

National Insurance and Social Security

Cap. 47.

**NATIONAL INSURANCE AND SOCIAL SECURITY
(DETERMINATION OF CLAIMS AND QUESTIONS)
REGULATIONS, 1967**

1967/46.
1982/11.
2006/137.

Authority: These Regulations were made on 28th March, 1967 by the Minister under section 50 of the *National Insurance and Social Security Act*.

Commencement: 5th June, 1967.

1. These Regulations may be cited as the *National Insurance and Social Security (Determination of Claims and Questions) Regulations, 1967*. Short title.

PART I

- 2.** (1) For the purposes of these Regulations, the expression Interpreta-
tion.
- "the Act" means the *National Insurance and Social Security Act*; Cap. 47.
- "appointed day" means 5th June, 1967;
- "claimant" means a person who has claimed benefit and includes
- (a) for the purposes of Part II, a person whose right to be exempted from liability to pay, or to be credited with, a contribution is in question; and
 - (b) an applicant for non-contributory old age pension under the *National Insurance and Social Security (Non-Contributory Old Age Pensions) Regulations, 1982*; 1982/11.
- "contributions" means insurance contributions;
- "Director" means the Director, National Insurance;
- "grant" means invalidity, maternity, old age contributory, survivors' and funeral grant; 2006/137.

"office" means any office appointed as an office for the purposes of the Act or of these Regulations;

1982/11. "question" includes, for the purposes of Part III of these Regulations, a claim or application for benefit;

"reserved question" means any question set out in regulation 3, and other expressions have the same meanings as in the Act.

(2) Any notice or other document required or authorised to be given or sent to any person under the provisions of these Regulations shall be deemed to have been given or sent if it was sent by post to that person at his ordinary or last known address;

(3) Any power given in these Regulations to extend the period during which anything is required to be done under these Regulations or to dispense with any of the requirements thereof may be exercised in any case, notwithstanding that the period during which the thing is required to be done has expired.

PART II

Determination of Questions by Board

Questions for determination by the Board.
2006/137.

3. (1) The following reserved questions arising under or in connection with the Act shall be determined by the Board, whose decision shall be final, subject to the provisions of these Regulations:

- (a) whether a person is or was an insured person;
- (b) whether a person is or was employed in employment pursuant to section 12 of the Act;
- (c) as to the class or category of insured persons in which a person is to be included;
- (d) whether the contribution conditions for any benefit are satisfied, or any question otherwise relating to a person's contributions;

- (e) who is or was liable for payment of contributions as the employer of any insured person;
- (f) as to which child or children should be granted survivors' benefit.

(2) The reserved questions listed at regulation 3(1)(a), (b) and (e) shall be asked of the Board by the insured person within 6 months after the end of the contribution year in which the question arose. 2006/137.

(3) Where an employer, employee or a representative of an employer or employee 2006/137.

- (a) fails to ask a question of the Board as set out in paragraph (2); and
- (b) an amount has been deducted from the remuneration of the employee for a year or has been paid by the employer as a contribution with respect to an employee for the year,

the amount so deducted or paid shall be deemed to have been deducted or paid in accordance with this regulation.

(4) Where an employer, employee or a representative of an employer or employee 2006/137.

- (a) fails to ask a question of the Board as set out in paragraph (2); and
- (b) no amount has been deducted from the remuneration of the employee for a year or has not been paid by the employer for the year before June 30th in the following year,

it shall be deemed that no amount was required to be deducted or paid in accordance with this regulation.

(5) Nothing in paragraph (2) restricts the authority of the Board to determine any question on its own initiative under paragraph (1) or to make an assessment under this regulation after June 30th in the following year. 2006/137.

Procedure for determination of questions by the Board.

4. (1) Any person desiring to obtain the decision of the Board on any question mentioned in regulation 3 shall deliver or send to the Board an application for the purpose in writing in a form approved by the Board, and shall furnish such particulars as the Board may require for the purpose of the consideration and determination of any such question.

(2) The Board shall take steps to bring any such application and any such particulars to the notice of any person appearing to it to be interested therein, and to obtain from such person such particulars within such time and in such form as it considers reasonably necessary for the proper determination of the question.

