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SCOTTISH STATUTORY INSTRUMENTS

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**2005 No. 514**

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

**PART V**

**HEARINGS AND DECISIONS**

**Notice of Hearing**

**25.**—(1) The Secretary shall, after consultation with the parties, fix the date, time and place of the hearing and, not less than 10 working days (or such shorter time as the parties may agree) before the date so fixed, send to each party a notice that the hearing is to be at such time and at such place or notify them in such other manner as the Secretary thinks fit.

(2) The Secretary shall include in or with the notice of hearing—

- (a) information and guidance as to attendance at the hearing of the parties, their witnesses and any persons whom they may wish to be present at the hearing in support, the lodging of documents, and the right of representation or assistance as provided for in rule 32(4);
- (b) a statement explaining the possible consequences of non-attendance by a party, unless that party has stated in writing that they wish to withdraw the reference or withdraw the response, and of the consequences of the failure to name a representative or witness whom the party may wish to attend;
- (c) an invitation to notify the Secretary if a party or a witness may require the attendance of an interpreter or other person to give other necessary assistance at the hearing or may require any other particular arrangements to be made; and
- (d) a statement explaining the right to make representations in writing provided for under rule 27(6) by—
  - (i) an appellant who does not attend and is not represented at the hearing; or
  - (ii) an authority if they are not represented at the hearing and if they have submitted a response, unless they have stated in writing that they do not resist the reference or have withdrawn opposition to the reference.

(3) The Secretary may alter the date, time or place of any hearing provided that the parties are given at least 5 working days notice (or such shorter time as the parties may agree) of any altered hearing date, time or place.

(4) An altered hearing date shall not (unless the parties so agree) be earlier than the date previously fixed.

(5) Nothing in this rule shall oblige the Secretary, in relation to the arrangements for any hearing, to consult with or send notice to any party who is not entitled to be present or represented at that hearing.

(6) In this rule “working day” has the meaning given to it in rule 2 except that it includes any day in July which is not a Saturday, a Sunday or a day specified as a bank holiday in accordance with these Rules.

#### **Power to decide reference without hearing**

**26.**—(1) A Tribunal may, in any of the circumstances referred to in paragraph (2), decide the reference without a hearing.

(2) For the purposes of paragraph (1) the circumstances are—

- (a) where no response is submitted to the Secretary within the time appointed by rule 10 or any extension of time allowed under rule 19;
- (b) where the authority states in writing that they do not resist the reference;
- (c) where the authority withdraws their opposition to the reference; or
- (d) where both parties agree in writing to dispense with a hearing.

(3) In deciding a reference under paragraph (1) a Tribunal shall do so on the basis of the notice of reference, any response, any statement of case and any written evidence submitted in accordance with the Rules.

#### **Attendance at hearings**

**27.**—(1) Subject to the provisions of this rule, any hearing before a Tribunal shall be in private.

(2) A convener or the Tribunal at a hearing may, on the application of the appellant or on his, her or its own initiative, make an order that a hearing or part of a hearing be held in public.

(3) An order shall not be made under paragraph (2) in any of the circumstances referred to in paragraph (4).

(4) Those circumstances are that a public hearing—

- (a) would prejudice the welfare or interests of the child or young person;
- (b) would not, in all the circumstances, allow the fair hearing of the reference; or
- (c) would not be fair or just.

(5) The Tribunal, with the consent of the parties or their representatives actually present, may permit any other person to attend the hearing of a reference which is held in private.

(6) An appellant or authority who does not intend to attend or be represented at the hearing may, not less than five working days before the hearing, submit additional written representations in support of their case.

(7) The following persons, as well as the parties and their representatives, shall be entitled to attend the hearing of a reference held in private—

- (a) the child or young person unless, in the case of a child, the Tribunal considers that in respect of the whole or any part of the proceedings the welfare or interests of that child would be prejudiced by being present;
- (b) a parent of the child or young person who is not a party;
- (c) a person attending to support a party;
- (d) a person appointed under rule 33(2);
- (e) a witness but only for the purpose of giving evidence;
- (f) the President and a member of the panels of conveners or members (when not sitting as a convener or member of the Tribunal);
- (g) the Secretary or a prospective Secretary undergoing training;

- (h) a member of the Tribunal staff;
  - (i) a member of the Council on Tribunals or its Scottish Committee appointed under section 2 of the Tribunals and Inquiries Act 1992(1);
  - (j) a person acting on behalf of the President in the training or supervision of the Tribunal staff;
  - (k) an interpreter or other person giving other necessary assistance to a person entitled to attend the hearing.
- (8) Without prejudice to any other powers it may have, a Tribunal may exclude from the hearing, or any part of it—
- (a) a person whose conduct has disrupted or is likely, in the opinion of the Tribunal, to disrupt the hearing;
  - (b) a person, including the child or young person, whose presence is likely, in the opinion of the Tribunal, to make it difficult for any person to present evidence or make representations necessary for the proper conduct of the hearing;
  - (c) a representative who was not notified to the Secretary in the reference, response or in accordance with rule 32; or
  - (d) a witness not included in the list of witnesses submitted by either party in accordance with rule 22(1).

