

2002 No. 3196

SOCIAL SECURITY

TAX CREDITS

The Tax Credits (Appeals) (No. 2) Regulations 2002

Made - - - - *18th December 2002*

Coming into force - - *1st January 2003*

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Whereas a draft of this instrument was laid before Parliament in accordance with section 80(1) of the Social Security Act 1998(a) and approved by a resolution of each House of Parliament.

Now, therefore, the Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by sections 7(6), 12(2) and (7), 14(10) and (11), 16(1), 28(1), 39(1)(b), 79(1) and (3) to (7) and 84(c) of, and paragraphs 11 and 12 of Schedule 1 and Schedule 5 to the Social Security Act 1998(d) and all other powers enabling him in that behalf, after consultation with the Council on Tribunals in accordance with section 8 of the Tribunals and Inquiries Act 1992(e), hereby makes the following Regulations:

PART 1

GENERAL

Citation, commencement, duration and interpretation

1.—(1) These Regulations may be cited as the Tax Credits (Appeals) (No. 2) Regulations 2002 and shall come into force on 1st January 2003.

(2) These Regulations shall cease to have effect on such day as is appointed by order made under section 63(1) of the Tax Credits Act 2002(f) (tax credits appeals etc.: temporary modifications).

(3) In these Regulations, unless the context otherwise requires—

“the Act” means the Social Security Act 1998;

(a) 1998 c. 14.

(b) Section 39(1) as modified by S.I.2002/2926 is cited for the meaning ascribed to the word prescribed.

(c) Section 84 is cited for the meaning ascribed to the word prescribed.

(d) The powers in sections 12(2) and (7), 14(10) and (11), 16(1), 28(1) and 39(1) of the Social Security Act 1998, exercised in these Regulations, are those which have been applied and modified under the powers contained in section 63(8) of the Tax Credits Act 2002 (c. 21) by S.I.2002/2926.

(e) 1992 c. 53.

(f) 2002 c. 21.

“the 2002 Act” means the Tax Credits Act 2002;

“the Appeals Regulations” means the Tax Credits (Appeals) Regulations 2002(a);

“the Decisions and Appeals Regulations” means the Social Security and Child Support (Decisions and Appeals) Regulations 1999(b);

“the Working Tax Credit Regulations” means the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002(c);

“appeal” means an appeal under section 38 of the 2002 Act;

“an application for a direction” means an application for a direction to close down an enquiry made under section 19(9) of the 2002 Act;

“a case” means, for the purposes of Chapter 3 of Part 3, an appeal or an application for a direction;

“clerk to the appeal tribunal” means a clerk assigned to the appeal tribunal in accordance with regulation 10;

“court” means the High Court, the Court of Appeal, the Court of Session, the High Court or Court of Appeal in Northern Ireland, the House of Lords or the Court of Justice of the European Community;

“the date of notification” means—

- (a) the date of the notice of a decision of the Board(d) given under section 23(2) of the 2002 Act; or
- (b) the date that notification of a decision of the Board, other than notice of a decision given under section 23(2) of the 2002 Act, is treated as having been given or sent in accordance with regulation 2(b);

“decision” means, for the purposes of Chapter 5 of Part 3,—

- (a) the decision of an appeal tribunal on an appeal;
- (b) a direction under section 19(10) of the 2002 Act(e) given in response to an application for a direction, or the refusal to make such a direction; and
- (c) a penalty determination made in penalty proceedings;

“financially qualified panel member” means a panel member who satisfies the requirements of paragraph 4 of Schedule 3 to the Decisions and Appeals Regulations;

“joint claim” means a claim made under section 3(3)(a) of the 2002 Act and any reference in these Regulations to “joint claimant” shall be construed accordingly;

“legally qualified panel member” means a panel member who satisfies the requirements of paragraph 1 of Schedule 3 to the Decisions and Appeals Regulations;

“medically qualified panel member” means a panel member who satisfies the requirements of paragraph 2 of Schedule 3 to the Decisions and Appeals Regulations;

“panel” means the panel constituted under section 6 of the Act;

“panel member” means a person appointed to the panel;

“panel member with a disability qualification” means a panel member who satisfies the requirements of paragraph 5 of Schedule 3 to the Decisions and Appeals Regulations;

“partner” means, where a person is a member of a married or an unmarried couple, the other member of that couple;

(a) S.I. 2002/2926.

