
WELSH STATUTORY INSTRUMENTS

2012 No. 322

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

PART D

MISCELLANEOUS

Extension of time

69.—(1) Subject to paragraph (2), the President may, on application of a party or on the President's own initiative, direct that a period of time in these Regulations or a direction made under them is extended.

(2) The President may only extend a period of time in accordance with paragraph (1) if the President considers it fair and just to do so.

(3) The President may extend a period of time by such period as the President thinks fit.

(4) Where the President has extended a period of time, reference in these Regulations or in a direction made under them to that period of time must be construed as a reference to the period of time so extended.

Withdrawal

70. A person may withdraw an appeal or a claim—

- (a) by giving notice to the Secretary of the Tribunal at any time before a hearing; or
- (b) orally at a hearing.

Orders for costs and expenses

71.—(1) The President or the Chair of the tribunal panel which decided the case must not normally make an order in respect of costs and expenses, but may, subject to paragraph (3), make such an order—

- (a) against a party if the President or the Chair is of the opinion that a party has been responsible for improper, unreasonable or negligent action or omission, or for any failure to comply with a direction or any delay which with diligence could have been avoided or that the party's conduct in making or resisting the appeal or claim was unreasonable;
- (b) against a representative if the President or the Chair is of the opinion that the representative is responsible for improper, unreasonable or negligent action or omission, or for any failure to comply with a direction or any delay which with diligence could have been avoided;
- (c) against a party who has failed to attend or be represented at a hearing of which that party has been duly notified;
- (d) against the local authority or responsible body where it has not submitted a case statement under regulation 21;

- (e) against the local authority or the responsible body where the President or the Chair considers that the disputed decision was unreasonable.
- (2) Any order in respect of costs and expenses may be made—
 - (a) as respects any costs and expenses incurred, or any allowances paid; or
 - (b) as respects the whole, or any part, of any allowance (other than allowances paid to members of the Tribunal) paid by the Welsh Ministers to any person for the purposes of, or in connection with, a person’s attendance at a Tribunal hearing.
- (3) An order for costs may be made on the application of a party or on the President’s or the Chair’s own initiative.
- (4) A party making an application for an order under paragraph (3) must—
 - (a) submit a written application and a schedule of costs claimed to the Secretary of the Tribunal; and
 - (b) serve a copy of the application and schedule of costs on the person against whom it is proposed that the order is made.
- (5) An application for an order under paragraph (3) may be made at any time during the appeal or the claim but may not be made later than 28 days from the date on which the tribunal panel—
 - (a) issued the decision notice recording the decision which finally disposed of all issues in the appeal or the claim;
 - (b) upon withdrawal of the appeal or the claim, made an order dismissing the appeal or the claim;
 - (c) following the local authority’s concession to the appeal, issued the decision notice.
- (6) An application for an order under paragraph (3)—
 - (a) must be refused by the President or the Chair if a party is asking the Tribunal to consider a matter which is outside its powers;
 - (b) may be refused in whole or part by the President or the Chair if, in the President’s or the Chair’s opinion, the whole or part of it has no reasonable chance of success.
- (7) Unless an application for an order is refused under paragraph (6), it must be determined after the party and the person against whom it is proposed that the order is made have had an opportunity to be heard by the President or the Chair.
- (8) If an order is made under paragraph (3), the President or the Chair may give directions to be complied with before or at the costs hearing.
- (9) If a party fails to comply with a direction given under paragraph (8) the President or the Chair may take account of that fact when deciding whether to make an order for costs.
- (10) An order under paragraph (3) may require the party or representative against whom it is made to pay a party either a specified sum in respect of the costs and expenses incurred by that other party in connection with the appeal or claim or the whole or part of such costs as assessed if not otherwise agreed.
- (11) An order under this regulation for costs to be assessed must allow the county court to make a detailed assessment of costs in accordance with the Civil Procedure Rules 1998 either on the standard basis or if specified in the order on the indemnity basis .

Power to exercise the functions of the President and Chair

72.—(1) Subject to paragraph (2), a Chair may exercise any function which these Regulations require or authorise the President to do.

- (2) A Chair may not exercise a function under regulation 28 of these Regulations.

- (3) Where in accordance with paragraph (1), a Chair—
 - (a) is required to select the Chair to a tribunal panel, a Chair may select themselves;
 - (b) makes a decision, regulations 56 and 57 apply in relation to that decision as if they referred to a Chair in place of the President.

(4) Subject to regulation 77(6), in the event of the death or incapacity of the Chair, or if the Chair ceases to be a member of the chairmen’s panel, following the decision of the tribunal panel, the functions of the Chair may be exercised by the President or another Chair appointed from the chairmen’s panel.

Power to exercise the functions of an education panel member in relation to a review

73.—(1) In the event of the death or incapacity of a member of the tribunal panel other than the Chair, or if a person ceases to be a member of the education panel, following the decision of the tribunal panel, the functions of the tribunal panel in relation to any review of a decision may be undertaken by the other two members.

- (2) This regulation does not apply to a tribunal panel—
 - (a) which is constituted of two members in accordance with regulation 45(5);
 - (b) of which any person is authorised to act in place of the Chair in accordance with regulation 72(4).

The Secretary of the Tribunal

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

Register

75.—(1) The Secretary of the Tribunal must keep a Register of appeals and claims registered by the Tribunal.

- (2) There must be entered in the Register a note of all appeals and claims registered, and the entry for each case must contain the following particulars where appropriate—
 - (a) the names and addresses of the parties;
 - (b) brief details of the nature of the appeal or the claim;
 - (c) the date of any hearing including any hearing on preliminary or incidental matters, and, where appropriate, the nature of the hearing;
 - (d) details of any directions or orders issued; and
 - (e) the document in which the decision of the tribunal panel has been recorded under regulation 55(3).
- (3) The Register or any part of it may be kept in electronic form.

