

1999 No. 1286

EDUCATION, ENGLAND AND WALES

**The Education (Adjudicators Inquiry Procedure etc.)
Regulations 1999**

<i>Made</i> - - - -	<i>4th May 1999</i>
<i>Laid before Parliament</i>	<i>6th May 1999</i>
<i>Coming into force</i>	<i>1st June 1999</i>

In exercise of the powers conferred on the Secretary of State by paragraph 5 of Schedule 5 to the School Standards and Framework Act 1998^(a), the Secretary of State for Education and Employment, after consultation with the Council on Tribunals in accordance with section 8 of the Tribunals and Inquiries Act 1992^(b), hereby makes the following regulations:

Citation and commencement

1. These Regulations may be cited as the Education (Adjudicators Inquiry Procedure etc.) Regulations 1999 and shall come into force on 1st June 1999.

Interpretation

2. In these Regulations—

“the Act” means the School Standards and Framework Act 1998;

“the adjudicator” means the adjudicator by whom the inquiry is to be, is in the process of being, or has been held;

“document” includes a photograph, map or plan;

“draft school organisation plan” means the draft school organisation plan prepared by a local education authority pursuant to section 26 of the Act;

“inquiry” means a local inquiry to which regulations 4 to 17 apply;

“pre-inquiry meeting” means a meeting held before an inquiry to consider what may be done with a view to securing that the inquiry is conducted efficiently and expeditiously;

“proposer” means—

(a) where the inquiry relates to proposals published under section 28, 29 or 31 of, paragraph 5(4) of Schedule 6 or paragraph 5(1) of Schedule 23 to, the Act, the persons or body who published the proposals;

(b) where the inquiry is held pursuant to paragraph 9 of Schedule 7 to the Act,

(i) the Secretary of State, and

(ii) any persons or body who has published proposals which have been referred to the adjudicator under paragraph 8(7) of that Schedule; and

(c) where the inquiry relates to a draft school organisation plan, the local education authority by whom the draft plan has been prepared;

(a) 1998 c. 31.

(b) 1992 c. 53.

“relevant date” means the date on which the adjudicator gives notice as required by regulation 4;

“relevant local education authority” means—

- (a) where the inquiry is into any matter such as is referred to in regulation 3(1)(a), the local education authority which maintains the school (or, in the case of a proposed school), which it is proposed should maintain the school;
- (b) where the inquiry is held pursuant to paragraph 9 of Schedule 7 to the Act, the local education authority in relation to whom the order under paragraph 2(2) or 3(2) of that Schedule was made; and
- (c) where the inquiry is into any matter arising from the adjudicator’s consideration of a draft school organisation plan, the local education authority by whom the draft plan was prepared;

“relevant objector” means any of the following bodies who have objected to any proposals or draft school organisation plan which is the subject of the inquiry—

- (a) the relevant local education authority;
- (b) the Diocesan Board of Education for any diocese of the Church of England any part of which is comprised in the area of the relevant local education authority;
- (c) the bishop of any Roman Catholic Church diocese any part of which is comprised in the area of the relevant local education authority;
- (d) the Further Education Funding Council for England (if the inquiry is into any matter which affects education to which section 2(1) of the Further and Higher Education Act 1992^(a) applies); and
- (e) where the inquiry is into any matter such as is referred to in regulation 3(1)(a) or is held pursuant to paragraph 9 of Schedule 7 to the Act, the governing body of any school to which the proposals relate; and

“statement of case” means, and is comprised of, a written statement which contains full particulars of the case which a person proposes to put forward at an inquiry, and a list of any documents which that person intends to refer to or put in evidence.

Power of adjudicator to hold inquiries and application of regulations

3.—(1) An adjudicator may hold an inquiry into any matter—

- (a) arising from his consideration of proposals published under section 28, 29 or 31 of, or paragraph 5(4) of Schedule 6 or paragraph 5(1) of Schedule 23 to, the Act, referred to him under paragraphs 3(5) or (6), 5(5) or (6) or 21(4) of Schedule 6, or paragraph 6(7) or (8) of Schedule 23, to the Act as the case may be; or
- (b) arising from his consideration of a draft school organisation plan or proposed modifications to it, referred to him under regulations 8, 10, 12 or 13 of the Education (School Organisation Plans) (England) Regulations 1999^(b).

