
STATUTORY INSTRUMENTS

1999 No. 265

**The Education (Registered Inspectors of Schools
Appeal Tribunal and Registered Nursery Education
Inspectors Appeal Tribunal) (Procedure) Regulations 1999**

PART 4: DETERMINATION OF APPEALS

Power to determine an appeal without a hearing

23.—(1) The Tribunal may determine an appeal, or any particular issue, without an oral hearing—

- (a) if both parties so agree in writing; or
- (b) in the circumstances described in regulation 12; or
- (c) if it appears to the Tribunal that the issues raised on the appeal have been determined on a previous appeal brought by the appellant on the basis of facts which did not materially differ from those to which the appeal relates and the Tribunal has given the parties an opportunity of making representations to the effect that the appeal ought not to be determined without a hearing.

(2) The provisions of regulations 25(2) and 26(5) shall apply in respect of the determination of an appeal, or any particular issue, under this regulation.

Hearings to be in public: exceptions

24.—(1) The hearing of an appeal shall be in public unless, having regard to all the circumstances, the Tribunal directs that the hearing or any part of the hearing shall take place in private.

(2) In exercising the power conferred by paragraph (1) the Tribunal shall take into account the need to protect any matter that relates to intimate personal or financial circumstances, is commercially sensitive, or consists of information communicated or obtained in confidence.

(3) The following persons may attend the hearing of an appeal notwithstanding that it is in private—

- (a) a member of the Council on Tribunals in his capacity as such; and
- (b) any other person with the leave of the Tribunal and the consent of the parties present.

— and the member of the Council on Tribunals may remain with the Tribunal during, but may take no part in, their deliberations as to their decision, notwithstanding that other persons present at the hearing have been required to withdraw.

(4) Without prejudice to any other powers it may have, the Tribunal may exclude from the hearing, or part of it, any person whose conduct has disrupted or is likely, in the opinion of the Tribunal, to disrupt the hearing.

Failure of parties to attend at hearing

25.—(1) If a party fails to attend or be represented at a hearing of which he has been duly notified, the Tribunal may:—

- (a) unless it is satisfied that there is sufficient reason for such absence, hear and determine the appeal in the party's absence; or
- (b) adjourn the hearing;

and may make such order as to costs as it thinks fit.

(2) Before deciding to dispose of any appeal in the absence of a party, the Tribunal shall consider any representations in writing submitted by that party in response to the notice of hearing and, for the purpose of this regulation, the notice of appeal and any reply shall be treated as representations in writing.

(3) Where an appellant has failed to attend a hearing of which he was duly notified, and the Tribunal has disposed of the appeal, no fresh appeal may be made by the appellant to the Tribunal against the same disputed decision without the prior leave of the Tribunal.

Provided that nothing in this paragraph shall preclude the appellant making an application for a review of the Tribunal's decision under regulation 29.

Procedure at hearing

26.—(1) At the beginning of the hearing the Chairman shall explain the order of proceeding which the Tribunal proposes to adopt.

(2) Subject to this regulation, the Tribunal shall conduct the hearing in such manner as it considers most suitable to the clarification of the issues before it and generally to the just handling of the proceedings; it shall so far as appears to it appropriate seek to avoid formality in its proceedings.

(3) The parties shall be heard in such order as the Tribunal shall determine. They shall be entitled to give evidence, to call witnesses, to question any witnesses and to address the Tribunal both on the evidence and generally on the subject matter of the appeal.

(4) Evidence before the Tribunal may be given orally or, if the Tribunal so orders, by affidavit or written statement, but the Tribunal may at any stage of the proceedings require the personal attendance of any deponent or maker of a written statement.

(5) The Tribunal may receive evidence of any fact which appears to the Tribunal to be relevant notwithstanding that such evidence would be inadmissible in proceedings before a court of law, but shall not refuse to admit any evidence which is admissible at law and is relevant.

