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WELSH STATUTORY INSTRUMENTS

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**2021 No. 406 (W. 132)**

**EDUCATION, WALES**

**The Education Tribunal for Wales Regulations 2021**

*Made* - - - - *at 2.10 p.m. on 24*  
*March 2021*

*Coming into force* - - *1 September 2021*

The Welsh Ministers make the following Regulations in exercise of the powers conferred on them by sections 70(4), 74, 75, 76(3), 77, 91(6) and 92(2) of the Additional Learning Needs and Education Tribunal (Wales) Act 2018(1) and section 207(4) of, and paragraphs 6(1), (2) to (5) and (7) and 6A of Schedule 17 to, the Equality Act 2010(2).

In accordance with section 98(3) of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 and section 209(6) of the Equality Act 2010, a draft of these Regulations was laid before, and approved by a resolution of, Senedd Cymru(3).

**Title and commencement**

1. The title of these Regulations is the Education Tribunal for Wales Regulations 2021 and they come into force on 1 September 2021.

**Interpretation**

2.—(1) In these Regulations—

“the 1996 Act” (“*Deddf 1996*”) means the Education Act 1996(4);

“the 2010 Act” (“*Deddf 2010*”) means the Equality Act 2010;

“the 2018 Act” (“*Deddf 2018*”) means the Additional Learning Needs and Education Tribunal (Wales) Act 2018;

“appeal” (“*apêl*”) means—

(a) subject to paragraph (b), an appeal to the Tribunal under Part 2 of the 2018 Act against a decision of a local authority or FEI governing body;

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(1) 2018 anaw 2; see section 99(1) for the definitions of “prescribed” and “regulations”.

(2) 2010 c. 15; see section 212(1) for the definition of “prescribed”. Paragraph 19 of Schedule 1 to the 2018 Act amended the 2010 Act including substituting paragraph 6A of Schedule 17.

(3) The references in section 98(3) of the 2018 Act and section 209(6) of the 2010 Act to the National Assembly for Wales are now to be read as references to Senedd Cymru by virtue of section 150A(2) of the Government of Wales Act 2006 (c. 32).

(4) 1996 c. 56.

(b) in regulations 55 to 57, an appeal to the Upper Tribunal against the tribunal panel’s decision;

“appellant” (“*apelydd*”) means a person entitled to appeal to the Tribunal under Part 2 of the 2018 Act;

“authority” (“*awdurdod*”) means an authority other than the local authority that made the disputed decision;

“case friend” (“*cyfaill achos*”) means a person appointed by the Tribunal in accordance with section 85 of the 2018 Act and regulations 60 to 62, to exercise the child’s right of appeal or claim on behalf of the child;

“case statement” (“*datganiad achos*”) means the statement of case submitted in accordance with regulation 18 or 19;

“case statement period” (“*cyfnod datganiad achos*”) is the period specified in regulation 17;

“Chair” (“*Cadeirydd*”) means the President or a person appointed under section 91(4) of the 2018 Act to the panel of persons who may serve as the legal chair of the Tribunal;

“child” (“*plentyn*”) means a person who is the subject of the appeal or claim;

“claim” (“*hawliad*”) means a claim for disability discrimination under Chapter 1 of Part 6 of, and Schedule 17 to, the 2010 Act;

“claimant” (“*hawlydd*”) means a person entitled to make a claim to the Tribunal under Chapter 1 of Part 6 of, and Schedule 17 to, the 2010 Act;

“clerk to the tribunal panel” (“*clerc i’r panel tribiwnlys*”) means the person appointed by the Secretary of the Tribunal to act as clerk at one or more hearings;

“disputed decision” (“*penderfyniad a herir*”) means the decision or act, or the failure to decide or act, in respect of which the appeal or claim is brought;

“document” (“*dogfen*”) means anything in which information of any description is recorded;

“electronic signature” (“*llofnod electronig*”) has the meaning given to it by section 7 of the Electronic Communications Act 2000<sup>(5)</sup>;

“e-mail address” (“*cyfeiriad e-bost*”) means a person’s electronic mail address;

“evidence” (“*tystiolaeth*”) includes material of any description recorded in any form;

“FEI governing body” (“*corff llywodraethau SAB*”) is the governing body of a further education institution in Wales that made the disputed decision and has the meaning given by section 90 of the Further and Higher Education Act 1992<sup>(6)</sup> as referred to in section 99 of the 2018 Act;

“First-tier Tribunal” (“*Tribiwnlys Haen Gyntaf*”) means the tribunal established under section 3 of the Tribunals, Courts and Enforcement Act 2007<sup>(7)</sup>, that has jurisdiction in England over appeals and claims;

“hearing” (“*gwrandawriad*”) means a hearing before the President, a Chair or the tribunal panel for the purpose of enabling the President, a Chair or the tribunal panel to reach a decision on an appeal, claim, application or any question or matter at which the parties are entitled to attend and be heard and includes a hearing conducted in whole or in part by video link, telephone or other means of instantaneous two-way electronic communication;

“local authority” (“*awdurdod lleol*”) means the council of a county or county borough in Wales that made the disputed decision;

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(5) 2000 c. 7.

(6) 1992 c. 13.

(7) 2007 c. 15.

“observer” (“*sylwedydd*”) means a person who may attend a hearing for the purpose of observing the hearing but who must not participate in the hearing, or make any notes of the hearing or make any recording of the hearing by audio visual means or by any other means;

“oral representations” (“*sylwadau llafar*”) includes evidence which by reason of an impairment of speech or hearing, a person gives using sign language;

“parent” (“*rhiant*”) has the meaning given by section 576 of the 1996 Act;

“party” (“*parti*”) means—

(a) in an appeal, the appellant, the local authority or the FEI governing body, and

(b) in a claim, the claimant or the responsible body;

“Register” (“*Cofrestr*”) means the register required to be kept under regulation 71;

“responsible body” (“*corff cyfrifol*”) has the meaning given by section 85(9) of the 2010 Act;

“Secretary of the Tribunal” (“*Ysgrifennydd y Tribiwnlys*”) means the person who for the time being acts as the Secretary of the office of the Tribunal;

“tribunal panel” (“*panel tribiwnlys*”) means a panel of the Tribunal who may dispose of an appeal or claim or any question or matter in relation to an appeal or claim;

“Upper Tribunal” (“*Uwch Dribiwnlys*”) means the appellate tribunal established under section 3 of the Tribunals, Courts and Enforcement Act 2007;

“witness summons” (“*gwŷs tyst*”) means a document issued by the President or the tribunal panel requiring a witness to attend at a hearing of an appeal or claim to give evidence, or produce documents, in relation to an appeal or claim to the Tribunal;

“working day” (“*diwrnod gwaith*”) means any day other than—

(a) a Saturday,

(b) a Sunday,

(c) any day from 25 December to 1 January inclusive,

(d) Good Friday,

(e) the first Monday in May,

(f) any day in August, or

(g) a day which is a bank holiday in England and Wales under section 1 of the Banking and Financial Dealings Act 1971(8);

“young person” (“*person ifanc*”) means—

(a) in an appeal, a person who is the subject of the appeal or claim, and

(b) in a claim, a person who is over compulsory school age and who is the subject of the claim.

(2) Words and expressions used in these Regulations and in the 2018 Act have the same meaning as in that Act, except so far as a contrary intention appears.

## Application

3. These Regulations apply to an appeal or a claim entered in the Register on or after 1 September 2021.

### **The overriding objective**

4.—(1) The overriding objective of these Regulations is to enable the President, and the tribunal panel, to deal with appeals and claims fairly and justly.

(2) Dealing with a case fairly and justly includes—

- (a) dealing with the appeal or the claim in ways which are proportionate to the importance of the case and the complexity of the issues,
- (b) avoiding, as far as the President or the tribunal panel considers appropriate, unnecessary formality in the proceedings under these Regulations,
- (c) ensuring, so far as is practicable, that the parties are on an equal footing procedurally and are able to participate fully in the proceedings, including facilitating any party to present any appeal or claim without advocating the course the party should take,
- (d) using the special expertise of the President, or the tribunal panel effectively, and
- (e) avoiding delay, so far as that is compatible with proper consideration of the issues.

