



# Education (Wales) Measure 2009

## 2009 nawm 5

A Measure of the National Assembly for Wales to make provision for children to have a right of appeal in respect of special educational needs, and a right to make a claim in respect of disability discrimination in schools, to the Special Educational Needs Tribunal for Wales; to make provision for the following in relation to special educational needs and disability discrimination in schools: advice and information services, arrangements for dispute resolution other than by appeals and claims to the Special Educational Needs Tribunal for Wales, and independent advocacy services; to make provision for piloting of the provisions of Part 1 of this Measure; to make provision about the curriculum in schools in Wales; and for connected purposes.

**This Measure, passed by the National Assembly for Wales on 3 November 2009 and approved by Her Majesty in Council on 9 December, enacts the following provisions:—**

### 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—

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- (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).”.

## 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 local education 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 local education 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.”.

### 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.”.

### 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 “local education 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 local education 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.

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- (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.”.

## 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 “local education 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 local education 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 local education 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.

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- (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 local education 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.”.

## **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—

### **“332BB Independent advocacy services — Wales**

- (1) Every local education 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.

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- (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 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 local education 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 local education authority must have regard to any guidance given from time to time by the Welsh Ministers.”.

## 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.”.

## 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”.

### *Disability discrimination claims*

## **9 Right of a child to make a disability discrimination claim**

- (1) In section 28I of the Disability Discrimination Act 1995 (c. 50), in the heading, after “Tribunal” insert “— England and Wales”.
- (2) After section 28I of that Act insert—

### **“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.”.

## **10 Case friends**

After section 28IA of the Disability Discrimination Act 1995 (c. 50) insert—

### **“28IB Case friends — Wales**

- (1) The Welsh Ministers may by regulations provide for—

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- (a) a disabled child in a local education 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;
  - (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 education authority.”.

## 11 Advice and information

After section 28IB of the Disability Discrimination Act 1995 (c. 50) insert—

### “28IC Advice and information — Wales

- (1) A local education 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.”.

## 12 Resolution of disputes

After section 28IC of the Disability Discrimination Act 1995 (c. 50) insert—

### “28ID Resolution of disputes — Wales

- (1) A local education 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.
- (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.”.

## 13 Independent advocacy services

After section 28ID of the Disability Discrimination Act 1995 (c. 50) insert—

### “28IE Independent advocacy services — Wales

- (1) Every local education 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;

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- (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 education 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,
  - (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 education authority must have regard to any guidance given from time to time by the Welsh Ministers.”.

## 14 Tribunal Procedure

- (1) Section 28J (procedure) of the Disability Discrimination Act 1995 (c. 50) is amended in accordance with this section.
- (2) In subsection (1), for “Regulations may, with the agreement of the Welsh Ministers, make provision” substitute “The Welsh Ministers may make provision by regulations”.
- (3) After subsection (2)(d) insert—
  - “(da) for adding and substituting parties.”.
- (4) In subsection (5)—
  - (a) for “The Secretary of State may, with the agreement of the Welsh Ministers,” substitute “The Welsh Ministers may”,
  - (b) for “as he may” substitute “as they may”,

- (c) omit the words “, with the consent of the Treasury.”.
- (5) In subsection 8(a) omit “, and”.
- (6) Omit subsection (8)(b).

## **15 Role of the Welsh Ministers**

- (1) Section 28M (roles of the Secretary of State and the Welsh Ministers) of the Disability Discrimination Act 1995 (c. 50) is amended in accordance with this section.
- (2) After subsection (1) insert—
  - “(1A) If the Welsh Ministers are satisfied (whether on a complaint or otherwise) that a local education authority—
    - (a) has acted, or is proposing to act, unreasonably in the discharge of a duty imposed by or under sections 28IC, 28ID or 28IE, or
    - (b) has failed to discharge a duty imposed by or under any of those sections,they may give that body such directions as to the discharge of the duty as appear to them to be expedient.”.
- (3) In subsection (4), after “(1)” insert “, (1A)”.
- (4) In subsection (5), omit the words “or the Welsh Tribunal”.
- (5) After subsection (6) insert—
  - “(6A) Subsection (6B) applies if the Welsh Tribunal has made an order under section 28I(3) or section 28IA(4).
  - (6B) If the Welsh Ministers are 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,they may give that body such directions as to compliance with the order as appear to them to be expedient.”.
- (6) In subsection (7), after “(1),” insert “(1A),” delete the word “or” the first time that word appears, and after “(6)” insert “or (6B)”.

