
 STATUTORY INSTRUMENTS

1982 No. 1736 (S. 186)

EDUCATION, SCOTLAND

**The Education (Appeal Committee Procedures) (Scotland)
Regulations 1982**

Made - - - - - 26th November 1982
Laid before Parliament 9th December 1982
*Coming into Operation in
accordance with regulation 1(2)*

In exercise of the powers conferred on me by section 28D(3)(a) and (c), 28H(5)(a) and 63(6)(a) 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:—

PART I

GENERAL

Citation and commencement

1.—(1) These regulations may be cited as the Education (Appeal Committee Procedures) (Scotland) Regulations 1982.

(2) These regulations shall come into operation—

- (a) as respects all matters to which the regulations relate other than references made under section 28H(1) of the Act on 1st January 1983; and
- (b) as respects references made under section 28H(1) of the Act on 5th April 1983.

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;

“the Act of 1981” means the Education (Scotland) Act 1981 (b);

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

“appellant” means any person who may refer a decision to an appeal committee in terms of section 28C(1), 28H(1), 63(1) or as the case may be 63(2) of the Act and who so refers;

-
- (a) 1980 c.44; sections 28D and 28H are inserted by section 1 of the Education (Scotland) Act 1981 (c.58); section 63 is substituted by section 4(1) of the Act of 1981; and section 28D is applied by Schedule A2 paragraphs 1 and 4(1) of the Act of 1980 (as inserted by section 4(3) of and Schedule 3 to the Act of 1981).
 - (b) 1981 c.58.

“chairman” means chairman of an appeal committee;

“decision” means a decision which may, in accordance with the provisions of section 28C(1), 28H(1), 63(1) or, as the case may be, 63(2) of the Act, be referred to an appeal committee and in the case of—

- (a) a decision which may be so referred in accordance with the provisions of section 28C(1) of the Act, includes a decision which an education authority is deemed to have made by virtue of any regulations in force under section 28A(5) of the Act; and
- (b) a decision which may be so referred in accordance with the provisions of section 63(1) or (2) of the Act, includes a decision which an education authority is deemed to have made by virtue of any regulations in force under subsection (6) of section 28A of the Act as that section 28A is substituted by Schedule A2 paragraph 3 to the Act;

“education authority” in relation to a reference means the education authority whose decision is referred under section 28C, 28H, or as the case may be 63 of the Act;

“placing request” means a request made in accordance with section 28A(1) of the Act or section 28A(1) of the Act as substituted by Schedule A2 paragraph 3 to the Act;

“reference” means a reference to an appeal committee of a decision; and in relation to a reference to an appeal committee “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.

(2) In these regulations any reference to a regulation is a reference to a regulation of these regulations and any reference in a regulation to a paragraph is a reference to a paragraph of that regulation.

Revocation of regulations

3. The Education (Appeal Committee Procedures) (Scotland) Regulations 1981 (a) are hereby revoked.

Procedures of an appeal committee

4. 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.

Acknowledgement of reference

5. Subject to regulation 6 an appeal committee shall within the period of 5 working days of a reference being received by them issue an acknowledgement of it and give notification to the education authority of the receipt of the reference.

Preliminary procedures of an appeal committee in relation to references made under section 63 of the Act and references made by an appeal committee to the Secretary of State

6.—(1) Where within the period specified in regulation 5 an appeal committee, in relation to a reference

- (a) are satisfied under section 64(1)(a) of the Act that that reference is made to them under section 63(1)(a) or (b) or (2)(b) of the Act; or
- (b) consider under section 64(1)(b) of the Act that without having the decision of the Secretary of State on the question whether or not the child to whom that reference relates should be recorded or continue to be recorded or on the matters specified in section 65D(2)(a) or (b) of the Act in relation to that child or to the young person to whom the reference relates they cannot deal with that reference;

they shall, within that period, refer that reference or so much thereof as relates to the matters specified in section 65D(2)(a) or (b) of the Act or as the case may be the question whether or not the child to whom that reference relates should be recorded or continue to be recorded to the Secretary of State, in accordance with section 64(1) of the Act, and in relation to such a reference, the acknowledgement and notification mentioned in regulation 5 shall include intimation of the nature and extent of the reference made by the committee to the Secretary of State.

(2) Without prejudice to the provisions of paragraph (1) where an appeal committee are not within the period specified in regulation 5 so satisfied or do not within that period so consider as mentioned in paragraph (1)(a) and (b) but become so satisfied or do so consider at some time thereafter the committee—

- (a) shall not issue their decision on the reference unless they shall have complied with this paragraph; and
- (b) shall, as soon as is practicable after becoming so satisfied or so considering, make appropriate reference to the Secretary of State in accordance with section 64(1) of the Act and at the same time shall notify the appellant and the education authority concerned, of the reference so made by the appeal committee and that any hearing already arranged in relation to the reference made to them is cancelled or, if the hearing has already commenced, is adjourned, to be re-arranged or as the case may be resumed as soon as practicable after the committee shall have been notified of the decision of the Secretary of State under section 64(8) of the Act.