(3) The President, or the tribunal panel, must seek to give effect to the overriding objective of these Regulations when under these Regulations they—

- (a) exercise any function, or
- (b) interpret any regulation.

(4) The President or the tribunal panel must manage appeals and claims actively in accordance with the overriding objective of these Regulations.

### **Parties' obligation to co-operate**

5.—(1) Parties must—

- (a) co-operate with each other for the purposes of progressing the appeal or the claim,
- (b) co-operate in the exchange of documents or information with each other to enable each party to prepare a case statement,
- (c) help the President, or the tribunal panel, to further the overriding objective of these Regulations, and
- (d) co-operate with the President and the tribunal panel generally.

(2) The President, or the tribunal panel, may draw such adverse inferences as they think fit from a party's failure to comply with any of the obligations specified in paragraph (1).

(3) Where the President or the tribunal panel has drawn an adverse inference under paragraph (2), they may direct the Secretary of the Tribunal to serve notice on the party in default that it is proposed to make an order to strike out—

- (a) the appeal, where the party in default is the appellant,
- (b) the claim, where the party in default is the claimant, or
- (c) the case statement and written evidence, where the party in default is the local authority, FEI governing body or the responsible body.

(4) The notice in paragraph (3) must invite representations and the President, or the tribunal panel, must consider any representations made.

(5) For the purposes of this regulation—

- (a) a notice inviting representations must inform the party in default that the party may, within a period (no later than 10 working days beginning with the date on which the notice is sent) specified in the notice, either make written representations or request an opportunity to make oral representations, and

(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.

(6) The President or the tribunal panel may, after considering any representations made by the party in default, order that the party's case is struck out.

### **Alternative dispute resolution**

6.—(1) The President or the tribunal panel must, where appropriate, bring to the attention of the parties the availability of any alternative procedure for the resolution of the dispute.

(2) If the parties wish to use the alternative dispute resolution procedure the President or the tribunal panel may, provided that it is compatible with the overriding objective of these Regulations, stay the appeal or the claim.

### **Lay panel members**

7.—(1) The Welsh Ministers must be satisfied that persons appointed as members of the lay panel are not eligible for appointment as a Chair.

(2) The Welsh Ministers must be satisfied that sufficient members of the panel have current knowledge and experience of children, and of young people, with—

- (a) additional learning needs,
- (b) disabilities, or
- (c) if required, both.

### **Establishment of tribunal panels**

8.—(1) The jurisdiction of the Tribunal is to be exercised by such number of tribunal panels as the President may from time to time determine.

(2) The tribunal panels exercising the jurisdiction conferred on them in accordance with paragraph (1) are to sit at such times and in such places as the President may from time to time determine.

### **Membership of tribunal panel**

9.—(1) A tribunal panel must be comprised of a Chair together with either one or two lay panel members.

(2) For each hearing—

- (a) the Chair must be the President or a person selected by the President from the legal chair panel, and
- (b) the other member or members must be persons selected by the President from the lay panel.

(3) Where the panel is comprised of one Chair and one lay panel member, the Chair has the casting vote in the event of a disagreement between the panel members.

### **Period within which proceedings must be commenced**

10.—(1) An appeal to the Tribunal must—

- (a) be made in writing in accordance with these Regulations, and

- (b) be received by the Tribunal no later than the first working day after the expiry of 8 weeks beginning with the date when—
  - (i) the notice of the decision of the local authority, or FEI governing body, and
  - (ii) the right to appeal under Part 2 of the 2018 Act against the decision, was given.
- (2) If in relation to an appeal or prospective appeal, the dispute concerned is referred for dispute resolution under section 68 of the 2018 Act before the end of the period specified in paragraph (1) (b) the period allowed by that paragraph is extended by 8 weeks.
- (3) A claim to the Tribunal must—
  - (a) be made in writing in accordance with these Regulations, and
  - (b) 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>(9)</sup>.
- (4) If in relation to a claim or prospective claim, the dispute concerned is referred for dispute resolution under paragraph 6C of Schedule 17 to the 2010 Act before the end of the period specified in paragraph (3)(b) the period allowed by that paragraph is extended in accordance with paragraph 4(2A) of Schedule 17 to the 2010 Act.
- (5) Subject to regulation 14, the Tribunal may not consider—
  - (a) an appeal application, unless proceedings are commenced in accordance with paragraph (1);
  - (b) a claim application, unless proceedings are commenced in accordance with paragraph (3).

### **Appeal application**

- 11.**—(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 and e-mail address,
  - (b) the name and date of birth of the child or young person,
  - (c) if relevant, the relationship or connection of the person making the appeal to the child or young person,
  - (d) the names and addresses of all persons who—
    - (i) have parental responsibility for the child, or
    - (ii) share parental responsibility for the child, or
    - (iii) 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 or case friend for the person making the appeal and, if available, the representative or case friend’s telephone number and e-mail address,
  - (f) an address and, if available, an e-mail address, where notices and documents for the person making the appeal should be sent,
  - (g) the name and address of the local authority or FEI governing body 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,

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(9) Paragraph 4(1) of Schedule 17 to the Equality Act 2010 stipulates the period in which a claim must be made to the Tribunal.

- (j) the result sought,
  - (k) the steps, if any, already taken to resolve the dispute, and
  - (l) any communication requirements and preferences of the child or young person.
- (2) If the person making the appeal seeks an order—
- (a) that an individual development plan is amended, the appeal application must specify to which section or sections of the individual development plan the appeal relates, and
  - (b) for a placement at a school or other institution, the appeal application must state the name and address of the school or other institution.
- (3) The appeal application may be accompanied by—
- (a) a copy of the disputed decision,
  - (b) where the appeal is made under section 70 or 72 of the 2018 Act, a copy of the child or young person’s individual development plan, any documentation attached to or forming part of the individual development plan and, if available, a copy of the latest review under section 23 or 24 of the 2018 Act, and
  - (c) the case statement in accordance with regulations 17 and 18.
- (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 or additional learning provision at another institution in accordance with paragraph (2)(b), by written confirmation that the person making the appeal has informed the head teacher of the school, or the governing body or proprietor of the other institution, that the person proposes to request that the school or other institution is named in the individual development plan, 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 individual development plan;
    - (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 individual development plan;
    - (iii) an independent school, by written confirmation from the proprietor of the school that a place is available at the school for the child;
    - (iv) any other institution, by written confirmation that the person making the appeal has established whether or not there is suitable provision available at the institution.
- (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 35, include a request that the appeal is heard with a claim against a responsible body.

### **Claim application**

- 12.—**(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 and e-mail address,
  - (b) the name and date of birth of the child or young person,
  - (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 or case friend appointed by the person making the claim and, if available, the representative's or case friend's telephone number and e-mail address,
  - (f) an address and, if available, an e-mail 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 school pupil's disability.
- (3) The claim application must include a description of any communication requirements and preferences of the child or young person.
- (4) Evidence of a medical or other professional diagnosis relating to the pupil's disability should, if available, accompany the claim application.
- (5) 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.
- (6) The claim application must be signed by the person making the claim or any representative or a case friend on that person's behalf.
- (7) The claim application may, in accordance with regulation 35, include a request that the claim is heard with an appeal against a local authority.

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

**13.—**(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) notification that local authorities have duties to put in place arrangements for independent advocacy services for children and young people for whom they are responsible,
  - (v) a statement of the possible consequences for the appeal or claim, if a party fails to comply with regulation 5 (parties' obligation to co-operate), and
  - (vi) a notification that parties may submit written witness statements and call witnesses in accordance with regulation 43.
- (2) The Secretary of the Tribunal must send to the FEI governing body, local authority or responsible body, as the case may be—
- (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) when a case statement is an accompanying document under sub-paragraph (a), or when it is separately received, a notice stating the time for submitting the case statement of the FEI governing body, local authority or responsible body and evidence under regulation 19 and the consequences of failing to do so,
  - (d) a statement of the possible consequences for the appeal or claim, if a party fails to comply with regulation 5 (parties' obligation to co-operate), and
  - (e) a notification that parties may submit written witness statements and call witnesses in accordance with regulation 43.
- (3) If it is necessary to determine the identity of the responsible body in relation to a claim, the President or the Secretary of the Tribunal 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 is 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) 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 their representative instead of the appellant or claimant;
- (b) unless a case friend has been appointed in accordance with section 85 of the 2018 Act and regulations 60 to 62.

