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WELSH STATUTORY INSTRUMENTS

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**2015 No. 1028 (W. 76)**

**WELSH LANGUAGE, WALES**

**The Welsh Language Tribunal Rules 2015**

<i>Made</i>	- - - -	<i>8 April 2015</i>
<i>Laid before the National Assembly for Wales</i>	- -	<i>9 April 2015</i>
<i>Coming into force</i>	- -	<i>30 April 2015</i>

The President of the Welsh Language Tribunal, in exercise of the powers conferred by section 123(1) of the Welsh Language (Wales) Measure 2011<sup>(1)</sup>, makes the following Rules:  
The Welsh Ministers allow these Rules under section 123(7) of the Measure.

**PART A**  
**GENERAL**

**Title, commencement and application**

- 1.—(1) The title of these Rules is the Welsh Language Tribunal Rules 2015.
- (2) They come into force on 30 April 2015.
- (3) They apply to all cases before the Tribunal.

**Interpretation**

2. In these Rules, unless the context otherwise requires—
  - “applicant” (“*ceisydd*”) means a person who makes an application to the Tribunal;
  - “application” (“*cais*”) means—
    - (a) an appeal to the Tribunal under section 58, 95(2), 95(4) or 99 of the Measure against a decision by the Commissioner, or
    - (b) an application to the Tribunal under section 103 of the Measure to review a decision by the Commissioner;
  - “case” (“*achos*”) means proceedings relating to an application to the Tribunal;

“case statement” (“*datganiad achos*”) means statement submitted in accordance with rule 19, 20 or 21;

“case statement period” (“*cyfnod datganiad achos*”) means the period specified in rule 18, 20 or 21;

“Chair” (“*Cadeirydd*”) means a person who has been appointed to chair a tribunal panel under rule 9;

“Commissioner” (“*Comisiynydd*”) means the Welsh Language Commissioner;

“disputed decision” (“*penderfyniad sy’n cael ei herio*”) is the decision, or failure to make a decision, in relation to which the application has been 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(2);

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

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

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

references, in rules 51 and 52, to “the High Court” (“*yr Uchel Lys*”) include, in relation to any further appeals from the High Court or the Court of Appeal, the Court of Appeal or the Supreme Court, as the case may be;

“languages of the Tribunal” (“*ieithoedd y Tribiwnlys*”) has the meaning given by rule 6;

“the Measure” means the Welsh Language (Wales) Measure 2011;

“notice of application” (“*hysbysiad cais*”) has the meaning given by rule 10;

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

“party” (“*parti*”) means the applicant, the Commissioner or a party joined under rule 35;

“practice directions” (“*cyfarwyddiadau ymarfer*”) has the meaning given by rule 4;

“President” (“*Llywydd*”) means the President of the Tribunal appointed under section 120 of the Measure;

“Register” (“*Cofrestr*”) means the register which must be kept under rule 58;

“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;

“the Tribunal” (“*y Tribiwnlys*”) means the Welsh Language Tribunal or any person exercising the functions of the Tribunal in accordance with these Rules;

“tribunal panel” (“*panel tribiwnlys*”) means a panel of Tribunal members who have been appointed under rule 9;

“witness summons” (“*gwŷs tyst*”) means a document issued by the Tribunal requiring a witness to attend at a hearing to give evidence or produce documents in relation to an application 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, or
- (e) a day which is a bank holiday in Wales under section 1 of the Banking and Financial Dealings Act 1971(3).

### **The overriding objective**

3.—(1) The overriding objective of these Rules (“the overriding objective”) is to enable the Tribunal to deal with cases fairly and justly.

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

- (a) dealing with the case in ways which are proportionate to the importance of the case and the complexity of the issues,
- (b) avoiding unnecessary formality, as far as the Tribunal considers appropriate,
- (c) ensuring, so far as 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 claim or appeal, but without advocating the course that party should take,
- (d) treating the languages of the Tribunal equally,
- (e) using the special expertise of Tribunal effectively, and
- (f) avoiding delay, so far as compatible with proper consideration of the issues.

(3) The Tribunal must seek to give effect to the overriding objective when —

- (a) exercising any function under these Rules, or
- (b) interpreting any rule.

(4) In particular, the Tribunal must manage cases actively in accordance with the overriding objective.

### **Practice Directions**

4.—(1) For the purposes of these Rules, “practice directions” (“*cyfarwyddiadau ymarfer*”) means practice directions given by the President under section 124 of the Measure in order to provide practical advice on how to interpret and apply these Rules.

(2) Practice directions under paragraph (1) may vary or revoke existing practice directions.

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

(4) The provisions of any practice direction are subject, in any particular case, to any directions given under rule 26 in relation to that case.

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

5.—(1) Parties must—

- (a) co-operate with each other for the purposes of progressing the case,
- (b) co-operate in giving documents or information to each other to enable each party to prepare a case statement,

- (c) help the Tribunal to further the overriding objective, and
  - (d) co-operate with the Tribunal generally.
- (2) The Tribunal may draw such adverse inferences as the Tribunal thinks fit from a party's failure to comply with any of the obligations specified in paragraph (1).
- (3) Where the Tribunal has made an adverse inference under paragraph (2), the Tribunal may serve notice on the party in default that the tribunal panel is proposing to make an order to strike out—
- (a) the application, where the party in default is the applicant,
  - (b) the case statement and written evidence, where the party in default is the Commissioner or any other party.
- (4) The notice in paragraph (3) must invite representations and the Tribunal must consider any representations made.
- (5) For the purposes of this rule—
- (a) a notice inviting representations must inform the party in default that the party may, within a period (no later than 10 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.
- (6) The Tribunal may, after considering any representations made by the party in default, order that that party's case be struck out.

