



Disability Discrimination Act 1995

1995 CHAPTER 50

PART IV

EDUCATION

[^{F1}CHAPTER 1

SCHOOLS]

[^{F1}Enforcement: England and Wales]

Textual Amendments

F1 Pt. IV Ch. 1: Cross-heading and s. 28H inserted (E.W.S.) (1.9.2002) by 2001 c. 10, s. 17(1) (with s. 43(13)); S.I. 2002/2217, art. 3, Sch. 1 Pt. 1

^{F3}28H [[^{F2}Tribunals]]

- (1) The Special Educational Needs Tribunal—
- is to continue to exist; but
 - after the commencement date is to be known as the Special Educational Needs and Disability Tribunal.

[^{F4}(2) In this Chapter—

“the Tribunal” means the Special Educational Needs and Disability Tribunal, and

“the Welsh Tribunal” means the Special Educational Needs Tribunal for Wales.

- (3) In addition to the jurisdiction of those tribunals under Part 4 of the Education Act 1996, each of them is to exercise the jurisdiction conferred on it by this Chapter.]

Status: Point in time view as at 01/09/2003. This version of this cross heading contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Disability Discrimination Act 1995, Cross Heading: Enforcement: England and Wales. (See end of Document for details)

- (3) In addition to its jurisdiction under Part 4 of the Education Act 1996, the Tribunal is to exercise the jurisdiction conferred on it by this Chapter.
- (4) “Commencement date” means the day on which section 17 of the Special Educational Needs and Disability Act 2001 comes into force.

Textual Amendments

- F2** S. 28H heading substituted (31.3.2003 for certain purposes otherwise 1.9.2003) by 2002 c. 32, s. 195, **Sch. 18 para. 8(2)** (with ss. 210(8), 214(4), Sch. 18 para. 17); S.I. 2002/3185, arts. 5, 6, Sch. Pt. II, **III**
- F3** S. 28H inserted (E.W.S.) (1.9.2002) by 2001 c. 10, s. 17(1) (with s. 43(13)); S.I. 2002/2217, art. 3, **Sch. 1 Pt. 1**
- F4** S. 28H(2)(3) substituted (31.3.2003 for certain purposes otherwise 1.9.2003) by 2002 c. 32, s. 195, **Sch. 18 para. 8(1)** (with ss. 210(8), 214(4), Sch. 18 para. 17); S.I. 2002/3185, arts. 5, 6, Sch. Pt. II, **III**

[^{F5}28I Jurisdiction and powers of the Tribunal

- (1) A claim that a responsible body—
- has discriminated against a person (“A”) in a way which is made unlawful under this Chapter, or
 - is by virtue of section 58 to be treated as having discriminated against a person (“A”) in such a way,
- may be made to the [^{F6}appropriate tribunal] by A’s parent.
- (2) But this section does not apply to a claim to which section 28K or 28L applies.
- (3) If the [^{F6}appropriate tribunal] considers that a claim under subsection (1) is well founded—
- it may declare that A has been unlawfully discriminated against; and
 - if it does so, it may make such order as it considers reasonable in all the circumstances of the case.
- (4) The power conferred by subsection (3)(b)—
- may, in particular, be exercised with a view to obviating or reducing the adverse effect on the person concerned of any matter to which the claim relates; but
 - does not include power to order the payment of any sum by way of compensation.
- [Subject to regulations under section 28J(8), the appropriate tribunal—
- ^{F7}(5) (a) for a claim against the responsible body for a school in England, is the Tribunal,
- (b) for a claim against the responsible body for a school in Wales, is the Welsh Tribunal.]]

Textual Amendments

- F5** S. 28I inserted (E.W.S.) (1.9.2002) by 2001 c. 10, s. 18 (with s. 43(13)); S.I. 2002/2217, art. 3, **Sch. 1 Pt. 1**
- F6** Words in s. 28I(1)(3) substituted (1.9.2003) by 2002 c. 32, s. 195, **Sch. 18 para. 9(2)** (with ss. 210(8), 214(4), Sch. 18 para. 17); S.I. 2002/3185, art. 6, **Sch. Pt. III**

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F7 S. 28I(5) inserted (1.9.2003) by 2002 c. 32, s. 195, **Sch. 18 para. 9(3)** (with ss. 210(8), 214(4), Sch. 18 para. 17); S.I. 2002/3185, art. 6, **Sch. Pt. III**

