2001 No. 600

EDUCATION, ENGLAND AND WALES

The Special Educational Needs Tribunal Regulations 2001

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In exercise of the powers conferred by sections 333(5), 334(2), 336(1) and (2) and 569(4) of the Education Act 1996(**a**), the Secretary of State for Education and Employment, with the agreement of the National Assembly for Wales in accordance with Article 5 of the National Assembly for Wales (Transfer of Functions) Order 1999(**b**) and after consultation with the Council on Tribunals in accordance with section 8 of the Tribunals and Inquiries Act 1992(**c**), hereby make the following Regulations:

PART 1

GENERAL

Citation, commencement and application

1.—(1) These Regulations may be cited as the Special Educational Needs Tribunal Regulations 2001 and shall come into force on 1st September 2001.

(2) These Regulations apply to all appeals to the Tribunal where the notice of appeal is entered in the records of the Tribunal on or after 1st September 2001.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—

"the 1996 Act" means the Education Act 1996;

"the authority" means the local education authority which made the disputed decision;

"the case statement period" is the period specified in the notice given under regulation 18(1), including any extension ordered by the President under regulation 51(1);

"child" means the child in respect of whom the appeal is brought;

"child's statement" means the statement of special educational needs relating to the child made under section 324 of the 1996 Act;

"disputed decision" means the decision or determination in respect of which the appeal is brought;

"the clerk to the tribunal" means the person appointed by the Secretary of the Tribunal to act in that capacity at one or more hearings;

"hearing" means a sitting of the tribunal constituted for the purpose of receiving evidence, hearing addresses and witnesses or doing anything lawfully requisite to enable the tribunal to reach a decision on any question;

"parent" means, except in regulations 7, 30(2) and (8) and 39(6), a parent who has made an appeal to the Tribunal under the 1996 Act;

"records" means the records of the Tribunal;

"the Secretary of the Tribunal" means the person for the time being acting as the Secretary of the office of the Tribunal;

"the tribunal" means the Special Educational Needs Tribunal but where the President has determined pursuant to regulation 4(1) that the jurisdiction of the Tribunal is to be exercised by more than one tribunal, it means, in relation to any proceedings, the tribunal to which the proceedings have been referred by the President;

"working day", except in regulation 28, means any day other than—

(a) a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday within the meaning of the Banking and Financial Dealings Act 1971; or

(b) a day in August;

"written evidence" includes evidence recorded in any way.

(2) Nothing in these Regulations authorises a body corporate to take any steps in proceedings or to attend a hearing other than by a representative.

(**a**) 1996 c. 56. For the meaning of "prescribed" and "regulations" see section 579(1).
(**b**) S.I. 1999/672.
(**c**) 1992 c. 53.

Members of lay panel

3. No person may be appointed as a member of the lay panel unless the Secretary of State in respect of England, and the National Assembly for Wales in respect of Wales, is satisfied that he has knowledge and experience of children with special educational needs and that he is not eligible for appointment to the chairmen's panel.

Establishment of tribunals

4.—(1) The President may from time to time determine the number of tribunals to exercise the jurisdiction of the Tribunal.

(2) The tribunals shall sit at such times and in such places as may from time to time be determined by the President.

Membership of tribunal

5.—(1) Subject to the provisions of regulation 32(5), the tribunal shall consist of a chairman and two other members.

(2) For each hearing—

(a) the chairman shall be the President or a person selected by him from the chairman's panel; and

(b) the two other members of the tribunal shall be selected from the lay panel by the President.

Proof of documents and certification of decisions

6.—(1) A document purporting to be a document issued by the Secretary of the Tribunal on behalf of the Tribunal shall, unless the contrary is proved, be deemed to be a document so issued.

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

PART 2

MAKING AN APPEAL TO THE TRIBUNAL AND STATEMENTS OF CASE

(A) THE PARENT

Notice of appeal

7.—(1) An appeal to the Tribunal shall be made by notice which—

(a) shall state—

(i) the name and address of the parent making the appeal and if more than one address is given, the address to which the tribunal should send replies or notices concerning the appeal;

(ii) the name and date of birth of the child;

(iii) that the notice is a notice of appeal;

(iv) the name of the authority which made the disputed decision and the date on which the parent was notified of it;

(v) if the parent seeks an order that the child's statement be amended, to which Part or Parts of the statement the appeal relates;

(vi) if the parent seeks an order that a school (other than one already named in the child's statement) be named in it, either the name and address of that school or a sufficient description of the type and nature of the school which the parent considers would constitute an appropriate placement for the child;

(b) shall be accompanied by—

(i) a copy of the notice of the disputed decision;

(ii) where the appeal is made under section 326 of, or paragraph 8 of Schedule 27 to, the 1996 Act, a copy of the child's statement;

(iii) where the notice of appeal states the name of a school in accordance with paragraph (a)(vi) above, written confirmation that the parent has informed the school that he proposes to request that it be named in the statement;

(c) shall include or be accompanied by a statement of the parent's reasons for appealing;

(d) may appoint a representative in accordance with regulation 12.