### **The languages of the Tribunal**

- 6.—(1) The languages of the Tribunal are the English and Welsh languages.
- (2) Every party or witness has the right to use either language in the proceedings of the Tribunal and when communicating with the Tribunal a party or witness may use one of them on a particular occasion or for a particular purpose and the other on other occasions or for other purposes.
- (3) The President must make practice directions under rule 4 in relation to the operation of this rule.
- (4) When a document is issued by the Tribunal under these Rules in both languages, the English and Welsh texts must be treated equally.
- (5) Paragraph (4) is without prejudice to the power of the Tribunal to correct clerical mistakes and other errors under rule 60(3).

### **Alternative dispute resolution**

- 7.—(1) The Tribunal must, where appropriate, bring to the attention of the parties any available appropriate alternative procedure for the resolution of the dispute.
- (2) If the parties wish to use the alternative dispute resolution procedure the Tribunal may, provided that it is compatible with the overriding objective, stay the application.

## PART B

### TRIBUNAL PANELS

#### **Establishment of tribunal panels**

**8.—**(1) Tribunal panels which exercise the jurisdiction of the Tribunal under these Rules, are to be appointed by the President in accordance with rule 9.

(2) They 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) Subject to rule 39(5), a tribunal panel must consist of three members of the Tribunal, namely—

- (a) the Chair of the panel, and
- (b) two other members.

(2) Members of a tribunal panel, and the Chair of the panel, must be appointed by the President but this is subject to paragraph (6).

(3) The Chair must either be the President or another member of the Tribunal who is legally qualified.

(4) The other two members must include at least one lay member of the Tribunal.

(5) The President must exercise the power under paragraph (2) with a view to ensuring that there is no conflict between the interests of any member of the panel which is to hear a case and the Tribunal's duty to deal with that case in accordance with the overriding objective.

(6) If there are circumstances which would, in accordance with paragraph (5) prevent the President from being a member of a panel, the President must consider whether those circumstances make it undesirable that the President should exercise the power under paragraph (2) to appoint members of that panel; if so, the President must identify a legally qualified member of the Tribunal, to whom no similar circumstances apply, and the power under paragraph (2) may then be exercised by that member.

## PART C

### COMMENCING APPLICATIONS

#### **Commencing an application**

**10.** An application to the Tribunal must be commenced by submitting to the Tribunal, in accordance with these Rules, a written document referred to as a notice of application.

#### **Period allowed for making an application**

**11.—**(1) A notice of application must be received by the Tribunal no later than the first working day after the expiry of the period of 28 days beginning with the date when the applicant was given written notice of the decision of the Commissioner which is disputed.

(2) Subject to rule 14, the Tribunal may not consider an application unless it was commenced in accordance with paragraph (1).

## **Notice of application**

**12.**—(1) The notice of application must state—

- (a) the name and address of the applicant and, if available, that person’s telephone number, fax number and email address,
- (b) the name and address of any representative appointed by the applicant and if available, that representative’s telephone number, fax number and email address,
- (c) an address and if available, an email address, where notices and documents for the applicant should be sent,
- (d) the date on which the applicant received written confirmation of the disputed decision,
- (e) the reason or reasons for making the application,
- (f) the result sought by the applicant, and
- (g) the language in which the applicant, or the applicant’s representative if there is one, wishes to receive communications from the Tribunal.

(2) The notice of application must be accompanied by a copy of the notice of the disputed decision.

(3) The notice of application must be signed by the applicant, or by that person’s representative, if there is one.

(4) If the applicant wishes to ask the Tribunal to exercise the power under rule 14 to consider the application even though received by the Tribunal after the period specified by rule 11(1), the notice of application must—

- (a) make this clear, and
- (b) include a statement of the reasons why the Tribunal should exercise that power.

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

**13.**—(1) Upon receiving the notice of application, the Secretary of the Tribunal must—

- (a) enter its particulars in the Register, and
- (b) send to the applicant—
  - (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 procedures of the Tribunal may be obtained from the Tribunal office,
  - (iv) subject to rule 18(2) and (3), a notice stating the time allowed under rule 18 for submitting the applicant’s case statement and evidence, and
  - (v) a statement of the possible consequences for the application if a party fails to comply with rule 5 (parties’ obligation to co-operate).

(2) At the same time as the notice referred to in paragraph (1)(b)(iv) is sent to the applicant, the Secretary of the Tribunal must send to the Commissioner—

- (a) a copy of the notice of application and any accompanying documents,
- (b) a note of the address to which notices and communications for the Tribunal should be sent,
- (c) a notice stating the time for submitting the Commissioner’s case statement and evidence under rule 20(1) and the consequences of failing to do so,

- (d) a statement of the possible consequences for the case if a party fails to comply with rule 5 (parties' obligation to co-operate), and
- (e) in the case of an appeal under sections 95(2) or 99 of the Measure, a request to the Commissioner to disclose to the Tribunal the contact details of the person or persons who made the relevant complaint (in the case of an appeal under section 95(2)) or those of the person to whom the investigation related (in the case of an appeal under section 99).

(3) Where the Tribunal is of the opinion, on the basis of the notice of application, that the applicant is asking the Tribunal to consider a matter which is outside the Tribunal's powers, the Secretary of the Tribunal may, instead of giving notice to the applicant under paragraph (1), give notice to the applicant—

- (a) stating the reasons for that opinion, and
- (b) informing the applicant—
  - (i) that the application will not be entered in the Register unless the applicant makes a written application to the Tribunal for permission to proceed with the claim, and the Tribunal has given permission, and
  - (ii) that the notice of application will be struck out unless the applicant has, within 3 months of receiving notice under this paragraph, made an application for permission to proceed with the claim, or that application has been rejected.

(4) The Tribunal may, before deciding any application under paragraph (3), invite written submissions, or further written submissions, from the applicant, the Commissioner, or any other person who, in the opinion of the Tribunal, has a sufficient interest in the case.

(5) If the Tribunal after considering an application under paragraph (3), has given permission to proceed with the claim, the Secretary of the Tribunal must treat the notice of application as having been received for the purpose of paragraph (1), and must record it in the Register in accordance with that paragraph.

(6) The Secretary of the Tribunal may correct any obvious error in the notice of application if it appears to the Secretary that the error in question has been caused by an accidental slip or omission.

