

**Changes to legislation governing the operation of the appeals office : Explanatory Table for Consultation Purposes.**

<b>Type of change</b>	<b>Current Wording</b>	<b>Proposed Wording</b>	<b>Change</b>	<b>Rationale</b>
<p>Primary Legislation</p> <p>(NOTE THIS IS ALREADY COMPLETED IN PRIMARY LEGISLATION AND IS INCLUDED FOR INFORMATION ONLY)</p>	<p><b>Previous Wording</b></p> <p>305. One of the appeals officers, who is an officer of the Minister, shall be designated by the Minister to be the Chief Appeals Officer and another of them who is an officer of the Minister shall be designated by the Minister to act as deputy for the Chief Appeals Officer when that Officer is not available.</p>	<p><b>Current Wording</b></p> <p>305. (1) The Minister shall designate—</p> <p>(a) one of the appeals officers who is an officer of the Minister to be the Chief Appeals Officer, and</p> <p>(b) one or more of the other appeals officers (not being an officer designated under paragraph (a)) who are officers of the Minister to act as the deputies for the Chief Appeals Officer when the Chief Appeals Officer is not available.</p> <p>(2) An appeals officer who is designated by the Minister under subsection (1) to act as deputy for the Chief Appeals Officer shall, when so acting be referred to as the Deputy Chief Appeals Officer.<sup>-1</sup></p>	<p>Section 305 of the Act has been changed to provide that the Minister may designate one or more persons to act as Deputy Chief Appeals Officers to assist the Chief Appeals Officer in the performance of their functions. These Deputy Chief Appeals officers will be designated to deputise for the Chief Appeals Officer in the event that the Chief Appeals Officer is not available to perform his/her duties.</p>	<p>Previously, the Act provided for just one Deputy Chief Appeals Officer whose sole purpose was to deputise for the Chief Appeals Officer (CAO) when she/he was unavailable.</p> <p>In effect the single point of authority, in an office now comprising some 40 appeals officers and some 40 administrative staff, was the Chief Appeals Officer.</p> <p>In addition, taken literally, the role of the Chief Appeals Officer with respect to other Appeals Officers is to be “first among equals” with limited statutory power to direct and manage the office. While this may have been feasible when the Office was originally established with a cadre of approximately 16 Appeal Officers it is not a feasible approach to managing an office now comprising over 80 staff.</p> <p>The purpose of this change (already implemented in primary legislation) taken together with the proposed changes to regulations, is to facilitate the operation of a management structure and process within the Office.</p>

<sup>1</sup> Art 305 substituted by s.17 SWA 2021

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Definition		“Office of the Chief Appeals Officer” means all functions, staff and facilities that report to and are under the direction of the Chief Appeals Officer including Appeals Officers, Deputy Chief Appeals Officers, and other staff necessary to the performance of Chapter 2 of Part 10 of the Social Welfare Consolidation Act 2005 (No. 26 of 2005) and these Regulations;	This is a new definition.	The purpose of this definition is to set out the scope of the Appeals Office and act as a reference point for references to the Office in regulations
Article 5 Deleted	<p><b>Revocation of Regulations</b></p> <p>5. The Social Welfare (Appeals) Regulations, 1990 ( S.I. No. 344 of 1990 ) are hereby revoked.</p>	No equivalent	This is a deletion of an out-of-date article.	It is not necessary to include a revocation article.
Articles 6 and 7 Replaced by new Article 5	<p><b>Distribution of references to appeals officers</b></p> <p>6. The Chief Appeals Officer shall be responsible for the distribution amongst the appeals officers of the references to them under sections 257 and 257A and for the prompt consideration of such references.</p>	<p><b>Functions of Chief Appeals Officer</b></p> <p>5. The Chief Appeals Officer shall be responsible for:</p> <p>(1) the assignment amongst Appeals Officers of references to them under section 311;</p> <p>(2) directing the appeals function and specifying procedures and policies to be followed by Appeals Officers and other staff working in the appeals function</p>	<p>Change to specify additional functions for the Chief Appeals Officer including</p> <ul style="list-style-type: none"> <li>• Giving the Chief Appeals Officer authority to direct the office and specify procedures to be followed</li> <li>• Nominating appeals officers to take and decide reviews under Section 317 of the Act</li> </ul>	<p>The purpose of this change is to provide greater detail and clarity with respect to the managerial role of the Chief Appeals Officer.</p> <p>In particular it gives the Chief Appeals Officer the responsibility and the authority to direct the organisation of the Appeals Office, and to specify and implement systems of quality assurance within the office. This latter change reflects the observations of the</p>

