

2005 No. 514

EDUCATION

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

Made - - - - - *19th October 2005*
Laid before the Scottish Parliament *21st October 2005*
Coming into force - - - *14th November 2005*

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The Scottish Ministers, in exercise of the powers conferred by section 17(4) and Schedule 1 of the Education (Additional Support for Learning) (Scotland) Act 2004^(a) and of all other powers enabling them in that behalf, and after consultation with the Council on Tribunals and its Scottish Committee in accordance with section 8(1) and (3) of the Tribunals and Inquiries Act 1992^(b), hereby make the following rules:

(a) 2004 asp 4.
(b) 1992 c.53.

PART I

GENERAL

Citation and Commencement

1. These Rules may be cited as the Additional Support Needs Tribunals for Scotland (Practice and Procedure) Rules 2005 and shall come into force on 14th November 2005.

Interpretation

2.—(1) In these Rules, unless the context otherwise requires—

“the Act” means the Education (Additional Support for Learning) (Scotland) Act 2004;

“the appellant” means the person who makes a reference to a Tribunal under section 18 of the Act;

“an appeal committee” means a committee set up under section 28D of the Education (Scotland) Act 1980(a);

“the authority” means the education authority responsible for the school education of the child or young person;

“case statement period” means the period referred to in rule 8;

“the child or young person” means the child or young person to whom a reference relates;

“convener” means the President or individual selected by the President from the panel (“the panel of conveners”) appointed by the Scottish Ministers under paragraph 3(1)(a) of Schedule 1 to the Act to act as the convener of a Tribunal;

“decision” in relation to a Tribunal includes—

(a) an order, including dismissal of a reference;

(b) a requirement under section 19 of the Act; and

(c) a reference by a Tribunal to an appeal committee under section 19(5)(c) of the Act;

“electronic communication” has the meaning given to it by section 15(1) of the Electronic Communications Act 2000(b) and “electronic signature” has the same meaning as in section 7 of that Act;

“grounds of reference” includes the matters specified in rule 5(2)(f) and (g);

“hearing” means a sitting of a Tribunal for the purpose of enabling the Tribunal to take a decision on a reference or on any question or matter at which the parties are entitled to attend and be heard;

“members” means the individuals selected by the President from the panel (“the panel of members”) appointed by the Scottish Ministers under paragraph 3(1)(b) of Schedule 1 to the Act to act as a member of a Tribunal;

“party” means either the appellant or authority in respect of any reference made to a Tribunal;

“reference” means a reference under section 18(1) of the Act;

“Register” means the Register of References to the Tribunals kept in pursuance of rule 44;

“response” means a written response submitted by an authority under rule 10;

“the Secretary” means the member of the Tribunal staff for the time being appointed to act as secretary to the Tribunals;

“working day” means any day which is not—

(a) a Saturday;

(b) a Sunday;

(a) 1980 c.44; section 28D was inserted by section 1 of the Education (Scotland) Act 1981 (c.58).
(b) 2000 c.7.

- (c) a day from 27th December to 31st December inclusive;
- (d) a day in July; or
- (e) a day specified as a bank holiday in Scotland in or by virtue of the Banking and Financial Dealings Act 1971(a);
- (f) “in writing” has the meaning in section 29(5) of the Act; and
- (g) “written evidence” includes evidence recorded in any way.

(2) In these Rules–

- (a) a reference to a rule is a reference to a rule in these Rules, and in any rule a reference to a paragraph or sub-paragraph is, unless the context requires otherwise, a reference to a paragraph or sub-paragraph in the rule; and
- (b) where the time prescribed by these Rules for doing any act expires on a day which is not a working day, that act is done in time if it is done on the next working day.

The overriding objective

3.—(1) These Rules are a procedural code with the overriding objective of enabling a Tribunal with the assistance of the parties to deal with references fairly and justly.