(7) Where an error has been corrected in accordance with paragraph (6), the Secretary of the Tribunal must notify the applicant of the correction and state the effect of paragraph (8).

(8) Unless the applicant informs the Secretary of the Tribunal, within 10 working days of the giving of notification under paragraph (7), of an objection to the correction, the notice of application must be treated, for the purposes of these Rules, as so amended.

(9) Subject to paragraphs (10) and (11), the Secretary of the Tribunal must send all documents and notices concerning the application to the applicant.

(10) This paragraph applies if the applicant has notified the Secretary of the Tribunal that all documents and notices concerning the application must be sent to the representative instead of the applicant.

(11) If paragraph (10) applies, references in these Rules (however expressed) to sending documents to, or giving notice to, the applicant must be construed as references to sending documents to, or giving notice to, the representative.

(12) If the contact details of any person are received by the Secretary of the Tribunal in response to a request to the Commissioner under paragraph (2)(e), the Secretary of the Tribunal must, as soon as possible, send a copy of the notice of application to the person in question and give that person notice of the right to apply to be added as a party under rule 35.

### **Application made out of time**

**14.**—(1) The Tribunal may consider any application which was received by the Tribunal after the end of the period specified by rule 11(1) if the Tribunal is satisfied that there was good reason—

- (a) for the failure to make the application before the end of that period, and
- (b) if there was further delay before requesting permission to make the application after the end of that period, for that further delay.

(2) The Tribunal may seek further information from the applicant before making a decision under paragraph (1).

### **Sufficiency of reasons**

**15.**—(1) If the notice of application does not include, or is not accompanied by, a statement of the reasons for making the application which the Tribunal considers sufficient to enable the Commissioner to respond to the application, the Tribunal must direct the applicant to send details, or further details, of those reasons to the Secretary of the Tribunal within 10 working days of the giving of the direction.

(2) Rule 33 applies to a direction under paragraph (1).

(3) Any reasons sent in response to a direction made under paragraph (1) are to be treated as part of the notice of application.

### **Giving or refusing permission to apply for a review of a decision by the Commissioner**

**16.**—(1) If the Tribunal receives a notice of application which includes an application for a review, under section 103 of the Measure, of a decision by the Commissioner, that application is not to be treated, for the purposes of rule 13, as having been received until the Tribunal has decided—

- (a) that the application would have a reasonable prospect of success, or
- (b) that there is some other compelling reason why the application should be heard.

(2) If the Tribunal considers that either paragraph (1)(a) or (1)(b) applies, the Tribunal must give permission for the application to be made and it must then be treated as having been received, for the purposes of rule 13, and considered further in accordance with these Rules.

(3) Subject to paragraph (4), if the Tribunal does not consider that either paragraph (1)(a) nor (1)(b) applies, the Tribunal must refuse permission for the application to be made and the application will not be considered further.

(4) If the application is based on more than one ground, and if the Tribunal decides that the requirements of paragraph (2) have been satisfied in relation to one or more of those grounds, but not in relation to the other grounds, the Tribunal must give permission for the application to be made on condition that further consideration of it will be limited to the relevant ground or grounds.

(5) The Secretary of the Tribunal must, as soon as practicable—

- (a) notify the applicant and the Commissioner of the Tribunal's decision under paragraph (1), and
- (b) record that decision in the Register.

(6) Notification given under paragraph (5) must—

- (a) include the Tribunal's reasons for coming to its decision, and
- (b) be accompanied by guidance, in a form approved by the President, about—
  - (i) the circumstances under which there is a right to appeal against the decision, and
  - (ii) the procedure to be followed.



- (7) The Tribunal’s function under paragraph (1) may be exercised—
  - (a) by the President, or by a legally qualified member of the Tribunal who has been authorised by the President to exercise that function, and
  - (b) without a hearing.
- (8) If permission to make an application—
  - (a) has been refused under paragraph (3), or
  - (b) has been given conditionally under paragraph (4),

the applicant may require that the decision be reconsidered by a tribunal panel at a hearing.

(9) A requirement under paragraph (8) must be notified in writing and must be received by the Tribunal within 14 days of the day on which the applicant is to be taken, in accordance with rule 62, to have received notification under paragraph (5).

(10) Paragraphs (1) to (4), and rules 36 (except for paragraph (4)(b)(ii)), 38, 39(1), (2) and (5), 43, 44, 45, 46 and 47 apply to a hearing under paragraph (8).

- (11) If a tribunal panel, after a hearing under paragraph (8), is of the opinion—
  - (a) that the application would have no reasonable prospect of success, and
  - (b) that there is no other compelling reason why the application should be heard,

the panel must give formal permission to make the application but must then dismiss that application.

### **Appointment of representatives**

**17.—**(1) Without prejudice to rule 12(1)(b), any party may, 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 that party’s representative, which cancels any previous appointment.

(2) Where an appointment is made under paragraph (1), the party in question must give the name, address and contact details of the appointed representative.

## **PART D**

### **PREPARING A CASE FOR HEARING**

#### **Applicant’s case statement period**

**18.—**(1) The case statement period, in the case of the applicant, is a period of 20 working days, commencing on the date on which notice given under rule 13(1)(b)(iv) is taken, in accordance with rule 63, to have been received.

(2) If the Tribunal makes a direction in relation to an application in accordance with rule 15, the period specified in paragraph (1) does not start, and the Secretary of the Tribunal must not send a notice to the applicant as required by rule 13(1)(b)(iv), nor send any documents as required by rule 13(2), until reasons are received in response to the direction.

(3) Without prejudice to paragraph (2), if the application is one seeking a review by the Tribunal, under section 103 of the Measure, of a decision, or a failure to make a decision, by the Commissioner, the period specified by paragraph (1) does not commence, and the Secretary of the Tribunal must not

send a notice to the applicant as required by rule 13(1)(b)(iv), nor send any documents as required by rule 13(2), until the Tribunal has given permission, under rule 16, for the application to be made.