(2) The parent shall sign the notice of appeal.

(3) The parent must deliver the notice of appeal to the Secretary of the Tribunal so that it is received no later than the first working day after the expiry of two months from the date on which the authority gave him notice, under Part IV of the 1996 Act, that he had a right of appeal.

(4) In this regulation "parent" means a person to whom the 1996 Act gives the right to appeal to the Tribunal.

Reasons for appealing

8.—(1) If the notice of appeal does not include, and is not accompanied by, reasons for appealing which the President considers sufficient to enable the authority to respond to the appeal, he shall direct the parent to send particulars of the reasons to the Secretary of the Tribunal within 10 working days of his direction.

(2) Regulations 21 and 25 shall apply to a direction under paragraph (1).

(3) Particulars of reasons sent in response to a direction made in accordance with paragraph (1) shall be treated as part of the notice of appeal.

Statement of parent's case, and supplementary provisions

9.—(1) During the case statement period, the parent may deliver to the Secretary of the Tribunal a written statement of his case, which may include the views of the child, and all written evidence which he wishes to submit to the Tribunal.

(2) In exceptional circumstances, the parent may amend the notice of appeal, deliver a supplementary statement of reasons for appealing or statement of case or amend a supplementary statement of reasons for appealing or statement of case, if permission is given by—

(a) the President, at any time before the hearing; or

(b) the tribunal at the hearing.

(3) The parent shall deliver to the Secretary of the Tribunal a copy of every amendment and supplementary statement for which permission was given.

(4) If the President gives permission under paragraph 2(a) he shall consider extending the case statement period.

Withdrawal of appeal

10. The parent may withdraw his appeal—

(a) at any time before the hearing of the appeal by sending to the Secretary of the Tribunal a notice signed by him;

(b) at the hearing of the appeal.

Further action by parent

11.—(1) The parent shall give the Secretary of the Tribunal the information requested in the enquiry made under regulation 20.

(2) If the parent does not intend to attend or be represented at the hearing, he may, not less than five working days before the hearing, send to the Secretary of the Tribunal additional written representations in support of his appeal.

Parent's representatives

12.—(1) The parent may in the notice of appeal 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 parent's representative, which cancels any previous appointment.

(2) To appoint a representative, the parent must give the name, address and profession of the representative.

(3) If a person whom the parent has appointed as a representative notifies the Secretary of the Tribunal in writing that he is not prepared, or is no longer prepared, to act in that capacity—

(a) the Secretary of the Tribunal shall notify the parent;

(b) the appointment of that representative is cancelled.

(4) Subject to paragraph (5), at any time after the parent has appointed a representative, and until that appointment is cancelled—

(a) the Secretary of the Tribunal shall send all documents and notices concerning the appeal to the representative instead of the parent;

(b) references in these Regulations (however expressed) to sending documents to, or giving notice to, the parent shall be construed as references to sending documents to, or giving notice to, the representative.

(5) Paragraph (4) applies—

(a) unless the parent notifies the Secretary of the Tribunal that he does not wish it to apply;

(b) subject to regulations 36(6) and 49(5).

(6) At a hearing, the parent may conduct his case himself (with assistance from one person if he wishes) or may appear and be represented by one person whether or not legally qualified:

Provided that, if the President gives permission before the hearing or the tribunal gives permission at the hearing, the parent may obtain assistance or be represented by more than one person.

(B) THE AUTHORITY

Statement of authority's case, and supplementary provisions

13.—(1) During the case statement period, the authority shall deliver to the Secretary of the Tribunal a written statement of its case and all written evidence which it wishes to submit to the Tribunal.

(2) The statement of the authority's case shall be signed by an officer of the authority who is authorised to sign such documents, and shall state whether or not the authority intends to oppose the appeal, and if it does intend to oppose the appeal shall state—

(a) the grounds on which it relies;

(b) the name and profession of the representative of the authority and the address for service of the authority for the purposes of the appeal;

(c) a summary of the facts relating to the disputed decision;

(d) the reasons for the disputed decision, if they are not included in the decision;

(e) the views of the child concerning the issues raised by the appeal, or the reasons why the authority has not ascertained those views.

(3) In exceptional circumstances the authority may amend its statement of case, deliver a supplementary statement of case or amend a supplementary statement of case if permission is given by—

(a) the President, at any time before the hearing; or

(b) the tribunal at the hearing.

(4) The authority shall deliver to the Secretary of the Tribunal a copy of every amendment and supplementary statement for which permission was given.

(5) If the President gives permission under paragraph (3) he shall consider extending the case statement period.

Authority's representative

14.—(1) The authority may at any time change its representative for the purposes of the appeal by notifying the Secretary of the Tribunal of the name and profession of its new representative.