(2) Regulations 4 to 17 shall apply in relation to any inquiry held by an adjudicator pursuant to this regulation or paragraph 9 of Schedule 7 to the Act.

Preliminary action to be taken by adjudicator

4. Where the adjudicator intends to hold an inquiry he shall give written notice to—

- (a) every proposer; and
- (b) each relevant objector.

Service of statement of case

5.—(1) Every proposer shall, at least 28 days before the date fixed for the inquiry and not later than six weeks after the relevant date, serve a statement of case on the adjudicator and on each relevant objector.

(a) 1992 c. 13.

(b) S.I. 1999/701.

- (2) The adjudicator may by notice in writing require—
- (a) any objector; or
 - (b) any other person who has notified him of an intention or wish to appear at the inquiry, within 4 weeks of the date of such notice to serve a statement of case on him, any proposer and on any other person specified in such a notice.
- (3) The adjudicator shall supply a copy of any proposer’s statement of case to any person who is not a relevant objector but has been required to serve a statement of case under paragraph (2).
- (4) A proposer shall afford to any person who so requests a reasonable opportunity to inspect and, where practicable, take copies of any statement or document which, or a copy of which, has been served on or by the proposer in accordance with this regulation; and shall specify in the statement served in accordance with paragraph (1) the time and place at which the opportunity will be afforded.

Statements of matters and pre-inquiry meetings

- 6.—(1) The adjudicator may, not later than 12 weeks after the relevant date, cause to be served on any proposer and any relevant objector a written statement of the matters about which the adjudicator particularly wishes to be informed for the purposes of his consideration of the matter the subject of the inquiry.
- (2) The adjudicator may hold a pre-inquiry meeting where he considers it desirable and shall arrange for not less than two weeks written notice of it to be given to the proposer, any relevant objector and any other person whose presence at the meeting appears to him to be desirable.
- (3) The adjudicator shall preside at the pre-inquiry meeting and shall determine the matters to be discussed and the procedure to be followed, and he may require any person present at the meeting who, in his opinion, is behaving in a disruptive manner to leave and may refuse to permit that person to attend any further meeting, or may permit him to return only on such conditions as he may specify.

Inquiry timetable

- 7.—(1) The adjudicator may at any time arrange a timetable for the proceedings at, or at part of, an inquiry and may at any time vary the timetable.
- (2) The adjudicator may specify in a timetable arranged pursuant to this regulation a date by which any proof of evidence and summary required by regulation 11 to be sent to him shall be so sent.

Appointment of assessor

- 8.—(1) The adjudicator may appoint an assessor to sit with him at the inquiry to advise him on any matters arising.
- (2) Where the adjudicator appoints an assessor he shall notify every person entitled to appear at the inquiry of the name of the assessor and of the matters on which he is to advise the adjudicator.

Date and notification of inquiry

- 9.—(1) The date fixed by the adjudicator for the holding of an inquiry shall, unless he considers such a date impracticable, be not later than 12 weeks after the relevant date; and where he considers it impracticable to fix a date within that period, the date fixed shall be the earliest date after the end of that period which he considers to be practicable.
- (2) Unless the adjudicator agrees a lesser period of notice with the proposer and the relevant objectors the adjudicator shall give not less than four weeks written notice of the date, time and place for the holding of an inquiry to—
- (a) every proposer;
 - (b) each relevant objector; and
 - (c) each objector who has been required under regulation 5(2) to serve a statement of case.
- (3) The adjudicator may vary the date fixed for the holding of an inquiry, whether or not the date as varied is within the period of 12 weeks mentioned in paragraph (1); and paragraph (2) shall apply to the variation of a date as it applies to the date originally fixed.

(4) The adjudicator may vary the time or place for the holding of an inquiry and shall give such notice of any such variation as appears to him to be reasonable.

(5) The adjudicator may require a proposer to take one or more of the following steps—

(a) not less than two weeks before the date fixed for the holding of an inquiry, to publish a notice of the inquiry in one or more newspapers circulating—

(i) where the inquiry relates to a draft school organisation plan, in the area of the relevant local education authority, and

(ii) where the inquiry relates to a school or proposed school, in the area served or proposed to be served by the school or proposed school;

(b) to serve a notice of the inquiry on such persons or classes of persons as he may specify, within such period as he may specify; or

(c) where the inquiry relates to a school or proposed school to post a notice of the inquiry in a conspicuous place near such school or the site of such proposed school, within such period as he may specify.

