STATUTORY INSTRUMENTS

1981 No. 1560 (S.161)

EDUCATION, SCOTLAND

The Education (Appeal Committee Procedures) (Scotland) Regulations 1981

Made - - - -	*30th October* 1981
Laid before Parliament	*6th November* 1981
Coming into Operation	*15th March* 1982

In exercise of the powers conferred on me by section 28D(3) of the Education (Scotland) Act 1980(a) and all other powers enabling me in that behalf and after consultation with the Council on Tribunals I hereby make the following regulations:—

Citation and commencement

1. These regulations may be cited as the Education (Appeal Committee Procedures) (Scotland) Regulations 1981 and shall come into operation on 15th March 1982.

Interpretation

2.—(1) In these regulations unless the context otherwise requires the following expressions have the meanings hereby respectively assigned to them—

"the Act" means the Education (Scotland) Act 1980;

"appeal committee" means an appeal committee set up and maintained under section 28D(1)(a) of the Act;

"appellant" means a parent of a child who makes a reference, or a young person who makes a reference, in relation to a placing request made by him;

"chairman" means chairman of an appeal committee;

"decision of an education authority" in relation to a placing request means a decision by an education authority to refuse a placing request of which decision an appellant has been informed by the education authority in accordance with section 28A(4) and includes a decision to refuse a placing request which an education authority is deemed to have made by virtue of any regulations in force under section 28A(5) of the Act;

"education authority" in relation to a reference, means the education authority whose decision is referred under section 28C of the Act;

"placing request" means a request made in accordance with section 28A(1) of the Act;

"reference" means a reference to an appeal committee of a decision of an education authority and "referred" shall be construed accordingly;

"working days" does not include Saturdays, Sundays or any day observed in the administration of an education authority as a holiday;

(a) 1980 c. 44; section 28D was inserted by section 1 of the Education (Scotland) Act 1981 (c. 58).

Procedures of an appeal committee

3. Except as otherwise provided in these regulations, the procedures of an appeal committee prior to, at or subsequent to a hearing on a reference shall be such as the education authority setting up and maintaining the committee or the chairman of the committee may determine; and any determination made by the chairman of the committee shall be subject to any determination made by the education authority in respect of the same matter.

Procedures of an appeal committee prior to a hearing

4.—(1) An appeal committee on receiving a reference from an appellant shall within 5 working days of the reference being received by them issue an acknowledgement of it and notify the education authority of the receipt of the reference.

(2) Subject to the provisions of paragraph (3) an appeal committee shall, not later than 14 days after receipt of a reference, give notification to the appellant and the education authority of the date fixed by them in accordance with paragraph (3), of the hearing to be held by the appeal committee on the reference and of the time and place of that hearing and such notification shall, except in a case where both the appellant and the education authority have agreed to waive the requirement so to do, be given not less than 14 days before that date.

(3) The notification to be given to the appellant in accordance with paragraph (2) shall include a statement as to his rights—

(*a*) to appear or to be represented at the hearing or not, as the case may be;

(*b*) to be accompanied at the hearing by up to 3 friends including the person, if any, representing him;

(*c*) to lodge written representations;

(*d*) to allow the presentation of his case at the hearing to rest on the written representations, if any, lodged by him.

(4) Subject to the provisions of paragraphs (5) to (10) a hearing on a reference shall be held by an appeal committee within the period of 28 days of the date of receipt by them of the reference or, in the event of a committee being unable owing to circumstances beyond their control to convene within that period, as soon as possible after the expiry of that period.

(5) A committee may vary a date of a hearing fixed by them where owing to circumstances beyond their control the date so fixed becomes inconvenient for them and shall as soon as practicable notify the variation to the appellant and the education authority.

(6) Where an appellant intimates to an appeal committee that the date for a hearing fixed by the committee in respect of any reference made by him is not convenient for him, the committee may cancel the date and fix another date for the hearing which is convenient for him.

(7) Subject to paragraph (8) where an appeal committee consider that it would be appropriate for the hearing on a reference made to them to be combined with the hearing on any one or more other references made to them, they shall intimate to each of the appellants concerned with those references, that the hearings on those references shall be combined.

Provided that an appeal committee shall not so combine two or more hearings unless all the references to which the combined hearing would relate are references of decisions in relation to placing requests all of which relate to the same stage of education at the same school and in the opinion of the appeal committee have been refused for substantially the same reasons.