## **16 Procedures for making regulations**

In section 67 (regulations and orders) of the Disability Discrimination Act 1995 (c. 50), after subsection (5A) insert—

- “(5B) A statutory instrument containing regulations under sections 28IB, 28IC, 28ID, 28IE or 28J is subject to annulment in pursuance of a resolution of the National Assembly for Wales.”.

### *Piloting*

#### **17 Piloting the rights of a child to appeal or make a claim**

- (1) The Welsh Ministers may by regulations provide for the piloting of the provisions of the Education Act 1996 (c. 56) and the Disability Discrimination Act 1995 (c. 50) as amended by this Part for a period specified in the regulations of up to 40 months (“the pilot period”).
- (2) Regulations under subsection (1) may provide (among other things)—
  - (a) that the rights of a child conferred by amendments made to the Education Act 1996 by this Part apply only to children for whom specified local authorities are responsible;
  - (b) that any duty imposed on a local authority by amendments made to the Education Act 1996 by this Part applies only to specified local authorities;
  - (c) that the rights of a person conferred by amendments made to the Disability Discrimination Act 1995 by this Part apply only to a body responsible for a school in specified areas;
  - (d) that any duty imposed on a local authority by amendments made to the Disability Discrimination Act 1995 by this Part applies only to specified local authorities;
  - (e) for reports or other information on the operation of piloted provisions to be provided to the Welsh Ministers by the Welsh Tribunal, local authorities specified under paragraphs (a), (b) or (d) or bodies responsible for schools in areas specified under paragraph (c).
- (3) The Welsh Ministers must—
  - (a) publish a report of how the piloted provisions were implemented and how effective they were in promoting the well-being of children, and
  - (b) lay a copy of the report before the National Assembly for Wales.
- (4) A report under subsection (3) may be laid before the National Assembly for Wales before the end of the pilot period; but it may not be laid on a date less than 12 months after the start of the pilot period.
- (5) A report under subsection (3) must be laid before the National Assembly for Wales no later than 30 months after regulations under this section come into force.

#### **18 Power to make provision about appeals and claims by a child**

- (1) The Welsh Ministers may by order make provision about—
  - (a) the rights of a child to appeal to the Welsh Tribunal in respect of matters for which a parent has a right to appeal under Part 4 of the Education Act 1996;
  - (b) the right of a person to make a claim to the Welsh Tribunal in respect of matters for which a parent of that person has a right to make a claim under section 28I of the Disability Discrimination Act 1995;
  - (c) any matter connected to such rights;
  - (d) provision of advice and information to children about matters relating to special educational needs;
  - (e) provision of advice and information to disabled children about matters relating to disability discrimination in schools;

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- (f) advocacy services about special educational needs or disability discrimination in schools;
  - (g) arrangements with a view to avoiding or resolving disagreements between—
    - (i) a local education authority (on the one hand) and a child (on the other) about the exercise by authorities of functions under Part 4 of the Education Act 1996;
    - (ii) the proprietor of a relevant school (on the one hand) and a child (on the other) about special educational provision (within the meaning of section 312(4) of the Education Act 1996);
    - (iii) a body responsible for a school (on the one hand) and a disabled child (on the other) about disability discrimination.
- (2) The power to make an order under subsection (1) includes power—
- (a) to add, remove or modify rights;
  - (b) to amend or repeal provisions of Part 4 of the Education Act 1996;
  - (c) to amend or repeal provisions of Part 4 of the Disability Discrimination Act 1995;
  - (d) to make consequential amendments and repeals to provisions in those Acts.
- (3) The power to make an order under this section may not be exercised—
- (a) before a report is laid before the National Assembly for Wales under section 17(3), or
  - (b) after a period of 24 months from the last day of the pilot period specified in regulations under section 17(1).

