

2010 No. 152

EDUCATION

The Additional Support Needs Tribunals for Scotland (Practice and Procedure) Amendment Rules 2010

<i>Made</i>	- - - -	<i>13th April 2010</i>
<i>Laid before the Scottish Parliament</i>		<i>16th April 2010</i>
<i>Coming into force</i>	- -	<i>16th August 2010</i>

The Scottish Ministers make the following Rules in exercise of the powers conferred by sections 17(4) and 34(2)(b) of, and paragraph 11 of schedule 1 to, the Education (Additional Support for Learning) (Scotland) Act 2004(a) and all other powers enabling them to do so.

In accordance with section 44(2) of, and paragraph 24(1) of Schedule 7 to, the Tribunals, Courts and Enforcement Act 2007(b) they have consulted with the Administrative Justice and Tribunals Council and its Scottish Committee.

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Additional Support Needs Tribunals for Scotland (Practice and Procedure) Amendment Rules 2010 and come into force on 16th August 2010.

(2) In these Rules, “the principal Rules” means the Additional Support Needs Tribunals for Scotland (Practice and Procedure) Rules 2006(c).

Amendment of the Additional Support Needs Tribunals for Scotland (Practice and Procedure) Rules 2006

2. The principal Rules are amended in accordance with rules 3 to 21.

Amendment of rule 2

3. In rule 2 (interpretation)—

(a) in the definition of “the authority” after “person” insert “and in the case of the decision of an education authority refusing a placing request includes an education authority which refused the request”; and

(b) for the definition of “case statement period” substitute—

““case statement period” means the period referred to in either rule 8(2)(a) or (b) as appropriate”.

(a) 2004 asp 4. Paragraph 11 was amended by section 20 of the Education (Additional Support for Learning) (Scotland) Act 2009 (asp 7).
(b) 2007 c.15.
(c) S.S.I. 2006/88.

Amendment of rule 5

4. In rule 5(1) (reference) insert at the end—

“or, at the discretion of the Secretary, a reference transmitted by electronic means may be accepted without the appellant’s signature”.

Amendment of rule 8

5. In rule 8 (case statement period and statement of appellant’s case)—

(a) for paragraph (2) substitute—

“(2) The case statement period shall be—

(a) in the case of an alleged failure of the type referred to in section 18(3)(c) of the Act, the period of 15 working days; or

(b) in any other case, the period of 30 working days,

beginning on the date on which notice under paragraph (1) is taken to have been received in accordance with rule 48.”;

(b) in paragraph (3)—

(i) delete the words from “Before” to “period”; and

(ii) after “person” insert—

“—

(a) where rule 8(2)(a) applies, before the end of the case statement period;

(b) where rule 8(2)(b) applies, before the end of the first 20 working days of the case statement period”;

(c) in paragraph (4)—

(i) delete “In exceptional circumstances”; and

(ii) after “hearing” insert “after having first sought and taken account of the views of the respondent”; and

(d) for paragraph (6) substitute—

“(6) Subject to paragraphs (6A) and (7), on the application of either party or on the convener’s own initiative, a convener may make an order shortening or extending the case statement period in any reference.

(6A) Before making an order under paragraph (6), the convener shall seek oral or written representations from the parties on the issue of shortening or extending the case statement period.”.

Amendment of rule 9

6. In rule 9 (distribution of documents by Secretary)—

(a) for paragraph (2) substitute—

“(2) If, after the closure of the case statement period, any amendment, supplementary statement, written representation, written evidence or other document or application is delivered to the Secretary, the Secretary shall—

(a) where the parties agree to the late submission, send a copy of it to the other party; or

(b) where the parties do not agree to the late submission, send a copy of it to the other party to enable the parties to make representations on its admission within such time limits as may be determined by a convener or by a Tribunal at a hearing.”;

(b) after paragraph (2) insert—

“(3) Where an education authority has been called under rule 24A(2), the Secretary shall send to that authority a copy of all of the documentation submitted by the appellant under rule 8(3) and (5).”.

