
STATUTORY INSTRUMENTS

2002 No. 1985

The Special Educational Needs and Disability Tribunal (General Provisions and Disability Claims Procedure) Regulations 2002

PART III

PREPARATION FOR A HEARING

Acknowledgement of claim and service of documents by the Secretary of the Tribunal

17.—(1) Upon receiving a notice of claim the Secretary of the Tribunal shall—

- (a) enter particulars of it in the records;
- (b) send to the parent—
 - (i) an acknowledgement of its receipt and a note of the case number entered in the records;
 - (ii) a note of the address to which notices and communications to the tribunal or to the Secretary of the Tribunal should be sent;
 - (iii) notification that advice about the claims procedure may be obtained from the office of the tribunal; and
 - (iv) subject to regulation 18(2), a notice informing the parent of the requirements of regulation 9(1) and the case statement period;
- (c) at the same time as sending to the parent the notice referred to in sub-paragraph (b)(iv), send to the responsible body—
 - (i) a copy of the notice of claim and any accompanying papers;
 - (ii) a note of the address to which notices and communications to the tribunal to the Secretary of the Tribunal should be sent; and
 - (iii) a notice informing the responsible body of the requirements of regulation 13(1) and of the case statement period, together with the consequences of failing to meet the requirements of that regulation within that period.

(2) Where it is necessary to determine the identity of the responsible body in relation to any claim, the President may make such enquiries as are necessary for this purpose.

(3) Where it appears to the President or the Secretary of the Tribunal that there may be more than one responsible body in relation to any claim, the President or the Secretary of the Tribunal may send the documentation specified in paragraph (1)(c) to any or all such bodies as may be appropriate.

(4) Where the Secretary of the Tribunal is of the opinion that, on the basis of the notice of claim, the parent is asking the tribunal to consider a matter which is not within its jurisdiction, he may give notice to the parent—

- (a) stating the reasons for his opinion; and

- (b) informing the parent that the notice of claim will not be entered in the records unless, within a specified time (which shall not be less than 5 working days), the parent notifies the Secretary of the Tribunal that he wishes to proceed with it.
- (5) Where the Secretary of the Tribunal is of the opinion that there is an obvious error in the notice of claim—
 - (a) he may correct that error and if he does so shall notify the parent accordingly and such notification shall state the effect of sub-paragraph (b); and
 - (b) unless within 5 working days the parent notifies the Secretary of the Tribunal that he objects to the correction, the notice of claim so corrected shall be treated as the notice of claim for the purposes of these Regulations.
- (6) If the Secretary of the Tribunal has given a notice under paragraph (4), the notice of claim shall only be treated as having been received for the purposes of paragraph (1) when the parent notifies the Secretary of the Tribunal that he wishes to proceed with the claim.

Case statement period

18.—(1) The case statement period shall—

- (a) be a period of 30 working days commencing on the date on which notification issued further to regulation 17(1)(b)(iv) and 17(1)(c)(iii) is taken to have been delivered in accordance with regulation 50(6); and
- (b) shall include any extension to that period ordered by the President under regulation 51(1).

(2) Where the President makes a direction in accordance with regulation 8 or makes enquiries under regulation 17(2), the Secretary of the Tribunal shall not send a notice to the parent as required by regulation 17(1)(b)(iv) or send any documents to the responsible body as required by regulation 17(1)(c) until particulars of reasons are received in response to the direction or the President has concluded his enquiries as the case may be.

Copy of documents for parties

19.—(1) Subject to paragraph (2), the Secretary of the Tribunal shall—

- (a) forthwith send to the responsible body a copy of any amendment to the notice of claim received during the case statement period;
- (b) at the end of the case statement period send a copy of each party's statement of case and written evidence to the other party;
- (c) forthwith send copies of any amendments or supplementary statements, written representations, written evidence (other than written evidence of which a copy is received in accordance with regulation 33(2)(b)) or other documents received from a party after the end of the case statement period to the other party to the proceedings.

(2) If a notice of claim, a statement of case, amendment, supplementary statement, written representation, written evidence or other document is delivered to the Secretary of the Tribunal after the time prescribed by these Regulations, the Secretary of the Tribunal shall not send a copy of it to the other party unless the President extends the time limit pursuant to regulation 51(1).

(3) Where the Secretary of the Tribunal sends any of the copies of documents referred to in paragraph (1) to a party who has already informed the Secretary of the Tribunal in response to the enquiries made under regulation 20(a)(i) and (ii) that the party does not wish to attend or be represented at the hearing, the Secretary of the Tribunal shall ask whether the party wishes to amend that response on the basis of the copies received.