## **19 Interpretation of sections 17 and 18**

- (1) In sections 17 and 18—
- “child” (“plentyn”) includes any person who has not attained the age of 19 and is a registered pupil at a school;
  - “disabled child” (“plentyn anabl”) has the same meaning as in section 28IB of the Disability Discrimination Act 1995;
  - “local authorities” (“awdurdodau lleol”) means local education authorities in Wales;
  - “maintained school” (“ysgol a gynhelir”) means any community, foundation or voluntary school or any community or foundation special school not established in a hospital;
  - “maintained nursery school” (“ysgol feithrin a gynhelir”) means a nursery school which is maintained by a local education authority and which is not a special school;
  - “parent” (“rhiant”) has the meaning given in section 576 of the Education Act 1996;
  - “proprietor” (“perchennog”) in relation to a school means the person or body of persons responsible for the management of the school (so that in relation to a community, foundation or voluntary school or a community or foundation special school, or a maintained nursery school, it means the governing body);
  - “relevant school” (“ysgol berthnasol”) means—
    - (a) a maintained school or a maintained nursery school,
    - (b) a pupil referral unit,

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- (c) an independent school named in the statement maintained for the child under section 324 of the Education Act 1996, or
  - (d) a school approved under section 342 of the Education Act 1996;
- “Welsh Tribunal” (“Tribiwnlys Cymru”) means the Special Educational Needs Tribunal for Wales.
- (2) The body responsible for a school is to be determined for the purposes of section 17(2)(c) and 18(1)(g)(iii) in accordance with paragraph 1 of Schedule 4A to the Disability Discrimination Act 1995.
  - (3) A local authority is responsible for a child for the purposes of section 17(2)(a) if the child is in its area and—
    - (a) the child is a registered pupil at a maintained school or a maintained nursery school,
    - (b) education is provided for the child at a school which is not a maintained school or maintained nursery school, but is so provided at the expense of the authority,
    - (c) the child does not come within (a) or (b), but is a registered pupil at a school and has been brought to its attention as having (or probably having) special educational needs, or
    - (d) the child is not a registered pupil at a school, but is not under the age of two or over compulsory school age and has been brought to its attention as having (or probably having) special educational needs.

*Future repeal and re-enactment of the Disability Discrimination Act 1995*

## **20 Powers on repeal and re-enactment of the Disability Discrimination Act 1995**

- (1) This section applies if Part 4 of the Disability Discrimination Act 1995 is repealed and re-enacted (with or without modification) by an Act of Parliament.
- (2) In subsection (1) “repealed and re-enacted” includes repeal and re-enactment prior to commencement of the repeal and re-enactment.
- (3) The Welsh Ministers may by order—
  - (a) make provision corresponding to provision made by sections 9 to 16 of this Measure, and
  - (b) make such other provision as they consider appropriate in consequence of any provision made under paragraph (a).
- (4) The power conferred by subsection (3) includes power to amend or repeal any enactment (whenever passed or made), including any provision of this Measure.
- (5) In this section “enactment” includes an enactment comprised in subordinate legislation, within the meaning of the Interpretation Act 1978 (c. 30).

