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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 2**

**START OF PROCEEDINGS**

**Claim**

**5.—(1)** A claim to a Tribunal shall be made by notice in writing and shall be signed by the claimant or, at the discretion of the Secretary, a claim transmitted by electronic means may be accepted without the claimant's signature.

(2) The claim shall state—

- (a) the name, address, telephone number, date of birth and nature of the disability of the person to whom the claim relates;
- (b) the name, address and telephone number of the claimant, if the claimant is not the person to whom the claim relates;
- (c) the address to which correspondence should be sent to the claimant, if different;
- (d) the name, address and telephone number of the responsible body;
- (e) the name, address and profession of any representative appointed by the claimant, and, where available, the representative's telephone number, fax number and electronic address;
- (f) the main facts on which the claimant intends to rely; and
- (g) details of the alleged contravention of Chapter 1 of Part 6 of the 2010 Act.

(3) The claimant must send a copy of the claim to the Equality and Human Rights Commission<sup>(1)</sup>.

(4) A Tribunal shall not consider a claim unless the claim has been received by the Secretary before the end of the period of six months beginning when the act complained of was done.

(5) If, in relation to proceedings or prospective proceedings under section 27 of the Equality Act 2006<sup>(2)</sup>, the dispute is referred for conciliation in pursuance of arrangements under that section before the end of the period specified in paragraph (4), that period is extended by 3 months.

(6) A Tribunal may consider any claim which is out of time under paragraphs (4) or (5) if, in all the circumstances of the case, it considers that it is just and equitable to do so.

**Action upon receiving a claim**

**6.** On receiving a claim the Secretary shall—

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(1) The address of the Commission's offices in Scotland is The Optima Building, 58 Robertson Street, Glasgow.

(2) 2006 c.3.

- (a) enter the details of such matters specified in rule 5(2) in the Register and such other information as the President may from time to time direct under paragraph 12 of schedule 1 to the 2004 Act;
- (b) send a copy of the claim and of any accompanying documents to the responsible body, together with a notice in writing giving the case number of the claim from the Register, and including information, as appropriate to the claim, about the means and time for submission of a response, the consequences of failure to do so, and the right to receive a copy of the decision; and
- (c) acknowledge receipt and provide the claimant with a notice in writing giving the case number of the claim, and including information as appropriate to the claim, about the time for the responsible body to submit a response, the right to withdraw the claim, and the right to receive a copy of the decision.

### **Sufficiency of reasons for claim**

7.—(1) If the claim does not state grounds of claim which a convener considers sufficient to enable the responsible body to respond to it, the convener shall direct the claimant to send further and better particulars of the grounds of claim to the Secretary within 10 working days of the receipt of notice of such direction by the claimant in accordance with rule 50.

(2) Rules 15 and 17 shall apply to a direction under paragraph (1).

(3) Further and better particulars of the grounds of claim sent in response to a direction made under paragraph (1) shall, if a convener is satisfied that, together with the claim, such particulars should be sufficient to enable the responsible body to respond to it, be treated as part of the claim.

(4) Where a convener has made a direction under paragraph (1), a copy of that direction shall be sent to the responsible body with confirmation that the case statement period will not commence until the direction has been complied with.

### **Case statement period and statement of claimant's case**

8.—(1) Where rule 7 does not apply or a convener is satisfied under rule 7(3), the Secretary shall send notice in writing to both parties advising them of the dates of the case statement period.

(2) The case statement period shall be the period of 30 working days beginning on the date on which notice under paragraph (1) is taken to have been received in accordance with rule 50.

(3) Before the end of the case statement period, the claimant must submit all written evidence to be relied on and which has not already been submitted and may submit to the Secretary a written statement of the claimant's case, which may include the views of the person to whom the claim relates.

(4) The claimant may amend the claim, submit a supplementary written statement of the claimant's case or amend a supplementary written statement, if permission is given by a convener or a Tribunal at a hearing after having first sought and taken account of the views of the responsible body.

(5) The claimant shall submit to the Secretary a copy of every amendment and supplementary statement for which permission is given.

(6) Subject to paragraphs (7) and (8), on the application of either party or on the convener's own initiative, a convener may make an order shortening or extending the case statement period in any claim.

