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WELSH STATUTORY INSTRUMENTS

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**2015 No. 1028**

The Welsh Language Tribunal Rules 2015

PART E

THE TRIBUNAL'S MANAGEMENT POWERS

**Directions**

**26.**—(1) The Tribunal may, on the application of a party or on the Tribunal's own initiative, give such directions to a party on any matter arising in connection with the application as the Tribunal thinks fit, including, among other things, such directions as are provided in rules 30, 31 and 32, with a view to enabling the Tribunal to determine the application in accordance with the overriding objective.

(2) An application by a party for directions must, unless it is made at the substantive hearing of the application, 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 Tribunal must consider the objection and, if the Tribunal considers it necessary for the determination of the application, must give the parties an opportunity to make representations.

(5) If, in the opinion of the Tribunal, there would not be reasonable time before a hearing of which notice has been given under rule 36(1) to comply with a direction for which a party applies, the Tribunal may—

- (a) if satisfied that compliance with the direction may assist the tribunal panel to determine the issues, postpone the hearing under rule 43, or
- (b) refuse the application.

(6) A direction which requires a party to take any action must—

- (a) include a statement of the possible consequences for the application, as provided by rule 33, of a party's failure to comply with the direction within the time allowed by the Tribunal,
- (b) unless the person to whom the direction is addressed has had an opportunity to object to the direction, or has given written consent to it, contain a statement to the effect that that person may apply to the Tribunal under rule 27 to vary or set aside the direction.

(7) Where it appears to the Tribunal that an issue arises in relation to an application which must be decided prior to the substantive hearing of the application, and which cannot properly be determined by the giving of directions without a hearing, the Tribunal may invite the parties to appear before the Tribunal for that purpose and may give any necessary directions relating to their appearance.

### **Varying or setting aside directions**

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

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

### **Power to strike out the application**

28.—(1) The Secretary of the Tribunal must, at any stage of the application, at the request of the Commissioner, or if the Tribunal so directs, serve a notice on the applicant stating that it has been proposed that the whole or part of the application should be struck out on one of the grounds specified in paragraph (2) or for want of prosecution on the part of the applicant.

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

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

(3) A notice under paragraph (1) must invite the applicant to make representations.

(4) For the purposes of this rule—

- (a) a notice inviting representations must inform the applicant that the applicant may, within a period (of 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 Tribunal may, after considering any representations made by the applicant, order that the whole or part of the application be struck out on one of the grounds specified in paragraph (2) or for want of prosecution by the applicant.

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

(7) If oral representations are made in accordance with paragraph (6), the Tribunal may consider the oral representations at the beginning of the hearing of the substantive application.

(8) If the whole of an application is struck out under paragraph (5) the application is to be considered concluded.

### **Order to amend case statement**

29.—(1) The Tribunal may, if it thinks fit, at any stage of the application, order that a party's case statement be amended on the grounds that, as it stands, it discloses no reasonable grounds for bringing the application or because it is an abuse of the Tribunal's process.

(2) Before an order may be made under paragraph (1), the Secretary of the Tribunal must give the party against whom the Tribunal is proposing to make the order a notice inviting representations by that party and must consider any representations made.

- (3) For the purposes of this rule—
- (a) a notice inviting representations must inform the party that, within a period (of no less than 5 working days) specified in the notice, that 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**

- 30.**—(1) The Tribunal may give directions on—
- (a) the issues which require evidence or submissions,
  - (b) the nature of the evidence or submissions required,
  - (c) any limitations on evidence or submissions which are consistent with the overriding objective,
  - (d) 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,
  - (e) 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
  - (f) the time by which any evidence or submissions are to be provided.
- (2) The Tribunal may consider a failure by a person who is a party to the application to comply with a requirement made under paragraph (1), in the absence of any good reason for such failure, as a failure to co-operate with the Tribunal.
- (3) The Tribunal may—
- (a) subject to sub-paragraph (b)(iii), admit any relevant evidence, whether or not that 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.

### **Particulars and supplementary statements**

**31.** The Tribunal 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 application.

### **Disclosure of documents and other material**

- 32.**—(1) The Tribunal may—
- (a) direct a party to submit to the Tribunal by a specified date any document or other material which the Tribunal 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 Tribunal 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 application.

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

(4) The Tribunal 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 warning that any person who, without reasonable excuse, fails to comply with requirements regarding disclosure or inspection of documents is liable under section 126 of the Measure on summary conviction to a fine not exceeding level 3 on the standard scale.

#### **Failure to comply with directions**

**33.**—(1) If a party has not complied with a direction given under these Rules within the time specified in the direction the Tribunal may—

- (a) where the party in default is the applicant, dismiss the application without a hearing,
- (b) where the party in default is the Commissioner, determine the application 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 rule 36(1), directing that neither the party in default nor any person who is intended to represent that party or to give evidence on that party's behalf is entitled to be heard at the hearing.

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

#### **Applications giving rise to substantially the same issue**

**34.**—(1) If more than one application requires a decision on substantially the same issue, the Tribunal may—

- (a) order that those applications are to be heard together, or
- (b) select one or more of those applications as a lead application or lead applications and stay the other applications until that case has, or those cases have, been decided.

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

(3) Subject to paragraph (4), the Tribunal may issue an order under this rule on the written request of either party or on the Tribunal's own initiative.

(4) An order made under this rule must only be made if it appears, in the opinion of the Tribunal, to be fair and just to do so and, before an order is made, each party to every application affected must be given an opportunity to be heard.

### **Addition and substitution of parties**

**35.**—(1) A person may make an application to be joined as a party to an application.

(2) The Tribunal may make an order to join a person as a party to an application—

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

(3) The Tribunal 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 application commenced.

(4) If an order is made under paragraph (2) or (3) the Tribunal may make such consequential directions, or enquiries under rule 24, as the Tribunal considers appropriate.

(5) Unless the Tribunal directs otherwise, a person appointed or substituted under this rule must be treated as a party for the purpose of any provision in these Rules requiring a document to be sent to or submitted by a party to the application.