Enquiries by the Secretary of the Tribunal

20. The Secretary of the Tribunal shall, at any time after having sent each party's statement of case and written evidence to the other party in accordance with regulation 19(1)(b)—

- (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 12(6) or 16(1) and if so the name of the representative;
 - (iii) whether the party wishes the hearing to be in public;
 - (iv) whether the party intends to call witnesses and if so the names of the proposed witnesses, their occupations, the likely subject matter of the evidence of each witness, and whether any of the witnesses is a medical or other expert;
 - (v) whether the party or a witness will require the assistance of an interpreter;
- (b) enquire of the parent whether he wishes any persons (other than a person who will represent him or any witness whom he proposes to call) to attend the hearing if the hearing is in private and if so the name of such persons;
- (c) inform each party of the effect of regulation 30(4)(c) and the provisions of regulation 34(1) and (2); and
- (d) inform the parties that where an answer to the enquiries made under paragraphs (a) or (b) changes after the party has responded to the enquiries, the party concerned must inform the Secretary of the Tribunal in writing forthwith.

Directions and determination of preliminary issues

21.—(1) The President may, on the application of a party or on his own initiative, at any time before the hearing give such directions on any matter arising in connection with the proceedings as appear to him to be appropriate, including such directions as are provided in regulations 23 and 24, to enable the parties to prepare for the hearing or to assist the tribunal to determine the issues.

(2) An application by a party for directions shall be made in writing to the Secretary of the Tribunal and, unless it is accompanied by the written consent of the other party, shall be served by the Secretary of the Tribunal on that other party. If the other party objects to the directions sought, the President shall consider the objection and, if he considers it necessary for the determination of the application, shall give the parties an opportunity of appearing before him.

(3) If in the opinion of the President there would not be a reasonable time before a hearing of which notice has been given under regulation 28(1) to comply with a direction for which a party applies, he shall refuse the application.

- (4) A direction shall—
 - (a) include a statement of the possible consequences for the claim, as provided by regulation 25, of a party's failure to comply with the requirement within the time allowed by the President;
 - (b) if made under regulation 24(2), contain a reference to the fact that, under section 28J(9) (a) of the 1995 Act, any person who without reasonable excuse fails to comply with requirements regarding disclosure or inspection of documents shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale; and
 - (c) unless the person to whom the direction is addressed had an opportunity to object to the direction, or he gave his written consent to the application for it, contain a statement to the effect that that person may apply to the President under regulation 22 to vary or set aside the direction.

(5) Where, in accordance with regulation 27(2), the President orders that a claim be heard together with an appeal under Part IV of the 1996 Act, the directions given under paragraph (1) shall relate to the claim only; but in giving such directions the President 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.

(6) Where it appears to the President that there is an issue in any claim which must be determined prior to the substantive hearing of the claim and which cannot properly be determined by the giving of directions, he may summon the parties to appear before him for this purpose and may give any necessary directions relating to their appearance.

Varying or setting aside directions

22. Where a party to whom a direction is addressed had no opportunity to object to the giving of such direction and he did not give his written consent to the application for it, he may apply to the President, by notice to the Secretary of the Tribunal, to vary it or set it aside, but the President shall not do so without first notifying the other party and considering any representations made by him.

Particulars, and supplementary statements

23. The President may give directions requiring any party to provide in or with that party's statement of case or otherwise, such particulars, supplementary statements or other evidence, in such form and at such times as may be necessary to enable the fair hearing of the claim.

Disclosures of documents and other material

24.—(1) The President—

- (a) may give directions requiring a party to deliver to the tribunal any document or other material which the tribunal may require and which it is in the power of that party to deliver;
- (b) shall impose a condition on the supply of a copy of any document or other material delivered in compliance with a direction given under this paragraph that the party receiving it shall use such document only for the purposes of the claim; and
- (c) may require a written undertaking to observe that condition before supplying a copy.

(2) The President 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).

Failure to comply with directions

25.—(1) If a party has not complied with a direction within the time specified in the direction the tribunal may—

- (a) where the party in default is the parent, dismiss the claim without a hearing;
- (b) where the party in default is the responsible body, determine the claim without a hearing;
- (c) hold a hearing (without notifying the party in default) at which the party in default is not entitled to attend or be represented; or
- (d) where the parties have been notified of the hearing in accordance with regulation 28(1), direct that neither the party in default nor any person whom he intends should represent him or give evidence on his behalf be entitled to attend the hearing.