(6) Every notice of inquiry published, served or posted pursuant to paragraph (5) shall contain—

(a) a clear statement of the date, time and place of the inquiry;

(b) a brief description of the matter the subject of the inquiry.

Appearances at the inquiry

10.—(1) The persons entitled to appear at the inquiry are—

(a) every proposer;

(b) each relevant objector;

(c) any other person who has served a statement of case under regulation 5.

(2) Nothing in paragraph (1) shall prevent the adjudicator from permitting any other person to appear at an inquiry and such permission shall not be unreasonably withheld.

(3) Any person entitled or permitted to appear may do so on his own behalf or be represented by counsel, solicitor, or any other person.

Proofs of evidence

11.—(1) A person entitled to appear at an inquiry who proposes to give, or to call another person to give, evidence at the inquiry by reading a proof of evidence shall send a copy of the proof to the adjudicator together with, subject to paragraph (2), a written summary.

(2) No written summary shall be required where the proof of evidence proposed to be read contains no more than 1,500 words.

(3) The proof and any summary shall be sent to the adjudicator not later than—

(a) three weeks before the date fixed for the holding of the inquiry; or

(b) where a time-table has been arranged pursuant to regulation 7 which specifies a date by which the proof and any summary shall be sent to the inspector, that date.

(4) Where any proposer or objector sends a copy of a proof to the adjudicator in accordance with paragraph (1), with or without a summary, they shall at the same time—

(a) where the proof was sent by a proposer, send a copy to each relevant objector;

(b) where the proof was sent by a relevant objector, send a copy to the proposer and each other relevant objector; and

(c) where the proof was sent by any other person, send a copy to the proposer and each relevant objector.

(5) Where a written summary is provided in accordance with paragraph (1), only that summary shall be read at the inquiry, unless the adjudicator permits or requires otherwise.

(6) Any person required by this regulation to send a copy of a proof to any other person shall send with it a copy of the whole, or the relevant part, of any document referred to in it, unless a

copy of the document or part of the document in question is already available for inspection pursuant to regulation 5(4).

(7) Every proposer shall afford to any person who so requests a reasonable opportunity to inspect and, where practicable, take copies of any document sent to or by them in accordance with this rule.

Procedure at inquiry

12.—(1) Except as otherwise provided in these Regulations, the adjudicator shall determine the procedure at an inquiry.

(2) Unless in any particular case the adjudicator with the consent of the proposer otherwise determines, the proposer shall begin and shall have the right of final reply; and the other persons entitled or permitted to appear shall be heard in such order as the adjudicator may determine.

(3) A person entitled to appear at an inquiry shall be entitled to call evidence and each proposer and any relevant objector shall be entitled to cross-examine persons giving evidence, but, subject to the foregoing and paragraphs (4) to (6), the calling of evidence and the cross-examination of persons giving evidence shall otherwise be at the adjudicator's discretion.

(4) The adjudicator may refuse to permit—

- (a) the giving or production of evidence;
- (b) the cross-examination of persons giving evidence; or
- (c) the presentation of any other matter,

which he considers to be irrelevant or repetitious; but where he refuses to permit the giving of oral evidence, the person wishing to give the evidence may submit to him any evidence or other matter in writing before the close of the inquiry.

(5) The adjudicator may refuse to permit the giving or production of evidence by reading a proof of evidence if the person has not complied with regulations 11(1) and (3).

(6) Where a person gives evidence at an inquiry by reading a summary of his evidence in accordance with regulation 11(5), the proof of evidence referred to in regulation 11(1) shall, unless the person required to provide the summary notifies the adjudicator that he now wishes to rely on the contents of the summary alone, be treated as tendered in evidence, and the person whose evidence the proof contains shall then be subject to cross-examination on it to the same extent as if it were evidence he had given orally.

(7) The adjudicator may direct that facilities shall be afforded to any person appearing at an inquiry to take or obtain copies of documentary evidence open to public inspection.

(8) The adjudicator may require any person appearing or present at an inquiry who, in his opinion, is behaving in a disruptive manner to leave and may refuse to permit that person to return, or may permit him to return only on such conditions as he may specify; but any such person may submit to him any evidence or other matter in writing before the close of the inquiry.

