

---

STATUTORY INSTRUMENTS

---

**2002 No. 1985**

The Special Educational Needs and Disability Tribunal (General Provisions and Disability Claims Procedure) Regulations 2002

PART V

ADDITIONAL POWERS OF THE TRIBUNAL

**Transfer of proceedings**

**41.** Where it appears to the President that a claim pending before a tribunal could be determined more conveniently in another tribunal he may at any time, upon the application of a party or on his own initiative, direct that the proceedings be transferred so as to be determined in that other tribunal:

Provided that no such direction shall be given unless notice has been sent to both parties giving them an opportunity to make representations against the giving of the direction.

**Regulation of proceedings**

**42.** Subject to the provisions of the 1995 Act and these Regulations, a tribunal may regulate its own procedure.

**Decisions agreed by the parties**

**43.** A tribunal may, if it thinks fit, make a decision in terms agreed in writing by the parties.

**Power to strike out**

**44.—(1)** The Secretary of the Tribunal shall, at any stage of the proceedings, if the responsible body applies or the President so directs, serve a notice on the parent stating that it appears that the claim should be struck out on one or both of the grounds specified in paragraph (2) or for want of prosecution.

(2) The grounds referred to in paragraph (1) are that—

- (a) the claim is not, or is no longer, within the jurisdiction of the tribunal;
- (b) that notice of claim is, or the claim is or has become, scandalous, frivolous or vexatious.

(3) The notice under paragraph (1) shall invite the parent to make representations.

(4) The tribunal may, after considering any representations duly made by the parent, order that the claim should be struck out on one or both of the grounds specified in paragraph (2) or for want of prosecution.

(5) The tribunal may make an order under paragraph (4) without holding a hearing unless the parent requests the opportunity to make oral representations, and if the tribunal holds a hearing it may be held at the beginning of the hearing of the substantive claim.

(6) The President may, if he thinks fit, at any stage of the proceedings order that a statement of a party's case should be struck out or amended on the grounds that it is scandalous, frivolous or vexatious.

(7) Before making an order under paragraph (6), the President shall give to the party against whom he proposes to make the order a notice inviting representations and shall consider any representations duly made.

(8) For the purposes of this regulation—

- (a) a notice inviting representations must inform the recipient that he may, within a period (not being less than 5 working days) specified in the notice, either make written representations or request an opportunity to make oral representations;
- (b) representations are duly made if—
  - (i) in the case of written representations, they are made within the period so specified; and
  - (ii) in the case of oral representations, the party proposing to make them has requested an opportunity to do so within the period so specified.

#### **Power to exercise powers of President and chairman**

**45.**—(1) An act which these Regulations require or authorise the President to do may be done by a member of the chairmen's panel authorised by him.

(2) Where a member of the chairmen's panel authorised under paragraph (1)—

- (a) selects the chairman of a tribunal, he may select himself;
- (b) makes a decision, regulation 39 applies in relation to that decision as if it referred to the member of the chairmen's panel in place of the President.

(3) Subject to regulation 49(6), in the event of the death or incapacity of the chairman, or if he ceases to be a member of the chairmen's panel, following the decision of the tribunal, the functions of the chairman for the completion of the proceedings, including any review of the decision, may be exercised by the President or any member of the chairmen's panel.

#### **Power to exercise the functions of a lay member**

**46.**—(1) In the event of the death or incapacity of a member of the tribunal other than the chairman, or if he ceases to be a member of the lay panel, following the decision of the tribunal, the functions of the tribunal in relation to any review of that decision may be undertaken by the other two members.

(2) This regulation shall not apply to a tribunal—

- (a) which is constituted of two members in accordance with regulation 32(5);
- (b) of which any person is authorised to act in place of the chairman in accordance with regulation 45(3).

#### **The Secretary of the Tribunal**

**47.** A function of the Secretary of the Tribunal may be performed by another member of the staff of the tribunal authorised by the President.

## **Orders of the Court**

**48.**—(1) If any decision of the tribunal is set aside, varied or altered in any way by order of the Court, the Secretary of the Tribunal shall alter the entry in the records to conform to that order and shall notify the parties accordingly.

