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## SCHEDULES

### SCHEDULE 17 **E+W+S**

Section 116

#### 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 1 **E+W+S**

#### 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 [<sup>F1</sup>Education Tribunal for Wales];
  - (c) in relation to a school in Scotland, [<sup>F2</sup>the First-tier Tribunal for Scotland];
- “the English Tribunal” means the First-tier Tribunal;
- “the Welsh Tribunal” means the [<sup>F3</sup>Education Tribunal for Wales];
- “the Scottish Tribunal” means [<sup>F2</sup>the First-tier Tribunal for Scotland];
- “responsible body” is to be construed in accordance with section 85.

##### Textual Amendments

- F1** Words in Sch. 17 para. 1 substituted (E.W.) (1.9.2021) by [Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(anaw 2\)](#), s. 100(3), [Sch. 1 para. 19\(5\)\(a\)\(i\)](#); [S.I. 2021/373](#), art. 8(j)(xxxiii)
- F2** Words in Sch. 17 para. 1 substituted (S.) (12.1.2018) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Additional Support Needs Tribunals for Scotland\) Regulations 2018 \(S.S.I. 2018/4\)](#), reg. 1(1), [sch. 2 para. 4\(4\)\(a\)](#)
- F3** Words in Sch. 17 para. 1 substituted (E.W.) (1.9.2021) by [Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(anaw 2\)](#), s. 100(3), [Sch. 1 para. 19\(5\)\(a\)\(ii\)](#); [S.I. 2021/373](#), art. 8(j)(xxxiii)

##### Commencement Information

- I1** Sch. 17 para. 1 wholly in force; Sch. 17 not in force at Royal Assent see s. 216; Sch. 17 para. 1 in force for certain purposes at 6.7.2010 by [S.I. 2010/1736](#), [art. 2](#), [Sch.](#); Sch. 17 Pt. 1 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](#))

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**PART 2 E+W+S**

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**

**I2** 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 [F4— England F5...]*

**Textual Amendments**

- F4** 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\(f\)](#)
- F5** Words in Sch. 17 para. 3 heading omitted (E.W.) (1.9.2021) by virtue of [Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(anaw 2\)](#), s. 100(3), [Sch. 1 para. 19\(5\)\(b\)](#); S.I. 2021/373, art. 8(j) (xxxiii)

3 A claim that a responsible body [F6:in England] has contravened Chapter 1 of Part 6 because of a person's disability may be made [F7—  
(a) to the English Tribunal by the person's parent or, if the person is over compulsory school age, the person;  
F8(b) .....]

**Textual Amendments**

- F6** Words in Sch. 17 para. 3 inserted (E.W.) (1.9.2021) by [Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(anaw 2\)](#), s. 100(3), [Sch. 1 para. 19\(5\)\(c\)\(i\)](#); S.I. 2021/373, art. 8(j)(xxxiii)
- F7** 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](#)))
- F8** Sch. 17 para. 3(b) omitted (E.W.) (1.9.2021) by virtue of [Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(anaw 2\)](#), s. 100(3), [Sch. 1 para. 19\(5\)\(c\)\(ii\)](#); S.I. 2021/373, art. 8(j)(xxxiii)

**Commencement Information**

**I3** 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](#))

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### *[<sup>F9</sup>Jurisdiction — Wales*

#### **Textual Amendments**

**F9** 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—
- [<sup>F10</sup>(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].
- (2) But this paragraph does not apply to a claim to which paragraph 13 or 14 applies.
- <sup>F11</sup>(3) .....
- (4) The exercise of rights under this paragraph is subject to provision made by regulations under paragraphs 6 and [<sup>F12</sup>6A(7)].

#### **Textual Amendments**

- F10** Sch. 17 para. 3A(1)(a)(b) substituted for words in Sch. 17 para. 3A(1) (1.9.2021) by [Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(anaw 2\)](#), s. 100(3), **Sch. 1 para. 19(5)(d)(i)**; S.I. 2021/373, art. 8(j)(xxxiii)
- F11** Sch. 17 para. 3A(3) omitted (1.9.2021) by virtue of [Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(anaw 2\)](#), s. 100(3), **Sch. 1 para. 19(5)(d)(ii)**; S.I. 2021/373, art. 8(j)(xxxiii)
- F12** Word in Sch. 17 para. 3A(4) substituted (1.9.2021) by virtue of [Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(anaw 2\)](#), s. 100(3), **Sch. 1 para. 19(5)(d)(iii)**; S.I. 2021/373, art. 8(j)(xxxiii)

#### **Modifications etc. (not altering text)**

- C2** Sch. 17 para. 3A(1)(a) modified (W.) (1.9.2021) by [The Equality Act 2010 \(Capacity of parents and persons over compulsory school age\) \(Wales\) Regulations 2021 \(S.I. 2021/403\)](#), regs. 1(2), 4
- C3** Sch. 17 para. 3A(1)(b) modified (W.) (1.9.2021) by [The Equality Act 2010 \(Capacity of parents and persons over compulsory school age\) \(Wales\) Regulations 2021 \(S.I. 2021/403\)](#), regs. 1(2), 3

### *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.
- <sup>F13</sup>(2) .....
- [<sup>F14</sup>(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 <sup>F15</sup>... 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.