(2) References in these Regulations (however expressed) to sending documents to, or giving notice to, the authority shall be construed as references to sending documents to, or giving notice to, the representative named in accordance with regulation 13(2)(b) or paragraph (1) above.

Failure to deliver a statement of case and absence of opposition

15.—(1) If the Secretary of the Tribunal does not receive a statement of case from the Authority within the case statement period or if the authority states in writing that it does not resist the appeal, or withdraws its opposition to the appeal, the tribunal shall—

(a) determine the appeal on the basis of the notice of appeal without a hearing; or

(b) without notifying the authority hold a hearing at which the authority is not represented.

(2) Where the parent's appeal relates to the contents of the child's statement, no statement that the authority does not resist the appeal or that it withdraws its opposition shall take effect until the authority sends the Tribunal a written statement of the amendments (if any) to the statement which it agrees to make.

Representation at hearing and further action by the authority

16.—(1) At a hearing or part of a hearing the authority may be represented by one person whether or not legally qualified:

Provided that if the President gives permission before the hearing or the tribunal gives permission at the hearing the authority may be represented by more than one person.

(2) The authority shall give the Secretary of the Tribunal the information requested in the enquiry made under regulation 20.

(3) If the authority does not intend to be represented at the hearing it may, not less than five working days before the hearing, send to the Secretary of the Tribunal additional representations in support of its case.

PART 3

PREPARATION OF A HEARING

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

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

(a) enter particulars of it in the records;

(b) send to the parent—

(i) an acknowledgement of its receipt and a note of the case number entered in the records;

(ii) a note of the address to which notices and communications to the Tribunal or to the Secretary of the Tribunal should be sent;

(iii) notification that advice about the appeals procedure may be obtained from the office of the Tribunal; and

(iv) subject to regulation 18(2), a notice stating the time for submitting a statement of the parent's case and written evidence under regulation 18(1);

(c) subject to paragraph 18(2), send to the authority—

(i) a copy of the notice of appeal and any accompanying papers;

(ii) a note of the address to which notices and communications to the Tribunal to the Secretary of the Tribunal should be sent; and

(iii) a notice stating the time for submitting a statement of the authority's case and written evidence under regulation 18(1) and the consequences of failing to do so;

(d) if, in accordance with regulation 7(1)(a)(vi), the notice of appeal names a maintained school, other than one maintained by the authority, give the head teacher of that school notice of the appeal, stating the name and date of birth of the child and the name of the authority.

(2) Where the Secretary of the Tribunal is of the opinion that, on the basis of the notice of appeal, the parent is asking the Tribunal to do something which it cannot do, he may give notice to the parent—

(a) stating the reasons for his opinion; and

(b) informing the parent that the notice of appeal will not be entered in the records unless, within a specified time (which shall not be less than five working days), the parent notifies the Secretary of the Tribunal that he wishes to proceed with it.

(3) Where the Secretary of the Tribunal is of the opinion that there is an obvious error in the notice of appeal—

(a) he may correct that error and if he does so shall notify the parent accordingly and such notification shall state the effect of paragraph (b); and

(b) unless within five working days the parent notifies the Secretary of the Tribunal that he objects to the correction, the notice of appeal so corrected shall be treated as the notice of appeal for the purposes of these Regulations.

(4) If the Secretary of the Tribunal has given a notice under paragraph (2), the notice of appeal shall only be treated as having been received for the purposes of paragraph (1) when the parent notifies the Secretary of the Tribunal that he wishes to proceed with the appeal.

Statements of case

18.—(1) Both parties shall be allowed the same period of 30 working days, from the date on which notification is taken to have been delivered in accordance with regulation 50(6), to send a statement of their respective cases and written evidence to the Secretary of the Tribunal.

(2) Where the President makes a direction in accordance with regulation 8, the period specified in paragraph (1) shall not start, and the Secretary of the Tribunal shall not send a notice as required by regulation 17(1)(b)(iv) or any documents as required by regulation 17(1)(c), until particulars of reasons are received in response to the direction.

Copy documents for parties

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

(a) forthwith send to the authority a copy of any amendment to the notice of appeal received during the case statement period;

(b) at the end of the case statement period send a copy of each party's statement of case and written evidence to the other party;

(c) forthwith send copies of any amendments or supplementary statements, written representations, written evidence (other than written evidence of which a copy is received in accordance with regulation 33(2)(b)) or other documents received from a party after the end of the case statement period to the other party to the proceedings.

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

(3) If a notice of appeal is amended in accordance with regulation 9(2) so that the parent seeks an order that a maintained school, or a different maintained school, other than the one already named in the child's statement be named in the statement, the Secretary of the Tribunal shall give the head teacher of that school notice of appeal, stating the name and date of birth of the child and the name of the authority unless the school is maintained by the authority.

