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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  
COMMENCING PROCEEDINGS**

*Making an appeal or claim*

**Period within which proceedings must be commenced**

**12.**—(1) An appeal to the Tribunal must be made by application in writing in accordance with these Regulations and must be received by the Tribunal no later than the first working day after the expiry of two months beginning with the date when written notice of the local authority's decision and the right to appeal under Part 4 of the 1996 Act against that decision was given<sup>(1)</sup>.

(2) If, in relation to an appeal or a prospective appeal, the dispute concerned is referred for dispute resolution under section 332BA of the 1996 Act<sup>(2)</sup> before the end of the period specified in paragraph (1), the period allowed by that paragraph is extended by three months.

(3) A claim to the Tribunal must be made by application in writing in accordance with these Regulations and must be received by the Tribunal no later than the first working day after the end of the period stated in paragraph 4(1) of Schedule 17 to the 2010 Act<sup>(3)</sup>.

(4) If, in relation to a claim or a prospective claim, the dispute concerned is referred for dispute resolution under paragraph 6C of Schedule 17 to the Equality Act 2010<sup>(4)</sup> or conciliation under section 27(1) of the Equality Act 2006<sup>(5)</sup> before the end of the period specified in paragraph (1), the period allowed by that paragraph is extended by three months.

(5) Subject to regulation 17, the Tribunal may not consider—

- (a) an appeal application unless proceedings are commenced in accordance with paragraphs (1) and (2);
- (b) a claim application unless proceedings are commenced in accordance with paragraphs (3) and (4).

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(1) See the Education (Special Educational Needs) Regulations 2002, regulation 5 (service) (S.I.2002/152).

(2) Section 332BA was inserted by section 5 of the Education (Wales) Measure 2009.

(3) Paragraph 4(1) of Schedule 17 to the Equality Act 2010 stipulates the period in which a claim must be made to the Tribunal. Sub-paragraph (2) makes provision in relation to proceedings or prospective proceedings where the dispute is referred for conciliation.

(4) Paragraph 6C was inserted into Schedule 17 to the Equality Act 2010 by S.I. 2011/1651.

(5) 2006 c. 3: section 27(1) was substituted by paragraph 16 of Schedule 26 to the Equality Act 2010; paragraph 16 was renumbered as paragraph 71 of Schedule 26 by paragraph 1 (c) of Schedule 1 to S.I. 2010/2279; section 27(1) subsequently amended by S.I. 2011/1060.

## Appeal application

- 13.—(1) The appeal application must state—
- (a) the name and address of the person making the appeal and if available, the person’s telephone number, fax number and email address;
  - (b) the name and date of birth of the child;
  - (c) if relevant, the relationship or connection of the person making the appeal to the child;
  - (d) the names and addresses of all persons who have or share parental responsibility for the child or have care of the child, or reasons why the names and addresses of such persons are not provided;
  - (e) the name and address of any representative appointed by the person making the appeal and if available, the representative’s telephone number, fax number and email address;
  - (f) an address and if available, an email address, where notices and documents for the person making the appeal should be sent;
  - (g) the name and address of the local authority which made the disputed decision;
  - (h) the date on which the person making the appeal received written confirmation of the disputed decision;
  - (i) the reason or reasons for making the appeal;
  - (j) the result sought; and
  - (k) the steps, if any, already taken to resolve the dispute.
- (2) If the person making the appeal seeks an order that—
- (a) the child’s statement is amended, the appeal application must specify to which part or parts of the statement the appeal relates;
  - (b) a school (other than one already named in the child’s statement) is named in the statement, the appeal application must state either the name and address of that school or a sufficient description of the type and nature of the school which the person considers would be an appropriate placement for the child.
- (3) The appeal application may be accompanied by—
- (a) a copy of the disputed decision;
  - (b) where the appeal is made under section 326 of, or paragraphs 8 or 11 of Schedule 27 to, the 1996 Act, a copy of the child’s statement, any documentation attached to or forming part of the statement and if available, a copy of the latest review under section 328 of the 1996 Act.
- (4) The appeal application must be accompanied—
- (a) by written confirmation that the person making the appeal has notified persons, if any, named in accordance with paragraph (1)(d) that the person proposes to make an appeal to the Tribunal, or written confirmation explaining why the person making the claim has not notified any such persons;
  - (b) where the appeal application states the name of a school in accordance with paragraph (2) (b), by written confirmation that the person making the appeal has informed the head teacher of the school that the person proposes to request that the school is named in the statement; and
  - (c) where under paragraph (2)(b), the appeal application states the name of—
    - (i) a maintained school, by written confirmation that the person making the appeal has informed the local authority that maintains the school, which may or may not be the

