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STATUTORY INSTRUMENTS

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**2008 No. 2699**

The Tribunal Procedure (First-tier Tribunal)  
(Health, Education and Social Care Chamber) Rules 2008

**PART 3**

Proceedings before the Tribunal other than in mental health cases

CHAPTER 1

Before the hearing

**Application of Part 3**

18. This Part does not apply to mental health cases.

**Application for leave**

19.—<sup>[F1]</sup>(1) This rule applies to applications for leave to bring proceedings under—

- (a) section 32 of the Criminal Justice and Court Services Act 2000 (application to have the issue of the continuation of a disqualification order determined by the Tribunal);
- (b) section 51 of the Children and Families Act 2014 where leave to appeal is required <sup>[F2]</sup>by virtue of—
  - (i) regulation 34(3) of the Special Educational Needs and Disability Regulations 2014, or
  - (ii) regulation 20(3) of the Special Educational Needs and Disability (Detained Persons) Regulations 2015,

(appeals in a special educational needs case in the absence of a mediation certificate).]

(2) An application to the Tribunal for leave must be made by sending or delivering an application to the Tribunal which—

- (a) gives full reasons why the applicant considers that the Tribunal should give leave; and
- (b) complies with paragraphs (2) to (4) of rule 20 (the application notice) as if the application for leave were an application notice.]

(3) The Tribunal may make any directions it considers appropriate before determining the application for leave.

(4) The Tribunal must—

- (a) notify the applicant of its decision in relation to the application for leave; and
- (b) if it gives leave, give directions as to the future conduct of the proceedings.

### Textual Amendments

- F1** Rule 19(1)(2) substituted (1.9.2014) by [The Tribunal Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/2128\)](#), rules 1(a), **23** (with rule 38)
- F2** Words in rule 19(1)(b) substituted (21.8.2015) by [The Tribunal Procedure \(Amendment\) Rules 2015 \(S.I. 2015/1510\)](#), rules 1, **10**

### The application notice

**20.**—<sup>F3</sup>(1) If rule 19 (application for leave) does not apply, an applicant must start proceedings before the Tribunal by sending or delivering an application notice to the Tribunal so that, unless paragraph (1A) <sup>F4</sup>or (1B)] applies, it is received—

- (a) if the time for providing the application notice is specified in another enactment, in accordance with that enactment;
- (b) in a case under the Suspension Regulations, within 10 working days after written notice of the decision being challenged was sent to the applicant;
- (c) <sup>F5</sup>in a special educational needs case—
  - (i) within 2 months after written notice of the decision being challenged was sent to the applicant; or
  - (ii) within 1 month from the date of issue of the mediation certificate if that date would be a later date than the date calculated by reference to paragraph (i);]
- (d) in a case listed in the Schedule, within 3 months after written notice of the decision being challenged was sent to the applicant;
- (e) in any other case, within 28 days after written notice of the decision being challenged was sent to the applicant.]

<sup>F6</sup>(1A) Where, in a health service case, the Tribunal has contingently removed a practitioner or performer from a list, an application may be made at any time if it is made under—

- (a) section 158(5)(a) of the National Health Service Act 2006;
- (b) section 114(5)(a) of the National Health Service (Wales) Act 2006;
- (c) regulation 15(6)(a) of the National Health Service (Performers Lists) Regulations 2004; or
- (d) regulation 15(6)(a) of the National Health Service (Performers Lists) (Wales) Regulations 2004.]

<sup>F7</sup>(1B) An application under section 127(5) of the Education and Skills Act 2008 may be made at any time when the relevant restriction has effect.]

(2) The application notice must be signed by the applicant and must include—

- (a) the name and address of the applicant;
- (b) the name and address of the applicant's representative (if any);
- (c) an address where documents for the applicant may be sent or delivered;
- (d) the name and address of any respondent;
- (e) details of the decision or act, or failure to decide or act, to which the proceedings relate;
- (f) the result the applicant is seeking;
- (g) the grounds on which the applicant relies; and
- (h) any further information or documents required by an applicable practice direction.