(b) S.I. 1999/991; relevant amending instruments are S.I. 1999/1466, S.I. 1999/1623, S.I. 1999/1662, S.I. 1999/1670, S.I. 1999/2570, S.I. 1999/2677, S.I. 1999/3178, S.I. 2000/119, S.I. 2000/127, S.I. 2000/897, S.I. 2000/1596, S.I. 2000/1982, S.I. 2000/3030, S.I. 2001/518, S.I. 2001/1711, S.I. 2001/4022, S.I. 2002/398, S.I. 2002/428, S.I. 2002/490, S.I. 2002/1379 and S.I. 2002/1703.

(c) S.I. 2002/2005.

(d) “the Board” is defined in section 39 of the Social Security Act 1998 as applied and modified by S.I. 2002/2926.

(e) Section 19(10) of the 2002 Act is modified by section 63(3) of that Act.

“party to the proceedings” means the Board and any other person—

- (a) who is an appellant in an appeal brought against a decision or determination set out in section 38 of the 2002 Act;
- (b) who is an applicant for a direction to close down an enquiry under section 19(9) of the 2002 Act;
- (c) who is a defendant (or defender) in penalty proceedings brought under paragraph 3 of Schedule 2 to the 2002 Act;
- (d) who is a person with a right of appeal or a right to make an application for a direction under regulation 3;

“penalty determination” means a decision made in accordance with paragraph 3 of Schedule 2 to the 2002 Act;

“penalty proceedings” means proceedings under paragraph 3 of Schedule 2 to the 2002 Act;

“President” means the President of appeal tribunals appointed under section 5 of the Act;

“single claim” means a claim made under section 3(3)(b) of the 2002 Act;

“tax credit” means child tax credit or working tax credit, construing those terms in accordance with section 1(1) and (2) of the 2002 Act, and any reference in these Regulations to “child tax credit” or “working tax credit” shall be construed accordingly.

Service of notices or 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 the Board, 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 by the Board, and
- (b) any notice or other document is required to be given or sent to any person other than the clerk to the appeal tribunal or the Board, that notice or document shall, if sent to that person’s last known address, be treated as having been given or sent on the day that it was posted.

PART 2

GENERAL APPEAL MATTERS

Other persons with a right of appeal or a right to make an application for a direction

3. For the purposes of section 12(2) of the Act(a) (as applied and modified by the Appeals Regulations), where—

- (a) a person has made a claim for a tax credit but is unable for the time being to make an appeal against a decision in respect of that tax credit; or
- (b) a person is the person in respect of whom an enquiry has been initiated under section 19(1) of the 2002 Act, but is unable for the time being to make an application for a direction,

the following other persons have a right of appeal to an appeal tribunal or a right to make an application for a direction—

- (i) a receiver appointed by the Court of Protection with power to make a claim for a tax credit on behalf of the person;

(a) Section 12(2) of the Act was substituted by paragraph 25(3) of Schedule 7 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2).

- (ii) in Scotland, a tutor, curator or other guardian acting or appointed in terms of law who is administering the estate of the person;
- (iii) a person appointed under regulation 33(1) of the Social Security (Claims and Payments) Regulations 1987^(a) (persons unable to act);
- (iv) where there is no person mentioned in sub-paragraph (iii) in relation to the person who is unable to act, a person who has applied in writing to the Board to be appointed to act on behalf of the person who is unable to act and, if a natural person, is aged 18 years or more and who has been so appointed by the Board for the purposes of this sub-paragraph.

Time within which an appeal is to be brought

4.—(1) Where a dispute arises as to whether an appeal was brought within the time limit specified in section 39(1) of the 2002 Act, the dispute shall be referred to, and be determined by, a legally qualified panel member.

(2) The time limit specified in section 39(1) of the 2002 Act may be extended in accordance with regulation 5.

Late appeals

5.—(1) The time within which an appeal must be brought may be extended where the conditions specified in paragraphs (2) to (8) 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 section 39(1) of the 2002 Act.

(2) An application for an extension of time under this regulation shall be made in accordance with regulation 6 and shall be determined by a legally qualified panel member, except that where the Board consider that the conditions in paragraphs (4)(b) to (8) are satisfied, the Board may grant the application.

(3) An application under this regulation shall contain particulars of the grounds on which the extension of time is sought, including details of any relevant special circumstances for the purposes of paragraph (4).