### **Applicant's case statement and evidence**

**19.**—(1) The applicant must submit to the Secretary of the Tribunal, before the end of the case statement period—

- (a) a case statement, and
  - (b) all other evidence to be relied on by the applicant which has not already been submitted.
- (2) If the Tribunal has given permission, the applicant may—
- (a) amend the notice of application,
  - (b) submit a supplementary statement of reasons in support of the application,
  - (c) amend a supplementary statement of reasons in support of the application,
  - (d) submit a supplementary case statement,
  - (e) amend a supplementary case statement.

(3) The applicant must submit to the Secretary of the Tribunal a copy of every amendment and supplementary statement for which permission has been given under paragraph (2) within the time period granted.

(4) Where permission is given under paragraph (2), the Tribunal may, if necessary, extend the case statement period, under rule 53 or, if it has expired, grant such further period as the Tribunal considers appropriate.

(5) If, at the time permission is given under paragraph (2), the Commissioner has lost the entitlement to attend or to be represented at the hearing, in accordance with rules 23, 25 or 33, the giving of permission restores that entitlement and, if necessary, the hearing, or the remainder of the hearing, may be postponed or adjourned, as appropriate, so that the Commissioner can be represented.

### **Commissioner's case statement and evidence**

**20.**—(1) The case statement period, in the case of the Commissioner is a period of 20 working days, commencing on the date on which the applicant's statement of case is taken, in accordance with rule 63, to have been received by the Commissioner.

(2) The Commissioner 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 case statement, and
- (c) all other evidence to be relied on by the Commissioner which has not already been submitted.

(3) The Commissioner's case statement must be signed by a person who is authorised to sign such documents on the Commissioner's behalf, and must state whether or not the Commissioner intends to oppose the application or not.

(4) If the Commissioner intends to oppose the application, the Commissioner's case statement must state—

- (a) the grounds on which the Commissioner opposes the application, or any part of the application,
- (b) the name and address of the Commissioner's representative and, if available, the representative's telephone number, fax number and email address,

- (c) the address where documents for the Commissioner should be sent or delivered,
- (d) a summary of the facts relating to the disputed decision, and
- (e) the reason or reasons for the disputed decision, if not included in the notice of the decision.

(5) The Commissioner may amend the Commissioner's case statement, submit a supplementary case statement, or amend a supplementary case statement, if permission has been given by the Tribunal.

(6) The Commissioner must submit to the Secretary of the Tribunal a copy of every amendment and supplementary statement for which permission has been given under paragraph (5) within the time period granted.

(7) If permission is given under paragraph (5) the Tribunal may extend the case statement period under rule 53 or, if it has expired, grant such further period as the Tribunal considers appropriate.

(8) If, at the time permission is given under paragraph (5), the applicant has lost the entitlement to attend or to be represented at the hearing in accordance with rule 25, the giving of permission restores that entitlement and, if necessary, the hearing, or the remainder of the hearing, may be postponed or adjourned, as appropriate, so that the applicant can be represented.

#### **Applicant's case statement in reply**

**21.**—(1) The applicant may, before the end of the period prescribed by paragraph (2), submit to the Secretary of the Tribunal a case statement in reply to that of the Commissioner.

(2) The period prescribed for the purpose of paragraph (1) is 20 working days, commencing on the date on which the Commissioner's case statement is taken, in accordance with rule 62, to have been received by the applicant.

#### **Copy documents for parties**

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

- (a) send to the Commissioner a copy of any amendment to the notice of application received during the case statement period,
- (b) send a copy of each party's case statement and written evidence to the other party, and
- (c) immediately send to the other party copies of any amendments or supplementary statements, written representations, written evidence or other documents received from a party after the end of the case statement period.

(2) If a notice of 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 Rules, the Secretary of the Tribunal must not send a copy of what has been so submitted to the other party unless the Tribunal has extended the time limit under rule 53.

(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 rule 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 those documents.

#### **Commissioner's failure to submit a case statement or absence of opposition**

**23.**—(1) The Tribunal may determine the application, without a hearing or by holding a hearing if—

- (a) the Secretary of the Tribunal does not receive a case statement from the Commissioner within the case statement period,

- (b) the Commissioner has stated in writing an intention not to resist the application, or
  - (c) the Commissioner has withdrawn opposition to the application.
- (2) Where the Tribunal decides the application without a hearing, it must do so on the basis of the notice of application and any other documents already received.
- (3) If the Tribunal decides to hold a hearing in accordance with paragraph (1), it may issue a direction precluding the Commissioner from attending the hearing or being represented at the hearing.

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

- 24.** The Secretary of the Tribunal may at any time after receiving the notice of 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 rule 45 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 and whether any of them is an expert witness,
    - (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, and
    - (v) whether the party or a witness to be called has any disabilities that may require reasonable adjustments to be made and, if so, details of the type of adjustments required,
  - (b) inform each party that where an answer to any of the enquiries under sub-paragraph (a) changes after a party has responded to the enquiries, the party concerned must immediately inform the Secretary of the Tribunal in writing.

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

- 25.—**(1) The Tribunal may order—
- (a) that the notice of application be struck out on the grounds that the applicant's failure to comply with enquiries made by the Secretary of the Tribunal under rule 24, prejudices, or delays, a fair hearing of the application,
  - (b) that the Commissioner may not take any further step in relation to the application nor attend the hearing, nor be represented at the hearing, on the grounds that the Commissioner's failure to comply with enquiries made by the Secretary of the Tribunal under rule 24, prejudices or delays a fair hearing of the application.
- (2) Before an order can be made under paragraph (1), the Secretary of the Tribunal must give the party against whom the Tribunal proposes to make an order a notice inviting representations by that party, and the Tribunal must consider any representations made.
- (3) For the purposes of this rule—
- (a) a notice inviting representations must inform the party that within a period (of no less than 5 working days) specified in the notice, that 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 a notice of application is struck out under paragraph (1)(a) the application is to be considered concluded.