(9) The adjudicator may allow any person to alter or add to a statement of case served under regulation 5 so far as may be necessary for the purposes of the inquiry; but he shall (if necessary by adjourning the inquiry) give every other person entitled to appear who is appearing at the inquiry an adequate opportunity of considering any fresh matter or document.

(10) The adjudicator may proceed with an inquiry in the absence of any person entitled to appear at it.

(11) The adjudicator may take into account any written representation or evidence or any other document received by him from any person before an inquiry opens or during the inquiry provided that he discloses it at the inquiry.

(12) The adjudicator may from time to time adjourn an inquiry and, if the date, time and place of the adjourned inquiry are announced before the adjournment, no further notice shall be required.

(13) Where an inquiry is held pursuant to paragraph 9 of Schedule 7 to the Act the reference in paragraph (2) to the proposer shall have effect as a reference to the Secretary of State.

Site inspections

13.—(1) The adjudicator may make an unaccompanied inspection of any school or the site of any proposed school which is the subject of the inquiry before or during an inquiry without giving notice of his intention to the persons entitled to appear at the inquiry.

(2) The adjudicator may, during an inquiry or after its close, inspect any school or the site of any proposed school which is the subject of the inquiry in the company of the proposer, and any relevant objector; and he shall make such an inspection if so requested by the proposer or any relevant objector before or during an inquiry.

(3) In all cases where the adjudicator intends to make an inspection of the kind referred to in paragraph (2) he shall announce during the inquiry the date and time at which he proposes to make it.

(4) The adjudicator shall not be bound to defer an inspection of the kind referred to in paragraph (2) where any person mentioned in that paragraph is not present at the time appointed.

Procedure after inquiry

14.—(1) Where an assessor has been appointed, he may, after the close of the inquiry, make a report in writing to the adjudicator in respect of the matters on which he was appointed to advise, and where he does so the adjudicator shall state in his notification of his decision pursuant to regulation 15 that such a report was made.

(2) If, after the close of an inquiry, the adjudicator proposes to take into consideration any new evidence or any new matter of fact which was not raised at the inquiry and which he considers to be material to his decision, he shall not come to a decision without first—

- (a) notifying the persons entitled to appear at the inquiry who appeared at it of the matter in question; and
- (b) affording to them an opportunity of making written representations to him with respect to it within three weeks of the date of the notification or of asking within that period for the re-opening of the inquiry.

(3) The adjudicator may, as he thinks fit, cause an inquiry to be re-opened, and he shall do so if asked by any proposer or relevant objector in the circumstances and within the period mentioned in paragraph (2); and where an inquiry is re-opened—

- (a) the adjudicator shall send to the persons entitled to appear at the inquiry who appeared at it a written statement of the matters with respect to which further evidence is invited; and
- (b) paragraphs (2) to (6) of regulation 9 shall apply as if the references to an inquiry were references to a re-opened inquiry.

Notification of decision

15.—(1) The adjudicator shall notify his decision on an appeal, and his reasons for it, in writing to all persons entitled to appear at the inquiry who did appear, and to any other person who, having appeared at the inquiry, has asked to be notified of the decision.

(2) Any person entitled to be notified of the adjudicator's decision under paragraph (1) may apply to the adjudicator within six weeks of the date of the decision, for an opportunity of inspecting any documents listed in the notification or any report made by an assessor and the adjudicator shall afford him that opportunity.

Allowing further time

16. The adjudicator may at any time in any particular case allow further time for the taking of any step which is required or enabled to be taken by virtue of these regulations, and references in these regulations to a day by which, or a period within which, any step is required or enabled to be taken shall be construed accordingly.

Services of notices by post

17. Notices or documents required or authorised to be served or sent under these regulations may be sent by post.

Amendment of the Education (References to Adjudicator) Regulations 1999

18.—(1) The Education (References to Adjudicator) Regulations 1999(a) shall be amended as follows.

(a) S.I. 1999/702.

(2) In regulation 2(3) for “section 26” there shall be substituted “section 25”.

4th May 1999

Estelle Morris
Minister of State,
Department for Education and Employment

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the holding of local inquiries by adjudicators. They establish a timetable for each procedural step, and provide for exchange of information between interested parties in addition to regulating matters relating to the conduct of the inquiry itself and to the notification of the adjudicator's decision.

The Regulations also amend the Education (References to Adjudicator) Regulations 1999 to correct an error in those regulations.

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