STATUTORY INSTRUMENTS

1983 No. 71 (S.2)

RESIDENTIAL AND OTHER ESTABLISHMENTS, SCOTLAND

The Registration of Establishments (Appeal Tribunal) (Scotland) Rules 1983

Made - - - -	*17th January* 1983
Coming into Operation	*7th February* 1983

In exercise of the powers conferred on me by section 64(4) of, and paragraph 6 of Schedule 5 to, the Social Work (Scotland) Act 1968(a), and all other powers enabling me in that behalf and after consultation with the Council on Tribunals, I hereby make the following rules:—

Citation and commencement

1. These rules may be cited as the Registration of Establishments (Appeal Tribunal) (Scotland) Rules 1983 and shall come into operation on 7th February 1983.

Interpretation

2.—(1) In these rules, unless the context otherwise requires—

"the Act" means the Social Work (Scotland) Act 1968;

"appeal" means an appeal under section 64 of the Act brought in accordance with section 64(5) of the Act;

"appellant" means a person aggrieved by, and who appeals against, a notice of a registration authority refusing an application for registration under Part IV of the Act or cancelling any registration thereunder;

"chairman" means chairman of a tribunal by virtue of paragraph 4 of Schedule 5 to the Act;

"local authority" means a regional or islands council;

"registration authority" means the Secretary of State or, as the case may be, the local authority in whose area the relevant establishment is situated;

"relevant establishment" means the establishment in relation to which an appeal to a tribunal is brought;

"tribunal" means an appeal tribunal established under Schedule 5 to the Act.

(2) In these rules a reference to a rule is a reference to a rule of these rules

(a) 1968 c.49.

and a reference in a rule to a paragraph is a reference to a paragraph of that rule.

Procedure of tribunal

3. Except as otherwise provided in these rules, the procedure of a tribunal prior to, at or subsequent to the hearing of an appeal by a tribunal shall be such as the chairman may determine.

Initial procedure of tribunal

4. As soon as a tribunal has been constituted in accordance with the provisions of paragraph 4 of Schedule 5 to the Act for the purpose of determining an appeal, the tribunal shall notify the appellant and the registration authority accordingly.

Intimation of grounds of refusal or cancellation

5.—(1) Subject to rule 15, within 14 days of receipt by an appellant of the notification mentioned in rule 4 the appellant shall send to the tribunal a written statement setting out the ground of his appeal; and shall at the same time send a copy of the statement to the registration authority.

(2) Subject to rule 15, within 7 days of receipt by the registration authority of the copy of the statement mentioned in paragraph (1), the registration authority shall send to the tribunal a written statement setting out the grounds on which the application for registration under Part IV of the Act has been refused, or, as the case may be, on which registration under that Part has been cancelled; and shall at the same time send a copy of that statement to the appellant.

Date, time and place of hearing

6. On receipt by the tribunal of the statement of the registration authority mentioned in rule 5, the chairman shall fix a date, time and place for the hearing of the appeal and shall cause to be served on the appellant and the registration authority, not less than 14 days before the date so fixed, notification of that date, time and place.

Abandonment of appeal

7. If at any time before the date fixed for the hearing, the appellant gives notice in writing to the tribunal that he desires to withdraw his appeal, the tribunal shall dismiss the appeal and shall forthwith in writing notify the registration authority of such dismissal.

Default of appearance

8. If a party to the appeal fails without good cause to appear on the date and at the time and place fixed for the hearing of the appeal, the tribunal may—

(a) hear and determine the appeal in his absence; or

(b) adjourn the hearing to a date, time and place (being a date not earlier

than 7 days after the date of such adjournment) of which the tribunal shall forthwith give notification to the parties to the appeal;

and where the appellant is the party so failing, the tribunal may treat such failure of the appellant as if the appellant has given notice in writing under rule 7 and shall thereupon dismiss the appeal and forthwith in writing notify the parties to the appeal of such dismissal.

Right of audience

9.—(1) An appellant may appear before a tribunal and be heard in person or may be represented by counsel or solicitor or, with the leave of the tribunal, by any other person; and where the appellant is—

(a) a partnership it may be represented by one of its partners;

(b) an incorporated body, it may be represented by a duly authorised director or officer of that body;

(c) an unincorporated body, it may be represented by a duly authorised officer of that body.

