STATUTORY INSTRUMENTS

1961 No. 2402 (S. 136)

EDUCATION, SCOTLAND

The Independent Schools Tribunal (Scotland) Rules, 1961

Made - - - - 7*th December*, 1961
Coming into Operation 16*th January*, 1962

I, James Latham Clyde, Lord President of the Court of Session, in exercise of the powers conferred upon me by section 114 (1) of the Education (Scotland) Act, 1946(a), after consultation with the Council on Tribunals, and with the approval of the Treasury in regard to the remuneration and allowances of members of the Tribunal prescribed by these Rules, hereby make the following Rules with the concurrence of the Secretary of State for Scotland:—

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Independent Schools Tribunal (Scotland) Rules, 1961, and shall come into operation on the 16th day of January, 1962.

(2) The Interpretation Act, 1889(b), shall apply to the interpretation of these Rules as it applies to the interpretation of an Act of Parliament.

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

"The Act" means the Education (Scotland) Act, 1946;

"Notice of Complaint" means a notice served by the Secretary of State under section 110 of the Act;

"The Tribunal" means an Independent Schools Tribunal constituted in accordance with the provisions of the Fifth Schedule to the Act.

Notice of appeal

2.—(1) An appeal to the tribunal shall be instituted by sending to the Secretary of State at his office at St. Andrew's House, Edinburgh, a written notice of appeal signed by the appellant, setting out the grounds of appeal and stating an address to which communications regarding the appeal should be sent.

(2) The notice shall be sent to the Secretary of State—

(*a*) in the case of an appeal against a notice of complaint, within the time limited by that notice; or

(*b*) in the case of an appeal against a refusal of the Secretary of State to remove a disqualification imposed by an order under Part V of the Act, within one month after the communication of the refusal to the appellant.

(3) Where the appeal is against a notice of complaint alleging that a teacher is not a proper person to be employed as a teacher in any school, the appellant shall at the same time send a copy of the notice of appeal to the proprietor of the school or to the teacher, as the case may be.

(a) 9 & 10 Geo. 6. c. 72. (b) 52 & 53 Vict. c. 63.

Time and place of hearing

3. The chairman of the tribunal shall fix a date, time and place for the hearing of the appeal and shall cause to be served upon the appellant, not less than twenty-eight days before the date so fixed, a notice in the form set out in the First Schedule hereto and shall at the same time send a copy of the notice to the Secretary of State, and where the appeal is against a notice of complaint alleging that a teacher is not a proper person to be employed as a teacher in any school, to the proprietor of the school or to the teacher, as the case may be.

Abandonment of appeal

4. An appellant may at any time before the hearing give notice in writing to the secretary of the tribunal that he desires to withdraw his appeal and shall send a copy of said notice to all interested parties; thereupon the appeal shall be deemed to be dismissed in regard to that appellant without prejudice to its continuance in regard to any other appellant.

Default of appearance

5. If an appellant fails to appear at the time fixed for the hearing of the appeal, the tribunal may, if it is satisfied that he has been afforded an adequate opportunity of attending, dismiss the appeal in regard to that appellant or hear and determine it in his absence, and, if the Secretary of State fails to appear at the time so fixed, the tribunal may proceed to hear and determine the appeal in his absence.

Right of audience

6.—(1) An appellant may appear and be heard in person or by counsel or solicitor.

(2) The Secretary of State may appear and be heard by counsel or solicitor.

Hearing

7. The hearing of an appeal shall take place in public unless the tribunal determines that there are exceptional reasons which make it desirable that the hearing or some part of it should take place in private.

Procedure at hearing

8.—(1) An appellant and the Secretary of State shall have the right to address the tribunal and call witnesses, whose evidence shall be given on oath and who shall be subject to cross-examination and to re-examination.

(2) The tribunal may require the attendance of further witnesses in addition to those called by or on behalf of the appellant and the Secretary of State.

(3) The tribunal may permit evidence to be given by affidavit, but may at any stage of the proceedings require the personal attendance of any deponent for examination and cross-examination.

(4) After the evidence has been concluded, the Secretary of State and the appellant shall have the right to address the tribunal if they so desire.

