

SCHEDULE 2

Regulation 17

PROCEDURE FOR APPEAL AGAINST A DECISION OF THE APPROPRIATE BODY

Interpretation

1. In this Schedule —

“appellant” (“*apelydd*”) means a person who brings an appeal pursuant to regulation 17 against a decision of the appropriate body under regulation 14;

“appropriate body” (“*corff priodol*”) means the appropriate body who took the decision subject to an appeal;

“disputed decision” (“*penderfyniad sy'n cael ei herio*”) means the matter in relation to which the appellant appeals to the Council; and

“proper officer” (“*swyddog priodol*”) means the person appointed by the Council to perform the duties of a proper officer under this Schedule.

Time for and manner of making an appeal

2.—(1) An appeal is to be made by sending a notice of appeal to the proper officer so that it is received within the period of 20 working days beginning with the date on which the appellant received notice under regulation 14(7) (a) of the disputed decision.

(2) The Council may extend the time limit imposed by sub-paragraph (1), whether or not it has already expired, but must not do so unless it is satisfied that not to extend the time limit would result in substantial injustice.

(3) Where the appellant considers it likely that a notice of appeal will be received outside the time limit imposed by sub-paragraph (1) the notice of appeal may be accompanied by a statement of the reasons relied upon to justify the delay and the Council must consider any such statement in deciding whether or not to extend the time limit.

The notice of appeal

3.—(1) The notice of appeal must state —

- (a) the name and address of the appellant;
- (b) the name and address of the school at which the appellant was employed at the end of the induction period;
- (c) the name and address of the appellant’s employer, if any, at the date of the appeal;
- (d) the grounds of the appeal;
- (e) the name, address and profession of the person (if any) representing the appellant, and whether the Council should send documents concerning the appeal to the representative instead of to the appellant; and
- (f) whether the appellant requests that the appeal should be decided at an oral hearing.

(2) The notice of appeal must be signed by the appellant.

(3) The appellant must annex to the notice of appeal a copy of —

- (a) the notice given to the appellant by the appropriate body under regulation 14(7) (a) relating to the disputed decision;
- (b) any written statement given to the appellant by the appropriate body giving reasons for its decision; and
- (c) every other document on which the appellant relies for the purposes of the appeal.

Additional documents, amendment and withdrawal of the appeal

4.—(1) The appellant may at any time before receiving notice of the date fixed for the hearing under paragraph 13 or of a decision of the Council under paragraph 11 —

- (a) send copies of such additional documents as he or she wishes to rely on for the purpose of the appeal to the proper officer;
- (b) amend or withdraw the appeal, or any part of it; or
- (c) amend or withdraw any material submitted in support of the appeal.

(2) The appellant may at any time take any step mentioned in sub-paragraph (1) with the leave of the Council.

(3) Where an appellant withdraws an appeal he or she may not bring a fresh appeal in relation to the disputed decision.

(4) An appeal may be amended or withdrawn by sending to the proper officer an amended notice of appeal or a notice stating that the appeal is withdrawn, as the case may be.

Acknowledgement and notification of the appeal

5.—(1) The proper officer must within the period of ten working days beginning with the date on which the Council received the notice of appeal —

- (a) send an acknowledgement of its receipt to the appellant;
- (b) send a copy of the notice of appeal and any accompanying documents to the appropriate body;
- (c) if a person or body other than the appropriate body is named as the appellant's employer in the notice of appeal, send a copy of the notice of appeal to that person or body; and
- (d) send a copy of the notice of appeal to the head teacher of the school or sixth form college at which the appellant was employed at the completion of the induction period.

(2) Within the period of ten working days beginning with the date on which the Council received from the appellant any additional documents, amended grounds of appeal, amended documents submitted in support of an appeal or notice of withdrawal of an appeal, the proper officer must send a copy to the appropriate body.

Request for further material

6.—(1) Where the Council considers that the appeal could be decided more fairly and efficiently if the appellant provided further material, it may send to the appellant a notice inviting the appellant to supply that material within the period of ten working days beginning with the date of the notice.

