
WELSH STATUTORY INSTRUMENTS

2012 No. 322

**The Special Educational Needs
Tribunal for Wales Regulations 2012**

PART B

SPECIAL EDUCATIONAL NEEDS APPEALS AND DISABILITY CLAIMS

Case preparation before the hearing

The Tribunal's management powers

General powers

28.—(1) The President may make practice directions.

(2) For the purposes of these Regulations “practice directions” means practice directions issued by the President to provide practical advice on how to interpret these Regulations.

(3) The power of the President to make practice directions under paragraph (1) includes a power to vary or revoke practice directions.

(4) The President must publish practice directions made under paragraph (1), and any variation or revocation of practice directions, in such manner as the President considers appropriate.

Power to strike out the appeal or claim

29.—(1) The Secretary of the Tribunal must, at any stage of the appeal or claim if the local authority or the responsible body applies, or the President or the tribunal panel so directs, serve a notice on the appellant or the claimant stating that it has been proposed that the whole or part of the appeal or the claim should be struck out on one of the grounds specified in paragraph (2) or for want of prosecution.

(2) The grounds referred to in paragraph (1) are that the appeal or the claim—

- (a) is made otherwise than in accordance with these Regulations;
- (b) is not, or is no longer, within the jurisdiction of the Tribunal;
- (c) discloses no reasonable grounds;
- (d) is an abuse of the Tribunal's process.

(3) The notice under paragraph (1) must invite the appellant or the claimant to make representations.

(4) For the purposes of this regulation—

- (a) a notice inviting representations must inform the appellant or the claimant that the appellant or the claimant may, within a period (no less than 5 working days) specified in the notice, either make written representations or request an opportunity to make oral representations;

(b) representations are made if—

- (i) in the case of written representations, they are made within the specified period; and
- (ii) in the case of oral representations, the party proposing to make them has requested an opportunity to do so within the specified period.

(5) The President or the tribunal panel may, after considering any representations made by the appellant or the claimant, order that the whole or part of the appeal or the claim is struck out on one of the grounds specified in paragraph (2) or for want of prosecution.

(6) An order under paragraph (5) may be made without holding a hearing unless the appellant or the claimant requests the opportunity to make oral representations.

(7) If oral representations are made in accordance with paragraph (6), the President or the tribunal panel may consider the oral representations at the beginning of the hearing of the substantive appeal or claim.

(8) If the whole of an appeal application or a claim application is struck out under paragraph (5) the proceedings to which the appeal or claim relates are deemed to be concluded.

Order to amend case statement

30.—(1) The President or the tribunal panel may, if the President or the tribunal panel thinks fit at any stage of the appeal or the claim, order that a party’s case statement is amended on the grounds that it discloses no reasonable grounds for bringing the appeal or the claim or it is an abuse of the Tribunal’s process.

(2) Before making an order under paragraph (1), the President or the tribunal panel must give the party against whom the President or the tribunal panel proposes to make the order, a notice inviting representations and must consider any representations made.

(3) For the purposes of this regulation—

- (a) a notice inviting representations must inform the party that, within a period (no less than 5 working days) specified in the notice, the party may either make written representations or request an opportunity to make oral representations;
- (b) representations are 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.

Evidence and submissions

31.—(1) The President or the tribunal panel may give directions on—

- (a) the issues which require evidence or submissions;
- (b) the nature of the evidence or submissions required;
- (c) whether the parties are permitted or required to provide expert evidence, and if so whether the parties must jointly appoint a single expert to provide such evidence;
- (d) the manner in which any evidence or submissions are to be provided, which may include a direction for them to be given—
 - (i) orally at a hearing; or
 - (ii) by written submissions or witness statement; and
- (e) the time by which any evidence or submissions are to be provided.

- (2) The President or the tribunal panel may direct in relation to an appeal—
 - (a) the parent of the child to make the child available for examination or assessment by a suitably qualified professional person; or
 - (b) the person responsible for a school or educational setting to allow a suitably qualified professional person to have access to the school or educational setting for the purpose of assessing the child or the provision made, or to be made, for the child.
- (3) The President or the tribunal panel may consider a failure by a person who is a party to the appeal to comply with a requirement made under paragraph (2), in the absence of any good reason for such failure, as a failure to co-operate with the Tribunal.
- (4) The President or the tribunal panel may—
 - (a) admit evidence whether or not the evidence would be admissible in a civil trial in England or Wales;
 - (b) exclude evidence that would otherwise be admissible where—
 - (i) the evidence was not provided within the time allowed by a direction;
 - (ii) the evidence was otherwise provided in a manner that did not comply with a direction; or
 - (iii) it would otherwise be unfair to admit the evidence.