Enquiries by the Secretary of the Tribunal

20. The Secretary of the Tribunal shall, at any time after he has received the notice of appeal—

(a) ask each party—

(i) whether or not the party intends to attend the hearing;

(ii) whether the party wishes to be represented at the hearing in accordance with regulation 12(6) or 16(1) and if so the name of the representative;

(iii) whether the party wishes the hearing to be in public;

(iv) whether the party intends to call witnesses and if so the names of the proposed witnesses;

(v) whether the party or a witness will require the assistance of an interpreter;

(b) enquire of the parent whether he wishes any persons (other than a person who will represent him or any witness whom he proposes to call) to attend the hearing if the hearing is in private and if so the name of such persons; and

(c) inform each party of the effect of regulation 30(4)(c).

Directions in preparation for a hearing

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

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

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

(4) A direction shall—

(a) include a statement of the possible consequences for the appeal, as provided by regulation 25, of a party's failure to comply with the requirement within the time allowed by the President;

(b) if made under regulation 24(2), contain a reference to the fact that, under section 336 of the 1996 Act, any person who without reasonable cause fails to comply with requirements regarding disclosure or inspection of documents shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale; and

(c) unless the person to whom the direction is addressed had an opportunity to object to the direction, or he gave his written consent to the application for it, contain a statement to the effect that that person may apply to the President under regulation 22 to vary or set aside the direction.

Varying or setting aside directions

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

Particulars and supplementary statements

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

Disclosures of documents and other material

24.—(1) The President—

(a) may give directions requiring a party to deliver to the tribunal any document or other material which the tribunal may require and which it is in the power of that party to deliver;

(b) shall impose a condition on the supply of a copy of any document or other material delivered in compliance with a direction given under this paragraph that the party receiving it shall use such document only for the purposes of the appeal; and

(c) may require a written undertaking to observe that condition before supplying a copy.

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

Failure to comply with directions

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

(a) where the party in default is the parent, dismiss the appeal without a hearing;

(b) where the party in default is the authority, determine the appeal without a hearing; or

(c) (i) hold a hearing (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 28(1), direct that neither the party in default nor any person whom he intends should represent him or give evidence on his behalf be entitled to attend the hearing.

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

Summoning witnesses

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

Provided that—

(a) no person shall be compelled to give any evidence or produce any document or other material that he could not be compelled to give or produce at a trial of an action in a Court of law;

(b) in exercising the power conferred by this regulation, the President shall take into account the need to protect any matter that relates to intimate personal or financial circumstances or consists of information communicated or obtained in confidence;

(c) no person shall be required to attend in obedience to such a summons unless he has been given at least five working days' notice of the hearing or, if less than five working days, he has informed the President that he accepts such notice as he has been given; and

(d) no person shall be required in obedience to such a summons to attend and give evidence or to produce any document unless the necessary expenses of his attendance are paid or tendered to him.

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

(3) A witness summons shall contain—

(a) a reference to the fact that, under section 336 of the 1996 Act, any person who without reasonable excuse fails to comply with any requirement to attend to give evidence and, if the summons so requires, to produce documents shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale; and

(b) a statement of the effect of paragraph (4).

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

Consolidating appeals

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

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

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

Notice of place and time of hearings and adjournments

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

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

(a) not less than five working days before the date fixed for a hearing under regulation 15, 37, 38 or 44;

(b) not less than 10 working days before the date fixed for the hearing in any other case; or

(c) in any case, within such shorter period before the date fixed for the hearing as the parties may agree.

(3) The Secretary of the Tribunal shall include in or with the notice of hearing—

(a) information and guidance, in a form approved by the President, as to attendance at the hearing of the parties and witnesses, the bringing of documents, and the right of representation or assistance as provided by regulation 12(6) or 16(1); and

(b) a statement explaining the possible consequences of non-attendance and the right to make representations in writing enjoyed by—

(i) the parent if he does not attend and is not represented; and

(ii) the authority 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 withdrew its opposition to the appeal.

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

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

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

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

(7) In this regulation "working day" means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday within the meaning of the Banking and Financial Dealings Act 1971.

PART 4

DETERMINATION OF APPEALS

Power to determine an appeal without a hearing

29.—(1) The tribunal may determine an appeal or any particular issue without a hearing—

(a) if the parties so agree in writing; or

(b) in the circumstances described in regulations 15 or 25.

(2) The provisions of regulation 31(2) shall apply in respect of the determination of an appeal, or any particular issue, under this regulation.

Hearings to be in private: exceptions

30.—(1) A hearing shall be in private unless—

(a) both the parent and the authority request that the hearing be in public; or

(b) the President, at any time before the hearing, or the tribunal at the hearing, orders that the hearing should be in public.