- [<sup>F8</sup>(3) The applicant must send with the application notice—
- (a) a copy of any written record of any decision under challenge,
  - (b) any statement of reasons for that decision that the applicant has or can reasonably obtain, and
  - (c) in a special educational needs case to which section 55(3) of the Children and Families Act 2014 (cases in which an appeal may be made only if a mediation certificate has been issued) applies, a copy of any certificate issued under subsection (4) or (5) of that section, as the case may be.]
- (4) If the applicant provides the application notice to the Tribunal later than the time required by paragraph (1) or by any extension of time under rule 5(3)(a) (power to extend time)—
- (a) the application notice must include a request for an extension of time and the reason why the application notice was not provided in time; and
  - (b) unless the Tribunal extends time for the application notice under rule 5(3)(a) (power to extend time) the Tribunal must not admit the application notice.
- (5) In proceedings under Suspension Regulations, the applicant must send or deliver a copy of the application notice and any accompanying documents to the respondent at the same time as it provides the application notice to the Tribunal.
- (6) In proceedings other than proceedings under paragraph (5), when the Tribunal receives the application notice it must send a copy of the application notice and any accompanying documents to each other party.

#### Textual Amendments

- F3** Rule 20(1) substituted (1.4.2011) by [The Tribunal Procedure \(Amendment\) Rules 2011 \(S.I. 2011/651\)](#), rules 1(2)(a), **3(4)(a)**
- F4** Words in rule 20(1) inserted (21.12.2017) by [The Tribunal Procedure \(Amendment No. 2\) Rules 2017 \(S.I. 2017/1168\)](#), rules 1, **6(a)**
- F5** Rule 20(1)(c) substituted (1.9.2014) by [The Tribunal Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/2128\)](#), rules 1(a), **24(a)** (with rule 38)
- F6** Rule 20(1A) inserted (1.4.2011) by [The Tribunal Procedure \(Amendment\) Rules 2011 \(S.I. 2011/651\)](#), rules 1(2)(a), **3(4)(b)**
- F7** Rule 20(1B) inserted (21.12.2017) by [The Tribunal Procedure \(Amendment No. 2\) Rules 2017 \(S.I. 2017/1168\)](#), rules 1, **6(b)**
- F8** Rule 20(3) substituted (1.9.2014) by [The Tribunal Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/2128\)](#), rules 1(a), **24(b)** (with rule 38)

#### The response

**21.—**(1) When a respondent receives a copy of the application notice, the respondent must send or deliver to the Tribunal a response so that it is received—

- [<sup>F9</sup>(a) in a case under the Suspension Regulations, within 3 working days after the respondent received the application notice;
- (b) in a health service case, within 21 days after the respondent received the application notice;
- (c) in a special educational needs case or a disability discrimination in schools case [<sup>F10</sup>to which sub-paragraph (cc) does not apply], within 30 working days after the respondent received the application notice;

- [<sup>F11</sup>(cc) in a disability discrimination in schools case that includes a claim for the reinstatement of a child [<sup>F12</sup>or young person] who has been permanently excluded, within 15 working days after the respondent received the application notice;]
- (d) in any other case, within 20 working days after the respondent received the application notice.]
- (2) The response must include—
- (a) the name and address of the respondent;
  - (b) the name and address of the respondent's representative (if any);
  - (c) an address where documents for the respondent may be sent or delivered;
  - (d) a statement as to whether the respondent opposes the applicant's case and, if so, any grounds for such opposition which are not contained in another document provided with the response;
  - (e) in a special educational needs case [<sup>F13</sup>brought by a parent of a child], the views of the child about the issues raised by the proceedings, or the reason why the respondent has not ascertained those views; and
  - (f) any further information or documents required by an applicable practice direction or direction.
- (3) The response may include a statement as to whether the respondent would be content for the case to be dealt with without a hearing if the Tribunal considers it appropriate.
- (4) If the respondent provides the response to the Tribunal later than the time required by paragraph (1) or by any extension of time under rule 5(3)(a) (power to extend time), the response must include a request for an extension of time and the reason why the response was not provided in time.
- (5) The respondent must send or deliver a copy of the response and any accompanying documents to each other party at the same time as it provides the response to the Tribunal.