(12) If paragraph (11)(a) or (b) 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 or to the case friend, as the case may be.

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

**14.**—(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 2010 Act.

(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**

**15.**—(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 12(1)(i) and (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 33 (failure to comply with directions) 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**

**16.**—(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 statement periods**

**17.**—(1) The case statement period for an appellant making an appeal is the relevant period of time set out in regulation 10 and includes any extension to that period of time ordered by the President under regulation 65.

(2) The case statement period for a claimant is a period of 8 weeks commencing on the date on which a notice given under regulation 13(2)(c) is taken to have been received in accordance with regulation 75(11) and includes any extension to that period ordered by the President under regulation 65.

(3) If the President makes a direction in relation to—

- (a) an appeal in accordance with regulation 15, the period specified in paragraph (1) does not start, and the Secretary of the Tribunal must not send any documents as required by regulation 13(2), until reasons are received in response to the direction;
- (b) a claim in accordance with regulation 15 or makes enquiries under regulation 13(3), the period specified in paragraph (2) does not start, and the Secretary of the Tribunal must not send any documents to the responsible body as required by regulation 13(2), until reasons are received in response to the direction or the enquiries are concluded.

(4) The case statement period for a local authority or FEI governing body in an appeal is—

- (a) 4 weeks, beginning with the date on which the notice accompanying the appellant's case statement is taken to have been received in accordance with regulation 75(11), and
- (b) includes any extension to that period ordered by the President under regulation 65.

(5) The case statement period for a responsible body is—

- (a) 4 weeks, beginning with the date on which the notice given under regulation 13(2) is taken to have been received in accordance with regulation 75(11), and
- (b) includes any extension to that period ordered by the President under regulation 65.

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

**18.**—(1) The appellant or the claimant must submit to the Secretary of the Tribunal before the end of their case statement period, as the case may be—

- (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 makes an appeal under section 70(2)(f) and (g) of the 2018 Act 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 65 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 respondent local authority, FEI governing body or the responsible body has lost its entitlement to attend or be represented at the hearing in accordance with regulation 23 or 33, the giving of permission restores such entitlement and, if necessary, the hearing may be postponed or adjourned, as appropriate, the respondent can be represented.

### **The respondent local authority, FEI governing body or responsible body's case statement and evidence**

**19.—**(1) The local authority, governing body of the FEI or the responsible body respondent (“the respondent”) must submit to the Secretary of the Tribunal before the end of the case statement period—

- (a) a copy of the disputed decision,
- (b) a copy of the child or young person’s individual development plan, any documentation attached to or forming part of the plan 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 respondent’s case statement must be signed by a person who is authorised to sign such documents on the respondent’s behalf, and must state whether or not the respondent intends to oppose the appeal or claim.

- (3) If the respondent 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 respondent’s representative and, if available, the representative’s telephone number and email address,
  - (c) the address where documents for the respondent 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 respondent’s case statement must include—

- (a) the views of the child or young person 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 respondent 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 respondent must submit to the Secretary of 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 65 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 33, 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 representative of respondent FEI governing body, local authority or responsible body**

**20.**—(1) The respondent FEI governing body, local authority or the responsible body (“the respondent”) 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 and e-mail address.

(2) References in these Regulations (however expressed) to sending documents to, or giving notice to, the governing body of the FEI, 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 19(3)(b).

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

**21.**—(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 or young person within the meaning of sections 13 and 14, or 18 and 19, of the 2018 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 13 of the 2018 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 13 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 13(1).

### **Copy documents for parties**

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

- (a) send to the local authority, FEI governing body 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 each 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 47 (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 65.

(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 24(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**

**23.**—(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, FEI governing body or the responsible body within the case statement period;
- (b) the local authority, FEI governing body or the responsible body states in writing that it does not resist—
  - (i) the appeal, or
  - (ii) the claim;
- (c) the local authority, FEI governing body or the responsible body withdraws its opposition to—
  - (i) the appeal, 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 18(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, FEI governing body 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 or young person's individual development plan, no statement that the local authority or FEI governing body does not resist the appeal or that it withdraws its opposition may take effect until the local authority or FEI governing body submits to the Secretary of the Tribunal written confirmation of the amendments (if any) it agrees to make to the child's or young person's individual development plan;
- (b) a decision to cease to maintain an individual development plan, no statement that the local authority or FEI governing body does not resist the appeal or that it withdraws its opposition may take effect until the local authority or FEI governing body 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**

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

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

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

**25.—(1)** The President may order—

- (a) that the appeal application or the claim application is struck out on the grounds that the appellant's or the claimant's failure to comply with enquiries made by the Secretary of the Tribunal under regulation 24, prejudices, or delays, the fair hearing of the appeal or the claim;
- (b) that the local authority, FEI governing body or the responsible body may not take any further step in the appeal or claim and may not attend the hearing or be represented at the hearing on the grounds of a failure to comply with enquiries made by the Secretary

of the Tribunal under regulation 24, prejudices, or delays, the fair hearing of the appeal or the claim.

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

(3) For the purposes of this regulation—

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

(b) representations are made if—

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

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

(4) If an appeal application or a claim application is struck out under paragraph (1)(a), the proceedings to which the appeal or claim relates are considered to be concluded.

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

**26.**—(1) The Secretary of the Tribunal must, at any stage of the appeal or claim if the local authority, FEI governing body or the responsible body applies, or the President or the tribunal panel so directs, serve a notice on the appellant or the claimant stating that it has been proposed that the whole or part of the appeal or the claim should be struck out on one of the grounds specified in paragraph (2) or for want of prosecution.

(2) The grounds referred to in paragraph (1) are that the appeal or the claim—

(a) is made otherwise than in accordance with these Regulations;

(b) is not, or is no longer, within the jurisdiction of the Tribunal;

(c) discloses no reasonable grounds;

(d) is an abuse of the Tribunal's process.

(3) The notice under paragraph (1) must invite the appellant or the claimant to make representations.

(4) For the purposes of this regulation—

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

(b) representations are made if—

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

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

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

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

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

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

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

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

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

(3) For the purposes of this regulation—

- (a) a notice inviting representations must inform the party that, within a period (no less than 5 working days) specified in the notice, the party may either make written representations or request an opportunity to make oral representations;
- (b) representations are made if—
  - (i) in the case of written representations, they are made within the period so specified, and
  - (ii) in the case of oral representations, the party proposing to make them has requested an opportunity to do so within the period so specified.

### **Evidence and submissions**

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

- (a) the issues which require evidence or submissions,
- (b) the nature of the evidence or submissions required,
- (c) whether the parties are permitted or required to provide expert evidence, and if so whether the parties must jointly appoint a single expert to provide such evidence,
- (d) the manner in which any evidence or submissions are to be provided, which may include a direction for them to be given—
  - (i) orally at a hearing, or
  - (ii) by written submissions or written witness statement, and
- (e) the time by which any evidence or submissions are to be provided.

(2) The President or the tribunal panel may direct in relation to an appeal—

- (a) the parent of the child to make the child available for examination or assessment by a suitably qualified professional person, or
- (b) the person responsible for a school or educational setting to allow a suitably qualified professional person to have access to the school or educational setting for the purpose of assessing the child or the provision made, or to be made, for the child.

(3) The President or the tribunal panel may consider a failure by a person who is a party to the appeal to comply with a requirement made under paragraph (2), in the absence of any good reason for such failure, as a failure to co-operate with the Tribunal.

(4) The President or the tribunal panel may—

- (a) admit evidence whether or not the evidence would be admissible in a civil trial in England or Wales;
- (b) exclude evidence that would otherwise be admissible where—
  - (i) the evidence was not provided within the time allowed by a direction,
  - (ii) the evidence was otherwise provided in a manner that did not comply with a direction, or
  - (iii) it would otherwise be unfair to admit the evidence.

### **Case management and directions**

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

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

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

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

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

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

(6) A direction must—

- (a) include a statement of the possible consequences for the appeal or claim, as provided by regulation 33, of a party's failure to comply with the direction within the time allowed by the President or the tribunal panel;
- (b) unless the person to whom the direction is addressed had an opportunity to object to the direction, or gave their written consent to the application for it, contain a statement to the effect that that person may apply to the President or the tribunal panel under regulation 30 to vary or set aside the direction.

