
SCOTTISH STATUTORY INSTRUMENTS

2005 No. 514

**The Additional Support Needs Tribunals for
Scotland (Practice and Procedure) Rules 2005**

PART II

START OF PROCEEDINGS

Reference

5.—(1) A reference to a Tribunal shall be made by notice in writing and shall be signed by the appellant.

(2) The reference shall state—

- (a) the name, address and telephone number of the appellant;
- (b) the address to which correspondence should be sent to the appellant if different;
- (c) the name and date of birth of the child or young person;
- (d) the name and address of the authority;
- (e) the date—
 - (i) on which the authority notified the appellant under sections 11 or 28 of the Act of the right to make a reference to a Tribunal in respect of the decision as referred to in section 18(3)(a), (b), (d)(iv) or (e), or of the information as referred to in section 18(3)(d)(i) which is the subject of the reference; or
 - (ii) on which the failure as referred to in section 18(3)(c), (d)(ii) or (iii) which is the subject of the reference first occurred;
- (f) the details of the decision, failure or information in respect of which the reference is made;
- (g) the appellant's reasons for making the reference;
- (h) the main facts on which the appellant intends to rely;
- (i) if the appellant seeks an order that a co-ordinated support plan be amended, the part or parts of the co-ordinated support plan to which the reference relates; and
- (j) the name, address and profession of any representative appointed by the appellant, and, where available, the representative's telephone number, fax number and electronic address.

(3) Where the child or young person is the subject of a placing request, and whether or not that placing request is the subject of the reference, the reference shall state—

- (a) whether there is an outstanding reference to an appeal committee under paragraph 5 of Schedule 2 to the Act; or
- (b) whether there is an outstanding appeal to the sheriff under paragraph 7 of that Schedule in which case it shall specify the court in which the appeal is proceeding and, if known to the appellant, any case reference number relative to it.

(4) The reference shall be accompanied by—

- (a) a copy of any decision in respect of which the reference is made; and
 - (b) where the reference relates to a co-ordinated support plan, a copy of that plan.
- (5) Where the reference is in respect of a decision or information as referred to in paragraph 2(e)(i) above the reference shall be sent so as to be received by the Secretary no later than two months from the date on which the authority gave the appellant notice under sections 11 or 28 of the Act of the right to make reference to a Tribunal.
- (6) Where the reference is in respect of a failure as referred to in paragraph 2(e)(ii) above the reference shall be sent so as to be received by the Secretary no later than two months from the date on which that failure first occurred.

Action upon receiving a reference

6. On receiving a reference the Secretary shall—
- (a) enter the details of such matters specified in rule 5(2) in the Register and such other information as the President may from time to time direct under paragraph 12 of Schedule 1 to the Act;
 - (b) send a copy of the reference and of any accompanying documents to the authority, together with a notice in writing giving the case number of the reference from the Register, and including information, as appropriate to the matter referred, about the means and time for submission of a response, the consequences of failure to do so, and the right to receive a copy of the decision;
 - (c) acknowledge receipt and provide the appellant with a notice in writing giving the case number of the reference, and including information as appropriate to the matter referred, about the time for the authority to submit a response, the right to withdraw the reference, and the right to receive a copy of the decision;
 - (d) where the reference discloses the existence of an appeal to an appeal committee under paragraph 5 of Schedule 2 to the Act in relation to the refusal of a placing request, notify the authority and the appeal committee to that effect; and
 - (e) where the reference discloses the existence of an appeal to the sheriff under paragraph 7 of that Schedule in relation to a placing request, send a copy to the sheriff clerk of the court in which that appeal is proceeding.

Sufficiency of reasons for reference

7.—(1) If the reference does not state grounds of reference which a convener considers sufficient to enable the authority to respond to it, the convener shall direct the appellant to send further and better particulars of the grounds of reference to the Secretary within 10 working days of the receipt of notice of such direction by the appellant in accordance with rule 48.

(2) Rules 15 and 17 shall apply to a direction under paragraph (1).

(3) Further and better particulars of the grounds of reference sent in response to a direction made in accordance with paragraph (1) shall, if a convener is satisfied that, together with the reference, such particulars are sufficient to enable the authority to respond to it, be treated as part of the reference.

(4) Where a convener has made a direction under paragraph (1) a copy of that direction shall be sent to the authority with confirmation that the case statement period will not commence until the direction has been complied with.

Case statement period and statement of appellant's case

8.—(1) Where rule 7 does not apply or a convener is satisfied under rule 7(3), the Secretary shall send notice in writing to both parties advising them of the dates of the case statement period.