## PART E

### THE TRIBUNAL'S MANAGEMENT POWERS

#### Directions

**26.**—(1) The Tribunal may, on the application of a party or on the Tribunal's own initiative, give such directions to a party on any matter arising in connection with the application as the Tribunal thinks fit, including, among other things, such directions as are provided in rules 30, 31 and 32, with a view to enabling the Tribunal to determine the application in accordance with the overriding objective.

(2) An application by a party for directions must, unless it is made at the substantive hearing of the application, 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 Tribunal must consider the objection and, if the Tribunal considers it necessary for the determination of the application, must give the parties an opportunity to make representations.

(5) If, in the opinion of the Tribunal, there would not be reasonable time before a hearing of which notice has been given under rule 36(1) to comply with a direction for which a party applies, the Tribunal may—

- (a) if satisfied that compliance with the direction may assist the tribunal panel to determine the issues, postpone the hearing under rule 43, or
- (b) refuse the application.

(6) A direction which requires a party to take any action must—

- (a) include a statement of the possible consequences for the application, as provided by rule 33, of a party's failure to comply with the direction within the time allowed by the Tribunal,
- (b) unless the person to whom the direction is addressed has had an opportunity to object to the direction, or has given written consent to it, contain a statement to the effect that that person may apply to the Tribunal under rule 27 to vary or set aside the direction.

(7) Where it appears to the Tribunal that an issue arises in relation to an application which must be decided prior to the substantive hearing of the application, and which cannot properly be determined by the giving of directions without a hearing, the Tribunal may invite the parties to appear before the Tribunal for that purpose and may give any necessary directions relating to their appearance.

#### Varying or setting aside directions

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

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

### **Power to strike out the application**

**28.**—(1) The Secretary of the Tribunal must, at any stage of the application, at the request of the Commissioner, or if the Tribunal so directs, serve a notice on the applicant stating that it has been proposed that the whole or part of the application should be struck out on one of the grounds specified in paragraph (2) or for want of prosecution on the part of the applicant.

- (2) The grounds referred to in paragraph (1) are that the application—
  - (a) has been made otherwise than in accordance with these Rules,
  - (b) is not, or is no longer, within the jurisdiction of the Tribunal,
  - (c) discloses no reasonable grounds,
  - (d) is frivolous or vexatious, or
  - (e) is otherwise an abuse of the Tribunal’s process.
- (3) A notice under paragraph (1) must invite the applicant to make representations.
- (4) For the purposes of this rule—
  - (a) a notice inviting representations must inform the applicant that the applicant may, within a period (of 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 Tribunal may, after considering any representations made by the applicant, order that the whole or part of the application be struck out on one of the grounds specified in paragraph (2) or for want of prosecution by the applicant.
- (6) An order under paragraph (5) may be made without holding a hearing unless the applicant requests the opportunity to make oral representations.
- (7) If oral representations are made in accordance with paragraph (6), the Tribunal may consider the oral representations at the beginning of the hearing of the substantive application.
- (8) If the whole of an application is struck out under paragraph (5) the application is to be considered concluded.

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

**29.**—(1) The Tribunal may, if it thinks fit, at any stage of the application, order that a party’s case statement be amended on the grounds that, as it stands, it discloses no reasonable grounds for bringing the application or because it is an abuse of the Tribunal’s process.

(2) Before an order may be made under paragraph (1), the Secretary of the Tribunal must give the party against whom the Tribunal is proposing to make the order a notice inviting representations by that party and must consider any representations made.

- (3) For the purposes of this rule—
  - (a) a notice inviting representations must inform the party that, within a period (of no less than 5 working days) specified in the notice, that 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**

**30.**—(1) The Tribunal may give directions on—

- (a) the issues which require evidence or submissions,
- (b) the nature of the evidence or submissions required,
- (c) any limitations on evidence or submissions which are consistent with the overriding objective,
- (d) 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,
- (e) the manner in which any evidence or submissions are to be provided, which may include a direction for them to be given—
  - (i) orally at a hearing, or
  - (ii) by written submissions or witness statement, and
- (f) the time by which any evidence or submissions are to be provided.

(2) The Tribunal may consider a failure by a person who is a party to the application to comply with a requirement made under paragraph (1), in the absence of any good reason for such failure, as a failure to co-operate with the Tribunal.

(3) The Tribunal may—

- (a) subject to sub-paragraph (b)(iii), admit any relevant evidence, whether or not that 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.

### **Particulars and supplementary statements**

**31.** The Tribunal 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 application.

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

**32.**—(1) The Tribunal may—

- (a) direct a party to submit to the Tribunal by a specified date any document or other material which the Tribunal 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 Tribunal 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 application.

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

(4) The Tribunal 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(4).

(5) An order under paragraph (4) must contain a warning that any person who, without reasonable excuse, fails to comply with requirements regarding disclosure or inspection of documents is liable under section 126 of the Measure 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 Rules within the time specified in the direction the Tribunal may—

- (a) where the party in default is the applicant, dismiss the application without a hearing,
- (b) where the party in default is the Commissioner, determine the application 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 rule 36(1), directing that neither the party in default nor any person who is intended to represent that party or to give evidence on that party's behalf is entitled to be heard at the hearing.

(2) In this rule “the party in default” (“*y parti diffygiol*”) means the party who has failed to comply with the direction.

### **Applications giving rise to substantially the same issue**

**34.**—(1) If more than one application requires a decision on substantially the same issue, the Tribunal may—

- (a) order that those applications are to be heard together, or
- (b) select one or more of those applications as a lead application or lead applications and stay the other applications until that case has, or those cases have, been decided.

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

(3) Subject to paragraph (4), the Tribunal may issue an order under this rule on the written request of either party or on the Tribunal's own initiative.

(4) An order made under this rule must only be made if it appears, in the opinion of the Tribunal, to be fair and just to do so and, before an order is made, each party to every application affected must be given an opportunity to be heard.



