

March 2010

The Scottish Committee of the Administrative Justice & Tribunals Council has considered the draft Statutory Instrument seeking to amend the Additional Support Needs Tribunals for Scotland (Practice & Procedure) Rules 2006. The Scottish Committee has no comment to make on the proposed Rules except for Rule 5 proposing to amend the existing Rule 8 and Rule 7 proposing to amend existing Rule 10.

In this respect, generally, the existing Rules provide for a case statement period of thirty days within which the appellant shall lodge a case statement and the respondent shall within the same period lodge a response thereto.

The amendments proposed would retain the thirty day case statement period but of this the appellant would have twenty days to submit a case statement with respondent having the balance of ten days to respond.

If the Appeal is against a failure by the authority to prepare a co-ordinated support plan where such is required the case statement period is reduced to fifteen days.

The proposed amendments further permit circumstances where the case statement period may be extended.

The Scottish Committee has concerns that the existing case statement period provisions are inadequate both in respect of the period and on whom lies the onus of submitting the statement.

We reach this view for the following reasons:-

- The substantive and subordinate legislation is complex.
- Parents of children with special needs in general will not be familiar with either the applicable law or procedure.
- When a decision letter is issued by the authority and a parent is dissatisfied with the decision, the decision letter may not make absolutely clear the options open and how to pursue them.
- Parents wishing to appeal generally leave consulting special advisers to the last minute.
- Advisers are then at a disadvantage as the parent invariably has incomplete or indeed scant information on which the original decision was based, as a result of which a skeleton statement will be lodged.
- The applicants or their advisers may require open access to files or to instruct an independent specialist report. These procedures are time consuming.

- We understand that applications for extension to the case statement period are the norm.
- We further understand that productions (often substantial) which might be referred to in an appeal will be in the hands of the authority.
- If at the outset and before the appellant lodges a case statement all relevant information in the hands of the authority were to be made available within a short timescale after the appeal is marked, to the appellants or their advisers, we consider that this might accelerate the process, possibly reduce costs for the appellants who might then not require to seek open access to files, would be fairer to the appellants and could considerably cut down on the subsequent procedure and volume of paperwork. It might also lead to earlier agreement on admitted issues.
- As an alternative approach consideration could be given to requiring the respondent to lodge a statement with all relevant productions justifying the initial decision with an appropriate time (which need not be over long as the relevant information would then be with them) for the appellants to respond which again might result in accelerating the process reducing costs and more fairness to the appellants.

The Administrative Justice and Tribunals Council has a policy of publishing its responses to all consultations on its website – [www.ajtc.gov.uk](http://www.ajtc.gov.uk) arrangements will be made for this response to be placed on the website shortly

I hope you find the Scottish Committee's comments helpful.

Yours sincerely

Secretary