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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2006 No.**

**The Risk Assessment and Minimisation  
(Accreditation Scheme) (Scotland) Order 2006**

APPEALS

**Appeals**

- 9.**—(1) A person who made an application in terms of article 3(1) may appeal against a decision—
- (a) under article 5(2) in respect of that application, or
  - (b) under article 7(8) to withdraw the resulting accreditation.
- (2) Such an appeal must—
- (a) be sent to the Authority within 4 weeks of the date of the notification to the applicant of the relevant decision;
  - (b) specify the part of the decision against which the appeal is taken; and
  - (c) be supported, within 4 weeks of being sent to the Authority, by such written representations as the appellant wishes to be considered.
- (3) Except where the appeal is in respect of a decision under article 7(8), any accreditation which is valid immediately before the appeal is sent to the Authority shall continue to be valid until a decision has been taken under article 15(1).

**Appeals committee**

- 10.**—(1) The Authority shall constitute an appeals committee which shall, if authorised to do so by the Authority, determine appeals sent to the Authority in accordance with article 9.
- (2) Subject to paragraph (4), the Authority shall appoint a minimum of two of its members to form the appeals committee, which number must include the convener, and the convener shall be appointed to chair the committee (but, if he or she has an interest in a particular appeal such that he or she cannot form part of the committee for that decision, or if the convener is otherwise unable to participate or if the office of convener is temporarily vacant, the Authority shall appoint another member to chair the committee for that appeal decision).
- (3) The quorum shall be two of the members so appointed, of whom one must be the person appointed to chair the committee.
- (4) No member who formed part of the accreditation committee which made the decision under appeal shall form part of the appeals committee which considers the appeal.
- (5) The validity of any proceedings of the appeals committee is not affected by the absence of any member appointed under paragraph (2), provided that the number of members considering an appeal does not fall below two.

**Hearing**

- 11.**—(1) Where the Authority does not authorise the appeals committee for the purposes of article 10(1), references in this article and in articles 12 to 15—

- (a) to the appeals committee shall be read as references to the Authority; and
  - (b) to the person appointed to chair the appeals committee shall be read as references to the convener (or, if the convener is unable to participate for any reason or if the office of convener is temporarily vacant, to such member of the Authority as shall be appointed by it for this purpose).
- (2) There shall be an oral hearing, of which the Authority shall give the appellant no less than 6 weeks' notice and at which the appellant will be entitled to make oral representations, either personally or through a representative.
- (3) If the appellant wishes to be represented at the hearing, he, she, or, as the case may be, it shall send written notification of the name, address and occupation of the representative to the Authority no later than 2 weeks before the hearing.
- (4) The hearing shall take place in private unless the appellant requests otherwise.
- (5) Unless the hearing takes place in public, the only people who may attend are—
- (a) the members of the appeals committee appointed to determine the appeal;
  - (b) the appellant (or, in the case of a legal person, a nominee of the appellant);
  - (c) the appellant's representative;
  - (d) any legal assessor appointed under article 14(1);
  - (e) any person to whom—
    - (i) paragraph (1) (but not paragraph (2)); or
    - (ii) paragraph (3),of article 13 applies; and
  - (f) any employee of the Authority whose attendance the person chairing the committee has approved.

### **Procedure**

**12.**—(1) Subject to the provisions of this Order and to any measure taken by the Authority under paragraph 4(1)(c)(i) of schedule 2 to the 2003 Act, the appeals committee may regulate its own procedure for dealing with an appeal.

(2) At the beginning of the hearing the person appointed to chair the appeals committee shall explain the order of proceeding which the committee proposes to adopt at the hearing.

(3) The appeals committee may consider any document or information, notwithstanding that such document or information may be inadmissible in proceedings before a court of law, provided that a copy of such a document or such information has been made available to the appellant no later than 2 weeks before the hearing or such later time as shall appear to the committee to be reasonable in the circumstances.

### **Witnesses**

**13.**—(1) Where an appellant wishes to call any person to attend a hearing to give evidence at it, he, she or, as the case may be, it shall send written notification to the Authority no later than 2 weeks before the hearing of the name, address and occupation of the person and of what the general nature of his or her evidence is likely to be.

(2) The person appointed to chair the appeals committee may refuse to permit such a person to attend the hearing to give evidence at it if he or she is satisfied that there are good and sufficient reasons for doing so; and in such an event the Authority shall send the appellant written notification of the refusal and of the reasons for it.

(3) The Authority shall notify the appellant in writing, no later than 2 weeks before the hearing, of the name, address and occupation of any person whom the appeals committee wishes to call to attend a hearing to give evidence at it, and of what the general nature of his or her evidence is likely to be.

### **Legal assessor**

**14.**—(1) The Authority may appoint a legal assessor to advise the appeals committee in respect of a particular appeal.

(2) The functions of the legal assessor are—

- (a) to advise the appeals committee on questions of law arising in proceedings before it, whether or not reference is made by the committee to him or her in that regard; and
- (b) to advise on the drafting of the decision of the committee (notwithstanding that he or she will not be a party to that decision).

(3) To be qualified for appointment as a legal assessor, a person must—

- (a) have a 10 year general qualification (within the meaning of section 71(3)(c) of the Courts and Legal Services Act 1990<sup>(1)</sup>);
- (b) be an advocate or solicitor in Scotland of at least 10 years' standing; or
- (c) be a member of the Bar of Northern Ireland of at least 10 years' standing.

(4) No person shall be a legal assessor if he is—

- (a) a member of the Authority; or
- (b) employed by the Authority.

(5) The appeals committee must notify the appellant in writing 2 weeks in advance of the hearing of the name of any legal assessor who has been appointed.

(6) If a legal assessor is appointed in respect of an appeal, he or she must attend the hearing required by article 11(2) and any continuation thereof.

(7) Any advice tendered by a legal assessor on a question of law shall, where it arises in the course of the hearing and before the appeals committee has begun its deliberations, be tendered in the presence of the appellant or the appellant's representative and otherwise shall be communicated to the appellant or the appellant's representative as soon as practicable (or, where such deliberations have begun, on their completion) and, where such communication is not in writing, a written record summarising the advice and any question giving rise to it shall thereafter be provided.

### **Decision**

**15.**—(1) The appeals committee may decide to uphold the appeal, in whole or in part, or to reject it; and where it upholds the appeal it shall take any decision in respect of the matter which the accreditation committee could have taken when it reached the decision under appeal.

(2) The decision of the appeals committee may be taken by a majority of the members, provided that the person appointed to chair the committee shall, in the event that the votes of the members of the committee are tied, have a second vote.

(3) The decision shall be recorded in a document which shall—

- (a) contain a statement of the reasons for the decision;
- (b) be signed and dated by the person appointed to chair the appeals committee; and
- (c) be sent to the appellant not later than 4 weeks after the end of the hearing.

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(1) 1990 c. 41; to which no relevant amendments have been made.

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**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: *The Risk Assessment and Minimisation (Accreditation Scheme) (Scotland) Order 2006 No. 190*

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