



Education (Wales) Measure 2009

2009 nawm 5

PART 1

EDUCATION APPEALS AND CLAIMS BY CHILDREN

Disability discrimination claims

[^{F1}9] **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—
 - “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

- F1** 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

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Changes to legislation: There are currently no known outstanding effects for the Education (Wales) Measure 2009, Cross Heading: Disability discrimination claims. (See end of Document for details)

Commencement Information

I1 S. 9 in force at 6.3.2012 by S.I. 2012/320, art. 3(f)

[^{F2}10 [^{F2}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

F2 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

I2 S. 10 in force at 6.3.2012 by S.I. 2012/320, art. 3(g)

[^{F3}11 [^{F3}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;”.]

Textual Amendments

F3 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

I3 S. 11 in force at 10.2.2012 by S.I. 2012/320, art. 2(d)

[^{F4}12 [^{F4}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

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- 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—
- "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

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

Textual Amendments

F4 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

I4 S. 12 in force at 10.2.2012 by [S.I. 2012/320](#), art. 2(e)

[^{F5}13 [^{F5}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,
 - (c) head teachers and proprietors of schools in its area, and
 - (d) such other persons as it considers appropriate.”.]

Textual Amendments

F5 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

I5 S. 13 in force at 6.3.2012 by [S.I. 2012/320](#), art. 3(h)

[^{F6}14 [^{F6}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*

Status: Point in time view as at 06/03/2012.

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- (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

F6 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

I6 S. 14 in force at 6.3.2012 by [S.I. 2012/320](#), art. 3(i)

[^{F7}15 [^{F7}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—

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- (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

F7 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**

Commencement Information

I7 S. 15 in force at 6.3.2012 by [S.I. 2012/320](#), **art. 3(j)**

[^{F8}16 [^{F8}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,

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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

- F8** 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**
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Commencement Information

- I8** S. 16 in force at 6.3.2012 by [S.I. 2012/320](#), art. 3(k)

Status:

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