local authority that made the disputed decision, that the person proposes to request that the maintained school is named in the statement;

- (ii) an independent school, by written confirmation that the person making the appeal has informed the proprietor of the school that the person proposes to request that the independent school is named in the statement;
- (iii) an independent school, by written confirmation from the proprietor of the school that a place is available at the school for the child.

(5) The appeal application must be signed by the person making the appeal, or any representative or a case friend on that person's behalf.

(6) The appeal application may, in accordance with regulation 38, include a request that the appeal is heard with a claim against a responsible body.

### **Claim application**

**14.**—(1) The claim application must state—

- (a) the name and address of the person making the claim and if available the person's telephone number, fax number and email address;
- (b) the name and date of birth of the child;
- (c) if relevant, the relationship or connection of the person making the claim to the child;
- (d) the names and addresses of all persons who have or share parental responsibility for the child or have care of the child, or reasons why the names and addresses of such persons are not provided;
- (e) the name and address of any representative appointed by the person making the claim and if available, the representative's telephone number, fax number and email address;
- (f) an address and if available an email address where notices and documents for the person making the claim should be sent;
- (g) the name and address of—
  - (i) the school or local authority which made the disputed decision; or
  - (ii) the authority for the school named under paragraph (1)(g)(i) if such a school is a maintained school;
- (h) details of the disputed decision to which the claim relates;
- (i) the date or dates on which the disputed decision took place;
- (j) the reason or reasons for making the claim;
- (k) the result sought; and
- (l) the steps, if any, already taken to resolve the dispute.

(2) The claim application must include a description of the child's disability.

(3) Evidence of a medical or other professional diagnosis relating to the child's disability should, if available, accompany the claim application.

(4) The claim application must be accompanied by written confirmation that the person making the claim has notified persons, if any, named in accordance with paragraph (1)(d) that the person has made a claim to the Tribunal; or written confirmation explaining why the person making the claim has not notified any such persons.

(5) The claim application must be signed by the person making the claim or any representative or a case friend on that person's behalf.

(6) The claim application may, in accordance with regulation 38, include a request that the claim is heard with an appeal against a local authority.

### **Action by the Secretary of the Tribunal**

**15.—**(1) Upon receiving the appeal application or the claim application the Secretary of the Tribunal must—

- (a) enter its particulars in the Register; and
- (b) send to the appellant or claimant—
  - (i) an acknowledgement of its receipt and a note of the case number entered in the Register;
  - (ii) a note of the address to which notices and communications for the Tribunal should be sent;
  - (iii) notification that advice about the appeals or claims procedure may be obtained from the office of the Tribunal;
  - (iv) subject to regulation 19(2), a notice stating the time for submitting the appellant's or the claimant's case statement and evidence under regulation 19(1); and
  - (v) a statement of the possible consequences for the appeal or claim, if a party fails to comply with regulation 7 (parties' obligation to co-operate).

(2) At the same time as sending to the appellant or claimant the notice referred to in paragraph (1)(b)(iv), the Secretary of the Tribunal must send to the local authority or responsible body—

- (a) a copy of the appeal application or the claim application and any accompanying documents;
- (b) a note of the address to which notices and communications for the Tribunal should be sent;
- (c) a notice stating the time for submitting the local authority's or responsible body's case statement and evidence under regulation 19(1) and the consequences of failing to do so; and
- (d) a statement of the possible consequences for the appeal or claim, if a party fails to comply with regulation 7 (parties' obligation to co-operate).