(2) The following persons (as well as the parties and their representatives and witnesses) shall be entitled to attend the hearing of an appeal, even though it is in private—

(a) the child;

(b) subject to the provisions of paragraph (8) below, any person named by the parent in response to the enquiry under regulation 20(b) unless the President has determined that any such person should not attend the hearing and has notified the parent accordingly;

(c) a parent of the child who is not a party to the appeal;

(d) the clerk to the tribunal and the Secretary of the Tribunal;

(e) the President and a member of the chairmen's or lay panel (when not sitting as a member of the tribunal);

(f) a member of the Council on Tribunals;

(g) a person undergoing training as a member of the chairmen's or lay panel or as a clerk to the tribunal;

(h) a person acting on behalf of the President in the training or supervision of clerks to tribunals;

(i) an interpreter.

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

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

(a) a person whose conduct has disrupted or is likely, in the opinion of the tribunal, to disrupt the hearing;

(b) a person, including the child, whose presence is likely, in the opinion of the tribunal, to make it difficult for any person to adduce the evidence or make the representations necessary for the proper conduct of the appeal;

(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 20.

(5) For the purposes of arriving at its decision a tribunal shall, 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 other than the members of the tribunal and any of the persons mentioned in paragraph 2(d) to (g).

(6) Except as provided in paragraphs (7) and (8) below none of the persons mentioned in paragraphs (2)(a) to (i) or (3) above shall, save in the case of the clerk to the tribunal or an interpreter as their respective duties require, take any part in the hearing or (where entitled or permitted to remain) in the deliberations of the tribunal.

(7) The tribunal may permit the child to give evidence and to address the tribunal on the subject matter of the appeal.

(8) The tribunal may permit a parent of the child who is not a party to the appeal to address the tribunal on the subject matter of the appeal.

(9) Where the parent has named more than two persons in response to the enquiry under regulation 20(b) only two persons shall be entitled to attend the hearing unless the President has given permission before the hearing or the tribunal gives permission at the hearing for a greater number to attend.

(10) Section 576 of the 1996 Act (which defines the word "parent") applies to paragraphs (2) and (8) of this regulation.

Failure of parties to attend hearing

31.—(1) If a party fails to attend or be represented at a hearing of which he had been duly notified, the tribunal may—

(a) unless it is satisfied that there is sufficient reason for such absence, hear and determine the appeal in the party's absence; or

(b) adjourn the hearing.

(2) Before disposing of an appeal in the absence of a party, the tribunal shall consider any representations in writing submitted by that party in response to the notice of hearing and, for the purpose of this regulation the notice of appeal and the parties' statements of their cases shall be treated as representations in writing.

Procedure at hearing

32.—(1) At the beginning of the hearing the chairman shall explain the order of proceedings which the tribunal proposes to adopt.

(2) The tribunal shall conduct the hearing in such manner as it considers the most suitable to the clarification of the issues and generally to the just handling of the proceedings; it shall, as far as appears to it appropriate, seek to avoid formality in its proceedings.

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

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

(a) the parent to rely on grounds not stated in his notice of appeal or the statement of his case and to adduce evidence not presented to the authority before or at the time it took the disputed decision;

(b) the authority to rely on grounds not specified in the statement of its case.

(5) If, at or after the beginning of a hearing a member of the tribunal other than the chairman is absent, the hearing may, with the consent of the parties, be conducted by the other two members and in that event the tribunal shall be deemed to be properly constituted and the decision of the tribunal shall be taken by those two members.

Late written evidence

33.—(1) At the beginning of the hearing, a party may submit further written evidence which satisfies the conditions set out in paragraph (2) below unless the tribunal, after considering any representations from the other party, is of the opinion that that would be contrary to the interests of justice.

(2) The conditions referred to in paragraph (1) 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;

(b) a copy of the evidence was sent or delivered to the Secretary of the Tribunal and to the other party to arrive at least 5 working days before the hearing; and

(c) the extent and form of the evidence is such that, in the opinion of the tribunal, it is not likely to impede the efficient conduct of the hearing.

(3) If paragraph (1) does not apply, the tribunal may give a party permission to submit further written evidence at the hearing if it is of the opinion that—

(a) the case is wholly exceptional; and

(b) unless the evidence is admitted, there is a serious risk of prejudice to the interests of the child.

(4) Before the hearing the tribunal may refer to copies of evidence sent to the Secretary of the Tribunal under paragraph (2)(b) above for the purpose of considering whether or not it satisfies the conditions in paragraph (2); but if the evidence is not admitted the tribunal shall disregard it in determining the appeal.

Evidence at hearing

34.—(1) In the course of the hearing the parties shall be entitled to give evidence, to call witnesses, to question any witness and to address the tribunal both on the evidence, including the written evidence submitted before the hearing, and generally on the subject matter of the appeal:

Provided that neither party shall be entitled to call more than two witnesses to give evidence orally (in addition to any witness whose attendance is required pursuant to paragraph (2)) unless the President has given permission before the hearing or the tribunal gives permission at the hearing.