(8) Any such combined hearing shall be held within the period of 28 days immediately after the date of the receipt by the committee of the reference last received by the committee of all the references to be dealt with at the combined hearing, or, in the event of a committee being unable owing to circumstances beyond their control to convene within that period, as soon as possible after the expiry of that period.

(9) Any procedures carried out or proceedings conducted in relation to a reference which becomes a reference to which a combined hearing relates shall be subsumed for the purposes of that combined hearing to the same extent and effect as if they had been carried out or conducted in relation to that combined hearing.

(10) The provisions of paragraph (6) of this regulation and of regulations 5 to 9 shall apply in relation to a combined hearing as they apply in relation to a hearing on a reference and in addition at a combined hearing the chairman of the appeal committee shall ask each appellant whether he wishes an opportunity to address the committee in the absence of the other appellants and if such an opportunity is requested, the committee shall require the other appellants and any persons accompanying them to withdraw from the hearing until requested to return by the committee.

Information and representations for the purposes of a hearing

5.—(1) Where a reference is made to an appeal committee the education authority shall forthwith send or cause to be sent a copy of their decision to the appeal committee and shall also send or cause to be sent such information as they consider to be relevant to that decision to the appeal committee and to the appellant not less than 10 days prior to the date fixed for the hearing in respect of the reference.

(2) An education authority and an appellant shall forthwith send, cause to be sent or make available to an appeal committee and to the other party such further information as is relevant to the decision of the education authority and as is required by the appeal committee at any time prior to or during the course of the hearing.

(3) Where an appellant wishes to make written representations to an appeal committee in support of a reference made by him, he shall send them or cause them to be sent to the committee and shall send or cause to be sent a copy thereof to the education authority not less than 10 days before the date fixed for the hearing of the reference.

(4) The period of 10 days referred to in paragraphs (1) and (3) shall include the day upon which the copy decision, information or representations is or are sent or caused to be sent, as the case may be.

Procedures at a hearing

6.—(1) Subject to regulation 3 and to the following provisions of this regulation the chairman shall state at the commencement of a hearing the procedure which the appeal committee shall adopt.

(2) Except where the appeal committee may, on cause shown, otherwise arrange, proceedings before the committee shall be arranged in the following order—

(*a*) presentation of case for the education authority;

(*b*) questioning by the appellant;

(*c*) presentation of case for the appellant;

(*d*) questioning by the education authority;

(*e*) summing up by the authority; and

(*f*) summing up by the appellant.

(3) The appellant and the education authority or any one person representing them at a hearing shall be entitled to call evidence, to question persons giving evidence, including the appellant and the education authority as the case may be, and to address the committee.

(4) Where the chairman considers that any questioning at a hearing or any address would lead to undue repetition or elaboration, he may disallow such questioning or address.

(5) Any document may be admitted as an adminicle of evidence at a hearing at the discretion of the chairman who may direct that such document may be inspected by any party to the hearing not tendering the same and that facilities be afforded him to take or obtain copies thereof.

Adjournment of a hearing

7.—(1) A hearing shall be adjourned if the membership of an appeal committee fails to comply with the provisions of Schedule A1 to the Act.

(2) An appeal committee shall adjourn a hearing if they are requested so to do by the appellant or the education authority and if the committee are satisfied that significant information relevant to the reference under consideration and made available to the committee by either or both of the appellant and the education authority has not been made available to both the appellant and the education authority prior to the hearing in accordance with the provisions of regulation 5.

(3) An appeal committee may adjourn any hearing—

(*a*) where they are satisfied that they require further information or advice in relation to the reference under consideration; where the advice required by the committee is legal advice, it shall be the duty of the education authority to secure that legal advice is available for the committee;

(*b*) where they are satisfied that either the appellant or the education authority requires to obtain further information or advice for the purpose of presentation of their case and that the further information or advice relates to a matter which is relevant to that case;

(*c*) where they are satisfied that either the appellant, the education authority or a witness for either of them cannot by reason of exceptional circumstances be present at the hearing and it is reasonable that the hearing should be adjourned; or

(*d*) where they are satisfied that the hearing ought to be combined with one or more other hearings in accordance with regulation 4(7).

