

1977 No. 1261 (S. 95)**EDUCATION, SCOTLAND****The Independent Schools Tribunal (Scotland) Rules 1977**

Made - - - - - 20th July 1977

Coming into Operation 22nd August 1977

The Lord President of the Court of Session, in exercise of the powers conferred upon him by section 116 of the Education (Scotland) Act 1962(a) as amended by section 6(2) of and schedule 2 to the Education (Scotland) Act 1976(b) and of all other powers enabling him in that behalf, after consultation with the Council on Tribunals in accordance with section 10 of the Tribunals and Inquiries Act 1971(c) and with the concurrence of the Secretary of State, hereby makes the following Rules:—

Citation and commencement

1. These Rules may be cited as the Independent Schools Tribunal (Scotland) Rules 1977 and shall come into operation on 22nd August 1977.

Interpretation

2.—(1) The Interpretation Act 1889(d) shall apply for the interpretation of these Rules as it applies for the interpretation of an Act of Parliament.

(2) In these Rules:—

“the Act” means the Education (Scotland) Act 1962;

“the Act of 1946” means the Education (Scotland) Act 1946(e);

“notice of complaint” means a notice of complaint served by the Secretary of State under section 112 of the Act;

“the tribunal” means an Independent Schools Tribunal constituted in accordance with the provisions of section 113(1) of and schedule 7 to the Act.

Notice of Appeal

3.—(1) An appeal to the tribunal shall be instituted by sending to the Secretary of State a written notice of appeal signed by the appellant, setting out the grounds of appeal and stating an address to which all communications regarding the appeal should be sent.

(a) 1962 c. 47.

(b) 1976 c. 20.

(c) 1971 c. 62.

(d) 1889 c. 63.

(e) 1946 c. 72.

(2) The notice shall be sent to the Secretary of State—

(a) in the case of an appeal under section 113 of the Act against a notice of complaint, within the time limited by that notice; or

(b) in the case of an appeal under section 115 of the Act against a refusal of the Secretary of State to remove a disqualification imposed by an order under Part V of the Act of 1946 or Part V of the Act, within one month after the communication of the refusal to the appellant.

(3) Where the appeal is against a notice of complaint alleging that a teacher is not a proper person to be employed as a teacher in any school, the appellant shall at the same time send a copy of the notice of appeal to the proprietor of the school or to the teacher, as the case may be.

(4) As soon as the tribunal has been constituted in accordance with the provisions of section 113(1) of and schedule 7 to the Act for the purpose of hearing the appeal, the Lord President shall appoint a person to act as secretary of the tribunal for the purposes of the appeal, and the Secretary of State shall send to the secretary of the tribunal three copies of the notice of appeal.

Date, time and place of hearing

4. The chairman of the tribunal shall fix a date, time and place for the hearing of the appeal and shall cause to be served upon the appellant, not less than twenty-eight days before the date so fixed, a notice in the form set out in the Schedule to these Rules and shall at the same time send a copy of the notice to the Secretary of State, and where the appeal is against a notice of complaint alleging that a teacher is not a proper person to be employed as a teacher in any school, to the proprietor of the school or the teacher as the case may be.

Abandonment of appeal

5. If an appellant at any time before the date fixed for the hearing gives notice in writing to the secretary of the tribunal that he desires to withdraw his appeal, the tribunal shall hear and determine the appeal in his absence.

Default of appearance

6. If an appellant or the Secretary of State fails to appear at the time and place fixed for the hearing of the appeal, the tribunal may hear and determine the appeal in his absence.

Right of audience

7.—(1) An appellant may appear and be heard in person, by counsel or solicitor or by any other person allowed by the tribunal to appear on his behalf, and if a partnership, by a partner and if a company, by a duly authorised director or officer of the company.

(2) The Secretary of State may appear and be heard by counsel or solicitor or by any officer of his department.

Hearing

8. The hearing of an appeal shall take place in public unless the tribunal determines that there are exceptional reasons which make it desirable that the hearing or some part of it should take place in private.

Procedure at hearing

9.—(1) An appellant and the Secretary of State shall have the right to address the tribunal and call witnesses, whose evidence shall be given on oath and who shall be subject to cross-examination and to re-examination.

(2) The tribunal may require the attendance of further witnesses in addition to those called by or on behalf of the appellant and the Secretary of State.

(3) The tribunal may permit evidence to be given by affidavit but may at any stage of the proceedings require the personal attendance of any deponent for examination and cross-examination.

(4) The tribunal shall not reject any evidence on the ground only that such evidence would be inadmissible in a court of law.

(5) After the evidence has been concluded, the Secretary of State and the appellant shall have the right to address the tribunal if they so desire.

Decision of tribunal

10.—(1) The decision of the tribunal on the appeal shall, in the event of disagreement, be the decision of the majority and may be given orally at the hearing or in writing as soon as may be after the hearing.

(2) The secretary of the tribunal shall send a copy of the decision given by the tribunal, together with a statement of its findings and the reasons for the decision and any order made by the tribunal to the appellant and the Secretary of State.

Stated Case to Court of Session

11. If any party to proceedings before the tribunal is dissatisfied in point of law with a decision of the tribunal, he may make application to the tribunal to state a case for the opinion of the Court of Session on any question of law arising in the proceedings and the provisions of Rules 276 to 280 of the Rules of the Court of Session(a) shall apply accordingly.

Extension of time

12. The time limited by these Rules for doing any act in connection with an appeal may be extended by the tribunal or by the chairman upon such terms (if any) as may seem just notwithstanding that the time limited has expired before an application for extension is made.

Power to regulate procedure

13.—(1) Subject to the provisions of the Act and these Rules, the tribunal shall have power to regulate its own procedure.

(2) Failure to comply with any requirements of these Rules shall invalidate any proceedings unless the tribunal so directs.

Revocation

14.—(1) The Independent Schools Tribunal (Scotland) Rules 1961(b) are hereby revoked.

(a) S.I. 1965/321 (1965 I, p. 803).

(b) S.I. 1961/2402 (1961 III, p. 4449).

(2) Section 38 of the Interpretation Act 1889 shall apply as if these Rules were an Act of Parliament and as if the Rules revoked by these Rules were Acts of Parliament repealed by an Act of Parliament.

G. C. Emslie,
Lord President of the Court
of Session.

Edinburgh.
15th July 1977.

I concur,

Bruce Millan,
One of Her Majesty's Principal
Secretaries of State.

New St. Andrew's House,
Edinburgh.
20th July 1977.

SCHEDULE

Rule 4

NOTICE OF HEARING

THE EDUCATION (SCOTLAND) ACT, 1962

Take notice that your appeal under section 113 of the Education (Scotland) Act, 1962 against the Secretary of State's notice of complaint dated day of , alleging that (here insert short statement of grounds of complaint) [or under section 115 of the Education (Scotland) Act, 1962 against the Secretary of State's refusal to remove the disqualification imposed on (here insert description of disqualification) under Part V of the Education (Scotland) Act, 1946 or Part V of the said Act of 1962] will be heard by the Independent Schools Tribunal sitting at on the day of at . If for any reason you do not wish, or are unable, to attend at the above time and place, you should IMMEDIATELY inform me in writing at the address mentioned at the head of this notice stating the reasons for your inability to attend.

(sgd) Secretary.

EXPLANATORY NOTE

(This Note is not part of the Rules.)

These Rules make provision in respect of the constitution and proceedings of the Independent Schools Tribunal for Scotland.

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