(3) Where an appeal committee in accordance with the provisions of section 64(1) refer a reference to the Secretary of State in its entirety, the provisions of regulations 7–14 shall not apply in respect of the reference.

Fixing of date of hearing

7.—(1) Subject to the provisions of this regulation and regulation 9 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 the committee being unable owing to circumstances beyond their control to convene within that period, as soon as possible after the expiry of that period.

(2) Where in relation to a reference to an appeal committee the committee have in turn made a reference to the Secretary of State under section 64(1) of the Act, a hearing on the reference made to the committee shall be held, or as

the case may be resumed, on such date, being a date as soon after the committee have been notified of the decision of the Secretary of State under section 64(8) of the Act as is practicable for the appeal committee.

(3) 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.

(4) Where an appellant intimates to an appeal committee that the date of 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 and shall as soon as practicable notify the variation to the education authority.

Notification of hearing

8.—(1) Subject to paragraph (2) an appeal committee shall,

- (a) in the case of any reference other than a reference mentioned in regulation 6(1), not later than 14 days after receipt of the reference; and
- (b) in the case of a reference mentioned in regulation 6(1) not later than 7 days after receipt by the committee of notification of the Secretary of State's decision under section 64(8) of the Act;

give notification to the appellant and the education authority concerned of the date fixed by them, in accordance with regulation 7, of the hearing or as the case may be resumed 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 the 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.

(2) The notification to be given to an appellant in accordance with paragraph (1) shall include a statement as to his rights—

- (a) to appear or to be represented at the hearing;
- (b) to be accompanied at the hearing by up to three friends including the person, if any, representing him;
- (c) to lodge written representation; and
- (d) to allow the presentation of his case at the hearing to rest on written representations, if any, lodged by him or on his behalf.

Combined hearings

9.—(1) Subject to paragraph (2) where an appeal committee consider that it would be appropriate for the hearing on a reference made to them under section 28C(1) or 28H(1) of the Act to be combined with the hearing of any one or more other references made to them under the same section, they shall intimate to each of the appellants and the education authority concerned with such other references that the hearings on all such references shall be combined; Provided that an appeal committee shall not so combine two or more hearings on such references unless all the references to which the combined hearing would relate are—

- (a) as respects references of decisions relating to placing requests, references of decisions 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;

(b) as respects references of decisions relating to exclusion of a pupil, references of decisions all of which relate to the same school, have been made at the same time and in the opinion of the appeal committee for substantially the same reasons.

(2) Any 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 practicable after the expiry of that period.

(3) 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 purpose 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.

(4) The provisions of these regulations relating to a hearing by an appeal committee shall apply in relation to a combined hearing as they apply in relation to a hearing 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 persons accompanying or representing them to withdraw from the hearing until requested to return by the committee.

Information and representation for the purposes of a hearing

10.—(1) Subject to paragraphs (2) and (3) where receipt of reference is notified by an appeal committee under regulation 5, the education authority shall forthwith send or cause to be sent a copy of their decision to which the reference relates 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) For the purposes of paragraph (1), in the case of a reference made under section 63 of the Act, the decision of the education authority referred to in that paragraph shall be deemed to include that part of the Record which contains the nomination by the education authority of a school to be attended by the child or young person to whom the reference relates.

(3) For the purposes of paragraph (1) and in lieu of a copy of the decision therein mentioned, in the case of a reference made under section 28H(1) of the Act, a copy of any intimation made by the education authority in accordance with regulation 4A of the Schools General (Scotland) Regulations 1975 (a), which failing a statement by the education authority of the reasons for their decision to which the reference relates and any conditions imposed by them in relation to that decision shall be sent or caused to be sent in accordance with paragraph (1).

(4) Without prejudice to the foregoing provisions of this regulation an education authority and an appellant shall forthwith send or cause to be sent or make available to an appeal committee and to the other party such information as is relevant to the decision and is required by the appeal committee at any time prior to or during the course of the hearing.

(a) S.I. 1975/1135, as amended by S.I. 1982/56 and 1982/1735.

(5) An appellant shall send any written representations he wishes to make in support of a reference made by him to the committee and a copy thereof to the education authority concerned not less than 10 days before the date fixed for the hearing of the reference.

(6) The period of 10 days referred to in paragraphs (1) and (5) shall include the day upon which the copy decision, information or representation is sent or caused to be sent as the case may be.