#### Textual Amendments

- F9** Rule 21(1)(a)-(d) substituted for rule 21(1)(a)(b) (1.4.2011) by [The Tribunal Procedure \(Amendment\) Rules 2011 \(S.I. 2011/651\)](#), rules 1(2)(a), **3(5)**
- F10** Words in rule 21(1)(c) inserted (1.9.2012) by [The Tribunal Procedure \(Amendment No. 2\) Rules 2012 \(S.I. 2012/1363\)](#), rules 1(a), **3(a)**
- F11** Rule 21(1)(cc) inserted (1.9.2012) by [The Tribunal Procedure \(Amendment No. 2\) Rules 2012 \(S.I. 2012/1363\)](#), rules 1(a), **3(b)**
- F12** Words in rule 21(1)(cc) inserted (1.9.2014) by [The Tribunal Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/2128\)](#), rules 1(a), **25(a)** (with rule 38)
- F13** Words in rule 21(2)(e) inserted (1.9.2014) by [The Tribunal Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/2128\)](#), rules 1(a), **25(b)** (with rule 38)

#### Order that a school be regarded as not registered pending determination of an appeal

**22.—**(1) This rule sets out the procedure for the making of an order under section 166(5) of the Education Act 2002<sup>M1</sup> that a school is to be regarded as not registered for the purposes of section 159 of that Act until the Tribunal determines an appeal under section 165(2) of that Act (decision to remove an independent school from the register).

- (2) In this rule—

- (a) “the applicant” means the applicant bringing the appeal under section 165(2) of the Education Act 2002; and
  - (b) “the respondent” means the respondent to that appeal.
- (3) The respondent must make any application for an order under this rule in writing and must send or deliver it to the Tribunal and the applicant so that it is received within 28 days after the date on which the respondent received a copy of the application notice starting the appeal.
- (4) An application under paragraph (3) must—
- (a) be signed by the respondent and dated;
  - (b) state the grounds for the application;
  - (c) state the nature of the evidence that will be provided in support of the application and the names of the witnesses who will give that evidence;
  - (d) specify any working days in the following 30 days when the respondent or a witness named under sub-paragraph (c) would not be available to attend a hearing, and provide reasons why they would not be available; and
  - (e) include, so far as practicable, any documentary evidence (including witness statements) that the respondent intends to rely on.
- (5) The applicant must send or deliver a written response to the application under paragraph (3) to the Tribunal and the respondent so that it is received within 16 days after the date on which the respondent sent that application to the applicant under paragraph (3).
- (6) The response must—
- (a) acknowledge receipt of the application and any documentary evidence included with it;
  - (b) state whether the applicant requests that the application be decided at a hearing, and if so—
    - (i) state the nature of the evidence that will be provided in support of the applicant's case and the names of the witnesses who will give that evidence; and
    - (ii) specify any working days in the following 16 days when the applicant or a witness named under sub-paragraph (b)(i) would not be available to attend a hearing, and provide reasons why they would not be available; and
  - (c) include, so far as practicable, any documentary evidence (including witness statements) that the applicant intends to rely on.
- (7) If the applicant fails to comply with paragraph (5) the applicant will not be entitled to take any further part in the proceedings in relation to the application.
- (8) If the applicant complies with paragraph (5) and requests that the application be decided at a hearing, the Tribunal must hold a hearing to consider the application.
- (9) Any hearing to consider the making of an order must be held as soon as reasonably practicable, and if the respondent has applied for such an order any such hearing must be held no later than the earlier of—
- (a) 14 days after the date on which the Tribunal received the applicant's response to the application; or
  - (b) 30 days after the date on which the respondent sent the application to the applicant.
- (10) If the Tribunal is considering whether to make an order on its own initiative, the Tribunal—
- (a) may not do so without giving the applicant an opportunity to make representations at a hearing in relation to the making of the order;
  - (b) must give directions as to the provision to the Tribunal by the parties of documents or evidence that the parties wish to be taken into account.