(4) An application for an extension of time shall not be granted unless—

- (a) the panel member is satisfied that, if the application is granted, there are reasonable prospects that the appeal will be successful; or
- (b) the panel member is, or the Board are, satisfied that 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 panel member is, or the Board are, as the case may be, satisfied that—

- (a) the special circumstances specified in paragraph (6) are relevant to the application; or
- (b) some other 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 appeal to be made within the time limit specified in section 39(1) of the 2002 Act.

(6) For the purposes of paragraph (5)(a), the special circumstances are that—

- (a) the applicant or a partner or dependant of the applicant has died or suffered serious illness;
- (b) the applicant is not resident in the United Kingdom; or
- (c) normal postal services were disrupted.

(7) In determining whether it is in the interests of justice to grant the application, regard shall be had to the principle that the greater the amount of time that has elapsed between the expiration of

^(a) S.I. 1987/1968; the relevant amending instrument is S.I. 1999/2572.

the time within which the appeal is to be brought under section 39(1) of the 2002 Act 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.

(8) 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 limit imposed by section 39(1) of the 2002 Act); or
- (b) that a Commissioner or a court has taken a different view of the law from that previously understood and applied.

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

(10) The 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.

(11) 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 an application for an extension of time

6. An application for an extension of time for making an appeal to an appeal tribunal shall be made in writing to the Board and shall—

- (a) include sufficient information to determine—
 - (i) the identity of the appellant;
 - (ii) the subject of the application in respect of which an extension of time is sought; and
 - (iii) the grounds on which an extension of time is sought; and
- (b) be signed by or on behalf of the appellant.

Making an application for a direction

7. An application for a direction to be made by an appeal tribunal shall—

- (a) be made in writing to the Board;
- (b) contain sufficient information for the Board to determine the identity of the applicant; and
- (c) be signed by or on behalf of the applicant.

Death of a party to an appeal or an application for a direction

8.—(1) In any proceedings relating to an appeal or an application for a direction, on the death of a party to those proceedings (other than the Board) the following persons may proceed with the appeal or application for a direction in the place of such deceased party—

- (a) where the proceedings are in relation to a single claim, the personal representatives of the person who has died;
- (b) where the proceedings are in relation to a joint claim, where only one of the persons by whom the claim was made has died, the other person with whom the claim was made;
- (c) where the proceedings are in relation to a joint claim where both the persons by whom the claim was made have died, the personal representatives of the last of them to die;
- (d) for the purposes of paragraph (c), where persons have died in circumstances rendering it uncertain which of them survived the other—
 - (i) their deaths shall be presumed to have occurred in order of seniority; and
 - (ii) the younger shall be treated as having survived the elder.

(2) Where there is no person mentioned in paragraphs (1)(a) to (1)(c) to proceed with the appeal or application for a direction, the Board may appoint such person as they think fit to proceed with that appeal or that application in the place of such deceased party referred to in paragraph (1).

(3) A grant of probate, confirmation or letters of administration to the estate of the deceased party, whenever taken out, shall have no effect on an appointment made under paragraph (2).

(4) Where a person appointed under paragraph (2) has, prior to the date of such appointment, taken any action in relation to the appeal or application for a direction on behalf of the deceased party, the effective date of appointment by the Board shall be the day immediately prior to the first day on which such action was taken.

PART 3

APPEAL TRIBUNALS FOR TAX CREDITS

CHAPTER 1

APPEAL TRIBUNALS

Composition of appeal tribunals

9.—(1) Subject to the following provisions of this regulation, an appeal tribunal, for the purposes of these Regulations, shall consist of a legally qualified panel member.

(2) Subject to paragraphs (3), (4) and (6), an appeal tribunal shall consist of a legally qualified panel member, a medically qualified panel member and a panel member with a disability qualification where the issue, or one of the issues, raised on the appeal is—

- (a) whether or not there is an entitlement, under regulation 9 of the Working Tax Credit Regulations, to have the disability element of working tax credit included in the maximum rate;
- (b) whether a member of a married or unmarried couple is incapacitated for the purposes of regulation 13(1)(b)(ii) of the Working Tax Credit Regulations;
- (c) whether a child is disabled for the purposes of regulation 14(3) of the Working Tax Credit Regulations;
- (d) whether there is an entitlement under regulation 17 of the Working Tax Credit Regulations to have the severe disability element of working tax credit included in the maximum rate;
- (e) whether the conditions set out in regulation 8 of the Child Tax Credit Regulations 2002(a) for a disabled or severely disabled child or qualifying young person are satisfied.