Procedures at a hearing

11.—(1) Subject to regulation 4 and to the following provisions of this regulation the chairman of the appeal committee shall state at the commencement of a hearing the procedure which the appeal committee shall adopt.

(2) Except where an appeal committee may on cause shown otherwise arrange, proceedings before an appeal 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 or any one person representing the appellant and the education authority represented by any one person duly authorised for the purpose shall be entitled to call evidence, to question any person giving evidence including the appellant and any officer of the education authority and to address the committee.

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

(5) Any document may be submitted 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 submitting the same and that facilities be afforded him to take or obtain copies thereof.

Adjournment of a hearing

12.—(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 concerned and if the committee are satisfied that significant information relevant to the reference under consideration and made available to the committee by the appellant or as the case may be the education authority has not been made available by the one to the other prior to the hearing and in accordance with the provisions of Regulation 10.

(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 require to obtain further information or advice for the purposes 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 or 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 9(1).
- (4) Where an appeal committee adjourn a hearing under paragraph (2) or (3)(a) or (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 (2) 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 for resumption of the hearing 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 a date, time and place for resumption of the hearing, which notice shall be not less than 14 days before the date for such resumption unless the appellant and the education authority agree to a lesser period of notice;

and the date specified in such notice as the date for resumption of the hearing shall be not more than 28 days from the date of the adjournment.

Supplementary provisions with respect to hearings

13.—(1) Subject to provisions of this regulation, no person other than the appellant, one person, if any, appointed by him to represent him, one person authorised by the education authority to represent them and any person appointed as clerk to the committee shall be entitled to 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 sub-paragraphs (i) – (iv) of paragraph (2) shall require the consent of the chairman to their presence at any hearing.

(4) An appellant may be accompanied by not more than three friends which number shall include the person, if any, appointed by him to represent him.

(5) Each member of an appeal committee shall, for the purpose 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.

Procedures with respect to decision of an appeal committee

14.—(1) Prior to the conclusion of a hearing the chairman of the appeal committee shall intimate to the appellant and the education authority whether the committee propose to notify their decision with the reasons for it in writing at the conclusion of the hearing or at some time after that conclusion, in accordance with paragraph (2) and if the appellant is not present or represented at the conclusion of the hearing, intimation of any such proposal of the committee to notify their decision at some time after conclusion of the hearing shall be given to the appellant in writing forthwith.

(2) Where at the conclusion of a hearing the appeal committee do not notify their decision they shall, within 14 days immediately following the date of such conclusion, notify their decision and the reasons therefor in writing, and where appropriate inform the appellant of any right of appeal to the sheriff under section 28F, 28H or as the case may be 65 of the Act and draw his attention to the provisions of section 28F(3) or as the case may be 28H(6) of the Act (manner of appeal).

(3) Where, by virtue of any regulations for the time being in force made under section 28D(3)(b), 28H(5)(b) or as the case may be section 63(6)(b) of the Act, an appeal committee are deemed on a certain date (ascertained in accordance with such regulations) to have confirmed a decision of an education authority referred to them, the appeal committee shall in writing and within 14 days immediately following that date inform the appellant of such right of appeal as is mentioned in paragraph (2) and as is appropriate in relation to the decision and draw his attention to the provisions of section 28F(3) or as the case may be 28H(6) of the Act.

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

New St Andrew's House,
Edinburgh.
26th November 1982.

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 made to them under section 28C (concerning refusals of placing requests by an education authority), section 63 (concerning recorded pupils, including the recording decision, the terms of the Record of Needs and refusals of placing requests) and section 28H (concerning the exclusion of pupils from school) of that Act.

Regulation 3 revokes the Education (Appeal Committee Procedures) (Scotland) Regulations 1981 which are superseded by these Regulations.

Regulation 4 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.

Regulations 5 to 9 prescribe the procedures which an appeal committee is to follow before a hearing of a reference, including arrangements for acknowledging receipt of the reference; additional procedures in respect of references concerning recorded pupils; arrangements for fixing a date for the hearing and giving notification of that date to the appellant and the education authority; and provision for combined hearings on two or more references.

Regulation 10 makes provision with respect to information about, and representation in relation to, a reference being made available by one party to the other and to the committee.

Regulation 11 makes provision for procedures at a hearing.

Regulation 12 deals with adjournment of a hearing.

Regulation 13 makes supplementary provision in relation to those who may be present at a hearing and in relation to voting by the members of an appeal committee.

Regulation 14 makes provision with respect to a decision of an appeal committee, including a deemed decision, and for informing an appellant of the right of further appeal to the sheriff from any decision (or deemed decision) of the committee.

SI 1982/1736
ISBN 0-11-027736-8



780110 277363