(2) Where the Council sends a notice under sub-paragraph (1) the proper officer must at the same time inform the appropriate body that it has done so.

(3) The proper officer must within the period of ten working days beginning with the date on which the Council received further material under sub-paragraph (1) send a copy of it to the appropriate body.

Reply by the appropriate body

7.—(1) The appropriate body must send to the proper officer a reply fulfilling the requirements of paragraph 8 so that it is received within the period of 20 working days beginning with the date on which the appropriate body received a copy of the notice of appeal.

(2) The Council may extend the time limit imposed by sub-paragraph (1) whether or not it has already expired.

(3) The Council must allow the appeal where the appropriate body states in reply, or at any time states in writing, that it does not seek to uphold the disputed decision, and must do so within the period of ten working days beginning with the date on which the Council received notification that the appropriate body did not seek to uphold the disputed decision.

Contents of the reply

8.—(1) The reply must state —

- (a) the name and address of the appropriate body;
- (b) whether the appropriate body seeks to uphold the disputed decision; and
- (c) in cases where the appropriate body seeks to uphold the disputed decision —
 - (i) the appropriate body's answer to each of the grounds of appeal supplied by the appellant,
 - (ii) whether or not the appropriate body requests an oral hearing, and
 - (iii) the name, address and profession of the person (if any) representing the appropriate body, and whether the Council should send documents concerning the appeal to that representative instead of to the appropriate body.

(2) The appropriate body must annex to the reply —

- (a) a copy of any document on which it wishes to rely for the purpose of opposing the appeal; and
- (b) where the appellant has not sent to the proper officer a copy of a written statement given to the appellant by the appropriate body giving reasons for its decision, a statement giving reasons for the decision.

Additional documents, amendment and withdrawal of the reply

9.—(1) The appropriate body may at any time before it receives notice of the date fixed for the hearing under paragraph 13 or of a decision of the Council under paragraph 11 —

- (a) send copies of such additional documents as it wishes to rely on for the purpose of opposing the appeal to the proper officer;
- (b) amend or withdraw its reply, or any part of it;
- (c) amend or withdraw any material submitted in support of the reply.

(2) The appropriate body may at any time take any step mentioned in sub-paragraph (1) with the leave of the Council.

(3) A reply may be amended or withdrawn by sending to the proper officer an amended reply or a notice stating that the reply is withdrawn, as the case may be.

Acknowledgement and notification of the reply

10.—(1) The proper officer must within the period of ten working days beginning with the date on which the Council received the reply —

- (a) send an acknowledgement of its receipt to the appropriate body; and
- (b) send a copy of the reply and any accompanying documents to the appellant.

(2) Within the period of ten working days beginning with the date on which the Council received from the appropriate body any additional documents, amended reply, amended documents submitted in support of a reply, or notice of withdrawal of a reply, the proper officer must send a copy to the appellant.

Power to decide the appeal without a hearing

11.—(1) Where following the expiry of the period within which the appropriate body is required to send its reply neither the appellant nor the appropriate body has requested an oral hearing, and the Council does not consider an oral hearing is necessary, the Council may decide the appeal without an oral hearing.

(2) Where following the expiry of the period within which the appropriate body is required to send its reply the appropriate body has not done so, the Council may allow the appeal without an oral hearing.

(3) If the Council decides the appeal without an oral hearing, it must send notice of its decision as required by paragraph 17 so that it is received by the appellant and the appropriate body within the period of 20 working days beginning with the day following the day on which the time limit for sending a reply expired.

Appeal hearing

12. Paragraphs 13 to 16 apply where the appeal is to be decided on the basis of an oral hearing.

Fixing a date for the hearing

13.—(1) The Council must —

- (a) within the period of 20 working days beginning with the day following the date on which the for time sending a reply expired; and
- (b) not before the day following the date on which the time for sending a reply expired,

fix a date for the hearing.