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

- 35.**—(1) A person may make an application to be joined as a party to an application.
- (2) The Tribunal may make an order to join a person as a party to an application—
- (a) if a written application is made under paragraph (1), or
  - (b) on the Tribunal’s own initiative if no written application has been made, but the person consents to be joined as a party to the application.
- (3) The Tribunal 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 application commenced.
- (4) If an order is made under paragraph (2) or (3) the Tribunal may make such consequential directions, or enquiries under rule 24, as the Tribunal considers appropriate.
- (5) Unless the Tribunal directs otherwise, a person appointed or substituted under this rule must be treated as a party for the purpose of any provision in these Rules requiring a document to be sent to or submitted by a party to the application.

## **PART F**

### **HEARINGS AND DECISIONS**

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

- 36.**—(1) Subject to the provisions of paragraph (2) and rule 37, the Secretary of the Tribunal must, after consultation with the parties, fix the date, place and time of any 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 that party’s availability to attend a hearing and that party fails to comply with the request, the Secretary of the Tribunal must proceed to arrange the hearing without further consultation with that party.
- (3) Subject to paragraph (4), the notice of hearing referred to in paragraph (1) must be sent—
- (a) no later than 5 working days before the date fixed for the hearing, or
  - (b) within such shorter period of time before the date fixed for the hearing in sub-paragraph (a) 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 to representation or assistance as provided by rule 45, and
  - (b) a statement explaining the possible consequences of non-attendance and the right of the following to make representations in writing—
    - (i) the applicant, if the applicant does not attend and is not represented,
    - (ii) the Commissioner, if the Commissioner does not attend and is not represented, if the Commissioner has submitted a statement of case, unless the Commissioner has stated in writing an intention not to resist the application or has withdrawn opposition to the application.

(5) Subject to paragraph (6), the Tribunal may alter the place and time of any hearing but the Secretary of the Tribunal must give the parties no less than 5 working days (or such shorter time as the parties may agree) notice of the new place and time of the hearing.

(6) If the parties are present when the Tribunal announces the new place and time of the hearing, no further notice is required.

(7) Nothing in paragraphs (1) or (5) obliges the Secretary of the Tribunal to consult or send a notice to any person who is not entitled to be present or represented at the hearing.

### **Power to determine the application without a hearing**

**37.**—(1) The Tribunal may determine the application, or any particular issue, without a hearing—

- (a) if the parties so agree in writing, or
- (b) in the circumstances described in rule 23 (failure by the Commissioner to submit a case statement or absence of opposition) or 33 (failure to comply with directions).

(2) Before making a determination under paragraph (1), the Tribunal must consider any representations in writing already submitted by the parties, for the purpose of this rule, notice of application and the parties' case statements are to be treated as representations in writing.

### **Public hearings**

**38.**—(1) Subject to paragraph (3), all Tribunal hearings must be held in public.

(2) Without prejudice to any other powers it may have, the Tribunal may exclude from a hearing, or part of it, any person whose conduct is likely, in the opinion of the Tribunal, to disrupt the hearing.

(3) If it appears to the Tribunal that a party or witness, intends to refer, in the course of a hearing, to matters which relate to any confidential personal information or which relate to an individual child or to another vulnerable person, the Tribunal may, to the extent that it is necessary in order to protect the privacy of the person in question, whilst ensuring fairness and justice, exclude from the relevant part (or relevant parts) of the hearing anyone who is not a party to the case.

### **Procedure at hearing**

**39.**—(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 ensure clarity of the issues and to handle the proceedings fairly and justly, avoiding, as far as it considers appropriate, unnecessary formality in its proceedings.

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

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

- (a) the applicant to rely on grounds not stated in the notice of application or the case statement and to rely on evidence not submitted to the Commissioner before or at the time the disputed decision was taken,
- (b) the Commissioner to rely on grounds not specified in the Commissioner's case statement.

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

- (a) the hearing may, with the consent of the parties, be conducted by the other two members and in that event the tribunal panel is to be regarded as properly constituted and the decision of the tribunal panel may be taken by those two members,

- (b) the absent member must not re-join the hearing.

### **Evidence at hearing**

**40.**—(1) Subject to rule 30(1)(d), the parties are entitled, in the course of the hearing, 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 application.

(2) Evidence before the tribunal panel may be given—

- (a) orally, or
- (b) by written statement if such evidence was submitted with the notice of application or the case statement or in accordance with a direction of the Tribunal.

(3) The Tribunal may at any stage of the application, require the personal attendance of any maker of any written statement.

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

(5) The Tribunal 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 under a statement of truth.

### **Summoning a witness**

**41.**—(1) Subject to paragraphs (2) to (5), the Tribunal may, on the application of a party or on the Tribunal's own initiative, require by summons any person to attend as a witness at a hearing at such time and place as may be specified in the summons, and at any postponement or adjournment of that hearing, and at the hearing to answer any questions or produce any documents or other material in the person's custody or under the person's control which relate to any matter in question in the appeal or claim.

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

(3) In exercising the power conferred by this rule, the Tribunal 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 that person has been given at least 5 working days' notice of the hearing or, if less than 5 working days, that person has informed the Tribunal 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 has been 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) a statement that 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, under section 126 of the Measure, on summary conviction to a fine not exceeding level 3 on the standard scale, and

- (b) a statement of the effect of paragraph (8).

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

(9) The Tribunal must not vary or set aside a 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**

**42.** The Tribunal may, on the application of a party or on the Tribunal'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.

#### **Postponement of hearing**

**43.—**(1) The Tribunal may, in exceptional circumstances, on its own initiative or on the application of a party, make an order to postpone a hearing.

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

(a) made in writing stating reasons in full,

(b) received by the Secretary of the Tribunal, and served by the applicant on the other party, at least 5 working days before the hearing.

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

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

#### **Adjournments and consequential directions**

**44.—**(1) The Tribunal may adjourn a hearing.

(2) When a hearing is adjourned the Tribunal may give directions to be complied with before or at the resumed hearing.

