
WELSH STATUTORY INSTRUMENTS

2012 No. 322

**The Special Educational Needs
Tribunal for Wales Regulations 2012**

PART B

SPECIAL EDUCATIONAL NEEDS APPEALS AND DISABILITY CLAIMS

Case preparation before the hearing

Hearings and decisions

Notice of date, place and time of hearings

41.—(1) Subject to the provisions of paragraph (2) and regulation 42, the Secretary of the Tribunal must, after consultation with the parties, fix the date, place and time of the 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 their availability to attend a hearing and a party fails to comply with the request, the Secretary of the Tribunal may proceed to list the appeal or claim for hearing without further consultation.

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

- (a) in relation to a hearing under regulations 25, 27, 29, 56 or 57, no later than 5 working days before the date fixed for a hearing;
- (b) in any other case, no later than 10 working days before the date fixed for the hearing; or
- (c) in any case, within a shorter period of time before the date fixed for the hearing in subparagraphs 3(a) or 3(b) 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 of representation or assistance as provided by regulation 53; and
- (b) a statement explaining the possible consequences of non-attendance and the right to make representations in writing by—
 - (i) the appellant or the claimant if the appellant or the claimant does not attend and is not represented;
 - (ii) the local authority or the responsible body 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 the claim or withdrew its opposition to the appeal or the claim.

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

(6) If the parties are present when the President or the tribunal panel announce the new place and time place of the hearing, no further notice is required.

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

Power to determine the appeal or claim without a hearing

42.—(1) The President or the tribunal panel may determine the appeal or the claim or any particular issue without a hearing—

- (a) if the parties so agree in writing; or
- (b) in the circumstances described in regulation 25 (failure to submit a case statement and absence of opposition) or 36 (failure to comply with directions).

(2) Before making a determination under paragraph (1), the tribunal panel must consider any representations in writing already submitted by the parties (for the purpose of this regulation the appeal application or the claim application and the parties' case statements are treated as representations in writing).

Public and private hearings: arrangements and exceptions

43.—(1) Subject to paragraph (2), all hearings of the Tribunal must be in private.

(2) The President or the tribunal panel may make an order that a hearing or part of a hearing is to be held in public if the parties agree to a public hearing and the President or the tribunal panel is satisfied that a public hearing would—

- (a) not prejudice the welfare or interests of the child; and
- (b) allow for the fair hearing of the appeal or claim.

(3) Subject to paragraph (6), the following persons are entitled to attend a hearing even though it is held in private—

- (a) the parties;
- (b) the parties representatives;
- (c) the parties witnesses; and
- (d) any person who has submitted a declaration of suitability to the Tribunal in accordance with regulation 66 to act as a case friend.

(4) The following persons are also entitled to attend a hearing even though it is held in private—

- (a) the child where the child is not a party to the appeal or claim;
- (b) a parent of the child where the parent is not a party to the appeal or the claim;
- (c) the clerk to the tribunal panel and the Secretary of the Tribunal;
- (d) the President, a Chair, or an education panel member (when not sitting as a member of the tribunal panel);
- (e) a person undergoing training as a Chair, an education panel member or as a clerk to the tribunal panel;
- (f) a person acting on behalf of the President in the training or supervision of clerks to tribunal panels;
- (g) an interpreter;
- (h) any person giving other necessary assistance to a person sitting as a member of the tribunal panel or entitled to attend the hearing further to this regulation;

