

SCHEDULES

SCHEDULE 17

Section 116

DISABLED PUPILS: ENFORCEMENT

PART 1

INTRODUCTORY

- 1 In this Schedule—
- “the Tribunal” means—
 - (a) in relation to a school in England, the First-tier Tribunal;
 - (b) in relation to a school in Wales, the Special Educational Needs Tribunal for Wales;
 - (c) in relation to a school in Scotland, an Additional Support Needs Tribunal for Scotland;
 - “the English Tribunal” means the First-tier Tribunal;
 - “the Welsh Tribunal” means the Special Educational Needs Tribunal for Wales;
 - “the Scottish Tribunal” means an Additional Support Needs Tribunal for Scotland;
 - “responsible body” is to be construed in accordance with section 85.

PART 2

TRIBUNALS IN ENGLAND AND WALES

Introductory

- 2 This Part of this Schedule applies in relation to the English Tribunal and the Welsh Tribunal.

Jurisdiction

- 3 A claim that a responsible body has contravened Chapter 1 of Part 6 because of a person’s disability may be made to the Tribunal by the person’s parent.

Time for bringing proceedings

- 4 (1) Proceedings on a claim may not be brought after the end of the period of 6 months starting with the date when the conduct complained of occurred.
- (2) If, in relation to proceedings or prospective proceedings under section 27 of the Equality Act 2006, the dispute is referred for conciliation in pursuance of

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arrangements under that section before the end of that period, the period is extended by 3 months.

- (3) The Tribunal may consider a claim which is out of time.
- (4) Sub-paragraph (3) does not apply if the Tribunal has previously decided under that sub-paragraph not to consider a claim.
- (5) For the purposes of sub-paragraph (1)—
 - (a) if the contravention is attributable to a term in a contract, the conduct is to be treated as extending throughout the duration of the contract;
 - (b) conduct extending over a period is to be treated as occurring at the end of the period;
 - (c) failure to do something is to be treated as occurring when the person in question decided on it.
- (6) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—
 - (a) when P acts inconsistently with doing it, or
 - (b) if P does not act inconsistently, on the expiry of the period in which P might reasonably have been expected to do it.

Powers

- 5 (1) This paragraph applies if the Tribunal finds that the contravention has occurred.
- (2) The Tribunal may make such order as it thinks fit.
- (3) The power under sub-paragraph (2)—
 - (a) may, in particular, be exercised with a view to obviating or reducing the adverse effect on the person of any matter to which the claim relates;
 - (b) does not include power to order the payment of compensation.

Procedure

- 6 (1) This paragraph applies in relation to the Welsh Tribunal.
- (2) The Welsh Ministers may by regulations make provision as to—
 - (a) the proceedings on a claim under paragraph 3;
 - (b) the making of a claim.
- (3) The regulations may, in particular, include provision—
 - (a) as to the manner in which a claim must be made;
 - (b) for enabling functions relating to preliminary or incidental matters (including in particular a decision under paragraph 4(3) to be performed by the President or by the person occupying the chair);
 - (c) enabling hearings to be conducted in the absence of a member other than the person occupying the chair;
 - (d) as to persons who may appear on behalf of the parties;
 - (e) for granting such rights to disclosure or inspection of documents or to further particulars as may be granted by the county court;
 - (f) requiring persons to attend to give evidence and produce documents;
 - (g) for authorising the administration of oaths to witnesses;

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- (h) for deciding claims without a hearing in prescribed circumstances;
 - (i) as to the withdrawal of claims;
 - (j) for enabling the Tribunal to stay proceedings;
 - (k) for the award of costs or expenses;
 - (l) for settling costs or expenses (and, in particular, for enabling costs to be assessed in the county court);
 - (m) for the registration and proof of decisions and orders;
 - (n) for enabling prescribed decisions to be reviewed, or prescribed orders to be varied or revoked, in such circumstances as may be decided in accordance with the regulations.
- (4) Proceedings must be held in private, except in prescribed circumstances.
- (5) The Welsh Ministers may pay such allowances for the purpose of or in connection with the attendance of persons at the Tribunal as they may decide.
- (6) Part 1 of the [Arbitration Act 1996](#) does not apply to the proceedings, but regulations may make provision in relation to such proceedings that corresponds to a provision of that Part.
- (7) The regulations may make provision for a claim to be heard, in prescribed circumstances, with an appeal under Part 4 of the Education Act 1996 (special educational needs).
- (8) A person commits an offence by failing to comply with—
- (a) a requirement in respect of the disclosure or inspection of documents imposed by virtue of sub-paragraph (3)(e), or
 - (b) a requirement imposed by virtue of sub-paragraph (3)(f).
- (9) A person guilty of the offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

PART 3

TRIBUNALS IN SCOTLAND

Introductory

- 7 This Part of this Schedule applies in relation to the Scottish Tribunal.

Jurisdiction

- 8 A claim that a responsible body has contravened Chapter 1 of Part 6 because of a person's disability may be made to the Tribunal by—
- (a) the person's parent;
 - (b) where the person has capacity to make the claim, the person.

Powers

- 9 (1) This paragraph applies if the Tribunal finds the contravention has occurred.
- (2) The Tribunal may make such order as it thinks fit.

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- (3) The power under sub-paragraph (2)—
- (a) may, in particular, be exercised with a view to obviating or reducing the adverse effect on the person of any matter to which the claim relates;
 - (b) does not include power to order the payment of compensation.

