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STATUTORY INSTRUMENTS

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**1997 No. 729 (S.69)**

**LOCAL GOVERNMENT, SCOTLAND  
SOCIAL WORK, SCOTLAND**

**The Reporters (Appeals against  
Dismissal) (Scotland) Regulations 1997**

<i>Made</i>	- - - -	<i>7th March 1997</i>
<i>Laid before Parliament</i>		<i>11th March 1997</i>
<i>Coming into force</i>	- -	<i>1st April 1997</i>

The Secretary of State, in exercise of the powers conferred on him by section 129(1), (2) and (4) of the Local Government etc. (Scotland) Act 1994(1) and of all other powers enabling him in that behalf, hereby makes the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Reporters (Appeals against Dismissal) (Scotland) Regulations 1997 and shall come into force on 1st April 1997.

**Interpretation**

2. In these Regulations, unless the context otherwise requires—

“the 1994 Act” means the Local Government etc. (Scotland) Act 1994;

“the Administration” means the Scottish Children’s Reporter Administration established by section 128 of the 1994 Act;

“the appellant” means the officer dismissed by the Administration who is appealing to the Secretary of State under section 129 of the 1994 Act.

**Officers entitled to appeal against dismissal**

3. An officer of the Administration of the grade or rank known as Assistant Principal Reporter is hereby prescribed as an officer for the purposes of section 129(1) of the 1994 Act (prescribing of officer or class of officer for purpose of entitlement to appeal to the Secretary of State against dismissal by the Administration).

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(1) 1994 c. 39; section 129(5) contains a definition of “prescribed” relevant to the exercise of the statutory powers under which these Regulations are made.

### **Notice of Appeal**

4. An appeal under section 129 of the 1994 Act shall be instituted by the appellant giving a notice of appeal in accordance with the provisions of these Regulations.

5. A notice of appeal under regulation 4 above shall be given to the Secretary of State within 21 days from the date on which the appellant received notification of dismissal by the Administration, and shall be accompanied by—

- (a) a statement setting out fully on what grounds the appeal is made; and
- (b) any documentary evidence which the appellant may desire to submit.

6. The appellant shall, at the same time as giving a notice of appeal to the Secretary of State under regulation 4 above, give to the Administration a copy of that notice of appeal and of any documentary evidence submitted by the appellant to the Secretary of State under regulation 5 above.

### **Response by Administration**

7. The Administration shall, within 21 days of the date of receipt of the copy of the notice of appeal and documentary evidence referred to in regulation 6 above, give to the Secretary of State a statement, signed and dated by the chairman or deputy chairman, saying whether or not the appeal is opposed.

8. If the appeal is opposed the statement by the Administration under regulation 7 above shall—

- (a) set out fully the reasons for opposing it;
- (b) contain any representations which the Administration may desire to submit with regard to the information furnished by the appellant for the purposes of the appeal; and
- (c) be accompanied by any documentary evidence in support of the statement together with a copy of any document which was taken into account by the Administration in determining that the appellant should be dismissed from his appointment.

9. The Administration shall, at the same time as giving the statement to the Secretary of State under regulation 7 above, give to the appellant a copy of that statement and, if the appeal is opposed, a copy of any documentary evidence provided to the Secretary of State under regulation 8(c) above.

### **Inquiry by a Panel**

10.—(1) The Secretary of State may, where he considers it appropriate, constitute a panel to conduct an inquiry for the purposes of the appeal and to report to him.

(2) The Secretary of State shall advise the appellant and the Administration of any decision by him to constitute a panel for this purpose.

(3) The Schedule to these Regulations shall have effect to govern the constitution of any such panel and the proceedings of the inquiry by the panel.

(4) In any case in which the Secretary of State has constituted a panel in terms of paragraph (1) above, the Secretary of State, on receipt of the report of that panel, shall give a copy of that report to the appellant and to the Administration, and the appellant and the Administration shall be entitled, within 21 days of the copy of the report being given to them, to give comments to the Secretary of State in relation to that report.

### **Disposal by Secretary of State**

11.—(1) The Secretary of State shall, before determining an appeal under section 129 of the 1994 Act, consider—

- (a) the notice of appeal and any other documents given to him by the appellant and the Administration in accordance with these Regulations;
  - (b) the report made to him by any panel constituted under regulation 10 above; and
  - (c) any comments given to him by the appellant and the Administration in relation to that report.
- (2) On an appeal under section 129 of the 1994 Act the Secretary of State may—
- (a) allow the appeal; or
  - (b) dismiss the appeal.
- (3) In any case in which the Secretary of State allows the appeal he may—
- (a) where the dismissal of the appellant from the employment of the Administration has taken effect—
    - (i) direct that the appellant be reinstated by the Administration with effect from such date as he may specify;
    - (ii) direct the Administration to make payment to the appellant of such sum as to the Secretary of State seems appropriate taking into account any loss sustained by the appellant in relation to benefits to which the appellant would otherwise have been entitled had his appointment not been terminated; and
    - (iii) give directions as to the extent to which the appellant shall for the purposes of pay and other conditions of service be treated as having served continuously in office from the date of dismissal appealed against to the date of reinstatement; or
  - (b) in any other case, direct that the dismissal of the appellant by the Administration shall not take effect.