- (i) any person named by the appellant or the claimant in response to the enquiry under regulation 26(a)(vii) unless the President or the tribunal panel has determined that any such person must not attend the hearing and has notified the appellant or the claimant accordingly.
- (5) The President or the tribunal panel with the consent of the parties or their representatives actually present may permit any other person to attend a hearing which is held in private.
- (6) Without prejudice to any other powers it may have, the President or the tribunal panel may exclude from a hearing, or part of it—
 - (a) a person whose conduct in the opinion of the President or the tribunal panel has disrupted or is likely to disrupt the hearing;
 - (b) a person whose presence in the opinion of the President or the tribunal panel has made or is likely to make it difficult for any person to give evidence or make the representations necessary for the proper conduct of the hearing;
 - (c) a representative or witness whom a party omitted to name, without reasonable cause, in response to the enquiry by the Secretary of the Tribunal under regulation 26.
- (7) Except as provided in regulation 46(3) and (4) none of the persons mentioned in paragraphs (4) or (5) may, except in the case of the persons specified in sub-paragraphs (c), (g), and (h) of paragraph (4) as their respective duties require, take any part in the hearing or (where entitled or permitted to remain) in the deliberations of the tribunal panel.

Restricted reporting orders

44.—(1) If it appears appropriate to do so the President or the tribunal panel may make an order limiting or prohibiting the publishing of any matter that is likely to lead members of the public to identify the appellant, claimant, child or other person, where it is considered that they should not be identified.

(2) In this regulation “publishing” (“*cyhoeddi*”) includes, without prejudice to the generality of that expression—

- (a) publishing any matter in a programme service, as defined by section 201 of the Broadcasting Act 1990⁽¹⁾; and
- (b) causing any matter to be published.

(3) An order under this regulation may be made in respect of a limited period and may be varied or revoked by the President or the tribunal panel.

Procedure at hearing

45.—(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 clarify 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 appellant or the claimant to rely on grounds not stated in the appeal application or the claim application or the case statement and to produce evidence not presented to the local authority or the responsible body before or at the time it took the disputed decision;

(1) 1990 c. 42.

- (b) the local authority or the responsible body to rely on grounds not specified in its 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 rejoin the hearing.

Evidence at hearing

46.—(1) Subject to regulation 43(6), in the course of the hearing the parties are entitled 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 appeal or the claim.

(2) A party is not entitled to call more than two witnesses to give evidence orally (in addition to any witness whose attendance is required in accordance with paragraph (6)).

(3) The President or the tribunal panel may permit the following persons to give evidence and address the tribunal panel on the subject matter of the appeal or the claim—

- (a) the child where the child is not a party to the appeal or the claim;
- (b) the parent of the child where the parent is not a party to the appeal or the claim;
- (c) a person who has submitted a declaration of suitability to the Tribunal in accordance with regulation 66 to act as a case friend.

(4) The President or the tribunal panel may permit—

- (a) the person, if any, named in response to an enquiry under regulation 26(a)(vii) to give evidence and address the tribunal panel on the child's views and wishes;
- (b) the local authority or the responsible body to question the person specified in subparagraph (a) in relation to any evidence or address made to the tribunal panel.

(5) Evidence before the tribunal panel may be given—

- (a) orally; or
- (b) by written statement if such evidence is submitted with the appeal application or claim application or the case statement or in accordance with regulation 50.

(6) The President or the tribunal panel may at any stage of the appeal or the claim require the personal attendance of any maker of any written statement.

(7) The President or the tribunal panel may receive evidence of any fact which appears to the President or the tribunal panel to be relevant.

(8) The President or the tribunal panel 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 by statement of truth.

Change of witness

47.—(1) The person named as a party's witness in response to an enquiry made under regulation 26 may be changed by that party if written notification is received by the Secretary of the Tribunal and a copy of the notification served on the other party no later than 5 working days before the hearing.

(2) Any application to change a witness made less than 5 working days before the hearing must be determined by the President or the tribunal panel.

Summoning a witness

48.—(1) Subject to paragraphs (2) to (5), the President or the tribunal panel may, on the application of a party or on the President's or the tribunal panel'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.

(3) In exercising the power conferred by this regulation, the President or the tribunal panel 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 the person has been given at least 5 working days notice of the hearing or, if less than 5 working days, the person has informed the President or the tribunal panel 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 is 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) in relation to an appeal, a statement that under section 336 of the 1996 Act, 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 on summary conviction to a fine not exceeding level 3 on the standard scale;
- (b) in relation to a claim, a statement that, under paragraph 6(8) of Schedule 17 to the 2010 Act, 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 on summary conviction to a fine not exceeding level 3 on the standard scale; and
- (c) a statement of the effect of paragraph (8).