(3) Subject to paragraph (4), an appeal tribunal shall consist of a legally qualified panel member and a financially qualified panel member where the appeal, application for a direction or penalty proceedings may require consideration by members of the appeal tribunal of issues which are, in the opinion of the President, difficult and which relate to—

- (a) profit and loss accounts, revenue accounts or balance sheets relating to any enterprise;
- (b) an income and expenditure account in the case of an enterprise not trading for profit; or
- (c) the accounts of any trust fund.

(4) Where the composition of an appeal tribunal would fall to be prescribed under both paragraphs (2) and (3), it shall consist of a legally qualified panel member, a medically qualified panel member and a panel member with a disability qualification.

(5) Where the composition of an appeal tribunal is prescribed under paragraph (1) or (3), the President may determine that the appeal tribunal shall include such an additional member drawn from the panel constituted under section 6 of the Act as he considers appropriate for the purposes

(a) S.I. 2002/2007.

of providing further experience for that additional panel member or for assisting the President in the monitoring of standards of decision making by panel members.

(6) A person shall not act as a medically qualified panel member of an appeal tribunal in any appeal if he has at any time advised or prepared a report upon any person whose medical condition is relevant to the issue in the appeal, or has at any time regularly attended such a person.

Assignment of clerks to appeal tribunals: function of clerks

10. The Secretary of State shall assign a clerk to service each appeal tribunal and the clerk so assigned shall be responsible for summoning members of the panel constituted under section 6 of the Act to serve on the tribunal.

CHAPTER 2

PROCEDURE IN CONNECTION WITH DETERMINATION OF APPEALS, APPLICATIONS FOR DIRECTIONS AND PENALTY PROCEEDINGS

Consideration and determination of appeals, applications for a direction and penalty proceedings

11.—(1) The procedure in connection with the consideration and determination of an appeal, an application for a direction or penalty proceedings shall, subject to the following provisions of these Regulations, be such as a legally qualified panel member shall determine.

(2) 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.

(3) 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

12.—(1) Where an appeal or an application for a direction is made to an appeal tribunal, the clerk to the appeal tribunal shall direct the appellant or applicant and any other party to the proceedings to notify the clerk to the appeal tribunal in writing whether he wishes to have an oral hearing of that appeal or that application, or whether he is content for that appeal or that application to proceed without an oral hearing.

(2) A direction under paragraph (1) shall include a statement informing the appellant or applicant that, if he does not respond in writing to the direction within the period specified in paragraph (3), the appeal or application for a direction may be struck out in accordance with regulation 16.

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

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

(5) 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 or application for a direction be held if he is satisfied that such a hearing is necessary to enable the appeal tribunal to reach a decision.

Withdrawal of application for a direction or penalty proceedings

13.—(1) An application for a direction may be withdrawn by the applicant, or penalty proceedings may be withdrawn by the Board, at any time before that application is, or those proceedings are, determined, either—

- (a) at an oral hearing; or
- (b) by giving notice in writing of withdrawal to the clerk to the appeal tribunal.

(2) If an application for a direction is, or penalty proceedings are, withdrawn in accordance with paragraph (1)(a), the clerk to the appeal tribunal shall send a notice in writing to any party to the proceedings who is not present when the application for a direction is, or penalty proceedings are, withdrawn, informing him that the application for a direction has, or the penalty proceedings have, been withdrawn.

(3) If an application for a direction is, or penalty proceedings are, withdrawn in accordance with paragraph (1)(b), the clerk to the appeal tribunal shall send a notice in writing to every party to the proceedings informing them that the application for a direction has, or penalty proceedings have, been withdrawn.

Non-disclosure of medical advice or evidence

14.—(1) Where, in connection with an appeal, an application for a direction or penalty proceedings, there is medical advice or medical evidence relating to a person which has not been disclosed to him and in the opinion of a legally qualified panel member, the disclosure to that person of that advice or evidence would be harmful to his health, such advice or evidence shall not be required to be disclosed to that person.

(2) Advice or 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 advice or 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 a legally qualified panel member is satisfied that it is in the interests of the person to whom the advice or evidence relates to do so.

(3) A tribunal shall not be precluded from taking into account for the purposes of the determination advice or evidence which has not been disclosed to a person under the provisions of paragraph (1) or (2).