(7) Where, in accordance with regulation 35(1) the President or the tribunal panel orders—

- (a) that an appeal is heard together with a claim, the directions given under paragraph (1), may relate to the appeal only;
- (b) that a claim is heard together with an appeal, the directions given under paragraph (1), may relate to the claim only.

(8) Where paragraph (7)(a) applies, the President or the tribunal panel may consider whether it is in the interests of the efficient disposal of the appeal and the claim, and in the interests of the parties, that the directions given with respect to the appeal are the same as, or similar to, those given in the claim.

(9) Where paragraph (7)(b) applies, the President or the tribunal panel may consider whether it is in the interests of the efficient disposal of the claim and the appeal, and in the interests of the parties, that the directions given with respect to the claim are the same as, or similar to, those given in the appeal.

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

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

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

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

### **Particulars and supplementary statements**

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

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

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

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

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

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

(4) The President or the tribunal panel may grant to a party an order for such disclosure or inspection of documents (including the taking of copies) as might be granted under the Civil Procedure Rules 1998<sup>(10)</sup>.

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

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<sup>(10)</sup> See Part 31 – Disclosure and Inspection of Documents.

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

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

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

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

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

### **Consolidating appeals or claims**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**37.**—(1) Subject to the provisions of paragraph (2) and regulation 39, the Secretary of the Tribunal must, after consultation with the parties, fix the date, place and time of the hearing and send to each party a notice specifying the date, place and time of the hearing.

(2) If the Secretary of the Tribunal has asked a party to provide details of their availability to attend a hearing and a party fails to comply with the request, the Secretary of the Tribunal may proceed to list the appeal or claim for hearing without further consultation.

(3) Subject to paragraph (4), the notice of hearing referred to in paragraph (1) must be sent—

- (a) in relation to a hearing under regulation 23, 25, 26, 53 or 54, no later than 5 working days before the date fixed for a hearing,
- (b) in any other case, no later than 10 working days before the date fixed for the hearing, or
- (c) in any case, within a shorter period of time before the date fixed for the hearing in sub-paragraph (a) or (b) as the parties may agree.

(4) The Secretary of the Tribunal must include in or with the notice of hearing—

- (a) information and guidance, in a form approved by the President, as to attendance at the hearing of the parties and witnesses, the bringing of documents, and the right of representation or assistance as provided by regulation 50, and
  - (b) a statement explaining the possible consequences of non-attendance and the right to make representations in writing by—
    - (i) the appellant or the claimant if the appellant or the claimant does not attend and is not represented;
    - (ii) the local authority, FEI governing body or the responsible body if it is not represented and if it has submitted a statement of its case, unless it stated in writing that it did not resist the appeal or the claim, or withdrew its opposition to the appeal or the claim.
- (5) Subject to paragraph (6), the President or the tribunal panel may alter the place and time of any hearing and the Secretary of the Tribunal must give the parties no less than 5 working days (or a shorter time as the parties agree) notice of the new place and time of the hearing.
- (6) If the parties are present when the President or the tribunal panel announce the new place and time place of the hearing, no further notice is required.
- (7) Nothing in paragraph (1) or (5) oblige the Secretary of the Tribunal to consult or send a notice to any person who is not entitled to be represented at the hearing.

### **Transfers**

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

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

- 39.**—(1) The President or the tribunal panel may determine the appeal or the claim or any particular issue without a hearing—
- (a) if the parties so agree in writing, or
  - (b) in the circumstances described in regulation 23 (failure to submit a case statement and absence of opposition) or 33 (failure to comply with directions).
- (2) Before making a determination under paragraph (1), the President or tribunal panel must consider any representations in writing already submitted by the parties (for the purpose of this regulation, the appeal application or the claim application and the parties' case statements are treated as representations in writing).

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

- 40.**—(1) Subject to paragraph (2), all hearings of the Tribunal must be in private.
- (2) The President or the tribunal panel may make an order that a hearing or part of a hearing is to be held in public if the parties agree to a public hearing and the President or the tribunal panel is satisfied that a public hearing would—
- (a) not prejudice the welfare or interests of the child or young person, and
  - (b) allow for the fair hearing of the appeal or claim.

(3) Subject to paragraph (6), the following persons are entitled to attend a hearing even though it is held in private—

- (a) the parties,
- (b) the parties representatives,
- (c) the parties witnesses, and
- (d) any person who has been appointed to act as a case friend in accordance with regulation 61.

(4) The following persons are also entitled to attend a hearing even though it is held in private—

- (a) the child, where the child is not a party to the appeal or claim;
- (b) a parent of the child, where the parent is not a party to the appeal or the claim;
- (c) the clerk to the tribunal panel and the Secretary of the Tribunal;
- (d) the President, a Chair, or a lay panel member (when not sitting as a member of the tribunal panel);
- (e) a person undergoing training as a Chair, a lay panel member or as a clerk to the tribunal panel;
- (f) a person acting on behalf of the President in the training or supervision of clerks to tribunal panels;
- (g) an interpreter;
- (h) any person giving other necessary assistance to a person sitting as a member of the tribunal panel or entitled to attend the hearing further to this regulation;
- (i) any person named by the appellant or the claimant in response to the enquiry under regulation 24(a)(vi) or (vii) unless the President or the tribunal panel has determined that any such person must not attend the hearing and has notified the appellant or the claimant accordingly.

(5) The President or the tribunal panel, with the consent of the parties or their representatives actually present, may permit any other person to attend a hearing which is held in private.

(6) Without prejudice to any other powers it may have, the President or the tribunal panel may exclude from a hearing, or part of it—

- (a) a person whose conduct in the opinion of the President or the tribunal panel has disrupted, or is likely to disrupt, the hearing;
- (b) a person whose presence in the opinion of the President or the tribunal panel has made, or is likely to make, it difficult for any person to give evidence or make the representations necessary for the proper conduct of the hearing;
- (c) a representative or witness whom a party omitted to name, without reasonable cause, in response to the enquiry by the Secretary of the Tribunal under regulation 24.

(7) Except as provided in regulation 43(3) and (4) none of the persons mentioned in paragraph (4) or (5) may, except in the case of the persons specified in sub-paragraphs (c), (g), and (h) of paragraph (4) as their respective duties require, take any part in the hearing or (where entitled or permitted to remain) in the deliberations of the tribunal panel.

### **Restricted reporting orders**

**41.**—(1) If it appears appropriate to do so the President or the tribunal panel may make an order limiting or prohibiting the publishing of any matter that is likely to lead members of the public to identify the appellant, claimant, child or other person, where it is considered that they should not be identified.

(2) In this regulation “publishing” includes, without prejudice to the generality of that expression—

- (a) publishing any matter in a programme service, as defined by section 201(1) of the Broadcasting Act 1990<sup>(11)</sup>, 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**

**42.**—(1) At the beginning of the hearing the Chair must explain the order of proceedings which the tribunal panel proposes to adopt.

(2) The tribunal panel must conduct the hearing in a manner it considers appropriate to clarify the issues and handle the proceedings in accordance with the overriding objective as required by regulation 4.

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

(4) The tribunal panel may, if it is satisfied that it is fair and just to do so, permit—

- (a) the appellant or the claimant to rely on grounds not stated in the appeal application or the claim application or the case statement and to produce evidence not presented to the local authority, FEI governing body or the responsible body before or at the time it took the disputed decision;
- (b) the local authority, FEI governing body or the responsible body to rely on grounds not specified in its case statement.

(5) If, at or after the beginning of a hearing, a member of the tribunal panel constituting three members other than the Chair is absent—

- (a) the hearing may, with the consent of the parties, be conducted by the other two members and in that event the tribunal panel is to be regarded as properly constituted and the decision of the tribunal panel may be taken by those two members, and
- (b) the absent member must not re-join the hearing.

### **Evidence at hearing**

**43.**—(1) Subject to regulation 40(6), in the course of the hearing the parties are entitled to give evidence, to call witnesses, to question any witness and to address the tribunal panel both on the evidence, including the written evidence submitted before the hearing, and generally on the subject matter of the appeal or the claim.

(2) A party is not entitled to call more than two witnesses to give evidence orally unless the President or the tribunal panel has given permission on application by a party (in addition to any witness whose attendance is required in accordance with paragraph (6)).

