



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.

Status: Point in time view as at 06/03/2012.

Changes to legislation: There are currently no known outstanding effects for the Education (Wales) Measure 2009, PART 1. (See end of Document for details)

- (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.

Status: Point in time view as at 06/03/2012.

Changes to legislation: There are currently no known outstanding effects for the Education (Wales) Measure 2009, PART 1. (See end of Document for details)

(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.

Status: Point in time view as at 06/03/2012.

Changes to legislation: There are currently no known outstanding effects for the Education (Wales) Measure 2009, PART 1. (See end of Document for details)

- (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.

Status: Point in time view as at 06/03/2012.

Changes to legislation: There are currently no known outstanding effects for the Education (Wales) Measure 2009, PART 1. (See end of Document for details)

- (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—

Status: Point in time view as at 06/03/2012.

Changes to legislation: There are currently no known outstanding effects for the Education (Wales) Measure 2009, PART 1. (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)**

Status: Point in time view as at 06/03/2012.

Changes to legislation: There are currently no known outstanding effects for the Education (Wales) Measure 2009, PART 1. (See end of Document for details)

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)

Disability discrimination claims

^[F29] Right of a child to make a disability discrimination claim

- (1) Schedule 17 to the Equality Act 2010 is amended in accordance with this section.
- (2) In the heading to paragraph 3 (jurisdiction), after “*Jurisdiction*” insert “— *England and Wales*”.
- (3) After paragraph 3 insert—

Status: Point in time view as at 06/03/2012.

Changes to legislation: There are currently no known outstanding effects for the Education (Wales) Measure 2009, PART 1. (See end of Document for details)

“3A *Jurisdiction — Wales*

- (1) A claim that a responsible body for a school in Wales has contravened Chapter 1 of Part 6 in relation to a person because of disability may be made to the Tribunal by that person (“the relevant person”).
- (2) But this paragraph does not apply to a claim to which paragraph 13 or 14 applies.
- (3) The relevant person’s right to claim is exercisable concurrently with the right of the relevant person’s parent under paragraph 3.
- (4) The exercise of rights under this paragraph is subject to provision made by regulations under paragraphs 6 and 6A.”.]

Textual Amendments

F2 S. 9 substituted (6.7.2011) by [The Right of a Child to Make a Disability Discrimination Claim \(Schools\) \(Wales\) Order 2011 \(S.I. 2011/1651\)](#), arts. 1(2), 3

Commencement Information

I9 S. 9 in force at 6.3.2012 by [S.I. 2012/320](#), art. 3(f)

[^{F3}10 [^{F3}Time for bringing proceedings]

- (1) Schedule 17 to the Equality Act 2010 is amended in accordance with this section.
- (2) In paragraph 4 (time for bringing proceedings), after sub-paragraph (2), insert—

“(2A) If, in relation to proceedings or prospective proceedings on a claim under paragraph 3 or 3A, the dispute is referred for resolution in pursuance of arrangements under paragraph 6C or for conciliation in pursuance of arrangements under section 27 of the Equality Act 2006 before the end of the period of 6 months mentioned in sub-paragraph (1), that period is extended by 3 months.”.]

Textual Amendments

F3 S. 10 substituted (6.7.2011) by [The Right of a Child to Make a Disability Discrimination Claim \(Schools\) \(Wales\) Order 2011 \(S.I. 2011/1651\)](#), arts. 1(2), 4

Commencement Information

I10 S. 10 in force at 6.3.2012 by [S.I. 2012/320](#), art. 3(g)

[^{F4}11 [^{F4}Tribunal procedure]

- (1) Schedule 17 to the Equality Act 2010 is amended in accordance with this section.
- (2) In paragraph 6 (procedure)—
 - (a) in sub-paragraph (2)(a), after “paragraph 3” insert “or 3A”;
 - (b) after sub-paragraph (3)(c), insert “(ca) for adding and substituting parties;”.]