(3) The Board may, if it thinks fit, before determining the question, appoint a person to hold an inquiry into the matter and to report to it thereon; and any person so appointed may by summons require persons to attend at any such inquiry to give evidence or to produce documents reasonably required for the purpose of the inquiry and may take evidence on oath and for that purpose administer oaths.

(4) Reasonable notice of the date and place of the holding of such an inquiry shall be given to the applicant and to any persons notified of the application in accordance with paragraph (2).

(5) The applicant and any person appearing to the Board or to the person holding the inquiry to be interested in the application shall be entitled to attend and be heard at the inquiry, and to be represented by any other person; and the procedure thereat shall, subject to this regulation, be such as the person holding the inquiry shall determine.

(6) The Board shall give notice in writing of its decision to the applicant and to any persons appearing to it to be interested therein, and may publish its decision in such manner as it thinks fit.

Reference to High Court by Board of questions of law; appeals against decisions of Board on questions of law.

5. (1) Any question of law arising in connection with the determination by the Board of any such question as is mentioned in regulation 3 may, if it thinks fit, be referred by the Board for decision to the High Court.

(2) In the event of the Board determining in accordance with paragraph (1) to refer any question of law to the High Court, it shall send notice in writing of its intention so to do to the applicant and to any other person appearing to it to be interested therein.

(3) Any person aggrieved by a decision of the Board on any question of law which is not referred in accordance with paragraph (1) may, in accordance with ^{2006/137.}

(a) Order 56 of the Rules of the Supreme Court; or

(b) the rules of court made pursuant to section 35(2) of the Act, appeal that decision to the High Court within 28 days after the date of the determination against which the appeal is brought or within 21 days after service of the notice of determination.

(3A) An applicant under paragraph (3) and any other person appearing to the Board to be interested shall on request be furnished with such a statement of the grounds of the decision as will enable them to determine whether any question of law has arisen upon which they may wish to appeal. ^{2006/137.}

(4) Without prejudice to the rights of any other person, the Board shall be entitled to appear and be heard on any such reference or appeal.

6. (1) The Board may, on new facts being brought to its notice or if it is satisfied that the decision was given in ignorance of, or was based on a mistake as to, some material fact, review a decision given by it in accordance with this Part of these Regulations: but any such decision shall not be reviewed while an appeal is pending against the decision of the Board on a question of law arising in connection therewith, or before the time for appealing has expired. ^{Review of decision of the Board.}

(2) The provisions of regulation 5 shall apply in relation to a decision on review as they apply to the original determination or decision.

PART III

*Determination of Claims and Questions by the Director,
Appeal Tribunal or Commissioner*

Submission
of questions
to Director.

7. (1) The following questions, that is to say:

(a) any question as to the right to benefit; and

(b) any other question arising under or in connection with
the Act, not being a reserved question,

shall be submitted to the Director, who shall consider the question,
and, so

far as practicable, dispose of it in accordance with these regulations within fourteen days from the date when it was submitted to him.

(2) If on consideration of a question the Director is of opinion that no reserved question arises, then

(a) if he is satisfied that the question ought to be determined wholly in favour of the claimant, he may determine the question accordingly;

(b) in so far as he is not so satisfied, he may either

(i) refer the question (so far as is practicable within fourteen days from the date on which it was submitted to him) to an appeal tribunal having the constitution as laid down by the Schedule for its decision; or

(ii) himself determine the question in whole or in part adversely to the claimant.

(3) Where the Director refers a question to an appeal tribunal in accordance with paragraph (2), notice in writing of such reference shall be given to the claimant.

8. (1) If the Director has determined a question in whole or in part adversely to the claimant, the claimant shall, subject to the provisions of this regulation, have a right of appeal in respect of the decision to the appeal tribunal and shall be notified in writing of the decision and the reasons therefor, and of his right of appeal therefrom: but where a reserved question has arisen in connection with the decision of the Director and has been determined by the proper authority, and the Director certifies that the decision on that question is the sole ground of his decision, no appeal shall lie without the leave of the chairman of the appeal tribunal.

