
WELSH STATUTORY INSTRUMENTS

2012 No. 322

**The Special Educational Needs
Tribunal for Wales Regulations 2012**

**PART A
GENERAL**

Title, commencement and application

1.—(1) The title of these Regulations is the Special Educational Needs Tribunal for Wales Regulations 2012 and they come into force on 6 March 2012.

(2) These Regulations apply in relation to Wales.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—

“the 1996 Act” (“*Deddf 1996*”) means the Education Act 1996;

“the 2010 Act” (“*Deddf 2010*”) means the Equality Act 2010;

“appeal” (“*apêl*”) means—

- (a) subject to sub-paragraph (b), an appeal to the Tribunal under Part 4 of, and Schedule 27 to, the 1996 Act against a local authority decision;
- (b) in regulations 58 to 60, an appeal to the Upper Tribunal against the tribunal panel’s decision.

“appellant” (“*apelydd*”) means a person entitled to appeal to the Tribunal under Part 4 of the 1996 Act or under regulations made under section 17(1) and (2) of the Education (Wales) Measure 2009(1);

“appropriate person” (“*person priodol*”) has the meaning given by paragraph 4(3) of Schedule 27 to the 1996 Act;

“authority” (“*awdurdod*”) means an authority other than the local authority that made the disputed decision;

“case friend” (“*cyfaill achos*”) means a person who submits a declaration of suitability to the Tribunal in accordance with regulation 66, to exercise the child’s right of appeal or claim on behalf of the child;

“case statement” (“*datganiad achos*”) means the statement of case submitted in accordance with regulation 20 or 21;

“case statement period” (“*cyfnod datganiad achos*”) is the period specified in regulation 19;

“Chair” (“*Cadeirydd*”) means a person appointed under section 333(2) of the 1996 Act to the Chairmen’s panel;

- “child” (“*plentyn*”) means the person who is the subject of the appeal or claim;
- “claim” (“*hawliad*”) means a claim under Chapter 1 of Part 6 of, and Schedule 17 to, the 2010 Act for disability discrimination;
- “claimant” (“*hawlydd*”) means a person entitled to make a claim to the Tribunal under Chapter 1 of Part 6 of, and Schedule 17 to, the 2010 Act or, under regulations made under section 17(1) and (2) of the Education (Wales) Measure 2009;
- “clerk to the tribunal panel” (“*clerc i'r panel tribiwnlys*”) means the person appointed by the Secretary of the Tribunal to act in that capacity at one or more hearings;
- “disputed decision” (“*penderfyniad a herir*”) means the decision or act or failure to decide or act in respect of which the appeal or claim is brought;
- “document” (“*dogfen*”) means anything in which information of any description is recorded;
- “education panel” (“*panel addysg*”) means the persons appointed by the Welsh Ministers under section 333(2)(c) of the 1996 Act to the lay panel of the Tribunal;
- “electronic signature” (“*llofnod electronig*”) has the meaning given to it by section 7 of the Electronic Communications Act 2000(2);
- “email address” (“*cyfeiriad e-bost*”) means the person’s electronic mail address;
- “evidence” (“*tystiolaeth*”) includes material of any description recorded in any form;
- “First-tier Tribunal” (“*Tribiwnlys Haen Gyntaf*”) means the tribunal established under section 3 of the Tribunals, Courts and Enforcement Act 2007, that has jurisdiction in England over appeals and claims;
- “hearing” (“*gwrandawriad*”) means a hearing before the President, a Chair or the tribunal panel for the purpose of enabling the President, a Chair or the tribunal panel to reach a decision on an appeal or claim or any question or matter at which the parties are entitled to attend and be heard and includes a hearing conducted in whole or in part by video link, telephone or other means of instantaneous two-way electronic communication;
- “local authority” (“*awdurdod lleol*”) means the local authority in Wales that made the disputed decision;
- “maintained school” (“*ysgol a gynhelir*”) means a community, foundation or voluntary school, a community or foundation special school or a nursery school maintained by a local authority that may or may not have made the disputed decision;
- “observer” (“*sylwedydd*”) means a person who may attend a hearing for the purpose of observing the hearing but who must not participate in the hearing, or make any notes of the hearing or make any recording of the hearing by photographic means, or by sound means or by any other means;
- “oral representations” (“*sylwadau llafar*”) includes evidence which by reason of an impairment of speech or hearing, a person gives using sign language;
- “parent” (“*rhiant*”) means a parent for the purposes of section 576 of the 1996 Act(3);
- “party” (“*parti*”) means—
- (a) in an appeal, the appellant or the local authority; and
 - (b) in a claim, the claimant or the responsible body;
- “President” (“*Llywydd*”) means the President of the Tribunal appointed under section 333(2) (a) of the 1996 Act;

(2) 2000 c. 7.