28IA Jurisdiction and powers of the Tribunal – Wales

- (1) A claim that a responsible body for a school in Wales—
 - (a) has discriminated against a person (“the relevant person”) in a way which is made unlawful under this Chapter, or
 - (b) is by virtue of section 58 to be treated as having discriminated against the relevant person in such a way,may be made to the Welsh Tribunal by that relevant person.
- (2) But this section does not apply to a claim to which section 28K or 28L applies.
- (3) The relevant person's right to claim is exercisable concurrently with the right of the relevant person's parent under section 28I.
- (4) If the Welsh Tribunal considers that a claim under subsection (1) is well founded—
 - (a) it may declare that the relevant person has been unlawfully discriminated against, and
 - (b) if it does so, it may make such order as it considers reasonable in all the circumstances of the case.
- (5) The power conferred by subsection (4)(b)—
 - (a) may, in particular, be exercised with a view to obviating or reducing the adverse effect on the person concerned of any matter to which the claim relates, but
 - (b) does not include power to order the payment of any sum by way of compensation.
- (6) The exercise of rights under this section is subject to provision made by regulations under sections 28IB and 28J.

28IB Case friends — Wales

- (1) The Welsh Ministers may by regulations provide for—
 - (a) a disabled child in a local authority area in Wales to have a person to make representations on behalf of the disabled child with a view to avoiding or resolving disagreements about matters made unlawful under this chapter or to be treated as discrimination by virtue of section 58, and
 - (b) a relevant person (within the meaning of section 28IA) to have another person to exercise the relevant person's rights under that section on the relevant person's behalf.
- (2) A person exercising rights or making representations on behalf of a disabled child or a relevant person under subsection (1) is referred to in this Part as a “case friend”.
- (3) A case friend must—
 - (a) make representations and exercise rights fairly and competently;
 - (b) have no interest adverse to that of the disabled child or relevant person;

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- (c) ensure that all steps and decisions taken by the case friend are for the benefit of the disabled child or relevant person and take account of the disabled child or relevant person's views.
- (4) Regulations made under this section may (among other things)—
 - (a) confer functions on the Welsh Tribunal;
 - (b) make provision about procedures in relation to case friends;
 - (c) make provision about the appointment and removal of case friends;
 - (d) specify the circumstances in which a person may or may not act as a case friend;
 - (e) specify the circumstances in which a relevant person (within the meaning of section 28IA) must have a case friend;
 - (f) specify further requirements in respect of the conduct of case friends.
- (5) In this section, sections 28IC, 28ID and 28IE, a disabled child means any disabled person who is a pupil (or a prospective pupil) of—
 - (a) a maintained school or maintained nursery school,
 - (b) a pupil referral unit,
 - (c) an independent school, or
 - (d) a special school not maintained by a local authority.
- (6) In this section, sections 28IC, 28ID and 28IE "local authority" has the meaning given by section 579(1) of the Education Act 1996.

28IC Advice and information — Wales

- (1) A local authority in Wales must arrange for any disabled child in their 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 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 authority must take such steps as they consider appropriate for making the services provided under subsection (1) known to—
 - (a) disabled children in their area,
 - (b) parents of disabled children in their area,
 - (c) head teachers and proprietors of schools in their area, and
 - (d) such other persons as they consider appropriate.

28ID Resolution of disputes — Wales

- (1) A local authority in Wales must make arrangements with a view to avoiding or resolving disagreements between responsible bodies and disabled children in their area about matters made unlawful under this chapter or to be treated as discrimination by virtue of section 58.
- (2) The arrangements must provide for the appointment of independent persons with the functions of facilitating the avoidance or resolution of such disagreements.

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- (3) In making the arrangements, the 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 authority must take such steps as they consider appropriate for making the arrangements under subsection (1) known to—
 - (a) disabled children in their area,
 - (b) parents of disabled children in their area,
 - (c) head teachers and proprietors of schools in their area, and
 - (d) such other persons as they consider appropriate.
- (6) The arrangements cannot affect the entitlement of any person to make a claim to the Welsh Tribunal, and the authority must take such steps as they consider appropriate to make that fact known to disabled children, to parents of disabled children and to case friends for disabled children in their area.