Amendment of rule 10

7. In rule 10(1) (response) delete “No later than the end of the case statement period” and insert after “Secretary”—

“within the last ten working days of the case statement period”.

Amendment of rule 11

8. In rule 11(1)(a) (withdrawal of reference) after “appellant” insert—

“or by the representative of the appellant”.

Amendment of rule 21

9. In rule 21(1) (recovery of documents)—

(a) after “Tribunal” insert “or a convener”;

(b) after “its” insert “or his or her”.

Amendment of rule 22

10. In rule 22 (witnesses and citation of witnesses)—

(a) in paragraph (3)—

(i) after “Tribunal” where it first occurs insert “or a convener”, and

(ii) after “its” insert “or his or her”; and

(b) after paragraph (6) insert—

“(7) At the hearing of a reference, the parties shall, subject to the provisions of these Rules, be entitled to be present and be heard, to give evidence, to call witnesses, to question witnesses and to address the Tribunal both on the evidence and generally on the subject matter of the reference, provided that neither party shall be entitled unless permitted to do so by a convener, or the Tribunal at a hearing, to call more than two witnesses in addition to the child or young person to give evidence in person.”.

Revocation of rule 23

11. Delete rule 23 (evidence by telephone, video link or other means).

Amendment of rule 24

12. In rule 24 (expert evidence)—

(a) in paragraph (1) after “Tribunal” where it first and second occurs, insert “or a convener”; and

(b) in paragraph (3)—

(i) after “Tribunal” insert “or a convener”; and

(ii) after “it” insert “, he or she”.

Insertion of rule 24A

13. After rule 24 insert—

“Specified persons

24A.—(1) On the application of either party or on its own initiative the Tribunal or a convener may call any person having a sufficient interest in the matter before the Tribunal to attend a hearing and give evidence.

(2) In the case of the decision of an education authority refusing a placing request the Tribunal or convener may call the education authority for the area to which the child or young person belongs (where it would be desirable for the Tribunal to have the assistance of the education authority) to attend a hearing and give evidence.”.

Amendment of rule 26

14. In rule 26 (power to decide reference without hearing)—

(a) in paragraph (1) delete “Tribunal” and insert “convener”;

(b) in paragraph (2)(c) delete “or”;

(c) after paragraph (2)(d) insert—

“or

(e) where it has been established that the child or young person requires a co-ordinated support plan and the authority fails to prepare such a plan within the time limit provided.”;

(d) in paragraph (3) delete “Tribunal” and insert “convener”;

(e) after paragraph (3) insert—

“(4) The Secretary shall, after receipt of a reference which is to proceed without a hearing in accordance with this rule, send to the parties—

(a) information and guidance; and

(b) an indication of when the Secretary expects to be able to notify the parties of the decision of the convener.”.

Amendment of rule 27

15. In rule 27 (attendance at hearings) for paragraph (7)(i) substitute “a member of the Administrative Justice and Tribunals Council or its Scottish Committee appointed under section 44 of and Schedule 7 to the Tribunals, Courts and Enforcement Act 2007;”.

Amendment of rule 28

16. In rule 28 (conduct of the hearing)—

(a) delete paragraph (2); and

(b) in paragraph (8) for “rule 27(5)” substitute “rule 27(7)”.

Amendment of rule 29

17. In rule 29 (evidence at hearing) after paragraph (2) insert—

“(3) A convener or the Tribunal may at the start of a hearing, on the application of either party or on his, her or its own initiative, determine that a witness be allowed to give evidence by telephone, video link or any other means of communication, if satisfied that this would not prejudice the achievement of the overriding objective.”.

Amendment of rule 38

18. In rule 38 (orders of the Court)—

- (a) in paragraph (2) for the words from “a period” to “each may” substitute “such period as a convener may specify each party may”; and
- (b) in paragraph (3)(b) for the words from “a period” to “writing)” substitute “such period as the convener may specify”.

