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OFFERYNNAU STATUDOL  
CYMRU

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**2012 Rhif 320 (Cy.51) (C.10)**

**ADDYSG, CYMRU**

Gorchymyn Mesur Addysg  
(Cymru) 2009 (Cychwyn Rhif 3 a  
Darpariaethau Trosiannol)  
2012

**NODYN ESBONIADOL**

*(Nid yw'r nodyn hwn yn rhan o'r Gorchymyn)*

Mae'r Gorchymyn hwn wedi ei wneud o dan adrannau 24(2) a 26(3) o Fesur Addysg (Cymru) 2009 ("Mesur 2009"). Y Gorchymyn hwn yw'r trydydd Gorchymyn Cychwyn i'w wneud o dan Fesur 2009.

Mae erthygl 2 o'r Gorchymyn hwn yn dwyn i rym y darpariaethau yn adrannau 3, 7, 8, 11, 12, 17, 18 a 19 o Fesur 2009 ar 10 Chwefror 2012. Mae erthygl 2 hefyd yn dwyn i rym adran 23 (i'r graddau y mae'n ymwneud â pharagraffau 1 a 4 o'r Atodlen) a pharagraffau 1 a 4 o'r Atodlen i Fesur 2009.

Mae adran 3 yn galluogi plentyn i fod â pherson (o'r enw "cyfaill achos") i gyflwyno sylwadau ar ran y plentyn i osgoi neu ddatrys anghydfodau â'r awdurdod lleol neu arfer hawl plentyn i apelio i Dribiwnlys Anghenion Addysgol Arbennig Cymru ("y Tribiwnlys") mewn cysylltiad ag anghenion addysgol arbennig ar ran y plentyn.

Mae adran 7 yn diwygio gweithdrefn y Tribiwnlys mewn perthynas ag apelau.

Mae adran 8 yn diwygio'r weithdrefn ar gyfer gwneud rheoliadau o dan Ddeddf Addysg 1996.

Mae adran 11 yn diwygio gweithdrefn y Tribiwnlys mewn perthynas â hawliadau gwahaniaethu ar sail anabled.

Mae adran 12 yn galluogi plentyn i fod â chyfaill achos i gyflwyno sylwadau ar ran y plentyn i osgoi neu ddatrys anghydfodau â'r corff sy'n gyfrifol am ysgol neu arfer hawl plentyn i wneud hawliad gwahaniaethu

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WELSH STATUTORY  
INSTRUMENTS

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**2012 No. 320 (W.51) (C.10)**

**EDUCATION, WALES**

The Education (Wales) Measure  
2009 (Commencement No. 3 and  
Transitional Provisions) Order  
2012

**EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order is made under sections 24(2) and 26(3) of the Education (Wales) Measure 2009 ("the 2009 Measure"). This Order is the third Commencement Order to be made under the 2009 Measure.

Article 2 of this Order brings into force on 10 February 2012 the provisions in sections 3, 7, 8, 11, 12, 17, 18 and 19 of the 2009 Measure. Article 2 also brings into force section 23 (in so far as it relates to paragraphs 1 and 4 of the Schedule) and paragraphs 1 and 4 of the Schedule to the 2009 Measure.

Section 3 enables a child to have a person (known as a "case friend") to make representations on behalf of the child to avoid or resolve disputes with the local authority or to exercise a child's right to make a special educational needs appeal to the Special Educational Needs Tribunal for Wales ("the Tribunal") on behalf of the child.

Section 7 amends the procedure of the Tribunal in relation to appeals.

Section 8 amends the procedure for making regulations under the Education Act 1996.

Section 11 amends the procedure of the Tribunal in relation to claims of disability discrimination.

Section 12 enables a child to have a case friend to make representations on behalf of the child to avoid or resolve disputes with the responsible body of a school or to exercise a child's right to make a claim of

ar sail anableded i'r Tribiwnlys ar ran y plentyn.

Mae adran 17 yn galluogi Gweinidogion Cymru i dreialu'r darpariaethau yn Rhan 1 o Fesur 2009.

