
WELSH STATUTORY INSTRUMENTS

2015 No. 1028

The Welsh Language Tribunal Rules 2015

PART F

HEARINGS AND DECISIONS

Notice of date, place and time of hearings

36.—(1) Subject to the provisions of paragraph (2) and rule 37, the Secretary of the Tribunal must, after consultation with the parties, fix the date, place and time of any hearing and send to each party a notice specifying the date, place and time of the hearing.

(2) If the Secretary of the Tribunal has asked a party to provide details of that party's availability to attend a hearing and that party fails to comply with the request, the Secretary of the Tribunal must proceed to arrange the hearing without further consultation with that party.

(3) Subject to paragraph (4), the notice of hearing referred to in paragraph (1) must be sent—

- (a) no later than 5 working days before the date fixed for the hearing, or
- (b) within such shorter period of time before the date fixed for the hearing in sub-paragraph (a) as the parties may agree.

(4) The Secretary of the Tribunal must 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 to representation or assistance as provided by rule 45, and
- (b) a statement explaining the possible consequences of non-attendance and the right of the following to make representations in writing—
 - (i) the applicant, if the applicant does not attend and is not represented,
 - (ii) the Commissioner, if the Commissioner does not attend and is not represented, if the Commissioner has submitted a statement of case, unless the Commissioner has stated in writing an intention not to resist the application or has withdrawn opposition to the application.

(5) Subject to paragraph (6), the Tribunal may alter the place and time of any hearing but the Secretary of the Tribunal must give the parties no less than 5 working days (or such shorter time as the parties may agree) notice of the new place and time of the hearing.

(6) If the parties are present when the Tribunal announces the new place and time of the hearing, no further notice is required.

(7) Nothing in paragraphs (1) or (5) obliges the Secretary of the Tribunal to consult or send a notice to any person who is not entitled to be present or represented at the hearing.

Power to determine the application without a hearing

37.—(1) The Tribunal may determine the application, or any particular issue, without a hearing—

- (a) if the parties so agree in writing, or
 - (b) in the circumstances described in rule 23 (failure by the Commissioner to submit a case statement or absence of opposition) or 33 (failure to comply with directions).
- (2) Before making a determination under paragraph (1), the Tribunal must consider any representations in writing already submitted by the parties, for the purpose of this rule, notice of application and the parties' case statements are to be treated as representations in writing.

Public hearings

- 38.**—(1) Subject to paragraph (3), all Tribunal hearings must be held in public.
- (2) Without prejudice to any other powers it may have, the Tribunal may exclude from a hearing, or part of it, any person whose conduct is likely, in the opinion of the Tribunal, to disrupt the hearing.
- (3) If it appears to the Tribunal that a party or witness, intends to refer, in the course of a hearing, to matters which relate to any confidential personal information or which relate to an individual child or to another vulnerable person, the Tribunal may, to the extent that it is necessary in order to protect the privacy of the person in question, whilst ensuring fairness and justice, exclude from the relevant part (or relevant parts) of the hearing anyone who is not a party to the case.

Procedure at hearing

- 39.**—(1) At the beginning of the hearing the Chair must explain the order of proceedings which the tribunal panel proposes to adopt.
- (2) The tribunal panel must conduct the hearing in a manner it considers appropriate to ensure clarity of the issues and to handle the proceedings fairly and justly, avoiding, as far as it considers appropriate, unnecessary formality in its proceedings.
- (3) The tribunal panel must determine the order in which the parties are heard and the issues determined.
- (4) The tribunal panel may, if it is satisfied that it is fair and just to do so, permit—
- (a) the applicant to rely on grounds not stated in the notice of application or the case statement and to rely on evidence not submitted to the Commissioner before or at the time the disputed decision was taken,
 - (b) the Commissioner to rely on grounds not specified in the Commissioner's case statement.
- (5) If, at or after the beginning of a hearing, a member of the tribunal panel other than the Chair is absent—
- (a) the hearing may, with the consent of the parties, be conducted by the other two members and in that event the tribunal panel is to be regarded as properly constituted and the decision of the tribunal panel may be taken by those two members,
 - (b) the absent member must not re-join the hearing.

Evidence at hearing

- 40.**—(1) Subject to rule 30(1)(d), the parties are entitled, in the course of the hearing, to give evidence, to call witnesses, to question any witness and to address the tribunal panel both on the evidence, including the written evidence submitted before the hearing, and generally on the subject matter of the application.
- (2) Evidence before the tribunal panel may be given—
- (a) orally, or

- (b) by written statement if such evidence was submitted with the notice of application or the case statement or in accordance with a direction of the Tribunal.
- (3) The Tribunal may at any stage of the application, require the personal attendance of any maker of any written statement.
- (4) The Tribunal may receive evidence of any fact which appears to the Tribunal to be relevant.
- (5) The Tribunal may require any party or witness to give evidence on oath or affirmation, and for that purpose there may be administered an oath or affirmation in the correct form, or may require any evidence given by a written statement to be given under a statement of truth.