Summoning of witnesses and administration of oaths

15.—(1) A chairman, or in the case of an appeal tribunal which has only one member, that member, may by summons, or in Scotland, by citation, require any person in Great Britain to attend as a witness at a hearing of an appeal, an application for a direction or penalty proceedings, at such time and place as shall be specified in the summons or citation and, subject to paragraph (2), at the hearing to answer any question or produce any documents in his custody or under his control which relate to any matter in question in that appeal, application or those proceedings but—

- (a) no person shall be required to attend in obedience to such summons or citation unless he has been given at least 14 days' notice of the hearing or, if less than 14 days' notice is given, he has informed the tribunal that the notice given is sufficient; and
- (b) no person shall be required to attend and give evidence or to produce any document in obedience to such summons or citation unless the necessary expenses of attendance are paid or tendered to him.

(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) In exercising the powers conferred by this regulation, the chairman, or in the case of an appeal tribunal which has only one member, that member, shall take into account the need to protect any matter that relates to intimate personal or financial circumstances, is commercially sensitive, consists of information communicated or obtained in confidence or concerns national security.

(4) Every summons or citation issued under this regulation shall contain a statement to the effect that the person in question may apply in writing to a chairman to vary or set aside the summons or citation.

(5) A chairman, or in the case of an appeal tribunal which has only one member, that member, may require any witness, including a witness summoned under the powers conferred by this regulation, to give evidence on oath or affirmation and for that purpose there may be administered an oath or affirmation in due form.

CHAPTER 3

STRIKING OUT APPEALS AND APPLICATIONS FOR A DIRECTION

Cases which may be struck out

16.—(1) Subject to paragraphs (2) and (3), a case may be struck out by the clerk to the appeal tribunal—

- (a) for want of prosecution including an appeal not made within the time specified in section 39(1) of the 2002 Act and in these Regulations; or
- (b) subject to regulation 12(4), for failure of the appellant or applicant to comply with a direction given under these Regulations where the appellant or applicant has been notified that failure to comply with the direction could result in the case being struck out.

(2) Where the clerk to the appeal tribunal determines to strike out the case, he shall notify the appellant or applicant that his case has been struck out and of the procedure for reinstatement of the case as specified in regulation 17.

(3) The clerk to the appeal tribunal may refer any matter for determination under this regulation to a legally qualified panel member for decision by the panel member rather than the clerk to the appeal tribunal.

Reinstatement of struck out cases

17.—(1) The clerk to the appeal tribunal may reinstate a case which has been struck out in accordance with regulation 16(1)(b) where—

- (a) the appellant or applicant has made representations to him or, as the case may be, further representations in support of his case with reasons why he considers that his case should not have been struck out;
- (b) the representations are made in writing within one month of the order to strike out the case being issued; and
- (c) the clerk is satisfied in the light of those representations that there are reasonable grounds for reinstating the case,

but if the clerk is not satisfied that there are reasonable grounds for reinstatement a legally qualified panel member shall consider whether the case should be reinstated in accordance with paragraph (2).

(2) A legally qualified panel member may reinstate a case which has been struck out in accordance with regulation 16 where—

- (a) the appellant or applicant has made representations or, as the case may be, further representations in support of his case with reasons why he considers that his case should

not have been struck out, to the clerk to the appeal tribunal, in writing within one month of the order to strike out the case being issued, and the panel member is satisfied in the light of those representations that there are reasonable grounds for reinstating the case;

- (b) the panel member is satisfied that the case is not a case which may be struck out under regulation 16; or
- (c) the panel member is satisfied that notwithstanding that the case is one which may be struck out under regulation 16, it is not in the interests of justice for the case to be struck out.

CHAPTER 4 ORAL HEARINGS

Procedure at oral hearings

18.—(1) Subject to the following provisions of this Part, the procedure for an oral hearing shall be such as the chairman, or in the case of an appeal tribunal which has only one member, such as that member, shall determine.

(2) Except where paragraph (4) applies, not less than 14 days' notice (beginning with the day on which notice is given and ending on the day before the hearing of the appeal or application for a direction, is to take place) of the time and place of any oral hearing of an appeal or an application for a direction shall be given to every party to the proceedings.

(3) If such notice has not been given to a person to whom it should have been given under the provisions of paragraph (2) the hearing may proceed only with the consent of that person.