(2) Dealing with references fairly and justly includes–

- (a) dealing with the reference in ways which are proportionate to the complexity of the issues and to the resources of the parties;
- (b) seeking informality and flexibility in the proceedings under these Rules;
- (c) ensuring, so far as practicable, that the parties are on an equal footing procedurally and are able to participate fully in the proceedings, including assisting any party in the presentation of his or her case without advocating the course he or she should take;
- (d) using a Tribunal’s special expertise effectively; and
- (e) avoiding delay, so far as compatible with the proper consideration of the issues.

Application by Tribunal of the overriding objective

4.—(1) A Tribunal must seek to give effect to the overriding objective when it–

- (a) exercises any power under these Rules; or
- (b) interprets any rule.

(2) In particular a Tribunal must manage references actively in accordance with the overriding objective.

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;

(a) 1971 c.80.

- (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.

PART III

MANAGEMENT POWERS OF TRIBUNALS

Preliminary matters

13.—(1) —A convener or, at the start of a hearing, the Tribunal may, either on the application of a party or on their own initiative, consider and determine any preliminary or incidental issue arising from a reference which must be determined prior to the substantive hearing of the reference, and which cannot be determined by the giving of directions under Rule 15.

(2) Before any such issue is determined by a convener or the Tribunal, the convener or the Tribunal may direct that the Secretary—

- (a) gives notice to the parties giving them an opportunity to submit representations in writing within a specified period; or
- (b) gives notice requiring the parties to appear before a convener or the Tribunal for a preliminary hearing on that issue.

Suspension of proceedings

14.—(1) A convener or a Tribunal at a hearing—

- (a) shall, if both parties are so agreed, suspend proceedings in respect of a reference pending the outcome of mediation or dispute resolution under sections 15 or 16 of the Act; or
- (b) may on the application of either party, or on their own initiative, suspend such proceedings if it would be fair and just to do so.

(2) Any such suspension may be indefinite or for such specified period as the convener or the Tribunal may consider appropriate.

Directions

15.—(1) A convener, at any time before the hearing, either on the written application of a party or on his or her own initiative, give such directions to either or both parties as the convener may consider necessary or expedient to further the overriding objective in the consideration of the reference and may in particular—

- (a) direct a party to provide any further information or particulars;
- (b) direct a party to produce any document which may reasonably be required and which it is in the power of that party to produce;
- (c) direct that a party shall supply a list of documents and a list of witnesses whom that party intends to call to give evidence at the hearing, on such date before the hearing as may be specified;
- (d) give directions as to the dates by which any documents or other evidence which any party is intending to rely on or produce shall be submitted;
- (e) where a party has notified that they do not wish to attend a hearing, give a direction as to the date by which that party shall send any written representations on the case to the Secretary;
- (f) give a direction on—
 - (i) any issues on which evidence is required;
 - (ii) the nature of the evidence so required;
 - (iii) the way in which the evidence is to be provided to the Tribunal; and
 - (iv) the exclusion of any evidence which is irrelevant, unnecessary or improperly obtained.

(2) Where an application is made by a party for a direction under paragraph (1), it shall be made in writing to the Secretary specifying the direction sought and the basis for the application.

(3) On receipt of such an application, the Secretary shall, unless the application is accompanied by the written consent of the other party, send a copy of the application to the other party inviting the party to make written representations on it within 10 working days or such other period as may be specified by a convener.

(4) Where a party objects to the application, a convener shall consider the objection and, if considered necessary for deciding the application, may afford the parties an opportunity to be heard.

(5) The Secretary shall give notice to the parties of any direction to any party required to comply with it and shall—

- (a) include a statement of the possible consequences of failure to comply as mentioned in rule 17; and
- (b) unless the person to whom the direction is addressed had consented to the application, contain a statement to the effect that that party may apply to a convener under rule 16 to have that direction varied or set aside.

