

2006 No. 322

EDUCATION

**The Education (Appeal Committee Procedures) (Scotland)
Amendment Regulations 2006**

<i>Made</i> - - - -	<i>8th June 2006</i>
<i>Laid before the Scottish Parliament</i>	<i>8th June 2006</i>
<i>Coming into force</i> - -	<i>30th June 2006</i>

The Scottish Ministers in exercise of the powers conferred by sections 28D(3) and 28H(5) of the Education (Scotland) Act 1980(a), paragraph 6(6) of schedule 2 to, and section 34 of the Education (Additional Support for Learning) (Scotland) Act 2004(b), and of all other powers enabling them in that behalf and after consultation with the Council on Tribunals(c) hereby make the following regulations—

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Education (Appeal Committee Procedures) (Scotland) Amendment Regulations 2006.

(2) These Regulations shall come into force on 30th June 2006.

(3) In these Regulations “the 1982 Regulations” means the Education (Appeal Committee Procedures) (Scotland) Regulations 1982(d).

Amendment of the 1982 Regulations

2. The 1982 Regulations are amended in accordance with regulations 3 to 7.

Amendment of regulation 2 (interpretation)

3. In regulation 2 (interpretation) in paragraph (1)—

(a) after the definition of “the Act of 1981” insert—

““the 2004 Act” means the Education (Additional Support for Learning) (Scotland) Act 2004;”;

(b) for the definition of “appellant” substitute—

““appellant” means any person who may refer a decision to an appeal committee in terms of sections 28C(1) or 28H(1) of the Act or as the case may be paragraph 5(1) of schedule 2 to the 2004 Act and who so refers;”;

(c) for the definition of “decision” substitute—

(a) 1980 c.44. Sections 28D and 28H were inserted by section 1(1) of the Education (Scotland) Act 1981 (c.58). The functions of the Secretary of State transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) 2004 asp 4.

(c) Consultation is required under section 8 of the Tribunals and Inquiries Act 1992 (c.53).

(d) S.I. 1982/1736

““decision” means a decision which may, in accordance with the provisions of sections 28C(1) or 28H(1) of the Act paragraph 5(1) of schedule 2 to or, as the case may be, section 19(5)(c) the 2004 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 made under section 28A(5) of the Act; and
- (b) a decision which may be so referred in accordance with the provisions of paragraph 5(1) of schedule 2 to the 2004 Act, includes a decision which an education authority is deemed to have made by virtue of any regulations in force made under paragraph 4(3) of schedule 2 to the 2004 Act;”;
- (d) in the definition of “education authority” for “, or as the case may be 63 of the Act” substitute “of the Act, paragraph 5(1) of schedule 2 to, or as the case may be, section 19(5)(c) of the 2004 Act;”;
- (e) in the definition of “placing request” for “section 28A(1) of the Act as substituted by Schedule A2 paragraph 3 to the Act” substitute “paragraph 2(1) of schedule 2 to the 2004 Act”; and
- (f) after the definition of “reference” insert–

““Tribunal” means an Additional Support Needs Tribunal for Scotland constituted under section 17(1) of the 2004 Act;”.

Amendment of regulation 5 (acknowledgement of reference)

- 4. In regulation 5 (acknowledgement of reference) omit “Subject to regulation 6”.

Amendment of regulation 8 (notification of a hearing)

- 5. In regulation 8(1) (notification of a hearing)–
 - (a) for sub-paragraph (a) substitute–

“(a) in the case of a reference other than a reference under sub-paragraph (b) not later than 14 days after receipt of the reference; and”;
- (b) for sub-paragraph (b) substitute–

“(b) in the case of a reference under section 19(5)(c) of the 2004 Act not later than 7 days after receipt by the committee of notification from the Tribunal of the reference;”.

Amendment of regulation 9 (combined hearings)

- 6. In regulation 9 (combined hearings) after paragraph (4) insert –

“(5) An appeal committee shall not combine a hearing on a reference under paragraph 5(1) of schedule 2 to or section 19(5)(c) of the 2004 Act with any other hearing unless the appellant agrees.”.

Amendment of regulation 14 (procedures with respect to decision of an appeal committee)

- 7. For regulation 14(2) and (3) substitute–

“(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 for their decision in writing, and where appropriate–

 - (a) inform the appellant of any right of appeal to the sheriff under sections 28F or 28H of the Act or as the case may be paragraph 7(1) of schedule 2 to the 2004 Act; and

- (b) draw the appellant's attention to the provisions of sections 28F(3) or 28H(6) of the Act or as the case may be paragraph 7(3) of schedule 2 to the 2004 Act (manner of appeal).

(3) Where, by virtue of any regulations for the time being in force made under sections 28D(3)(b) or 28H(5)(b) of the Act or as the case may be paragraph 6(6)(b) of schedule 2 to the 2004 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—

- (a) inform the appellant of such right of appeal as is mentioned in sub-paragraph (2)(a); and
- (b) draw the appellant's attention, as is appropriate in relation to the decision, to the provisions of sections 28F(3) or 28H(6) of the Act or as the case may be paragraph 7(3) of schedule 2 to the 2004 Act.”.

Revocations

8. The following provisions of the 1982 Regulations are revoked—

- (a) regulation 6 (preliminary procedures in references under section 63 of the Act);
- (b) regulation 7(2) (fixing date of a hearing); and
- (c) regulation 10(2) (information and representation).

St Andrew's House,
Edinburgh
8th June 2006

PETER J PEACOCK
A member of the Scottish Executive

EXPLANATORY NOTE

(This note is not part of these Regulations)

These Regulations make consequential modifications to the Education (Appeal Committee Procedures) (Scotland) Regulations 1982 (“the 1982 Regulations”). These modifications are consequential and supplemental to the Education (Additional Support for Learning) (Scotland) Act 2004 (“the 2004 Act”).

Regulation 3 amends certain definitions in regulation 2 of the 1982 Regulations and adds a definition of “tribunal” in consequence of provisions made and repeals under the 2004 Act.

Regulations 4, 5 and 7 amend regulations 5, 8 and 14 of the 1982 Regulations in consequence of provisions made and repeals under the 2004 Act.

Regulation 6 amends regulation 9 of the 1982 Regulations to make provision that an appeal committee shall not combine hearings where a reference under the 2004 Act is involved unless the appellant in the reference under the 2004 Act agrees.

Regulation 8 revokes regulations 6, 7(2) and 10(2) of the 1982 Regulations in consequence of repeals made under the 2004 Act.

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