Procedure etc.

- 10 (1) The Scottish Ministers may make rules as to—
- (a) the proceedings on a claim under paragraph 8;
 - (b) the making of a claim.
- (2) The rules may, in particular, include provision for or in connection with—
- (a) the form and manner in which a claim must be made;
 - (b) the time within which a claim is to be made;
 - (c) the withdrawal of claims;
 - (d) the recovery and inspection of documents;
 - (e) the persons who may appear on behalf of the parties;
 - (f) the persons who may be present at proceedings alongside any party or witness to support the party or witness;
 - (g) enabling specified persons other than the parties to appear or be represented in specified circumstances;
 - (h) requiring specified persons to give notice to other specified persons of specified matters;
 - (i) the time within which any such notice must be given;
 - (j) enabling Tribunal proceedings to be conducted in the absence of any member of a Tribunal other than the convener;
 - (k) enabling any matters that are preliminary or incidental to the determination of proceedings to be determined by the convener of a Tribunal alone or with such other members of the Tribunal as may be specified;
 - (l) enabling Tribunals to be held in private;
 - (m) enabling a Tribunal to exclude any person from attending all or part of Tribunal proceedings;
 - (n) enabling a Tribunal to impose reporting restrictions in relation to all or part of Tribunal proceedings;
 - (o) enabling a Tribunal to determine specified matters without holding a hearing;
 - (p) the recording and publication of decisions and orders of a Tribunal;
 - (q) enabling a Tribunal to commission medical and other reports in specified circumstances;
 - (r) requiring a Tribunal to take specified actions, or to determine specified proceedings, within specified periods;
 - (s) enabling a Tribunal to make an award of expenses;
 - (t) the taxation or assessment of such expenses;
 - (u) enabling a Tribunal, in specified circumstances, to review, or to vary or revoke, any of its decisions, orders or awards;
 - (v) enabling a Tribunal, in specified circumstances, to review the decisions, orders or awards of another Tribunal and take such action (including variation and revocation) in respect of those decisions, orders or awards as it thinks fit.

Appeals

- 11 (1) Either of the persons specified in sub-paragraph (2) may appeal on a point of law to the Court of Session against a decision of a Tribunal relating to a claim under this Schedule.
- (2) Those persons are—
- (a) the person who made the claim;
 - (b) the responsible body.
- (3) Where the Court of Session allows an appeal under sub-paragraph (1) it may—
- (a) remit the reference back to the Tribunal or to a differently constituted Tribunal to be considered again and give the Tribunal such directions about the consideration of the case as the Court thinks fit;
 - (b) make such ancillary orders as it considers necessary or appropriate.

Amendment of Education (Additional Support for Learning) (Scotland) Act 2004

- 12 The Education (Additional Support for Learning) (Scotland) Act 2004 ([asp 4](#)) is amended as follows—
- (a) in section 17(1), omit “to exercise the functions which are conferred on a Tribunal by virtue of this Act”;
 - (b) after section 17(1), insert—
 - “(1A) Tribunals are to exercise the functions which are conferred on them by virtue of—
 - (a) this Act, and
 - (b) the Equality Act 2010”;
 - (c) in the definition of “Tribunal functions” in paragraph 1 of Schedule 1, after “Act” insert “or the Equality Act 2010”.

PART 4

ADMISSIONS AND EXCLUSIONS

Admissions

- 13 (1) This paragraph applies if appeal arrangements have been made in relation to admissions decisions.
- (2) A claim that a responsible body has, because of a person’s disability, contravened Chapter 1 of Part 6 in respect of an admissions decision must be made under the appeal arrangements.
- (3) The body hearing the claim has the powers it has in relation to an appeal under the appeal arrangements.
- (4) Appeal arrangements are arrangements under—
- (a) section 94 of the [School Standards and Framework Act 1998](#), or
 - (b) an agreement between the responsible body for an Academy and the Secretary of State under section 482 of the [Education Act 1996](#), enabling an appeal to be made by the person’s parent against the decision.

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- (5) An admissions decision is—
- (a) a decision of a kind mentioned in section 94(1) or (2) of the [School Standards and Framework Act 1998](#);
 - (b) a decision as to the admission of a person to an Academy taken by the responsible body or on its behalf.

Exclusions

- 14 (1) This paragraph applies if appeal arrangements have been made in relation to exclusion decisions.
- (2) A claim that a responsible body has, because of a person's disability, contravened Chapter 1 of Part 6 in respect of an exclusion decision must be made under the appeal arrangements.
- (3) The body hearing the claim has the powers it has in relation to an appeal under the appeal arrangements.
- (4) Appeal arrangements are arrangements under—
- (a) section 52(3) of the [Education Act 2002](#), or
 - (b) an agreement between the responsible body for an Academy and the Secretary of State under section 482 of the [Education Act 1996](#), enabling an appeal to be made by the person's parent against the decision.
- (5) An exclusion decision is—
- (a) a decision of a kind mentioned in 52(3) of the [Education Act 2002](#);
 - (b) a decision taken by the responsible body or on its behalf not to reinstate a pupil who has been permanently excluded from an Academy by its head teacher.
- (6) "Responsible body", in relation to a maintained school, includes the discipline committee of the governing body if that committee is required to be established as a result of regulations made under section 19 of the [Education Act 2002](#).
- (7) "Maintained school" has the meaning given in section 20(7) of the [School Standards and Framework Act 1998](#).