(2) Evidence before the tribunal may be given orally or by written statement, but the tribunal may at any stage of the proceedings require the personal attendance of any maker of any written statement:

Provided that a party shall only be entitled to give evidence by written statement if such evidence is submitted with the notice of appeal or the statement of his case or in accordance with regulation 33.

(3) The tribunal may receive evidence of any fact which appears to the tribunal to be relevant.

(4) The tribunal may require any witness to give evidence on oath or affirmation, and for that purpose there may be administered an oath or affirmation in due form, or may require any evidence given by written statement to be given by statement of truth.

Adjournments and directions

35.—(1) The tribunal may from time to time adjourn the hearing.

(2) When a hearing is adjourned—

(a) the tribunal may give directions to be complied with before or at the resumed hearing;

(b) the chairman may announce provisional conclusions reached by the tribunal. The provisional conclusions are not a decision of the tribunal.

(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.

(4) If a party fails to comply with such a direction, the tribunal shall take account of that fact when determining the appeal or deciding whether to make an order for costs.

Decision of the tribunal

36.—(1) A decision of the tribunal may be taken by a majority and where the tribunal is constituted by two members under regulation 32(5) the chairman shall have a second or casting vote.

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

(3) Neither a decision given orally nor the document referred to in paragraph (2) shall contain any reference to the decision being by majority (if that be the case) or to any opinion of a minority.

(4) Every decision of the tribunal shall be entered in the records.

(5) As soon as may be the Secretary of the Tribunal shall send a copy of the document referred to in paragraph (2) 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 a tribunal decision and the procedure to be followed.

(6) Where, under regulation 12 a parent has appointed a representative the Secretary of the Tribunal shall send a copy of the documents referred to in paragraph (5) to the parent as well as to the representative.

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

Application or proposal for review of tribunal's decision

37.—(1) A party may apply to the Secretary of the Tribunal for the decision of the tribunal to be reviewed on the grounds that—

(a) its decision was wrongly made as a result of an error on the part of the tribunal staff;

(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 error in the decision; or

(d) the interests of justice require.

(2) An application that a decision of the tribunal be reviewed shall—

(a) be made not later than 10 working days after the date on which the decision was sent to the parties;

(b) be in writing stating the grounds in full.

(3) An application that a decision of the tribunal be reviewed may be refused by the President, or by the chairman of the tribunal which decided the case, if in his opinion it has no reasonable grounds of success.

(4) Unless an application that a decision of the tribunal be reviewed is refused in accordance with paragraph (3), it shall be determined, after the parties have had an opportunity to be heard, by the tribunal which made the decision or, where that is not practicable, by a tribunal appointed by the President.

(5) The tribunal may on its own initiative propose to review its decision on any of the grounds referred to in paragraph (1), in which case—

(a) the Secretary of the Tribunal shall serve notice on the parents not later than 10 working days after the date on which the decision was sent to them; and

(b) the parties shall have an opportunity to be heard.

(6) If, on the application of a party or on its own initiative, the tribunal is satisfied as to any of the grounds referred to in paragraph (1)—

(a) it shall order that the whole or a specified part of the decision be reviewed; and

(b) it may give directions to be complied with before or at the hearing of the review.

(7) A direction under paragraph (6) may require a party to provide such particulars, evidence or statements as may reasonably be required for the determination of the review.

(8) If a party fails to comply with such a direction, the tribunal shall take account of that fact when determining the review or deciding whether to make an order for costs.

Review of tribunal's decision

38.—(1) A tribunal which reviews all or part of a decision may—

(a) by certificate under the chairman's hand set aside or vary that decision and substitute such other decision as it thinks fit; or

(b) order a rehearing before the same or a differently constituted tribunal.

(2) If the decision is set aside or varied, the Secretary of the Tribunal shall alter the entry in the records to conform to the chairman's certificate and shall notify the parties accordingly.

Review of the President's decision

39.—(1) On the application of a party to the Secretary of the Tribunal or on his own initiative, the President may review and set aside or vary any decision of his if he is satisfied that—

(a) the decision was wrongly made as a result of an error on the part of the tribunal staff;

(b) there was an obvious error in the decision; or

(c) the interests of justice so require.

(2) An application by a party for a review under paragraph (1) shall be made—

(a) in writing stating the grounds in full;

(b) not later than 10 working days after the date on which he was notified of the decision.

(3) Where the President proposes to review his decision on his own initiative he shall serve notice of that proposal on the parties not later than 10 working days after they were notified of the decision.

(4) The parties shall have an opportunity to be heard on any application or proposal for review under this regulation and the review shall be determined by the President.

(5) If any decision is set aside or varied under this regulation the Secretary of the Tribunal shall alter the entry in the records and shall notify the parties accordingly.

(6) A decision by the President not to extend the parent's time for delivering notice of appeal under regulation 7(3) shall be capable of being reviewed under this regulation on the application of the parent as if he were party to an appeal. In such a case, the authority shall not be entitled to be heard or notified.