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

(4) Where it appears to the President or the Secretary of the Tribunal that there may be more than one responsible body in relation to a claim, the Tribunal may send the documentation specified in paragraph (2) to any or all such bodies as may be appropriate.

(5) Where the President and the Secretary of the Tribunal are of the opinion that on the basis of the appeal application or the claim application, the person making the appeal or the claim is asking the Tribunal to consider a matter which is outside its powers, the Secretary of the Tribunal may give notice to the person—

- (a) stating the reasons for the opinion; and
- (b) informing the person that the appeal application or the claim application must not be entered in the Register unless, within a specified time (which must not be less than 5 working days), the person notifies the Secretary of the Tribunal that the person wishes to proceed with the appeal or claim.

(6) If the Secretary of the Tribunal has given a notice under paragraph (5), the appeal application or the claim application is to be treated as having been received for the purposes of paragraph (1) when the person making the appeal or claim notifies the Secretary of the Tribunal that the person wishes to proceed with the appeal or claim.

(7) Where the Secretary of the Tribunal is of the opinion that there is an obvious error in the appeal application or the claim application, the Secretary of the Tribunal may correct that error.

(8) Where an error has been corrected in accordance with paragraph (7), the Secretary of the Tribunal must notify the person making the appeal or claim of the correction and state the effect of paragraph (9).

(9) Unless the person making the appeal or claim informs the Secretary of the Tribunal within 5 working days of the notification given under paragraph (8) that the person objects to the correction, the appeal application or the claim application as corrected must be treated as the appeal application or the claim application for the purposes of these Regulations.

(10) Subject to regulations 67(2) and (3) and paragraph (11), the Secretary of the Tribunal must send all documents and notices concerning the appeal or the claim to the appellant or the claimant.

(11) Paragraph (10) applies—

(a) unless the appellant or the claimant notifies the Secretary of the Tribunal that all documents and notices concerning the appeal or the claim must be sent to the representative instead of the appellant or claimant;

(b) subject to regulations 55(7) and 79(5).

(12) If paragraph (11) (a) applies, references in these Regulations (however expressed) to sending documents to, or giving notice to, the appellant or the claimant must be construed as references to sending documents to, or giving notice to, the representative.

### **Appeal or claim made out of time**

16.—(1) The President may consider—

(a) any appeal which is out of time if, in all the circumstances of the case, the President considers that it is fair and just to do so;

(b) any claim which is out of time under paragraph 4(3) of Schedule 17 to the Equality Act 2010.

(2) The President may seek further information from the person making the appeal or claim before making a decision under paragraph (1).

### **Sufficiency of reasons**

17.—(1) If the appeal application or the claim application does not include, or is not accompanied by, a statement of the reasons for making the appeal or the claim, including in relation to a claim the information set out in regulation 14(1)(i), (j) and (2), which the President considers sufficient to enable the local authority or responsible body to respond to the appeal or the claim, the President must direct the appellant or the claimant to send details of the reasons to the Secretary of the Tribunal within 10 working days of the direction.

(2) Regulation 36 applies to a direction under paragraph (1).

(3) Reasons sent in response to a direction made under paragraph (1) are to be treated as part of the appeal application or the claim application.

### **Appellant's or claimant's representatives**

18.—(1) The appellant or the claimant may in the appeal application or the claim application or by giving written notice to the Secretary of the Tribunal at any later time—

(a) appoint a representative;

(b) appoint another representative to replace the representative previously appointed, whose appointment is cancelled by the later appointment;

- (c) state that no person is acting as the appellant's or the claimant's representative, which cancels any previous appointment.
- (2) Where an appointment is made under paragraph (1), the appellant or the claimant must give the name, address and contact details of the representative.