(3) Under section 576 of the 1996 Act a “parent” in relation to a child or young person, includes any person who is not a parent of the child but who has parental responsibility for the child, or has care of the child. Section 212 of the 2010 Act adopts this definition for the purposes of disability disputes.

- “Register” (“*Cofrestr*”) means the register required to be kept under regulation 75;
- “responsible body” (“*corff cyfrifol*”) has the meaning given by section 85(9) of the 2010 Act(4);
- “Secretary of the Tribunal” (“*Ysgrifennydd y Tribiwnlys*”) means the person who for the time being acts as the Secretary of the office of the Tribunal;
- “statement” (“*datganiad*”) means the statement of special educational needs relating to the child made under section 324 of the 1996 Act;
- “Tribunal” (“*Tribiwnlys*”) means Tribiwnlys Anghenion Addysgol Arbennig Cymru or the Special Educational Needs Tribunal for Wales(5);
- “tribunal panel” (“*panel tribiwnlys*”) means a panel of the Tribunal who may dispose of an appeal or claim or any question or matter in relation to an appeal or claim;
- “Upper Tribunal” (“*Uwch Dribiwnlys*”) means the appellate tribunal established under section 3 of the Tribunals, Courts and Enforcement Act 2007 (6);
- “witness summons” (“*gwŷs tyst*”) means a document issued by the President or the tribunal panel requiring a witness to attend at a hearing of an appeal or claim to give evidence or produce documents in relation to an appeal or claim to the Tribunal;
- “working day” (“*diwrnod gwaith*”) means any day other than—
- (c) a Saturday;
 - (d) a Sunday;
 - (e) any day from 25 December to 1 January inclusive;
 - (f) Good Friday;
 - (g) the first Monday in May;
 - (h) any day in August; or
 - (i) a day which is a bank holiday in England and Wales under section 1 of the Banking and Financial Dealings Act 1971(7).

Appeals and claims on or after 6 March 2012

3. These Regulations apply to an appeal or a claim entered in the Register on or after 6 March 2012.

Revocations and savings

4.—(1) Subject to paragraph (2) the Special Educational Needs Tribunal Regulations 2001(8) and the Special Educational Needs Tribunal (Amendment) Regulations 2002(9) are revoked.

(2) The Regulations specified in paragraph (1) continue to apply in relation to—

- (a) an application for permission to appeal to the Upper Tribunal;
- (b) any appeal made under Part 4 of, and Schedule 27 to, the 1996 Act where the appeal application was entered in the Register before 6 March 2012;

(4) Under section 85(9) of the Equality Act 2010, the local authority or governing body, according to which has the relevant function, is the responsible body for a maintained school or maintained nursery school; the local authority is the responsible body for a pupil referral unit; the proprietor is the responsible body for an independent school or a special school not maintained by a local authority.

(5) Section 333 (1ZA) of the 1996 Act.

(6) 2007 c. 15.

(7) 1971 c. 80.

(8) S.I.2001/600.

(9) S.I. 2002/2787.

(3) Subject to paragraph (4) the Special Educational Needs and Disability Tribunal (General Provisions and Disability Claims Procedure) Regulations 2002⁽¹⁰⁾ are revoked.

(4) The Regulations specified in paragraph (3) continue to apply in relation to—

- (a) an application for permission to appeal to the Upper Tribunal;
- (b) any claim made under Chapter 1 of Part 6 of the 2010 Act where the claim application was entered in the Register before 6 March 2012⁽¹¹⁾.

(5) Subject to paragraphs (2)(b) and (4)(b), the Special Educational Needs Tribunal (Time Limits) (Wales) Regulations 2001⁽¹²⁾ are revoked.

Transitional provisions

5.—(1) This regulation applies if—

- (a) an appeal or a claim made by a parent is entered in the Register of the Tribunal before 6 March 2012 and a child entitled to make an appeal or claim to the Tribunal by virtue of regulations made under section 17(1) and (2) of the Education (Wales) Measure 2009 makes an appeal or claim that is entered in the Register of the Tribunal on or after 6 March 2012; and
- (b) the appeal or claim made by the child relates to the disputed issue and is based on the same grounds specified in the parent’s appeal or claim.

