

---

SCOTTISH STATUTORY INSTRUMENTS

---

**2011 No. 104**

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

**PART 5**

**HEARINGS AND DECISIONS**

**Notice of hearing**

**26.**—(1) The Secretary shall, after consultation with the parties, fix the date, time and place of the hearing and, not less than 10 working days (or such shorter time as the parties may agree) before the date so fixed, send to each party a notice that the hearing is to be at such time and at such place or notify them in such other manner as the Secretary thinks fit.

(2) The Secretary shall include in or with the notice of hearing—

- (a) information and guidance as to attendance at the hearing of the parties, their witnesses and any persons whom they may wish to be present at the hearing in support, the lodging of documents, and the right of representation or assistance as provided for in rule 33(4);
- (b) a statement explaining the possible consequences of non-attendance by a party, unless that party has stated in writing that they wish to withdraw the claim or withdraw the response, and of the consequences of the failure to name a representative or witness whom the party may wish to attend;
- (c) an invitation to notify the Secretary if a party or a witness may require the attendance of an interpreter or other person to give other necessary assistance at the hearing or may require any other particular arrangements to be made; and
- (d) a statement explaining the right to make representations in writing provided for under rule 28(6) by—
  - (i) a claimant who does not attend and is not represented at the hearing; or
  - (ii) a responsible body if they are not represented at the hearing and if they have submitted a response, unless they have stated in writing that they do not resist the claim or have withdrawn opposition to the claim.

(3) The Secretary may alter the date, time or place of any hearing provided that the parties are given at least 5 working days notice (or such shorter time as the parties may agree) of any altered hearing date, time or place.

(4) An altered hearing date shall not (unless the parties so agree) be earlier than the date previously fixed.

(5) Nothing in this rule shall oblige the Secretary, in relation to the arrangements for any hearing, to consult with or send notice to any party who is not entitled to be present or represented at that hearing.

(6) 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.

### **Power to decide claim without hearing**

**27.**—(1) A convener may, in any of the circumstances referred to in paragraph (2), decide the claim without a hearing.

(2) For the purposes of paragraph (1) the circumstances are—

- (a) where no response is submitted to the Secretary within the time appointed by rule 10 or any extension of time allowed under rule 19;
- (b) where the responsible body states in writing that they do not resist the claim;
- (c) where the responsible body withdraws their opposition to the claim; or
- (d) where both parties agree in writing to dispense with a hearing.

(3) In deciding a claim under paragraph (1) a convener shall do so on the basis of the notice of claim, any response, any statement of case, any supplementary written statement of case and any written evidence submitted in accordance with the Rules.

(4) The Secretary shall, after receipt of a claim which is to proceed without a hearing in accordance with this rule, send to the parties—

- (a) information and guidance; and
- (b) an indication of when the Secretary expects to be able to notify the parties of the decision of the convener.

### **Attendance at hearings**

**28.**—(1) Subject to the provisions of this rule, any hearing before a Tribunal shall be in private.

(2) A convener or the Tribunal at a hearing may, on the application of the claimant or on their own initiative, make an order that a hearing or part of a hearing be held in public.

(3) An order shall not be made under paragraph (2) in any of the circumstances referred to in paragraph (4).

(4) Those circumstances are that a public hearing—

- (a) would prejudice the welfare or interests of the person to whom the claim relates;
- (b) would not, in all the circumstances, allow the fair hearing of the claim; or
- (c) would not be fair or just.

(5) The Tribunal, with the consent of the parties or their representatives actually present, may permit any other person to attend the hearing of a claim which is held in private.

(6) A claimant or responsible body who does not intend to attend or be represented at the hearing may, not less than 5 working days before the hearing, submit additional written representations in support of their case.

(7) The following persons, as well as the parties and their representatives, shall be entitled to attend the hearing of a claim held in private—

- (a) the person to whom the claim relates, where the person is the claimant;
- (b) a parent of the person to whom the claim relates where the person is not the claimant;
- (c) an individual attending to support a party;
- (d) an individual appointed under rule 34(4);

- (e) a witness, but only for the purpose of giving evidence;
  - (f) the President and a member of the panels of conveners or members (when not sitting as a convener or member of the Tribunal);
  - (g) the Secretary or a prospective Secretary undergoing training;
  - (h) a member of the Tribunal staff;
  - (i) a member of the Administrative Justice and Tribunals Council or its Scottish Committee appointed under section 44 of and Schedule 7 to the Tribunals, Courts and Enforcement Act 2007<sup>(1)</sup>;
  - (j) a person acting on behalf of the President in the training or supervision of the Tribunal staff;
  - (k) an interpreter;
  - (l) a person giving necessary assistance to a person entitled to attend the hearing.
- (8) Without prejudice to any other powers it may have, a Tribunal may exclude from the hearing, or any part of it—
- (a) a person whose conduct has disrupted or is likely, in the opinion of the Tribunal, to disrupt the hearing;
  - (b) a person whose presence is likely, in the opinion of the Tribunal, to make it difficult for anyone to present evidence or make representations necessary for the proper conduct of the hearing;
  - (c) a representative who was not notified to the Secretary in the claim, response or in accordance with rule 33;
  - (d) a witness not included in the list of witnesses submitted by either party in accordance with rule 23(1).