(6) When making a direction under paragraph (1)(b) of this rule a convener may—

- (a) impose a condition on the supply of a document that the party receiving the document shall treat it as confidential and shall use it only for the purposes of the reference; and
- (b) require, before the direction takes effect, a written undertaking to that effect from that party.

Varying or setting aside of directions

16.—(1) Where a party to whom a direction is given under rule 15 was not afforded the opportunity to be heard before the direction was given and did not consent to the relative application, that person may apply at any time before a Tribunal has determined the reference to a convener, by notice to the Secretary, for the direction to be varied or set aside, but a convener shall not vary it or set it aside without first notifying the other party and considering any representations made by that party.

(2) An application under paragraph (1) may be considered by a convener alone or with such other members of a Tribunal as the convener considers appropriate.

Failure to comply with a direction

17.—(1) If any direction given to a party under rule 15 is not complied with by that party within any period specified in the direction, a convener or a Tribunal at a hearing, may—

- (a) where the party in default is the appellant, dismiss the reference either in whole or in part;
- (b) where the party in default is the authority, determine the reference without a hearing; or
- (c) where appropriate, direct that a party in default take no further part in the proceedings.

(2) In this rule the expression “party in default” means the party who failed to comply with the direction.

Power to dismiss

18.—(1) Without prejudice to the powers of a Tribunal at a hearing, a convener may, at any time before the hearing of a reference, direct that the Secretary serves notice on the appellant stating that it appears that the reference should be dismissed on one or more of the grounds specified in paragraph (2) or for want of prosecution.

(2) The grounds referred to in paragraph (1) are that the reference—

- (a) is made otherwise than in accordance with these Rules;
- (b) is not, or is no longer, within the jurisdiction of the Tribunal; or
- (c) is frivolous or vexatious.

(3) The notice under paragraph (1) shall invite the appellant within such period as may be specified (being not less than 5 working days) to make representations in writing as to why the reference should not be dismissed and shall explain that the appellant may request a hearing.

(4) After expiry of the period specified in paragraph (3), and subject to paragraph (5), a convener may order that the reference be struck out on one or more of the grounds specified in paragraph (2) or for want of prosecution.

(5) Before making an order under paragraph (4) a convener shall consider any representations under paragraph (3) and may afford the appellant the opportunity of a hearing.

(6) Any decision to dismiss a reference under this rule shall be recorded in summary form in a document signed by the convener and a copy of that document shall be sent by the Secretary to each of the parties, and details of the decision entered in the Register.

Extension of time

19.—(1) Where these Rules or any direction made under them require or authorise a party or other person to do something within a period of time, a convener or a Tribunal at a hearing may, in exceptional circumstances, on the application of that person or on their own initiative, and even if the period has expired, grant such further period as the convener or Tribunal may consider appropriate.

(2) Where such a further period has been granted, reference in these Rules to the period of time shall be construed as a reference to the period of time as so extended, and, unless the further period is granted by a Tribunal at a hearing at which both parties are either present or represented, the Secretary shall give notice to each of the parties of any such extension.

Consolidation of references

20.—(1) Where more than one reference relates to the same child or young person, or requires a decision on substantially the same issue, a convener may order that such references be heard at the same hearing.

(2) A convener may make an order varying or revoking an earlier order made under paragraph (1).

(3) An order under this rule shall only be made if it appears to the convener be fair and just to do so and, before an order is made, the parties to each reference affected shall have the opportunity to be heard either by a convener alone or with such other members of a Tribunal as the convener may consider appropriate.

PART IV EVIDENCE

Recovery of documents

21.—(1) Subject to the provisions of the Act and to paragraph (2) of this rule, a Tribunal may, on the application of any party or on its own initiative, direct the Secretary to send a citation to any person in Scotland requiring that person to produce to the Secretary, by such date as may be specified, any document in the custody, or under the control, of that person.

