
STATUTORY RULES OF NORTHERN IRELAND

2005 No. 339

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

PART VI

ADDITIONAL POWERS OF AND
PROVISIONS RELATING TO THE TRIBUNAL

Transfer of proceedings

51. Where it appears to the President that an appeal or 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 motion, 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 all parties concerned giving them an opportunity to make representations against the giving of the direction.

Miscellaneous powers of a tribunal

52.—(1) Subject to the provisions of the 1996 Order, the 2005 Order and these Regulations, a tribunal may regulate its own procedure.

(2) A tribunal may, if it thinks fit, make a decision in terms agreed in writing by the parties.

Power to strike out

53.—(1) The Secretary of the Tribunal shall, at any stage of the proceedings if the board or responsible body applies or the President so directs, serve a notice on the parent stating that it appears that the appeal or 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 appeal or claim is not, or is no longer, within the jurisdiction of the Tribunal;
- (b) the notice of the appeal or the claim is, or the appeal 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 appeal or 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 such an order 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 appeal or 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 purpose 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

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

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

- (a) selects the chairman of a tribunal, he may select himself;
- (b) makes a decision, regulation 49 (Review of the President's decision) applies in relation to that decision as if it referred to the member of the chairman's panel in place of the President.

(3) Subject to regulation 58(6), in the event of the death or incapacity of the chairman, or if he ceases to be a member of the chairman'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 chairman's panel.

Power to exercise the functions of a lay member

55.—(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 two other members.

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

- (a) which is constituted of two members in accordance with regulation 42(5);
- (b) of which any person is authorised to act in place of the chairman in accordance with regulation 54(3).

The Secretary of the Tribunal

56. 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

57.—(1) If any decision of the tribunal is set aside, varied or altered in any way by order of a superior 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 an appeal or claim is remitted to the tribunal by order of a superior court to be reheard, the Secretary of the Tribunal shall notify all parties that, during a period of 15 working days beginning with the date of that order of the superior court (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 an appeal or claim is quashed or set aside by order of a superior court, the Secretary of the Tribunal shall notify the parties—

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

(i) in accordance with regulation 27(1)(b)(iv), 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 order took effect;

(b) where sub-paragraph (a) does not apply, that each party has a period of 15 working days beginning with the date of the order of the superior court 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

58.—(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 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 or 22, the Secretary of the Tribunal shall (notwithstanding regulation 12(4) or 22(4)) send a copy of the document referred to in paragraph (4) 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

59.—(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 appeal or 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 under regulation 36 requiring the attendance of a witness.

(6) A document or notice 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

60.—(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 motion, 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.

Change of Board (SEN appeals only)

61.—(1) This regulation applies if, after the date on which the disputed decision is taken, the child becomes the responsibility, within the meaning of Article 13 of the 1996 Order, of a Board ("the new Board") other than the Board which made the disputed decision ("the old Board").

(2) On receiving evidence that this regulation applies, the President may order that, for all the purposes of the appeal, the name of the new Board be substituted for the old Board.

(3) The old Board, the new Board and the parent shall have an opportunity to be heard before an order is made under paragraph (2).

(4) When an order is made under paragraph (2)—

(a) the Secretary of the Tribunal shall notify the old Board, the new Board and the parent;

(b) the old Board shall no longer be a party to the appeal;

- (c) the new Board shall become a party to the appeal;
- (d) these Regulations shall apply as if the new Board had made the disputed decision;
- (e) the Secretary of the Tribunal shall send to the new Board copies of all the documents and written evidence relating to the appeal duly received by the Tribunal from the parent and the old Board;
- (f) the procedure for determining the appeal shall re-start, and regulation 27 shall apply as if the documents and written evidence sent in accordance with sub-paragraph (e) were the notice of appeal referred to in regulation 27(1).

Revocation and saving

62.—(1) Subject to paragraph (2) the Special Educational Needs Tribunal Regulations (Northern Ireland) 1997(1) are hereby revoked.

(2) In relation to any appeal where the notice of appeal was entered in the records of the Tribunal before 1st September 2005, those Regulations shall continue to apply to such an appeal.