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	<p><b>Convening of meetings</b></p> <p>7. The Chief Appeals Officer may convene meetings of appeals officers for the purpose of discussing matters relating to the discharge of the functions of appeals officers including in particular consistency in the application of the statutory provisions.</p>	<p>consistent with the provisions of the Principal Act and these Regulations;</p> <p>(3) nominating an Appeals Officer, including a Deputy Chief Appeals Officer, to consider revising a decision of an Appeals Officer in accordance with section 317;</p> <p>(4) nominating an Appeals Officer, including a Deputy Chief Appeals Officer, to review and submit to him or her a recommendation in respect of a decision of an Appeals Officer in accordance with section 318;</p> <p>(5) ensuring the application of effective systems of quality assurance with regard to the operation of the appeals function with specific regard to timeliness and consistency in the determination of appeals;</p> <p>(6) arranging for the preparation and issuing of guidance to the Minister, on the appropriate interpretation and application of statutory provisions with respect to decisions made in accordance with section 300;</p>	<ul style="list-style-type: none"> <li>• Delegating first consideration of referrals made under section 318 of the Act (reviews of appeal officer decisions)</li> <li>• Specifying and ensuring application of an effective system of quality assurance.</li> </ul>	<p>Comptroller and Auditor General in his 2021 review of the Appeals Office</p> <p>In addition, it enables the Chief Appeals Officer to delegate initial consideration of reviews under Section 318 of the Act (reviews on errors of law or fact) to Deputy Chief Appeals Officers. – This latter change will reduce their direct workload enabling them to devote more time to the management of the office.</p> <p>It also provides a role for the Chief Appeals Officer to provide feedback and guidance to the Minister and to Department staff on the correct interpretation of statutory provisions relating to decisions.</p> <p>The rationale for this particular provision is that Appeals Officers are senior staff directly engaged in the interpretation of scheme rules across all schemes on a daily basis.</p> <p>In practice therefore, issues with regard to the consistency of application of scheme rules are also most apparent in the appeals received by the Appeals Office.</p> <p>it is therefore important that the Appeals Office is mandated to provide feedback to</p>

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		<p>(7) providing advice and guidance, at the request of any officer of the Minister at Principal Officer level or higher, with respect to the interpretation of statutory provisions applying to any decision or class of decisions;</p> <p>(8) reviewing and reporting the activities and performance of the appeals function, in accordance with Section 308.</p>		<p>the Department’s scheme area deciding officers. This will help improve the quality and consistency of first instance decision making.</p> <p>This was an issue that was previously raised by former Chief Appeals Officers (CAOs) and more recently by the Comptroller and Auditor General.</p> <p>This provision will for the first time formally establish a role for, and assign responsibility to, the CAO in providing feedback and guidance to the Department.</p> <p>Finally, the new wording also updates the references to the correct sections of the Social Welfare Consolidation Act (2005) (as amended).</p>
<p>Article 8 Retained as new Article 6</p>	<p><b>Reference by a deciding officer to appeals officer</b> 8. (1) A reference to an appeals officer by a deciding officer under section 250 shall be in the form, for the time being, approved by the Chief Appeals Officer or in any other such manner as the Chief Appeals Officer may</p>	<p><b>Reference by a Deciding Officer to Appeals Officer</b> 6. (1) A reference to an Appeals Officer by a Deciding Officer under section 303 shall be in the form, for the time being, approved by the Chief Appeals Officer or in any other such manner as the Chief Appeals Officer may accept as sufficient in the circumstances.</p>	<p>No material change. – Technical change to update references to the correct sections of the Act.</p>	<p>Technical correction.</p>

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	<p>accept as sufficient in the circumstances.</p> <p>(2) Where a reference to an appeals officer is made by a deciding officer under section 250, the manner for dealing with it shall, with any necessary modifications, be the same as if the reference were an appeal made under section 257 of the said Act.</p>	<p>(2) Where a reference to an Appeals Officer is made by a Deciding Officer under section 303, the manner for dealing with it shall, with any necessary modifications, be the same as if the reference were an appeal made under section 311.</p>		
<p>Article 9</p> <p>Replaced by Article 7</p>	<p><b>Submission of appeal and information to be supplied by appellant.</b></p> <p>9. (1) Any person (in these Regulations referred to as the appellant) who is dissatisfied with the decision of a deciding officer or the determination of a designated person and who wishes to appeal against such decision or determination, as the case may be, shall give notice in that</p>	<p><b>Submission of appeal and information to be supplied by appellant</b></p> <p>7. (1) Any person (in these Regulations referred to as the appellant) who is dissatisfied with the decision of a Deciding Officer or the determination of a Designated Person and who wishes to appeal against such decision or determination, as the case may be, shall give notice in that behalf, in writing, to the Chief Appeals Officer. The time within which an appeal may be made shall be any time up to the expiration of 60 days from the date</p>	<p>Change <i>Submission of Appeal</i> provisions to</p> <ul style="list-style-type: none"> <li>• Extend the time limit for submission of an appeal from 21 days to 60 days</li> <li>• Provide for late appeals to be accepted up to 180 days in bona fide cases</li> <li>• Provide further information on the factors to be considered by the Chief Appeals Officer in allowing late submission of an appeal.</li> <li>• Provide further information on the material that appellants</li> </ul>	<p>At present appellants must submit their appeal within <u>three weeks</u> of the initial decision.</p> <p>This change increases the time allowed to <u>60 days (8 – 9 weeks)</u> and is designed to provide an extended period for appellants to submit their appeal.</p> <p>At present late appeals can be accepted at the discretion of the Chief Appeals Officer but there is no defined period within which late appeals must be submitted, nor are any factors set out that should inform the discretion afforded to the Chief Appeals Officer.</p>