(2) If the circumstances in paragraph (1) exist—

- (a) regulations 37 and 38 apply; and
- (b) the President may make such directions in relation to the parent’s appeal or claim, as the President thinks just.

The overriding objective

6.—(1) The overriding objective of these Regulations is to enable the President or the tribunal panel to deal with appeals and claims fairly and justly.

(2) Dealing with a case fairly and justly includes—

- (a) dealing with the appeal or the claim in ways which are proportionate to the importance of the case and the complexity of the issues;
- (b) avoiding, as far as the President or the tribunal panel considers appropriate, unnecessary formality in the proceedings under these Regulations;
- (c) ensuring, so far as practicable, that the parties are on an equal footing procedurally and are able to participate fully in the proceedings, including facilitating any party to present any appeal or claim without advocating the course the party should take;
- (d) using the special expertise of the President or the tribunal panel effectively; and
- (e) avoiding delay, so far as compatible with proper consideration of the issues.

(3) The President or the tribunal panel must seek to give effect to the overriding objective of these Regulations when the President or the tribunal panel—

- (a) exercises any function under these Regulations; or
- (b) interprets any regulation.

⁽¹⁰⁾ S.I. 2002/1985.

⁽¹¹⁾ Despite their lapse by Schedule 27 to the 2010 Act, the Special Educational Needs and Disability Tribunal (General Provisions and Disability Claims Procedure) Regulations 2002 continue in effect so far they relate to Wales. [S.I.2010/2317](#).

⁽¹²⁾ S.I. 2001/3982.

(4) In particular, the President or the tribunal panel must manage appeals and claims actively in accordance with the overriding objective of these Regulations.

Parties' obligation to co-operate

7.—(1) Parties must—

- (a) co-operate with each other for the purposes of progressing the appeal or the claim;
- (b) co-operate in giving documents or information to each other to enable each party to prepare a case statement;
- (c) help the President or the tribunal panel to further the overriding objective of these Regulations; and
- (d) co-operate with the President and the tribunal panel generally.

(2) The President or the tribunal panel may draw such adverse inferences as the President or the tribunal panel thinks fit from a party's failure to comply with any of the obligations specified in paragraph (1).

(3) Where the President or the tribunal panel has made an adverse inference under paragraph (2), the President or the tribunal panel may direct the Secretary of the Tribunal to serve notice on the party in default that the President or the tribunal panel is proposing to make an order to strike out—

- (a) the appeal, where the party in default is the appellant;
- (b) the claim, where the party in default is the claimant;
- (c) the case statement and written evidence, where the party in default is the local authority or the responsible body.

(4) The notice in paragraph (3) must invite representations and the President or the tribunal panel must consider any representations made.

(5) For the purposes of this regulation—

- (a) a notice inviting representations must inform the party in default that the party may, within a period (no later than 10 working days) specified in the notice, either make written representations or request an opportunity to make oral representations;
- (b) representations are made if—
 - (i) in the case of written representations, they are made within the specified period; and
 - (ii) in the case of oral representations, the party proposing to make them has requested an opportunity to do so within the specified period.

(6) The President or the tribunal panel may after considering any representations made by the party in default, order that the party's case is struck out.

Alternative dispute resolution

8.—(1) The President or the tribunal panel may seek, where appropriate, to bring to the attention of the parties the availability of any appropriate alternative procedure for the resolution of the dispute.

(2) If the parties wish to use the alternative dispute resolution procedure the President or the tribunal panel may, provided that it is compatible with the overriding objective of these Regulations, stay the appeal or the claim.

Constitution of Tribunal

Education panel members

9. No person may be appointed as a member of the education panel unless the Welsh Ministers are satisfied that the person—

- (a) is not eligible for appointment as a Chair; and
- (b) has current knowledge and experience of children with—
 - (i) special educational needs; or
 - (ii) disabilities; or
 - (iii) if required, both.

Establishment of tribunal panels

10.—(1) The jurisdiction of the Tribunal is to be exercised by such number of tribunal panels as the President may from time to time determine.

(2) The tribunal panels exercising the jurisdiction conferred on them in accordance with paragraph (1) are to sit at such times and in such places as the President may from time to time determine.

Membership of tribunal panel

11.—(1) Subject to regulation 45(5), a tribunal panel must consist of a person appointed as a Chair and two other members.

- (2) For each hearing—
 - (a) the Chair must be the President or a person selected by the President from the panel of persons appointed under section 333(2) of the 1996 Act; and
 - (b) the two other members must be persons selected by the President from the education panel.