## PART 2

### MISCELLANEOUS AND GENERAL

#### *Amendments to Part 7 of the Education Act 2002*

#### **21 Foundation phase**

- (1) The Education Act 2002 (c. 32) is amended in accordance with this section.
- (2) In section 97 (interpretation of Part 7)—
  - (a) in the definition of “assessment arrangements”, for “stage”, each time it appears, substitute “phase”;
  - (b) in the definition of “desirable outcomes”, for “foundation stage” substitute “foundation phase”;
  - (c) in the definition of “the foundation stage”, for “stage” substitute “phase”.
- (3) In section 102 (including the heading), for “foundation stage”, each time those words appear, substitute “foundation phase”.
- (4) In section 103, omit subsection (1)(a).
- (5) In section 104 (including the heading), for “foundation stage”, each time those words appear, substitute “foundation phase”.
- (6) In section 105 (including in the heading), omit the word “first,” each time it appears.
- (7) In section 108—
  - (a) for “foundation stage”, each time those words appear, substitute “foundation phase”;
  - (b) in subsection (3), omit the word “first,”.
- (8) In section 110 for “foundation stage”, each time those words appear, substitute “foundation phase”.

#### *Amendments to the Learning and Skills Act 2000*

#### **22 Local curriculum entitlements for students aged 16 to 18**

- (1) The Learning and Skills Act 2000 (c. 21) is amended in accordance with this section.
- (2) In section 33F(1)(a), for “ceases to be” substitute “was not at the beginning of the entitlement period, or subsequently ceases to be,”.
- (3) For the definition of “academic year” in section 33N(1), substitute the following—

““academic year” means the period beginning on the fourth Monday of September in any year and ending on the first day of September in the following year;”.

*General***23 Minor and consequential amendments**

The Schedule contains minor and consequential amendments.

**24 Orders and regulations**

- (1) Any power of the Welsh Ministers to make an order or regulations under this Measure is exercisable by statutory instrument.
- (2) Any power of the Welsh Ministers to make an order or regulations under this Measure includes power—
  - (a) to make different provision for different cases or areas;
  - (b) to make provision generally or in relation to specific cases;
  - (c) to make such incidental, supplementary, transitory, transitional or saving provision as the Welsh Ministers think fit.
- (3) Any statutory instrument containing regulations made under section 17(1) is subject to annulment in pursuance of a resolution of the National Assembly for Wales.
- (4) A statutory instrument containing an order under section 18 or 20 may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales.

**25 Orders under section 18: procedure**

- (1) Before the Welsh Ministers make an order under section 18 they must—
  - (a) consult such persons as appear to them to be representative of interests affected by their proposals;
  - (b) have regard to the findings of their report under section 17(3).
- (2) If, following consultation under subsection (1), the Welsh Ministers propose to make an order under section 18 they must lay before the National Assembly for Wales a document including—
  - (a) an explanation of the proposals,
  - (b) a draft of the proposed order, and
  - (c) details of the consultation under subsection (1)(a).
- (3) Where a document is laid before the National Assembly for Wales under subsection (2), a draft of an order under section 18 to give effect to the proposals (with or without modification) must not be laid before the Assembly until after the expiry of the period of sixty days beginning with the day on which the document was laid.
- (4) In calculating the period mentioned in subsection (3) no account is to be taken of any time during which the National Assembly for Wales is dissolved or is in recess for more than four days.
- (5) In preparing a draft order under section 18 the Welsh Ministers must consider any representations made during the period mentioned in subsection (3).
- (6) A draft order laid before the National Assembly for Wales in accordance with section 24(4) must be accompanied by a statement of the Welsh Ministers giving details of—



- (a) any representations considered in accordance with subsection (5), and
- (b) any changes made to the proposals contained in the document laid before the National Assembly for Wales under subsection (2).

## **26 Commencement**

- (1) The following provisions come into force at the end of a period of two months beginning on the day on which this Measure is approved by Her Majesty in Council—
  - section 24,
  - section 25,
  - this section,
  - section 27.
- (2) Paragraphs 10 to 12 of the Schedule come into force on the day on which this Measure is approved by Her Majesty in Council.
- (3) The remaining provisions of this Measure come into force in accordance with provision made by the Welsh Ministers by order.

## **27 Short title**

This Measure may be cited as the Education (Wales) Measure 2009.