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

Summoning witnesses

26.—(1) The President may by summons require any person in England and Wales to attend as a witness at a hearing of a claim at such time and place as may be specified in the summons, and at any adjournment of that hearing, and at the hearing to answer any questions or produce any documents or other material in his custody or under his control which relate to any matter in question in the claim:

Provided that—

- (a) no person shall be compelled to give any evidence or produce any document or other material that he could not be compelled to give or produce at a trial of an action in a Court of law;
- (b) in exercising the power conferred by this regulation, the President shall take into account the need to protect any matter that relates to intimate personal or financial circumstances or consists of information communicated or obtained in confidence;
- (c) no person shall be required to attend in obedience to such a summons unless he has been given at least 5 working days' notice of the hearing or, if less than 5 working days, he has informed the President that he accepts such notice as he has been given;
- (d) no person shall be required in obedience to such a summons to attend and give evidence or to produce any document unless the necessary expenses of his attendance are paid or tendered to him; and
- (e) no summons shall require a child under the age of 12 to attend and give evidence at the hearing except where the President determines that the evidence of such a child is necessary to enable the fair hearing of the claim.

(2) A party seeking a witness summons shall 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.

(3) A witness summons shall contain—

- (a) a reference to the fact that, under section 28J(9)(b) of the 1995 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 shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale; and
- (b) a statement of the effect of paragraph (4).

(4) A person to whom a witness summons is addressed may apply to the President, by notice to the Secretary of the Tribunal, to vary it or set it aside, but the President shall not do so without first notifying the party who applied for the issue of the summons and considering any representations made by him.

Consolidating claims and hearing claims together with appeals under Part IV of the Education Act 1996

27.—(1) Where more than one claim relates to the same child, or requires a decision on substantially the same issue, the President may order that they be heard together.

(2) Subject to paragraphs (3) and (4), where a claim relates to the same child and either arises from the same circumstances or requires a decision on substantially the same issue as an appeal against a local education authority under Part IV of the 1996 Act, the President may order that the claim be heard with the appeal.

(3) Nothing in paragraph (2) shall permit the President to make an order under that paragraph where a parent has failed to bring an appeal within the time limit for such appeals provided for by

regulation 7(3) of the Special Educational Needs Tribunal Regulations 2001(2) or any extension granted under those Regulations.

(4) The President may only make an order under paragraph (2) if, in addition to complying with the requirements of paragraph (7), the making of an order would not cause undue delay to the determination of the appeal.

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

(6) Subject to paragraph (7), the President may issue an order under this regulation on the written request of either party or on his own initiative.

(7) An order made under this regulation shall only be made if it appears to be just and convenient to do so, and before an order is made the parties to every claim or appeal affected shall be given an opportunity to be heard.

Notice of place and time of hearings and adjournments

28.—(1) Subject to the provisions of regulation 29, the Secretary of the Tribunal shall, after consultation with the parties, fix the time and place of the hearing and send to each party a notice that the hearing is to be at such time and place.

(2) The notice of hearing referred to in paragraph (1) shall be sent—

- (a) not less than 5 working days before the date fixed for a hearing under regulation 15, 37, 38 or 44;
- (b) not less than 10 working days before the date fixed for the hearing in any other case; or
- (c) in any case, within such shorter period before the date fixed for the hearing as the parties may agree.

(3) The Secretary of the Tribunal shall 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 12(6) or 16(1); and
- (b) a statement explaining the possible consequences of non-attendance and the right to make representations in writing enjoyed by—
 - (i) the parent if he does not attend and is not represented; and
 - (ii) the responsible body if it does not attend and is not represented and if it has submitted a statement of its case, unless it stated in writing that it did not resist the claim or withdrew its opposition to the claim.

(4) The tribunal may alter the time and place of any hearing and the Secretary of the Tribunal shall give the parties not less than 5 working days (or such shorter time as the parties agree) notice of the altered hearing date:

Provided that any altered hearing date shall not (unless the parties agree) be before the date notified under paragraph (1).

(5) If the time and place of an adjourned hearing are announced at the hearing before the adjournment, no further notice shall be required.

(6) Nothing in paragraphs (1) or (4) shall oblige the Secretary of the Tribunal to consult, or send a notice to any party who is not entitled to attend or be represented at the hearing.

(7) In this regulation “working day” has the meaning ascribed to it in regulation 2 except that it shall include any day in August which is not a Saturday, Sunday, or bank holiday.

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