28IE Independent advocacy services — Wales

- (1) Every local authority in Wales must—
 - (a) make arrangements for the provision of independent advocacy services in their area;
 - (b) refer any disabled child in their area who requests independent advocacy services to a service provider;
 - (c) refer any person who is a case friend for a disabled child in their area and who requests independent advocacy services to a service provider.
- (2) In this section “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—
 - (i) has discriminated against that child in a way which is unlawful under this Chapter, or
 - (ii) is by virtue of section 58 to be treated as having discriminated against that child in such a way; 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 section 28ID.
- (3) In making arrangements under this section, every local education 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 Welsh 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 they consider appropriate for making the arrangements under this section known to—
 - (a) disabled children in their area,
 - (b) parents of disabled children in their area,

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- (c) head teachers and proprietors of schools in their area, and
 - (d) such other persons as they consider 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.

[^{F8}28J Procedure

- (1) Regulations may make provision about—
- (a) the proceedings of the Tribunal on a claim of unlawful discrimination under this Chapter; and
 - (b) the making of a claim.
- (2) The regulations may, in particular, include provision—
- (a) as to the manner in which a claim must be made;
 - (b) if the jurisdiction of the Tribunal is being exercised by more than one tribunal—
 - (i) for determining by which tribunal any claim is to be heard, and
 - (ii) for the transfer of proceedings from one tribunal to another;
 - (c) for enabling functions which relate to matters preliminary or incidental to a claim (including, in particular, decisions under paragraph 10(3) of Schedule 3) to be performed by the President, or by the chairman;
 - (d) enabling hearings to be conducted in the absence of any member other than the chairman;
 - (e) as to the persons who may appear on behalf of the parties;
 - (f) for granting any person such disclosure or inspection of documents or right to further particulars as might be granted by a county court;
 - (g) requiring persons to attend to give evidence and produce documents;
 - (h) for authorising the administration of oaths to witnesses;
 - (i) for the determination of claims without a hearing in prescribed circumstances;
 - (j) as to the withdrawal of claims;
 - (k) for enabling the Tribunal to stay proceedings on a claim;
 - (l) for the award of costs or expenses;
 - (m) for taxing or otherwise settling costs or expenses (and, in particular, for enabling costs to be taxed in the county court);
 - (n) for the registration and proof of decisions and orders; and
 - (o) for enabling prescribed decisions to be reviewed, or prescribed orders to be varied or revoked, in such circumstances as may be determined in accordance with the regulations.

[If made with the agreement of the National Assembly, the regulations apply to the ^{F9}(2A) Welsh Tribunal as they apply to the Tribunal, subject to such modifications as may be specified in the regulations.]

- (3) Proceedings before the Tribunal [^{F10}or the Welsh Tribunal] are to be held in private, except in prescribed circumstances.

^{F11}(4)

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- (5) The Secretary of State may pay such allowances for the purpose of or in connection with the attendance of persons at the Tribunal [^{F10}or the Welsh Tribunal] as he may, with the consent of the Treasury, determine.
- (6) In relation to [^{F12}the Welsh Tribunal], the power conferred by subsection (5) may be exercised only with the agreement of the National Assembly.
- (7) Part 1 of the Arbitration Act 1996 does not apply to proceedings before the Tribunal [^{F10}or the Welsh Tribunal] but regulations may make provision, in relation to such proceedings, corresponding to any provision of that Part.
- (8) The regulations may make provision for a claim under this Chapter to be heard, in prescribed circumstances, with an appeal under Part 4 of the Education Act 1996 [^{F13}, including provision—
 - (a) for determining the appropriate tribunal for the purposes of section 28I for such a claim, and
 - (b) for the transfer of proceedings between the Tribunal and the Welsh Tribunal.]
- (9) A person who without reasonable excuse fails to comply with—
 - (a) a requirement in respect of the disclosure or inspection of documents imposed by the regulations by virtue of subsection (2)(f), or
 - (b) a requirement imposed by the regulations by virtue of subsection (2)(g),is guilty of an offence.
- (10) A person guilty of an offence under subsection (9) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (11) Part 3 of Schedule 3 makes further provision about enforcement of this Chapter and about procedure.]