(3) The President or the tribunal panel may permit the following persons to give evidence and address the tribunal panel on the subject matter of the appeal or the claim—

- (a) the child, where the child is not a party to the appeal or the claim;
- (b) the parent of the child, where the parent is not a party to the appeal or the claim;

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<sup>(11)</sup> 1990 c. 42; section 201(1) was amended by Part 3, Chapter 6, section 360 of, and paragraph 1 of Schedule 19 to, the Communications Act 2003 (c. 21).

- (c) a person who has submitted a declaration of suitability to the Tribunal in accordance with regulation 61 to act as a case friend.
- (4) The President or the tribunal panel may permit—
  - (a) the person, if any, named in response to an enquiry under regulation 24(a)(vii) to give evidence and address the tribunal panel on the child’s or young person’s views and wishes, and
  - (b) the local authority or the responsible body to question the person specified in subparagraph (a) in relation to any evidence or address made to the tribunal panel.
- (5) Evidence before the tribunal panel may be given—
  - (a) orally, or
  - (b) by written statement if such evidence is submitted with the appeal application or claim application or the case statement or in accordance with regulation 47.
- (6) The President or the tribunal panel may, at any stage of the appeal or the claim, require the personal attendance of any maker of any written statement.
- (7) The President or the tribunal panel may receive evidence of any fact which appears to the President or the tribunal panel to be relevant.
- (8) The President or the tribunal panel may require any party or witness to give evidence on oath or affirmation, and for that purpose there may be administered an oath or affirmation in the correct form, or may require any evidence given by a written statement to be given by statement of truth.

#### **Change of witness**

**44.**—(1) The person named as a party’s witness in response to an enquiry made under regulation 24 may be changed by that party if written notification is received by the Secretary of the Tribunal and a copy of the notification served on the other party no later than 5 working days before the hearing.

(2) Any application to change a witness made less than 5 working days before the hearing must be determined by the President or the tribunal panel.

#### **Summoning a witness**

**45.**—(1) Subject to paragraphs (2) to (5), the President or the tribunal panel may, on the application of a party or on the President’s or the tribunal panel’s own initiative, require by summons any person to—

- (a) attend as a witness at a hearing at such time and place as may be specified in the summons, and at any postponement or adjournment of that hearing, and
- (b) at the hearing, to answer any questions or produce any documents or other material in the person’s custody or under the person’s control which relate to any matter in question in the appeal or claim.

(2) No person must be compelled to give any evidence or produce any document or other material that the person could not be compelled to give or produce at a trial of an action in a court of law.

(3) In exercising the power conferred by this regulation, the President or the tribunal panel must take into account the need to protect any matter that relates to intimate personal circumstances or financial circumstances or consists of information communicated or obtained in confidence.

(4) No person may be required to attend in compliance with a summons unless the person has been given at least 5 working days’ notice of the hearing or, if less than 5 working days, the person has informed the President or the tribunal panel that the person accepts the notice given.

(5) No person may be required in compliance with a summons to attend and give evidence or to produce any document unless a sum reasonably sufficient to cover the necessary expenses of the person's attendance is paid or tendered.

(6) A party seeking a witness summons must apply in writing to the Secretary of the Tribunal at least 8 working days before the hearing, or later if the person to whom the summons is to be addressed consents in writing.

(7) A witness summons must contain—

- (a) in relation to an appeal, a statement that under section 79 of the 2018 Act, any person who without reasonable excuse fails to comply with any requirement to attend to give evidence and, if the summons so requires, to produce documents is liable on summary conviction to a fine not exceeding level 3 on the standard scale,
- (b) in relation to a claim, a statement that, under paragraph 6(8) of Schedule 17 to the 2010 Act, any person who without reasonable excuse fails to comply with any requirement to attend to give evidence and, if the summons so requires, to produce documents is liable on summary conviction to a fine not exceeding level 3 on the standard scale, and
- (c) a statement of the effect of paragraph (8).

(8) A person to whom a witness summons is addressed may apply to the President or the tribunal panel, by notice to the Secretary of the Tribunal, to vary it or set it aside.

(9) The President or the tribunal panel must not vary or set aside the witness summons without first notifying the party who applied for the issue of the witness summons and considering any representations made by that party.

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

**46.** The President may, on the application of a party or on the President's or the tribunal panel's own initiative, permit a party or a witness to give evidence by telephone, through a video link or by any other means of communication, if satisfied that this would not prejudice the achievement of the overriding objective of these Regulations.

#### **Late written evidence**

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

- (a) the parties agree to the admission of the further evidence, or
  - (b) the evidence satisfies the conditions set out in paragraph (2).
- (2) The conditions referred to in paragraph (1)(b) are that—
- (a) the evidence was not, and could not reasonably have been, available to that party before the end of the case statement period, and
  - (b) a copy of the evidence was submitted to the Secretary of the Tribunal and served on the other party at least 5 working days before the hearing.

(3) Further written evidence submitted in accordance with paragraph (1)(b) may only, subject to paragraph (4), be admitted if, after considering any representations from the other party, the President or the tribunal panel is of the opinion that the extent and form of the evidence is such that it is unlikely to impede the efficient conduct of the hearing.

(4) Further written evidence must not be admitted if, in the opinion of the President or the tribunal panel, its admission would be contrary to the interests of justice.

(5) If the conditions in paragraph (2) are not met, the President or the tribunal panel may give a party permission to submit further written evidence at the hearing if the President or the tribunal

panel is of the opinion that unless the evidence is admitted, there is a serious risk of prejudice to the party seeking to rely on it.

### **Postponement of hearing**

**48.**—(1) The President or the tribunal panel may, on the President’s or the tribunal panel’s own initiative or on the application of a party, in exceptional circumstances, make an order to postpone a hearing.

(2) An application by a party under paragraph (1) must be—

- (a) made in writing stating reasons in full, and
- (b) received by the Secretary of the Tribunal, and served by the applicant on the other party, at least 5 working days before the hearing.

(3) If an order is made under paragraph (1), the Secretary of the Tribunal must give the parties no less than 5 working days (or such shorter time as the parties agree) notice of the new hearing date.

(4) Nothing in paragraph (3) obliges the Secretary of the Tribunal to consult or send a notice to any person who is not entitled to be represented at the hearing.

### **Adjournments and directions**

**49.**—(1) The President or the tribunal panel may adjourn a hearing.

(2) When a hearing is adjourned—

- (a) the President or the tribunal panel may give directions to be complied with before, or at, the resumed hearing, and
- (b) the Chair may announce provisional conclusions reached by the tribunal panel. The provisional conclusions are not a decision of the tribunal panel.

(3) A direction under paragraph (2)(a) may require a party to provide such particulars, evidence or statements as may reasonably be required for the determination of the appeal or the claim.

(4) If a party fails to comply with a direction made under paragraph (2)(a), the tribunal panel may take account of that fact when determining the appeal or the claim or deciding whether to make an order for costs.

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

### **Representation at hearing**

**50.**—(1) Subject to paragraph (2), at any hearing or part of a hearing—

- (a) the appellant or claimant may conduct the appeal or claim (with assistance from one person if the appellant or the claimant wishes), or may appear and be represented by one person whether or not legally qualified;
- (b) the local authority, FEI governing body or the responsible body may appear and be represented by one person whether or not legally qualified.

(2) The President or the tribunal panel may grant permission—

- (a) for the appellant or claimant to obtain assistance or be represented by more than one person;
- (b) for the local authority, FEI governing body or the responsible body to be represented by more than one person.

(3) If a party does not intend to attend or be represented at the hearing the party may, no later than 5 working days before the hearing, send to the Secretary of the Tribunal additional written representations in support of that party's case.

### **Failure to attend hearing**

**51.**—(1) If a party fails to attend or be represented at a hearing of which that party had been notified, the tribunal panel may—

- (a) unless satisfied that there is sufficient reason for such absence, hear and determine the appeal or claim in the party's absence, or
- (b) postpone or adjourn the hearing, as appropriate.

(2) Before disposing of an appeal or claim in the absence of a party, the tribunal panel must consider any representations in writing submitted by that party in response to the notice of hearing and, for the purpose of this regulation the appeal application or claim application and the parties' case statements are to be treated as representations in writing.