Appeals to
appeal
tribunal.

(2) An appeal against a decision of the Director must be brought by giving notice of appeal at an office of the Board within 21 days after the date of that decision or within such further time, not exceeding 4 months, as the chairman of the appeal tribunal may allow.

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(3) A notice of appeal shall be in writing and shall contain a statement of the grounds upon which the appeal is made.

Time and
place of
hearings
before appeal
tribunal.

9. (1) Reasonable notice of time and place of the hearing before the appeal tribunal shall be given to the claimant, and to any other person who may appear to the chairman of the tribunal to be interested, and, except with the consent of the claimant, the appeal tribunal shall not proceed with the hearing of any case unless such notice has been given.

(2) If a claimant or other person to whom notice of hearing has been duly given in accordance with these regulations should fail to appear either in person or by representative at such hearing and has not given a reasonable explanation for his absence, the tribunal may proceed to determine the case, or may give such directions with a view to the determination of the case as they may think proper.

Hearings
before appeal
tribunal.

10. (1) Every hearing by an appeal tribunal shall be in public except in so far as the chairman of the tribunal 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.

(2) The following persons shall be entitled to be heard at the hearing of any case by an appeal tribunal

- (a) the claimant;
- (b) the Director;

and any person appearing to the tribunal to be interested shall have the right to be present notwithstanding that the hearing of the case is not in public.

(3) Any person who by virtue of the provisions of this regulation has the right to be heard at the hearing of a case by an appeal tribunal may be represented at the hearing by some other person, whether having professional qualifications or not, and, for the purposes of the hearing, any such representative shall have all the rights to which the person whom he represents is entitled under these regulations.

(4) Any person who exercises the right conferred by this regulation to be heard at the hearing may call witnesses and

shall be given an opportunity of putting questions directly to any witnesses called at the hearing.

(5) For the purposes of arriving at their decision, or discussing any question of procedure, an appeal tribunal may, notwithstanding anything in this regulation, order all persons not being members of the tribunal other than an officer of the Board acting as clerk to the tribunal, to withdraw from the sitting of the tribunal.

11. (1) An appeal tribunal shall

- (a) record in writing in such form as may from time to time be approved by the Board all their decisions (whether on an appeal or on a reference from the Director); and
- (b) include in the record of every decision (which shall be signed by all the members of the tribunal) a statement of the reasons for their decision, including their findings on all questions of fact material thereto.

Decisions of
appeal
tribunal.

(2) Where the tribunal is unable to reach a unanimous decision on any case, the decision of the majority of the members thereof shall be the decision of the tribunal.

(3) As soon as may be practicable, a copy of the record of their decision made in accordance with this regulation shall be sent to the claimant and to the Director and to any other person who appears to the appeal tribunal to be interested.

12. (1) Subject as hereinafter provided, an appeal shall lie to a National Insurance Commissioner appointed in accordance with regulation 14, whose decision shall be final subject to the provisions of this Part of these regulations, from any decision of an appeal tribunal at the instance of

Appeal to
National
Insurance
Commis-
sioner.

- (a) the Director;
- (b) the claimant.

(2) An appeal to the Commissioner must be brought within three months from the date of the decision of the appeal tribunal or such further period as the Commissioner may in any case for special reasons allow, and such an appeal shall be brought by giving notice in writing to the Commissioner in a form approved

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by the Board stating the grounds of the appeal, and a copy of such notice shall be given

- (a) in the case of an appeal by the Director, to the claimant;
- (b) in the case of an appeal by the claimant, to the Director through the office of the Board.

Oral hearing
of appeal.

13. (1) If the claimant or Director makes a request to the Commissioner for an oral hearing of the appeal, the Commissioner shall grant such request, unless, after considering the record of the case and the reasons put forward in the request for the hearing, he is satisfied that the appeal can properly be determined without a hearing, in which event he shall so inform the claimant and the Director in writing, and may proceed to determine the case without a hearing.

