

WELSH STATUTORY INSTRUMENTS

2021 No. 406

The Education Tribunal for Wales Regulations 2021

Tribunal enquiries

Enquiries by the Secretary of the Tribunal

24. The Secretary of the Tribunal must at any time after receiving the appeal application or the claim application—

- (a) ask each party—
 - (i) whether or not the party intends to attend the hearing;
 - (ii) whether the party wishes to be represented at the hearing in accordance with regulation 50 and if so the name of the representative;
 - (iii) whether the party intends to call witnesses and if so the names of the proposed witnesses, their occupations, and whether any of the witnesses is a medical or other expert;
 - (iv) whether the party or a witness requires assistance because of a communication impairment and if so, details of the type of communication assistance required;
 - (v) whether the party or a witness to be called has any disabilities that may require reasonable adjustments to be made;
 - (vi) whether the party wishes a person to attend the hearing as an observer and if so the name of such person;
 - (vii) whether the party wishes any person to attend the hearing to communicate the views and wishes of the child or young person and, if so, the name and address of such person and if relevant, the person's connection to the child or young person;
- (b) inform each party—
 - (i) of the effect of regulation 40(6) and the provision of regulation 42(2), and
 - (ii) that where an answer to any of the enquiries under paragraph (a) changes after a party has responded to the enquiries, the party concerned must immediately inform the Secretary of the Tribunal in writing.

Commencement Information

II [Reg. 24](#) in force at 1.9.2021, see [reg. 1](#)

Failure to respond to enquiries made by the Secretary of the Tribunal

25.—(1) The President may order—

- (a) that the appeal application or the claim application is struck out on the grounds that the appellant's or the claimant's failure to comply with enquiries made by the Secretary of the Tribunal under regulation 24, prejudices, or delays, the fair hearing of the appeal or the claim;

- (b) that the local authority, FEI governing body or the responsible body may not take any further step in the appeal or claim and may not attend the hearing or be represented at the hearing on the grounds of a failure to comply with enquiries made by the Secretary of the Tribunal under regulation 24, prejudices, or delays, the fair hearing of the appeal or the claim.
- (2) Before making an order under paragraph (1), the President must give the party against whom the President proposes to make an order a notice inviting representations and must consider any representations made.
- (3) For the purposes of this regulation—
- (a) a notice inviting representations must inform the party that within a period (no less than 5 working days) specified in the notice, the party may either make written representations or request an opportunity to make oral representations;
- (b) representations are made if—
- (i) in the case of written representations, they are made within the specified period, and
- (ii) in the case of oral representations, the party proposing to make them has requested an opportunity to do so within the specified period.
- (4) If an appeal application or a claim application is struck out under paragraph (1)(a), the proceedings to which the appeal or claim relates are considered to be concluded.

Commencement Information

12 [Reg. 25](#) in force at 1.9.2021, see [reg. 1](#)

Power to strike out the appeal or claim

- 26.**—(1) The Secretary of the Tribunal must, at any stage of the appeal or claim if the local authority, FEI governing body or the responsible body applies, or the President or the tribunal panel so directs, serve a notice on the appellant or the claimant stating that it has been proposed that the whole or part of the appeal or the claim should be struck out on one of the grounds specified in paragraph (2) or for want of prosecution.
- (2) The grounds referred to in paragraph (1) are that the appeal or the claim—
- (a) is made otherwise than in accordance with these Regulations;
- (b) is not, or is no longer, within the jurisdiction of the Tribunal;
- (c) discloses no reasonable grounds;
- (d) is an abuse of the Tribunal’s process.
- (3) The notice under paragraph (1) must invite the appellant or the claimant to make representations.
- (4) For the purposes of this regulation—
- (a) a notice inviting representations must inform the appellant or the claimant that the appellant or the claimant may, within a period (no less than 5 working days) specified in the notice, either make written representations or request an opportunity to make oral representations;
- (b) representations are made if—
- (i) in the case of written representations, they are made within the specified period, and
- (ii) in the case of oral representations, the party proposing to make them has requested an opportunity to do so within the specified period.

(5) The President or the tribunal panel may, after considering any representations made by the appellant or the claimant, order that the whole or part of the appeal or the claim is struck out on one of the grounds specified in paragraph (2) or for want of prosecution.