Summoning a witness

41.—(1) Subject to paragraphs (2) to (5), the Tribunal may, on the application of a party or on the Tribunal’s own initiative, require by summons any person to attend as a witness at a hearing at such time and place as may be specified in the summons, and at any postponement or adjournment of that hearing, and at the hearing to answer any questions or produce any documents or other material in the person’s custody or under the person’s control which relate to any matter in question in the appeal or claim.

(2) No person must be compelled to give any evidence or produce any document or other material that the person could not be compelled to give or produce at a trial of an action in a court of law in England or Wales.

(3) In exercising the power conferred by this rule, the Tribunal must take into account the need to protect any matter that relates to intimate personal circumstances or financial circumstances or consists of information communicated or obtained in confidence.

(4) No person may be required to attend in compliance with a summons unless that person has been given at least 5 working days’ notice of the hearing or, if less than 5 working days, that person has informed the Tribunal that the person accepts the notice given.

(5) No person may be required in compliance with a summons to attend and give evidence or to produce any document unless a sum reasonably sufficient to cover the necessary expenses of the person’s attendance has been paid or tendered.

(6) A party seeking a witness summons must 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.

(7) A witness summons must contain—

- (a) a statement that any person who, without reasonable excuse, fails to comply with any requirement to attend to give evidence and, if the summons so requires, to produce documents, is liable, under section 126 of the Measure, on summary conviction to a fine not exceeding level 3 on the standard scale, and
- (b) a statement of the effect of paragraph (8).

(8) A person to whom a witness summons is addressed may apply to the Tribunal, by written notice to the Secretary of the Tribunal, to vary it or set it aside.

(9) The Tribunal must not vary or set aside a witness summons without first notifying the party who applied for the issue of the witness summons and considering any representations made by that party.

Evidence by telephone, video link or other means

42. The Tribunal may, on the application of a party or on the Tribunal’s own initiative, permit a party or a witness to give evidence by telephone, through a video link or by any other means of communication, if satisfied that this would not prejudice the achievement of the overriding objective.

Postponement of hearing

43.—(1) The Tribunal may, in exceptional circumstances, on its own initiative or on the application of a party, make an order to postpone a hearing.

(2) An application by a party under paragraph (1) must be—

- (a) made in writing stating reasons in full,
- (b) received by the Secretary of the Tribunal, and served by the applicant on the other party, at least 5 working days before the hearing.

(3) If an order is made under paragraph (1) the Secretary of the Tribunal must give the parties no less than 5 working days (or such shorter time as the parties agree) notice of the new hearing date.

(4) Nothing in paragraph (3) obliges the Secretary of the Tribunal to consult or send a notice to any person who is not entitled to be represented at the hearing.

Adjournments and consequential directions

44.—(1) The Tribunal may adjourn a hearing.

(2) When a hearing is adjourned the Tribunal may give directions to be complied with before or at the resumed hearing.

(3) A direction under paragraph (2) may require a party to provide such particulars, evidence or statements as may reasonably be required for the determination of the application.

(4) If a party fails to comply with a direction made under paragraph (2) the tribunal panel may take account of that fact when determining the application or deciding whether to make an order for costs.

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

Representation at hearing

45.—(1) Subject to paragraph (2), at any hearing or part of a hearing the applicant, the Commissioner or any other party may conduct the application in person or by a representative, whether or not that representative is legally qualified.

(2) If a party does not intend to attend or be represented at the hearing, that party may, no later than 5 working days before the hearing, send to the Secretary of the Tribunal additional written representations in support of that party's case.

Failure to attend hearing

46.—(1) If a party fails to attend or be represented at a hearing of which that party had been notified, the tribunal panel may—

- (a) unless satisfied that there is sufficient reason for such absence, hear and determine the application in the party's absence, or
- (b) postpone or adjourn the hearing, as appropriate.

(2) Before disposing of an application in the absence of a party, the tribunal panel must consider any representations in writing submitted by that party in response to the notice of hearing and, for the purpose of this rule the notice of application and the parties' case statements are to be treated as representations in writing.

Tribunal panel's decision

47.—(1) The tribunal panel may consider any decision in private.

(2) A decision of the tribunal panel may be taken by a majority and where the tribunal panel consists of only two members under rule 39(5) the Chair has a second or casting vote.

(3) The decision of the tribunal panel may be given orally at the end of the hearing or reserved and must be recorded in a document; except in the case of a decision by consent, that document (or an annexe to it) must also contain a statement of the reasons (in summary form) for the tribunal panel's decision, and such document must be signed and dated by the Chair.

(4) Neither a decision given orally nor the document referred to in paragraph (3) may contain any reference to the decision being by majority (if that is the case) or to any opinion of a minority.

(5) Every decision of a tribunal panel must be recorded in the Register.

(6) The Secretary of the Tribunal must send a copy of the document referred to in paragraph (3), as soon as is practicable, to each party, accompanied by guidance, in a form approved by the President, about the circumstances in which there is a right to apply for a review of, or to appeal against, the tribunal panel decision and the procedure to be followed.

(7) Where rule 13(10) applies, the Secretary of the Tribunal must send a copy of the documents referred to in paragraph (6) to the applicant in addition to the representative.

(8) Every decision is to be treated as having been made on the date on which a copy of the document recording it is sent to the applicant (whether or not the decision has previously been announced at the end of the hearing).