits (Northern Ireland) Order 1977**(g)**.

Time and manner of applications for leave to appeal

4.—(1) An application to a Commissioner for leave to appeal against a Commissioner's decision, by a person entitled to make such an application, shall be made in writing within 3 months beginning with the date on which the Commissioner has given to that person notice in writing of the decision (a notice sent by post being deemed to have been given on the day on which it was posted), or such further period as the Commissioner may for special reasons allow (notwithstanding that the period of 3 months has already expired); and every such application shall include a statement of the question of law in respect of which it is alleged that the Commissioner's decision is erroneous and on which it is desired to appeal.

(2) An application shall be delivered or sent to the Commissioners' office in London, Edinburgh or Cardiff, according as the decision against which it is desired to appeal was made by a Commissioner in England, Scotland or Wales.

(a) 1970 c. 55. **(b)** 1975 c. 18. **(c)** 1975 c. 61. **(d)** 1976 c. 71.
(e) 1971 c. 8 (N.I.). **(f)** S.I. 1975/1504 (N.I. 16). **(g)** S.I. 1977/2156 (N.I. 27).

Provisions for the hearing and determination of applications for leave to appeal

5.—(1) If the Commissioner to whom an application for leave to appeal has been made is satisfied that a hearing is desirable, he may direct that a hearing be held, and reasonable notice of the time and place of the hearing shall be given to every person who applied or was entitled to apply for leave to appeal.

(2) Every such hearing shall be in public except in so far as the Commissioner may otherwise direct if he is of the opinion that intimate personal or financial circumstances may have to be disclosed or that considerations of public security are involved, so however that any member of the Council on Tribunals or of the Scottish Committee of the Council may be present in his capacity as such, notwithstanding that the hearing is not in public.

(3) Every person who applied or was entitled to apply for leave to appeal shall have the right to be present and to be heard at such a hearing and may be represented by counsel, advocate or solicitor or any other person.

(4) If any person to whom notice of hearing has been duly given in accordance with paragraph (1) should fail to appear either in person or by representative at the hearing, the Commissioner may proceed to determine the application notwithstanding the absence of that person, or may give such directions as he thinks proper with a view to the determination of the application.

(5) Subject to the provisions of these regulations, the procedure in connection with the consideration and determination of any application shall be such as a Commissioner may determine.

(6) The decision of a Commissioner on an application for leave to appeal shall be recorded in writing and signed by him, and a copy thereof shall be given as soon as may be practicable to every person who applied or was entitled to apply for leave to appeal.

Cases where medical appeal tribunals refer questions of law to Commissioners

6.—(1) In relation to a decision of a Commissioner which was given in consequence of a reference under section 112(4) of the Social Security Act 1975 (references of questions of law by medical appeal tribunals), section 14(3) of the Act shall have effect with the modification that an application for leave to appeal against the Commissioner's decision may only be made by—

(*a*) the claimant in relation to whose claim the question of law arose before the medical appeal tribunal; or

(*b*) a person appointed to apply on behalf of the claimant under regulation 3 above; or

(*c*) a trade union of which the claimant was a member at the material time; or

(*d*) any other association which exists to promote the interests and welfare of its members and of which the claimant was a member at the material time; or

(*e*) the Secretary of State.

(2) In paragraph (1)(*c*) and (*d*), "the material time" means, where the question of law arose in relation to—

(*a*) an accident, the time of that accident; or

(*b*) a prescribed disease, the date of development (within the meaning of the Social Security (Industrial Injuries) (Prescribed Diseases) Regulations 1980**(a)**) of that disease; or

(a) S.I. 1980/377.

(*c*) a claim for mobility allowance, the date on which the reference was made.

(3) In relation to such a decision of a Commissioner as is referred to in paragraph (1), section 14(5) of the Act shall have effect with the modification that "the relevant place" means the premises where the medical appeal tribunal which has referred the question of law to the Commissioner usually exercises its functions.

Signed by authority of the Secretary of State for Social Services.

Reg Prentice,
Minister for Social Security.
Department of Health and Social Security.

3rd September 1980.

EXPLANATORY NOTE

(*This Note is not part of the Regulations.*)

These regulations are concerned with applications for leave to appeal on a question of law from a decision of a Social Security Commissioner to the appropriate court, under section 14 of the Social Security Act 1980. They make provision for the selection of a Commissioner, other than the one against whose decision leave is sought to appeal, to determine the application for leave; for the procedure when the person who would otherwise have been entitled to apply for leave is a child or has become unable to act; for the time within which and the manner in which an application may be made; and for the hearing and determination of applications. Special provision is also made for cases where the Commissioner's decision is on a question of law referred by a medical appeal tribunal.

SI 1980/1321
ISBN 0-11-007321-5