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	<p>behalf, in writing, to the Chief Appeals Officer.</p> <p>(2) The time within which an appeal may be made shall be any time up to the expiration of 21 days from the date of the notification of the decision of a deciding officer or determination of a designated person, as the case may be, to the appellant.</p> <p>(3) Notwithstanding sub-article (2), notice of an appeal given after the expiration of 21 days from the date of the notification of the decision of a deciding officer or determination of a designated person to the appellant may, with the approval of the Chief Appeals Officer, be accepted.</p> <p>(4) The notice of appeal shall contain a statement of the facts and contentions upon which the appellant intends to rely.</p>	<p>of the notification of the decision of a Deciding Officer or determination of a Designated Person, as the case may be, to the appellant.</p> <p>(3) Notwithstanding sub-article (2), a notice of appeal received after the expiration of 60 days may be accepted, at the sole discretion of the Chief Appeal Officer, if he or she is satisfied that the delay in submitting the appeal is due to exceptional circumstances and, in addition, that there are strong <i>prima facie</i> grounds for appeal. Appeals will not be accepted by the Chief Appeals Officer any time after the expiry of 180 days from the date of the notification of the decision of a Deciding Officer or determination of a Designated Person, as the case may be, to the appellant.</p> <p>(4) The notice of appeal shall contain a statement of the facts and contentions upon which the appellant intends to rely. This shall include the details of the original claim submitted to the Minister together with grounds of appeal and any additional information that the</p>	<p>should submit with their appeal.</p>	<p>In contrast other appellate bodies usually specify timeframes by which documents must be submitted.</p> <p>Accordingly, the regulation provides that late appeals can be accepted provided they are received within 180 days of the date of the initial decision (equivalent to six months) where the Chief Appeals Officer believes there are bona fide reasons for the late appeal (e.g. relating to illness, family bereavements, third party delays etc.) and there are prima facie grounds for the appeal.</p> <p>The setting of an outer time limit is believed to be reasonable in circumstances where the period of time for an initial appeal submission is being extended, by nearly threefold, to 60 days.</p> <p>The new article also provides further information on the information that should be submitted with an appeal and which is necessary to a proper consideration of an appeal. This is intended to avoid delays associated with incomplete appeals being received by the Office.</p>

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	<p>(5) The appellant shall send to the Chief Appeals Officer along with the notice of appeal, such documentary evidence as the appellant wishes to submit in support of his or her appeal, and the notice shall contain a list of any such documents.</p> <p>(6) Any person wishing to withdraw an appeal may do so by sending a written notice to that effect to the Chief Appeals Officer. 2</p>	<p>appellant considers is relevant to the consideration of his or her appeal.</p> <p>(5) The appellant shall send to the Chief Appeals Officer, along with the notice of appeal, such documentary evidence as the appellant wishes to submit in support of his or her appeal, and the notice shall contain a list of any such documents.</p> <p>Any person wishing to withdraw an appeal may do so by sending a written notice to that effect to the Chief Appeals Officer.</p>		
<p>Article 10 replaced by Article 8</p>	<p><b>Notification of appeal and information to be supplied.</b></p> <p>10. In the case of an appeal against the decision of a deciding officer or the determination of a designated person under section 311, the Chief Appeals Officer shall cause notice of the appeal to be sent to the Minister</p>	<p><b>Notification of appeal to Minister and information to be supplied.</b></p> <p>8. (1) In the case of an appeal against the decision of a Deciding Officer or the determination of a Designated Person under section 311, the Chief Appeals Officer shall cause notice of the appeal together with the grounds submitted for the appeal to be sent to the Minister who shall, as soon as may be but not later than 21 days thereafter, either revise the original decision in favour</p>	<p>Change to</p> <ul style="list-style-type: none"> <li>• Introduce a 3 week time limit for the Department, upon receipt of notice of the appeal from the Appeals Office, to review its original decision or to provide information used in reaching the original decision.</li> <li>• Empower the Appeals Office to determine an appeal if the information</li> </ul>	<p>At present all appeals are sent to the Department by the Appeals Office with a request for the Department to</p> <ul style="list-style-type: none"> <li>• provide all information and documents at its disposal that are relevant to an appeal, and to,</li> <li>• provide a statement from the Deciding Officer as to the extent to which they admit or dispute the appeal contentions.</li> </ul>