(2) The citation must explain that it is an offence under paragraph 13 of Schedule 1 to the Act to refuse or fail to produce any such document without reasonable excuse or to deliberately alter, conceal or destroy any document which that person is required by the citation to produce, and that a person guilty of such an offence may be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) Where such a citation has been duly served on a person and that person fails to comply within the time specified in the citation, a convener or the Tribunal at a hearing may—

- (a) where the person in default is the appellant, dismiss the reference without a hearing or further hearing; or
- (b) where the person in default is the authority, order that the authority take no further part in the proceedings.

(4) For the purposes of paragraph (1) a person is not obliged to produce a document which that person would be entitled to refuse to produce in civil proceedings before the Court of Session.

(5) In the exercise of the power conferred under paragraph (1) regard shall be had to the need to protect any matter that relates to intimate personal or financial circumstances of any person or consists of information communicated or obtained in confidence.

Witnesses and citation of witnesses

22.—(1) Where a party wishes to call witnesses to attend a hearing to give evidence, that party shall, prior to the end of the case statement period, provide to the Secretary a list of the names and addresses of such witnesses.

(2) A party may not call and lead evidence from any witness who is not included on their list of witnesses except with the permission of a convener or a Tribunal at a hearing.

(3) Subject to the provisions of the Act and to paragraph (5) of this rule, a Tribunal may, on the written application of any party made not later than 8 working days before the hearing or on its own initiative, direct the Secretary to send a citation to any person in Scotland whose details are included in either party's list of witnesses under paragraph (1) requiring that person to attend any hearing, including any adjourned hearing, of the Tribunal at such time and place as may be specified in the citation, for the purpose of giving evidence.

(4) The citation must explain that it is an offence under paragraph 13 of Schedule 1 to the Act without reasonable excuse to fail to attend the Tribunal proceedings as required by the citation or to refuse or fail, whilst attending proceedings as so required, to answer any question and that a person guilty of such an offence may be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) No person shall be required so to attend unless—

- (a) they have been given at least 5 working days' notice of the hearing or, if less than 5 such days, they have informed the Secretary that they accept such notice as they have been given; and
- (b) the necessary expenses of their attendance are paid or tendered to them by the party seeking their attendance.

(6) No witness shall be obliged to answer any question that they could not be compelled to answer in any civil proceedings before the Court of Session.

Evidence by telephone, video link or other means

23. A convener or the Tribunal at the start of a hearing may, on the application of either party or on his, her or its own initiative, determine that a witness be allowed 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.

Expert evidence

24.—(1) A Tribunal may, if any issue arises in relation to a reference on which in the opinion of the Tribunal, it would be desirable for the Tribunal to have the assistance of an expert, appoint a person having appropriate qualifications to enquire into and report on any matter.

(2) The Secretary must supply the parties with a copy of any written report received under paragraph (1) in advance of the hearing or resumed hearing.

(3) If the Tribunal sees fit, it may direct that the expert shall attend the hearing and give evidence.

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

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(a);
 - (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

(a) 1992 (c.3)

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(a); 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—

- (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.

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

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.

PART VI

MISCELLANEOUS

Miscellaneous

- 40.**—(1) Subject to the provisions of the Act and these Rules, a Tribunal may regulate its own procedure.
- (2) A Tribunal may, if it thinks fit, make a decision in terms agreed in writing by the parties.
 - (3) A function of the Secretary may be performed by another member of the Tribunal staff duly authorised by the President.

