

EDUCATION (WALES) MEASURE 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Education Appeals and Claims by Children

Special educational needs appeals

Sections 1- 8 insert new provisions into the Education Act 1996

Section 1 – Right of a child to appeal to the Tribunal in respect of special educational needs (inserting a new section 332ZA into the Education Act 1996)>

5. Subsection (1) of the new section 332ZA specifies existing grounds on which a parent of a child with SEN may appeal to the Tribunal.
6. Subsection (2) provides that a child may appeal to the Tribunal in relation to the existing grounds on which the child’s parent may appeal.
7. Subsection (3) permits a parent and child to appeal at the same time whether on the same or on different grounds.
8. Subsection (4) provides that the exercise of rights granted under this section is subject to any provisions made by regulations under sections 332ZC and 336(1) of the Education Act 1996.

Section 2 – Notice and service of documents on a child (inserting a new section 332ZB into the Education Act 1996)

9. Subsection (1) of the new section 332ZB specifies various circumstances when a Local Education Authority must give notice to, or serve a document on, a parent of a child.
10. Subsection (2) places a duty on a Local Education Authority to give notice to, or serve a document on, the child as well as the parent.
11. Subsection (3) requires that any provision which applies to notices given to or documents served on a parent will apply equally to notices or documents served on a child.

Section 3 – Case Friends (inserting a new section 332ZC into the Education Act 1996)

12. Subsection (1) of the new section 332ZC allows regulations to be made by the Welsh Ministers that provide for a child to have a person (known as a “case friend”) to make representations on behalf of the child to avoid or resolve disputes with the Local Education Authority, or to exercise a child’s right of appeal on behalf of the child.
13. Subsection (2) sets out the duties of a case friend when making representations or making an appeal on behalf of a child.
14. Subsection (3) provides that regulations made by the Welsh Ministers under this section may (among other things) confer functions on the Tribunal and set up procedures in

relation to case friends. Regulations may also make provision about the appointment or removal of a case friend, specify circumstances in which a person may or may not act as a case friend, specify circumstances in which a child must have a case friend, and specify requirements in respect of a case friend's conduct.

Section 4 - Advice and information (amending section 332A and inserting a new section 332AA into the Education Act 1996)

15. Section 332A of the Education Act 1996 is amended so that it applies to England only.
16. A new section 332AA is inserted into the Education Act 1996.
17. Subsection (1) of the new section places a duty on Local Education Authorities in Wales to arrange for any child in their area with SEN, and any parent or case friend of such child, to be provided with appropriate advice and information about matters relating to the child's SEN.
18. Subsection (2) requires Local Education Authorities to have regard to any guidance given by the Welsh Ministers when making arrangements to provide advice and information to children, their parents or case friends.
19. Subsection (3) requires Local Education Authorities to comply with any regulations made by the Welsh Ministers that relate to advice and information arrangements.
20. Subsection (4) places a duty on Local Education Authorities to make children, parents, head teachers and proprietors of schools in their area, and such other persons as they consider appropriate, aware that advice and information services are available.

Section 5 - Resolution of disputes (amending section 332B and inserting a new section 332BA into the Education Act 1996)

21. Section 332B of the Education Act 1996 is amended so that it applies to England only.
22. A new section 332BA is inserted into the Education Act 1996.
23. Subsection (1) of the new section places a duty on Local Education Authorities in Wales to make arrangements to provide independent dispute resolution services to avoid or resolve disagreements between the Local Education Authority and a child and the Local Education Authority and a parent of a child.
24. Subsection (2) obliges Local Education Authorities to make arrangements to provide independent dispute resolution services with a view to avoiding or resolving disputes between a child and the proprietor of a school and a parent and the proprietor of a school.
25. Subsection (3) requires Local Education Authorities to make arrangements that provide for the appointment of an independent person to help avoid or resolve disputes.
26. Subsection (4) requires Local Education Authorities to have regard to any guidance given by the Welsh Ministers when making arrangements to provide dispute resolution services.
27. Subsection (5) requires Local Education Authorities to comply with any provision made in regulations by the Welsh Ministers that relate to dispute resolution services.
28. Subsection (6) places a duty on Local Education Authorities to make children, parents, head teachers and proprietors of schools in their area, and such other persons as they consider appropriate, aware that dispute resolution services are available.
29. Subsection (7) requires Local Education Authorities to notify children, parents and case friends for children in their area that participation in dispute resolution arrangements will not affect a parent or a child's entitlement to appeal to the Tribunal.

Section 6 - Independent advocacy services (inserting a new section 332BB into the Education Act 1996)

30. Subsection (1) of the new section 332BB places a duty on Local Education Authorities in Wales to arrange for an independent advocacy service to be available in their area, and for a child or a case friend for a child to be referred to the service should they request it.
31. Subsection (2) defines “independent advocacy services” as services intended to provide advice and assistance to a child who is considering whether to appeal to the Tribunal, who has made or intends to make an appeal, or who is taking part in or intending to take part in dispute resolution arrangements.
32. Subsection (3) requires Local Education Authorities when making advocacy services arrangements, to have regard to the principle that the advocacy service must be independent of any person who is the subject of an appeal or involved in investigating or adjudicating on the appeal.
33. Subsection (4) requires Local Education Authorities to comply with any regulations made by the Welsh Ministers that relate to advocacy services arrangements.
34. Subsection (5) places a duty on Local Education Authorities to make children, parents, head teachers and proprietors of schools in their area, and such other persons as they consider appropriate, aware that independent advocacy services are available.
35. Subsection (6) allows a Local Education Authority to make arrangements that provide for payment to be made to, or in relation to, a person who provides independent advocacy services to a child or case friend.
36. Subsection (7) requires Local Education Authorities to have regard to any guidance given by the Welsh Ministers when making arrangements to provide independent advocacy services to children or case friends.

Section 7 - Tribunal procedure

37. This section amends section 336 of the Education Act 1996 which gives the Welsh Ministers the power to make regulations about Tribunal proceedings.
38. Subsection (3) adds additional paragraphs to section 336(2) to enable the Welsh Ministers to postpone proceedings in certain circumstances and to add or substitute parties in appeal proceedings.

Section 8 - Procedure for making regulations (amending section 569 of the Education Act 1996 and inserting a new section 569(2A) and (2B) into that Act)

39. This section amends section 569 of the Education Act 1996 which makes provision in relation to regulations.
40. Subsection (2) amends section 569(1) of the Education Act 1996 to specify that any power of the Welsh Ministers to make regulations must be exercised by statutory instrument.
41. Subsection (4) inserts new subsections (2A) and (2B). Subsection (2A) prescribes that regulations made under sections 332ZC, 332AA, 332BA, 332BB and 336 will be subject to the negative resolution procedure. Subsection (2B) is a signpost to the effect of paragraphs 33 to 35 of Schedule 11 to the Government of Wales Act 2006, which deal with the Assembly procedures that apply to subordinate legislation made under powers in the Education Act 1996 and other Acts that were transferred to the Welsh Ministers by the 2006 Act.