(2) A registration authority may be represented by counsel, solicitor or duly authorised officer of the authority.

Hearing

10. 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

11.—(1) Subject to the following provisions of this rule, the chairman shall state at the commencement of a hearing the procedure which the tribunal shall adopt (including the order of proceedings before the tribunal).

(2) The appellant and the registration authority, or their respective representatives, shall have the right to address the tribunal, to call evidence and to examine, cross-examine and re-examine persons giving evidence.

(3) The tribunal may require the attendance before it of further witnesses in addition to those called by or on behalf of a party to the appeal.

(4) Any document may be admitted as an adminicle of evidence at a hearing at the discretion of the chairman who may direct that such document may be inspected by or on behalf of any party to the hearing not tendering the same and that facilities be afforded him to take or obtain copies thereof.

Inspection of establishment and re-opening of hearing

12.—(1) A tribunal may on its own motion and shall at the request of a party to the appeal, (and subject in either case to any necessary consent being obtained), inspect the relevant establishment.

(2) An inspection may be made before, in the couse of, or after the close of, the hearing.

(3) A tribunal shall give to the parties to an appeal such notice (if any) in writing as the tribunal considers appropriate of its intention to inspect the relevant establishment and shall allow the parties and their representatives to attend such inspection.

(4) Where an inspection is made after the close of a hearing the tribunal may re-open the hearing, if it considers it necessary to do so on account of any matter arising from the inspection; and shall forthwith in writing notify the parties to the appeal of the date, time and place of the re-opened hearing and the provisions of these rules shall apply in relation to a re-opened hearing as they apply to a hearing, save insofar as the parties to an appeal agree that the provisions so applied may be relaxed or dispensed with in relation to a re-opened hearing.

Decision of Tribunal

13.—(1) The decision of a tribunal on an appeal shall be given in writing and if at the conclusion of the hearing or re-opened hearing, as the case may be, the tribunal does not thereupon give its decision, the chairman shall intimate that the decision shall be issued within 14 days immediately following upon such conclusion.

(2) The tribunal shall give, or as the case may be, send a copy of its decision on the appeal to the apellant and to the registration authority.

Allowances

14. The Secretary of State may, if a claim therefor is submitted to him in writing, pay to, or in respect of, a person attending proceedings before a tribunal travelling and subsistance allowances which are equal in amount to expenses therefor reasonably and necessarily incurred by or in respect of that person for the purpose of enabling him to attend those proceedings.

Extension of Time

15. If a party to an appeal applies to a tribunal for an extension of any time limit prescribed by these rules for doing any act in connection with the appeal, the tribunal may extend that time limit upon such terms (if any) as may seem to the tribunal equitable, notwithstanding that the time limit to be extended has expired before the application for extension is made.

George Younger,
One of Her Majesty's Principal
Secretaries of State.

New St Andrew's House,
Edinburgh,
17th January 1983.

EXPLANATORY NOTE

(This Note is not part of the Rules)

These Rules make provision as to the manner in which matters may be brought before an Appeal Tribunal constituted to hear appeals made under Section 64(4) of the Social Work (Scotland) Act 1968, against the refusal of a local authority or of the Secretary of State, as the case may be, of an application for registration in respect of an establishment providing accommodation for the purposes of the Social Work (Scotland) Act 1968 or the cancellation of registration.

The Rules prescribe periods within which to submit grounds of appeal and grounds of refusal, or cancellation, of registration (Rule 5). They make provision for fixing the date, time and place of a hearing, and for the proceedures to be followed during, or in relation to, a hearing, including the right of parties to be represented by others, the holding of a hearing in public, parties' right to produce evidence and to call and question witnesses (Rules 6 to 11).

The Rules provide for inspection by the tribunal of the establishment with which the appeal is concerned and, if necessary, for the re-opening of a hearing as a consequence of such an inspection (Rule 12). The decision of a tribunal is to be in writing and given to the parties to the appeal within 14 days of the close of a hearing (Rule 13).

Rule 3 provides that generally the procedure of a tribunal is a matter for its chairman. Rule 15 gives the tribunal a power to extend any time limit under the Rules.

Provision is made for the payment, by the Secretary of State, of travel and subsistence allowances to persons attending Tribunal proceedings. (Rule 14).

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