Orders for costs and expenses

40.—(1) The tribunal shall 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 (including a parent who has withdrawn his appeal or an authority which has withdrawn its opposition to the appeal) if it is of the opinion that that party has acted frivolously or vexatiously or that his conduct in making, pursuing or resisting an appeal was wholly unreasonable;

(b) against a party who has failed to attend or be represented at a hearing of which he has been duly notified;

(c) against the authority where it has not delivered a statement of its case under regulation 13; or

(d) against the authority where it considers that the disputed decision was wholly 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 Secretary of State under section 336 of the 1996 Act to any person for the purposes of, or in connection with, his attendance at the tribunal.

(3) No order shall be made under paragraph (1) against a party without first giving that party an opportunity of making representations against the making of the order.

(4) An order under paragraph (1) may require the party against whom it is made to pay the other party either a specified sum in respect of the costs and expenses incurred by that other party in connection with the proceedings or the whole or part of such costs as assessed if not otherwise agreed.

(5) An order under this regulation for costs to be assessed shall allow the county court to make a detailed assessment of fast track trial costs either on the standard or indemnity basis as the order may specify in accordance with the Civil Procedure Rules 1998.

PART 5

ADDITIONAL POWERS OF AND PROVISIONS RELATING TO THE TRIBUNAL

Transfer of proceedings

41. Where it appears to the President that an appeal pending before a tribunal could be determined more conveniently in another tribunal he may at any time, upon the application of a party or on his own initiative, direct that the proceedings be transferred so as to be determined in that other tribunal:

Provided that no such direction shall be given unless notice has been sent to both parties giving them an opportunity to make representations against the giving of the direction.

Miscellaneous powers of the tribunal

42.—(1) Subject to the provisions of the 1996 Act and these Regulations, a tribunal may regulate its own procedure.

(2) A tribunal may, if it thinks fit, make a decision in terms agreed in writing by the parties.

Change of authority

43.—(1) This regulation applies if, after the date on which the disputed decision is taken, the child becomes the responsibility, within the meaning of section 321(3) of the 1996 Act, of a local education authority ("the new authority") other than the authority which made the disputed decision ("the old authority").

(2) On receiving evidence that this regulation applies, the President may order that, for all the purposes of the appeal, the name of the new authority be substituted for the old authority.

(3) The old authority, the new authority and the parent shall 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 shall notify the old authority, the new authority and the parent;

(b) the old authority shall no longer be a party to the appeal;

(c) the new authority shall become a party to the appeal;

(d) these regulations shall apply as if the new authority had made the disputed decision;

(e) the Secretary of the Tribunal shall send to the new authority copies of all the documents and written evidence relating to the appeal duly received by the Tribunal from the parent and from the old authority;

(f) the procedure for determining the appeal shall re-start, and regulation 17 shall apply as if the documents and written evidence sent in accordance with paragraph (e) above were the notice of appeal referred to in regulation 17(1).

Power to strike out

44.—(1) The Secretary of the Tribunal shall, at any stage of the proceedings if the authority applies or the President so directs serve a notice on the parent stating that it appears that the appeal should be struck out on one or both of the grounds specified in paragraph (2) or for want of prosecution.

(2) The grounds referred to in paragraph (1) are that—

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

(b) that notice of appeal is, or the appeal is or has become, scandalous, frivolous or vexatious.

(3) The notice under paragraph (1) shall invite the parent to make representations.

(4) The tribunal may, after considering any representations duly made by the parent, order that the appeal should be struck out on one or both of the grounds specified in paragraph (2) or for want of prosecution.

(5) The tribunal may make such an order without holding a hearing unless the parent requests the opportunity to make oral representations, and if the tribunal holds a hearing it may be held at the beginning of the hearing of the substantive appeal.

(6) The President may, if he thinks fit, at any stage of the proceedings order that a statement of a party's case should be struck out or amended on the grounds that it is scandalous, frivolous or vexatious.

(7) Before making an order under paragraph (6) above, the President shall give to the party against whom he proposes to make the order a notice inviting representations and shall consider any representations duly made.

(8) For the purposes of this regulation—

(a) a notice inviting representations must inform the recipient that he may, within a period (not being less than 5 working days) specified in the notice, either make written representations or request an opportunity to make oral representations;

(b) representations are duly 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.

Power to exercise powers of President and chairman

45.—(1) An act which these Regulations require or authorise the President to do may be done by a member of the chairmen's panel authorised by him.

(2) Where a member of the chairmen's panel authorised under paragraph (1)—

(a) selects the chairman of a tribunal, he may select himself;

(b) makes a decision, regulation 39 applies in relation to that decision as if it referred to the member of the chairmen's panel in place of the President.

(3) Subject to regulation 49(6), in the event of the death or incapacity of the chairman, or if he ceases to be a member of the chairmen's panel, following the decision of the tribunal, the functions of the chairman for the completion of the proceedings, including any review of the decision, may be exercised by the President or any member of the chairmen's panel.