**Marginal Citations**

M1 2002 c.32.

CHAPTER 2

Hearings

**Decision with or without a hearing**

**23.**—(1) Subject to paragraphs (2) and (3), the Tribunal must hold a hearing before making a decision which disposes of proceedings unless—

- (a) each party has consented to the matter being decided without a hearing; and
- (b) the Tribunal considers that it is able to decide the matter without the hearing.

(2) This rule does not apply to a decision under Part 5.

(3) The Tribunal may dispose of proceedings without a hearing under rule 8 (striking out a party's case).

**Entitlement to attend a hearing**

**24.** Subject to rules 22(7) (exclusion of applicant from proceedings to consider an order under section 166(5) of the Education Act 2002) and 26(5) (exclusion of a person from a hearing)—

- (a) each party is entitled to attend a hearing; and
- [<sup>F14</sup>(b) in a special educational needs case or a disability discrimination in schools case brought by a parent of a child, the child is entitled to attend a hearing and the Tribunal may permit the child to give evidence and to address the Tribunal.]

**Textual Amendments**

**F14** Rule 24(b) substituted (1.9.2014) by [The Tribunal Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/2128\)](#), [rules 1\(a\), 26](#) (with [rule 38](#))

**Notice of hearings**

**25.**—(1) The Tribunal must give each party entitled to attend a hearing reasonable notice of the time and place of the hearing (including any adjourned or postponed hearing) and any changes to the time and place of the hearing.

(2) The period of notice under paragraph (1) must be at least 14 days, except that—

- (a) in proceedings under Suspension Regulations the period of notice must be at least 3 working days;
- (b) the period of notice in respect of a hearing to consider the making of an order under section 166(5) of the Education Act 2002 must be at least 7 days; and
- (c) the Tribunal may give shorter notice—
  - (i) with the parties' consent; or
  - (ii) in urgent or exceptional circumstances.

## Public and private hearings

26.—(1) Subject to the following paragraphs, all hearings must be held in public.

(2) Hearings in special educational needs cases and disability discrimination in schools cases must be held in private unless the Tribunal considers that it is in the interests of justice for a hearing to be held in public.

(3) Subject to paragraph (2), the Tribunal may give a direction that a hearing, or part of it, is to be held in private.

[<sup>F15</sup>(3A) Without prejudice to paragraph (3), the Tribunal may direct that a hearing, or part of it, is to be held in private if—

- (a) the Tribunal directs that the proceedings are to be conducted wholly or partly as video proceedings or audio proceedings;
- (b) it is not reasonably practicable for such a hearing, or such part, to be accessed in a court or tribunal venue by persons who are not parties entitled to participate in the hearing;
- (c) a media representative is not able to access the proceedings remotely while they are taking place; and
- (d) such a direction is necessary to secure the proper administration of justice.]

(4) Where a hearing, or part of it, is to be held in private, the Tribunal may determine who is permitted to attend the hearing or part of it.

(5) The Tribunal may give a direction excluding from any hearing, or part of it—

- (a) any person whose conduct the Tribunal considers is disrupting or is likely to disrupt the hearing;
- (b) any person whose presence the Tribunal considers is likely to prevent another person from giving evidence or making submissions freely;
- (c) any person who the Tribunal considers should be excluded in order to give effect to a direction under rule 14(2) (withholding information likely to cause harm);
- (d) any person where the purpose of the hearing would be defeated by the attendance of that person; or

[<sup>F16</sup>(e) in a special educational needs case or a disability discrimination in schools case brought by a parent of a child or by a young person who lacks capacity to conduct their case, that child or young person, if the Tribunal considers that their presence at the hearing would be adverse to their interests.]