(6) An order under paragraph (5) may be made without holding a hearing unless the appellant or the claimant requests the opportunity to make oral representations.

(7) If oral representations are made in accordance with paragraph (6), the President or the tribunal panel may consider the oral representations at the beginning of the hearing of the substantive appeal or claim.

(8) If the whole of an appeal application or a claim application is struck out under paragraph (5) the proceedings to which the appeal or claim relates are deemed to be concluded.

Commencement Information

I3 [Reg. 26](#) in force at 1.9.2021, see [reg. 1](#)

Order to amend case statement

27.—(1) The President or the tribunal panel may, if the President or the tribunal panel thinks fit at any stage of the appeal or the claim, order that a party's case statement is amended on the grounds that it discloses no reasonable grounds for bringing the appeal or the claim or it is an abuse of the Tribunal's process.

(2) Before making an order under paragraph (1), the President or the tribunal panel must give the party against whom the President or the tribunal panel proposes to make the order, a notice inviting representations and must consider any representations made.

(3) For the purposes of this regulation—

(a) a notice inviting representations must inform the party that, within a period (no less than 5 working days) specified in the notice, the party may either make written representations or request an opportunity to make oral representations;

(b) representations are made if—

(i) in the case of written representations, they are made within the period so specified, and

(ii) in the case of oral representations, the party proposing to make them has requested an opportunity to do so within the period so specified.

Commencement Information

I4 [Reg. 27](#) in force at 1.9.2021, see [reg. 1](#)

Evidence and submissions

28.—(1) The President or the tribunal panel may give directions on—

(a) the issues which require evidence or submissions,

(b) the nature of the evidence or submissions required,

(c) whether the parties are permitted or required to provide expert evidence, and if so whether the parties must jointly appoint a single expert to provide such evidence,

(d) the manner in which any evidence or submissions are to be provided, which may include a direction for them to be given—

- (i) orally at a hearing, or
- (ii) by written submissions or written witness statement, and
- (e) the time by which any evidence or submissions are to be provided.
- (2) The President or the tribunal panel may direct in relation to an appeal—
 - (a) the parent of the child to make the child available for examination or assessment by a suitably qualified professional person, or
 - (b) the person responsible for a school or educational setting to allow a suitably qualified professional person to have access to the school or educational setting for the purpose of assessing the child or the provision made, or to be made, for the child.
- (3) The President or the tribunal panel may consider a failure by a person who is a party to the appeal to comply with a requirement made under paragraph (2), in the absence of any good reason for such failure, as a failure to co-operate with the Tribunal.
- (4) The President or the tribunal panel may—
 - (a) admit evidence whether or not the evidence would be admissible in a civil trial in England or Wales;
 - (b) exclude evidence that would otherwise be admissible where—
 - (i) the evidence was not provided within the time allowed by a direction,
 - (ii) the evidence was otherwise provided in a manner that did not comply with a direction, or
 - (iii) it would otherwise be unfair to admit the evidence.

Commencement Information

I5 [Reg. 28](#) in force at 1.9.2021, see [reg. 1](#)

Case management and directions

29.—(1) The President or the tribunal panel may, on the President’s or the tribunal panel’s initiative, or on the application of a party, give such directions to a party on any matter arising in connection with the appeal or claim as the President or the tribunal panel thinks fit, including staying proceedings, or such directions as are provided in regulations 31 and 32 to enable the parties to prepare for the hearing or to assist the President or the tribunal panel to determine the issues.

(2) An application by a party for directions must be made in writing to the Secretary of the Tribunal.

(3) A party who submits an application for directions to the Secretary of the Tribunal must unless the application is accompanied by the written consent of the other party serve a copy of the application on the other party.

(4) If the other party objects to the directions sought, the President or the tribunal panel must consider the objection and, if the President or the tribunal panel consider it necessary for the determination of the application, must give the parties an opportunity to make representations.

(5) If in the opinion of the President or the tribunal panel there would not be a reasonable time before a hearing of which notice has been given under regulation 37(1) to comply with a direction for which a party applies, the President or the tribunal panel may—

- (a) if satisfied that compliance with the direction may assist the tribunal panel to determine the issues, postpone the hearing under regulation 48, or
- (b) refuse the application.