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- (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.

#### Textual Amendments

- F13** 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)
- F14** 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\(g\)](#))
- F15** 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

- I4** 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

- I5** 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 <sup>F16</sup>... [<sup>F17</sup>3A];

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- (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;
  - <sup>[F18]</sup>(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 <sup>[F19]</sup>Part 4 of the Education Act 1996 (special educational needs)<sup>]</sup><sup>[F19]</sup>Part 2 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018].
- (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.

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### Textual Amendments

- F16** Words in Sch. 17 para. 6(2)(a) omitted (E.W.) (1.9.2021) by virtue of [Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(anaw 2\)](#), s. 100(3), [Sch. 1 para. 19\(5\)\(e\)\(i\)](#); S.I. 2021/373, art. 8(j)(xxxiii)
- F17** 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\(d\)](#)
- F18** 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\(d\)](#)
- F19** Words in [Sch. 17 para. 6\(7\)](#) substituted (E.W.) (1.9.2021 for specified purposes) by [Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(anaw 2\)](#), s. 100(3), [Sch. 1 para. 19\(5\)\(e\)\(ii\)](#); S.I. 2021/373, arts. 3, 4, 6, 7 (as amended by S.I. 2021/938, art. 2)

### Commencement Information

- I6** 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](#))

## *f<sup>F20</sup> Appeals from the Welsh Tribunal*

### Textual Amendments

- F20** Sch. 17 para. 6AA and cross-heading inserted (E.W.) (1.9.2021) by [Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(anaw 2\)](#), s. 100(3), [Sch. 1 para. 19\(5\)\(f\)](#); S.I. 2021/373, art. 8(j)(xxxiii)

- 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.]

## *f<sup>F21</sup> Case friends — Wales*

### Textual Amendments

- F21** 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\(e\)](#)

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- [  
F22 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 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.]]

#### Textual Amendments

**F22** 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\(j\)\(xxxiii\)](#)

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### *f<sup>F23</sup> Advice and information — Wales*

#### **Textual Amendments**

**F23** 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.]

### *f<sup>F24</sup> Resolution of disputes — Wales*

#### **Textual Amendments**

**F24** 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\(i\)](#))

- 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.



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- (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.]

*[<sup>F25</sup>Independent advocacy services — Wales*

**Textual Amendments**

**F25** 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—
- (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.]

*Status: Point in time view as at 01/09/2021.*

*Changes to legislation: Equality Act 2010, SCHEDULE 17 is up to date with all changes known to be in force on or before 27 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)*

### *[<sup>F26</sup>Power of direction — Wales*

#### **Textual Amendments**

**F26** 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.]

### *[<sup>F27</sup>Capacity of parents and persons over compulsory school age - Wales*

#### **Textual Amendments**

**F27** 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)

- 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.

*Status: Point in time view as at 01/09/2021.*

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- (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.]

### PART 3 E+W+S

#### TRIBUNALS IN SCOTLAND

##### *Introductory*

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

##### **Commencement Information**

- 17** Sch. 17 para. 7 wholly in force; Sch. 17 not in force at Royal Assent see s. 216; Sch. 17 Pt. 3 in force for certain purposes at 1.10.2010 by [S.I. 2010/2317](#), [art. 2\(1\)\(9\)\(k\)\(ii\)](#) (with [art. 15](#), and subject to transitional provision in [art. 7](#)); Sch. 17 Pt. 3 in force in so far as not already in force at 18.3.2011 by [S.I. 2010/2317](#), [art. 3\(d\)](#) (with [art. 15](#), and subject to transitional provision in [art. 7](#))

##### *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.

##### **Commencement Information**

- 18** Sch. 17 para. 8 wholly in force; Sch. 17 not in force at Royal Assent see s. 216; Sch. 17 Pt. 3 in force for certain purposes at 1.10.2010 by [S.I. 2010/2317](#), [art. 2\(1\)\(9\)\(k\)\(ii\)](#) (with [art. 15](#), and subject to transitional provision in [art. 7](#)); Sch. 17 Pt. 3 in force in so far as not already in force at 18.3.2011 by [S.I. 2010/2317](#), [art. 3\(d\)](#) (with [art. 15](#), and subject to transitional provision in [art. 7](#))

##### *Powers*

- 9 (1) This paragraph applies if the Tribunal finds the contravention has occurred.

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- (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**

**I9** Sch. 17 para. 9 wholly in force; Sch. 17 not in force at Royal Assent see s. 216; Sch. 17 Pt. 3 in force for certain purposes at 1.10.2010 by [S.I. 2010/2317](#), [art. 2\(1\)\(9\)\(k\)\(ii\)](#) (with [art. 15](#), and subject to transitional provision in [art. 7](#)); Sch. 17 Pt. 3 in force in so far as not already in force at 18.3.2011 by [S.I. 2010/2317](#), [art. 3\(d\)](#) (with [art. 15](#), and subject to transitional provision in [art. 7](#))

#### *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;

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- (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.

