SCOTTISH STATUTORY INSTRUMENTS

2011 No. 104

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

PART 6

MISCELLANEOUS

Miscellaneous

41.—(1) Subject to the provisions of the 2004 Act, the 2010 Act and these Rules, a Tribunal may regulate its own procedure.

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

(3) A function of the Secretary may be performed by another member of the Tribunal staff duly authorised by the President.

Change of responsible body

42.—(1) A convener or a Tribunal at a hearing may order that, for all the purposes of the claim, a new responsible body be substituted for, or be added to the claim with, the original responsible body.

(2) The claimant, the original responsible body and the new responsible body shall have an opportunity to be heard before an order is made under paragraph (1).

(3) When an order is made under paragraph (1)—

(a) the Secretary shall notify the claimant, the original responsible body and the new responsible body;

(b) where a new responsible body is substituted for the original responsible body, the original responsible body shall no longer be a party;

(c) the new responsible body shall become a party;

(d) the Secretary shall send to a new responsible body copies of all the documents and written evidence relating to the claim duly received by the Tribunal from the claimant or from the original responsible body; and

(e) the convener or the Tribunal shall give directions as to further procedure and in particular may set new dates for the new case statement period or for any hearing.

Power to exercise functions of a convener

43.—(1) Any function of a convener may be exercised by the President or by any member of the panel of conveners selected by the President.

(2) Where the President or a member of the panel of conveners determines any preliminary or incidental matter alone, then unless the interests of fairness and justice require that particular claim to be determined by a Tribunal with the same convener, the claim may be considered by a Tribunal

constituted by the President with a different convener, if the President considers it necessary or expedient.

(3) Subject to rule 48(6), if the circumstances referred to in paragraph (4) occur after the decision of a convener or of a Tribunal, the functions of the convener for the completion of the proceedings may be exercised by the President or any member of the panel of conveners.

(4) The circumstances referred to in paragraph (3) are—

(a) the death or incapacity of the convener; or

(b) the convener ceasing to be included in the panel of conveners.

Power to exercise functions of members other than conveners

44.—(1) If either of the circumstances referred to in paragraph (2) occur after the decision of a Tribunal, the functions of that Tribunal may be undertaken by the convener and the remaining member.

(2) The circumstances referred to in paragraph (1) are—

(a) the death or incapacity of a member other than the convener; or

(b) such a member ceasing to be included in the panel of members.

(3) This rule shall not apply to a Tribunal—

(a) which is constituted with a convener and one member in accordance with rule 29(5); or

(b) in relation to which the President or another member of the panel of conveners is acting in place of the convener in accordance with rule 43(3).

Register

45.—(1) The Secretary shall keep a Register of Claims to the Tribunals.

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

(a) the names and addresses of the parties;

(b) brief details of the nature of the claim;

(c) the date of any hearing including any hearing on preliminary or incidental matters, and, where appropriate, the nature of the hearing and any hearing at which the convener sat alone;

(d) details of any directions or orders issued; and

(e) the document in terms of which the decision of a Tribunal has been recorded under rule 38(2).

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

Publication

46.—(1) The President shall make such arrangements as the President considers appropriate for the publication of Tribunal decisions.

(2) Decisions may be published electronically.

(3) A decision may be published in an edited form, or subject to any deletions, where the President or a convener considers that to be appropriate bearing in mind—

(a) the need to safeguard the welfare and interests of the person to whom the claim relates or of any other person;

(b) the need to protect the private life of any person;

(c) any representations on the matter which any person has provided in writing to the Tribunal at any time prior to publication under the arrangements made under paragraph (1).

(4) A decision of the Tribunal shall be published in such a manner as to protect the anonymity of the person to whom the claim relates.

Review

47.—(1) If, on the application of a party, a Tribunal is satisfied that—

(a) its decision was based on an error of fact or in law;

(b) a party, who was entitled to be heard at a hearing but failed to be present or represented, had a good reason for failing to be present or represented and the interests of justice require; or

(c) otherwise that the interests of justice require,

the Tribunal may review and vary or revoke the relevant decision.

(2) An application for the purposes of paragraph (1) must be—

(a) delivered to the Secretary at any time not later than one month after the date on which the decision was issued to the applicant; and

(b) in writing stating the reasons for the making of the application in full.