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

(4) If a party fails to comply with a direction made under paragraph (2) the tribunal panel may take account of that fact when determining the application 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**

**45.—**(1) Subject to paragraph (2), at any hearing or part of a hearing the applicant, the Commissioner or any other party may conduct the application in person or by a representative, whether or not that representative is legally qualified.

(2) If a party does not intend to attend or be represented at the hearing, that 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**

**46.**—(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 application in the party's absence, or
- (b) postpone or adjourn the hearing, as appropriate.

(2) Before disposing of an application 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 rule the notice of application and the parties' case statements are to be treated as representations in writing.

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

**47.**—(1) The tribunal panel may consider any decision in private.

(2) A decision of the tribunal panel may be taken by a majority and where the tribunal panel consists of only two members under rule 39(5) the Chair has a second or casting vote.

(3) The decision of the tribunal panel may be given orally at the end of the hearing or reserved and must be recorded in a document; except in the case of a decision by consent, that document (or an annexe to it) must also contain 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 a tribunal panel must be recorded 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 apply for a review of, or to appeal against, the tribunal panel decision and the procedure to be followed.

(7) Where rule 13(10) applies, the Secretary of the Tribunal must send a copy of the documents referred to in paragraph (6) to the applicant in addition to the representative.

(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 applicant (whether or not the decision has previously been announced at the end of the hearing).

## **PART G**

### **AFTER THE HEARING**

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

**48.**—(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, or
- (c) there was an obvious and material error in the decision.

(2) An application for a decision of the Tribunal to be reviewed must be made—

- (a) in writing stating the grounds,
  - (b) no later than 28 days after the date on which the decision was sent to the parties.
- (3) The President may—
- (a) on the application of a party under paragraph (1) or on the President’s own initiative, review and set aside or vary any decision made by the Tribunal on a ground referred to in paragraph (1),
  - (b) refuse an application for a review of the Tribunal’s decision in accordance with paragraph (5).
- (4) The President must, upon setting aside the decision of a tribunal panel under paragraph (3) order a rehearing before a differently constituted tribunal panel.
- (5) Even if persuaded that one or more of the grounds referred to in paragraph (1) has been established, the President may refuse the application for a review, in whole or in part if, in the view of the President, the interests of justice justify it.
- (6) The President must, before granting an application for a review, give the parties an opportunity to be heard.
- (7) If a decision is set aside or varied following a review under this rule, 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**

- 49.**—(1) A decision by the Tribunal not to extend the time for submitting a notice of application under rule 11 may be reviewed under rule 48 on the application of a person as if the person was a party to the application.
- (2) If an application for review is made under paragraph (1), the Secretary of the Tribunal must serve a copy of the application on the Commissioner and give the Commissioner a notice inviting written representations within a specified period.

**Consideration of an application for permission to appeal to the High Court**

- 50.**—(1) On receiving an application under sections 59, 97, 101 or 105 of the Measure for permission to appeal to the High Court, the President must first consider, taking into account the overriding objective, whether or not to review the Tribunal’s decision in accordance with rule 48, unless the President has already reviewed the decision or refused an application to review it.
- (2) If the President decides not to review the decision, or reviews the decision and decides to take no action in relation to the decision, or to that part of it to which the proposed appeal relates, the President must then consider whether to give permission to appeal in relation to the decision or that part of it.

**Power to suspend Tribunal’s decision**

- 51.** The Tribunal may, on the application of a party or on the Tribunal’s own initiative, make an order to suspend the effect of the tribunal panel’s decision pending the determination by the Tribunal or the High Court of an application for permission to appeal against, and any appeal or review of, that decision.

### **Orders of the High Court**

**52.**—(1) If any decision of the Tribunal is set aside, varied or altered in any way by order of the High 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 High Court, to be reheard by the Tribunal, 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 a notice of application is quashed or set aside by the High Court, the Secretary of the Tribunal must notify the parties—

(a) if 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 documents referred to in sub-paragraph (b) in respect of a case statement or evidence submitted before the strike out took effect, or

(b) where sub-paragraph (a) does not apply, that each party has a period of 15 working days (or such 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.

## **PART H**

### **MISCELLANEOUS**

#### **Extension of time**

**53.**—(1) Subject to paragraph (2), the Tribunal may, on the application of a party or on the Tribunal's own initiative, direct that a period of time specified in these Rules (other than the period specified by rule 11(1)) or by a direction made under them, is to be extended.

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

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

(4) Where the Tribunal has extended a period of time, reference in these Rules 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**

**54.** A person may withdraw an application—

(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**

**55.**—(1) The Tribunal 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 Tribunal 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 Tribunal is of the opinion that the representative 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,
  - (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 Commissioner, where the Commissioner has not submitted a case statement under rule 20,
  - (e) against the Commissioner, if the Tribunal considers that the disputed decision was unreasonable.
- (2) Any order in respect of costs and expenses may be made—
- (a) as respects the whole, or any part, of 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) payable to any person for the purposes of, or in connection with, that person's attendance at a Tribunal hearing.
- (3) An order for costs may be made on the application of a party or on the Tribunal'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 case but may not be made later than 28 days from the date on which—
- (a) the decision notice recording the decision on all issues in the application was issued,
  - (b) upon withdrawal of the application, the order dismissing the application was made,
  - (c) following the Commissioner's concession to the application, the decision notice was issued.
- (6) An application for an order under paragraph (3)—
- (a) must be refused by the Tribunal 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 Tribunal if, in the opinion of the Tribunal, 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 Tribunal.
- (8) If an order is made under paragraph (3), the Tribunal 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 Tribunal may take account of that fact when deciding whether or not 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 application, or the whole or part of such costs as assessed if not otherwise agreed.

(11) An order under this rule for costs to be assessed has the effect that it is for the county court to make a detailed assessment of those 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 functions**

**56.**—(1) Subject to any practice direction made by the President, any function exercisable by the Tribunal under these Rules may be exercised by—

- (a) a tribunal panel,
- (b) the President,
- (c) a legally qualified member of the Tribunal authorised in writing by the President to exercise that function.