Publication

76.—(1) The President may make such arrangements as the President considers appropriate for the publication of tribunal panel decisions.

(2) Decisions may be published electronically.

(3) A decision may be published in an edited form, or subject to any deletions, where the President considers that it is appropriate having had regard to—

- (a) the need to safeguard the welfare and interests of the child or any other person;

- (b) the need to respect the private life of any person;
 - (c) any representations on the matter which any person has provided in writing to the President or the tribunal panel at any time prior to publication under the arrangements made under paragraph (1).
- (4) A decision of the tribunal panel must be published in such manner as to protect the anonymity of the child.

Irregularities

77.—(1) An irregularity resulting from failure to comply with any provision of these Regulations, a practice direction or of any direction of the President or the tribunal panel before the tribunal panel has reached its decision may not of itself render the proceedings void.

(2) Where any such irregularity comes to the attention of the tribunal panel, the tribunal panel may, 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 remedy the irregularity.

(3) Clerical mistakes in any document recording a direction or decision of the tribunal panel 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 Chair or the President (as the case may be) by certificate signed by the Chair or the President.

(4) The Secretary of the Tribunal must as soon as practicable send a copy of any corrected document containing reasons for the tribunal panel's decision, to each party.

(5) Where a person has appointed a representative in accordance with regulation 18, the Secretary of the Tribunal must (notwithstanding regulation 15(11)(a)) send a copy of the document referred to in paragraph (4) to the person as well as the representative.

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

Proof of documents and certification of decisions

78.—(1) A document purporting to be a document issued by the Secretary of the Tribunal on behalf of the President or the tribunal panel is, unless the contrary is proved, to be considered to be a document so issued.

(2) A document purporting to be certified by the Secretary of the Tribunal as a true copy of a document containing a decision of the tribunal panel is, unless the contrary is proved, to be sufficient evidence of its contents.

Method of sending, submitting or serving notices and documents

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

- (2) Notices and documents to be provided under these Regulations must be—
- (a) sent by pre-paid post to the Secretary of the Tribunal or delivered by hand to the office of the Tribunal or such other office as the Secretary of the Tribunal may notify to the parties;
 - (b) sent by facsimile transmission to the number specified for the Tribunal;
 - (c) sent by email to the address specified for the Tribunal; or
 - (d) sent or delivered by such other method as the Tribunal may permit or direct.

(3) A party who sends a notice or document to the Tribunal by email or facsimile transmission must not treat the notice or document as having been delivered unless its delivery has been acknowledged by the Tribunal.

(4) Subject to paragraph (5), if a party provides a facsimile number, email address or other details for the service of notices or documents to them, that party must accept delivery of documents by that method.

(5) If a party informs the Tribunal and the other party that a particular form of communication, other than pre-paid post or delivery by hand, must not be used to provide documents to that party, that form of communication must not be used.

(6) If the Tribunal or a party sends a document to a party or the Tribunal by email or any other electronic means of communication, the recipient may request that the sender provide a hard copy of the document to the recipient. The recipient must make such a request as soon as reasonably practicable after receiving the document electronically.

(7) The Tribunal and each party may assume that the address provided by a party or a representative is and remains the address to which documents must be sent or delivered unless they receive written notification to the contrary.

(8) Notices and documents which these Regulations authorise or require the President, the tribunal panel or the Secretary of the Tribunal to send may (subject to paragraph (10)) either be sent by first class post, by facsimile transmission to, by email to or delivered at—

(a) in the case of a party—

(i) the party's address for service specified in the appeal application or the claim application or in a written reply or in a notice under paragraph (9), or

(ii) if no address for service has been so specified the party's last known address; and

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

(9) A party may at any time by notice to the Secretary of the Tribunal change that party's address for service under these Regulations.

(10) The recorded delivery service must be used instead of first class post for service of a summons issued under regulation 48 requiring the attendance of a witness.

(11) A notice or document sent by the Tribunal by first class post in accordance with these Regulations, and not returned to the Tribunal, is to be taken to have been received by the addressee on the second working day after the date of posting, unless the contrary is shown.

(12) The date of posting is to be presumed, unless the contrary is shown, to be the date shown in the postmark on the envelope in which the notice or document is contained.

(13) A notice or document sent by the Tribunal to a party using email or facsimile transmission is to be taken to have been delivered when it is received in legible form.

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

Calculating time

80.—(1) An act required by these Regulations, a practice direction or a direction to be done on or by a particular day must be done by 5pm on that day.

(2) If the time specified by these Regulations, a practice direction or a direction for doing any act ends on a day other than a working day, the act is done in time if it is done on the next working day.

(3) If the time for commencing proceedings by providing the appeal application or the claim application to the Tribunal under regulation 12 ends on a day from 25 December to 1 January inclusive, or on any day in August—

- (a) the appeal application or the claim application is provided in time if it is received by the Tribunal on the first working day after 1 January or 31 August, as appropriate; and
- (b) the days from 25 December to 1 January inclusive and any day in August must not be counted when calculating the time by which any other act must be done.

(4) Paragraph 3(b) does not apply where the Tribunal directs that an act must be done by or on a specified date.

Signature of documents

81. Where these Regulations require a document to be signed, that requirement is satisfied—

- (a) if the signature is written; or
- (b) in the case of a document which is communicated electronically in accordance with these Regulations by the electronic signature of the person who is required to sign it.