#### **Timetable for disposal by Secretary of State**

**12.**—(1) The provisions of paragraphs (2) and (3) require the Secretary of State to make a decision on whether to allow the appeal and to notify the appellant and the Administration within the times specified in those paragraphs.

(2) Where the Secretary of State has not constituted a panel in terms of regulation 10(1), the steps specified in paragraph (1) of that regulation must be completed not later than 21 days from the last day for the receipt of the Administration's statement as provided for in regulation 7.

(3) Where the Secretary of State has constituted a panel in terms of regulation 10(1), the steps specified in paragraph (1) of that regulation must be completed not later than 21 days from the last day for receipt of comments on the panel's report as provided for in regulation 10(4).

#### **Effect of disposal by Secretary of State**

**13.** The Administration shall give effect to the disposal of an appeal by the Secretary of State under regulation 11 above, and to any directions by the Secretary of State under that regulation.

#### **Time Limits**

**14.** The Secretary of State, where satisfied on the application of the appellant or the Administration that there are special circumstances warranting any time limit specified in these Regulations being waived, may waive the application of any such time limit for up to 21 days.

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### **Giving notice**

**15.** Any notice, statement or document required to be given in terms of these Regulations shall be sent by recorded delivery service and the date of the giving of the notice, statement or document, shall be the date of sending.

### **Withdrawal of appeal**

**16.** The appellant may withdraw his appeal at any time prior to a disposal by the Secretary of State, by giving notice of this in writing to the Secretary of State.

St Andrew's House,  
Edinburgh  
7th March 1997

*James Douglas-Hamilton*  
Minister of State, Scottish Office

## SCHEDULE

Regulation 10

1. A panel to conduct an inquiry and to report to the Secretary of State for the purposes of an appeal under section 129 of the 1994 Act shall be constituted by the appointment of members to that panel by the Secretary of State in accordance with the provisions of this Schedule.

2. The Secretary of State shall appoint—

- (a) as chairman of the panel a practising solicitor or advocate who has been qualified for at least 10 years; and
- (b) 2 further persons as members of the panel, being persons of such qualifications and experience as the Secretary of State considers appropriate to the case.

3. The chairman and members of the panel shall be remunerated, and paid travelling and subsistence expenses, at such rates as the Secretary of State may specify.

4. Such administrative arrangements as are necessary for the purpose of the inquiry shall be made by the Secretary of State.

5. The Secretary of State shall give to the chairman and members of the panel a copy of the notices, statements and documents given to him in terms of these Regulations in connection with the appeal.

6. The appellant and the Administration shall be entitled to be assisted in presenting their case for the purposes of an appeal, and to be represented at an inquiry, by counsel, by a solicitor, or by a representative of a trade union.

7. The inquiry shall be held in private.

8. The panel shall, following the inquiry, make a report to the Secretary of State within 14 days from the last day on which the inquiry was conducted.

9. The report by the panel shall include—

- (a) a statement of the facts admitted to or found by the panel;
- (b) the opinion of the panel as to whether the dismissal was just and proper having regard to the facts; and
- (c) recommendations where appropriate in relation to reinstatement of the appellant and the date on which this should take effect and as to payment to the appellant of any sum referred to in regulation 11(3)(a)(ii) above.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations prescribe certain officers of a senior rank in the Scottish Children's Reporter Administration as having a right to appeal to the Secretary of State against dismissal by the Administration from office, and make provision in relation to appeals to the Secretary of State against dismissal.

Regulation 3 prescribes an officer of the grade or rank known as Assistant Principal Reporter for the purpose of entitlement under section 129(1) of the Local Government etc. (Scotland) Act 1994

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to appeal to the Secretary of State against dismissal by the Administration. Section 129(1) itself provides such a right of appeal against dismissal for the Principal Reporter.

Regulations 4 to 6 provide for the institution of an appeal to the Secretary of State under section 129 of the 1994 Act by way of a notice of appeal together with accompanying documents, and for a copy of that notice and any documents to be given to the Administration by the appellant.

Regulations 7 to 9 provide for a response by the Administration to the Secretary of State to the appeal, stating whether or not the appeal is opposed, and for the Administration to copy their response to the appellant.

Provision is made in regulation 10 and in the Schedule to these Regulations for the Secretary of State, where he considers it appropriate, to constitute a panel to conduct an inquiry for the purposes of the appeal and to report to him, for the constitution of any such panel and the proceedings of the inquiry by the panel, and for the copying by the Secretary of State to the Administration and to the appellant of the report by the panel.

Regulation 11 makes provision as to consideration by the Secretary of State before determining an appeal under section 129 of the 1994 Act, and as to the powers of the Secretary of State in allowing the appeal, or dismissing the appeal.

Regulation 12 sets time limits on the Secretary of State for the disposal of an appeal.

Provision is made in regulation 13 for the Administration to give effect to the disposal of any appeal by the Secretary of State.

The Secretary of State is provided with a power under regulation 14 to waive the application of any time limit specified in the Regulations.

Provision is made in regulation 15 for the giving of any notice required by the Regulations, and in regulation 16 for withdrawal of an appeal by the appellant.