### **Conduct of the hearing**

**29.**—(1) At the beginning of the hearing the convener shall explain the procedure which the Tribunal proposes to adopt.

(2) 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, provided that neither party shall be entitled to call more than five witnesses to give evidence in person in addition to the claimant, unless, in exceptional circumstances, permitted to do so by a convener, or the Tribunal at a hearing.

(3) A Tribunal may permit a parent of a claimant to address it on the subject matter of the claim.

(4) The Tribunal may, if it is satisfied that it is fair and just to do so, permit—

- (a) the claimant to rely on grounds not stated in the claim or in any statement of case; or
- (b) the responsible body to rely on grounds not specified in the response.

(5) If, at or after the beginning of a hearing, a member of the Tribunal other than the convener is absent, the hearing may, with the consent of the parties, be conducted by the convener and the remaining member and in that event the Tribunal shall be deemed to be properly constituted, and the decision of the Tribunal shall be taken by the convener and that member.

(6) In the absence of the consent referred to in paragraph (5) the hearing shall be postponed.

---

(1) 2007 c.15.

(7) Except in so far as expressly permitted by these Rules to give evidence or to address the Tribunal none of the persons mentioned in rule 28(5) or (7) shall, save in the case of persons mentioned in rule 28(7)(k), take any part in the hearing or (where entitled or permitted to remain) in the deliberations of the Tribunal.

(8) For the purposes of arriving at its decision a Tribunal shall, and for the purposes of discussing a question of procedure, may, notwithstanding anything contained in these Rules order all persons to withdraw from the sitting of the Tribunal other than the convener and members of the Tribunal and any of the persons mentioned in rule 28(7)(f) to (j).

### **Evidence at hearing**

**30.**—(1) Evidence at a hearing may be given in person or by written statement, but, subject to the provisions of these Rules, the Tribunal may at any stage of the proceedings require the personal attendance of the maker of a written statement.

(2) A party shall only be permitted to give evidence by written statement if such statement is submitted prior to the expiry of the case statement period or at any other time with the consent of the other party and with the approval of a convener or the Tribunal at a hearing.

(3) A convener or the Tribunal may at the start of a hearing, on the application of either party or on their own initiative, determine that a witness be allowed to give evidence by telephone, video link or any other means of communication, if satisfied that this would not prejudice the achievement of the overriding objective.

### **Postponement of hearing**

**31.**—(1) A convener may, on their own initiative, or on application by either party, postpone any hearing.

(2) The Secretary shall notify the parties of the date, time and place of any subsequent hearing following postponement.

### **Adjournment of hearing**

**32.**—(1) A Tribunal may from time to time adjourn a hearing.

(2) A hearing shall not be adjourned solely on account of the failure of a witness to appear unless the Tribunal, on cause shown, so directs.

(3) When the hearing is adjourned, a convener or the Tribunal may give directions to be complied with, before or at the resumed hearing.

(4) Such directions may require a party to provide such particulars or evidence as may reasonably be required for the determination of the claim.

(5) If a party fails to comply with such a direction, the Tribunal shall take account of that fact when determining the claim or deciding whether to make an order for expenses.

(6) The Secretary shall notify the parties of the date, time and place for the resumed hearing.

### **Representation**

**33.**—(1) If at any time a party wishes to be represented by a person other than a representative named in the claim or the response, they shall give notice to the Secretary of the name and address and profession of that person.

(2) If at any time a party no longer wishes to be represented by a representative of whom details have been provided they shall notify the Secretary.

(3) If at any time a person named as the representative of a party is not prepared, or is no longer prepared, to represent that party they shall notify the Secretary.

(4) At the hearing of a claim a party may conduct their own case, with assistance from any person if they wish, or may appear and be represented by their representative.

(5) If, in any particular case, a Tribunal is satisfied that there are good and sufficient reasons for doing so, it may refuse to permit a particular person to assist or represent a party at the hearing.

(6) The Secretary shall, where a party is represented, send all documents and notices concerning the claim to the representative instead of the party.

(7) Except in relation to citations under rule 22 or 23, references in these Rules (however expressed) to giving or sending any notice or other document to a party shall be construed as references to giving or sending any notice or other documents to the representative of that party.

### **Children**

**34.**—(1) Any child who is a claimant may give evidence.

(2) Any child of 12 years of age or over who is not a claimant may give evidence.

(3) A child under 12 years of age who is not a claimant may only give evidence where a convener or the Tribunal considers—

(a) that the evidence of the child is necessary to enable a fair and just hearing of the claim; and

(b) that the welfare and interests of the child will not be prejudiced by so doing.

(4) Where a child gives evidence in person, a convener or the Tribunal may appoint for the purpose of the hearing a person with appropriate skills or experience in facilitating the giving of evidence by children.