(6) At any hearing the Tribunal may, if it is satisfied that it is just and reasonable to do so, permit a party to rely on grounds not stated in his notice of appeal or, as the case may be, his reply and to adduce any evidence not presented to the Chief Inspector before or at the time he took the disputed decision.

(7) A Tribunal may require any witness to give evidence on oath or affirmation and for that purpose there may be administered an oath or affirmation in due form.

Expert evidence

27. The Tribunal may, where it considers it desirable to do so, request any person to assist it at a hearing by attending to give expert evidence on payment to him of such fee as the Tribunal considers reasonable.

Decision by Tribunal

28.—(1) A decision of the Tribunal may be taken by a majority and the decision shall record whether it was unanimous or taken by a majority:

Provided that where in accordance with regulation 33 the Tribunal is constituted by two members, the Chairman shall have a second or casting vote.

(2) The decision of the Tribunal may be given orally at the end of a hearing or reserved and, in any event, whether there has been a hearing or not, the decision shall be recorded in a document which, save in the case of a decision by consent, shall contain a statement of the reasons for the decision, and shall be signed and dated by the Chairman.

(3) Subject to paragraph (4), every document referred to in this regulation shall, as soon as may be, be entered in the register and the proper officer shall send a copy of the entry to each party.

(4) Where any such document refers to any evidence that has been heard in private, only a summary of the document, omitting such material, shall be entered in the register as the Tribunal may direct, but copies of the complete document shall be sent to the parties together with a copy of the entry.

(5) Except where a decision has been announced at the conclusion of a hearing, it shall be treated as having been made on the date on which the copy is sent to the appellant.

Review of Tribunal's decision

29.—(1) If, on the application of a party or of its own motion, a Tribunal is satisfied that:—

- (a) its decision was wrongly made as a result of an error on the part of the Tribunal staff;
- (b) a party, who was entitled to be heard at a hearing but failed to appear or be represented, had good and sufficient reason for failing to appear;
- (c) new evidence has become available since the making of the decision, provided that its existence could not have been reasonably known of or foreseen; or
- (d) the interests of justice require,

the Tribunal may review and, by certificate under the Chairman's hand, set aside or vary the relevant decision.

(2) An application for the purposes of paragraph (1) may be made immediately following the decision at the hearing. If an application is not made at the hearing, it shall be made not later than fourteen days after the date on which the decision was sent to the parties, and shall be in writing stating the grounds in full. When the Tribunal proposes to review its decision of its own motion, it shall serve notice of that proposal on the parties within the same period.

(3) The parties shall have an opportunity to be heard by the Tribunal on any application or proposal for review under this regulation and the review shall be determined by the Tribunal which decided the case or, where it is not practicable for it to be heard by that Tribunal, by a Tribunal appointed by the Chairman; and if, having reviewed the decision, the decision is set aside, the Tribunal shall substitute such decision as it thinks fit or order a rehearing before either the same or a differently constituted Tribunal.

(4) The certificate of the Chairman as to the setting aside and substitution of the Tribunal's decision under this regulation shall be sent to the proper officer, who shall immediately make such correction as may be necessary in the register and shall send a copy so corrected to each of the parties.

Costs

30.—(1) In any appeal before the Tribunal, including one withdrawn under regulation 7 above, the Tribunal may make an order awarding costs—

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- (a) against the appellant and in favour of the Chief Inspector where it considers that the appeal was manifestly unreasonable;
- (b) against the Chief Inspector and in favour of the appellant where it considers that the disputed decision was manifestly unreasonable;
- (c) where it considers that a party has been responsible for frivolous, vexatious, improper or unreasonable action or for any delay which with diligence could have been avoided, against that party and in favour of the other;

but the Tribunal shall not make an order awarding costs against a party without first giving that party an opportunity of making representations against the making of the order.

(2) An order under paragraph (1) above may be to the party at fault to pay to the other party either a specified sum in respect of the costs incurred by that other party in connection with the proceedings or the whole or part of such costs.