Status: Point in time view as at 06/03/2012.

Changes to legislation: There are currently no known outstanding effects for the Education (Wales) Measure 2009, PART 1. (See end of Document for details)

Textual Amendments

- F4** S. 11 substituted (6.7.2011) by [The Right of a Child to Make a Disability Discrimination Claim \(Schools\) \(Wales\) Order 2011 \(S.I. 2011/1651\)](#), arts. 1(2), 5

Commencement Information

- I11** S. 11 in force at 10.2.2012 by [S.I. 2012/320](#), art. 2(d)

[^{F5}12] [^{F5}Case friends]

- (1) Schedule 17 to the Equality Act 2010 is amended in accordance with this section.
- (2) After paragraph 6 (procedure) insert—
 - “6A *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 contraventions of Chapter 1 of Part 6; and
 - (b) a relevant person (within the meaning of paragraph 3A) to have another person to exercise the relevant person’s rights under that paragraph 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 sub-paragraph (1) is referred to in this Schedule 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 paragraph 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 paragraph 3A) must have a case friend;
 - (f) specify further requirements in respect of the conduct of case friends.
 - (5) In this paragraph and in paragraphs 6B, 6C, 6D and 6E, “local authority” has the meaning given in section 89(10).
 - (6) In this paragraph and in paragraphs 6B, 6C and 6D—

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Changes to legislation: There are currently no known outstanding effects for the Education (Wales) Measure 2009, PART 1. (See end of Document for details)

“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;

“proprietor” has the meaning given in section 89(4);

“school” has the meanings given in section 89(5).

(7) In sub-paragraph (6)—

“independent school” has the meaning given in section 89(8);

“maintained school” has the meaning given in section 20(7) of the School Standards and Framework Act 1998;

“maintained nursery school” has the meaning given in section 22(9) of the

School Standards and Framework Act 1998

“pupil” has the meanings given in section 89(3);

“pupil referral unit” has the meaning given in section 19 of the Education Act 1996; and

“special school” has the meaning given in section 89(9).”.]

Textual Amendments

F5 S. 12 substituted (6.7.2011) by [The Right of a Child to Make a Disability Discrimination Claim \(Schools\) \(Wales\) Order 2011 \(S.I. 2011/1651\)](#), arts. 1(2), 6

Commencement Information

I12 S. 12 in force at 10.2.2012 by [S.I. 2012/320](#), art. 2(e)

[^{F6}13 [^{F6}Advice and information]

(1) Schedule 17 to the Equality Act 2010 is amended in accordance with this section.

(2) After paragraph 6A (case friends — Wales) insert—

“6B *Advice and information — Wales*

(1) A local authority in Wales must arrange for any disabled child in its 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 local 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 local authority must take such steps as it considers appropriate for making the services provided under sub-paragraph (1) known to—

- (a) disabled children in its area,
- (b) parents of disabled children in its area,

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- (c) head teachers and proprietors of schools in its area, and
- (d) such other persons as it considers appropriate.”.]

Textual Amendments

F6 S. 13 substituted (6.7.2011) by [The Right of a Child to Make a Disability Discrimination Claim \(Schools\) \(Wales\) Order 2011 \(S.I. 2011/1651\)](#), arts. 1(2), 7

Commencement Information

I13 S. 13 in force at 6.3.2012 by [S.I. 2012/320](#), art. 3(h)

[^{F7}14 [^{F7}Resolution of disputes]

- (1) Schedule 17 to the Equality Act 2010 is amended in accordance with this section.
- (2) After paragraph 6B (advice and information — Wales) insert—

“6C *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 its area about contraventions of Chapter 1 of Part 6.
- (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 local 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 local authority must take such steps as it considers appropriate for making the arrangements under sub-paragraph (1) known to—
 - (a) disabled children in its area,
 - (b) parents of disabled children in its area,
 - (c) head teachers and proprietors of schools in its area, and
 - (d) such other persons as it considers appropriate.
- (6) The arrangements cannot affect the entitlement of any person to make a claim to the Tribunal, and the local authority must take such steps as it considers appropriate to make that fact known to disabled children, to parents of disabled children and to case friends for disabled children in its area.”.]