Mae adran 18 yn galluogi Gweinidogion Cymru i wneud gorchymyn yn ystod unrhyw dreial neu ar ôl unrhyw dreial am hawliau plant i wneud apelau a hawliadau.

Mae adran 19 yn cynnwys diffiniadau sy'n berthnasol i weithrediad adrannau 17 a 18.

Mae erthygl 3 o'r Gorchymyn hwn yn dwyn i rym y darpariaethau yn adrannau 1, 2, 4, 5, 6, 9, 10, 13, 14, 15 a 16 o Fesur 2009 ar 6 Mawrth 2012. Mae erthygl 3 hefyd yn dwyn i rym adran 23 (i'r graddau y mae'n ymwneud â pharagraffau 2, 3, a 5 o'r Atodlen) a pharagraffau 2, 3, a 5 o'r Atodlen i Fesur 2009. Effaith cychwyn y darpariaethau hyn o'u cymryd ynghyd â rheoliadau a wneir o dan adran 17 o Fesur 2009 yw na fydd y darpariaethau hyn yn gymwys ond at ddibenion treialu yn ardaloedd awdurdodau lleol Sir Gaerfyrddin a Wrecsam. Ar ddiwedd y treialu bydd y darpariaethau yn gymwys yn awtomatig i Gymru gyfan:

- (a) mae adran 1 yn rhoi hawl i blentyn apelio i'r Tribiwnlys mewn cysylltiad ag anghenion addysgol arbennig;
- (b) mae adran 2 yn gosod dyletswydd ar yr awdurdod lleol i roi hysbysiad i'r plentyn, neu gyflwyno dogfen iddo ef, yn ogystal â'r rhiant;
- (c) mae adran 4 yn gosod dyletswydd ar yr awdurdod lleol i drefnu bod cyngor a gwybodaeth am faterion sy'n ymwneud ag anghenion addysgol arbennig yn cael eu darparu i unrhyw blentyn yn ei ardal, unrhyw riant neu gyfaill achos i'r plentyn hwnnw;
- (ch) mae adran 5 yn gosod dyletswydd ar yr awdurdod lleol i ddarparu gwasanaethau datrys anghydfodau annibynnol i osgoi neu ddatrys anghytundebau rhwng yr awdurdod lleol a phlentyn a'r awdurdod lleol a rhiant plentyn;
- (d) mae adran 6 yn gosod dyletswydd ar yr awdurdod lleol i drefnu gwasanaethau eiriol annibynnol ac i gyfeirio unrhyw blentyn yn ei ardal, neu gyfaill achos i'r plentyn hwnnw, at y gwasanaeth os ydynt yn gofyn amdano;
- (dd) mae adran 9 yn rhoi hawl i blentyn i wneud hawliad i'r Tribiwnlys am wahaniaethu ar sail anableded mewn ysgolion;
- (e) mae adran 10 yn gwneud darpariaeth am derfynau amser i ddod â hawliad gwahaniaethu ar sail anableded gerbron y Tribiwnlys;
- (f) mae adran 13 yn gosod dyletswydd ar yr awdurdod lleol i drefnu bod cyngor a

disability discrimination to the Tribunal on behalf of the child.

Section 17 enables the Welsh Ministers to pilot the provisions in Part 1 of the 2009 Measure.

Section 18 enables the Welsh Ministers to make an order during or following any pilot about the rights of children to make appeals and claims.

Section 19 contains definitions relevant to the operation of sections 17 and 18.

Article 3 of this Order brings into force on 6 March 2012 the provisions in sections 1, 2, 4, 5, 6, 9, 10, 13, 14, 15 and 16 of the 2009 Measure. Article 3 also brings into force section 23 (in so far as it relates to paragraphs 2, 3, and 5 of the Schedule) and paragraphs 2, 3, and 5 of the Schedule to the 2009 Measure. The effect of commencing these provisions when taken together with regulations made under section 17 of the 2009 Measure is that these provisions will apply only for the purposes of piloting in the local authority areas of Carmarthenshire and Wrexham. At the end of the pilot the provisions will automatically apply to the whole of Wales:

- (a) section 1 gives a child the right to make an appeal in respect of special educational needs to the Tribunal;
- (b) section 2 places a duty on the local authority to give notice to, or serve a document on, the child as well as the parent;
- (c) section 4 places a duty on the local authority to arrange for any child in their area, any parent, or case friend of such child, to be provided with advice and information about matters relating to special educational needs;
- (d) section 5 places a duty on the local authority to provide independent dispute resolution services to avoid or resolve disagreements between the local authority and a child and the local authority and a parent of a child;
- (e) section 6 places a duty on the local authority to arrange independent advocacy services and to refer any child in their area, or a case friend for such a child, to the service should they request it;
- (f) section 9 gives a child the right to make a claim to the Tribunal about disability discrimination in schools;
- (g) section 10 makes provision about time limits for bringing a claim of disability discrimination before the Tribunal;
- (h) section 13 places a duty on the local authority to arrange for any child in their area and for

gwybodaeth am faterion sy'n ymwneud â gwahaniaethu ar sail anabledd mewn ysgolion yn cael eu darparu i unrhyw blentyn yn ei ardal ac i unrhyw gyfaill achos i'r plentyn hwnnw;

- (ff) mae adran 14 yn gosod dyletswydd ar yr awdurdod lleol i ddarparu gwasanaethau datrys anghydfodau annibynnol i osgoi neu ddatrys anghytundebau rhwng plentyn anabl a'r corff sy'n gyfrifol am yr ysgol;
- (g) mae adran 15 yn gosod dyletswydd ar yr awdurdod lleol i drefnu gwasanaethau eiriol annibynnol ac i gyfeirio plentyn anabl yn ei ardal, neu gyfaill achos i'r plentyn hwnnw, at y gwasanaeth os ydynt yn gofyn amdano;
- (ng) mae adran 16 yn rhoi pŵer cyfarwyddo i Weinidogion Cymru o dan Ddeddf Cydraddoldeb 2010 pan fydd awdurdod lleol yn gweithredu neu yn bwriadu gweithredu yn afresymol wrth gyflawni dyletswydd neu pan fydd wedi methu â chyflawni dyletswydd.

Mae erthygl 4 o'r Gorchymyn hwn yn gwneud darpariaeth drosiannol sy'n ymwneud â dyletswydd yr awdurdod lleol i wneud trefniadau i ddarparu cyngor a gwybodaeth a gwasanaethau datrys anghydfodau.

## **NODYN YNGHYLCH GORCHMYNION CYCHWYN CYNHARACH**

*(Nid yw'r nodyn hwn yn rhan o'r Gorchymyn)*

Ducpwyd darpariaethau canlynol Mesur 2009 i rym o ran Cymru gan Orchymyn Cychwyn a wnaed cyn dyddiad y Gorchymyn hwn:

| <b>Y Ddarpariaeth</b> | <b>Dyddiad Cychwyn</b> | <b>O.S. Rhif</b>               | <b>Provision</b> | <b>Date of Commencement</b> | <b>S.I. No.</b>              |
|-----------------------|------------------------|--------------------------------|------------------|-----------------------------|------------------------------|
| Adran 20              | 11 Mehefin 2011        | 2011 Rhif 1468 (Cy.173) (C.56) | Section 20       | 11 June 2011                | 2011 No. 1468 (W.173) (C.56) |
| Adran 21              | 1 Medi 2011            | 2011 Rhif 1951 (Cy.215) (C.70) | Section 21       | 1 September 2011            | 2011 No. 1951 (W.215) (C.70) |
| Adran 22              | 1 Medi 2011            | 2011 Rhif 1951 (Cy.215) (C.70) | Section 22       | 1 September 2011            | 2011 No. 1951 (W.215) (C.70) |

any case friend of such child, to be provided with advice and information about matters relating to disability discrimination in schools;

- (i) section 14 places a duty on the local authority to provide independent dispute resolution services to avoid or resolve disagreements between a disabled child and the body responsible for the school;
- (j) section 15 places a duty on the local authority to arrange independent advocacy services and to refer a disabled child in their area, or a case friend for such a child, to the service should they request it;
- (k) section 16 gives the Welsh Ministers a power of direction under the Equality Act 2010 when a local authority acts or proposes to act unreasonable in the discharge of a duty or has failed to discharge a duty.