(2) The case statement period shall be the period of 30 working days beginning on the date on which notice under paragraph (1) of this rule is taken to have been received in accordance with rule 48.

(3) Before the end of the case statement period the appellant must submit all written evidence to be relied on and which has not already been submitted and may submit to the Secretary a written statement of the appellant's case, which may include the views of the child or young person.

(4) In exceptional circumstances the appellant may amend the reference, submit a supplementary written statement of the appellant's case or amend a supplementary written statement, if permission is given by a convener or a Tribunal at a hearing.

(5) The appellant shall submit to the Secretary a copy of every amendment and supplementary statement for which permission is given.

(6) Subject to paragraph (7) a convener may make an order shortening or extending the case statement period in any reference—

- (a) which relates to the refusal of a placing request; or
- (b) in relation to which an order has been made under rule 20(1).

(7) A convener may only make an order under paragraph (6) if satisfied that—

- (a) both parties will have sufficient time to prepare their cases; and
- (b) it is fair and just to do so.

(8) In the case of any reference where permission is given by a convener under paragraph (4) the convener giving permission may extend the case statement period if satisfied that it is fair and just to do so.

(9) If, at the time permission is granted under paragraph (4), the authority is not entitled to take any part in the proceedings in accordance with Rule 10(4), the giving of permission shall restore such entitlement and, if necessary, the hearing shall be rearranged or adjourned, as a convener or a Tribunal at the hearing may consider appropriate, so that the authority can be represented.

Distribution of documents by Secretary

9.—(1) Subject to paragraph (2), the Secretary shall—

- (a) forthwith send to the authority a copy of any amendment to the reference received during the case statement period;
- (b) at the end of the case statement period, and in so far as copies have not already been sent, send to each party—
 - (i) a copy of any amendment to the reference or response;
 - (ii) any statement of case submitted by the other party; and
 - (iii) the written evidence of the other party;
- (c) forthwith send to the other party copies of any amendments or supplementary statements, written representations, written evidence (other than written evidence of which a copy is received in accordance with rule 8(3) or 10(3)) or other documents received from a party after the end of the case statement period.

(2) If a reference, a statement of case, amendment, supplementary statement, written representation, written evidence or other document is delivered to the Secretary after the time prescribed by these Rules, the Secretary shall not send a copy of it to the other party unless the relevant time limit has been extended under rule 19.

Response

10.—(1) No later than by the end of the case statement period the authority shall submit a response to the Secretary.

(2) The response shall be signed and dated on behalf of the authority and shall state—

- (a) the name and address of the authority;
- (b) the address to which correspondence should be sent, if different;
- (c) the response to the grounds stated in the reference;
- (d) the basis on which the reference is resisted;
- (e) which facts as set out in the reference or in any statement of case under rule 8 are admitted and which are disputed;
- (f) any further facts on which the authority propose to rely;
- (g) the views of the child or young person concerning the issues raised by the reference, or the reason why the authority has not ascertained those views; and
- (h) the name, address and profession of any representative appointed by the authority, and, where available, the representative’s telephone number, fax number and electronic address.

(3) The authority must submit along with the response all written evidence to be relied on.

(4) An authority who does not submit a response shall not be entitled to take any part in the proceedings, except—

- (a) to make an application under rule 15 for a direction requiring the appellant to provide further information on the grounds on which the appellant relies and any facts and submissions relevant thereto, to enable the authority to respond;
- (b) to apply under rule 19 for an extension of the time appointed under this rule for the response; or
- (c) in exceptional circumstances at the discretion of a convener or a Tribunal at a hearing.

(5) In exceptional circumstances the authority may amend the response if permission is given by a convener or a Tribunal at a hearing.

(6) The authority shall submit to the Secretary a copy of every amendment for which permission is given.

Withdrawal of reference

11.—(1) An appellant may withdraw any reference made to a Tribunal—

- (a) at any time before the hearing of the reference by sending to the Secretary a notice to that effect signed by the appellant; or
- (b) at the hearing of the reference.

(2) Upon receipt of any such notice, the Secretary shall send a copy to the authority.

(3) Upon withdrawal of the reference a convener or a Tribunal at a hearing shall make an order dismissing the reference.

Withdrawal of opposition

12.—(1) The authority may withdraw their opposition to the reference—

- (a) at any time before the hearing of the reference by sending to the Secretary a notice to that effect signed on their behalf; or
- (b) at the hearing of the reference.

(2) Upon receipt of any such notice, the Secretary shall send a copy to the appellant.