Education (Wales) Measure 2009

2009 nawm 5

PART 1

EDUCATION APPEALS AND CLAIMS BY CHILDREN

Special educational needs appeals

1 Right of a child to appeal in respect of special educational needs

(1) The Education Act 1996 (c. 56) is amended in accordance with this section.

(2) After section 332 insert—

"Appeals by children

332ZA Right of a child to appeal to the Welsh Tribunal

(1) This section applies to the rights of a parent of a child to appeal to the Welsh Tribunal under any of the following provisions—

(a) section 325(2) (appeal against decision not to make statement);

(b) section 326(1) (appeal against contents of statement);

(c) section 328(3)(b) (reviews of educational needs);

(d) section 329(2)(b) (assessment of educational needs at request of child's parent);

(e) section 329A(8)(b) (review of assessment of educational needs at request of responsible body);

(f) paragraph 8(3)(b) of Schedule 27 (change of named school);

(g) paragraph 11(2)(b) of Schedule 27 (ceasing to maintain a statement).

(2) The child may exercise the rights conferred on the parent in respect of that child.

(3) The child's rights are exercisable concurrently with the parent's rights.

(4) The exercise of rights under this section is subject to provision made by regulations under sections 332ZC and 336(1).”.

Commencement Information

I1 S. 1 in force at 6.3.2012 by S.I. 2012/320, **art. 3(a)**

2 Notice and service of documents

(1) The Education Act 1996 (c. 56) is amended in accordance with this section.

(2) After section 332ZA insert—

“**332ZB Notice and service of documents on a child**

(1) This section applies if a **[**[F1]local authority**]** in Wales is required to give notice to or serve a document on a parent of a child under any of the following provisions—

(a) section 325 (appeal against decision not to make statement);

(b) section 328 (reviews of educational needs);

(c) section 329 (assessment of educational needs at request of child's parent);

(d) section 329A(8) (review or assessment of educational needs at request of responsible body);

(e) paragraph 3 of Schedule 26 (manner and timing of assessments);

(f) paragraph 2A of Schedule 27 (amendments to a statement);

(g) paragraph 2B(2) of Schedule 27 (provision of additional information);

(h) paragraph 6 of Schedule 27 (service of statement);

(i) paragraph 8 of Schedule 27 (change of named school);

(j) paragraph 11 of Schedule 27 (ceasing to maintain a statement).

(2) The **[**[F1]local authority**]**must give notice to, or serve the document on, the child as well as on the parent.

(3) Any provision applicable to notices given to or documents served on a parent applies equally to notices given to or documents served on a child.”.

Textual Amendments

F1 Words in Measure substituted (5.5.2010) by Local Education Authorities and Children’s Services Authorities (Integration of Functions) (Wales) Order 2010 (S.I. 2010/1148), arts. 1, **5(2)**

Commencement Information

I2 S. 2 in force at 6.3.2012 by S.I. 2012/320, **art. 3(b)**

3 Case friends

(1) The Education Act 1996 (c. 56) is amended in accordance with this section.

(2) After section 332ZB insert—

"332ZC Case friends — Wales

(1) The Welsh Ministers may provide by regulations for a child to have a person (referred to in this Part as a "case friend")—
- (a) to make representations on behalf of a child with a view to avoiding or resolving disagreements about the exercise by local education authorities in Wales of functions under this Part, and
- (b) to exercise the rights of a child under section 332ZA on the child's behalf.

(2) A child's case friend must—
- (a) make representations and exercise rights fairly and competently,
- (b) have no 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 take account of the child's views.

(3) 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 child must have a case friend;
- (f) specify further requirements in respect of the conduct of case friends.".

Commencement Information
I3 S. 3 in force at 10.2.2012 by S.I. 2012/320, **art. 2(a)**

4 Advice and information

(1) The Education Act 1996 (c. 56) is amended in accordance with this section.

(2) In section 332A (advice and information for parents)—
- (a) in the heading, after the word "parents" insert " — England ";
- (b) in subsection (1), after the words "**[**[F1]local authority**]**" insert " in England ";
- (c) in subsection (2), for "given—" substitute " given by the Secretary of State. ";
- (d) in subsection (2), omit paragraphs (a) and (b).

(3) After section 332A insert—

"332AA Advice and information — Wales

(1) A **[**[F1]local authority**]** in Wales must arrange for any child in their area with special educational needs, for a parent of any such child and for a case friend for any such child, to be provided with advice and information about matters relating to those needs.

(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) children in their area,

(b) parents of children in their area,

(c) head teachers and proprietors of schools in their area, and

(d) such other persons as they consider appropriate.”.

Textual Amendments

F1 Words in Measure substituted (5.5.2010) by Local Education Authorities and Children’s Services Authorities (Integration of Functions) (Wales) Order 2010 (S.I. 2010/1148), arts. 1, **5(2)**

Commencement Information

I4 S. 4 in force at 6.3.2012 by S.I. 2012/320, **art. 3(c)** (with art. 4(a))

5 Resolution of disputes

(1) Section 332B of the Education Act 1996 (c. 56) is amended in accordance with subsection (2).

(2) In section 332B (resolution of disputes)—

(a) in the heading, after the word “disputes” insert “ — England ”;

(b) in subsections (1) and (2), after the words “**[**[F1]local authority**]**” insert “ in England ”;

(c) in subsection (4), for “given—”substitute “ given by the Secretary of State. ”;

(d) in subsection (4), omit paragraphs (a) and (b).