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

**52.**—(1) For the purposes of arriving at its decision the tribunal panel must, and for the purposes of discussing a question of procedure may, notwithstanding anything contained in these Regulations, order all persons to withdraw from the sitting of the tribunal panel other than the members of the tribunal panel and any of the persons mentioned in regulation 40(4)(c) to (f), or, as their respective duties require, regulation 40(4)(g) and (h).

(2) A decision of a three member tribunal panel may be taken by a majority and where the tribunal panel is constituted by two members the Chair has a second or casting vote.

(3) The decision of the tribunal panel may be given orally at the end of the hearing or reserved and, in any event, whether there has been a hearing or not, must be recorded immediately in a document which, except in the case of a decision by consent, must also contain, or have annexed to it, a statement of the reasons (in summary form) for the tribunal panel's decision, and such document must be signed and dated by the Chair.

(4) Neither a decision given orally nor the document referred to in paragraph (3) may contain any reference to the decision being by majority (if that is the case) or to any opinion of a minority.

(5) Every decision of the tribunal panel must be entered in the Register.

(6) The Secretary of the Tribunal must send a copy of the document referred to in paragraph (3) as soon as is practicable to each party, accompanied by guidance, in a form approved by the President, about the circumstances in which there is a right to appeal against the tribunal panel decision and the procedure to be followed.

(7) Where regulation 13(11)(a) or 62(2) applies, the Secretary of the Tribunal must send a copy of the documents referred to in paragraph (6) to the appellant or claimant in addition to the representative or the case friend.

(8) Every decision is to be treated as having been made on the date on which a copy of the document recording it is sent to the appellant or claimant (whether or not the decision has previously been announced at the end of the hearing).

After the hearing

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

**53.**—(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, and
  - (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), or
  - (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), or
  - (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, or
  - (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 paragraph (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**

**54.**—(1) A decision by the President not to extend the time for submitting an appeal application under regulation 14 may be reviewed under regulation 53 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 53 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 paragraph (1) or (2), the Secretary of the Tribunal must serve a copy of the application on the local authority, FEI governing body or the responsible body together with a notice inviting written representations within a specified period.

#### **Application for permission to appeal to the Upper Tribunal**

**55.**—(1) A party seeking permission to appeal on a point of law under section 81 of the 2018 Act or paragraph 6AA of Schedule 17 to the 2010 Act (appeals from the Education Tribunal for Wales to the Upper Tribunal) must make a written application to the Education Tribunal for permission to appeal.

(2) An application under paragraph (1) must be sent to the Secretary of the Tribunal no later than 28 days after the latest of the dates that the Secretary of the Tribunal sent to the party making the application—

- (a) notification of the decision,
- (b) notification that an application for the decision to be reviewed has been unsuccessful, or
- (c) notification that the decision has been varied following a review.

(3) An application under paragraph (1) must—

- (a) identify the decision to which it relates,
- (b) identify the alleged error or errors of law in the decision, and
- (c) state the result the party making the application is seeking.

(4) The President or Chair may give directions in relation to the determination of the application, and may make its decision on the application with or without a hearing.

(5) On receiving an application 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 4, whether to review the Tribunal's decision in accordance with regulation 53 unless the President or the Chair have already reviewed the decision or decided not to review the decision.

(6) 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.

(7) The Secretary of the Tribunal must send written notification of the President or Chair's decision on the application to the parties as soon as practicable including details of any decision to give permission to appeal made under paragraph (6).

(8) If the President or Chair has refused the application the notification under paragraph (7) must also include—

- (a) the reasons for such refusal, and
- (b) notification of the right to make an application to the Upper Tribunal for permission to appeal and the time within which, and the method by which, such application must be made.

(9) The President or Chair may give permission to appeal on limited grounds, but must comply with paragraph (8) in relation to any grounds on which it has refused permission.

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

**56.** 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**

**57.—**(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 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 with tribunal panel orders - appeals**

**58.—**(1) If the tribunal panel, following its decision in relation to an appeal, makes an order under section 71 of the 2018 Act requiring a local authority or FEI governing body to perform the actions referred to in paragraph (2) the local authority or FEI governing body must perform the actions within the time period specified in paragraph (2).

(2) In the case of an order—

- (a) against a local authority to prepare an individual development plan, it must prepare and give a copy of the individual development plan to the child, child's parent or young person within 7 weeks;

- (b) against a FEI governing body to prepare an individual development plan, it must prepare and give a copy of the individual development plan to the young person within 35 term time days;
  - (c) against a local authority to revise an individual development plan, it must revise the individual development plan and give a copy of it to the child, child's parent or young person within 7 weeks;
  - (d) against an FEI governing body to revise an individual development plan, it must revise the individual development plan and give a copy of it to the young person within 35 term time days;
  - (e) to continue to maintain an individual development plan (with or without revisions), with immediate effect;
  - (f) against a local authority to take over responsibility for maintaining an individual development plan, beginning with the date specified by the tribunal;
  - (g) against a local authority to review an individual development plan, it must undertake the review and notify the child, child's parent or young person of the outcome of the review, in writing, within 7 weeks;
  - (h) against an FEI governing body to review an individual development plan, it must undertake the review and inform the young person of the outcome of the review, in writing within 35 term time days;
  - (i) to remit the case to the local authority responsible for the matter for it to reconsider whether, having regard to any observations made by the tribunal, it is necessary for a different decision to be made or a different action to be taken, the local authority must do so, and notify the child, child's parent or young person of the outcome of that reconsideration within 7 weeks;
  - (j) to remit the FEI governing body responsible for the matter for it to reconsider whether, having regard to any observations made by the tribunal, it is necessary for a different decision to be made or a different action to be taken, the FEI governing body must do so, and notify the child, child's parent or young person of the outcome of that reconsideration within 35 term days.
- (3) If the tribunal panel, following its decision in relation to an appeal, makes an order under section 73 of the 2018 Act requiring a home authority to perform an action referred to in paragraph (4), the home authority must perform that action within the time period specified in paragraph (4).
- (4) In the case of an order—
- (a) to prepare an individual development plan, it must prepare and give a copy of the individual development plan to the child, child's parent or young person within 7 weeks;
  - (b) to revise an individual development plan as specified in the order, it must revise the individual development plan and give a copy of it to the child, child's parent or young person within 7 weeks;
  - (c) to remit the case to the home authority responsible for the matter for it to reconsider whether, having regard to any observations made by the tribunal, it is necessary for a different decision to be made or different action to be taken, it must do so and notify the child, child's parent or young person of the outcome of that reconsideration within 7 weeks.
- (5) In each case in paragraphs (2) and (4), unless otherwise specified, the period begins with the first working day after the order was made.
- (6) Where an order is made in respect of an FEI governing body, a "term time day" means a day on which the further education institution is due to meet for the purpose of teaching students, provided

that day is within a time period in which the further education institution delivers the majority of its full-time courses.

Children who lack capacity and case friends

### **Applications under section 70(3) of the 2018 Act for a declaration under section 71(2) of the 2018 Act relating to child’s capacity to understand**

**59.**—(1) A child or child’s parent seeking a declaration from the tribunal pursuant to section 71(2) of the 2018 Act must submit an application in writing to the tribunal.

(2) The application must state—

- (a) the name and address of the person seeking the declaration and, if available, the person’s telephone number and e-mail address;
- (b) the name and date of birth of the child;
- (c) the name and address of the child’s school and the relevant local authority;
- (d) the applicant’s relationship to the child;
- (e) the names and addresses of all persons—
  - (i) who have parental responsibility for a child, or
  - (ii) who share parental responsibility for a child, or
  - (iii) have care of the child,or reasons why the names and addresses of such persons are not provided;
- (f) a copy of the governing body’s and local authority’s decisions under section 84 of the 2018 Act relating to the child’s capacity;
- (g) the reason or reasons for making the application;
- (h) supporting evidence of the child’s capacity, or lack of capacity, within the meaning of section 85(1) of the 2018 Act;
- (i) the declaration sought.

(3) Where it appears to the President or tribunal panel that further information is required before a declaration can be made, the President or tribunal panel may direct the applicant to provide such information.