Textual Amendments

- F8** S. 28J inserted (E.W.S.) (1.7.2002 for certain purposes otherwise 1.9.2002) by 2001 c. 10, s. 19(1) (with s. 43(13)); S.I. 2002/1721, art. 3, **Sch. Pt. I**; S.I. 2002/2217, art. 3, **Sch. 1 Pt. I**
- F9** S. 28J(2A) inserted (1.9.2003) by 2002 c. 32, s. 195, **Sch. 18 para. 10(2)** (with ss. 210(8), 214(4), Sch. 18 para. 17); S.I. 2002/3185, art. 6, **Sch. Pt. III**
- F10** Words in s. 28J(3)(5)(7) inserted (1.9.2003) by 2002 c. 32, s. 195, **Sch. 18 para. 10(3)(5)(7)** (with ss. 210(8), 214(4), Sch. 18 para. 17); S.I. 2002/3185, art. 6, **Sch. Pt. III**
- F11** S. 28J(4) repealed (1.9.2003) by 2002 c. 32, ss. 195, 215(2), Sch. 18 para. 10(4), **Sch. 22 Pt. II** (with ss. 210(8), 214(4), Sch. 18 para. 17); S.I. 2002/3185, art. 6, **Sch. Pt. III**
- F12** Words in s. 28J(6) substituted (1.9.2003) by 2002 c. 32, s. 195, **Sch. 18 para. 10(6)** (with ss. 210(8), 214(4), Sch. 18 para. 17); S.I. 2002/3185, art. 6, **Sch. Pt. III**
- F13** S. 28J(8)(a)(b) and the preceding words inserted (1.9.2003) by 2002 c. 32, s. 195, **Sch. 18 para. 10(8)** (with ss. 210(8), 214(4), Sch. 18 para. 17); S.I. 2002/3185, art. 6, **Sch. Pt. III**

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VALID FROM 03/11/2008

[^{F14}28JA Appeal from the Welsh Tribunal to the Upper Tribunal

- (1) A party to any proceedings under this Chapter 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 subsection (1) only if, on an application made by the party concerned, the Welsh Tribunal or the Upper Tribunal has given its permission for the appeal to be brought.
- (3) Section 12 of the Tribunals, Courts and Enforcement Act 2007 (proceedings on appeal to Upper Tribunal) applies in relation to appeals to the Upper Tribunal under this section 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.]

Textual Amendments

F14 S. 28JA inserted (E.W.S.) (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 9(1), **Sch. 3 para. 118**

[^{F15}28K Admissions

- (1) If the condition mentioned in subsection (2) is satisfied, this section applies to a claim in relation to an admissions decision that a responsible body—
 - (a) has discriminated against a person (“A”) in a way which is made unlawful under this Chapter; or
 - (b) is by virtue of section 58 to be treated as having discriminated against a person (“A”) in such a way.
- (2) The condition is that arrangements (“appeal arrangements”) have been made—
 - (a) under section 94 of the School Standards and Framework Act 1998, or
 - (b) under an agreement entered into between the responsible body for [^{F16}an Academy] and the Secretary of State under section 482 of the Education Act 1996,

enabling an appeal to be made against the decision by A’s parent.
- (3) The claim must be made under the appeal arrangements.
- (4) The body hearing the claim has the powers which it has in relation to an appeal under the appeal arrangements.
- (5) “Admissions decision” means—
 - (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 [^{F16}an Academy] taken by the responsible body or on its behalf.]

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Textual Amendments

- F15** S. 28K inserted (E.W.S.) (1.9.2002) by 2001 c. 10, s. 20 (with s. 43(13)); S.I. 2002/2217, art. 3, **Sch. 1 Pt. 1**
- F16** Words in s. 28K(2)(b)(5)(b) substituted (26.7.2002) by 2002 c. 32, s. 65, **Sch. 7 para. 5(3)** (with ss. 210(8), 214(4)); S.I. 2002/2002, **art. 2**

[^{F17}28L Exclusions

- (1) If the condition mentioned in subsection (2) is satisfied, this section applies to a claim in relation to an exclusion decision that a responsible body—
- has discriminated against a person (“A”) in a way which is made unlawful under this Chapter; or
 - is by virtue of section 58 to be treated as having discriminated against a person (“A”) in such a way.
- (2) The condition is that arrangements (“appeal arrangements”) have been made—
- under [^{F18}section 52(3)(c) of the Education Act 2002], or
 - under an agreement entered into between the responsible body for [^{F19}an Academy] and the Secretary of State under section 482 of the Education Act 1996,
- enabling an appeal to be made against the decision by A or by his parent.
- (3) The claim must be made under the appeal arrangements.
- (4) The body hearing the claim has the powers which it has in relation to an appeal under the appeal arrangements.
- (5) “Exclusion decision” means—
- a decision of a kind mentioned in [^{F20}section 52(3)(c) of the Education Act 2002];
 - a decision not to reinstate a pupil who has been permanently excluded from [^{F19}an Academy] by its head teacher, taken by the responsible body or on its behalf.
- (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 [^{F21}section 19 of the Education Act 2002].
- (7) “Maintained school” has the meaning given in section 28Q(5).]