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*Status: This is the original version (as it was originally enacted).*

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## SCHEDULE

(introduced by section 23)

### MINOR AND CONSEQUENTIAL AMENDMENTS

#### *Education Act 1996 (c. 56)*

- 1 Amend the Education Act 1996 as follows.
- 2 In section 326(4) (appeal against contents of the statement)—
  - (a) in paragraph (b), omit the full stop and after “school” insert “, or”;
  - (b) after paragraph (b) insert—
    - “(c) in the case of proceedings relating to a statement maintained by a local education authority in Wales only, the child has proposed the school in the proceedings (whether or not the parent, the local education authority or both have also proposed the school).”.
- 3 In section 326A (unopposed appeals), in subsection (1)(a), for “the parent of a child has appealed to the Tribunal under section 325, 328, 329 or 329A or paragraph 8(3) of Schedule 27 against a decision of a local education authority, and” substitute—
 

“either—

  - (i) the parent of a child has appealed to the Tribunal under section 325, 328, 329 or 329A or paragraph 8(3) of Schedule 27 against a decision of a local education authority in England or Wales, or
  - (ii) the child has appealed to the Tribunal under section 325, 328, 329 or 329A or paragraph 8(3) of Schedule 27 against a decision of a local education authority in Wales, and”.
- 4 In section 333 (constitution of Welsh Tribunal), in subsection (1ZB), for “this section and sections 334 to 336ZB” substitute “this Part”.
- 5 In Schedule 27 (making and maintenance of statements under section 324)—
  - (a) in paragraph 8(1)(b)(iv), for “the parent has appealed” substitute “there is an appeal”;
  - (b) in paragraph 11(4), for “the parent of the child appeals” substitute “there is an appeal”;
  - (c) in paragraph 11(5)(a), for “the parent of the child has appealed” substitute “there has been an appeal”.

#### *Disability Discrimination Act 1995 (c. 50)*

- 6 Amend the Disability Discrimination Act 1995 as follows.
- 7 In section 28G (residual duty: supplementary provisions), in subsection (5), after “28I,” insert “28IA,”.
- 8 In section 28P (validity and revision of agreements of responsible bodies) in subsection (2)(a), after “28I” insert “, 28IA”.
- 9 In Schedule 3 (enforcement and procedure), Part 3 (discrimination in schools)—
  - (a) in paragraph 9 (restriction on proceedings for breach of Part 4, Chapter 1), in sub-paragraph (1), after “28I,” insert “28IA,”;
  - (b) in paragraph 10 (period within which proceedings may be brought), in sub-paragraph (1), after “28I” insert “or section 28IA”;

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*Status: This is the original version (as it was originally enacted).*

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- (c) in paragraph 10(2)—
  - (i) after “28I” insert “or section 28IA”;
  - (ii) before “section 27 of the Equality Act 2006” insert “section 28ID of this Act or”;
- (d) in paragraph 10(3), after “28I” insert “or section 28IA”;
- (e) in paragraph 11 (evidence) in sub-paragraph (1B), after “28I,” insert “28IA,”.

*Education and Inspections Act 2006 (c. 40)*

10 Section 162 of the Education and Inspections Act 2006 is amended as follows.

11 For subsection (5A) substitute—

“(5A) The Welsh Ministers may by order—

- (a) make such provision as appears to them to be appropriate for the purpose of—
  - (i) repealing any reference in a Measure of the National Assembly for Wales to a local education authority (however expressed), and
  - (ii) replacing it, where it appears to them to be appropriate, with a reference (however expressed) to a Welsh local authority;
- (b) make such provision as appears to them to be appropriate in consequence of or in connection with any provision made by virtue of paragraph (a).

(5B) An order under subsection (5A) may make provision modifying any enactment whenever passed or made, and may, in particular, make provision of the kind specified in paragraphs (a) to (e) of subsection (2).”.

*After subsection (6) insert—*

12 “(7) In interpreting paragraphs (a) to (e) of subsection (2) for the purposes of subsection (5B), “statutory provision” also includes any provision of a Measure of the National Assembly for Wales, including any Measure passed after the Education (Wales) Measure 2009.”.