(2) If, in accordance with the provisions of paragraph (1) a request for an oral hearing has been granted, or if, notwithstanding that no request has been made, the Commissioner is otherwise satisfied that an oral hearing is desirable, reasonable notice of the time and place of the hearing shall be given to the claimant and the Director, and, if he thinks fit, to any other person appearing to the Commissioner to be interested.

(3) In any case in which an oral hearing of an appeal is held, 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.

(4) Any person to whom notice of the hearing has been given shall be entitled to be heard at the hearing and to be represented thereat by some other person, whether having professional qualifications or not, and for the purpose of the hearing such representative shall have all the rights to which that person whom he represents is entitled under these regulations.

(5) Any person who exercises the rights conferred by this regulation to be heard at the hearing may, with the leave of the Commissioner, call witnesses and shall be given an opportunity of putting questions directly to any witnesses called at the hearing.

(6) If any person to whom notice of the hearing has been

duly given should fail to appear either in person or by representative at the hearing, and has not given a reasonable explanation for his absence, the Commissioner may proceed to determine the appeal or may give such directions with a view to the determination of the appeal as he thinks proper.

(7) If it appears to the Commissioner that any appeal under this regulation involves a question of law or fact of special difficulty, he may direct that in dealing with the appeal or any part thereof he shall have the assistance of an assessor or assessors.

(8) The Commissioner may, if he thinks fit, refer any question arising for his decision to a registered medical practitioner for examination and report.

(9) The decision of the Commissioner shall be in writing and signed by him, and, as soon as practicable, copies thereof shall be sent, simultaneously, one to the claimant and one to the Director.

14. The National Insurance Commissioner shall be appointed by the Governor-General and shall be an attorney-at-law of not less than 10 years' standing.

Appoint-
ment of
Commis-
sioner.

15. (1) Any decision under this Part of these regulations of the Director, appeal tribunal or Commissioner may be reviewed at any time by the Director, or on a reference from the Director, by an appeal tribunal, if

Review of
decisions of
Director and
appeal
tribunal.

- (a) he is or they are satisfied, but not without fresh evidence in the case of a decision of the Commissioner, that the decision was given in ignorance of, or was based on a mistake as to, some material fact;
- (b) there has been any relevant change of circumstances since the decision was given; or
- (c) the decision was based on the decision of any reserved question and the decision of that question has been revised.

(2) A question may be raised with a view to such a review by means of an application in writing to the Director stating the grounds of the application.

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(3) On receipt of any such application, the Director shall proceed to deal with or refer any question arising thereon in accordance with the Act and these regulations.

(4) Any decision given on a review under this regulation, and any refusal to review a decision under this regulation, shall be subject to appeal in like manner as an original decision, and the provisions of this Part of these regulations shall, subject to the necessary modifications, apply in relation to any decision given on a review as they apply to the original decision of a question.

Interim
payments.

16. (1) Subject to the provisions of this regulation and of regulation 19, benefit shall be payable in accordance with an award, notwithstanding that an appeal against the award is pending.

(2) Where it appears to the Board that a question has arisen whether

- (a) the conditions for the receipt of benefit payable under an award are or were fulfilled; or
- (b) an award of benefit ought to be revised in accordance with these regulations,

it may direct that payment of the benefit shall be suspended in whole or in part until that question has been determined.

Review of
decisions
involving
payment or
increase of
benefits other
than grants.

17. (1) Where on review a decision is revised so as to make benefit payable, or to increase the rate of benefit, the decision on review shall have effect as from the date of the application for the review.

(1A) Subject to paragraph (2), if in any case the claimant proves that, on a date earlier than the date on which the application for the review was made, he was (apart from satisfying the condition of making a claim therefor) entitled to benefit, he shall not be disqualified by virtue of the foregoing provisions of this paragraph for receiving any benefit to which he would have been entitled in respect of the period between the earlier date and the date on which the application for the review was made.

(2) Notwithstanding anything contained in this regulation, the following provisions shall have effect

- (a) paragraph (1A) shall apply subject to the conditions that no sum on account of benefit shall be paid to any person in respect of any part of the period referred to in that proviso earlier than 6 months before the date on which the application for the review was made;
- (b) the decision on review shall not in any event have effect for any period before the date on which the original decision took effect or would have taken effect if an award had been made;
- (c) if the said decision on review was based on a material change of circumstances subsequent to the date from which the original decision took effect, it shall not have effect for any period before the date declared by the Director, appeal tribunal or the Commissioner, as the case may be, to be the date on which such material change of circumstances took place.