Power to exercise the functions of a lay member

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

(2) This regulation shall not apply to a tribunal—

(a) which is constituted of two members in accordance with regulation 32(5);

(b) of which any person is authorised to act in place of the chairman in accordance with regulation 44(3).

The Secretary of the Tribunal

47. A function of the Secretary of the Tribunal may be performed by another member of the staff of the Tribunal authorised by the President.

Orders of the Court

48.—(1) If any decision of the tribunal is set aside, varied or altered in any way by order of the Court, the Secretary of the Tribunal shall alter the entry in the records to conform to that order and shall notify the parties accordingly.

(2) If an appeal is remitted to the tribunal by order of the Court to be reheard, the Secretary of the Tribunal shall notify both parties that, during a period of 15 working days (or such shorter period as the parties may agree in writing) each may submit a supplementary statement of his case and further written evidence.

(3) If an order to strike out an appeal is quashed or set aside by the court, the Secretary of the Tribunal shall notify the parties—

(a) in the case where the case statement period has not expired before the order to strike out took effect, that regulation 18(1) applies;

(b) in any other case, that each party has a period of 15 working days (or such shorter period as the parties may agree in writing) to submit a supplementary statement of his case and further written evidence.

(4) The Secretary of the Tribunal shall forthwith send a copy of all statements and written evidence received from a party during that period to the other party.

Irregularities

49.—(1) An irregularity resulting from failure to comply with any provision of these Regulations or of any direction of the tribunal before the tribunal has reached its decision shall not of itself render the proceedings void.

(2) Where any such irregularity comes to the attention of the tribunal, the tribunal may, and shall, 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 cure or to waive the irregularity.

(3) Clerical mistakes in any document recording the decision of the tribunal 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 chairman or the President (as the case may be) by certificate under his hand.

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

(5) Where a parent has appointed a representative in accordance with regulation 12, the Secretary of the Tribunal shall (notwithstanding regulation 12(4)) send a copy of the document referred to in paragraph (4) above to the parent as well as the representative.

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

Method of sending, delivering or serving notices and documents

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

(2) Notices and documents required by these Regulations to be sent or delivered to the Secretary of the Tribunal or to the Tribunal may be sent by post, by facsimile transmission or by electronic mail to or delivered at the office of the Tribunal or such other office as the Secretary of the Tribunal may notify to the parties.

(3) Notices and documents which these Regulations authorise or require the President or the Secretary of the Tribunal to send may (subject to paragraph (5)) either be sent by first class post or by facsimile transmission to or delivered at—

(a) in the case of a party—

(i) his address for service specified in the notice of appeal or in a written reply or in a notice under paragraph (4), or

(ii) if no address for service has been so specified his last known address; and

(b) in the case of any other person, his place of residence or business or if such person is a corporation, the corporation's registered or principal office.

(4) A party may at any time by notice to the Secretary of the Tribunal change his address for service under these Regulations.

(5) The recorded delivery service shall be used instead of first class post for service of a summons issued under regulation 26 requiring the attendance of a witness.

(6) A notice or document sent by the Secretary of the Tribunal by post in accordance with these Regulations, and not returned, shall be taken to have been delivered to the addressee on the second day for normal postal deliveries after it was posted.

(7) A notice or document sent by facsimile transmission or electronic mail shall be taken to have been delivered when it is received in legible form.

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

Extensions of time

51.—(1) Where these Regulations or a direction made under them requires or authorises a person to do something within a period of time, the President may, on the application of that person or on his own initiative, in exceptional circumstances extend that period of time.

(2) Where the President has extended a period of time reference in these Regulations to that period of time shall be construed as a reference to the period of time as so extended.

Revocation and saving

52. The Special Educational Needs Tribunal Regulations 1995(**a**) are hereby revoked, except in relation to any appeal where the notice of appeal was entered in the records of the Tribunal before 1st September 2001, and those Regulations shall continue to apply to such an appeal.

Jacqui Smith
Parliamentary Under Secretary of State,
27th February 2001 Department for Education and Employment

(**a**) S.I. 1995/3113.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in relation to the Special Educational Needs Tribunal established by section 333 of the Education Act 1996. In particular they deal with the making and determination of appeals to the Tribunal. They revoke the Special Educational Needs Tribunal Regulations 1995 but re-enact the provisions with amendments.

The main differences between these Regulations and the 1995 Regulations are that:

(a) The child who is the subject of the appeal now has the right to attend the hearing. In addition the local education authority have to ascertain the views of the child on the issues raised by the appeal (or give the reasons why it has not done so). (*Regulations 13(2) and 30(2)*).

(b) The procedure is now in two stages rather than three. Once an appeal has been made, both parties have the same period of time in which to make their case. (*Regulations 9 and 13*).

(c) Members of the lay panel are required to have knowledge or experience of special educational needs. (*Regulation 3*).

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