

Status: Point in time view as at 10/06/2022.

Changes to legislation: *Additional Learning Needs and Education Tribunal (Wales) Act 2018, Paragraph 19 is up to date with all changes known to be in force on or before 17 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

SCHEDULE 1

MINOR AND CONSEQUENTIAL AMENDMENTS AND REPEALS

Equality Act 2010 (c. 15)

- 19 (1) The Equality Act 2010 is amended as follows.
- (2) In section 116(1)(b) (education cases), for “Special Educational Needs Tribunal for Wales” substitute “ Education Tribunal for Wales ”.
- (3) In section 136(6)(e) (burden of proof), for “Special Educational Needs Tribunal for Wales” substitute “ Education Tribunal for Wales ”.
- (4) In section 209(3) (orders and regulations made by the Welsh Ministers), after paragraph (d) insert—
- “(e) regulations under paragraph 6, 6A or 6F of Schedule 17 (tribunal procedure, case friends and capacity of parents and persons over compulsory school age).”
- (5) In Schedule 17 (disabled pupils: enforcement)—
- (a) in paragraph 1—
- (i) in paragraph (b) of the definition of “Tribunal”, for “Special Educational Needs Tribunal for Wales” substitute “ Education Tribunal for Wales ”;
- (ii) in the definition of “Welsh Tribunal”, for “Special Educational Needs Tribunal for Wales” substitute “ Education Tribunal for Wales ”.
- (b) in the heading of paragraph 3, omit “and Wales”;
- (c) in paragraph 3—
- (i) after “responsible body” insert “ in England ”;
- (ii) omit paragraph (b);
- (d) in paragraph 3A—
- (i) in sub-paragraph (1), for “that person (“the relevant person”)” substitute—
- “ (a) the person (including a child not over compulsory school age), or
- (b) if the person is a child not over compulsory school age, the person's parent”;
- (ii) omit sub-paragraph (3);
- (iii) in sub-paragraph (4), for “6A” insert “ 6A(7) ”;
- (e) in paragraph 6—
- (i) in sub-paragraph (2)(a), omit “3 or”;
- (ii) in sub-paragraph (7), for “Part 4 of the Education Act 1996 (special educational needs)” substitute “ Part 2 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 ”;
- (f) after paragraph 6 insert—

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“Appeals from the Welsh Tribunal

- 6AA(1) A party to any proceedings on a claim under paragraph (3A) before the Welsh Tribunal may appeal to the Upper Tribunal on any point of law arising from a decision made by the Welsh Tribunal in those proceedings.
- (2) An appeal may be brought under sub-paragraph (1) only if, on an application made by the party concerned, the Welsh Tribunal or the Upper Tribunal has given its permission.
- (3) Section 12 of the Tribunals, Courts and Enforcement Act 2007 (c. 15) (proceedings on appeal to the Upper Tribunal) applies in relation to appeals to the Upper Tribunal under this paragraph as it applies in relation to appeals to it under section 11 of that Act, but as if references to the First-tier Tribunal were references to the Welsh Tribunal.”
- (g) for paragraph 6A substitute—
- “6A (1) This paragraph applies to a child not over compulsory school age who—
- (a) has the right to make a claim under paragraph 3A, and
- (b) lacks the capacity to understand what it means to exercise that right.
- (2) The Education Tribunal for Wales may by order—
- (a) appoint a person to be a case friend for a child to whom this section applies, or
- (b) remove the person from being a case friend for the child, on the application of any person or on its own initiative, subject to provision in regulations under sub-paragraph (7).
- (3) A case friend appointed for a child under this paragraph may—
- (a) represent and support the child, and
- (b) take decisions and act on behalf of the child,
- in respect of matters arising under or by virtue of this Schedule, subject to provision in regulations under sub-paragraph (7).
- (4) Where a person is appointed to be a case friend by order of the Tribunal under this paragraph, the right of a child to make a claim under paragraph 3A is to be exercised by the case friend on behalf of the child.
- (5) A case friend appointed under this paragraph must—
- (a) act fairly and competently,
- (b) not have any interest adverse to that of the child,
- (c) ensure that all steps and decisions taken by the case friend are for the benefit of the child, and
- (d) take account of the child's views, so far as possible.
- (6) In deciding whether to appoint a person to be a case friend, or to remove a person from being a case friend, the Tribunal must have

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regard, in particular, to whether the person is likely to comply (in the case of appointment) or has complied (in the case of removal) with the duty in sub-paragraph (5).

- (7) The Welsh Ministers may by regulations make further provision about case friends, including (among other things) provision—
- (a) conferring functions on the Education Tribunal for Wales;
 - (b) conferring functions on case friends;
 - (c) for procedures in relation to case friends;
 - (d) specifying the circumstances in which a person may or may not act as a case friend;
 - (e) specifying the circumstances in which a child must have a case friend;
 - (f) specifying requirements in respect of the conduct of case friends;
 - (g) applying any enactment with or without modifications for the purpose of enabling a case friend to make decisions or act on behalf of a child in respect of matters arising under or by virtue of this Schedule.”;
- (h) after paragraph 6E insert—