(2) The proper officer must on the same day as the Council fixes a date for the hearing send to the appellant and the appropriate body a notice —

- (a) informing them of the time and place of the hearing of the appeal;
- (b) giving guidance regarding the procedure which will apply to the hearing;
- (c) advising them of the consequences of not attending the hearing; and
- (d) informing them of the right to submit written representations if they do not attend the hearing.

(3) The date fixed for the hearing must not be less than 15 working days after the date of the notice.

Action by the appellant and appropriate body on receiving notice of the hearing

14.—(1) Not less than ten working days before the date fixed for the hearing the appellant and the appropriate body —

- (a) must inform the proper officer whether or not they intend to appear or be represented at the hearing;
- (b) must inform the proper officer which, if any, witnesses they intend to call at the hearing;
- (c) may, if they do not intend to appear or be represented at the hearing send to the proper officer any written representations in support of the material already sent to the proper officer.

(2) The proper officer must within the period of three working days beginning with the date on which representations are received send to each party a copy of any representations received by the proper officer from the other party under this paragraph.

Alteration of place or time of the hearing

15.—(1) The Council may alter the place or time of the hearing in such circumstances as it considers appropriate, provided that the altered date of the hearing is not earlier than the original date.

(2) Where the Council alters the place or time of the hearing the proper officer must without delay and in any event within the period of three working days beginning with the date on which the alteration was made send a notice to the appellant and the appropriate body informing them of the alteration.

Procedure at the hearing

16.—(1) Subject to the following provisions of this paragraph the Council must determine the procedure at the hearing of the appeal.

(2) The hearing of the appeal must be in public unless the Council determines that it is fair and reasonable for the hearing or any part of it to be in private.

(3) The appellant and the appropriate body may appear at the hearing and may be represented or assisted by any person.

(4) If the appellant or the appropriate body fails to attend the hearing, the Council may hear, and provided it has considered any representations made by the party concerned under paragraph 14, determine, the appeal in that party's absence.

(5) Subject to sub-paragraph (6) the appellant and the appropriate body may give evidence, call witnesses, question any witnesses and address the Council both on the evidence and generally on the subject matter of the appeal.

(6) The Council may at any point in the hearing limit the rights of either party under sub-paragraph (5) provided it is satisfied that to do so will not prevent the appeal from being decided fairly.

(7) The Council may adjourn the hearing, but must not do so unless it is satisfied that it is necessary to do so in order for the appeal to be decided fairly.

(8) The time and place for an adjourned hearing must either be announced before the adjournment or the Council must without delay and in any event within the period of three working days beginning with the date of the adjournment send notice to the appellant and the appropriate body informing them of the time and place of the adjourned hearing.

Decision of the Council

17.—(1) The decision of the Council may be made and announced at the end of the hearing, but in any event, whether there has been a hearing or not, must be recorded immediately it is made in a document which must also contain a statement of the reasons for the decision and must be signed and dated by a person authorised by the Council.

(2) The Council must within the period of five working days beginning with the date on which it made its decision —

- (a) send a copy of the document referred to in sub-paragraph (1) to the appellant, the appropriate body and the head teacher of the school or sixth form college at which the appellant was employed at the completion of the induction period; and
- (b) if a person or body other than the appropriate body is named as the appellant's employer in the notice of appeal, notify that body or person of its decision.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Irregularities

18.—(1) Any irregularity resulting from failure to comply with any provision of this Schedule before the Council has reached its decision shall not of itself render the proceedings void.

(2) Where any such irregularity comes to the attention of the Council it may, and must if it considers either party may have been prejudiced by the irregularity, give such directions as it thinks just, before reaching its decision, to cure or waive the irregularity.

Documents

19.—(1) Anything required to be sent to a person for the purposes of an appeal under this Schedule may be —

- (a) delivered to that person personally; or
- (b) sent to that person at his or her appropriate address by post; or
- (c) sent to him or her by facsimile or electronic mail or other similar means which are capable of producing a document containing the text of the communication, in which case the document is to be regarded as sent when it is received in a legible form.

(2) A person's appropriate address is the address stated in the notice of appeal or reply, or such other address as may be subsequently notified to the proper officer.