Textual Amendments

F7 S. 14 substituted (6.7.2011) by [The Right of a Child to Make a Disability Discrimination Claim \(Schools\) \(Wales\) Order 2011 \(S.I. 2011/1651\)](#), arts. 1(2), 8

Commencement Information

I14 S. 14 in force at 6.3.2012 by [S.I. 2012/320](#), art. 3(i)

Status: Point in time view as at 06/03/2012.

Changes to legislation: There are currently no known outstanding effects for the Education (Wales) Measure 2009, PART 1. (See end of Document for details)

[^{F8}15 [^{F8}Independent advocacy services]

- (1) Schedule 17 to the Equality Act 2010 is amended in accordance with this section.
- (2) After paragraph 6C (resolution of disputes — Wales) insert—
- “6D *Independent advocacy services — Wales*
- (1) Every local authority in Wales must—
- (a) make arrangements for the provision of independent advocacy services in its area;
- (b) refer any disabled child in its area who requests independent advocacy services to a service provider;
- (c) refer any person who is a case friend for a disabled child in its area and who requests independent advocacy services to a service provider.
- (2) In this paragraph “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 has contravened Chapter 1 of Part 6 because of the child’s disability; 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 paragraph 6C.
- (3) In making arrangements under this paragraph, every 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 a claim to the 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 it considers appropriate for making the arrangements under this paragraph known to—
- (a) disabled children in its area,
- (b) parents of disabled children in its area,
- (c) head teachers and proprietors of schools in its area, and
- (d) such other persons as it considers 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.”.]

Textual Amendments

F8 S. 15 substituted (6.7.2011) by [The Right of a Child to Make a Disability Discrimination Claim \(Schools\) \(Wales\) Order 2011 \(S.I. 2011/1651\)](#), arts. 1(2), 9

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Commencement Information

I15 S. 15 in force at 6.3.2012 by S.I. 2012/320, art. 3(j)

[^{F9}16 [^{F9}Role of Welsh Ministers]

(1) Schedule 17 to the Equality Act 2010 is amended in accordance with this section.

(2) After paragraph 6D (independent advocacy services — Wales) insert—

“6E *Power of direction — Wales*

(1) If the Welsh Ministers are satisfied (whether on a complaint or otherwise) that a local authority—

- (a) has acted, or is proposing to act, unreasonably in the discharge of a duty imposed by or under paragraph 6B, 6C or 6D, or
- (b) has failed to discharge a duty imposed by or under any of those paragraphs,

they may give that local authority such directions as to the discharge of the duty as appear to them to be expedient.

(2) A direction may be given under sub-paragraph (1) even if the performance of the duty is contingent on the opinion of the local authority.

(3) A direction—

- (a) may be varied or revoked by the Welsh Ministers;
- (b) may be enforced, on the application of the Welsh Ministers, by a mandatory order obtained in accordance with section 31 of the Senior Courts Act 1981.”]

Textual Amendments

F9 S. 16 substituted (6.7.2011) by [The Right of a Child to Make a Disability Discrimination Claim \(Schools\) \(Wales\) Order 2011 \(S.I. 2011/1651\)](#), arts. 1(2), 10

Commencement Information

I16 S. 16 in force at 6.3.2012 by S.I. 2012/320, art. 3(k)

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 [^{F10}Equality Act 2010 (c. 15)] 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;

Status: Point in time view as at 06/03/2012.

Changes to legislation: There are currently no known outstanding effects for the Education (Wales) Measure 2009, PART 1. (See end of Document for details)

- (c) that the rights of a person conferred by amendments made to the [F11Equality Act 2010] 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 [F12Equality Act 2010] 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.