(3) For the purposes of this regulation, where a decision is reviewed at the instance of the Director under paragraph (1) of regulation 15, the date on which it was first decided by the Director that the decision should be reviewed shall be deemed to be the date of the application for the review.

(4) In this regulation "benefit" does not include an invalidity, old age contributory, survivors' or funeral grant.

18. (1) A decision shall not be reviewed so as to make a grant payable unless the claimant proves that the application for review was made not later than 4 years from the date of the decision. Review of decisions involving payments of grants.

(2) The provisions of paragraph (3) of regulation 17 shall apply in the application of paragraph (1) as they apply in the application of paragraphs (1) and (2) of that regulation.

19. (1) Where a grant is awarded by a decision on review or appeal in lieu of a pension previously awarded, such decision shall direct that any payments made on account of such pension shall, in so far as they do not exceed the amount of the grant, be treated as being made on account of the grant. Adjustment of benefit.

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(2) Where any benefit other than a grant is awarded by a decision on review or appeal in lieu of another kind of benefit previously awarded, that decision shall, as respects any payments made on account of the benefit previously awarded

- (a) direct that in so far as the amount thereof does not exceed the amount of any arrears payable by way of the benefit so awarded, such payments shall be treated as having been made on account of such arrears; and
- (b) to the extent by which the amount thereof exceeds the amount of the said arrears, direct that such payments shall (except in so far as they are required to be repaid under this regulation) be treated as having been made on account of sums becoming payable after the date of the decision on review or appeal by way of the benefit awarded thereby.

(3) Where on review or appeal a decision is revised, or is reversed or varied so as to make benefit not payable or to reduce benefit, the decision given on the review or appeal shall require repayment to the Fund of any benefit paid in pursuance of the original decision to the extent to which it

- (a) would not have been payable if the decision on the review or appeal had been given in the first instance; and
- (b) is not directed to be treated as paid on account of the benefit awarded by the decision on review or appeal.

(4) Where

- (a) on appeal against an award of benefit a decision is reversed or varied, so that such benefit is not payable or is payable at a less rate; and
- (b) on review, the decision on that appeal is revised so as to make such benefit payable or payable at a higher rate from a date before the decision on appeal, any benefit paid in pursuance of the award before the decision on appeal shall, to the extent to which it would not have been payable if the decision on appeal had been given in the first instance, be treated as having been paid on account of any benefit made payable for the same period by the decision on review, except in so far as it

has, in pursuance of the decision on appeal, been repaid or treated as paid on account of the benefit awarded by that decision.

(5) Where, in accordance with a decision given on a review or appeal, any benefit is required to be repaid to the Fund, then, without prejudice to any other method of recovery, such benefit shall be recoverable by deduction from any benefit then or thereafter payable to the person by whom it is to be repaid or from any benefit payable on his death.

20. (1) If on consideration of a question the Director is of opinion that a reserved question arises, he shall Reference of reserved questions.

- (a) refer the reserved question for determination to the Board to determine the same; and
- (b) deal with any other questions as if the reserved question had not arisen:

(1A) The Director may

- (a) postpone the reference of or dealing with any question under paragraph (1);
- (b) in cases where the determination of any question disposes of a claim or any part thereof, make an award, or decide that an award cannot be made, as to the claim or that part thereof without referring or dealing with, or before the determination of, any other question.

(2) The foregoing provisions of this regulation shall apply to the appeal tribunal or the Commissioner as they apply to the Director, except that an appeal tribunal or the Commissioner instead of themselves referring a question for determination in accordance with sub-paragraph (a) of paragraph (1) shall require it to be so referred by the Director.

PART IV

Miscellaneous

- 21.** (1) Where in any proceedings
- (a) for an offence under the Act; or

Decisions to be conclusive for purpose of proceedings under Act, etc.