<sup>2</sup> Substituted by Art 5(a) S.I. 505/2011

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	<p>who shall, as soon as may be, furnish to the Chief Appeals Officer—</p> <p>_____ (a) a statement from the deciding officer or the designated person or on his or her behalf _____ showing the extent to which the facts and contentions advanced by the appellant are _____ admitted or disputed, and _____</p> <p>_____ (b) any information, document or item in the power or control of the deciding officer or _____ the designated person, as the case may be, that is relevant to the appeal.<sup>3</sup></p>	<p>of the appellant and advise the Chief Appeals Officer accordingly, or furnish or make available to the Chief Appeals Officer all claim forms or other documentation submitted by the appellant and such other evidentiary information considered by the Deciding Officer or the Designated Person, as the case may be, including reports of any assessors or inspectors, when making the decision that is being appealed.</p> <p>(2) The date fixed for furnishing the information requested may be extended on application, subject to a valid reason being submitted by the Minister, and at the discretion of the Chief Appeals Officer. An application for extension shall only be considered if it is received within 18 days of the date of notice.</p> <p>(3) Where the Minister does not provide the documentation and information within 21 days from the date of notice by the Chief Appeals Officer (or such date as may be specified under sub-article (2)), the Chief Appeals Officer shall arrange</p>	<p>requested is not submitted by the Department within the three-week timeframe.</p> <ul style="list-style-type: none"> <li>Remove the obligation on a deciding officer to provide a statement in each appeal case.</li> </ul>	<p>There is, however, no time specified by which the Department must provide the required information.</p> <p>Although the current practice is that the request for documents and submissions is also a trigger for the Department to review its original decision this review is not required by the existing regulation.</p> <p>The change proposed</p> <ul style="list-style-type: none"> <li>formally establishes this review process i.e., requiring the Department to review the original decision prior to returning papers to the Appeals Office and advise the Chief Appeals Officer if it has revised its decision.</li> <li>sets, for the first time, a 3-week timeframe within which the review must be completed or the claim information requested by the Appeals Office provided to the Office</li> <li>provides that, where the Department does not provide the requested information within the required 3-week timeframe, the Appeals Officer can determine the appeal based on the information provided by the appellant.</li> </ul>

<sup>3</sup> Substituted by Art 5(a) S.I. 505/2011



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		<p>for the appeal to be determined on the basis of the information provided by the appellant and such further information as may be provided under article 10 of these Regulations.</p>		<p>This change will require the Department to respond promptly to provide all documents and information relevant to the claim/appeal. This should shorten the time taken to process appeals.</p> <p>With regard to the obligation on Deciding Officers to provide a statement the new article recognises that this is not necessary, or of value, in all cases.</p> <p>This is because all decisions of Appeals Officers must be grounded in the legislation that sets out the rules/conditions for receipt of a benefit or determination of a social insurance class.</p> <p>Towards this end the Appeals Officer has access to the same information as was available to the Deciding Officer and such other additional information as is provided by the appellant with the appeal submission</p> <p>It is this information, under the <i>de novo</i> principle, that must inform the Appeals Officer's examination of the case.</p> <p>The requirement for a Deciding Officer to provide a statement in <b>all</b> appeal cases imposes an unnecessary burden on</p>

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				<p>Deciding Officers (who are mainly clerical officer grade), delays the appeals process and also creates an adversarial situation with Deciding Officers being put in the position of contesting/admitting the appellant's submission. This change reduces this contention and is consistent with the 'de novo' approach as provided for in Section 311 (3) of the primary legislation (see further below).</p> <p>The impact of this change is to simplify and shorten the process of preparing an appeal file within the Department.</p> <p>It is to be noted that while this change removes the <u>obligation</u> to produce a statement it does not mean that Deciding Officers are prevented from doing so.</p> <p>In addition, Appeals Officers retain the option under new Article 10 (see below) to request further particulars from any person they consider relevant – including Deciding Officers.</p> <p>It is likely that in more complex appeals where there is more than one interested party to a case (e.g. separate submissions from employers and workers relating to employment status/PRSI) Deciding Officers may still prepare a statement</p>

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				setting out the factors they considered relevant in considering the arguments put forward by the different parties.
Article 11 retained as Article 9	<p><b>Notice of appeal</b></p> <p>11. The Chief Appeals Officer shall cause notice that an appeal has been submitted to be furnished to any other person appearing to be concerned</p>	<p><b>Notice of appeal to other persons</b></p> <p>9. The Chief Appeals Officer shall cause notice that an appeal has been submitted to be furnished or made available to any other person appearing to be concerned.</p>	No change	No change
Article 12 replaced by Article 10.	<p><b>Further information to be supplied and amendment of pleadings</b></p> <p>12. The appeals officer to whom an appeal is referred may at any time—</p> <p>(a) require the appellant, the deciding officer or the designated person, as the case may be, or any other person appearing to the appeals officer to be concerned, to furnish to him or her, in writing,</p>	<p><b>Further information to be supplied and amendment of pleadings</b></p> <p>10. (1) The Appeals Officer to whom an appeal is referred may in considering the appeal—</p> <p>(a) require the appellant or any other person appearing to the appeals officer to be concerned, to furnish to him or her, in writing, further particulars regarding the appeal,</p> <p>(b) allow the amendment of any notice of appeal, statement, or particulars at any stage of the proceedings, and</p>	<p>Maintain existing powers to seek further information from interested parties and allow amendments of an appeal and, in addition:</p> <ul style="list-style-type: none"> <li>• Introduce a timeframe of 3 weeks by which a person is required to furnish further particulars if requested by an Appeals Officer.</li> <li>• Provide that this deadline may be extended by application subject to a valid reason being provided.</li> </ul>	<p>The current regulations do not provide for a timeframe by which a person must respond to a request for further information. Instead, they provide that an Appeals Officer will set a return date in each case.</p> <p>The setting of a timeframe (of no more than 3 weeks and which may be extended) is intended to ensure consistency in approach, set expectations, encourage prompt return of documents, shorten the appeals process and expedite decisions.</p>