Change of authority

- 41.**—(1) This rule applies if, after the date of receipt by the Secretary of a reference, an education authority (“the new authority”) other than the authority named in the notice of reference (“the original authority”) becomes responsible for the school education of the child or young person.
- (2) On receiving information that this rule applies a convener or a Tribunal at a hearing may order that, for all the purposes of the reference, the new authority be substituted for the original authority.
 - (3) The appellant, the original authority and the new authority, shall have an opportunity to be heard before an order is made under paragraph (2).
 - (4) When an order is made under paragraph (2)—
 - (a) the Secretary shall notify the appellant, the original authority and the new authority;
 - (b) the original authority shall no longer be a party;
 - (c) the new authority shall become a party;
 - (d) these Rules shall apply as if the new authority had made the decision or was responsible for the failure or information to which the reference relates;

- (e) the Secretary shall send to the new authority copies of all the documents and written evidence relating to the reference duly received by the Tribunal from the appellant or from the original authority; and
- (f) the convener or the Tribunal shall give directions as to further procedure and in particular may set new dates for the new case statement period or for any hearing.

Power to exercise functions of a convener

42.—(1) Any function of a convener may be exercised by the President or by any member of the panel of conveners selected by the President.

(2) Where the President or a member of the panel of conveners determines any preliminary or incidental matter alone, then unless the interests of fairness and justice requires that particular reference to be determined by a Tribunal with the same convener, the reference may be considered by a Tribunal constituted by the President with a different convener, if the President considers necessary or expedient.

(3) Subject to rule 46(6), if the circumstances referred to in paragraph (4) occur after the decision of a convener or of a Tribunal, the functions of the convener for the completion of the proceedings may be exercised by the President or any member of the panel of conveners.

(4) The circumstances referred to in paragraph (3) are—

- (a) the death or incapacity of the convener; or
- (b) the convener ceasing to be included in the panel of conveners.

Power to exercise functions of members other than conveners

43.—(1) If either of the circumstances referred to in paragraph (2) occur after the decision of a Tribunal, the functions of that Tribunal may be undertaken by the convener and the remaining member.

(2) The circumstances referred to in paragraph (1) are—

- (a) the death or incapacity of a member other than the convener; or
- (b) such a member ceasing to be included in the panel of members.

(3) This rule shall not apply to a Tribunal—

- (a) which is constituted with a convener and one member in accordance with rule 28(5); or
- (b) in relation to which the President or another member of the panel of conveners is acting in place of the convener in accordance with rule 42(3).

Register

44.—(1) The Secretary shall keep a Register of References to the Tribunals.

(2) There shall be entered in the Register a note of all references, and the entry for each case shall contain the following particulars where appropriate—

- (a) the names and addresses of the parties;
- (b) brief details of the nature of the reference;
- (c) the date of any hearing including any hearing on preliminary or incidental matters, and, where appropriate, the nature of the hearing;
- (d) details of any directions or orders issued; and
- (e) the document in terms of which the decision of a Tribunal has been recorded under rule 37(2).

(3) The Register or any part of it may be kept in electronic form.

Publication

45.—(1) The President shall make such arrangements as the President considers appropriate for the publication of Tribunal decisions.

(2) Decisions may be published electronically.

(3) A decision may be published in an edited form, or subject to any deletions, where the President or a convener considers it appropriate bearing in mind—

- (a) the need to safeguard the welfare and interests of the child or young person or any other person;
- (b) the need to protect the private life of any person;
- (c) any representations on the matter which any person has provided in writing to the Tribunal at any time prior to publication under the arrangements made under paragraph (1).

(4) A decision of the Tribunal shall be published in such a manner as to protect the anonymity of the child or young person.

Irregularities

46.—(1) Any irregularity resulting from failure to comply with any provision of these Rules or of any direction of a Tribunal before the Tribunal has determined the reference, shall not by itself render the proceedings void.

(2) Where any such irregularity comes to the attention of a Tribunal, the Tribunal may, and shall, if it considers that any person has been prejudiced by the irregularity, give such directions as it thinks just before reaching its decision to cure or waive the irregularity.

(3) Clerical mistakes in any document recording the decision of a Tribunal or a direction or a decision of a convener or errors arising in such documents from accidental slips or omissions may at any time be corrected by the convener by certificate under his or her hand.

(4) The Secretary shall as soon as may be send a copy of any corrected document containing reasons for a Tribunal's decision to each party and shall correct any relative entry in the Register as appropriate.