- (6) A direction must—
- (a) include a statement of the possible consequences for the appeal or claim, as provided by regulation 33, of a party’s failure to comply with the direction within the time allowed by the President or the tribunal panel;
 - (b) unless the person to whom the direction is addressed had an opportunity to object to the direction, or gave their written consent to the application for it, contain a statement to the effect that that person may apply to the President or the tribunal panel under regulation 30 to vary or set aside the direction.
- (7) Where, in accordance with regulation 35(1) the President or the tribunal panel orders—
- (a) that an appeal is heard together with a claim, the directions given under paragraph (1), may relate to the appeal only;
 - (b) that a claim is heard together with an appeal, the directions given under paragraph (1), may relate to the claim only.
- (8) Where paragraph (7)(a) applies, the President or the tribunal panel may consider whether it is in the interests of the efficient disposal of the appeal and the claim, and in the interests of the parties, that the directions given with respect to the appeal are the same as, or similar to, those given in the claim.
- (9) Where paragraph (7)(b) applies, the President or the tribunal panel may consider whether it is in the interests of the efficient disposal of the claim and the appeal, and in the interests of the parties, that the directions given with respect to the claim are the same as, or similar to, those given in the appeal.
- (10) Where it appears to the President or the tribunal panel that there is an issue in an appeal or claim which must be determined prior to the substantive hearing of the appeal or the claim and which cannot properly be determined by the giving of directions, the President or the tribunal panel may summon the parties to appear before the President or the tribunal panel for this purpose and may give any necessary directions relating to their appearance.

Commencement Information

I6 [Reg. 29](#) in force at 1.9.2021, see [reg. 1](#)

Varying or setting aside directions

30.—(1) Where a party to whom a direction is addressed had no opportunity to object to the giving of the direction and did not give written consent to the application for it, that party may apply at any time to the President or the tribunal panel, by notice to the Secretary of the Tribunal, for the direction to be varied or set aside.

(2) The President or the tribunal panel must not vary the direction or set it aside without first notifying the parties and considering any representations made by them.

Commencement Information

I7 [Reg. 30](#) in force at 1.9.2021, see [reg. 1](#)

Particulars and supplementary statements

31. The President or the tribunal panel may give directions requiring any party to provide in, or with, that party's case statement such particulars or supplementary statements as may reasonably be required for the determination of the appeal or the claim.

Commencement Information

I8 [Reg. 31](#) in force at 1.9.2021, see [reg. 1](#)

Disclosure of documents and other material

32.—(1) The President or the tribunal panel may—

- (a) direct a party to submit to the President or the tribunal panel by a specified date any document or other material which the President or the tribunal panel may require and which it is in the power of that party to submit;
- (b) give a direction on—
 - (i) any issue on which disclosure of evidence is required,
 - (ii) the nature and extent of the disclosure,
 - (iii) the manner in which the document or other evidence is to be provided to the Tribunal, and
 - (iv) the exclusion of any document or other evidence which is irrelevant, unnecessary or improperly obtained.

(2) The President or the tribunal panel may impose a condition on the supply of a copy of any document or other material submitted in compliance with a direction given under paragraph (1) that the party receiving it must use the copy only for the purposes of the appeal or claim.

(3) The President or the tribunal panel may require a written undertaking to observe the condition referred to in paragraph (2) before supplying a copy.

(4) The President or the tribunal panel may grant to a party an order for such disclosure or inspection of documents (including the taking of copies) as might be granted under the Civil Procedure Rules 1998⁽¹⁾.

(5) An order under paragraph (4) must contain a reference—

- (a) in relation to an appeal, that under section 79 of the 2018 Act, any person who without reasonable excuse fails to comply with requirements regarding disclosure or inspection of documents is liable on summary conviction to a fine not exceeding level 3 on the standard scale, and
- (b) in relation to a claim, that under paragraph 6(8) of Schedule 17 to the 2010 Act, any person who without reasonable excuse fails to comply with requirements regarding disclosure or inspection of documents is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Commencement Information

I9 [Reg. 32](#) in force at 1.9.2021, see [reg. 1](#)

(1) See Part 31 – Disclosure and Inspection of Documents.

