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WELSH STATUTORY INSTRUMENTS

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**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**

*After the hearing*

**Application or proposal for review of the Tribunal's decision**

**56.**—(1) A party may apply to the Secretary of the Tribunal for the decision of the President or the tribunal panel to be reviewed on the grounds that—

- (a) the decision was wrongly made as a result of a material error on the part of the Tribunal administration;
- (b) a party, who was entitled to be heard at the hearing but failed to appear or to be represented, had good and sufficient reason for failing to appear;
- (c) there was an obvious and material error in the decision; or
- (d) the interests of justice so require.

(2) An application that a decision of the President or the tribunal panel is reviewed must be made—

- (a) in writing stating the grounds;
- (b) no later than 28 days after the date on which the decision was sent to the parties.

(3) The President may—

- (a) on the application of a party or on the President's own initiative, review and set aside or vary any decision made by the President on a ground referred to in paragraph (1);
- (b) refuse an application for a review of the President's decision in accordance with paragraph (6).

(4) The President or the Chair of the tribunal panel which decided the case may—

- (a) on the application of a party, or on the President's or Chair's own initiative, review and set aside or vary any decision made by the tribunal panel on a ground referred to in paragraph (1);
- (b) refuse an application for a review of the tribunal panel's decision in accordance with paragraph (6).

(5) The Chair of the tribunal panel which decided the case may order a rehearing before the same or a differently constituted tribunal panel.

(6) An application for a review may be refused in whole or part by the President, or the Chair of the tribunal panel which decided the case, if in the President's or the Chair's opinion the whole or part of it has no reasonable chance of success.

(7) Unless an application for a review is refused in accordance with paragraph (6), the review must be determined after the parties have had an opportunity to be heard—

- (a) by the President, where the decision was made by the President;
- (b) where the decision was made by a tribunal panel, by the President or the tribunal panel which made the decision or by another tribunal panel appointed by the President.

(8) If the President or the Chair of the tribunal panel which decided the case proposes, on the President's or the Chair's own initiative, that a decision is reviewed—

- (a) the Secretary of the Tribunal must serve notice on the parties no later than 28 days after the date on which the decision was sent to the parties; and
- (b) the parties must have an opportunity to be heard.

(9) In determining an application or a proposal for a review under paragraphs (3), (4) or (7), the President or the Chair may give directions to be complied with before or at the hearing of the review.

(10) If a party fails to comply with a direction made under paragraph (9), the tribunal panel may take account of that fact when determining the review or deciding whether to make an order for costs.

(11) The President or the Chair may on the application of a party, give permission for that party to change a witness for the purpose of the review hearing.

(12) An application made under paragraph (11), must be received by the Secretary of the Tribunal and served by the applicant on the other party, no later than 14 days before the review hearing.

(13) The President or the Chair must give the parties the opportunity to be heard on any application made under paragraph (11).

(14) If a decision is set aside or varied following a review under this regulation the Secretary of the Tribunal must alter the entry in the Register and must notify the parties accordingly.

### **Review of Tribunal's decision not to extend the period in which proceedings must be commenced**

**57.**—(1) A decision by the President not to extend the time for submitting an appeal application under regulation 16 may be reviewed under regulation 56 on the application of a person as if the person was a party to the appeal.

(2) Where the President decides not to consider a claim which is out of time, under paragraph 4(3) of Schedule 17 to the 2010 Act, that decision may be reviewed under regulation 56 on the application of a person as if the person was a party to the claim.

(3) If an application for review is made under paragraphs (1) or (2), the Secretary of the Tribunal must serve a copy of the application on the local authority or the responsible body and give the local authority or the responsible body a notice inviting written representations within a specified period.

### **Consideration of an application for permission to appeal to the Upper Tribunal**

**58.**—(1) On receiving an application under regulation 39A of the Special Educational Needs Tribunal Regulations 2001, or regulation 39A of the Special Educational Needs and Disability Tribunal (General Provisions and Disability Claims Procedure) Regulations 2002, for permission to appeal to the Upper Tribunal the President or the Chair of the tribunal panel which decided the case must first consider, taking into account the overriding objective in regulation 6, whether to review the Tribunal's decision in accordance with regulation 56 unless the President or the Chair have already reviewed the decision or decided not to review the decision.

(2) If the President or the Chair decides not to review the decision, or reviews the decision and decides to take no action in relation to the decision, or part of it, the President or the Chair must then consider whether to give permission to appeal in relation to the decision or that part of it.

### **Power to suspend Tribunal's decision**

**59.** The President or the Chair of the tribunal panel which decided the case may, on application or on the President's or the Chair's own initiative, make an order to suspend the effect of the tribunal panel's decision pending the determination by the President or the Chair or the Upper Tribunal of an application for permission to appeal against, and any appeal or review of, that decision.

### **Orders of the Upper Tribunal or the Court**

**60.**—(1) If any decision of the Tribunal is set aside, varied or altered in any way by order of the Upper Tribunal or the Court, the Secretary of the Tribunal must alter the entry in the Register to correspond to that order and must notify the parties accordingly.

(2) If the appeal or the claim is remitted to the Tribunal by order of the Upper Tribunal or the Court to be reheard, the Secretary of the Tribunal must notify the parties that, during a period of 15 working days (or a shorter period as agreed by the parties) each party may submit a supplementary case statement and further written evidence.

(3) If an order to strike out the appeal application or the claim application is quashed or set aside by the Upper Tribunal or the Court, the Secretary of the Tribunal must notify the parties—

(a) in the case where the case statement period had not expired before the order to strike out took effect—

(i) that a new case statement period is to commence; and

(ii) that, within the new case statement period, the parties may submit the documentation referred to in sub-paragraph (b) in respect of a case statement or evidence submitted before the strike out took effect; or

(b) where sub-paragraph (a) does not apply, that each party has a period of 15 working days (or a shorter period as the parties may agree in writing) to submit a supplementary case statement and further written evidence.

(4) The Secretary of the Tribunal must send a copy of all case statements and written evidence received from a party during the periods referred to in paragraphs (2) and (3)(b) to the other party.