“Capacity of parents and persons over compulsory school age - Wales

- 6F (1) The Welsh Ministers must make regulations for the purpose of a claim that a responsible body for a school in Wales has contravened Chapter 1 of Part 6 in relation to a person because of disability in a case to which sub-paragraph (2) or (3) applies.
- (2) This sub-paragraph applies where the person is a child not over compulsory school age and the parent of the person lacks capacity at the relevant time.
- (3) This sub-paragraph applies where the person is over compulsory school age and lacks capacity at the relevant time.
- (4) Regulations under sub-paragraph (1) may include provision applying any enactment with modifications, including (for example) provision for modifications to have effect despite section 27(1)(g) of the Mental Capacity Act 2005 (c. 9) (which does not permit decisions on discharging parental responsibilities in matters not relating to a child's property to be made on a person's behalf).
- (5) In this paragraph “the relevant time” means the time at which, under this Act, something is required or permitted to be done by or in relation to a parent or a person over compulsory school age.
- (6) The reference in this paragraph to lacking capacity is to lacking capacity within the meaning of the Mental Capacity Act 2005.
- (7) “Representative”, in relation to a parent or a person over compulsory school age, means—
- (a) a deputy appointed by the Court of Protection under section 16(2)(b) of the Mental Capacity Act 2005 to make

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- decisions on the parent's or person's behalf in relation to matters within this Schedule;
- (b) the donee of a lasting power of attorney (within the meaning of section 9 of that Act) appointed by the parent or person to make decisions on his or her behalf in relation to matters within this Schedule;
- (c) an attorney in whom an enduring power of attorney (within the meaning of Schedule 4 to that Act) created by the parent or person is vested, where the power of attorney is registered in accordance with paragraphs 4 and 13 of that Schedule or an application for registration of the power of attorney has been made.”

(6) In consequence of the amendments made by sub-paragraph (5)(d), in the Education (Wales) Measure 2009 (nawm 7), omit section 12.

Commencement Information

- I1** Sch. 1 para. 19(1)(4)(5)(g)(h) in force at 2.11.2020 for specified purposes by S.I. 2020/1182, **reg. 3(1)(n)**
- I2** Sch. 1 para. 19(1) in force at 1.9.2021 for specified purposes by S.I. 2021/373, **arts. 3, 4** (as amended by S.I. 2021/938, **art. 2(3)**)
- I3** Sch. 1 para. 19(1) in force at 1.9.2021 for specified purposes by S.I. 2021/373, **arts. 6, 7** (as amended by S.I. 2021/938, **art. 2(4)(5)**)
- I4** Sch. 1 para. 19(1) in force at 1.9.2021 for specified purposes by S.I. 2021/373, **art. 8(j)(xxxii)**
- I5** Sch. 1 para. 19(1) in force at 1.1.2022 for specified purposes by S.I. 2021/1243, **art. 3(o)(xvii)** (with arts. 4-23) (as amended by S.I. 2021/1428, **art. 2**; (10.6.2022) by S.I. 2022/663, **art. 2** and (21.8.2023) by S.I. 2023/932, **art. 2**)
- I6** Sch. 1 para. 19(1) in force at 1.1.2022 for specified purposes by S.I. 2021/1244, **art. 3(o)(xvii)** (with arts. 4-21) (as amended by S.I. 2021/1428, **art. 3**; (10.6.2022) by S.I. 2022/663, **art. 3** and (21.8.2023) by S.I. 2023/932, **art. 3**)
- I7** Sch. 1 para. 19(1) in force at 1.1.2022 for specified purposes by S.I. 2021/1245, **arts. 3(o)(xvii)**, 4 (with art. 1(4))
- I8** Sch. 1 para. 19(2)(3) in force at 1.9.2021 by S.I. 2021/373, **art. 8(j)(xxxiii)**
- I9** Sch. 1 para. 19(4) in force at 1.9.2021 in so far as not already in force by S.I. 2021/373, **art. 8(j)(xxxiii)**
- I10** Sch. 1 para. 19(5)(a)-(d) in force at 1.9.2021 by S.I. 2021/373, **art. 8(j)(xxxiii)**
- I11** Sch. 1 para. 19(5)(e)(i) in force at 1.9.2021 by S.I. 2021/373, **art. 8(j)(xxxiii)**
- I12** Sch. 1 para. 19(5)(e)(ii) in force at 1.9.2021 for specified purposes by S.I. 2021/373, **arts. 3, 4** (as amended by S.I. 2021/938, **art. 2(3)**)
- I13** Sch. 1 para. 19(5)(e)(ii) in force at 1.9.2021 for specified purposes by S.I. 2021/373, **arts. 6, 7** (as amended by S.I. 2021/938, **art. 2(4)(5)**)
- I14** Sch. 1 para. 19(5)(e)(ii) in force at 1.1.2022 for specified purposes by S.I. 2021/1244, **art. 3(o)(xviii)** (with arts. 4-21) (as amended by S.I. 2021/1428, **art. 3**; (10.6.2022) by S.I. 2022/663, **art. 3** and (21.8.2023) by S.I. 2023/932, **art. 3**)
- I15** Sch. 1 para. 19(5)(e)(ii) in force at 1.1.2022 for specified purposes by S.I. 2021/1245, **arts. 3(o)(xviii)**, 4 (with art. 1(4))
- I16** Sch. 1 para. 19(5)(e)(ii) in force at 1.1.2022 for specified purposes by S.I. 2021/1243, **art. 3(o)(xviii)** (with arts. 4-23) (as amended by S.I. 2021/1428, **art. 2**; (10.6.2022) by S.I. 2022/663, **art. 2** and (21.8.2023) by S.I. 2023/932, **art. 2**)
- I17** Sch. 1 para. 19(5)(f) in force at 1.9.2021 by S.I. 2021/373, **art. 8(j)(xxxiii)**
- I18** Sch. 1 para. 19(5)(g)(h) in force at 1.9.2021 in so far as not already in force by S.I. 2021/373, **art. 8(j)(xxxiii)**
- I19** Sch. 1 para. 19(6) in force at 1.9.2021 by S.I. 2021/373, **art. 8(j)(xxxiii)**

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