Article 4 of this Order makes transitional provision relating to the local authority's duty to make arrangements to provide advice and information and dispute resolution services.

## **NOTE AS TO EARLIER COMMENCEMENT ORDERS**

*(This note is not part of the Order)*

The following provisions of the 2009 Measure have been brought into force in relation to Wales by a Commencement Order made before the date of this Order:

**2012 Rhif 320 (Cy.51) (C.10)**

**ADDYSG, CYMRU**

**Gorchymyn Mesur Addysg  
(Cymru) 2009 (Cychwyn Rhif 3 a  
Darpariaethau Trosiannol)  
2012**

*Gwnaed*

*8 Chwefror 2012*

Mae Gweinidogion Cymru, drwy arfer y pwerau a roddwyd iddynt gan adrannau 24(2) a 26(3) o Fesur Addysg (Cymru) 2009(1) yn gwneud y Gorchymyn a ganlyn:

**Enwi a dehongli**

1.—(1) Enw'r Gorchymyn hwn yw Gorchymyn Mesur Addysg (Cymru) 2009 (Cychwyn Rhif 3 a Darpariaethau Trosiannol) 2012.

(2) Yn y Gorchymyn hwn ystyr "Mesur 2009" ("*the 2009 Measure*") yw Mesur Addysg (Cymru) 2009.

**Darpariaethau sy'n dod i rym ar 10 Chwefror 2012**

2. Daw'r darpariaethau a ganlyn yn Rhan 1 (apelau a hawliadau addysg gan blant) o Fesur 2009 i rym ar 10 Chwefror 2012—

- (a) adran 3 (cyfeillion achos);
- (b) adran 7 (gweithdrefn y tribiwnlys);
- (c) adran 8 (gweithdrefnau ar gyfer gwneud rheoliadau);
- (ch) adran 11 (gweithdrefn y tribiwnlys)(2);
- (d) adran 12 (cyfeillion achos)(3);
- (dd) adran 17 (treialu hawliau plentyn i apelio neu i wneud hawliad);
- (e) adran 18 (pŵer i wneud darpariaeth ynghylch apelau a hawliadau gan blentyn);

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(1) 2009 mccc 5. Diwygiwyd adrannau 9 i 19, 26 a'r Atodlen i Fesur 2009 gan O.S. 2011/1651 (Cy. 187).

(2) Diwygiwyd adran 11 gan O.S. 2011/1651, erthygl 5.

(3) Diwygiwyd adran 12 gan O.S. 2011/1651, erthygl 6.

**2012 No. 320 (W.51) (C.10)**

**EDUCATION, WALES**

**The Education (Wales) Measure  
2009 (Commencement No.3 and  
Transitional Provisions) Order  
2012**

*Made*

*8 February 2012*

The Welsh Ministers, in exercise of the powers conferred upon them by sections 24(2) and 26(3) of the Education (Wales) Measure 2009(1), make the following Order:

**Title and interpretation**

1.—(1) The title of this Order is the Education (Wales) Measure 2009 (Commencement No.3 and Transitional Provisions) Order 2012.

(2) In this Order, "the 2009 Measure" ("*Mesur 2009*") means the Education (Wales) Measure 2009.

**Provisions coming into force on 10 February 2012**

2. The following provisions in Part 1 (education appeals and claims by children) of the 2009 Measure come into force on 10 February 2012—

- (a) section 3 (case friends);
- (b) section 7 (tribunal procedure);
- (c) section 8 (procedures for making regulations);
- (d) section 11 (tribunal procedure)(2);
- (e) section 12 (case friends)(3);
- (f) section 17 (piloting the rights of a child to appeal or make a claim);
- (g) section 18 (power to make provision about appeals and claims by a child);

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(1) 2009 nawm 5. Sections 9 to 19, 26 and the Schedule to the 2009 Measure were amended by S.I. 2011/1651 (W. 187).

(2) Section 11 was amended by S.I. 2011/1651, article 5.

(3) Section 12 was amended by S.I. 2011/1651, article 6.