(4) Any party to the proceedings may waive his right under paragraph (2) to receive not less than 14 days' notice of the time and place of any oral hearing by giving notice to the clerk to the appeal tribunal.

(5) If a party to the proceedings to whom notice has been given under paragraph (2) fails to appear at the hearing the chairman, or in the case of an appeal tribunal which has only one member, that member, may, having regard to all the circumstances including any explanation offered for the absence—

- (a) proceed with the hearing notwithstanding his absence; or
- (b) give such directions with a view to the determination of the appeal or application for a direction as he may think proper.

(6) If a party to the proceedings has waived his right to be given notice under paragraph (2) the chairman, or in the case of an appeal tribunal which has only one member, that member, may proceed with the hearing notwithstanding his absence.

(7) An oral hearing of an appeal, application for a direction or penalty proceedings shall be in public except where the chairman, or in the case of an appeal tribunal which has only one member, that member, is satisfied that it is necessary to hold the hearing, or part of the hearing, in private—

- (a) in the interests of national security, morals, public order or children;
- (b) for the protection of private or family life of one or more parties to the proceedings; or
- (c) in special circumstances, because publicity would prejudice the interests of justice.

(8) At an oral hearing—

- (a) any party to the proceedings shall be entitled to be present and be heard; and
- (b) the following persons may be present by means of a live television link—
 - (i) a party to the proceedings or his representative or both; or
 - (ii) where an appeal tribunal consists of more than one member, a tribunal member other than the chairman,

provided that the person who constitutes or is the chairman of the tribunal gives permission and the appellant, the applicant for a direction or the person who is subject to penalty proceedings consents.

(9) A person who 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 the hearing, any such representative shall have all the rights and powers to which the person whom he represents is entitled.

(10) The following persons shall also be entitled to be present at an oral hearing (whether or not it is otherwise in private) but shall take no part in the proceedings—

- (a) the President;
- (b) any person undergoing training as a chairman or member of an appeal tribunal or as a clerk to an appeal tribunal;
- (c) any person acting on behalf of the President in the training or supervision of panel members or in the monitoring of standards of decision-making by panel members;
- (d) with the leave of the chairman, or in the case of an appeal tribunal which has only one member, with the leave of that member, any other person; and
- (e) a member of the Council on Tribunals or of the Scottish Committee of the Council on Tribunals.

(11) Nothing in paragraph (10) affects the rights of—

- (a) any person mentioned in sub-paragraphs (a) and (b) of that paragraph where he is sitting as a member of a tribunal or acting as its clerk; or
- (b) the clerk to the tribunal,

and nothing in this regulation prevents the presence at an oral hearing of any witness or of any person whom the chairman, or in the case of an appeal tribunal which has only one member, that member, permits to be present in order to assist the appeal tribunal or the clerk.

(12) Any person entitled to be heard at an oral hearing may address the tribunal, may give evidence, may call witnesses and may put questions directly to any other person called as a witness.

(13) For the purpose of arriving at its decision an appeal 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 person acting as clerk to the appeal tribunal, to withdraw from the hearing except that—

- (a) a member of the Council on Tribunals or of the Scottish Committee of the Council on Tribunals, the President or any other person mentioned in paragraph (10)(c); and
- (b) with the leave of the chairman, or in the case of an appeal tribunal which has only one member, with the leave of that member, any person mentioned in paragraph (10)(b) or (d),

may remain present at any such sitting.

(14) In this regulation “live television link” means a live television link or other facilities which allow a person who is not physically present at an oral hearing to see and hear proceedings and be seen and heard by those physically present.

Manner of providing expert assistance

19.—(1) Where an appeal tribunal requires one or more experts to provide assistance to it in dealing with a question of fact of special difficulty under section 7(4) of the Act, such an expert shall, if the chairman, or in the case of an appeal tribunal which has only one member, that member, so requests, attend at the hearing and give evidence.

(2) If the chairman or in the case of an appeal tribunal which has only one member, that member, considers it appropriate, the expert shall enquire into and provide a written report on the question to be dealt with in accordance with paragraph (1).

(3) A copy of any written report received from an expert in accordance with paragraph (2) shall be supplied to every party to the proceedings.