(5) Where an appellant has appointed a representative in accordance with rules 5 or 32 the secretary shall (notwithstanding rule 32(6)) send a copy of the document referred to in paragraph (4) to the appellant as well as to the representative.

(6) Where these Rules require the convener of a Tribunal to sign a document, and where by reason of death or incapacity the convener is unable to do so, the other members of the Tribunal, whom failing the President, shall sign it and certify that the convener is unable to sign.

Proof of documents and certification of decisions

47.—(1) A document purporting to be a document issued by the Secretary on behalf of the President, a convener or a Tribunal shall, unless the contrary is proved, be deemed to be a document so issued.

(2) A document purporting to be certified by the Secretary as a true copy of a document containing a decision of a Tribunal shall, unless the contrary is proved, be sufficient evidence of its contents.

Manner and time of service of notices etc

48.—(1) A notice given under these Rules shall be in writing and a person required under these Rules to notify a matter to the Secretary shall do so in writing.

(2) Notices and documents required by these Rules to be sent or delivered to the Secretary may be sent by post, by fax or by electronic communication to or be delivered at the address of the Secretary or such other address as the Secretary may notify.

(3) Any citation under rules 21 or 22 shall—

- (a) be posted by first class recorded or special delivery post properly addressed and pre-paid to the addressee at their ordinary or last notified address; and
- (b) be deemed, unless the contrary is proved, to have been received on the second working day after posting.

(4) Any notice or document, other than a citation under rules 21 or 22, required or authorised to be given or sent under these Rules shall, subject to the provisions of paragraph (6) be deemed to have been given or sent if it was—

- (a) sent by first class post properly addressed and pre-paid to the addressee at their ordinary or last notified address; or
- (b) transmitted by fax or communicated electronically to a fax number or electronic address specified by the addressee.

(5) Any such notice or document as is referred to in paragraph (4), shall, unless the contrary is proved, be deemed to have been received—

- (a) where sent by first class post, on the second working day after posting; or
- (b) if transmitted by fax or communicated electronically, on the first working day after the day on which it is received in legible form.

(6) Any such notice or document as is referred to in paragraph (4) shall not be transmitted by fax or electronic communication to a person unless that person has confirmed in writing that notices or documents will be considered to have been duly sent if transmitted or communicated to a specified fax number or electronic address.

(7) A person may at any time by notice to the Secretary change their address for service under these Rules.

(8) Where for any sufficient reason service of any document or the giving of any notice cannot be effected in the manner prescribed under this rule, a convener or a Tribunal may dispense with service or make an order for substituted service in such manner as may be deemed fit and such service shall have the same effect as service in the manner prescribed under this rule.

(9) 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.

Signature of documents

49. Where any of these Rules requires a document to be signed, that requirement shall be satisfied—

- (a) if the signature is written; or
- (b) in the case of a document which is communicated electronically in accordance with these Rules by the electronic signature of the person who is required to sign it.

MALCOLM CHISHOLM
A member of the Scottish Executive

St Andrew’s House,
Edinburgh
19th October 2005

EXPLANATORY NOTE

(This note is not part of the Order)

These Rules prescribe the practice and procedure to be followed in proceedings before the Additional Support Needs Tribunals for Scotland created under section 17 of, and schedule 1 to, the Education (Additional Support for Learning) (Scotland) Act 2004. The Rules come into force on 14th November 2005.

Part I of these Rules contains introductory provisions.

Part II contains rules about the start of proceedings before the Tribunals.

Part III contains rules about the management powers of Tribunals.

Part IV contains rules in relation to evidence for references to the Tribunals.

Part V contains rules about hearings before, and decisions of, the Tribunals.

Part VI contains miscellaneous and general provisions which apply to proceedings before the Tribunals.

2005 No. 514

EDUCATION

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

£4.00

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