

Status: Point in time view as at 02/11/2020.

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SCHEDULES

SCHEDULE 17

DISABLED PUPILS: ENFORCEMENT

Modifications etc. (not altering text)

- C1** Sch. 17: power to amend or repeal conferred (10.2.2012) by Education (Wales) Measure 2009 (nawm 5), s. 18(2)(c) (as amended by [S.I. 2011/1651](#), [art. 12\(b\)](#)); [S.I. 2012/320](#), [art. 2\(g\)](#))

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.

Commencement Information

- II** Sch. 17 para. 2 wholly in force; Sch. 17 not in force at Royal Assent see s. 216; Sch. 17 Pt. 2 in force at 1.10.2010 by [S.I. 2010/2317](#), [art. 2\(1\)\(9\)\(k\)\(i\)](#) (with [art. 15](#), and subject to transitional provision in [art. 7](#))

Jurisdiction ^{F1}— England and Wales]

Textual Amendments

- F1** Words in Sch. 17 para. 3 cross-heading inserted (E.W.) (6.3.2012) by Education (Wales) Measure 2009 (nawm 5), s. 9(2) (as substituted (6.7.2011) by [The Right of a Child to Make a Disability Discrimination Claim \(Schools\) \(Wales\) Order 2011](#) ([S.I. 2011/1651](#)), [art. 3](#)); [S.I. 2012/320](#), [art. 3\(f\)](#))

- 3 A claim that a responsible body has contravened Chapter 1 of Part 6 because of a person's disability may be made ^{F2}—
- (a) to the English Tribunal by the person's parent or, if the person is over compulsory school age, the person;
 - (b) to the Welsh Tribunal by the person's parent.]

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Textual Amendments

F2 Words in Sch. 17 para. 3 substituted (1.9.2014) by [Children and Families Act 2014 \(c. 6\)](#), **ss. 60**, 139(6); [S.I. 2014/889](#), **art. 7(a)** (with savings and transitional provisions in [S.I. 2014/2270](#) (as amended (1.4.2015)) by [S.I. 2015/505](#))

Commencement Information

I2 Sch. 17 para. 3 wholly in force; Sch. 17 not in force at Royal Assent see s. 216; Sch. 17 Pt. 2 in force at 1.10.2010 by [S.I. 2010/2317](#), **art. 2(1)(9)(k)(i)** (with [art. 15](#), and subject to transitional provision in [art. 7](#))

[^{F3}Jurisdiction — Wales

Textual Amendments

F3 Sch. 17 para. 3A and cross-heading inserted (E.W.) (6.3.2012) by Education (Wales) Measure 2009 (nawm 5), s. 9(3) (as substituted (6.7.2011) by The Right of a Child to Make a [Disability Discrimination Claim \(Schools\) \(Wales\) Order 2011 \(S.I. 2011/1651\)](#), **art. 3**; [S.I. 2012/320](#), **art. 3(f)**)

- 3A (1) 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 may be made to the Tribunal by that person (“the relevant person”).
- (2) But this paragraph does not apply to a claim to which paragraph 13 or 14 applies.
- (3) The relevant person's right to claim is exercisable concurrently with the right of the relevant person's parent under paragraph 3.
- (4) The exercise of rights under this paragraph is subject to provision made by regulations under paragraphs 6 and 6A.]

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.

^{F4}(2)

[^{F5}(2A) If, in relation to proceedings or prospective proceedings on a claim under paragraph 3 or 3A, the dispute is referred for resolution in pursuance of arrangements under paragraph 6C ^{F6}... before the end of the period of 6 months mentioned in sub-paragraph (1), that 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;

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- (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.

Textual Amendments

- F4** Sch. 17 para. 4(2) omitted (25.6.2013) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), [ss. 64\(14\)\(a\)](#), 103(2)
- F5** Sch. 17 para. 4(2A) inserted (E.W.) (6.3.2012) by Education (Wales) Measure 2009 (nawm 5), s. 10(2) (as substituted (6.7.2011) by The Right of a Child to Make a [Disability Discrimination Claim \(Schools\) \(Wales\) Order 2011 \(S.I. 2011/1651\)](#), [art. 4](#); S.I. 2012/320, [art. 3\(g\)](#))
- F6** Words in Sch. 17 para. 4(2A) omitted (25.6.2013) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), [ss. 64\(14\)\(b\)](#), 103(2)

Commencement Information

- I3** Sch. 17 para. 4 wholly in force; Sch. 17 not in force at Royal Assent see s. 216; Sch. 17 Pt. 2 in force at 1.10.2010 by [S.I. 2010/2317](#), [art. 2\(1\)\(9\)\(k\)\(i\)](#) (with [art. 15](#), and subject to transitional provision in [art. 7](#))

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.