### **Conduct of the hearing**

**28.**—(1) At the beginning of the hearing the convener shall explain the procedure which the Tribunal proposes to adopt.

(2) At the hearing of a reference, the parties shall, subject to the provisions of these Rules, be entitled to be present and be heard, to give evidence, to call witnesses, to question witnesses and to address the Tribunal both on the evidence and generally on the subject matter of the reference, provided that neither party shall be entitled unless permitted to do so by a convener, or the Tribunal at a hearing, to call more than two witnesses to give evidence in person in addition to the child or young person.

(3) A Tribunal may permit a parent of the child or young person, who is not a party, to address it on the subject matter of the reference.

(4) The Tribunal may, if it is satisfied that it is fair and just to do so, permit—

- (a) the appellant to rely on grounds not stated in the reference or in any statement of case and to produce or lead any evidence not presented to the authority prior to the date of—
  - (i) the decision which is the subject of the reference; or
  - (ii) the provision of a copy of the co-ordinated support plan or amended plan in accordance with section 11(5)(a) of the Act containing the information which is the subject of the reference; or
- (b) the authority to rely on grounds not specified in the response.

(5) If, at or after the beginning of a hearing, a member of the Tribunal, other than the convener is absent, the hearing may, with the consent of the parties, be conducted by the convener and the remaining member and in that event the Tribunal shall be deemed to be properly constituted, and the decision of the Tribunal shall be taken by the convener and that member.

(6) In the absence of the consent referred to in paragraph (5) the hearing shall be postponed.

(7) Except in so far as expressly permitted by these Rules to give evidence or to address the Tribunal none of the persons mentioned in rule 27(5) or 27(7) shall, save in the case of persons mentioned in sub paragraph (k) as their respective duties require, take any part in the hearing or (where entitled or permitted to remain) in the deliberations of the Tribunal.

(8) For the purposes of arriving at its decision a Tribunal shall, and for the purposes of discussing a question of procedure, may, notwithstanding anything contained in these Rules order all persons to withdraw from the sitting of the Tribunal other than the convener and members of the Tribunal and any of the persons mentioned in rule 27(5) (f) to (j).

### **Evidence at hearing**

**29.**—(1) Evidence at a hearing may be given in person or by written statement, but, subject to the provisions of these Rules, the Tribunal may at any stage of the proceedings require the personal attendance of the maker of a written statement.

(2) A party shall only be permitted to give evidence by written statement if such statement is submitted prior to the expiry of the case statement period or at any time with the consent of the other party and with the approval of a convener or the Tribunal at a hearing.

### **Postponement of hearing**

**30.**—(1) A convener may, on his or her own initiative, or on application by either party, postpone any hearing.

(2) The Secretary shall notify the parties of the date, time and place of any postponed hearing.

### **Adjournment of hearing**

**31.**—(1) A Tribunal may from time to time adjourn a hearing.

(2) A hearing shall not be adjourned solely on account of the failure of a witness to appear unless the Tribunal, on cause shown, so directs.

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

(4) Such directions may require a party to provide such particulars or evidence as may reasonably be required for the determination of the reference.

(5) If a party fails to comply with such a direction, the Tribunal shall take account of that fact when determining the reference or deciding whether to make an order for expenses.

(6) The Secretary shall notify the parties of the date, time and place for the resumed hearing.

### **Representation**

**32.**—(1) If at any time, a party wishes to be represented by a person other than a representative named in the reference or the response, they shall give notice to the Secretary of the name and address and profession of that person.

(2) If at any time a party no longer wishes to be represented by a representative of whom details have been provided they shall notify the Secretary.

(3) If at any time a person named as the representative of a party is not prepared, or is no longer prepared, to represent that party they shall notify the Secretary.

(4) At the hearing of a reference a party may conduct their own case, with assistance from any person if they wish, or may appear and be represented by their representative.

(5) If, in any particular case, a Tribunal is satisfied that there are good and sufficient reasons for doing so, it may refuse to permit a particular person to assist or represent a party at the hearing.

(6) The Secretary shall, where a party is represented, send all documents and notices concerning the reference to the representative instead of the party.

(7) Except in relation to citations under rules 21 or 22, references in these Rules (however expressed) to giving or sending any notice or other document to a party shall be construed as references to giving or sending any notice or other documents to the representative of that party.

### **Children**

**33.**—(1) A Tribunal may permit a child under the age of 12 to give evidence only where it considers—

- (a) that the evidence of the child is necessary to enable a fair and just hearing of the reference; and
- (b) that the welfare and interests of the child will not be prejudiced by so doing.

(2) If it allows such a child to give evidence in person, a convener or the Tribunal may appoint for the purpose of the hearing a person with appropriate skills or experience in facilitating the giving of evidence by children.