### **Case preparation before the hearing**

#### *Case statements and supplementary provision*

#### **Case statement period**

- 19.**—(1) The case statement period—
- (a) is a period of 30 working days, commencing on the date on which notice given under regulation 15(1)(b)(iv) and 15(2)(c) is taken to have been received in accordance with regulation 79(11); and
  - (b) includes any extension to that period ordered by the President under regulation 69.
- (2) If the President makes a direction in relation to—
- (a) an appeal in accordance with regulation 17, the period specified in paragraph (1) does not start, and the Secretary of the Tribunal must not send a notice to the appellant as required by regulation 15(1)(b)(iv) or send any documents as required by regulation 15(2) until reasons are received in response to the direction;
  - (b) a claim in accordance with regulation 17 or makes enquiries under regulation 15(3), the period specified in paragraph (1) does not start, and the Secretary of the Tribunal must not send a notice to the claimant as required by regulation 15(1)(b)(iv) or send any documents to the responsible body as required by regulation 15(2), until reasons are received in response to the direction or the enquiries are concluded.

#### **Appellant's or claimant's case statement and evidence**

- 20.**—(1) The appellant or the claimant must submit to the Secretary of the Tribunal before the end of the case statement period—
- (a) a case statement; and
  - (b) all other evidence to be relied on which has not already been submitted.
- (2) The case statement must include—
- (a) where the appellant or the claimant is the parent of the child—
    - (i) the views of the child on the issues raised in the appeal or the claim; or
    - (ii) an explanation of why the appellant or claimant has not established the child's views;
  - (b) where the appellant or the claimant is the child—
    - (i) the views of the child's parent on the issues raised in the appeal or the claim; or
    - (ii) an explanation of why the appellant or claimant has not established the parent's views.
- (3) If the President gives permission, the appellant or the claimant may—
- (a) amend the appeal application or the claim application;
  - (b) submit a supplementary statement of reasons in support of the appeal application or the claim application;
  - (c) amend a supplementary statement of reasons in support of the appeal application or the claim application;

- (d) submit a supplementary case statement;
- (e) amend a supplementary case statement.

(4) The appellant or the claimant must submit to the Secretary of the Tribunal a copy of every amendment and supplementary statement for which permission was given under paragraph (3) within the time period granted.

(5) If an appeal application is amended in accordance with paragraph (3) so that the appellant seeks an order that a maintained school other than the one already named in the statement is named in the child's statement, or where none is named that a maintained school is named, the appellant must notify the head teacher of the maintained school named in the amended appeal application, stating the name and date of birth of the child.

(6) If the school referred to in paragraph (5) is not maintained by the local authority, the appellant must notify the authority that maintains the school.

(7) Where permission is given under paragraph (3), the President may, if necessary, extend the case statement period, under regulation 69 or, if it has expired, grant such further period as the President considers appropriate.

(8) If, at the time permission is given under paragraph (3), the local authority or the responsible body has lost its entitlement to attend or be represented at the hearing in accordance with regulations 25 or 36 the giving of permission restores such entitlement and, if necessary, the hearing may be postponed or adjourned, as appropriate, so that the local authority or the responsible body can be represented.

### **Local authority's or responsible body's case statement and evidence**

**21.—**(1) The local authority or the responsible body must submit to the Secretary of the Tribunal before the end of the case statement period—

- (a) a copy of the disputed decision;
- (b) where the appeal is made under section 326 of, or paragraphs 8 or 11 of Schedule 27 to, the 1996 Act, a copy of the child's statement, any documentation attached to or forming part of the statement and if available a copy of the latest review;
- (c) a case statement; and
- (d) all other evidence to be relied on which has not already been submitted.

(2) The local authority's or responsible body's case statement must be signed by a person who is authorised to sign such documents on the local authority's or responsible body's behalf, and must state whether or not the local authority or responsible body intends to oppose the appeal or claim.

(3) If the local authority or the responsible body intends to oppose the appeal or the claim, its case statement must state—

- (a) the grounds on which the appeal or the claim or any part of the appeal or the claim is opposed;
- (b) the name and address of the local authority's or the responsible body's representative and if available the representative's telephone number, fax number and email address;
- (c) the address where documents for the local authority or the responsible body should be sent or delivered;
- (d) a summary of the facts relating to the disputed decision;
- (e) the reason or reasons for the disputed decision, if not included in the decision; and
- (f) the steps, if any, already taken to resolve the dispute.