(2) Any function exercisable by the President under these Rules may be exercised by a member of the Tribunal who is legally qualified and who has been authorised by the President to do so.

(3) Subject to rule 60(6), in the event of the death or incapacity of the Chair, or if the Chair ceases to be a member of the Tribunal, following the decision of the tribunal panel, the functions of the Chair may be exercised by the President or another Chair appointed by the President for the purpose.

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

**57.** 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**

**58.**—(1) The Secretary of the Tribunal must keep a Register of applications made to the Tribunal.

(2) There must be entered in the Register a note of all applications, which must include the following particulars where appropriate—

- (a) the names and addresses of the parties,
- (b) brief details of the nature of the application,
- (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, and
- (e) the document in which the decision of the tribunal panel has been recorded under rule 47(3).

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

### **Publication**

**59.**—(1) The Tribunal must publish its decisions in accordance with such arrangements as the President considers appropriate.

(2) Decisions may be published electronically.

(3) If it is necessary for the Tribunal, in order to give full reasons for a decision, to refer to matters which relate to any confidential personal information or to an individual child or to another

vulnerable person, the version of that decision which is published may, to the extent necessary to protect the privacy of the person in question, omit references to those matters.

### **Irregularities**

**60.**—(1) An irregularity resulting from failure to comply with any provision of these Rules, a practice direction or of any direction of the Tribunal before the Tribunal reaches its decision does not of itself render the proceedings on the case void.

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

(3) The Tribunal may, by certificate signed by the President or by the Chair of the tribunal panel in question, correct, at any time, clerical mistakes in any document recording a direction or decision of the Tribunal or of the President, produced by or on behalf of the Tribunal, or errors arising in such documents from accidental slips or omissions.

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

(5) Where a person has appointed a representative in accordance with rule 17, the Secretary of the Tribunal must (notwithstanding rule 13(10)) send a copy of the document referred to in paragraph (4) to that person as well as to the representative.

(6) Where these Rules 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**

**61.**—(1) A document purporting to be a document issued by the Secretary of the Tribunal on behalf of the Tribunal 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 a tribunal panel is, unless the contrary is proved, to be sufficient evidence of its contents.

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

**62.**—(1) A notice given under these Rules must be in writing and a party required by these Rules to notify a matter to the Secretary of the Tribunal must do so in writing.

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

- (a) sent by first class 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 facsimile transmission to the number specified for the Tribunal,
- (c) sent by email to the address specified for the Tribunal, or
- (d) 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 email or facsimile transmission 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 a facsimile number, email address or other details for the service of notices or documents, 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 first class 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 email 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 Rules authorise or require the Secretary of the Tribunal to send may (subject to paragraph (10)) either be sent by first class pre-paid post, by facsimile transmission to, by email to or be delivered at—

(a) in the case of a party—

(i) the party's address for service specified in the notice of application 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, that 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 Rules.

(10) The recorded delivery service must be used instead of first class post for service of a summons issued under rule 41 requiring the attendance of a witness.

(11) A notice or document sent by the Tribunal by first class post in accordance with these Rules, 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 email or facsimile transmission 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 rule, the Tribunal may dispense with service or make an order for substituted service in such manner as the Tribunal may deem fit and such service has the same effect as service in the manner prescribed under this rule.

### **Calculating time**

**63.**—(1) An act required by these Rules, by a practice direction or by 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 Rules, by a practice direction or by 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 submitting a notice of application to the Tribunal under rule 11 ends on a day between 25 December and 1 January, inclusive—

(a) the notice of application is submitted in time if it is received by the Tribunal on the first working day after 1 January, and

(b) the days from 25 December to 1 January inclusive must not be counted when calculating the time by which any other act must be done.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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(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**

- 64.** Where these Rules 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 Rules, by the electronic signature of the person who is required to sign it.

I make these Rules

8 April 2015

*Keith Bush QC*  
President of the Welsh Language Tribunal

I allow these Rules

2 April 2015

*Carwyn Jones*  
First Minister of Wales

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## EXPLANATORY NOTE

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

These Rules are made by the President of the Welsh Language Tribunal (“the Tribunal”) and allowed by the Welsh Ministers in accordance with section 123 of the Welsh Language (Wales) Measure 2011 (“the Measure”). The Rules set out the practices and procedures which the Tribunal must follow in exercising its jurisdiction under the Measure.

Part A contains general provisions including definitions, the overriding objective of the Tribunal, requirements on parties to co-operate, and the languages of the Tribunal.

Part B contains provisions on the establishment and membership of tribunal panels.

Part C makes provision about the commencement of applications to the Tribunal, including provisions on how to commence an application, the time limits involved, the content of applications, the requirements on the Secretary of the Tribunal upon receiving an application, and the appointment of representatives to act on behalf of parties.

Part D contains provisions on the preparation of cases for hearing. This includes provision requiring parties to prepare case statements within specified periods together with evidence relied upon for submission to the Tribunal. There is also provision in this Part requiring these documents be shared with other parties. This Part also allows the Secretary of the Tribunal to make enquiries of the parties in relation to matters such as representation and reliance on witnesses.

Part E relates to the Tribunal’s management powers. These include provision allowing the Tribunal to make directions relating to applications on issues such as procedure, evidence and disclosure. This Part also provides the Tribunal with the power to strike out applications, order similar matters to be heard together, and to add or substitute parties.

Part F contains provisions on hearings and decisions. These include requirements relating to the provision of notice to parties of the date, place and time of hearings, procedures to be followed at hearings, the provision of evidence by witnesses at hearings, when a case can proceed without a hearing, and the decisions of the Tribunal.

Part G contains provisions on matters arising after a hearing. This includes reviews of Tribunal decisions by the President of the Tribunal and the powers relating to a review. This Part also sets out the procedures to follow in the event of a High Court order varying, setting aside or otherwise altering a decision of the Tribunal.

Part H contains miscellaneous provisions such as orders for costs and expenses, the maintenance of a Register of applications to the Tribunal and the publication of decisions.