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	<p>further particulars regarding the appeal,<sup>4</sup></p> <p>(b) allow the amendment of any notice of appeal, statement, or particulars at any stage of the proceedings, and</p> <p>(c) fix the time for furnishing any such statement or particulars upon such terms as he or she may think fit.</p>	<p>(c) fix the return date for furnishing any such statement and this return date to be no more than 21 days from the notice requesting further particulars or upon such terms as he or she may think fit.</p> <p>(2) (a) Notwithstanding sub-article (1)(c) of this article, and subject to paragraphs (b) and (c), the date fixed for furnishing further particulars may be extended at the discretion of the Appeals Officer.</p> <p>(b) An application for extension shall only be considered if it is received at least 3 days prior to the return date specified in the notice for further particulars from the person to whom the notice was directed.</p> <p>(c) In exercising their discretion, the Appeals Officer shall consider if the reason sought for the extension is in all the circumstances reasonable.</p>	<ul style="list-style-type: none"> <li>• Provide that where a third party is requested to provide information but fails to do so that the Appeals Officer can proceed to determine the appeal</li> <li>• Provide that failure to provide further particulars/ information by seven days after the requested date shall result in the appeal being deemed to be withdrawn.</li> </ul>	<p>The new regulation also includes a provision whereby this timeframe can be extended on application by the appellant (not in the current regulation) where the Appeals Officer believes there are reasonable grounds to do so.</p> <p>In addition, the regulation includes a provision that empowers an Appeals Officer to determine an appeal in the event that a third party does not return information requested-(having at an opportunity to seek an extension of the return date). – This might happen, for example, in cases relating to disputed insurability/employment status where employers may be requested to submit information.</p> <p>The introduction of a ‘deemed withdrawn’ by an extended deadline provision, and where a person has not sought an extension of time, is intended to reduce the number of cases where appeals are submitted with no further action being taken but retained on file within the appeals office even though the appellant is not actively engaging with the appeals process. It is believed this approach is reasonable in circumstances</p>

<sup>4</sup> Substituted by Art 5(b) S.I. 505/2011

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		<p>(3) Where the notice for further particulars was directed to the appellant (or a person representing the appellant) and a response is not received by a date 7 days after the designated return date, the appeal will be deemed to be withdrawn and all parties to the appeal shall be notified accordingly.</p> <p>(4) Where the notice for further particulars was directed to a person other than the appellant (or a person representing the appellant) and a response is not received by the designated return date, the Appeals Officer shall proceed to determine the appeal in the absence of the information requested.</p>		<p>where the appellant now has the right to seek an extension of the timeframe to return further information and particulars.</p> <p>It is important to note that appellants or other interested parties retain the right under section 317 of the Act to seek a review of an Appeals Officer Decision <u>at any time</u> if new facts or evidence are available to be submitted.</p> <p>Therefore, if there is a bona fide delay in appellants or other parties producing information this information can still be provided, at a later date, with an application for a '317' review.</p>
New Article 11		<p><b>Determination of appeals</b></p> <p>11. An appeal, in accordance with section 311(3), shall be determined by an Appeals Officer as if it was being decided for the first time on the basis of the information submitted by the appellant and the Minister (which shall include reports of inspectors and assessors working on behalf of the Minister), and taking due account of any opinion provided</p>	<p>Introduction of a <i>Determination of Appeals</i> provision to set out the basis on which appeals should be determined.</p> <p>As provided for under Section 311 (3) of the Act this article operationalises the <i>de novo</i> approach to determining appeals i.e. that the</p>	<p>Section 311 (3) of the Act provides for <i>De Novo</i> decisions.</p> <p>The role of the Appeals Officer in a <i>de novo</i> approach is not to adjudicate between contesting parties <i>per se</i> but to assess whether or not, on the basis of the information available to them, the appellant satisfies the legislative conditions to qualify for the benefit or assistance sought.</p>

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		<p>by any assessor who may be assigned, in accordance with Section 309.</p>	<p>entitlement to a benefit or service is to be considered with fresh eyes as if it was being assessed for the first time.</p> <p>It also requires Appeals Officers to have regard to all of the information provided by the appellant and the Minister including the reports of inspectors or assessors.</p> <p>In addition, it requires Appeals Officers to take due account of opinions of assessors whose advice may be sought under Section 309 of the Act.</p>	<p>In practice however an approach has evolved whereby the Department, by being asked to defend or state its case for the original decision, is pitted against the appellant.</p> <p>This change is intended to help minimise contention and to clearly provide that the Appeals Office shall decide appeals using the '<i>de novo</i>' principle of taking the correct decision based on the evidence available to them. i.e. The information available to the Department when it considered the claim <i>plus</i> whatever further information is obtained during the appeals process.</p> <p>Section 309 of the Act provides for assessors to assist Appeals Officers. This new article operationalises this Section and requires appeals officers to have regard to the opinion of expert assessors in cases where under the Act it appears to the Chief Appeals Officer that the determination of an appeal question requires the assistance of an assessor. This will, in particular, arise in cases where new medical evidence is submitted with an appeal (See below)</p>