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- (b) involving any question as to the payment of contributions under the Act; or
- (c) for the recovery of any sums due to the Fund,

any question arises which under the Act or the regulations is to be determined by the Board, or by the court in the event of an appeal on a point of law, or the Director, appeal tribunal or Commissioner, the decision by the appropriate determining authority shall, unless an appeal under these regulations is pending or the time for so appealing has not expired, be conclusive for the purpose of those proceedings.

(2) If any such decision under paragraph (1) has not been obtained and the decision of the question is necessary for the determination of the proceedings, the question shall be referred to the appropriate determining authority, as the case may require, in accordance with the procedure (modified where necessary) prescribed in these regulations.

(3) Where any such appeal as is mentioned in paragraph (1) is pending, or the time for so appealing has not expired, or where any question has been referred under paragraph (2), the authority dealing with the case shall adjourn the proceedings until such time as a final decision upon the question has been obtained.

Authority
for payment
of expenses.

22. There shall be paid out of the Fund to the National Insurance Commissioner and the chairman of the appeal tribunal such salary or other remuneration and such expenses as the Cabinet may from time to time determine.

23. (1) There shall be paid

- (a) to members of an appeal tribunal (not being the chairman);
- (b) to a person or persons sitting as assessors (where necessary) with the National Insurance Commissioner;
- (c) to a person or persons appointed by the Board under regulation 4

such remuneration and such travelling or other allowances as the Board may by resolution declare, and such sums shall properly be payable out of the Fund.

(2) There shall be paid to persons required to attend on the consideration of a case before the appeal tribunal or before the Board such travelling or other allowances as the Board may by resolution declare, and such sums shall be properly payable out of the Fund.

(3) There shall be paid such other expenses incurred in connection with the work of the Commissioner, the appeal tribunal or the Board as the Board may by resolution declare, and such sums shall be properly payable out of the Fund.

(4) In this regulation references to travelling or other allowances include references to compensation for loss of remuneration: but such compensation shall not be paid to any person in respect of any time during which he is in receipt of remuneration under this regulation.

SCHEDULE

(Regulation 7(2)(b)(i))

Appeal Tribunal

1. An appeal tribunal shall consist of
 - (a) one person drawn, in accordance with paragraph 3, from a panel of persons chosen by the Board to represent employers;
 - (b) one person drawn, in accordance with paragraph 3, from a panel of persons chosen by the Board to represent insured persons; and
 - (c) a chairman who, subject to the provisions of this Schedule, shall hold office for such period, not exceeding 2 years, as the Cabinet may determine, and shall be eligible for re-appointment.
2. (1) The chairman of an appeal tribunal shall be an attorney-at-law of at least 5 years' standing, and the Cabinet may appoint one or more persons to perform the functions of chairman.
 - (2) The members of a panel shall be appointed by the Board, so, however, that before appointing members to either of the panels, the Board may take into consideration any recommendation from organisations concerned with the interests of employers or insured persons.

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3. As far as practicable, the members of each panel shall be summoned by the Board to serve in turn on the appeal tribunal for which the panel is established.

4. (1) No person shall sit on a tribunal during the consideration of a case

(i) in which he appears as the representative of the claimant; or

(ii) by which he is or may be directly affected; or

(iii) in which he has taken any part as an employer or as a witness;

(2) Where the claimant is a woman, at least one of the members of the tribunal, if practicable, shall be a woman.

5. The appeal tribunal may, with the consent of the claimant, but not otherwise, proceed with any case in the absence of any member other than the chairman, and in any such case the chairman shall, if the number of the members of the tribunal is an even number, have a second or casting vote.

Schedule. 6. Members appointed to a panel pursuant to this *Schedule* shall, subject to the provisions of this *Schedule*, hold office for such term and on such conditions as may be determined by the Board.

2006/137. 7. The Cabinet may at any time revoke the appointment of the chairman for any reason, including failure to function effectively or to write decisions in a timely manner; and the Board may at any time revoke the appointment of any member of a panel.

8. No member of the Board shall be eligible for appointment as a chairman or member of an appeal tribunal.