
STATUTORY RULES OF NORTHERN IRELAND

2005 No. 339

**Special Educational Needs and Disability
Tribunal Regulations (Northern Ireland) 2005**

PART IV

PREPARATION FOR THE HEARING OF AN APPEAL OR A CLAIM

Acknowledgement of appeal or claim and service of documents by the Secretary of the Tribunal

- 27.**—(1) Upon receiving a notice of appeal or claim the Secretary of the Tribunal shall—
- (a) enter particulars of it in the records;
 - (b) send to the parent—
 - (i) an acknowledgement of its receipt and a note of the case number entered in the records;
 - (ii) notification of the address to which notices and communications to the Tribunal should be sent;
 - (iii) notification that advice about the appeals and claims procedures may be obtained from the office of the Tribunal; and
 - (iv) subject to regulation 28(2)—
 - (aa) in relation to an appeal, a notice stating the time for submitting a statement of the parent’s case and written evidence under regulation 28(1);
 - (bb) in relation to a claim, a notice informing the parent of the requirements of regulation 19(1) and the case statement period;
 - (c) at the same time as sending to the parent the notice referred to in sub-paragraph (b)(iv), send to the other party—
 - (i) a copy of the notice of appeal or claim and any accompanying papers;
 - (ii) notification of the address to which notices and communications to the Tribunal should be sent; and
 - (iii) a notice stating the time for delivering a statement and written evidence under regulation 13(1) or 23(1) and in either case the consequences of failing to do so;
 - (d) if, in accordance with regulation 7(1)(a)(vii), the notice of appeal names a grant-aided school, other than one grant-aided by the board, give the principal of that school notice of the appeal, stating the name and date of birth of the child and the name of the board.
- (2) Where it is necessary to determine the identity of the responsible body in relation to any claim, the President may make such enquiries as are necessary for this purpose.

(3) Where it appears to the President or the Secretary of the Tribunal that there may be more than one responsible body in relation to any claim, the President or the Secretary of the Tribunal may send the documentation specified in paragraph (1)(c) to any or all such bodies as may be appropriate.

(4) Where the Secretary of the Tribunal is of the opinion that, on the basis of the notice of appeal or claim, the parent is asking the Tribunal to do something which is not or is no longer within its jurisdiction, he may give notice to the parent—

- (a) stating the reasons for his opinion; and
- (b) informing the parent that the notice of appeal or claim will not be entered in the records unless, within a specified time (which shall not be less than 5 working days), the parent notifies the Secretary of the Tribunal that he wishes to proceed with it.

(5) Where the Secretary of the Tribunal is of the opinion that there is an obvious error in the notice of appeal or claim—

- (a) he may correct the error and if he does so shall notify the parent accordingly and such notification shall state the effect of sub-paragraph (b); and
- (b) unless within 5 working days the parent notifies the Secretary of the Tribunal that he objects to the correction, the notice of appeal or claim so corrected shall be treated as the notice of appeal or claim for the purpose of these Regulations.

(6) If the Secretary of the Tribunal has given a notice under paragraph (4), the notice of appeal or claim shall only be treated as having been received for the purposes of paragraph (1) when the parent notifies the Secretary of the Tribunal that he wishes to proceed with it.

(7) In paragraph (1)(c) “the other party” means—

- (a) in relation to an appeal, the board;
- (b) in relation to a claim, the responsible body.

Statements of case

28.—(1) Both parties shall be allowed the same period of 30 working days, commencing on the date on which notification issued further to regulation 27(1)(b)(iv) and (c)(iii) is taken to have been delivered in accordance with regulation 59(6), to send a statement of their respective cases and written evidence to the Secretary of the Tribunal.

(2) Where the President makes a direction in accordance with regulation 8, the period specified in paragraph (1) shall not start, and the Secretary of the Tribunal shall not send a notice as required by regulation 27(1)(b)(iv) or any documents as required by regulation 27(1)(c), until particulars of reasons are received in response to the direction.

Copy document for parties

29.—(1) Subject to paragraph (2), the Secretary of the Tribunal shall—

- (a) forthwith send to the board or responsible body a copy of any amendment to the notice of appeal or claim received during the case statement period;
- (b) at the end of the case statement period send a copy of each party’s statement of case and written evidence to the other party;
- (c) forthwith send copies of any documents (other than written evidence of which a copy is received in accordance with regulation 43(2)(b)) received from a party after the end of the case statement period to the other party to the proceedings.

(2) If a notice of appeal or claim, or other document is delivered to the Secretary of the Tribunal after the time prescribed by these Regulations, the Secretary of the Tribunal shall not send a copy of it to the other party unless the President extends the time limit pursuant to regulation 60.

(3) If a notice of appeal is amended in accordance with regulation 9(2) so that the parent seeks an order that a grant-aided school, or a different grant-aided school, other than the one already named in the child's statement be named in the statement, the Secretary of the Tribunal shall give the principal of that school notice of appeal, stating the name and date of birth of the child and the name of the board unless the school is grant-aided by the board.