(6) The Tribunal may give a direction excluding a witness from a hearing until that witness gives evidence.

### Textual Amendments

**F15** Rule 26(3A) inserted (temp.) (10.4.2020) by virtue of [The Tribunal Procedure \(Coronavirus\) \(Amendment\) Rules 2020 \(S.I. 2020/416\)](#), rules 1(2), **2(3)** (with rule 1(2))

**F16** Rule 26(5)(e) substituted (1.9.2014) by [The Tribunal Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/2128\)](#), rules 1(a), **27** (with rule 38)

### [<sup>F17</sup>Coronavirus temporary rule (recording of remote hearings)]

26A.—(1) In the circumstances set out in paragraph (3), the Tribunal must direct that the hearing be recorded, if practicable.

(2) Where the Tribunal has made a direction under paragraph (1), it may direct the manner in which the hearing must be recorded.

(3) The circumstances referred to in paragraph (1) are that the hearing, or part of it, is—

- (a) held in private under rule 26(3A); or
- (b) only treated as held in public by virtue of a media representative being able to access the proceedings remotely while they are taking place.

[  
<sup>F18</sup>(4) On the application of any person, any recording made pursuant to a direction under paragraph (1) is to be accessed with the consent of the Tribunal in such manner as the Tribunal may direct.]]

#### Textual Amendments

**F17** Rule 26A inserted (temp.) (10.4.2020) by virtue of [The Tribunal Procedure \(Coronavirus\) \(Amendment\) Rules 2020 \(S.I. 2020/416\)](#), rules 1(2), **2(4)** (with rule 1(2))

**F18** [Rule 26A\(4\)](#) inserted (temp.) (21.7.2020) by virtue of [The Tribunal Procedure \(Amendment\) Rules 2020 \(S.I. 2020/651\)](#), rules 1(1), **2(4)** (with rule 1(2))

#### Hearings in a party's absence

**27.** If a party fails to attend a hearing the Tribunal may proceed with the hearing if the Tribunal—

- (a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and
- (b) considers that it is in the interests of justice to proceed with the hearing.

#### Power to pay allowances

**28.** The Secretary of State may pay such allowances for the purpose of or in connection with the attendance of persons at hearings as the Secretary of State may determine.

### CHAPTER 3

#### Decisions

#### Consent orders

**29.—(1)** The Tribunal may, at the request of the parties but only if it considers it appropriate, make a consent order disposing of the proceedings and making such other appropriate provision as the parties have agreed.

(2) Notwithstanding any other provision of these Rules, the Tribunal need not hold a hearing before making an order under paragraph (1), or provide reasons for the order.

#### Decisions

**30.—(1)** The Tribunal may give a decision orally at a hearing.

(2) Subject to rule 14(2) (withholding information likely to cause harm), the Tribunal must provide to each party as soon as reasonably practicable after making [<sup>F19</sup>a decision (other than a decision under Part 5) which finally disposes of all issues in the proceedings or of a preliminary issue dealt with following a direction under rule 5(3)(e)]—

- (a) a decision notice stating the Tribunal's decision;



- (b) written reasons for the decision; and
  - (c) notification of any rights of review or appeal against the decision and the time within which, and the manner in which, such rights of review or appeal may be exercised.
- (3) In proceedings under Suspension Regulations, the documents and information referred to in paragraph (2) must be provided at the hearing or sent within 3 working days after the hearing.
- (4) The Tribunal may provide written reasons for any decision to which paragraph (2) does not apply.

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**Textual Amendments**

**F19** Words in [rule 30\(2\)](#) substituted (1.4.2013) by [The Tribunal Procedure \(Amendment\) Rules 2013 \(S.I. 2013/477\)](#), [rules 1\(2\)\(c\)](#), **18**

**Changes to legislation:**

There are currently no known outstanding effects for the The Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008, PART 3.