Commencement Information

- I4** Sch. 17 para. 5 wholly in force; Sch. 17 not in force at Royal Assent see s. 216; Sch. 17 Pt. 2 in force at 1.10.2010 by [S.I. 2010/2317](#), [art. 2\(1\)\(9\)\(k\)\(i\)](#) (with [art. 15](#), and subject to transitional provision in [art. 7](#))

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 [^{F7} or 3A];
 - (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;

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- (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;
 - [^{F8}(ca) for adding and substituting parties;]
 - (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;
 - (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.

Textual Amendments

- F7** Words in Sch. 17 para. 6(2)(a) inserted (E.W.) (10.2.2012) by Education (Wales) Measure 2009 (nawm 5), s. 11(2)(a) (as substituted (6.7.2011) by The Right of a Child to Make a [Disability Discrimination Claim \(Schools\) \(Wales\) Order 2011 \(S.I. 2011/1651\)](#), [art. 5](#)); S.I. 2012/320, [art. 2\(d\)](#)
- F8** Sch. 17 para. 6(3)(ca) inserted (E.W.) (10.2.2012) by Education (Wales) Measure 2009 (nawm 5), s. 11(2)(b) (as substituted (6.7.2011) by The Right of a Child to Make a [Disability Discrimination Claim \(Schools\) \(Wales\) Order 2011 \(S.I. 2011/1651\)](#), [art. 5](#)); S.I. 2012/320, [art. 2\(d\)](#)

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Commencement Information

- I5** Sch. 17 para. 6 wholly in force; Sch. 17 not in force at Royal Assent see s. 216; Sch. 17 para. 6(1)-(7) in force for certain purposes at 6.7.2010 by S.I. 2010/1736, art. 2, Sch.; Sch. 17 Pt. 2 in force at 1.10.2010 in so far as not already in force by S.I. 2010/2317, art. 2(1)(9)(k)(i) (with art. 15, and subject to transitional provision in art. 7)

F⁹Case friends — Wales

Textual Amendments

- F9** Sch. 17 para. 6A and cross-heading inserted (E.W.) (10.2.2012) by Education (Wales) Measure 2009 (nawm 5), s. 12(2) (as substituted (6.7.2011) by The Right of a Child to Make a Disability Discrimination Claim (Schools) (Wales) Order 2011 (S.I. 2011/1651), art. 6); S.I. 2012/320, art. 2(e)

- 6A ^{F10}(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 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;

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- (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.]

Textual Amendments

F10 Sch. 17 para. 6A substituted (2.11.2020 for specified purposes; 1.9.2021 in so far as not already in force) by [Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(anaw 2\)](#), s. 100(3), [Sch. 1 para. 19\(5\)\(g\)](#); S.I. 2020/1182, [reg. 3\(1\)\(n\)](#); S.I. 2021/373, [art. 8\(j\)\(xxxiii\)](#)

[^{F11} Advice and information — Wales

Textual Amendments

F11 Sch. 17 para. 6B and cross-heading inserted (E.W.) (6.3.2012) by Education (Wales) Measure 2009 (nawm 5), s. 13(2) (as substituted (6.7.2011) by The Right of a Child to Make a [Disability Discrimination Claim \(Schools\) \(Wales\) Order 2011 \(S.I. 2011/1651\)](#), [art. 7](#); S.I. 2012/320, [art. 3\(h\)](#))

- 6B (1) A local authority in Wales must arrange for any disabled child in its area and for the case friend of any such child to be provided with advice and information about matters relating to disability discrimination in schools.
- (2) In making the arrangements, the local authority must have regard to any guidance given by the Welsh Ministers.
- (3) The arrangements must comply with any provisions made in regulations by the Welsh Ministers that relate to the arrangements.
- (4) The local authority must take such steps as it considers appropriate for making the services provided under sub-paragraph (1) known to—
- (a) disabled children in its area,
 - (b) parents of disabled children in its area,
 - (c) head teachers and proprietors of schools in its area, and
 - (d) such other persons as it considers appropriate.]