Directions in preparation for a hearing

32.—(1) The President or the tribunal panel may, on the application of a party or on the President’s or the tribunal panel’s own initiative, give such directions to a party on any matter arising in connection with the appeal or claim as the President or the tribunal panel thinks fit, including such directions as are provided in regulations 34 and 35 to enable the parties to prepare for the hearing or to assist the President or the tribunal panel to determine the issues.

(2) An application by a party for directions must be made in writing to the Secretary of the Tribunal.

(3) A party who submits an application for directions to the Secretary of the Tribunal must unless the application is accompanied by the written consent of the other party serve a copy of the application on the other party.

(4) If the other party objects to the directions sought, the President or the tribunal panel must consider the objection and, if the President or the tribunal panel consider it necessary for the determination of the application, must give the parties an opportunity to make representations.

(5) If in the opinion of the President or the tribunal panel there would not be a reasonable time before a hearing of which notice has been given under regulation 41(1) to comply with a direction for which a party applies, the President or the tribunal panel may—

- (a) if satisfied that compliance with the direction may assist the tribunal panel to determine the issues, postpone the hearing under regulation 51; or
- (b) refuse the application.

(6) A direction must—

- (a) include a statement of the possible consequences for the appeal or claim as provided by regulation 36 of a party’s failure to comply with the direction within the time allowed by the President or the tribunal panel;
- (b) unless the person to whom the direction is addressed had an opportunity to object to the direction, or gave his or her written consent to the application for it, contain a statement to the effect that that person may apply to the President or the tribunal panel under regulation 33 to vary or set aside the direction.

- (7) Where, in accordance with regulation 38(1) the President or the tribunal panel orders—
- (a) that an appeal is heard together with a claim, the directions given under paragraph (1), may relate to the appeal only;
 - (b) that a claim is heard together with an appeal, the directions given under paragraph (1), may relate to the claim only.

(8) Where paragraph (7)(a) applies, the President or the tribunal panel may consider whether it is in the interests of the efficient disposal of the appeal and the claim, and in the interests of the parties, that the directions given with respect to the appeal are the same as, or similar to, those given in the claim.

(9) Where paragraph (7)(b) applies, the President or the tribunal panel may consider whether it is in the interests of the efficient disposal of the claim and the appeal, and in the interests of the parties, that the directions given with respect to the claim are the same as, or similar to, those given in the appeal.

(10) Where it appears to the President or the tribunal panel that there is an issue in an appeal or claim which must be determined prior to the substantive hearing of the appeal or the claim and which cannot properly be determined by the giving of directions, the President or the tribunal panel may summon the parties to appear before the President or the tribunal panel for this purpose and may give any necessary directions relating to their appearance.

Varying or setting aside directions

33.—(1) Where a party to whom a direction is addressed had no opportunity to object to the giving of the direction and did not give written consent to the application for it, that party may apply at any time to the President or the tribunal panel, by notice to the Secretary of the Tribunal, for the direction to be varied or set aside.

(2) The President or the tribunal panel must not vary the direction or set it aside without first notifying the parties and considering any representations made by them.

Particulars and supplementary statements

34. The President or the tribunal panel may give directions requiring any party to provide in or with that party's case statement such particulars or supplementary statements as may reasonably be required for the determination of the appeal or the claim.

Disclosure of documents and other material

- 35.**—(1) The President or the tribunal panel may—
- (a) direct a party to submit to the President or the tribunal panel by a specified date any document or other material which the President or the tribunal panel may require and which it is in the power of that party to submit;
 - (b) give a direction on—
 - (i) any issue on which disclosure of evidence is required;
 - (ii) the nature and extent of the disclosure;
 - (iii) the manner in which the document or other evidence is to be provided to the Tribunal;
and
 - (iv) the exclusion of any document or other evidence which is irrelevant, unnecessary or improperly obtained.

(2) The President or the tribunal panel may impose a condition on the supply of a copy of any document or other material submitted in compliance with a direction given under paragraph (1) that the party receiving it must use the copy only for the purposes of the appeal or claim.

(3) The President or the tribunal panel may require a written undertaking to observe the condition referred to in paragraph (2) before supplying a copy.

(4) The President or the tribunal panel may grant to a party an order for such disclosure or inspection of documents (including the taking of copies) as might be granted under the Civil Procedure Rules 1998(1).