Postponement and adjournment

20.—(1) Where a person to whom—

- (a) notice of an oral hearing is given; or
- (b) in the case of penalty proceedings, a summons has been issued under paragraph 3(2) of Schedule 2 to the 2002 Act,

wishes to request a postponement of that hearing he shall do so in writing to the clerk to the appeal tribunal stating his reasons for the request, and the clerk to the appeal tribunal may grant or refuse the request as he thinks fit or may pass the request to a legally qualified panel member who may grant or refuse the request as he thinks fit.

(2) Where the clerk to the appeal tribunal or the panel member, as the case may be, refuses a request to postpone the hearing he shall—

- (a) notify in writing the person making the request of the refusal; and
- (b) place before the appeal tribunal at the hearing both the request for the postponement and notification of its refusal.

(3) A panel member or the clerk to the appeal tribunal may of his own motion at any time before the beginning of the hearing postpone the hearing.

(4) An oral hearing may be adjourned by the appeal tribunal at any time on the application of any party to the proceedings or of its own motion.

CHAPTER 5

DECISIONS OF APPEAL TRIBUNALS AND RELATED MATTERS

Decisions of appeal tribunals

21.—(1) Every decision of an appeal tribunal shall be recorded in summary by the chairman, or in the case of an appeal tribunal which has only one member, by that member and shall be referred to as a decision notice.

(2) The decision notice specified in paragraph (1) shall be in such written form as shall have been approved by the President and shall be signed by the chairman, or in the case of an appeal tribunal which has only one member, by that member.

(3) As soon as may be practicable after an appeal or an application for a direction has, or penalty proceedings have, been decided by an appeal tribunal, a copy of the decision notice prepared in accordance with paragraphs (1) and (2) shall be sent or given to every party to the proceedings who shall also be informed of—

- (a) his right under paragraph (4); and
- (b) the conditions governing appeals to a Commissioner.

(4) A party to the proceedings may apply in writing to the clerk to the appeal tribunal for a statement of the reasons for the tribunal's decision within one month of the sending or giving of the decision notice to every party to the proceedings or within such longer period as may be allowed in accordance with regulation 22.

(5) Following the application made under paragraph (4), the chairman, or in the case of an appeal tribunal which has only one member, that member, shall record a statement of the reasons and a copy of that statement shall be given or sent to every party to the proceedings as soon as may be practicable.

(6) If the decision is not unanimous, the decision notice specified in paragraph (1) shall record that one of the members dissented and the statement of reasons referred to in paragraph (5) shall include the reasons given by the dissenting member for dissenting.

Late applications for a statement of reasons of tribunal decision

22.—(1) The time for making an application for the statement of reasons for a tribunal's decision may be extended where the conditions specified in paragraphs (2) to (8) are satisfied, but, subject to paragraph (13), no application shall in any event be brought more than three months after the date of the sending or giving of the notice of the decision of the appeal tribunal.

(2) An application for an extension of time under this regulation shall be made in writing 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, including details of any relevant special circumstances for the purposes of paragraph (4).

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

- (a) the special circumstances specified in paragraph (6) are relevant to the application; or
- (b) some other special circumstances are 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 21(4).

(6) For the purposes of paragraph (5)(a), the special circumstances are that—

- (a) the applicant or a partner or dependant of the applicant has died or suffered serious illness;
- (b) the applicant is not resident in the United Kingdom; or
- (c) normal postal services were disrupted.

(7) In determining whether it is in the interests of justice to grant the application, the panel member shall have regard to the principle that the greater the amount of time that has elapsed between the expiration of the time within which the application for a copy of the statement of reasons for a tribunal's decision is to be made 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.

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

- (a) that the person making the application 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 Commissioner or a court has taken a different view of the law from that previously understood and applied.

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

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

(11) As soon as practicable after the determination is made, notice of the determination shall be sent or given to every party to the proceedings.

(12) Any person who under paragraph (11) receives notice of the determination may, within one month of the determination being sent to him, apply in writing for a copy of the reasons for that determination and a copy shall be supplied to him.

(13) In calculating the time specified for applying in writing for a statement of the reasons for the tribunal's decision there shall be disregarded any day which falls before the day on which notice was given of—

- (a) a correction of a decision or the record thereof pursuant to regulation 24; or

- (b) a determination that a decision shall not be set aside following an application made under regulation 25, except where the decision was not set aside because of a refusal to extend the time for applying.

Record of tribunal proceedings

23.—(1) A record of the proceedings at an oral hearing, which is sufficient to indicate the evidence taken, shall be made by the chairman, or in the case of an appeal tribunal which has only one member, by that member, in such medium as he may direct.