(4) The local authority's or the responsible body's case statement must include—

- (a) the views of the child concerning the issues raised in the appeal or the claim; or
- (b) an explanation of why it has not established the child's views.

(5) The local authority or the responsible body may amend its case statement, submit a supplementary case statement, or amend a supplementary case statement, if permission is given by the President.

(6) The local authority or the responsible body must submit to the Tribunal a copy of every amendment and supplementary statement for which permission was given under paragraph (5) within the time period granted.

(7) If permission is given under paragraph (5) the President may extend the case statement period under regulation 69 or, if it has expired, grant such further period as the President considers appropriate.

(8) If, at the time permission is given under paragraph (5), the appellant or the claimant has lost entitlement to attend or be represented at the hearing in accordance with regulation 36, the giving of permission restores such entitlement and, if necessary, the hearing may be postponed or adjourned, as appropriate, so that the appellant or the claimant can be represented.

#### **Change of local authority's or responsible body's representative**

**22.**—(1) The local authority or the responsible body may at any time change its representative for the purposes of the appeal or the claim by notifying the Secretary of the Tribunal of the name and address of its new representative and if available the representative's telephone number, facsimile number and email address.

(2) References in these Regulations (however expressed) to sending documents to, or giving notice to, the local authority or the responsible body are to be construed as references to sending documents to, or giving notice to, the representative named in accordance with paragraph (1) or regulation 21(3)(b).

#### **Change of local authority in an appeal**

**23.**—(1) This regulation applies for the purposes of an appeal if, after the date on which the local authority made the disputed decision, the local authority is no longer responsible for the child within the meaning of section 321(3) of the 1996 Act ("the old authority").

(2) Where paragraph (1) applies, the President may order that, for all the purposes of the appeal and on receiving evidence that this regulation applies, the name of the authority responsible for the child within the meaning of section 321(3) of the 1996 Act ("the new authority") is substituted for the old authority.

(3) The old authority, the new authority and the appellant must 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 of the Tribunal must notify the old authority, the new authority and the appellant;
- (b) the old authority is no longer a party to the appeal;
- (c) the new authority becomes a party to the appeal;
- (d) these Regulations apply as if the new authority had made the disputed decision;
- (e) the Secretary of the Tribunal must send to the new authority copies of all the documents and written evidence relating to the appeal received by the Tribunal from the appellant and from the old authority;

- (f) the procedure for determining the appeal re-starts and regulation 15 applies as if the documents and written evidence sent in accordance with sub-paragraph (e) were part of the appeal application referred to in regulation 15(1).

### **Copy documents for parties**

**24.**—(1) Subject to paragraph (2), the Secretary of the Tribunal must—

- (a) send to the local authority or the responsible body a copy of any amendment to the appeal application or the claim application received during the case statement period;
- (b) at the end of the case statement period send a copy of each party’s case statement and written evidence to the other party;
- (c) immediately 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 50 (late written evidence)) or other documents received from a party after the end of the case statement period to the other party.

(2) If an appeal application or a claim application, a case statement, amendment, supplementary statement, written representation, written evidence or other document is submitted to the Secretary of the Tribunal after the time prescribed by these Regulations, the Secretary of the Tribunal must not send a copy of it to the other party unless the President extends the time limit under regulation 69.

(3) Where the Secretary of the Tribunal sends any 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 26(a)(i) and (ii) that the party does not wish to attend or be represented at the hearing, the Secretary of the Tribunal must ask whether the party wishes to amend that response on the basis of the copies received.