(2) If a claim is remitted to the tribunal by order of the Court to be reheard, the Secretary of the Tribunal shall notify both parties that, during a period of 15 working days (or such shorter period as the parties may agree in writing), each may submit a supplementary statement of his case and further written evidence.

(3) If an order to strike out a claim is quashed or set aside by the Court, the Secretary of the Tribunal shall notify the parties—

(a) where the case statement period had not expired before the order to strike out took effect—

(i) in accordance with regulations 17(1)(b)(iv) and 17(1)(c)(iii), that a new case statement period shall be commenced; and

(ii) that, within the new case statement period, the parties may submit the documentation referred to in sub-paragraph (b) in respect of a statement of case or evidence submitted before the strike out took effect;

(b) where sub-paragraph (a) does not apply, that each party has a period of 15 working days to submit a supplementary statement of his case and further written evidence.

(4) The Secretary of the Tribunal shall forthwith send a copy of all statements and written evidence received from a party during the periods referred to in paragraphs (2) and (3)(b) to the other party.

## **Irregularities**

**49.**—(1) An irregularity resulting from failure to comply with any provision of these Regulations or of any direction of the tribunal before the tribunal has reached its decision shall not of itself render the proceedings void.

(2) Where any such irregularity comes to the attention of the tribunal, the tribunal may, and shall, if it considers that any person may have been prejudiced by the irregularity, give such directions as it thinks just before reaching its decision to cure or to waive the irregularity.

(3) Clerical mistakes in any document recording the decision of the tribunal or a direction or decision of the President produced by or on behalf of the tribunal or errors arising in such documents from accidental slips or omissions may at any time be corrected by the chairman or the President (as the case may be) by certificate under his hand.

(4) The Secretary of the Tribunal shall as soon as may be send a copy of any corrected document containing reasons for the tribunal's decision to each party.

(5) Where a parent has appointed a representative in accordance with regulation 12, the Secretary of the Tribunal shall (notwithstanding regulation 12(4)) send a copy of the document referred to in paragraph (4) above to the parent as well as the representative.

(6) Where these Regulations require the chairman to sign a document, but by reason of death or incapacity he is unable to do so, the other members of the tribunal shall sign it and certify that the chairman is unable to sign.

## **Method of sending, delivering or serving notices and documents**

**50.**—(1) A notice given under these Regulations shall be in writing and a party whom the Regulations require to notify a matter to the Secretary of the Tribunal shall do so in writing.

(2) Notices and documents required by these Regulations to be sent or delivered to the Secretary of the Tribunal or to the Tribunal may be sent by post, by facsimile transmission or by electronic mail to or delivered at the office of the Tribunal or such other office as the Secretary of the Tribunal may notify to the parties.

(3) Notices and documents which these Regulations authorise or require the President or the Secretary of the Tribunal to send may (subject to paragraph (5)) either be sent by first class post or by facsimile transmission to or delivered at—

(a) in the case of a party—

(i) his address for service specified in the notice of claim or in a written reply or in a notice under paragraph (4), or

(ii) if no address for service has been so specified his last known address; and

(b) in the case of any other person, his place of residence or business or if such person is a corporation, the corporation's registered or principal office.

(4) A party may at any time by notice to the Secretary of the Tribunal change his address for service under these Regulations.

(5) The recorded delivery service shall be used instead of first class post for service of a summons issued under regulation 26 requiring the attendance of a witness.

(6) A notice or document sent by the Secretary of the Tribunal by post in accordance with these Regulations, and not returned, shall be taken to have been delivered to the addressee on the second day for normal postal deliveries after it was posted.

(7) A notice or document sent by facsimile transmission or electronic mail shall be taken to have been delivered when it is received in legible form.

(8) Where for any sufficient reason service of any document or notice cannot be effected in the manner prescribed under this regulation, the President may dispense with service or make an order for substituted service in such manner as he may deem fit and such service shall have the same effect as service in the manner prescribed under this regulation.

### **Extensions of time**

**51.**—(1) Where these Regulations or a direction made under them requires or authorises a person to do something within a period of time, the President may, on the application of that person or on his own initiative, in exceptional circumstances extend that period of time.

(2) Where the President has extended a period of time reference in these Regulations to that period of time shall be construed as a reference to the period of time as so extended.