(2) Such record shall be preserved by the clerk to the appeal tribunal for six months from the date of the decision made by the appeal tribunal to which the record relates and any party to the proceedings may within that period apply in writing for a copy of that record and a copy shall be supplied to him.

Correction of accidental errors

24.—(1) The clerk to the appeal tribunal or a legally qualified panel member may at any time correct accidental errors in any decision, or the record of any such decision, of an appeal tribunal made under the 2002 Act.

(2) A correction made to, or to the record of, a decision shall be deemed to be part of the decision or record of that decision and written notice of it shall be given as soon as practicable to every party to the proceedings.

Setting aside decisions on certain grounds

25.—(1) On an application made by a party to the proceedings, a decision of an appeal tribunal made under the 2002 Act, may be set aside by a legally qualified panel member in a case where it appears just to set the decision aside on the ground that—

- (a) a document relating to the proceedings in which the decision was made was not sent to, or was not received at an appropriate time by, a party to the proceedings or the party's representative or was not received at an appropriate time by the person who made the decision;
- (b) a party to the proceedings in which the decision was made or the party's representative was not present at a hearing relating to the proceedings.

(2) In determining whether it is just to set aside a decision on the ground set out in paragraph (1)(b), the panel member shall determine whether the party making the application gave notice that he wished to have an oral hearing, and if that party did not give such notice the decision shall not be set aside unless that member is satisfied that the interests of justice manifestly so require.

(3) An application under this regulation shall—

- (a) be made within one month of the date on which—
 - (i) a copy of the decision notice is sent or given to the parties to the proceedings in accordance with regulation 21(3); or
 - (ii) the statement of the reasons for the decision is given or sent in accordance with regulation 21(5),whichever is the later;
- (b) be in writing and signed by a party to the proceedings or, where the party has provided written authority to a representative to act on his behalf, that representative;
- (c) contain particulars of the grounds on which it is made; and
- (d) be sent to the clerk to the appeal tribunal.

(4) Where an application to set aside a decision is entertained under paragraph (1), every party to the proceedings shall be sent a copy of the application and shall be afforded a reasonable opportunity of making representations on it before the application is determined.

(5) Notice in writing of a determination on an application to set aside a decision shall be sent or given to every party to the proceedings as soon as may be practicable and the notice shall contain a statement giving the reasons for the determination.

(6) The time within which an application under this regulation must be made may be extended by a period not exceeding one year where the conditions specified in paragraphs (7) to (11) are satisfied.

(7) An application for an extension of time shall be made in accordance with paragraph (3)(b) to (d), shall include details of any relevant special circumstances for the purposes of paragraph (9) and shall be determined by a legally qualified panel member.

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

- (a) if the application is granted there are reasonable prospects that the application to set aside will be successful; and
- (b) it is in the interests of justice for the application for an extension of time to be granted.

(9) For the purposes of paragraph (8) it is not in the interests of justice to grant an application for an extension of time unless the panel member is satisfied that—

- (a) the special circumstances specified in paragraph (10) are relevant to the application; or
- (b) some other special circumstances exist which are wholly exceptional and relevant to that application,

and as a result of those special circumstances, it was not practicable for the application to set aside to be made within the time limit specified in paragraph (3)(a).

(10) For the purposes of paragraph (9)(a), the special circumstances are that—

- (a) the applicant or a partner or dependant of the applicant has died or suffered serious illness;
- (b) the applicant is not resident in the United Kingdom; or
- (c) normal postal services were disrupted.

(11) In determining whether it is in the interests of justice to grant an application for an extension of time, the 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 application to set aside is to be made and the making of the application for an extension of time, the more compelling should be the special circumstances on which the application for an extension is based.

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

Provisions common to regulations 24 and 25

26.—(1) In calculating any time specified for appealing to a Commissioner from a decision of an appeal tribunal there shall be disregarded any day falling before the day on which notice was given of—

- (a) a correction of a decision or the record thereof pursuant to regulation 24; or
- (b) a determination that a decision shall not be set aside following an application made under regulation 25, except where the decision was not set aside because of a refusal to extend the time for applying.

(2) There shall be no appeal against a correction made under regulation 24 or a refusal to make such a correction or against a determination made under regulation 25.

(3) Nothing in this Chapter shall be construed as derogating from any power to correct errors or set aside decisions which is exercisable apart from these Regulations.