(3) The Secretary must send a copy of the application to any other party involved in the claim within 10 working days of receipt.

(4) The Tribunal may dispense with a hearing where both parties so agree in writing.

(5) The review must be decided as soon as reasonably practicable by the Tribunal which decided the case or, where it is not practicable for it to be heard by that Tribunal, by a Tribunal appointed by the President.

(6) If, having reviewed the decision, the decision is to be varied or revoked, the Tribunal must substitute the decision it thinks fit or order a rehearing before either the same or a differently constituted Tribunal.

(7) On the setting aside or variation of the Tribunal's decision the Secretary must, as soon as reasonably practicable, make such correction as may be necessary in the Register and must send a copy of the entry so corrected to each of the parties.

(8) Rule 38 shall apply to the Tribunal's decision on the review.

Irregularities

48.—(1) Any irregularity resulting from failure, at any time before the Tribunal has determined the claim, to comply with any provision of, or direction made under, these Rules shall not by itself render the proceedings void.

(2) Where any such irregularity comes to the attention of a Tribunal, the Tribunal may, and shall, if it considers that any person has been prejudiced by the irregularity, give such directions as it thinks just before reaching its decision to cure or waive the irregularity.

(3) Clerical mistakes in any document recording the decision of a Tribunal or a direction or a decision of a convener or errors arising in such documents from accidental slips or omissions may at any time be corrected by the convener by certificate under their hand.

(4) The Secretary shall as soon as may be send a copy of any corrected document containing reasons for a Tribunal's decision to each party and shall correct any relative entry in the Register as appropriate.

(5) Where a claimant has appointed a representative in accordance with rule 5 or 33 the Secretary shall (notwithstanding rule 33(6)) send a copy of the document referred to in paragraph (4) to the claimant as well as to the representative.

(6) Where these Rules require the convener of a Tribunal to sign a document, and where by reason of death or incapacity the convener is unable to do so, the other members of the Tribunal, whom failing the President, shall sign it and certify that the convener is unable to sign.

Proof of documents and certification of decisions

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

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

Manner and time of service of notices etc.

50.—(1) A notice given under these Rules shall be in writing and a person required under these Rules to notify a matter to the Secretary shall do so in writing.

(2) Notices and documents required by these Rules to be sent or delivered to the Secretary may be sent by post, by fax or by electronic communication to or be delivered at the address of the Secretary or such other address as the Secretary may notify.

(3) Any citation under rule 22 or 23 shall—

(a) be posted by first class recorded or special delivery post properly addressed and pre-paid to the addressee at their ordinary or last notified address; and

(b) be deemed, unless the contrary is proved, to have been received on the second working day after posting.

(4) Any notice or document, other than a citation under rule 22 or 23, required or authorised to be given or sent under these Rules shall, subject to the provisions of paragraph (6) be deemed to have been given or sent if it was—

(a) sent by first class post properly addressed and pre-paid to the addressee at their ordinary or last notified address; or

(b) transmitted by fax or communicated electronically to a fax number or electronic address specified by the addressee.

(5) Any such notice or document as is referred to in paragraph (4), shall, unless the contrary is proved, be deemed to have been received—

(a) where sent by first class post, on the second working day after posting; or

(b) if transmitted by fax or communicated electronically, on the first working day after the day on which it is received in legible form.

(6) Any such notice or document as is referred to in paragraph (4) shall not be transmitted by fax or electronic communication to a person unless that person has confirmed in writing that notices or documents will be considered to have been duly sent if transmitted or communicated to a specified fax number or electronic address.

(7) A person may at any time by notice to the Secretary change their address for service under these Rules.

(8) Where for any sufficient reason service of any document or the giving of any notice cannot be effected in the manner prescribed under this rule, a convener or a Tribunal may dispense with service

or make an order for substituted service in such manner as may be deemed fit and such service shall have the same effect as service in the manner prescribed under this rule.

(9) In this rule, "working day" has the meaning given to it in rule 2 except that it includes any day in July which is not a Saturday, a Sunday or a day specified as a bank holiday in accordance with these Rules.

Signature of documents

51. Where any of these Rules requires a document to be signed, that requirement shall be satisfied—

(a) if the signature is written; or

(b) subject to rule 5(1) in the case of a document which is communicated electronically in accordance with these Rules by the electronic signature of the individual who is required to sign it.