### **Failure to submit a case statement and absence of opposition**

**25.**—(1) The tribunal panel may determine the appeal or the claim without a hearing or by holding a hearing if—

- (a) the Secretary of the Tribunal does not receive a case statement from the local authority or the responsible body within the case statement period;
- (b) the local authority or the responsible body states in writing that it does not resist—
  - (i) the appeal which relates to the contents of the child’s statement or a decision to cease to maintain the child’s statement; or
  - (ii) the claim;
- (c) the local authority or the responsible body withdraws its opposition to—
  - (i) the appeal which relates to the contents of the child’s statement or a decision to cease to maintain the child’s statement; or
  - (ii) the claim.

(2) Where the tribunal panel determines the appeal or the claim without a hearing it must do so on the basis of the appeal application or claim application and any other documentation already received or amended in accordance with regulation 20(3).

(3) If the tribunal panel decides to hold a hearing in accordance with paragraph (1), it may issue a direction precluding the local authority or the responsible body from attending the hearing or being represented at the hearing.

(4) If the appeal relates to—

- (a) the contents of a child’s statement, no statement that the local authority does not resist the appeal or that it withdraws its opposition may take effect until the local authority submits

to the Secretary of the Tribunal written confirmation of the amendments (if any) it agrees to make to the child's statement;

- (b) a decision to cease to maintain a statement, no statement that the local authority does not resist the appeal or that it withdraws its opposition may take effect until the local authority submits to the Secretary of the Tribunal written confirmation of its decision not to resist the appeal or to withdraw its opposition.

### ***Tribunal enquiries***

#### **Enquiries by the Secretary of the Tribunal**

**26.** 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 53 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 and if so the name and address of such person and if relevant, the person's connection to the child;
- (b) inform each party—
  - (i) of the effect of regulation 43(6) and the provision of regulation 46(2); and
  - (ii) that where an answer to any of the enquiries under sub-paragraph (a) changes after a party has responded to the enquiries, the party concerned must immediately inform the Secretary of the Tribunal in writing.

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

**27.—(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 26, prejudices, or delays, the fair hearing of the appeal or the claim;
- (b) that the local authority 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 that the local authority or the responsible body's failure to comply with enquiries made by the Secretary of the Tribunal under regulation 26, 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.

### ***The Tribunal's management powers***

#### **General powers**

**28.**—(1) The President may make practice directions.

(2) For the purposes of these Regulations “practice directions” means practice directions issued by the President to provide practical advice on how to interpret these Regulations.

(3) The power of the President to make practice directions under paragraph (1) includes a power to vary or revoke practice directions.

(4) The President must publish practice directions made under paragraph (1), and any variation or revocation of practice directions, in such manner as the President considers appropriate.

#### **Power to strike out the appeal or claim**

**29.**—(1) The Secretary of the Tribunal must, at any stage of the appeal or claim if the local authority 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.

### **Order to amend case statement**

**30.**—(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.

### **Evidence and submissions**

**31.**—(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 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.

#### **Directions in preparation for a hearing**

**32.**—(1) 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, 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 such directions as are provided in regulations 34 and 35 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 41(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 51; 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 36 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 his or her 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 33 to vary or set aside the direction.

(7) Where, in accordance with regulation 38(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.

#### **Varying or setting aside directions**

**33.**—(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.

#### **Particulars and supplementary statements**

**34.** 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.

#### **Disclosure of documents and other material**

**35.**—(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(6).

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

- (a) in relation to an appeal, that under section 336 of the 1996 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;
- (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.

### **Failure to comply with directions**

**36.**—(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 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 41(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” (“*y parti diffygiol*”) means the party which has failed to comply with the direction.

### **Consolidating appeals or claims**

**37.**—(1) If more than one appeal relates to the same child, 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 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 paragraphs (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.

### **Consolidating claims together with appeals**

**38.**—(1) Subject to paragraphs (2) and (3), 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, 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 limit for such appeals provided for by regulation 12(1) or by any extension of time 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.

### **Addition and substitution of parties**

**39.**—(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 26 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.

### **Transfer of appeal**

**40.**—(1) This regulation applies to proceedings in relation to an appeal made by an appellant other than an appellant entitled to make an appeal under regulations made under section 17(1) and (2) of the Education (Wales) Measure 2009.

(2) Subject to paragraph (3), 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.

