

Executive Note

The Additional Support Needs Tribunals for Scotland (Practice and Procedure) Rules 2005 SSI/2005/514

The above instrument was made in exercise of the powers conferred by section 17(4) and Schedule 1 of the Education (Additional Support for Learning) (Scotland) Act 2004 (“the 2004 Act”). The instrument is subject to negative resolution procedure.

Policy Objectives

Introduction

The 2004 Act replaces the system for assessment and recording of children and young people with special educational needs with a new framework around additional support needs. Additional support needs are defined more broadly than special educational needs. Children with additional support needs arising from enduring complex or multiple factors, for whom the education authority are responsible for providing school education, and who require support from outside education services, will receive a co-ordinated support plan (“CSP”).

Section 17 and Schedule 1 of the 2004 Act provides for the constitution of Additional Support Needs Tribunals for Scotland (“Tribunals”).

Section 18 of the 2004 Act provides that parents or the young person themselves can refer any specified decision, failure or information relative to a CSP to a Tribunal for determination. A refusal of a placing request can also be the subject of a reference where a CSP has been prepared, is about to be prepared or a decision that a CSP is not required has already been referred to the Tribunal.

Section 19 of the 2004 Act specifies the powers of a Tribunal in relation to references made to it. A Tribunal may require an education authority to take action on a timeframe set by the Tribunal. When determining references made to it, a Tribunal will take account of the code of practice published by Scottish Ministers under section 27(1) of the 2004 Act.

These rules set out how the new Additional Support Needs Tribunals for Scotland will deal with cases that are referred to them. The 2004 Act (Schedule 1, paragraph 11) requires Scottish Ministers to make rules as to the practice and procedure of the Tribunals. Paragraph 11(2) sets out a list of matters for which provision may be made by the rules.

Some matters are not covered by the rules because they are spelt out elsewhere in the 2004 Act (especially Schedule 1) or in other legislation, such as the Education (Scotland) Act 1980. The 2004 Act requires the Scottish Ministers to make a number of regulations and most of these have already been before the Scottish Parliament. Some of these regulations, e.g. the Additional Support for Learning (Co-ordinated Support Plan) (Scotland) Regulations 2005 (SSI 2005/266), set timescales and parameters contravention of which may be the subject matter of references made to the Tribunals. Schedule 1 gives the President of the Tribunals powers to issue directions and guidance in respect of the administration of the Tribunal (paragraph 8 (3)) and directions as to the practice and procedure of the Tribunals (paragraph 12). Section 21 provides for a right of appeal from a Tribunal to the Court of Session on a point of law.

The 2004 Act amends the Tribunals and Inquiries Act 1992 to bring the Tribunals under the supervision of the Scottish Committee of the Council on Tribunals. The Council on Tribunals keeps under review, and reports on, the constitution and working of the tribunals under its supervision. The drafting of these rules has followed the Council's *Guide to Drafting Tribunal Rules* (November 2003), as far as it is relevant.

Unlike the Special Educational Needs and Disability Tribunals in England and Wales, the Tribunals will not have jurisdiction over disability discrimination cases in Scottish school education, at least initially, and so the rules of procedure do not cover such matters. The Executive intends to review the operation and scope of the Tribunals in 2007 as part of wider review of implementation of the 2004 Act.

Matters Covered by the Rules

The rules follow the structure of the Council's *Guide to Drafting Tribunal Rules* and are thus arranged into six parts:

Part I. General. This Part defines the terms used in the rules and also includes the principles ("the overriding objective") by which a Tribunal should interpret and apply them.

Part II. Start of Proceedings. This Part sets out how a reference should be made to a Tribunal, the time limits for the education authority to respond and makes provision for the submission of further written evidence by either party.

Part III. Management Powers of Tribunals. This Part gives the President and conveners powers to issue directions to either party and adjust time limits in preparation for a hearing. It also enables references on substantially the same issue to be consolidated.

Part IV. Evidence. This Part builds on provision in the 2004 Act itself (Schedule 1, paragraph 13) for the citation of witnesses and production of documents and sets out the relevant Tribunal procedures. It also makes provision for giving evidence by telephone, video link or other means and empowers a Tribunal to appoint an expert to give it advice on any particular matter.

Part V. Hearings and Decisions. This Part makes provision in relation to hearings, from the giving of notice to the conduct of the hearing. It also sets out the procedures for conducting, postponing and adjourning hearings. It sets out who can and cannot attend and the consequences for a party of failing to attend.

Part VI. Miscellaneous. This Part contains a range of provisions covering various contingencies. In particular, it includes provision for: a change of education authority having responsibility for the child's education; any function of a convener to be exercised by the President or another convener; arrangements for publication of Tribunal decisions; and procedures for correcting administrative errors.

Overview of Procedures

The appellant makes a reference and, on receiving the notice of reference, the Secretary sends a copy of it to the education authority. A convener decides whether the Tribunals can deal with the reference. If the appellant has not provided enough information, the convener writes to ask them for the missing information. The appellant has 10 working days to reply.

As soon as the appellant has provided all the requisite information, the Secretary writes to both parties advising them that the case statement period has begun. During this period of 30 working days, the education authority must provide a response and both parties may provide further written evidence. Before the end of this period both parties must provide the Secretary with a list of witnesses they intend to bring to the hearing. Both parties can ask the Tribunal to give them more time. To do so, they must write to the Tribunal giving their reasons.

At the end of the case statement period, the Secretary will send the appellant a copy of the education authority's response and supporting information, and the education authority a copy of the appellant's case statement and any other supporting information. The Secretary will ask the appellant and the education authority about hearing dates and, subsequently, write to inform both parties of the place and date of the hearing.

The Secretary will confirm the place, date and time of the hearing about 10 working days beforehand. The Secretary will send a written decision to both parties, usually within 10 working days after the hearing.

Consultation

The proposals for rules were published for public consultation from 11 May until 3 August 2005. During this period, 216 responses were received and public consultation events were held in Edinburgh and Glasgow. The Scottish Committee of the Council on Tribunals were consulted during the public consultation period and subsequently given a draft of the rules on 1 September. The Executive has largely accepted their recommendations in finalising the rules.

The consultation exercise did not result in major changes to the overall scheme proposed. However, it did result in some improvements and refinements in the detail of the scheme and these are set out in the report of the consultation. The consultation also produced a lot of useful views and material which, although not appropriate for inclusion in the rules themselves, will be reflected elsewhere.

Financial Effects

The instrument has no financial effects on the Scottish Executive, local government or business.

Scottish Executive Education Department
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