Failure to comply with directions

33.—(1) If a party has not complied with a direction given under these Regulations within the time specified in the direction the President or the tribunal panel may—

- (a) where the party in default is the appellant or the claimant, dismiss the appeal or the claim without a hearing;
- (b) where the party in default is the local authority, FEI governing body or the responsible body, determine the appeal or the claim without a hearing;
- (c) hold a hearing—
 - (i) without notifying the party in default, at which the party in default is not present or represented, or
 - (ii) where the parties have been notified of the hearing in accordance with regulation 37(1), and direct that neither the party in default nor any person that intends to represent that party or give evidence on that party’s behalf is entitled to attend the hearing.

(2) In this regulation, “the party in default” means the party which has failed to comply with the direction.

Commencement Information

I10 [Reg. 33](#) in force at 1.9.2021, see [reg. 1](#)

Consolidating appeals or claims

34.—(1) If more than one appeal relates to the same child or young person, or requires a decision on substantially the same issue, the President may order that the appeals are heard together.

(2) If more than one claim relates to the same child or young person, or requires a decision on substantially the same issue, the President may order that the claims are heard together.

(3) The President may make an order varying or revoking an earlier order made under paragraph (1) or (2).

(4) Subject to paragraph (5), the President may issue an order under this regulation on the written request of either party or on the President’s own initiative.

(5) An order made under this regulation must only be made if it appears, in the opinion of the President, to be fair and just to do so and before an order is made each party to every appeal or claim affected must be given an opportunity to be heard.

Commencement Information

I11 [Reg. 34](#) in force at 1.9.2021, see [reg. 1](#)

Consolidating claims together with appeals

35.—(1) Subject to paragraphs (2) and (3), where a claim relates to the same child or young person and either arises from the same circumstances or requires a decision on substantially the same issue as an appeal, the President may order that the claim is heard with the appeal.

(2) Nothing in paragraph (1) permits the President to make an order if a person has failed to make an appeal within the time limits specified by regulation 10 or by any extension of time to make such an appeal granted under these Regulations.

(3) The President may only make an order under paragraph (1) if, in addition to complying with the requirements of paragraph (6), the making of an order would not cause undue delay to the determination of the appeal.

(4) The President may make an order varying or revoking an earlier order made under paragraph (1).

(5) Subject to paragraph (6), the President may issue an order under this regulation on the written request of either party or on the President's own initiative.

(6) An order made under this regulation must only be made if it appears, in the opinion of the President, to be fair and just to do so, and before an order is made each party to every claim or appeal affected must be given an opportunity to be heard.

Commencement Information

I12 [Reg. 35](#) in force at 1.9.2021, see [reg. 1](#)

Addition and substitution of parties

36.—(1) A person may make an application to be joined as a party to the appeal or the claim.

(2) The President or the tribunal panel may make an order to join a person as a party to the appeal or the claim—

- (a) if a written application is made under paragraph (1), or
- (b) on the President's or the tribunal panel's own initiative if no written application has been made but a person consents to be joined as a party to the appeal or the claim.

(3) The President or the tribunal panel may make an order to substitute a party if—

- (a) the wrong person has been named as a party, or
- (b) the substitution has become necessary because of a change in circumstances since the start of the appeal or the claim.

(4) If an order is made under paragraph (2) or (3) the President or the tribunal panel may make such consequential directions, or enquiries under regulation 24 as the President or the tribunal panel considers appropriate.

(5) Unless the President or the tribunal panel directs otherwise, a person appointed or substituted under this regulation must be treated as a party for the purpose of any provision in these Regulations requiring a document to be served on, or sent to, or notice to be given to a party to the appeal or claim.

Commencement Information

I13 [Reg. 36](#) in force at 1.9.2021, see [reg. 1](#)

Notice of date, place and time of hearings

37.—(1) Subject to the provisions of paragraph (2) and regulation 39, 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 regulation 23, 25, 26, 53 or 54, 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 subparagraph (a) or (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 50, 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, FEI governing body 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 paragraph (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.

Commencement Information

I14 [Reg. 37](#) in force at 1.9.2021, see [reg. 1](#)

Transfers

- 38.**—(1) Subject to paragraph (2), the President may refer proceedings in relation to an appeal to the First- tier Tribunal if the First-tier Tribunal has jurisdiction in relation to the proceedings.
- (2) A reference under paragraph (1) must not be made unless notice has been given to the parties.
- (3) If proceedings in relation to an appeal are transferred to the Tribunal by the First-tier Tribunal the Tribunal may continue with the proceedings if the Tribunal has jurisdiction in relation to the proceeding.