(3) A reference under paragraph (2) must not be made unless notice has been given to the parties.

(4) 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.

### ***Hearings and decisions***

#### **Notice of date, place and time of hearings**

**41.**—(1) Subject to the provisions of paragraph (2) and regulation 42, 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 regulations 25, 27, 29, 56 or 57, 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 subparagraphs 3(a) or 3(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 53; 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 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 paragraphs (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.

#### **Power to determine the appeal or claim without a hearing**

**42.**—(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 25 (failure to submit a case statement and absence of opposition) or 36 (failure to comply with directions).

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

**Public and private hearings: arrangements and exceptions**

**43.**—(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; 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 submitted a declaration of suitability to the Tribunal in accordance with regulation 66 to act as a case friend.

(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 an education panel member (when not sitting as a member of the tribunal panel);
- (e) a person undergoing training as a Chair, an education 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 26(a)(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 26.

(7) Except as provided in regulation 46(3) and (4) none of the persons mentioned in paragraphs (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.

### **Restricted reporting orders**

**44.**—(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” (“*cyhoeddi*”) 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(7); 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.

### **Procedure at hearing**

**45.**—(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 to handle the proceedings fairly and justly avoiding, as far as it considers appropriate, unnecessary formality in its proceedings.

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

(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 or the responsible body before or at the time it took the disputed decision;

(b) the local authority 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 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;

(b) the absent member must not rejoin the hearing.

### **Evidence at hearing**

**46.**—(1) Subject to regulation 43(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 (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 66 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 26(a)(vii) to give evidence and address the tribunal panel on the child's views and wishes;
- (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 50.

(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.

### **Change of witness**

47.—(1) The person named as a party's witness in response to an enquiry made under regulation 26 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.

### **Summoning a witness**

48.—(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 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 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 336 of the 1996 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.

### **Evidence by telephone, video link or other means**

**49.** 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.

### **Late written evidence**

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

### **Postponement of hearing**

**51.**—(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;
- (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.

### **Adjournments and directions**

**52.**—(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;
- (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.

### **Representation at hearing**

**53.**—(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 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 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.

### **Failure to attend hearing**

**54.**—(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.

### **Tribunal panel's decision**

**55.**—(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 43(4)(c) to (f), or, as their respective duties require, regulation 43(4)(g) and (h).

(2) A decision of the tribunal panel may be taken by a majority and where the tribunal panel is constituted by two members under regulation 45(5) 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 regulations 15(11)(a) or 67(2) apply 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).

### *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.

### ***Compliance***

#### **Compliance with tribunal panel orders — appeals**

**61.**—(1) Subject to paragraph (5), if the tribunal panel, following its decision in relation to an appeal, makes an order requiring a local authority to perform an action referred to in paragraph (2) the local authority must perform that action within the time period specified in paragraph (2).

(2) In the case of an order—

- (a) to make an assessment, the local authority must notify—
  - (i) the parent that it must make an assessment under section 323(4) or 329A(7) of the 1996 Act as the case may be within 5 weeks; and
  - (ii) where the child was the appellant, the child that it must make an assessment under section 329A(7) of the 1996 Act within 5 weeks;
- (b) to make and maintain a statement, the local authority must make a statement within 5 weeks;
- (c) remitting a case back to the local authority under section 325(3)(c) of the 1996 Act, the local authority must within 2 weeks serve a copy of a proposed statement and a notice on the parent and the child under paragraphs 2(1) and 2B(2) of Schedule 27 to the 1996 Act respectively, or give notice to the parent and the child—
  - (i) under section 325(1) of the 1996 Act that they have decided not to make a statement;
  - (ii) of their reasons for that decision;
  - (iii) of the parent and the child’s right of appeal against that decision to the Tribunal; and
  - (iv) of the time limit within which an appeal to the Tribunal must be made;
- (d) to amend a statement, the local authority must serve an amendment notice on the parent and the child under paragraph 2A of Schedule 27 to the 1996 Act within 5 weeks;
- (e) to continue to maintain a statement, the local authority must continue to maintain the statement with immediate effect;
- (f) to continue to maintain and to amend a statement, the local authority must continue to maintain the statement with immediate effect and must serve an amendment notice on the parent and the child under paragraph 2A of Schedule 27 to the 1996 Act within 5 weeks;