(5) The Secretary shall pay such reasonable fees, expenses or allowances as the President may determine to any person appointed under this rule.

### **Late evidence**

**35.** At the start of a hearing, where a party proposes to submit further documents not already lodged as productions, or to call a witness not on their list of witnesses, the Tribunal, after considering any representations from the other party, may allow that proposal if it is satisfied that, in all the circumstances, it would be fair and just to do so.

### **Restricted reporting orders**

**36.**—(1) If it appears appropriate to do so a restricted reporting order may be made by a convener or a Tribunal at a hearing.

(2) A restricted reporting order is an order limiting or prohibiting the publishing of any matter specified in the order, which may include matter likely to lead members of the public to identify the claimant or any child under 16 years of age or other individual, where it is considered that they should not be identified.

(3) In this rule “publishing” includes, without prejudice to the generality of that expression—

(a) publishing any matter in a programme service, as defined by section 201 of the Broadcasting Act 1990(2); and

(b) causing any matter to be published.

---

(2) 1990 c 42; section 201 was amended by the Communications Act 2003 (c.86), section 360(1) and (2).

(4) An order under this rule may be made in respect of a limited period and may be varied or revoked by a convener or a Tribunal before or at the hearing.

### **Failure of parties to attend**

**37.**—(1) If a party fails to attend or be represented at a hearing of which they have been duly notified, the Tribunal may—

- (a) unless it is satisfied that there is sufficient reason for such absence, hear and determine the claim in the party's absence; or
- (b) adjourn the hearing.

(2) Before disposing of the claim in the absence of a party, the Tribunal shall consider the claim, any response, any statement of case, any supplementary written statement of case and any written evidence submitted in accordance with the Rules.

### **Decisions on claims**

**38.**—(1) Where the Tribunal is constituted by a convener and one member under these Rules the convener shall have a second or casting vote.

(2) The decision of a Tribunal may be given orally at the end of the hearing or may be reserved and, in any event, whether there has been a hearing or not, shall as soon as may be practicable be recorded in a document signed by the convener.

(3) The Secretary shall—

- (a) when sending a copy of the document referred to in paragraph (2) to each party, send notice about the circumstances in which there is a right to appeal under paragraph 11 of Schedule 17 to the 2010 Act against a Tribunal decision; and
- (b) enter such details in the Register as the President may from time to time direct under paragraph 12 of Schedule 1 to the 2004 Act.

### **Orders of the Court**

**39.**—(1) If any appeal against a decision of a Tribunal is allowed by order of the Court of Session, the Secretary shall alter the entry relating to the decision in the Register to conform to that order and shall notify the parties accordingly.

(2) If by order of the Court of Session a claim is remitted back to the Tribunal or to a differently constituted Tribunal, and subject to any directions or orders of the court made under paragraph 11(3) of Schedule 17 to the 2010 Act, the Secretary shall notify the parties that, during such period as a convener may specify each party may submit a supplementary statement of case and further written evidence.

(3) If an appeal against an order to dismiss a claim is allowed by the Court of Session, the Secretary shall notify the parties—

- (a) in the case where the case statement period had not expired before the order to dismiss took effect—
  - (i) that a new case statement period shall be commenced in accordance with rule 8; and
  - (ii) that, within the new period, the parties may submit the documentation referred to in sub-paragraph (b) in respect of a statement of case or evidence submitted before the dismissal took effect; or
- (b) in any other case, that each party may within such period as the convener may specify submit a supplementary statement of case along with any further written evidence.

(4) The Secretary shall forthwith send a copy of all statements and written evidence received from a party in accordance with this rule to the other party.

### **Expenses**

**40.**—(1) A Tribunal shall not normally make an order as to expenses, but may, subject to paragraph (2), after disposing of a claim, make such an order—

- (a) against either party if it is satisfied that the party has acted frivolously or vexatiously or that their conduct in the making or pursuing or the resisting of a claim was wholly unreasonable;
- (b) against a party who failed to attend or be represented at any hearing of which they were duly notified;
- (c) against the responsible body where they have not delivered a response under rule 10; or
- (d) against the responsible body where the Tribunal considers the disputed decision or failure was wholly unreasonable.

(2) A Tribunal may not make an order as to expenses against a party who is the person to whom the claim relates.

(3) An order as to expenses may be made as respects any expenses incurred or fees or allowances paid by any party to any person.

(4) An order shall not be made under paragraph (1) against a party unless that party has been given an opportunity to make representations to the Tribunal, whether in writing or in person as the Tribunal may specify, against the making of the order.

(5) An order made under paragraph (1) may require the party against whom it is made to pay to the other party either a specified sum in respect of the expenses incurred by that other party in connection with the proceedings or the whole or part of such expenses as taxed if not otherwise agreed.

(6) An order under this rule for expenses as taxed shall allow the Auditor of the Court of Session to make a detailed assessment and tax the expenses on such basis as the order may specify.