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SCOTTISH STATUTORY INSTRUMENTS

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**2011 No. 104**

**The Additional Support Needs Tribunals for  
Scotland (Disability Claims Procedure) Rules 2011**

**PART 3**

**MANAGEMENT POWERS OF TRIBUNALS**

**Preliminary matters**

**13.—(1)** A convener or, at the start of a hearing, the Tribunal may, either on the application of a party or on their own initiative, consider and determine any preliminary or incidental issue arising from a claim which must be determined prior to the substantive hearing of the claim, and which cannot be determined by the giving of directions under rule 15.

(2) Before any such issue is determined by a convener or the Tribunal, the convener or the Tribunal may direct that the Secretary gives—

- (a) notice to the parties giving them an opportunity to submit representations in writing within a specified period; or
- (b) notice requiring the parties to appear before a convener or the Tribunal for a preliminary hearing on that issue.

**Suspension of proceedings**

**14.—(1)** A convener or a Tribunal at a hearing may, on the application of either party, or on their own initiative, suspend such proceedings if it would be fair and just to do so.

(2) Any such suspension may be indefinite or for such specified period as the convener or the Tribunal may consider appropriate.

**Directions**

**15.—(1)** A convener may, at any time before the hearing, either on the written application of a party or on the convener's own initiative, give such directions to either or both parties as the convener may consider necessary or expedient to further the overriding objective in the consideration of the claim and may in particular—

- (a) direct a party to provide any further information or particulars;
- (b) direct a party to produce any document which may reasonably be required and which it is in the power of that party to produce;
- (c) direct that a party shall supply a list of documents and a list of witnesses whom that party intends to call to give evidence at the hearing, on such date before the hearing as may be specified;
- (d) give directions as to the dates by which any documents or other evidence which any party is intending to rely on or produce shall be submitted;

- (e) where a party has notified that they do not wish to attend a hearing, give a direction as to the date by which that party shall send any written representations on the case to the Secretary;
  - (f) give a direction on—
    - (i) any issues on which evidence is required;
    - (ii) the nature of the evidence so required;
    - (iii) the way in which the evidence is to be provided to the Tribunal; and
    - (iv) the exclusion of any evidence which is irrelevant, unnecessary or improperly obtained.
- (2) Where an application is made by a party for a direction under paragraph (1), it shall be made in writing to the Secretary specifying the direction sought and the basis for the application.
- (3) On receipt of such an application, the Secretary shall, unless the application is accompanied by the written consent of the other party, send a copy of the application to the other party inviting the party to make written representations on it within 10 working days or such other period as may be specified by a convener.
- (4) Where a party objects to the application, a convener shall consider the objection and, if considered necessary for deciding the application, may afford the parties an opportunity to be heard.
- (5) The Secretary shall give notice to the parties of any direction to any party required to comply with it and shall—
- (a) include a statement of the possible consequences of failure to comply as mentioned in rule 17; and
  - (b) unless the party to whom the direction is addressed had consented to the application, contain a statement to the effect that that party may apply to a convener under rule 16 to have that direction varied or set aside.
- (6) When making a direction under paragraph (1)(b) a convener may—
- (a) impose a condition on the supply of a document that the party receiving the document shall treat it as confidential and shall use it only for the purposes of the claim; and
  - (b) require, before the direction takes effect, a written undertaking to that effect from that party.

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

- 16.—(1) Where a party to whom a direction is given under rule 15 was not afforded the opportunity to be heard before the direction was given and did not consent to the relative application, that party may apply at any time before a Tribunal has determined the claim to a convener, by notice to the Secretary, for the direction to be varied or set aside, but a convener shall not vary it or set it aside without first notifying the other party and considering any representations made by that party.
- (2) An application under paragraph (1) may be considered by a convener alone or with such other members of a Tribunal as the convener considers appropriate.

#### **Failure to comply with a direction**

- 17.—(1) If any direction given to a party under rule 15 is not complied with by that party within any period specified in the direction, a convener or a Tribunal at a hearing, may—
- (a) where the party in default is the claimant, dismiss the claim either in whole or in part;
  - (b) where the party in default is the responsible body, determine the claim without a hearing; or
  - (c) where appropriate, direct that a party in default take no further part in the proceedings.

(2) In this rule the expression “party in default” means the party who failed to comply with the direction.

### **Power to dismiss**

**18.**—(1) Without prejudice to the powers of a Tribunal at a hearing, a convener may, at any time before the hearing of a claim, direct that the Secretary serves notice on the claimant stating that it appears that the claim should be dismissed on one or more of the grounds specified in paragraph (2) or for want of prosecution.

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

- (a) is made otherwise than in accordance with these Rules;
- (b) is not, or is no longer, within the jurisdiction of the Tribunal; or
- (c) is frivolous or vexatious.

(3) The notice under paragraph (1) shall invite the claimant within such period as may be specified (being not less than 5 working days) to make representations in writing as to why the claim should not be dismissed and shall explain that the claimant may request a hearing.

(4) After expiry of the period specified in paragraph (3), and subject to paragraph (5), a convener may order that the claim be struck out on one or more of the grounds specified in paragraph (2) or for want of prosecution.

(5) Before making an order under paragraph (4) a convener shall consider any representations under paragraph (3) and may afford the claimant the opportunity of a hearing.

(6) Any decision to dismiss a claim under this rule shall be recorded in summary form in a document signed by the convener and a copy of that document shall be sent by the Secretary to each of the parties, and details of the decision entered in the Register.

### **Extension of time**

**19.**—(1) Where these Rules or any direction made under them require or authorise a party or other person to do something within a period of time, a convener or a Tribunal at a hearing may, in exceptional circumstances, on the application of that party or other person, or on their own initiative, and even if the period has expired, grant such further period as the convener or Tribunal may consider appropriate.

(2) Where such a further period has been granted, reference in these Rules to the period of time shall be construed as a reference to the period of time as so extended, and, unless the further period is granted by a Tribunal at a hearing at which both parties are either present or represented, the Secretary shall give notice to each of the parties of any such extension.

### **Consolidation of claims**

**20.**—(1) Where more than one claim relates to the same person, or requires a decision on substantially the same issue, a convener may order that such claims be heard at the same hearing.

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

(3) An order under this rule shall only be made if it appears to the convener to be fair and just to do so and, before an order is made, the parties to each claim affected shall have the opportunity to be heard, and to have their views taken into account, either by a convener alone or with such other members of a Tribunal as the convener may consider appropriate.

### **Consolidation of hearings of claims and references**

**21.**—(1) Where a reference under section 18(1) of the 2004 Act and a claim relate to the same person, and the other party to the reference and the claim is also the same, the person or, where the claim was made by the person’s parent, the parent or the other party may apply to the Tribunal for an order that such a claim and reference be heard at the same hearing.

(2) A convener may—

(a) make an order under paragraph (1);

(b) make an order varying or revoking an earlier order made under paragraph (1).

(3) An order under this rule shall only be made if it appears to the convener to be fair and just to do so and, before an order is made, the parties have had the opportunity to be heard, and to have their views taken into account, either by a convener alone or with such other members of a Tribunal as the convener may consider appropriate.

(4) A convener must not make an order under this rule if it would cause a breach of any of these rules or the Additional Support Needs Tribunals for Scotland (Practice and Procedure) Rules 2006<sup>(1)</sup>.

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<sup>(1)</sup> S.S.I. 2006/ 88, as amended by S.S.I. 2010/152 and 274.