WELSH STATUTORY INSTRUMENTS

2012 No. 322 (W.53)

EDUCATION, WALES

The Special Educational Needs Tribunal for Wales Regulations 2012

Made - - - -	*8 February 2012*
Laid before the National Assembly for Wales - -	*13 February 2012*
Coming into force - -	*6 March 2012*

The Welsh Ministers, in exercise of the powers conferred on them by sections 326A(4) and (6), 332ZC(1) and (3), 333(5), 334(2), 336(1),(2), (2A) and (4A), 336A and 569(4) and (5) of the Education Act 1996(**1**) and section 207(4) and paragraphs 6A(**2**), 6(1), (2), (3), (4), (5), and (7) of Schedule 17 to the Equality Act 2010(**3**) and after consulting the Administrative Justice and Tribunals Council in accordance with paragraph 24(1) of Schedule 7 to the Tribunals, Courts and Enforcement Act 2007(**4**), make the following Regulations.

The Secretary of State has consented to the making of the Regulations in so far as the Secretary of State's consent is required by sections 333(5), 334(2) and 336A(2)(b) of the Education Act 1996.

(**1**) 1996 c. 56. Section 326A was inserted by section 5 of the Special Education Needs and Disability Act 2001 (c. 10). Subsection (6) of that section was substituted by paragraphs 1 and 3 of Schedule 18 to the Education Act 2002 (c. 32). Subsection (6)(b) was amended by paragraphs 127 and 129(b) of Schedule 3 to the Transfer of Tribunal Functions Order 2008 (S.I.2008/2833) and further amended by paragraph 7(1) and (2) of Schedule 2 to S.I. 2010/1158. Section 332ZC(1) was inserted by section 3 of the Education (Wales) Measure 2009 (2009 nawm 5) and amended by S.I 2010/1148. Section 333(5) was amended by paragraphs 127, 130(d) and 130(f) of Schedule 3 to S.I. 2008/2833. Section 334(2) was amended by paragraphs 127 and 131(a) of Schedule 3 to S.I. 2008/2833. Section 336(1) was amended by paragraphs 127, 133(a)(i) and 133(a)(ii) of Schedule 3 to S.I. 2008/2833. Section 336(2) was amended by Schedules 8 and 9 to the Special Educational Needs and Disability Act 2001, and further amended by S.I. 2008/2833 and section 7 of the Education (Wales) Measure 2009. Section 336(2A) was inserted by section 42(1) of, and Schedule 8 to, the Special Education Needs and Disability Act 2001 and amended by S.I. 2008/2833. Section 336(4A) was inserted by section 42(1) of, and Schedule 8 to, the Special Education Needs and Disability Act 2001 and amended by S.I. 2008/2833 and S.I. 2010/2279. Section 336A was inserted by section 4 of the Special Educational Needs and Disability Act 2001. Subsection (1) of that section was amended by S.I 2010/1158. Subsection (2) was substituted by paragraphs 1 and 6 of Schedule 18 to the Education Act 2002 and subsection (2)(b) amended by paragraphs 127 and 136(b) of Schedule 3 to S.I. 2008/2833. Section 569(4) was amended by section 8 of the Education (Wales) Measure 2009.

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

(**3**) 2010 c. 15.

(**4**) 2007 c. 15.

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(**5**);

"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;

(**5**) 2009 nawm 5. The Education (Wales) Measure 2009 was approved by Her Majesty in Council on 9 December 2009.

"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(**6**);

"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" ("*gwrandawiad*") 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(**7**);

"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;

"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(**8**);

"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;

(**6**) 2000 c. 7.

(**7**) 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.

(**8**) 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.

"Tribunal" ("*Tribiwnlys*") means Tribiwnlys Anghenion Addysgol Arbennig Cymru or the Special Educational Needs Tribunal for Wales(**9**);

"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 (**10**);

"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(**11**).

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(**12**) and the Special Educational Needs Tribunal (Amendment) Regulations 2002(**13**) 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;

(3) Subject to paragraph (4) the Special Educational Needs and Disability Tribunal (General Provisions and Disability Claims Procedure) Regulations 2002(**14**) 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(**15**).

(**9**) Section 333 (1ZA) of the 1996 Act.
(**10**) 2007 c. 15.
(**11**) 1971 c. 80.
(**12**) S.I. 2001/600.
(**13**) S.I. 2002/2787.
(**14**) S.I. 2002/1985.
(**15**) 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.

(5) Subject to paragraphs (2)(b) and (4)(b), the Special Educational Needs Tribunal (Time Limits) (Wales) Regulations 2001(**16**) 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.

(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;

(**16**) S.I. 2001/3982.