(4) The Secretary of the Tribunal must serve notice of any declaration made under section 71(2) of the 2018 Act on the applicant, the governing body, the local authority and, where appropriate, those listed in paragraph (2)(e).

(5) The Secretary of the Tribunal must record the decision and any declaration in the Register.

### **Who may be a case friend**

**60.** A person may only act as a case friend if the person is not barred from regulated activity relating to children under section 3(2)(a) of the Safeguarding Vulnerable Groups Act 2006(12).

### **How a person becomes a case friend**

**61.**—(1) A person who wishes to act as a case friend must submit an application in writing to the Tribunal.

(2) The application must state—

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(12) Under section 3(2)(a) of the Safeguarding Vulnerable Groups Act 2006 (c. 47), a person is barred from regulated activity relating to children if the person’s name is included in the list in Part 1 of Schedule 3 to that Act (“the children’s barred list”).

- (a) the name and address of the person who wishes to act as the child's case friend and, if available, the person's telephone number and e-mail address;
  - (b) the name and date of birth of the child;
  - (c) the name and address of the child's school and the relevant local authority;
  - (d) the person's relationship or connection to the child;
  - (e) a declaration of suitability confirming that the person satisfies the conditions and requirements specified in these Regulations and section 85(6) of the 2018 Act;
  - (f) supporting evidence of the child's lack of capacity within the meaning of section 85(1) of the 2018 Act.
- (3) The application must include—
- (a) the views of the child's parent in relation to the person's wish to act as the case friend, or
  - (b) an explanation of why the person has not established the parent's views.
- (4) Subject to paragraph (5), the declaration of suitability must be accompanied by an enhanced disclosure certificate issued by the Disclosure and Barring Service.
- (5) The requirement in paragraph (4) does not apply where the person who wishes to act as the case friend is the child's parent, step-parent, brother, step-brother, half-brother, sister, step-sister, half-sister, grand-parent, uncle, aunt, nephew or niece.
- (6) The Secretary of the Tribunal must—
- (a) record on the Tribunal's register the enhanced disclosure certificate's number and the start and expiry date, and
  - (b) use the recorded delivery service to return the enhanced disclosure certificate to the person.
- (7) The application must be accompanied by evidence to support the person's suitability to act as a case friend.
- (8) The application must be signed by the person who wishes to act as the child's case friend.
- (9) The person who wishes to act as the child's case friend must serve a copy of the application on—
- (a) the parties to the proceedings,
  - (b) the child's parent, and
  - (c) the child's school and local authority.

### **Steps in proceedings**

**62.**—(1) If during the appeal or the claim the President or the tribunal panel make a finding that a child appellant or claimant lacks capacity to understand within the meaning of section 85(1) of the 2018 Act and requires a case friend to conduct the proceedings on its behalf, no party may take any further step in the appeal or the claim without the President's or the tribunal panel's permission until and unless a person who wishes to act as the appellant's or the claimant's case friend has submitted an application to the Tribunal in accordance with regulation 61.

(2) Where the President or tribunal panel has ordered that a person is a case friend, the Secretary of the Tribunal must send a copy of the order to the case friend, the child's parent and to the child's school and local authority.

(3) Where the President or tribunal panel has ordered that a person is a case friend, the Secretary of the Tribunal must send all documents and notices concerning the appeal or claim to the case friend instead of the appellant or the claimant.

(4) If paragraph (3) 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 case friend.

### **Removing a case friend**

**63.**—(1) The President or the tribunal panel may remove a case friend by order in accordance with section 85(2)(b) of the 2018 Act on the President’s or the tribunal panel’s own initiative or on application, if satisfied that—

(a) the person does not meet one or more of the conditions set out in section 85(6) of the 2018 Act, or

(b) other good reason exists.

(2) An application for an order to remove a case friend must be supported by evidence.

(3) Where an order is made under paragraph (1), the President or the tribunal panel may stay the appeal or the claim until the appellant or the claimant has appointed a new case friend.

(4) The Secretary of the Tribunal must serve notice on the parties of any order made under paragraph (1) stating—

(a) that the person no longer acts as the appellant’s or the claimant’s case friend, and

(b) where a person has been substituted as a case friend, the name and address of the new case friend for service of notices and documents.

(5) The Secretary of the Tribunal must serve a copy of a direction made under paragraph (1) on—

(a) the person who has been removed as the case friend,

(b) the child’s parent, and

(c) the child’s school and local authority.

### *Miscellaneous*

### **NHS bodies – Reports to the Tribunal**

**64.**—(1) An NHS body to whom a recommendation has been made by the Tribunal must make a report to the Tribunal before the end of 6 weeks beginning with the date on which the recommendation is made.

(2) The Secretary of the Tribunal must send a copy of the report to each party.

#### **Extension of time**

**65.**—(1) Subject to paragraph (2), the President may, on application of a party or on the President’s own initiative, direct that a period of time in these Regulations or a direction made under them is extended.

(2) The President may only extend a period of time in accordance with paragraph (1) if the President considers it fair and just to do so.

(3) The President may extend a period of time by such period as the President thinks fit.

(4) Where the President has extended a period of time, reference in these Regulations or in a direction made under them to that period of time must be construed as a reference to the period of time so extended.

### **Withdrawal**

**66.** A person may withdraw an appeal or a claim—

- (a) by giving notice to the Secretary of the Tribunal at any time before a hearing, or
- (b) orally at a hearing.

### **Orders for costs and expenses**

**67.**—(1) The President or the Chair of the tribunal panel which decided the case must not normally make an order in respect of costs and expenses, but may, subject to paragraph (3), make such an order—

- (a) against a party if the President or the Chair is of the opinion that a party has been responsible for improper, unreasonable or negligent action or omission, or for any failure to comply with a direction or any delay which with diligence could have been avoided or that the party's conduct in making or resisting the appeal or claim was unreasonable;
- (b) against a representative if the President or the Chair is of the opinion that the representative is responsible for improper, unreasonable or negligent action or omission, or for any failure to comply with a direction or any delay which with diligence could have been avoided;
- (c) against a party who has failed to attend or be represented at a hearing of which that party has been duly notified;
- (d) against the local authority, FEI governing body or responsible body where it has not submitted a case statement under regulation 19;
- (e) against the local authority, FEI governing body or the responsible body where the President or the Chair considers that the disputed decision was unreasonable.

(2) Any order in respect of costs and expenses may be made—

- (a) as respects any costs and expenses incurred, or any allowances paid, or
- (b) as respects the whole, or any part, of any allowance (other than allowances paid to members of the Tribunal) paid by the Welsh Ministers to any person for the purposes of, or in connection with, a person's attendance at a Tribunal hearing.

(3) An order for costs may be made on the application of a party or on the President's or the Chair's own initiative.

(4) A party making an application for an order under paragraph (3) must—

- (a) submit a written application and a schedule of costs claimed to the Secretary of the Tribunal, and
- (b) serve a copy of the application and schedule of costs on the person against whom it is proposed that the order is made.

(5) An application for an order under paragraph (3) may be made at any time during the appeal or the claim but may not be made later than 28 days beginning with the date on which the tribunal panel—

- (a) issued the decision notice recording the decision which finally disposed of all issues in the appeal or the claim,
- (b) upon withdrawal of the appeal or the claim, made an order dismissing the appeal or the claim, or
- (c) following the local authority's concession to the appeal, issued the decision notice.

(6) An application for an order under paragraph (3)—

- (a) must be refused by the President or the Chair if a party is asking the Tribunal to consider a matter which is outside its powers;
- (b) may be refused in whole or part by the President or the Chair 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 an order is refused under paragraph (6), it must be determined after the party and the person against whom it is proposed that the order is made have had an opportunity to be heard by the President or the Chair.

(8) If an order is made under paragraph (3), the President or the Chair may give directions to be complied with before or at the costs hearing.

(9) If a party fails to comply with a direction given under paragraph (8), the President or the Chair may take account of that fact when deciding whether to make an order for costs.

(10) An order under paragraph (3) may require the party or representative against whom it is made to pay a party either a specified sum in respect of the costs and expenses incurred by that other party in connection with the appeal or claim, or the whole or part of such costs as assessed if not otherwise agreed.

(11) An order under this regulation for costs to be assessed must allow the county court to make a detailed assessment of costs in accordance with the Civil Procedure Rules 1998 either on the standard basis or if specified in the order on the indemnity basis.