Decision of tribunal

9.—(1) The decision of the tribunal on the appeal shall, in the event of disagreement, be the decision of the majority, and may be given orally at the hearing or in writing as soon as may be after the hearing.

(2) The secretary shall send a copy of the order made by the tribunal, together with a statement of its findings and of the reasons for the decision, to every appellant and to the Secretary of State.

Reference to Court of Session on questions of law

10. Where the tribunal have made an order under subsection (2) of section 111 or subsection (2) of section 113 of the Act, either party may at the time when the order is made or at any time within fourteen days thereafter make application to the tribunal to state a case for the opinion of the Court of Session on any question of law arising in the proceedings, and, on such an application being made, the tribunal shall be bound to state a case for such opinion; and it shall thereupon be competent to refer the stated case to the said Court for their opinion on the question of law to which the stated case relates. The procedure in such a stated case shall be regulated so far as applicable by Rules 286, 288 and 289 of the Rules of the Court of Session(a).

Extension of time

11. The time limited by these Rules for doing any act in connection with an appeal may be extended by the tribunal or by the chairman upon such terms (if any) as may seem just, notwithstanding that the time limited has expired before an application for extension is made.

Remuneration and allowances of tribunal

12.—(1) The chairman of the tribunal shall be remunerated at the rate of fifteen guineas and the members at the rate of ten guineas for each day on which the tribunal sits.

(2) The chairman and members of the tribunal shall be paid the allowances specified in the Second Schedule hereto in respect of travelling and subsistence expenses incurred by them in connection with the performance of their duties.

Power to regulate procedure

13.—(1) Subject to the provisions of the Act and these Rules, the tribunal shall have power to regulate its own procedure.

(2) Failure to comply with any requirements of these Rules, shall not invalidate any proceedings unless the tribunal so directs.

J. L. Clyde,
Lord President of the Court of Session.

29th November, 1961.

I concur,

John S. Maclay,
One of Her Majesty's Principal Secretaries of State.

30th November, 1961.

We approve the remuneration and allowances prescribed by these Rules.

Michael Hughes-Young,
W. S. I. Whitelaw,
Two Lords Commissioners of Her Majesty's Treasury.

7th December, 1961.

(a) S.I. 1948/1691 (1948 I, p. 3778).

Rule 3.

FIRST SCHEDULE

Notice of Hearing

The Education (Scotland) Act, 1946

Take notice that your appeal against the Secretary of State's notice of complaint dated the day of , 19 , alleging that (*here insert short statement of grounds of complaint*) [or against the Secretary of State's refusal to remove the disqualification imposed on (*here insert description of disqualification*) under Part V of the Education (Scotland) Act, 1946] will be heard by the Independent Schools Tribunal sitting at on the day of , 19 , at o'clock. If for any reason you do not wish, or are unable, to attend at the above time and place, you should IMMEDIATELY inform me in writing at the address mentioned at the head of this notice stating the reasons for your inability to attend.

(Signed)

Secretary.

Rule 12 (2)

SECOND SCHEDULE

Travelling and Subsistence Allowances of the Tribunal

There shall be paid to the chairman and members of the tribunal—

(1) travelling expenses actually incurred by them in attending a hearing including the cost of first class return railway fares;

(2) where, for the purpose of attending the hearing, the chairman or member—
(*a*) is absent from home for a period of more than five but less than ten hours, 5s. 6d.; or for a period exceeding ten hours, 12s.;
(*b*) spends one or more nights away from home 53s. 6d. for each night.

Note: The allowance specified in paragraph (*a*) above is not payable for any period of twenty-four hours for which the allowance specified in paragraph (*b*) is payable.

EXPLANATORY NOTE

(*This Note is not part of the Rules, but is intended to indicate their general purport.*)

These Rules prescribe the procedure to be followed in proceedings before an Independent Schools Tribunal set up under Section 111 (1) of the Education (Scotland) Act, 1946, to hear appeals against a notice of complaint served by the Secretary of State on the proprietor of an independent school or against a refusal of the Secretary of State to remove a disqualification imposed as the result of such a notice.