Textual Amendments

- F17** S. 28L inserted (E.W.S.) (1.9.2002) by 2001 c. 10, s. 21 (with s. 43(13)); S.I. 2002/2217, art. 3, **Sch. 1 Pt. 1**
- F18** Words in s. 28L(2)(a)(5)(a) substituted (20.1.2003 for E. and 9.1.2004 in relation to W. by 2002 c. 32, ss. 215(1), 216, Sch. 21 para. 27(2) (with ss. 210(8), 214(4)); S.I. 2002/2952, art. 2; S.I. 2003/2961, **art. 7**, Sch. Pt. 4
- F19** Words in s. 28L(2)(b)(5)(b) substituted (26.7.2002) by 2002 c. 32, s. 65, **Sch. 7 para. 5(4)** (with ss. 210(8), 214(4)); S.I. 2002/2002, **art. 2**

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- F20** Words in s. 28L(2)(a)(5)(a) substituted (20.1.2003 for E. and 1.9.2004 in relation to W. by 2002 c. 32, ss. 215(1), 216, Sch. 21 para. 27(2) (with ss. 210(8), 214(4)); S.I. 2002/2952, art. 2; S.I. 2003/2961, art. 7, Sch. Pt. 4
- F21** Words in s. 28L(6) substituted (1.9.2003 except in relation to W. and 31.10.2005 for W.) by 2002 c. 32, ss. 215(1), 216, Sch. 21 para. 27(3) (with ss. 210(8), 214(4); S.I. 2003/1667, art. 4; S.I. 2005/2910, art. 4, Sch.

[^{F22}28M Roles of the Secretary of State and the National Assembly

- (1) If the appropriate authority is satisfied (whether on a complaint or otherwise) that a responsible body—
- (a) has acted, or is proposing to act, unreasonably in the discharge of a duty imposed by or under section 28D or 28E, or
 - (b) has failed to discharge a duty imposed by or under either of those sections,
- it may give that body such directions as to the discharge of the duty as appear to it to be expedient.
- (2) Subsection (3) applies in relation to—
- (a) special schools which are not maintained special schools but which are approved by the Secretary of State, or by the National Assembly, under section 342 of the Education Act 1996; and
 - (b) city academies.
- (3) If the appropriate authority is satisfied (whether on a complaint or otherwise) that a responsible body—
- (a) has acted, or is proposing to act, unreasonably in the discharge of a duty which that body has in relation to—
 - (i) the provision to the appropriate authority of copies of that body's accessibility plan, or
 - (ii) the inspection of that plan, or
 - (b) has failed to discharge that duty,
- it may give that body such directions as to the discharge of the duty as appear to it to be expedient.
- (4) Directions may be given under subsection (1) or (3) even if the performance of the duty is contingent upon the opinion of the responsible body.
- (5) Subsection (6) applies if the Tribunal [^{F23}or the Welsh Tribunal] has made an order under section 28I(3).
- (6) If the Secretary of State is satisfied (whether on a complaint or otherwise) that the responsible body concerned—
- (a) has acted, or is proposing to act, unreasonably in complying with the order, or
 - (b) has failed to comply with the order,
- he may give that body such directions as to compliance with the order as appear to him to be expedient.
- (7) Directions given under subsection (1), (3) or (6)—
- (a) may be varied or revoked by the directing authority; and
 - (b) may be enforced, on the application of the directing authority, by a mandatory order obtained in accordance with section 31 of the Supreme Court Act 1981.

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- (8) “Appropriate authority” means—
- (a) in relation to England, the Secretary of State; and
 - (b) in relation to Wales, the National Assembly.
- (9) “Directing authority” means—
- (a) the Secretary of State in relation to a direction given by him; and
 - (b) the National Assembly in relation to a direction given by it.]

Textual Amendments

F22 S. 28M inserted (E.W.S.) (1.9.2002 for certain purposes and 8.10.2003 in so far as not already in force) by 2001 c. 10, ss. 22, 43(3) (with s. 43(13)); S.I. 2002/2217, art. 3, Sch. 1 Pt. 1; S.I. 2003/2532, **art. 2**, Sch.

F23 Words in s. 28M(5) inserted (1.9.2003) by 2002 c. 32, s. 195, **Sch. 18 para. 11** (with ss. 210(8), 214(4), Sch. 18 para. 17); S.I. 2002/3185, art. 6, **Sch. Pt. III**

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