Textual Amendments

- F10** Words in s. 17(1) substituted (6.7.2011) by [The Right of a Child to Make a Disability Discrimination Claim \(Schools\) \(Wales\) Order 2011 \(S.I. 2011/1651\)](#), arts. 1(2), **11(a)**
- F11** Words in s. 17(2)(c) substituted (6.7.2011) by [The Right of a Child to Make a Disability Discrimination Claim \(Schools\) \(Wales\) Order 2011 \(S.I. 2011/1651\)](#), arts. 1(2), **11(b)(i)**
- F12** Words in s. 17(2)(d) substituted (6.7.2011) by [The Right of a Child to Make a Disability Discrimination Claim \(Schools\) \(Wales\) Order 2011 \(S.I. 2011/1651\)](#), arts. 1(2), **11(b)(ii)**

Commencement Information

- I17** S. 17 in force at 10.2.2012 by [S.I. 2012/320](#), art. 2(f)

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 [F13paragraph 3 of Schedule 17 to the Equality Act 2010];
 - (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;
 - (f) advocacy services about special educational needs or disability discrimination in schools;
 - (g) arrangements with a view to avoiding or resolving disagreements between—

Status: Point in time view as at 06/03/2012.

Changes to legislation: There are currently no known outstanding effects for the Education (Wales) Measure 2009, PART 1. (See end of Document for details)

- (i) a [F1]local 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 [F14]Chapter 1 of Part 6 of, and Schedule 17 to, the Equality Act 2010];
 - (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).

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)**
- F13** Words in s. 18(1)(b) substituted (6.7.2011) by [The Right of a Child to Make a Disability Discrimination Claim \(Schools\) \(Wales\) Order 2011 \(S.I. 2011/1651\)](#), arts. 1(2), **12(a)**
- F14** Words in s. 18(2)(c) substituted (6.7.2011) by [The Right of a Child to Make a Disability Discrimination Claim \(Schools\) \(Wales\) Order 2011 \(S.I. 2011/1651\)](#), arts. 1(2), **12(b)**

Commencement Information

- I18** S. 18 in force at 10.2.2012 by [S.I. 2012/320](#), art. 2(g)

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 [F15]paragraph 6A of Schedule 17 to the Equality Act 2010];
- “local authorities” (“awdurdodau lleol”) means [F16]local 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 [F1]local authority] and which is not a special school;

Status: Point in time view as at 06/03/2012.

Changes to legislation: There are currently no known outstanding effects for the Education (Wales) Measure 2009, PART 1. (See end of Document for details)

“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,
- (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 [F17 section 85(9) of the Equality Act 2010].
- (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.

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)**
- F15** Words in s. 19(1) substituted (6.7.2011) by [The Right of a Child to Make a Disability Discrimination Claim \(Schools\) \(Wales\) Order 2011 \(S.I. 2011/1651\)](#), arts. 1(2), **13(1)(a)**
- F16** Words in s. 19(1) 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(4)**
- F17** Words in s. 19(2) substituted (6.7.2011) by [The Right of a Child to Make a Disability Discrimination Claim \(Schools\) \(Wales\) Order 2011 \(S.I. 2011/1651\)](#), arts. 1(2), **13(1)(b)**

Commencement Information

- I19** [S. 19](#) in force at 10.2.2012 by [S.I. 2012/320](#), art. 2(h)

Status: Point in time view as at 06/03/2012.

Changes to legislation: There are currently no known outstanding effects for the Education (Wales) Measure 2009, PART 1. (See end of Document for details)

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).

Commencement Information

I20 [S. 20](#) in force at 11.6.2011 by [S.I. 2011/1468](#), [art. 2](#)

Status:

Point in time view as at 06/03/2012.

Changes to legislation:

There are currently no known outstanding effects for the Education (Wales) Measure 2009, PART 1.