#### **Power to exercise the functions of the President and Chair**

**68.**—(1) A Chair may exercise any function which these Regulations require or authorise the President to do.

(2) Where in accordance with paragraph (1), a Chair—

- (a) is required to select the Chair to a tribunal panel, a Chair may select themselves;
- (b) makes a decision, regulations 53 and 55 apply in relation to that decision as if they referred to a Chair in place of the President.

(3) Subject to regulation 73(6), in the event of the death or incapacity of the Chair, or if the Chair ceases to be a member of the legal chair's panel, following the decision of the tribunal panel, the functions of the Chair may be exercised by the President or another Chair appointed from the legal chair's panel.

#### **Power to exercise the functions of a panel member in relation to a review**

**69.**—(1) In the event of the death or incapacity of a member of the tribunal panel other than the Chair, or if a person ceases to be a member of the lay panel, following a decision of the tribunal panel, the functions of the tribunal panel in relation to any review of a decision may be undertaken by the other two panel members.

(2) This regulation does not apply to a tribunal panel—

- (a) which is constituted of two members;
- (b) of which any person is authorised to act in place of the Chair in accordance with regulation 68.

#### **The Secretary of the Tribunal**

**70.** Any function of the Secretary of the Tribunal may be performed by another member of the staff of the Tribunal authorised by the President.

#### **Register**

**71.**—(1) The Secretary of the Tribunal must keep a Register of appeals and claims registered by the Tribunal.

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

- (a) the names and addresses of the parties,
- (b) brief details of the nature of the appeal or the claim,
- (c) the date of any hearing including any hearing on preliminary or incidental matters, and, where appropriate, the nature of the hearing,
- (d) details of any directions or orders issued,
- (e) the document in which the decision of the tribunal panel has been recorded under regulation 52(3), and
- (f) whether the appeal or claim has been withdrawn.

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

### **Publication**

**72.**—(1) The President may make such arrangements as the President considers appropriate for the publication of tribunal panel decisions.

(2) Decisions may be published electronically.

(3) A decision may be published in an edited form, or subject to any deletions, where the President considers that it is appropriate having had regard to—

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

(4) A decision of the tribunal panel must be published in such manner as to protect the anonymity of the child or young person.

### **Irregularities**

**73.**—(1) An irregularity resulting from failure to comply with any provision of these Regulations, a practice direction<sup>(13)</sup> or of any direction of the President or the tribunal panel before the tribunal panel has reached its decision may not of itself render the proceedings void.

(2) Where any such irregularity comes to the attention of the tribunal panel, the tribunal panel may, if it considers that any person may have been prejudiced by the irregularity, give such directions as it thinks just, before reaching its decision to remedy the irregularity.

(3) Clerical mistakes in any document recording a direction or decision of the tribunal panel or a direction or decision of the President produced by or on behalf of the Tribunal or errors arising in such documents from accidental slips or omissions may at any time be corrected by the Chair or the President (as the case may be) by certificate signed by the Chair or the President.

(4) The Secretary of the Tribunal must as soon as practicable send a copy of any corrected document containing reasons for the tribunal panel's decision, to each party.

(5) Where a person has appointed a representative in accordance with regulation 16, the Secretary of the Tribunal must (notwithstanding regulation 13(11)(a)) send a copy of the document referred to in paragraph (4) to the person as well as the representative.

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<sup>(13)</sup> See section 61(2) of the Wales Act 2017 (c. 4) for powers to make practice directions.

(6) Where these Regulations require the Chair to sign a document, but by reason of death or incapacity the Chair is unable to do so, the other members of the tribunal panel must sign it and certify that the Chair is unable to sign.

#### **Proof of documents and certification of decisions**

74.—(1) A document purporting to be a document issued by the Secretary of the Tribunal on behalf of the President or the tribunal panel is, unless the contrary is proved, to be considered to be a document so issued.

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

#### **Method of sending, submitting or serving notices and documents**

75.—(1) A notice given under these Regulations must be in writing and a party whom the Regulations require to notify a matter to the Secretary of the Tribunal must do so in writing.

(2) Notices and documents to be provided under these Regulations must be—

- (a) sent by pre-paid post to the Secretary of the Tribunal or delivered by hand to the office of the Tribunal or such other office as the Secretary of the Tribunal may notify to the parties,
- (b) sent by e-mail to the address specified for the Tribunal, or
- (c) sent or delivered by such other method as the Tribunal may permit or direct.

(3) A party who sends a notice or document to the Tribunal by e-mail must not treat the notice or document as having been delivered unless its delivery has been acknowledged by the Tribunal.

(4) Subject to paragraph (5), if a party provides an email address or other details for the service of notices or documents to them, that party must accept delivery of documents by that method.

(5) If a party informs the Tribunal and the other party that a particular form of communication, other than pre-paid post or delivery by hand, must not be used to provide documents to that party, that form of communication must not be used.

(6) If the Tribunal or a party sends a document to a party or the Tribunal by e-mail or any other electronic means of communication, the recipient may request that the sender provide a hard copy of the document to the recipient. The recipient must make such a request as soon as reasonably practicable after receiving the document electronically.

(7) The Tribunal and each party may assume that the address provided by a party or a representative is, and remains, the address to which documents must be sent or delivered unless they receive written notification to the contrary.

(8) Notices and documents which these Regulations authorise or require the President, the tribunal panel or the Secretary of the Tribunal to send may (subject to paragraph (10)) either be sent by first class post or e-mail to or delivered at—

- (a) in the case of a party—
  - (i) the party's address for service specified in the appeal application or the claim application or in a written reply or in a notice under paragraph (9), or
  - (ii) if no address for service has been so specified the party's last known address, and
- (b) in the case of any other person, the person's place of residence or business or if the person is a corporation, the corporation's registered or principal office.

(9) A party may at any time by notice to the Secretary of the Tribunal change that party's address for service under these Regulations.

(10) The recorded delivery service must be used instead of first class post for service of a summons issued under regulation 45 requiring the attendance of a witness.

(11) A notice or document sent by the Tribunal by first class post in accordance with these Regulations, and not returned to the Tribunal, is to be taken to have been received by the addressee on the second working day after the date of posting, unless the contrary is shown.

(12) The date of posting is to be presumed, unless the contrary is shown, to be the date shown in the postmark on the envelope in which the notice or document is contained.

(13) A notice or document sent by the Tribunal to a party using e-mail is to be taken to have been delivered when it is received in legible form.

(14) Where for any sufficient reason service of any document or notice cannot be effected in the manner prescribed under this regulation, the President or the tribunal panel may dispense with service or make an order for substituted service in such manner as the President or the tribunal panel may deem fit and such service must have the same effect as service in the manner prescribed under this regulation.

### **Calculating time**

**76.**—(1) An act required by these Regulations, a practice direction or a direction to be done on or by a particular day must be done by 5pm on that day.

(2) If the time specified by these Regulations, a practice direction or a direction for doing any act ends on a day other than a working day, the act is done in time if it is done on the next working day.

(3) If the time for commencing proceedings by providing the appeal application or the claim application to the Tribunal under regulation 10 ends on a day in the period beginning with 25 December and ending with 1 January, or on any day in August—

- (a) the appeal application or the claim application is provided in time if it is received by the Tribunal on the first working day after 1 January or 31 August, as appropriate, and
- (b) the days in the period beginning with 25 December and ending with 1 January and any day in August must not be counted when calculating the time by which any other act must be done.

(4) Paragraph (3)(b) does not apply where the Tribunal directs that an act must be done by or on a specified date.

### **Signature of documents**

**77.** Where these Regulations require a document to be signed, that requirement is satisfied—

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

At 2.10 p.m. on 24th March 2021

*Kirsty Williams*  
Minister for Education, one of the Welsh  
Ministers

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations set out the procedure to be followed in proceedings before the Education Tribunal for Wales. These Regulations make provision relating to the exercise of that Tribunal's jurisdiction under Part 2 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 which concerns additional learning needs appeals, and Chapter 1 of Part 6 of the Equality Act 2010 which concerns claims of disability discrimination in respect of school pupils.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Welsh Government at Cathays Park, Cardiff, CF10 3NQ and on the Welsh Government website at [www.gov.wales](http://www.gov.wales).