(3) After section 332B insert—

“**332BA Resolution of disputes — Wales**

(1) A **[**[F1]local authority**]** in Wales must make arrangements with a view to avoiding or resolving disagreements between—

(a) authorities and children in their area about the exercise by authorities of functions under this Part, and

(b) authorities and parents of children in their area about the exercise by authorities of functions under this Part.

(2) A **[**[F1]local authority**]** in Wales must also make arrangements with a view to avoiding or resolving, in each relevant school, disagreements between—

(a) a relevant child and the proprietor of the school about the special educational provision made for that child, and

(b) the parents of a relevant child and the proprietor of the school about the special educational provision made for that child.

(3) The arrangements must provide for the appointment of independent persons with the functions of facilitating the avoidance or resolution of such disagreements.

(4) In making the arrangements, the authority must have regard to any guidance given by the Welsh Ministers.

(5) The arrangements must comply with any provisions made in regulations by the Welsh Ministers that relate to the arrangements.

(6) The authority must take such steps as they consider appropriate for making the arrangements under subsections (1) and (2) known to—

(a) children in their area,

(b) parents of children in their area,

(c) head teachers and proprietors of schools in their area, and

(d) such other persons as they consider appropriate.

(7) The arrangements cannot affect the entitlement of a child or a parent of a child to appeal to the Tribunal, and the authority must take such steps as they consider appropriate to make that fact known to children, to parents of children and to case friends for children in their area.

(8) In this section—

"authorities" means the governing bodies of maintained schools and the **[**[F1]local authority**]**;

"relevant child" means a child who has special educational needs and is a registered pupil at a relevant school.

(9) For the purposes of this section a school is a relevant school in relation to a child if it is—

(a) a maintained school or a maintained nursery school,

(b) a pupil referral unit,

(c) an independent school named in the statement maintained for the child under section 324, or

(d) a school approved under section 342.".

Textual Amendments

F1 Words in Measure substituted (5.5.2010) by Local Education Authorities and Children's Services Authorities (Integration of Functions) (Wales) Order 2010 (S.I. 2010/1148), arts. 1, **5(2)**

Commencement Information

I5 S. 5 in force at 6.3.2012 by S.I. 2012/320, **art. 3(d)** (with art. 4(b))

6 Independent advocacy services

(1) The Education Act 1996 (c. 56) is amended in accordance with this section.

(2) After section 332BA insert the following—

***Changes to legislation:** There are currently no known outstanding effects for the Education (Wales) Measure 2009, Cross Heading: Special educational needs appeals. (See end of Document for details)*

"332BB Independent advocacy services — Wales

(1) Every **[**[F1]local authority**]** in Wales must—

(a) make arrangements for the provision of independent advocacy services in their area;

(b) refer any child in their area who requests independent advocacy services to a service provider;

(c) refer any person who is a case friend for a 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 child—

(a) making, or intending to make an appeal to the Tribunal under section 332ZA, or

(b) considering whether to appeal to the Tribunal under that section, or

(c) taking part in or intending to take part in dispute resolution arrangements made under section 332BA.

(3) In making arrangements under this section, every **[**[F1]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 an appeal to the Tribunal, or

(b) involved in investigating or adjudicating on such an appeal.

(4) The arrangements must comply with any provisions made in regulations by the Welsh Ministers that relate to the arrangements.

(5) Every **[**[F1]local authority**]** in Wales must take such steps as they consider appropriate for making the arrangements under this section known to—

(a) children in their area,

(b) parents of 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 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 **[**[F1]local authority**]** must have regard to any guidance given from time to time by the Welsh Ministers.".

Textual Amendments

F1 Words in Measure substituted (5.5.2010) by Local Education Authorities and Children's Services Authorities (Integration of Functions) (Wales) Order 2010 (S.I. 2010/1148), arts. 1, **5(2)**

Commencement Information

I6 S. 6 in force at 6.3.2012 by S.I. 2012/320, **art. 3(e)**

7 Tribunal procedure

(1) Section 336 of The Education Act 1996 (c. 56) is amended in accordance with this section.

(2) At the end of subsection (2)(n), leave out "and".

(3) After subsection (2)(o) insert—

"(p) enabling the Welsh Tribunal to stay proceedings on an appeal, and

(q) for adding and substituting parties.".

Commencement Information

I7 S. 7 in force at 10.2.2012 by S.I. 2012/320, **art. 2(b)**

8 Procedures for making regulations

(1) Section 569 (regulations) of the Education Act 1996 (c. 56) is amended in accordance with this section.

(2) In subsection (1), after "Secretary of State" insert " or the Welsh Ministers ".

(3) In subsection (2), after "Act" insert " made by the Secretary of State ".

(4) After subsection (2A) insert—

"(2B) A statutory instrument containing regulations under sections 332ZC, 332AA, 332BA, 332BB or 336 made by the Welsh Ministers is subject to annulment in pursuance of a resolution of the National Assembly for Wales.

(2C) Paragraphs 33 to 35 of Schedule 11 to the Government of Wales Act 2006 make provision about the National Assembly for Wales procedures that apply to any statutory instrument containing regulations or an order made in exercise of functions conferred upon the Secretary of State or the National Assembly for Wales by this Act that have been transferred to the Welsh Ministers by virtue of paragraph 30 of that Schedule.".

(5) In subsection (4) after "thinks fit" insert " or the Welsh Ministers think fit ".

Commencement Information

I8 S. 8 in force at 10.2.2012 by S.I. 2012/320, **art. 2(c)**

Changes to legislation:
There are currently no known outstanding effects for the Education (Wales) Measure 2009, Cross Heading: Special educational needs appeals.