#### Commencement Information

**I10** Sch. 17 para. 10 wholly in force; Sch. 17 not in force at Royal Assent see s. 216; Sch. 17 Pt. 3 in force for certain purposes at 1.10.2010 by [S.I. 2010/2317](#), [art. 2\(1\)\(9\)\(k\)\(ii\)](#) (with [art. 15](#), and subject to transitional provision in [art. 7](#)); Sch. 17 Pt. 3 in force in so far as not already in force at 18.3.2011 by [S.I. 2010/2317](#), [art. 3\(d\)](#) (with [art. 15](#), and subject to transitional provision in [art. 7](#))

#### Appeals

F28 11 .....

#### Textual Amendments

**F28** Sch. 17 para. 11 repealed (S.) (12.1.2018) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Additional Support Needs Tribunals for Scotland\) Regulations 2018 \(S.S.I. 2018/4\)](#), [reg. 1\(1\)](#), [sch. 2 para. 4\(4\)\(b\)](#)

#### *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 ”.

#### Commencement Information

**I11** Sch. 17 para. 12 wholly in force; Sch. 17 not in force at Royal Assent see s. 216; Sch. 17 Pt. 3 in force for certain purposes at 1.10.2010 by [S.I. 2010/2317](#), [art. 2\(1\)\(9\)\(k\)\(ii\)](#) (with [art. 15](#), and subject to transitional provision in [art. 7](#)); Sch. 17 Pt. 3 in force in so far as not already in force at 18.3.2011 by [S.I. 2010/2317](#), [art. 3\(d\)](#) (with [art. 15](#), and subject to transitional provision in [art. 7](#))

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## PART 4 E+W+S

### 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
  - <sup>F29</sup>(b) Academy arrangements (as defined in section 1 of the Academies Act 2010) between the responsible body for an Academy and the Secretary of State,] enabling an appeal to be made by the person's parent against the decision.
- (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 <sup>F30</sup>Academy school or an alternative provision Academy] taken by the responsible body or on its behalf.

#### **Textual Amendments**

**F29** Sch. 17 para. 13(4)(b) substituted (1.2.2012) by [Education Act 2011 \(c. 21\), s. 65, Sch. 15 para. 2; S.I. 2012/84, art. 3](#)

**F30** Words in Sch. 17 para. 13(5)(b) substituted (1.4.2012) by [Education Act 2011 \(c. 21\), s. 54\(1\), Sch. 13 para. 20\(4\); S.I. 2012/924, art. 2](#)

#### **Commencement Information**

**I12** Sch. 17 para. 13 wholly in force; Sch. 17 not in force at Royal Assent see s. 216; Sch. 17 Pt. 4 in force at 1.10.2010 by [S.I. 2010/2317, art. 2\(1\)\(9\)\(k\)\(iii\)](#) (with [art. 15](#), and subject to transitional provision in [art. 7](#))

#### *Exclusions <sup>F31</sup>: Wales]*

#### **Textual Amendments**

**F31** Word in Sch. 17 para. 14 cross-heading inserted (1.9.2012) by [Education Act 2011 \(c. 21\), s. 4\(4\), Sch. 1 para. 12; S.I. 2012/1087, art. 3](#)

- 14 (1) This paragraph applies if appeal arrangements have been made in relation to exclusion decisions <sup>F32</sup>that are made in relation to schools in Wales].

*Status: Point in time view as at 01/09/2021.*

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- (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.
- [<sup>F33</sup>(4) Appeal arrangements are arrangements under section 52(3) of the Education Act 2002 enabling an appeal to be made against an exclusion decision.]
- (5) An exclusion decision is—
  - (a) a decision of a kind mentioned in 52(3) of the Education Act 2002;
  - (b) <sup>F34</sup> .....
- (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.

#### Textual Amendments

- F32** Words in Sch. 17 para. 14(1) inserted (1.9.2012) by [Education Act 2011 \(c. 21\), s. 4\(4\)](#), [Sch. 1 para. 13\(a\)](#); [S.I. 2012/1087, art. 3](#)
- F33** Sch. 17 para. 14(4) substituted (1.9.2012) by [Education Act 2011 \(c. 21\), s. 4\(4\)](#), [Sch. 1 para. 13\(b\)](#); [S.I. 2012/1087, art. 3](#)
- F34** Sch. 17 para. 14(5)(b) omitted (1.9.2012) by virtue of [Education Act 2011 \(c. 21\), s. 4\(4\)](#), [Sch. 1 para. 13\(c\)](#); [S.I. 2012/1087, art. 3](#)

#### Commencement Information

- I13** Sch. 17 para. 14 wholly in force; Sch. 17 not in force at Royal Assent see s. 216; Sch. 17 Pt. 4 in force at 1.10.2010 by [S.I. 2010/2317, art. 2\(1\)\(9\)\(k\)\(iii\)](#) (with [art. 15](#), and subject to transitional provision in [art. 7](#))

**Status:**

Point in time view as at 01/09/2021.

**Changes to legislation:**

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