[^{F12} Resolution of disputes — Wales

Textual Amendments

F12 Sch. 17 para. 6C and cross-heading inserted (E.W.) (6.3.2012) by Education (Wales) Measure 2009 (nawm 5), s. 14(2) (as substituted (6.7.2011) by The Right of a Child to Make a [Disability Discrimination Claim \(Schools\) \(Wales\) Order 2011 \(S.I. 2011/1651\)](#), [art. 8](#); S.I. 2012/320, [art. 3\(i\)](#))

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- 6C (1) A local authority in Wales must make arrangements with a view to avoiding or resolving disagreements between responsible bodies and disabled children in its area about contraventions of Chapter 1 of Part 6.
- (2) The arrangements must provide for the appointment of independent persons with the functions of facilitating the avoidance or resolution of such disagreements.
- (3) In making the arrangements, the local authority must have regard to any guidance given by the Welsh Ministers.
- (4) The arrangements must comply with any provisions made in regulations by the Welsh Ministers that relate to the arrangements.
- (5) The local authority must take such steps as it considers appropriate for making the arrangements under sub-paragraph (1) known to—
- (a) disabled children in its area,
 - (b) parents of disabled children in its area,
 - (c) head teachers and proprietors of schools in its area, and
 - (d) such other persons as it considers appropriate.
- (6) The arrangements cannot affect the entitlement of any person to make a claim to the Tribunal, and the local authority must take such steps as it considers appropriate to make that fact known to disabled children, to parents of disabled children and to case friends for disabled children in its area.]

[^{F13}Independent advocacy services — Wales

Textual Amendments

F13 Sch. 17 para. 6D and cross-heading inserted (E.W.) (6.3.2012) by Education (Wales) Measure 2009 (nawm 5), s. 15(2) (as substituted (6.7.2011) by The Right of a Child to Make a [Disability Discrimination Claim \(Schools\) \(Wales\) Order 2011 \(S.I. 2011/1651\)](#), [art. 9](#)); S.I. 2012/320, [art. 3\(j\)](#)

- 6D (1) Every local authority in Wales must—
- (a) make arrangements for the provision of independent advocacy services in its area;
 - (b) refer any disabled child in its area who requests independent advocacy services to a service provider;
 - (c) refer any person who is a case friend for a disabled child in its area and who requests independent advocacy services to a service provider.
- (2) In this paragraph “independent advocacy services” are services providing advice and assistance (by way of representation or otherwise) to a disabled child who is—
- (a) making, or intending to make a claim that a responsible body has contravened Chapter 1 of Part 6 because of the child's disability; or
 - (b) considering whether to make such a claim; or
 - (c) taking part in or intending to take part in dispute resolution arrangements made under paragraph 6C.
- (3) In making arrangements under this paragraph, every local authority must have regard to the principle that any services provided under the arrangements must be independent of any person who is—

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- (a) the subject of a claim to the Tribunal, or
 - (b) involved in investigating or adjudicating on such a claim.
- (4) The arrangements must comply with any provisions made in regulations by the Welsh Ministers that relate to the arrangements.
- (5) Every local authority in Wales must take such steps as it considers appropriate for making the arrangements under this paragraph known to—
- (a) disabled children in its area,
 - (b) parents of disabled children in its area,
 - (c) head teachers and proprietors of schools in its area, and
 - (d) such other persons as it considers appropriate.
- (6) The arrangements may include provision for payments to be made to, or in relation to, any person carrying out functions in accordance with the arrangements.
- (7) A local authority must have regard to any guidance given from time to time by the Welsh Ministers.]

[^{F14}Power of direction — Wales

Textual Amendments

F14 Sch. 17 para. 6E and cross-heading inserted (E.W.) (6.3.2012) by Education (Wales) Measure 2009 (nawm 5), s. 16(2) (as substituted (6.7.2011) by The Right of a Child to Make a [Disability Discrimination Claim \(Schools\) \(Wales\) Order 2011 \(S.I. 2011/1651\)](#), **art. 10**); S.I. 2012/320, **art. 3(k)**

- 6E (1) If the Welsh Ministers are satisfied (whether on a complaint or otherwise) that a local authority—
- (a) has acted, or is proposing to act, unreasonably in the discharge of a duty imposed by or under paragraph 6B, 6C or 6D, or
 - (b) has failed to discharge a duty imposed by or under any of those paragraphs, they may give that local authority such directions as to the discharge of the duty as appear to them to be expedient.
- (2) A direction may be given under sub-paragraph (1) even if the performance of the duty is contingent on the opinion of the local authority.
- (3) A direction—
- (a) may be varied or revoked by the Welsh Ministers;
 - (b) may be enforced, on the application of the Welsh Ministers, by a mandatory order obtained in accordance with section 31 of the Senior Courts Act 1981.]

[^{F15}Capacity of parents and persons over compulsory school age - Wales

Textual Amendments

F15 Sch. 17 para. 6F inserted (2.11.2020 for specified purposes, 1.9.2021 in so far as not already in force) by [Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(anaw 2\)](#), s. 100(3), **Sch. 1 para. 19(5)(h)**; S.I. 2020/1182, reg. 3(1)(n); S.I. 2021/373, art. 8(j)(xxxiii)

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- 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 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.]

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