(5) An order under paragraph (4) must contain a reference—

- (a) in relation to an appeal, that under section 336 of the 1996 Act, any person who without reasonable excuse fails to comply with requirements regarding disclosure or inspection of documents is liable on summary conviction to a fine not exceeding level 3 on the standard scale;
- (b) in relation to a claim, that under paragraph 6(8) of Schedule 17 to the 2010 Act, any person who without reasonable excuse fails to comply with requirements regarding disclosure or inspection of documents is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Failure to comply with directions

36.—(1) If a party has not complied with a direction given under these Regulations within the time specified in the direction the President or the tribunal panel may—

- (a) where the party in default is the appellant or the claimant, dismiss the appeal or the claim without a hearing;
- (b) where the party in default is the local authority or the responsible body, determine the appeal or the claim without a hearing;
- (c) hold a hearing—
 - (i) without notifying the party in default, at which the party in default is not present or represented; or
 - (ii) where the parties have been notified of the hearing in accordance with regulation 41(1), and direct that neither the party in default nor any person that intends to represent that party or give evidence on that party’s behalf is entitled to attend the hearing.

(2) In this regulation “the party in default” (“*y parti diffygiol*”) means the party which has failed to comply with the direction.

Consolidating appeals or claims

37.—(1) If more than one appeal relates to the same child, or requires a decision on substantially the same issue, the President may order that the appeals are heard together.

(2) If more than one claim relates to the same child, or requires a decision on substantially the same issue, the President may order that the claims are heard together.

(3) The President may make an order varying or revoking an earlier order made under paragraphs (1) or (2).

(4) Subject to paragraph (5), the President may issue an order under this regulation on the written request of either party or on the President’s own initiative.

(5) An order made under this regulation must only be made if it appears, in the opinion of the President, to be fair and just to do so and before an order is made each party to every appeal or claim affected must be given an opportunity to be heard.

Consolidating claims together with appeals

38.—(1) Subject to paragraphs (2) and (3), where a claim relates to the same child and either arises from the same circumstances or requires a decision on substantially the same issue as an appeal, the President may order that the claim is heard with the appeal.

(2) Nothing in paragraph (1) permits the President to make an order if a person has failed to make an appeal within the time limit for such appeals provided for by regulation 12(1) or by any extension of time granted under these Regulations.

(3) The President may only make an order under paragraph (1) if, in addition to complying with the requirements of paragraph (6), the making of an order would not cause undue delay to the determination of the appeal.

(4) The President may make an order varying or revoking an earlier order made under paragraph (1).

(5) Subject to paragraph (6), the President may issue an order under this regulation on the written request of either party or on the President's own initiative.

(6) An order made under this regulation must only be made if it appears, in the opinion of the President, to be fair and just to do so, and before an order is made each party to every claim or appeal affected must be given an opportunity to be heard.

Addition and substitution of parties

39.—(1) A person may make an application to be joined as a party to the appeal or the claim.

(2) The President or the tribunal panel may make an order to join a person as a party to the appeal or the claim—

- (a) if a written application is made under paragraph (1); or
- (b) on the President's or the tribunal panel's own initiative if no written application has been made but a person consents to be joined as a party to the appeal or the claim.

(3) The President or the tribunal panel may make an order to substitute a party if—

- (a) the wrong person has been named as a party; or
- (b) the substitution has become necessary because of a change in circumstances since the start of the appeal or the claim.

(4) If an order is made under paragraph (2) or (3) the President or the tribunal panel may make such consequential directions, or enquiries under regulation 26 as the President or the tribunal panel considers appropriate.

(5) Unless the President or the tribunal panel directs otherwise, a person appointed or substituted under this regulation must be treated as a party for the purpose of any provision in these Regulations requiring a document to be served on, or sent to, or notice to be given to a party to the appeal or claim.

Transfer of appeal

40.—(1) This regulation applies to proceedings in relation to an appeal made by an appellant other than an appellant entitled to make an appeal under regulations made under section 17(1) and (2) of the Education (Wales) Measure 2009.

(2) Subject to paragraph (3), the President may refer proceedings in relation to an appeal to the First-tier Tribunal if the First-tier Tribunal has jurisdiction in relation to the proceedings.

(3) A reference under paragraph (2) must not be made unless notice has been given to the parties.

(4) If proceedings in relation to an appeal are transferred to the Tribunal by the First-tier Tribunal the Tribunal may continue with the proceedings if the Tribunal has jurisdiction in relation to the proceeding.