(4) Where an appeal committee adjourn a hearing under paragraphs (2), (3)(*a*) and (*b*), any information as mentioned in those paragraphs shall be supplied to the committee and copied by the party having or requiring to obtain the same to the other party not less than 7 days before the date fixed by the committee for resumption of the hearing.

(5) Where a hearing has been adjourned under paragraph 1 or where an appeal committee decide to adjourn a hearing they shall—

(*a*) at or before adjourning that hearing give to the appellant and the education authority notice of the date which shall be at least 14 days from the date of the adjournment unless the appellant and the education authority otherwise agree, time and place at which the hearing shall be resumed and thereafter confirm that date, time and place to them in writing; or

(*b*) give to the appellant and the education authority notice in writing of such date, time and place not less than 14 days before that date, unless the appellant and the education authority agree to a lesser period of notice; and in either event the date specified in the notice for the resumption of the hearing shall be not more than 28 days from the date of the adjournment.

Supplementary provisions with respect to hearings

8.—(1) Subject to the provisions of this regulation no person other than the appellant and the education authority shall be present at the hearing of a reference.

(2) Any of the following persons may be present as observers at any hearing namely—

(i) a member of the education authority;

(ii) the Director of Education of the education authority or any person representing him;

(iii) a person, being a person appointed by the education-authority under Schedule A1 to the Act, who in the opinion of the authority would benefit for training purposes from attendance at the hearing;

(iv) a member of Her Majesty's Inspectorate of Schools; and

(v) a member of the Scottish Committee of the Council on Tribunals or a member of that Council not on the Scottish Committee.

(3) The persons mentioned in subparagraphs (i) to (iv) of paragraph 2 shall require the consent of the chairman to their presence at any hearing.

(4) An appellant may be represented by one person and may be accompanied by not more than 3 friends including that person.

(5) Each member of an appeal committee shall for the purposes of the committee reaching their decision in relation to a reference, be obliged to cast a vote either in favour of or against refusing to confirm the decision of the education authority to which the reference relates.

Conclusion of a hearing

9.—(1) Prior to the conclusion of a hearing the chairman shall indicate to the appellant and the education authority whether the appeal committee proposes to

(*a*) issue their decision in accordance with section 28E(3) of the Act at the conclusion of the hearing; or

(*b*) issue their decision at some date after the conclusion of the hearing.

(2) At the conclusion of a hearing if an appeal committee do not thereupon issue their decision in writing in terms of paragraph (1)(*a*), the chairman shall intimate that the decision of the committee shall be issued within the period of 14 days immediately following upon the conclusion of the hearing and shall inform the appellant of the effect of the regulations for the time being in force made under section 28D(3)(*b*) of the Act with regard to the date on which the Committee will be deemed to have reached a decision.

(3) Where the appellant is not present or represented at the conclusion of a hearing the information specified in paragraphs (1) and (2) shall be given in writing to him forthwith.

(4) In any case where the decision of the appeal committee is a decision to confirm the decision of the authority, the committee shall inform the appellant in writing of his right to appeal against the decision of the committee to the sheriff under section 28F of the Act and shall also draw the attention of the appellant to the provisions of section 28F(3) of the Act.

George Younger,
One of Her Majesty's Principal
Secretaries of State.

New St Andrew's House,
Edinburgh.
30th October 1981.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

The regulations prescribe the procedures of appeal committees set up under section 28D(1) of the Education (Scotland) Act 1980 in relation to references of refusals of placing requests by an education authority.

Regulation 3 provides that insofar as procedures are not determined in the regulations or by the education authority responsible for setting up the committee they shall be determined by the chairman of the appeal committee.

Regulation 4 prescribes the procedures which an appeal committee is to follow before a hearing of a reference, including arrangements for combined hearings on two or more references.

Regulation 5 makes provision with respect to information about, and representations in relation to a reference being made available by one party to the other and to the committee.

Regulation 6 makes provision for procedures at a hearing.

Regulation 7 deals with adjournment of a hearing.

Regulation 8 makes supplementary provisions in relation to those who may be present at a hearing and in relation to voting by the members of an appeal committee.

Regulation 9 makes provision for the issue of a decision of an appeal committee and for informing an appellant of the right of further appeal to the sheriff from any decision (or deemed decision) of the committee.

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