(3) The Secretary shall pay such reasonable fees, expenses or allowances as the President may determine to any person appointed under this rule.

### **Late evidence**

**34.** At the start of a hearing, where a party proposes to submit further documents not already lodged as productions, or to call a witness not on their list of witnesses, the Tribunal, after considering any representations from the other party, may allow that proposal if it is satisfied that, in all the circumstances, it would be fair and just to do so.

### **Restricted reporting orders**

**35.**—(1) If it appears appropriate to do so a restricted reporting order may be made by a convener or a Tribunal at a hearing.

(2) A restricted reporting order is an order limiting or prohibiting the publishing of any matter specified in the order, which may include matter likely to lead members of the public to identify the appellant or any specified child or other person, where it is considered that they should not be identified.

(3) In this rule “publishing” 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(2); and
- (b) causing matter to be published.

(4) An order under this rule may be made in respect of a limited period and may be varied or revoked by a convener or a Tribunal before or at the hearing.

### **Failure of parties to attend**

**36.**—(1) If a party fails to attend or be represented at a hearing of which they have been duly notified, the Tribunal may—

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(2) 1990 c 42; section 201 was amended by the Communications Act 2003 (c. 86), section 360(2).

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

(2) Before disposing of the reference in the absence of a party, the Tribunal shall consider the reference, any response, any statement of case and any written evidence submitted in accordance with the Rules.

### **Decisions on references**

**37.**—(1) Where the Tribunal is constituted by a convener and one member under these Rules the convener shall have a second or casting vote.

(2) The decision of a Tribunal may be given orally at the end of the hearing or reserved and, in any event, whether there has been a hearing or not, shall as soon as may be practicable be recorded in a document signed by the convener which, save in the case of a decision by consent, shall also contain, or have annexed to it, a statement of the facts found by the Tribunal and of the reasons for the decision.

(3) The Secretary shall—

- (a) send a copy of the document referred to in paragraph (2) to each party, together with notice about the circumstances in which there is a right to appeal under section 21 of the Act against a Tribunal decision;
- (b) enter such details in the Register as the President may from time to time direct under paragraph 12 of Schedule 1 to the Act; and
- (c) where the circumstances mentioned in section 19(5)(c) of the Act apply, notify the appeal committee of the reference to the committee of the Tribunal's decision.

### **Orders of the Court**

**38.**—(1) If any appeal against a decision of a Tribunal is allowed by order of the Court of Session, the Secretary shall alter the entry relating to the decision in the Register to conform to that order and shall notify the parties accordingly.

(2) If by order of the Court of Session a reference is remitted back to the Tribunal or to a differently constituted Tribunal, and subject to any directions or orders of the court made under section 21(3) of the Act, the Secretary shall notify the parties that, during a period of 15 working days (or such shorter period as the parties may agree in writing) each may submit a supplementary statement of case and further written evidence.

(3) If an appeal against an order to dismiss a reference is allowed by the Court of Session, the Secretary shall notify the parties—

- (a) in the case where the case statement period had not expired before the order to dismiss took effect—
  - (i) that a new case statement period shall be commenced in accordance with rule 8; and
  - (ii) that, within the new 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 dismissal took effect; or
- (b) in any other case, that each party may within a period of 15 working days (or such shorter period as the parties may agree in writing) submit a supplementary statement of case along with any further written evidence.

(4) The Secretary shall forthwith send a copy of all statements and written evidence received from a party in accordance with this rule to the other party.

## **Expenses**

**39.**—(1) A Tribunal shall not normally make an order as to expenses but may after disposing of a reference, make such an order—

- (a) against either party if it is satisfied that the party has acted frivolously or vexatiously or that their conduct in the making or pursuing or the resisting of a reference was wholly unreasonable;
- (b) against a party who failed to attend or be represented at any hearing of which they were duly notified;
- (c) against the authority where they have not delivered a response under rule 10; or
- (d) against the authority where the Tribunal considers the disputed decision, failure or information was wholly unreasonable.

(2) An order as to expenses may be made—

- (a) as respects any expenses incurred or fees or allowances paid by any party to any person, or
- (b) as respects any expenses, fees or allowances paid to any person providing expert advice or evidence to the Tribunal or appointed under rule 33(2).

(3) An order shall not be made under paragraph (1) against a party unless that party has been given an opportunity to make representations to the Tribunal, whether in writing or in person as the Tribunal may specify, against the making of the order.

(4) An order made under paragraph (2)(a) may require the party against whom it is made to pay to the other party either a specified sum in respect of the expenses incurred by that other party in connection with the proceedings or the whole or part of such expenses as taxed if not otherwise agreed.

(5) An order made under paragraph (2)(b) shall require the party against whom it is made to pay a specified sum in reimbursement of the expenses, fees or allowances paid to any such expert or person appointed under rule 33(2).

(6) An order under this rule for expenses as taxed, shall allow the Auditor of the Court of Session to make a detailed assessment and tax the expenses on such basis as the order may specify.