(4) In the event of a school referred to in paragraph (3) not being grant-aided by the board the notice required by that paragraph shall also be given to the board by which the school is grant-aided.

(5) Where the Secretary of the Tribunal sends any of the copies of documents referred to in paragraph (1) to a party who has already informed the Secretary of the Tribunal in response to enquiries made under regulation 30(a)(i) and (ii) that the party does not wish to attend or be represented at the hearing, the Secretary of the Tribunal shall ask whether the party wishes to amend that response on the basis of the copies received.

Enquiries by the Secretary of the Tribunal

30. The Secretary of the Tribunal shall, at any time after he has received the notice of appeal or, in respect of a claim at any time after having sent each party's statement of case and written evidence to the other party in accordance with regulation 29(1)(b)—

- (a) ask each party—
 - (i) whether or not the party intends to attend the hearing;
 - (ii) whether the party wishes to be represented at the hearing in accordance with regulation 12(6) or 16(1) and if so the name of the representative;
 - (iii) whether the party wishes the hearing to be in public;
 - (iv) whether the party intends to call witnesses and if so the names of the proposed witnesses and in the case of a claim, their occupation, the likely subject matter of the evidence of each witness and whether any of the witnesses is a medical or other expert;
 - (v) whether the party or a witness will require the assistance of an interpreter;
- (b) enquire of the parent whether he wishes any persons (other than a person who will represent him or any witness whom he proposes to call) to attend the hearing if the hearing is in private and if so the name of such persons; and
- (c) inform each party of the effect of regulation 40(4)(c) and the provisions of regulation 44(1) and (2);
- (d) inform the parties that where an answer to the enquiries under sub-paragraph (a) or (b) changes after the party has responded to the enquiries, the party concerned must inform the Secretary of the Tribunal in writing forthwith.

Directions in preparation for a hearing and determination of preliminary issues

31.—(1) The President may, on the application of a party or on his own motion, at any time before the hearing give such directions on any matter arising in connection with the proceedings as appear to him to be appropriate, including such directions as are provided in regulations 33 and 34 to enable the parties to prepare for the hearing or to assist the tribunal to determine the issues.

(2) An application by a party for directions shall be made in writing to the Secretary of the Tribunal and, unless it is accompanied by the written consent of the other party, shall be served by the Secretary of the Tribunal on that other party. If the other party objects to the directions sought, the President shall consider the objection and, if he considers it necessary for the determination of the application, shall give the parties an opportunity of appearing before him.

(3) If in the opinion of the President there would not be a reasonable time before a hearing of which notice has been given under regulation 38 to comply with a direction for which a party applies, he shall refuse the application.

(4) A direction shall—

- (a) include a statement of the possible consequences for the appeal or the claim, as provided by regulation 35, of a party's failure to comply with the requirement within the time allowed by the President;
- (b) if made under regulation 34, contain a reference to the fact that, under Article 23(5) and (6) of the 1996 Order in respect of an appeal or under Article 23(7) and (8) of the 2005 Order in respect of a claim, any person who without reasonable cause fails to comply with requirements regarding disclosure or inspection of documents shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale; and
- (c) unless the person to whom the direction is addressed had an opportunity to object to the direction, or he gave his written consent to the application for it, contain a statement to the effect that the person may apply to the President under regulation 32 to vary or set aside the direction.

(5) Where in accordance with regulation 37—

- (a) the President orders that an appeal be heard together with a claim the directions given under paragraph (1) shall relate to the appeal only; but in giving such directions the President 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.
- (b) the President orders that a claim be heard together with an appeal the directions given under paragraph (1) shall relate to the claim only; but in giving such directions the President 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.

(6) Where it appears to the President that there is an issue in the appeal or the claim, as the case may be, which must be determined prior to the substantive hearing of either the appeal or the claim, he may direct the parties to appear before him.

Varying or setting aside directions

32. Where a party to whom a direction is addressed had no opportunity to object to the giving of such direction and he did not give his written consent to the application for it, he may apply to the President, by notice to the Secretary of the Tribunal, to vary it or set it aside, but the President shall not do so without first notifying the other party and considering any representations made by that party.

Particulars and supplementary statements

33. The President may give directions requiring any party to provide in or with that party's statement of case, such particulars or supplementary statements or other evidence as may reasonably be required for the appeal or the claim to be fairly disposed of.

Disclosures of documents and other material

34.—(1) The President—

- (a) may give directions requiring a party to deliver to the tribunal any document or other material which the tribunal may require and which it is in the power of that party to deliver;

- (b) shall impose a condition on the supply of a copy of any document or other material delivered in compliance with a direction given under this paragraph that the party receiving it shall use such document only for the purposes of the appeal or claim;
 - (c) may require a party to give a written undertaking to observe that condition before receiving a copy.
- (2) The President may grant to a party an order for such disclosure or inspection of documents (including the taking of copies) as might be granted by a county court.