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

(9) The President or the tribunal panel must not vary or set aside the 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

49. The President may, on the application of a party or on the President's or the tribunal panel'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 of these Regulations.

Late written evidence

50.—(1) At the beginning of the hearing, a party may submit for admission further written evidence if—

- (a) the parties agree to the admission of the further evidence; or
 - (b) the evidence satisfies the conditions set out in paragraph (2).
- (2) The conditions referred to in paragraph (1)(b) are that—
- (a) the evidence was not, and could not reasonably have been, available to that party before the end of the case statement period; and
 - (b) a copy of the evidence was submitted to the Secretary of the Tribunal and served on the other party at least 5 working days before the hearing.

(3) Further written evidence submitted in accordance with paragraph (1)(b) may only, subject to paragraph (4), be admitted if, after considering any representations from the other party, the President or the tribunal panel is of the opinion that the extent and form of the evidence is such that it is unlikely to impede the efficient conduct of the hearing.

(4) Further written evidence must not be admitted if, in the opinion of the President or the tribunal panel, admission would be contrary to the interests of justice.

(5) If the conditions in paragraph (2) are not met, the President or the tribunal panel may give a party permission to submit further written evidence at the hearing if the President or the tribunal panel is of the opinion that unless the evidence is admitted, there is a serious risk of prejudice to the party seeking to rely on it.

Postponement of hearing

51.—(1) The President or the tribunal panel may, on the President's or the tribunal panel's own initiative or on the application of a party, in exceptional circumstances, 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 directions

52.—(1) The President or the tribunal panel may adjourn a hearing.

- (2) When a hearing is adjourned—
- (a) the President or the tribunal panel may give directions to be complied with before or at the resumed hearing;
 - (b) the Chair may announce provisional conclusions reached by the tribunal panel. The provisional conclusions are not a decision of the tribunal panel.

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

(4) If a party fails to comply with a direction made under paragraph (2)(a) the tribunal panel may take account of that fact when determining the appeal or the claim 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

53.—(1) Subject to paragraph (2), at any hearing or part of a hearing—

- (a) the appellant or claimant may conduct the appeal or claim (with assistance from one person if the appellant or the claimant wishes), or may appear and be represented by one person whether or not legally qualified;
- (b) the local authority or the responsible body may appear and be represented by one person whether or not legally qualified.

(2) The President or the tribunal panel may grant permission—

- (a) for the appellant or claimant to obtain assistance or be represented by more than one person;
- (b) for the local authority or the responsible body to be represented by more than one person.

(3) If a party does not intend to attend or be represented at the hearing the 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

54.—(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 appeal or claim in the party's absence; or
- (b) postpone or adjourn the hearing, as appropriate.

(2) Before disposing of an appeal or claim 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 regulation the appeal application or claim application and the parties' case statements are to be treated as representations in writing.

Tribunal panel's decision

55.—(1) For the purposes of arriving at its decision the tribunal panel must, and for the purposes of discussing a question of procedure may, notwithstanding anything contained in these Regulations, order all persons to withdraw from the sitting of the tribunal panel other than the members of the tribunal panel and any of the persons mentioned in regulation 43(4)(c) to (f), or, as their respective duties require, regulation 43(4)(g) and (h).

(2) A decision of the tribunal panel may be taken by a majority and where the tribunal panel is constituted by two members under regulation 45(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, in any event, whether there has been a hearing or not, must be recorded immediately in a document which except in the case of a decision by consent, must also contain, or have annexed to it, 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.

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(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 the tribunal panel must be entered 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 appeal against the tribunal panel decision and the procedure to be followed.

(7) Where regulations 15(11)(a) or 67(2) apply the Secretary of the Tribunal must send a copy of the documents referred to in paragraph (6) to the appellant or claimant in addition to the representative or the case friend.

(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 appellant or claimant (whether or not the decision has previously been announced at the end of the hearing).