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New Article 12		<p><b>Decision involving an assessment of capacity to work or requirements for care</b></p> <p>12. (1) In any appeal where the question to be decided relates to a person’s capacity to work under Sections 40, 46A , 74 and 118, or to whether or not they are substantially restricted in undertaking employment under Section 210, or to a relevant person’s requirement for full-time care and attention under Sections 100, 179 and 186C, the Appeals Officer shall, if they are not themselves a registered medical practitioner, have regard to the opinion of a medical assessor to assist them in determining any question that may arise from consideration of any new medical information or opinion provided as part of the appeal.</p> <p>(2) If an Appeals Officer, required in accordance with sub-article (1), to seek the advice of a medical assessor, makes a decision contrary to the medical opinion of the medical assessor, he or she shall advise and set out in writing to the appellant, and any other parties</p>	<p>This article provides that any appeal relating to a person’s capacity to work or requirement for care shall be determined either by an appeals officer who is a registered medical practitioner or, if not a registered practitioner, that the appeals officer will be obliged to seek the advice of a medical assessor.</p>	<p>At present appeals relating to the ‘medical’ conditionality of the illness, disability and caring schemes are determined by ‘lay’ appeals officers even though the decision as to whether or not a person satisfies these particular scheme conditions is a judgement based on consideration of medical evidence.</p> <p>The purpose of this provision is ensure that any such judgement is properly founded either by requiring the Appeals Officer to be a certified medical practitioner, or, by mirroring, on Appeals Officers, the requirement on the Department’s deciding officers, to seek a medical opinion in respect of medical evidence.</p> <p>Accordingly, the Appeals Officers will be required to seek a medical opinion on any additional medical information that may be supplied by an appellant.</p> <p>In addition, while the Appeals Officer is empowered to take a decision that is contrary to the medical opinion, they are required, in such cases, to set out their reasons for doing so.</p> <p>These provisions provide greater assurance to appellants that their medical</p>

Type of change	Current Wording	Proposed Wording	Change	Rationale
		concerned, the rationale for his or her making a determination contrary to the advice of the medical assessor.		reports are being properly reviewed by an appropriately qualified person and also provides greater transparency relating to the basis for any decision taken.
Regulation 13	<p><b>Summary appeals</b></p> <p>13. Save as provided in section 270, where the appeals officer is of the opinion that the case is of such a nature that it can properly be determined without a hearing, he or she may determine the appeal summarily.</p>	<p><b>Summary appeals</b></p> <p>13. Where the written information, including grounds for appeal and supporting material or other documentation and supplementary material requested by, and available to, the Appeals Officer, is, in his or her view, sufficient to enable an informed decision, the Appeals Officer shall set out his or her rationale accordingly, and determine the appeal based on this information and without recourse to a hearing.</p>	Change to expand the text to set out the basis on which an Appeals Officer may decide to deal with an appeal without recourse to a hearing and, in addition, to require the Appeals Officer to set out their rationale for determining the appeal on a summary basis.	<p>At present the text providing for summary appeals simply states that where an Appeals Officer is of the view that a case can be determined without a hearing they may then proceed to determine the appeal summarily. The text also includes an incorrect reference to S 270 of the Act.</p> <p>The new text removes the incorrect reference and, in addition, explicitly provides that an Appeals Officer must have regard to the information provided to them by the parties in forming a view as to whether or not an appeal warrants an oral hearing.</p> <p>In addition, they are, for the first time, required to set out their reasons for determining the appeal on a summary basis. This will improve the transparency of the process and be of assistance to appellants in considering if they wish to take up the option of further reviews *under Sections 317 and 318 of the Act)</p>



