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WELSH STATUTORY INSTRUMENTS

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**2012 No. 322**

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

**PART B**

**SPECIAL EDUCATIONAL NEEDS APPEALS AND DISABILITY CLAIMS**

**COMMENCING PROCEEDINGS**

*Making an appeal or claim*

**Period within which proceedings must be commenced**

**12.**—(1) An appeal to the Tribunal must be made by application in writing in accordance with these Regulations and must be received by the Tribunal no later than the first working day after the expiry of two months beginning with the date when written notice of the local authority's decision and the right to appeal under Part 4 of the 1996 Act against that decision was given<sup>(1)</sup>.

(2) If, in relation to an appeal or a prospective appeal, the dispute concerned is referred for dispute resolution under section 332BA of the 1996 Act<sup>(2)</sup> before the end of the period specified in paragraph (1), the period allowed by that paragraph is extended by three months.

(3) A claim to the Tribunal must be made by application in writing in accordance with these Regulations and must be received by the Tribunal no later than the first working day after the end of the period stated in paragraph 4(1) of Schedule 17 to the 2010 Act<sup>(3)</sup>.

(4) If, in relation to a claim or a prospective claim, the dispute concerned is referred for dispute resolution under paragraph 6C of Schedule 17 to the Equality Act 2010<sup>(4)</sup> or conciliation under section 27(1) of the Equality Act 2006<sup>(5)</sup> before the end of the period specified in paragraph (1), the period allowed by that paragraph is extended by three months.

(5) Subject to regulation 17, the Tribunal may not consider—

- (a) an appeal application unless proceedings are commenced in accordance with paragraphs (1) and (2);
- (b) a claim application unless proceedings are commenced in accordance with paragraphs (3) and (4).

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(1) See the Education (Special Educational Needs) Regulations 2002, regulation 5 (service) (S.I.2002/152).

(2) Section 332BA was inserted by section 5 of the Education (Wales) Measure 2009.

(3) Paragraph 4(1) of Schedule 17 to the Equality Act 2010 stipulates the period in which a claim must be made to the Tribunal. Sub-paragraph (2) makes provision in relation to proceedings or prospective proceedings where the dispute is referred for conciliation.

(4) Paragraph 6C was inserted into Schedule 17 to the Equality Act 2010 by S.I. 2011/1651.

(5) 2006 c. 3: section 27(1) was substituted by paragraph 16 of Schedule 26 to the Equality Act 2010; paragraph 16 was renumbered as paragraph 71 of Schedule 26 by paragraph 1 (c) of Schedule 1 to S.I. 2010/2279; section 27(1) subsequently amended by S.I. 2011/1060.

## Appeal application

- 13.—(1) The appeal application must state—
- (a) the name and address of the person making the appeal and if available, the person's telephone number, fax number and email address;
  - (b) the name and date of birth of the child;
  - (c) if relevant, the relationship or connection of the person making the appeal to the child;
  - (d) the names and addresses of all persons who have or share parental responsibility for the child or have care of the child, or reasons why the names and addresses of such persons are not provided;
  - (e) the name and address of any representative appointed by the person making the appeal and if available, the representative's telephone number, fax number and email address;
  - (f) an address and if available, an email address, where notices and documents for the person making the appeal should be sent;
  - (g) the name and address of the local authority which made the disputed decision;
  - (h) the date on which the person making the appeal received written confirmation of the disputed decision;
  - (i) the reason or reasons for making the appeal;
  - (j) the result sought; and
  - (k) the steps, if any, already taken to resolve the dispute.
- (2) If the person making the appeal seeks an order that—
- (a) the child's statement is amended, the appeal application must specify to which part or parts of the statement the appeal relates;
  - (b) a school (other than one already named in the child's statement) is named in the statement, the appeal application must state either the name and address of that school or a sufficient description of the type and nature of the school which the person considers would be an appropriate placement for the child.
- (3) The appeal application may be accompanied by—
- (a) a copy of the disputed decision;
  - (b) where the appeal is made under section 326 of, or paragraphs 8 or 11 of Schedule 27 to, the 1996 Act, a copy of the child's statement, any documentation attached to or forming part of the statement and if available, a copy of the latest review under section 328 of the 1996 Act.
- (4) The appeal application must be accompanied—
- (a) by written confirmation that the person making the appeal has notified persons, if any, named in accordance with paragraph (1)(d) that the person proposes to make an appeal to the Tribunal, or written confirmation explaining why the person making the claim has not notified any such persons;
  - (b) where the appeal application states the name of a school in accordance with paragraph (2)(b), by written confirmation that the person making the appeal has informed the head teacher of the school that the person proposes to request that the school is named in the statement; and
  - (c) where under paragraph (2)(b), the appeal application states the name of—
    - (i) a maintained school, by written confirmation that the person making the appeal has informed the local authority that maintains the school, which may or may not be the

