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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 4**

**EVIDENCE**

**Recovery of documents**

**22.**—(1) Subject to the provisions of the 2004 Act and to paragraph (2), a Tribunal or a convener may, on the application of any party or on their own initiative, direct the Secretary to send a citation to any person requiring them to produce to the Secretary, by such date as may be specified, any document in their custody, or under their control.

(2) The citation must explain that it is an offence under paragraph 13 of schedule 1 to the 2004 Act to refuse or fail to produce any such document without reasonable excuse or to deliberately alter, conceal or destroy any document which that person is required by the citation to produce, and that a person guilty of such an offence may be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) Where such a citation has been duly served on a person and that person fails to comply within the time specified in the citation, a convener or the Tribunal at a hearing may—

- (a) where the person in default is the claimant, dismiss the claim without a hearing or further hearing; or
- (b) where the person in default is the responsible body, order that the responsible body take no further part in the proceedings.

(4) For the purposes of paragraph (1) a person is not obliged to produce a document which that person would be entitled to refuse to produce in civil proceedings before the Court of Session.

(5) In the exercise of the power conferred under paragraph (1) regard shall be had to the need to protect any matter that relates to intimate personal or financial circumstances of any person or consists of information communicated or obtained in confidence.

**Witnesses and citation of witnesses**

**23.**—(1) Where a party wishes to call witnesses to attend a hearing to give evidence, that party shall, prior to the end of the case statement period, provide to the Secretary a list of the names and addresses of such witnesses.

(2) A party may not call and lead evidence from any witness who is not included on their list of witnesses except with the permission of a convener or a Tribunal at a hearing.

(3) Subject to the provisions of the 2004 Act and to paragraph (5), a Tribunal or a convener may, on the written application of any party made not later than 8 working days before the hearing, or on their own initiative, direct the Secretary to send a citation to any person whose details are included in either party's list of witnesses under paragraph (1) requiring that person to attend any hearing,

including any adjourned hearing, of the Tribunal at such time and place as may be specified in the citation, for the purpose of giving evidence.

(4) The citation must explain that it is an offence under paragraph 13 of Schedule 1 to the 2004 Act without reasonable excuse to fail to attend the Tribunal proceedings as required by the citation or to refuse or fail, whilst attending proceedings as so required, to answer any question and that a person guilty of such an offence may be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) No individual shall be required so to attend unless—

- (a) they have been given at least 5 working days notice of the hearing or, if less than 5 such days, they have informed the Secretary that they accept such notice as they have been given; and
- (b) the necessary expenses of their attendance are paid or tendered to them by the party seeking their attendance.

(6) No witness shall be obliged to answer any question that they could not be compelled to answer in any civil proceedings before the Court of Session.

(7) At the hearing of a claim, the parties shall, subject to the provisions of these Rules, be entitled to be present and be heard, to give evidence, to call witnesses, to question witnesses and to address the Tribunal both on the evidence and generally on the subject matter of the claim.

### **Expert evidence**

**24.**—(1) A Tribunal or a convener may, if any issue arises in relation to a claim on which, in the opinion of the Tribunal or a convener, it would be desirable for the Tribunal to have the assistance of an expert, appoint a person having appropriate qualifications to enquire into and report on any matter.

(2) The Secretary must supply the parties with a copy of any written report received under paragraph (1) in advance of the hearing or resumed hearing.

(3) If the Tribunal or a convener sees fit, it, he or she may direct that the expert shall attend the hearing and give evidence.

### **Specified individual**

**25.** On the application of either party or on its own initiative the Tribunal or a convener may call any individual having a sufficient interest in the matter before the Tribunal to attend a hearing and give evidence.