Type of change	Current Wording	Proposed Wording	Change	Rationale
<p>Article 14 replaced by Articles 14 and 15</p>	<p><b>Hearings.</b></p> <p>14. Where, in the opinion of the appeals officer, a hearing is required he or she shall, as soon as may be, fix a date and place for the hearing, and give reasonable notice of the said hearing to the appellant, the deciding officer or designated person, as the case may be, and any other person appearing to the appeals officer to be concerned in the appeal.</p>	<p><b>Hearings</b></p> <p>14. Where an appellant or any other party who stands to be directly affected by the appeal decision requests a hearing of the appeal (such request to be provided in writing), the Appeals Officer shall consider this request and, if he or she decides not to proceed with a hearing, the Appeals Officer shall advise the appellant and other parties concerned setting out the reasons why he or she considers a hearing of the appeal to be unnecessary.</p> <p><b>Notice where hearing required</b></p> <p>15. Where either on their own volition or upon receipt of a request by a party to the appeal, an Appeals Officer determines that a hearing is required they shall, having consulted with a Deputy Chief Appeals Officer, and as soon as may be, fix a date and place for the hearing, and give reasonable notice of the said hearing to the appellant, the Minister and any other person appearing to the Appeals Officer to be concerned in the appeal.</p>	<p>Change to provide that a person is entitled to request a hearing, that an Appeals Officer is required to consider this request, and that where a person requests a hearing but a hearing is not granted that the reasons for this decision must be provided.</p>	<p>At present there is no provision in the regulations entitling a person who is a party to an appeal to request an oral hearing, nor is there an obligation on an Appeals Officer to consider any request that may be received.</p> <p>In addition, at present, the decision as to whether or not an oral hearing is warranted is solely reserved for the Appeals Officer and is, in regulations, to be taken on their own volition only</p> <p>This change</p> <ul style="list-style-type: none"> <li>• introduces a new provision whereby an appellant is entitled under the regulations to request a hearing</li> <li>• requires the Appeals Officer to give consideration to the request for an oral hearing</li> <li>• provides that a reason must be given for any decision by an Appeals Officer not to grant a hearing on request.</li> </ul> <p>As at present the Appeals Officer retains the authority at their own discretion, subject to accepting requests and providing reasons, to determine whether or not an oral hearing is necessary.</p>

Type of change	Current Wording	Proposed Wording	Change	Rationale
				<p>The new article also provides that any decision with respect to whether or not a hearing is required shall be advised to a Deputy Chief Appeals Officer.</p> <p>This does not require an Appeals Officer to seek prior approval or sanction to hold an oral hearing. The purpose of the provision is to facilitate management of the Office, in particular with respect to allocation of work, work planning and scheduling.</p>
<p>Article 15 replaced by Article 16</p>	<p><b>Attendance at a hearing</b></p> <p>15. (1) The appellant shall ordinarily appear at the hearing in person and he or she may be accompanied by any member of his or her family, or, with the consent of the appeals officer, by any other person.</p> <p>(2) The appellant may, with the consent of the appeals officer, be represented at the hearing by any member of his or her family or by any other person.</p>	<p><b>Persons who may appear at hearing</b></p> <p>16. (1) The appellant shall ordinarily attend at the hearing and he or she may be accompanied by a member of his or her family, or, with the consent of the Appeals Officer, any other person.</p> <p>(2) The appellant may, with the consent of the Appeals Officer, be represented at the hearing by any other person.</p> <p>(3) Any officer designated by the Minister may, on giving written notice, represent the Minister at the hearing.</p> <p>(4) Any other person, appearing to the Appeals Officer to be</p>	<p>No material change – simplification of language</p>	<p>No material change – simplification of language.</p>

Type of change	Current Wording	Proposed Wording	Change	Rationale
	<p>(3) The deciding officer or designated person, as the case may be, may appear at the hearing in person or he or she may be represented by another officer of the Minister.<sup>5</sup></p> <p>(4) Any other person appearing to the appeals officer to be concerned may also attend at the hearing.</p>	<p>concerned, may, on being given written notice, also attend at the hearing.</p>		
<p>Article 16 replaced by Article 17</p>	<p><b>Failure to attend hearing</b> 16. Where, after notice of a hearing has been duly given, any of the parties fails to appear at the hearing, such order or decision may be made, and such steps may be taken with a view to the determination of, or in reference to, the appeal as the appeals officer may think appropriate.</p>	<p><b>Failure to attend hearing</b> 17. Where, after notice of a hearing has been duly given, any of the parties so notified fails to attend at the hearing, such order or decision may be made, and such steps may be taken with a view to the determination of, or in reference to, the appeal as the Appeals Officer considers appropriate, including determining the appeal on a summary basis.</p>	<p>The single change to this article is to explicitly reference that “such steps....as an appeals officer may think appropriate” may include the determination of an appeal on a summary basis.</p>	<p>This change is informed by experience whereby, on occasion, some parties to an appeal hearing do not attend on the day of the hearing with no or very little notice of their non-attendance and seek to insist on an alternative date. In some cases this has merit, in other it appears that non-appearance, is used as a delaying tactic.</p>