local authority that made the disputed decision, that the person proposes to request that the maintained school is named in the statement;

- (ii) an independent school, by written confirmation that the person making the appeal has informed the proprietor of the school that the person proposes to request that the independent school is named in the statement;
- (iii) an independent school, by written confirmation from the proprietor of the school that a place is available at the school for the child.

(5) The appeal application must be signed by the person making the appeal, or any representative or a case friend on that person's behalf.

(6) The appeal application may, in accordance with regulation 38, include a request that the appeal is heard with a claim against a responsible body.

### **Claim application**

**14.**—(1) The claim application must state—

- (a) the name and address of the person making the claim and if available the person's telephone number, fax number and email address;
- (b) the name and date of birth of the child;
- (c) if relevant, the relationship or connection of the person making the claim to the child;
- (d) the names and addresses of all persons who have or share parental responsibility for the child or have care of the child, or reasons why the names and addresses of such persons are not provided;
- (e) the name and address of any representative appointed by the person making the claim and if available, the representative's telephone number, fax number and email address;
- (f) an address and if available an email address where notices and documents for the person making the claim should be sent;
- (g) the name and address of—
  - (i) the school or local authority which made the disputed decision; or
  - (ii) the authority for the school named under paragraph (1)(g)(i) if such a school is a maintained school;
- (h) details of the disputed decision to which the claim relates;
- (i) the date or dates on which the disputed decision took place;
- (j) the reason or reasons for making the claim;
- (k) the result sought; and
- (l) the steps, if any, already taken to resolve the dispute.

(2) The claim application must include a description of the child's disability.

(3) Evidence of a medical or other professional diagnosis relating to the child's disability should, if available, accompany the claim application.

(4) The claim application must be accompanied by written confirmation that the person making the claim has notified persons, if any, named in accordance with paragraph (1)(d) that the person has made a claim to the Tribunal; or written confirmation explaining why the person making the claim has not notified any such persons.

(5) The claim application must be signed by the person making the claim or any representative or a case friend on that person's behalf.

(6) The claim application may, in accordance with regulation 38, include a request that the claim is heard with an appeal against a local authority.

### **Action by the Secretary of the Tribunal**

**15.—**(1) Upon receiving the appeal application or the claim application the Secretary of the Tribunal must—

- (a) enter its particulars in the Register; and
- (b) send to the appellant or claimant—
  - (i) an acknowledgement of its receipt and a note of the case number entered in the Register;
  - (ii) a note of the address to which notices and communications for the Tribunal should be sent;
  - (iii) notification that advice about the appeals or claims procedure may be obtained from the office of the Tribunal;
  - (iv) subject to regulation 19(2), a notice stating the time for submitting the appellant's or the claimant's case statement and evidence under regulation 19(1); and
  - (v) a statement of the possible consequences for the appeal or claim, if a party fails to comply with regulation 7 (parties' obligation to co-operate).

(2) At the same time as sending to the appellant or claimant the notice referred to in paragraph (1)(b)(iv), the Secretary of the Tribunal must send to the local authority or responsible body—

- (a) a copy of the appeal application or the claim application and any accompanying documents;
- (b) a note of the address to which notices and communications for the Tribunal should be sent;
- (c) a notice stating the time for submitting the local authority's or responsible body's case statement and evidence under regulation 19(1) and the consequences of failing to do so; and
- (d) a statement of the possible consequences for the appeal or claim, if a party fails to comply with regulation 7 (parties' obligation to co-operate).