- (g) to substitute the name of the school or other institution specified in a child's statement with the name of a school specified by the parent or child, the local authority must, subject to paragraph (3), specify the school specified by the parent or child within 2 weeks; and
- (h) dismissing an appeal against a determination to cease to maintain a statement, the local authority must cease to maintain that statement immediately or on a date proposed by the local authority, whichever is the later.

(3) If an order requires a local authority to comply with both sub-paragraphs (d) and (g) of paragraph (2), or both sub-paragraphs (f) and (g) of paragraph (2), the local authority must specify the school specified by the parent or child within 5 weeks.

(4) In each case in paragraphs (2) and (3), the period begins on the first working day after the order was made.

(5) The local authority need not comply with the time periods referred to in paragraphs (2) and (3) if it is impractical to do so because—

- (a) exceptional personal circumstances affect the parent or, where the appellant was the child, the child during the time period;
- (b) the parent or, where the appellant was the child, the child is absent from the area of the local authority for a continuous period of no less than 2 weeks, or where paragraph (3) applies no less than 5 weeks, during the time period;
- (c) the parent has indicated that the parent wishes to make representations to the local authority about the content of the statement under paragraph 4(1) of Schedule 27 to the 1996 Act after the expiry of the 15 day period for making such representations provided for in paragraph 4(4) of that Schedule;
- (d) a meeting between the parent and an officer of the local authority has been held under paragraph 4(1) of Schedule 27 to the 1996 Act and the parent under paragraph 4(2) of that Schedule has either required that another such meeting is arranged or has required that a meeting with the appropriate person is arranged; or
- (e) the local authority have sent a written request to the Welsh Ministers seeking their consent under section 347(5) of the 1996 Act to the child being educated at an independent school which is not approved by them and such consent has not been received by the local authority within 3 weeks of the day on which the request was sent.

### **Compliance with appellant's request when a local authority concedes an appeal**

**62.**—(1) Subject to paragraph (3) if, under section 326A(2) of the 1996 Act, an appeal to the Tribunal is treated as having been determined in favour of the appellant, the local authority must—

- (a) in the case of an appeal under section 325 of the 1996 Act, make a statement within 5 weeks;
- (b) in the case of an appeal under section 328, 329 or 329A of the 1996 Act, make an assessment within 5 weeks; and
- (c) in the case of an appeal under paragraph 8(3) of Schedule 27 to the 1996 Act against a determination not to comply with the appellant's request to substitute the name of a maintained school for the name of the school or institution specified in the statement, comply with that request within 2 weeks.

(2) In each case in paragraph (1), the period begins on the first working day after the local authority notifies the Tribunal that it does not oppose the appeal.

(3) The local authority need not comply with the time limits referred to in paragraph (1) if it is impractical to do so because—

- (a) exceptional personal circumstances affect the parent or, where the appellant is the child, the child during the relevant time period;
- (b) the parent or, where the appellant is the child, the child is absent from the area of the local authority for a continuous period of no less than 2 weeks during the relevant time period;
- (c) the parent has indicated that the parent wishes to make representations to the local authority about the content of the statement under paragraph 4(1) of Schedule 27 to the 1996 Act after the expiry of the 15 day period for making such representations provided for in paragraph 4(4) of that Schedule;
- (d) a meeting between the parent and an officer of the local authority has been held under paragraph 4(1) of Schedule 27 to the 1996 Act and the parent under paragraph 4(2) of that Schedule has either required that another such meeting is arranged or has required that a meeting with the appropriate person is arranged, or
- (e) the local authority have sent a written request to the Welsh Ministers seeking their consent under section 347(5) of the 1996 Act to the child being educated at an independent school which is not approved by them and such consent has not been received by the local authority within 3 weeks of the day on which the request was sent.