Amendment of rule 44

19. In rule 44 (register) at the end of paragraph (2)(c) insert “and any hearing at which the convener sat alone”.

Insertion of rule 45A

20. After rule 45 insert—

“Review

45A.—(1) If, on the application of a party, a Tribunal is satisfied that—

- (a) its decision was based on an error of fact or in law;
- (b) a party, who was entitled to be heard at a hearing but failed to be present or represented, had a good reason for failing to be present or represented and the interests of justice require; or
- (c) otherwise that the interests of justice require,

the Tribunal may review and vary or revoke the relevant decision, order or award.

(2) An application for the purposes of paragraph (1) of this rule must be—

- (a) delivered to the Secretary at any time not later than one month after the date on which the decision was issued to the applicant; and
- (b) in writing stating the reasons for the making of the application in full.

(3) The Secretary must send a copy of the application to any other party involved in the reference within 10 working days of receipt.

(4) The Tribunal may dispense with a hearing where both parties so agree in writing.

(5) The review must be decided as soon as reasonably practicable by the Tribunal which decided the case or, where it is not practicable for it to be heard by that Tribunal, by a Tribunal appointed by the President.

(6) If, having reviewed the decision, the decision is to be varied or revoked, the Tribunal must substitute the decision it thinks fit or order a rehearing before either the same or a differently constituted Tribunal.

(7) On the setting aside or variation of the Tribunal’s decision the Registrar must, as soon as reasonably practicable, make such correction as may be necessary in the register and must send a copy of the entry so corrected to each of the parties.

(8) Rule 37 shall apply to the Tribunal’s decision on the review.”.

Amendment of Rule 49 (signature of documents)

21. In rule 49(b) insert at the beginning “Subject to rule 5(1)”.

St Andrew’s House,
Edinburgh
13th April 2010

ADAM INGRAM
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Additional Support Needs Tribunals for Scotland (Practice and Procedure) Rules 2006 (“the principal Rules”). The principal Rules prescribe the practice and procedure to be followed in proceedings before the Additional Support Needs Tribunals for Scotland created under section 17 of, and Schedule 1 to, the Education (Additional Support for Learning) (Scotland) Act 2004 (asp 4).

Rule 3 amends the definitions of “the authority” and “case statement period”.

Rule 4 provides the Secretary to the Tribunal with a discretion to accept a reference to it sent by electronic means but without the appellant’s signature.

Rule 5 provides for a shortened case statement period in respect of an alleged failure of an education authority to prepare a co-ordinated support plan within the time allowed. It also changes the procedure for amending a reference.

Rule 6 amends the procedure for the treatment of late submissions to the Tribunal.

Rule 7 amends the time within which an education authority may submit a response to a referral to the Secretary to the Tribunal.

Rule 8 provides that the representative of the appellant may withdraw a reference to the Tribunal.

Rule 9 provides that the convener may direct the Secretary to require a person to produce documents to the Tribunal.

Rules 10 and 16 provide that the convener him or herself may direct the Secretary to cite a person on either party’s list of witnesses to attend a hearing and repositions the provisions of the existing rule 28(2) relating to the conduct of hearings.

Rules 11 and 17 repositions the provisions of the existing rule 23 which allows a witness to give evidence by telephone, video link or by any other means.

Rule 12 provides that the convener him or herself may also appoint an expert to enquire, report and give evidence.

Rule 13 empowers the Tribunal or the convener to call any person having sufficient interest to give evidence, as also the appropriate education authority.

Rule 14 enables the convener, as well as the Tribunal, to decide a reference without a hearing, adds an additional matter that may be decided without a hearing and makes consequential provision about what the Secretary is to notify the parties.

Rule 15 substitutes a reference to a member appointed under the Tribunals, Courts and Enforcement Act 2007.

Rule 18 provides for the convener having a discretion as to the period within which the parties may submit a supplementary statement of case and further written evidence.

Rule 19 requires the Secretary to enter in the Register any hearing at which the convener sat alone.

Rule 20 provides for the circumstances and manner in which a Tribunal may review its own proceedings.

Rule 21 makes an amendment to rule 49 in consequence of rule 4.