(3) If it is necessary to determine the identity of the responsible body in relation to a claim, the President may make such enquiries as are necessary for this purpose.

(4) Where it appears to the President or the Secretary of the Tribunal that there may be more than one responsible body in relation to a claim, the Tribunal may send the documentation specified in paragraph (2) to any or all such bodies as may be appropriate.

(5) Where the President and the Secretary of the Tribunal are of the opinion that on the basis of the appeal application or the claim application, the person making the appeal or the claim is asking the Tribunal to consider a matter which is outside its powers, the Secretary of the Tribunal may give notice to the person—

- (a) stating the reasons for the opinion; and
- (b) informing the person that the appeal application or the claim application must not be entered in the Register unless, within a specified time (which must not be less than 5 working days), the person notifies the Secretary of the Tribunal that the person wishes to proceed with the appeal or claim.

(6) If the Secretary of the Tribunal has given a notice under paragraph (5), the appeal application or the claim application is to be treated as having been received for the purposes of paragraph (1) when the person making the appeal or claim notifies the Secretary of the Tribunal that the person wishes to proceed with the appeal or claim.

(7) Where the Secretary of the Tribunal is of the opinion that there is an obvious error in the appeal application or the claim application, the Secretary of the Tribunal may correct that error.

(8) Where an error has been corrected in accordance with paragraph (7), the Secretary of the Tribunal must notify the person making the appeal or claim of the correction and state the effect of paragraph (9).

(9) Unless the person making the appeal or claim informs the Secretary of the Tribunal within 5 working days of the notification given under paragraph (8) that the person objects to the correction, the appeal application or the claim application as corrected must be treated as the appeal application or the claim application for the purposes of these Regulations.

(10) Subject to regulations 67(2) and (3) and paragraph (11), the Secretary of the Tribunal must send all documents and notices concerning the appeal or the claim to the appellant or the claimant.

(11) Paragraph (10) applies—

(a) unless the appellant or the claimant notifies the Secretary of the Tribunal that all documents and notices concerning the appeal or the claim must be sent to the representative instead of the appellant or claimant;

(b) subject to regulations 55(7) and 79(5).

(12) If paragraph (11) (a) applies, references in these Regulations (however expressed) to sending documents to, or giving notice to, the appellant or the claimant must be construed as references to sending documents to, or giving notice to, the representative.

### **Appeal or claim made out of time**

16.—(1) The President may consider—

(a) any appeal which is out of time if, in all the circumstances of the case, the President considers that it is fair and just to do so;

(b) any claim which is out of time under paragraph 4(3) of Schedule 17 to the Equality Act 2010.

(2) The President may seek further information from the person making the appeal or claim before making a decision under paragraph (1).

### **Sufficiency of reasons**

17.—(1) If the appeal application or the claim application does not include, or is not accompanied by, a statement of the reasons for making the appeal or the claim, including in relation to a claim the information set out in regulation 14(1)(i), (j) and (2), which the President considers sufficient to enable the local authority or responsible body to respond to the appeal or the claim, the President must direct the appellant or the claimant to send details of the reasons to the Secretary of the Tribunal within 10 working days of the direction.

(2) Regulation 36 applies to a direction under paragraph (1).

(3) Reasons sent in response to a direction made under paragraph (1) are to be treated as part of the appeal application or the claim application.

### **Appellant's or claimant's representatives**

18.—(1) The appellant or the claimant may in the appeal application or the claim application or by giving written notice to the Secretary of the Tribunal at any later time—

(a) appoint a representative;

(b) appoint another representative to replace the representative previously appointed, whose appointment is cancelled by the later appointment;

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- (c) state that no person is acting as the appellant's or the claimant's representative, which cancels any previous appointment.
- (2) Where an appointment is made under paragraph (1), the appellant or the claimant must give the name, address and contact details of the representative.