<sup>5</sup> Substituted by Art 5(d) S.I. 505/2011

Type of change	Current Wording	Proposed Wording	Change	Rationale
Article 17 retained as article 18	<p><b>Failure to comply with Regulations</b></p> <p>17. The appeals officer may decide any question duly referred to him or her, notwithstanding the failure or neglect of any person to comply with any requirement of these Regulations.</p>	<p><b>Failure to comply with Regulations</b></p> <p>18. An Appeals Officer may decide any question duly referred to him or her, notwithstanding the failure or neglect of any person to comply with any requirement of these Regulations.</p>	No change	No change
Article 18 retained with minor changes as Article 19	<p><b>Procedure at hearing</b></p> <p>18. (1) The procedure at the hearing shall be such as the appeals officer may determine.</p> <p>(2) The appeals officer may postpone or adjourn the hearing as he or she may think fit.</p> <p>(3) The appeals officer may admit any duly authenticated written statement or other material as prima facie evidence of any fact or facts in any case in which he or she thinks it appropriate.</p>	<p><b>Procedure at hearing</b></p> <p>19. (1) The procedure at the hearing shall be as determined by an Appeals Officer on the day of the hearing.</p> <p>(2) An Appeals Officer shall make best efforts to expedite the conclusion of an appeal, and postponements or adjournment of hearings shall only be granted in exceptional circumstances.</p> <p>(3) An Appeals Officer may admit any duly authenticated written statement or other material as <i>prima facie</i> evidence of any fact or facts, in any case, in which he or she thinks it appropriate.</p>	The changes made are to give effect to how the regulation is implemented in practice.	<p>At present, and reflecting the administrative nature of the process, appellants and other parties can seek to introduce new material on the day of a hearing or to seek a particular approach to be taken on the day of the hearing. The change proposed explicitly facilitates Appeals Officers in considering such requests on the day of the hearing if they believe it is appropriate to do so.</p> <p>The intention of the revised sub-article (2) is to change the emphasis from the Appeals Officer postponing the hearing as “they may think fit” to, instead placing the emphasis on expeditious hearings. In addition, while adjournments may still be facilitated, they will need to be justified by exceptional circumstances (e.g. family illness, bereavements, third party delays etc.)</p>

Type of change	Current Wording	Proposed Wording	Change	Rationale
<p>Article 19 replaced by Articles 20</p>	<p><b>Decision of appeals officer</b></p> <p>19. (1) The decision of the appeals officer shall be in writing signed by him or her and shall be sent, as soon as may be, to the Chief Appeals Officer.</p> <p>(2) In any case where the decision of the appeals officer is not in favour of the appellant, the appeals officer shall attach to his or her decision a note of the reasons for the said decision.</p> <p>(3) The Chief Appeals Officer shall, as soon as may be after the receipt of the decision of the appeals officer, cause a memorandum of—</p> <p>(a) the decision, and</p> <p>(b) where in accordance with sub-article (2) of this article the decision is not</p>	<p><b>Decision of Appeals Officer</b></p> <p>20. (1) The decision of an Appeals Officer, together with the reasons for this decision, shall be recorded and notified, in accordance with such procedures as may be specified from time to time by the Chief Appeals Officer, to all parties to the appeal. Notices shall issue no later than 15 working days (working day to exclude Saturdays, Sundays and Public Holidays) after the appeal is determined.</p> <p>(2) Decisions of Appeals Officers will, as appropriate, be given practical effect in accordance with such procedures as may be specified from time to time by agreement between the Chief Appeals Officer and the Secretary General of the Department.</p>	<p>Change to provide that decisions, including the reasons for the decision, must be notified to the parties to an appeal within 15 days of the appeal being determined.</p> <p>In addition, the regulation provides for the method through which practical effect shall be given to the appeal decision to be agreed between the Chief Appeals officer and the Secretary General of the Department.</p>	<p>At present there is no time frame within which appeals decisions, having been taken, must be notified to the parties to the appeal.</p> <p>In addition, the reasons for decisions are only required where a decision is not in favour of the appellant.</p> <p>In practice the reason for granting an appeal is of interest to the Department, and other parties such as advocacy groups, and is also required for quality assurance purposes.</p> <p>This change requires the outcome of appeal determinations to be issued within 15 days and for reasons to be provided in all cases.</p> <p>The current regulations are silent on how practical effect will be given to appeal decisions and provides that all communications between the Appeals Office and the Department are in the form of a ‘memorandum’.</p> <p>Given IT developments it is possible for appeal outcomes to be communicated electronically to the Department and for practical effect to be given to appeal decisions by building an Application Programming Interface (API) between the Departments operations systems and an</p>

Type of change	Current Wording	Proposed Wording	Change	Rationale
	<p>in favour of the appellant, the reasons for that decision, to be sent to—</p> <p>(i) the appellant and to any other person concerned, and</p> <p>(ii) the Minister.<sup>6</sup></p>			<p>Appeals Office IT system. This will shorten lead times for notification and implementation of decisions. The new text enables use of these technologies.</p>
<p>Article 20 retained as Article 21</p>	<p><b>Method of sending documents</b></p> <p>20. Any notice or other document required or authorised to be sent to any person for the purpose of these Regulations shall be deemed to be duly sent if sent by post addressed to him or her at his or her ordinary address or at his or her place of business.</p>	<p><b>Method of sending documents</b></p> <p>21. Any notice or other document required or authorised to be sent to any person for the purpose of these Regulations shall be deemed to be duly sent, if sent by post addressed to him or her at his or her ordinary address or at his or her place of business or by electronic means.</p>	<p>This article has been updated to provide for electronic communications.</p>	<p>In practice many appellants and their representatives submit documents electronically and request responses electronically.</p>

<sup>6</sup> Substituted by Art 5(e) S.I. 505 of 2011

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