Commencement Information

I15 [Reg. 38](#) in force at 1.9.2021, see [reg. 1](#)

Power to determine the appeal or claim without a hearing

- 39.**—(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 23 (failure to submit a case statement and absence of opposition) or 33 (failure to comply with directions).

(2) Before making a determination under paragraph (1), the President or 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).

Commencement Information

116 Reg. 39 in force at 1.9.2021, see [reg. 1](#)

Public and private hearings: arrangements and exceptions

40.—(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 or young person, 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 been appointed to act as a case friend in accordance with regulation 61.

(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 a lay panel member (when not sitting as a member of the tribunal panel);
- (e) a person undergoing training as a Chair, a lay 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 24(a)(vi) or (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 24.

(7) Except as provided in regulation 43(3) and (4) none of the persons mentioned in paragraph (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.

Commencement Information

I17 [Reg. 40](#) in force at 1.9.2021, see [reg. 1](#)

Restricted reporting orders

41.—(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” includes, without prejudice to the generality of that expression—

- (a) publishing any matter in a programme service, as defined by section 201(1) of the Broadcasting Act 1990(2), 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.

Commencement Information

I18 [Reg. 41](#) in force at 1.9.2021, see [reg. 1](#)

Procedure at hearing

42.—(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 handle the proceedings in accordance with the overriding objective as required by regulation 4.

(3) The tribunal panel must determine the order in which the parties are heard and the issues determined.

(2) [1990 c. 42](#); section 201(1) was amended by Part 3, Chapter 6, section 360 of, and paragraph 1 of Schedule 19 to, the Communications Act 2003 (c. 21).

- (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, FEI governing body or the responsible body before or at the time it took the disputed decision;
 - (b) the local authority, FEI governing body 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 constituting three members 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, and
 - (b) the absent member must not re-join the hearing.

Commencement Information

I19 Reg. 42 in force at 1.9.2021, see [reg. 1](#)

Evidence at hearing

43.—(1) Subject to regulation 40(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 unless the President or the tribunal panel has given permission on application by a party (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 61 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 24(a)(vii) to give evidence and address the tribunal panel on the child's or young person's views and wishes, and
- (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 47.

(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.

Commencement Information

I20 [Reg. 43](#) in force at 1.9.2021, see [reg. 1](#)

Change of witness

44.—(1) The person named as a party’s witness in response to an enquiry made under regulation 24 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.

Commencement Information

I21 [Reg. 44](#) in force at 1.9.2021, see [reg. 1](#)

Summoning a witness

45.—(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—

- (a) 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
- (b) 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 79 of the 2018 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.

Commencement Information

I22 [Reg. 45](#) in force at 1.9.2021, see [reg. 1](#)

Evidence by telephone, video link or other means

46. 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.

Commencement Information

I23 [Reg. 46](#) in force at 1.9.2021, see [reg. 1](#)

Late written evidence

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

Commencement Information

I24 Reg. 47 in force at 1.9.2021, see [reg. 1](#)

Postponement of hearing

48.—(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, and
- (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.

Commencement Information

I25 Reg. 48 in force at 1.9.2021, see [reg. 1](#)

Adjournments and directions

49.—(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, and
- (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.

Commencement Information

I26 Reg. 49 in force at 1.9.2021, see [reg. 1](#)

Representation at hearing

- 50.**—(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, FEI governing body 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, FEI governing body 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.

Commencement Information

I27 [Reg. 50](#) in force at 1.9.2021, see [reg. 1](#)

Failure to attend hearing

- 51.**—(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.

Commencement Information

I28 [Reg. 51](#) in force at 1.9.2021, see [reg. 1](#)

Tribunal panel’s decision

- 52.**—(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 40(4)(c) to (f), or, as their respective duties require, regulation 40(4)(g) and (h).
- (2) A decision of a three member tribunal panel may be taken by a majority and where the tribunal panel is constituted by two members 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.

(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 regulation 13(11)(a) or 62(2) applies, 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).

Commencement Information

I29 Reg. 52 in force at 1.9.2021, see [reg. 1](#)

Changes to legislation:

There are currently no known outstanding effects for the The Education Tribunal for Wales Regulations 2021, Cross Heading: Tribunal enquiries.