Failure to comply with directions

35.—(1) If a party has not complied with a direction within the time specified in the direction the tribunal may—

- (a) where the party in default is the parent, dismiss the appeal or the claim without a hearing;
- (b) where the party in default is the board or the responsible body, determine the appeal or the claim without a hearing; or
- (c) (i) hold a hearing (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 38(1), direct that neither the party in default nor any person whom he intends should represent him or give evidence on his behalf be entitled to attend the hearing.

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

Summoning witnesses

36.—(1) The President may by summons require any person in Northern Ireland to attend as a witness at a hearing of an appeal or claim at such time and place as may be specified in the summons, and at any adjournment of that hearing, and at the hearing to give evidence or produce any documents or other material in his custody or under his control which relate to any matter in question in the appeal or claim:

Provided that—

- (a) no person shall be compelled to give any evidence or produce any document or other material that he could not be compelled to give or produce at a trial of an action in the High Court;
- (b) in exercising the power conferred by this regulation, the President shall take into account the need to protect any matter that relates to intimate personal or financial circumstances or consists of information communicated or obtained in confidence;
- (c) no person shall be required to attend in obedience to such a summons unless he has been given at least 5 working days' notice of the hearing or, if less than 5 working days, he has informed the President that he accepts such notice as he has been given;
- (d) no person shall be required in obedience to such a summons to attend and give evidence or to produce any document unless the necessary expenses of his attendance are paid or tendered to him;
- (e) no summons shall require a child under the age of 12 to attend and give evidence at a hearing except where the President determines that the evidence of such a child is necessary to enable the fair hearing of the appeal or claim.

(2) A party seeking a witness summons shall apply in writing to the Secretary of the Tribunal at least 8 working days before the hearing, or later if the person to whom the summons is to be addressed consents in writing.

(3) A witness summons shall contain—

(a) a reference to the fact that, under Article 23 of the 1996 Order or Article 23 of the 2005 Order, any person who without reasonable excuse fails to comply with any requirement to attend and give evidence and, if the summons so requires, to produce documents shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale; and

(b) a statement of the effect of paragraph (4).

(4) A person to whom a witness summons is addressed may apply to the President, by notice to the Secretary of the Tribunal, to vary it or set it aside, but the President shall not do so without first notifying the party who applied for the issue of the summons and considering any representations made by that party.

Consolidating appeals or claims and hearing claims together with appeals under the Education (Northern Ireland) Order 1996

37.—(1) Where more than one appeal or claim, or an appeal and a claim relates to the same child, or requires a decision on substantially the same issue, the President may order that they be heard at the same hearing.

(2) Subject to paragraphs (3) and (4), 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 against a Board under Part II of and Schedule 2 to the 1996 Order, the President may order that the claim be heard with the appeal.

(3) Nothing in paragraph (2) shall permit the President to make an order under that paragraph where a parent has failed to bring an appeal within the time limit for such appeals provided for by regulation 7(3) or any extension of time granted under these Regulations.

(4) The President may only make an order under paragraph (2) if, in addition to complying with the requirements of paragraph (7), the making of an order would not cause undue delay to the determination of the appeal.

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

(6) Subject to paragraph (7), the President may make an order under this regulation on the written request of either party or on his own motion.

(7) An order made under this regulation shall only be made if it appears to be just and convenient to do so, and before an order is made the parties to every appeal or claim shall be given an opportunity to be heard.

Notice of place and time of hearings and adjournments

38.—(1) Subject to regulation 39, the Secretary of the Tribunal shall, after consultation with the parties, fix the time and place of the hearing and send to each party a notice that the hearing is to be at such time and place.

(2) The notice of hearing referred to in paragraph (1) shall be sent—

(a) not less than 5 working days before the date fixed for a hearing under regulation 15, 25, 35, 47, 48 or 53;

(b) not less than 10 working days before the date fixed for the hearing in any other case; or

(c) in any case, within such shorter period before the date fixed for the hearing as the parties may agree.

(3) The Secretary of the Tribunal shall include in or with the notice of hearing—

(a) information and guidance, in a form approved by the President, as to attendance at the hearing of the parties and witnesses, the bringing of documents, and the right of representation or assistance as provided by regulation 12(6) or 16(1); and

(b) a statement explaining the possible consequences of non-attendance and the right to make representations in writing enjoyed by—

(i) the parent if he does not attend and is not represented; and

(ii) the board or responsible body if, being an individual, he does not attend, or otherwise if it is not represented and if it has submitted a statement of its case, unless it stated in writing that it did not resist the appeal or claim or withdrew its opposition to the appeal or claim.

(4) The tribunal may alter the time and place of any hearing and the Secretary of the Tribunal shall give the parties not less than 5 working days (or such shorter time as the parties agree) notice of the altered hearing date:

Provided that any altered hearing date shall not (unless the parties agree) be before the date notified under paragraph (1).

(5) If the time and place of an adjourned hearing are announced at the hearing before the adjournment, no further notice shall be required.

(6) Nothing in paragraphs (1) to (4) shall oblige the Secretary of the Tribunal to consult, or send a notice to any party who is not entitled to be represented at a hearing.

(7) In this regulation “working day” means any day other than a Saturday, a Sunday, or a public holiday.