(7) Before making an order under paragraph (6), the convener shall seek oral or written representations from the parties on the issue of shortening or extending the case statement period.

(8) A convener may only make an order under paragraph (6) if satisfied that—

- (a) both parties will have sufficient time to prepare their cases; and
- (b) it is fair and just to do so.

(9) In the case of any claim where permission is given by a convener under paragraph (4) the convener giving permission may extend the case statement period if satisfied that it is fair and just to do so.

(10) If, at the time permission is granted under paragraph (4), the responsible body is not entitled to take any part in the proceedings in accordance with rule 10(4), the giving of permission shall restore such entitlement and, if necessary, the hearing shall be rearranged or adjourned, as a convener or a Tribunal at the hearing may consider appropriate, so that the responsible body can be represented.

### **Distribution of documents by Secretary**

**9.—**(1) Subject to paragraph (2), the Secretary shall—

- (a) forthwith send to the responsible body a copy of any amendment to the claim received during the case statement period;
- (b) at the end of the case statement period, and in so far as copies have not already been sent, send to each party—
  - (i) a copy of any amendment to the claim or response;
  - (ii) any statement of case submitted by the other party; and
  - (iii) the written evidence of the other party;
- (c) forthwith send to the other party copies of any amendments or supplementary statements, written representations, written evidence (other than written evidence of which a copy is received in accordance with rule 8(3) or 10(3)) or other documents received from a party after the end of the case statement period.

(2) If, after the closure of the case statement period, any amendment, supplementary statement, written representation, written evidence or other document or application is delivered to the Secretary, the Secretary shall—

- (a) where the parties agree to the late submission, send a copy of it to the other party; or
- (b) where the parties do not agree to the late submission, send a copy of it to the other party to enable the parties to make representations on its admission within such time limits as may be determined by a convener or by a Tribunal at a hearing.

(3) Where any individual has been called under rule 25, the Secretary shall send to them a copy of all of the documentation submitted by the claimant under rule 8(3) and (5).

### **Response**

**10.—**(1) The responsible body shall submit a response to the Secretary within the last ten working days of the case statement period.

- (2) The response shall be signed and dated on behalf of the responsible body and shall state—
  - (a) the name and address of the responsible body;
  - (b) the address to which correspondence should be sent, if different;
  - (c) the response to the grounds stated in the claim;
  - (d) the basis on which the claim is resisted;
  - (e) which facts as set out in the claim or in any statement of case under rule 8 are admitted and which are disputed;
  - (f) any further facts on which the responsible body propose to rely; and

- (g) the name, address and profession of any representative appointed by the responsible body, and, where available, the representative's telephone number, fax number and electronic address.
- (3) The responsible body must submit along with the response all written evidence to be relied on.
- (4) A responsible body who does not submit a response shall not be entitled to take any part in the proceedings, except—
  - (a) to make an application under rule 15 for a direction requiring the claimant to provide further information on the grounds on which the claimant relies and any facts and submissions relevant thereto, to enable the responsible body to respond;
  - (b) to apply under rule 19 for an extension of the time appointed under this rule for the response; or
  - (c) in exceptional circumstances at the discretion of a convener or a Tribunal at a hearing.
- (5) In exceptional circumstances the responsible body may amend the response if permission is given by a convener or a Tribunal at a hearing.
- (6) The responsible body shall submit to the Secretary a copy of every amendment for which permission is given.

#### **Withdrawal of claim**

- 11.—(1) A claimant may withdraw any claim made to a Tribunal—
  - (a) at any time before the hearing of the claim by sending to the Secretary a notice to that effect signed by the claimant or by the representative of the claimant; or
  - (b) at the hearing of the claim.
- (2) Upon receipt of any such notice, the Secretary shall send a copy to the responsible body.
- (3) Upon withdrawal of the claim, a convener or a Tribunal at a hearing shall make an order dismissing the claim.

#### **Withdrawal of opposition**

- 12.—(1) The responsible body may withdraw their opposition to the claim—
  - (a) at any time before the hearing of the claim by sending to the Secretary a notice to that effect signed on their behalf; or
  - (b) at the hearing of the claim.
- (2) Upon receipt of any such notice, the Secretary shall send a copy to the claimant.