- (f) adran 19 (dehongli adrannau 17 ac 18);
- (ff) adran 23 (mân ddiwygiadau a diwygiadau canlyniadol) i'r graddau y mae'n ymwneud â pharagraffau 1 a 4 o'r Atodlen; a
- (g) paragraffau 1 a 4 o'r Atodlen.

- (h) section 19 (interpretation of sections 17 and 18);
- (i) section 23 (minor and consequential amendments) in so far as it relates to paragraphs 1 and 4 of the Schedule; and
- (j) paragraphs 1 and 4 of the Schedule.

### **Darpariaethau sy'n dod i rym ar 6 Mawrth 2012**

3. Daw'r darpariaethau a ganlyn yn Rhan 1 (apelau a hawliadau addysg gan blant) o Fesur 2009 i rym ar 6 Mawrth 2012—

- (a) adran 1 (hawl plentyn i apelio mewn cysylltiad ag anghenion addysgol arbennig);
- (b) adran 2 (hysbysu a chyflwyno dogfennau);
- (c) adran 4 (cyngor a gwybodaeth);
- (ch) adran 5 (datrys anghydfodau);
- (d) adran 6 (gwasanaethau eirioli annibynnol);
- (dd) adran 9 (hawl plentyn i wneud hawliad gwahaniaethu ar sail anabledd);
- (e) adran 10 (amser ar gyfer dwyn achos);
- (f) adran 13 (cyngor a gwybodaeth);
- (ff) adran 14 (datrys anghydfodau);
- (g) adran 15 (gwasanaethau eirioli annibynnol);
- (ng) adran 16 (rôl Gweinidogion Cymru);
- (h) adran 23 i'r graddau y mae'n ymwneud â pharagraffau 2, 3 a 5 o'r Atodlen; a
- (i) paragraffau 2, 3 a 5 o'r Atodlen.

### **Darpariaethau Trosiannol**

4. Ar unrhyw adeg pan fo rheoliadau o dan adran 17 o Fesur 2009 mewn grym—

- (a) mae adran 332A o Ddeddf Addysg 1996 yn parhau i fod yn gymwys i awdurdodau lleol yng Nghymru ac eithrio Cyngor Sir Caerfyrddin a Chyngor Bwrdeistref Sirol Wrecsam fel petai'r diwygiadau a wnaed gan adran 4(2) o Fesur 2009 heb fod mewn grym;
- (b) mae adran 332B o Ddeddf Addysg 1996 yn parhau i fod yn gymwys i awdurdodau lleol yng Nghymru ac eithrio Cyngor Sir Caerfyrddin a Chyngor Bwrdeistref Sirol Wrecsam fel petai'r diwygiadau a wnaed gan adran 5(2) o Fesur 2009 heb fod mewn grym.

### **Provisions coming into force on 6 March 2012**

3. The following provisions of Part 1 (education appeals and claims by children) of the 2009 Measure come into force on 6 March 2012—

- (a) section 1 (right of a child to appeal in respect of special educational needs);
- (b) section 2 (notice and service of documents);
- (c) section 4 (advice and information);
- (d) section 5 (resolution of disputes);
- (e) section 6 (independent advocacy services);
- (f) section 9 (right of a child to make a disability discrimination claim);
- (g) section 10 (time for bringing proceedings);
- (h) section 13 (advice and information);
- (i) section 14 (resolution of disputes);
- (j) section 15 (independent advocacy services);
- (k) section 16 (role of the Welsh Ministers);
- (l) section 23 in so far as it relates to paragraphs 2, 3 and 5 of the Schedule; and
- (m) paragraphs 2, 3 and 5 of the Schedule.

### **Transitional provisions**

4. At any time during which regulations under section 17 of the 2009 Measure are in force—

- (a) section 332A of the Education Act 1996 continues to apply to local authorities in Wales other than Carmarthenshire County Council and Wrexham County Borough Council as though the amendments made by section 4(2) of the 2009 Measure were not in force;
- (b) section 332B of the Education Act 1996 continues to apply to local authorities in Wales other than Carmarthenshire County Council and Wrexham County Borough Council as though the amendments made by section 5(2) of the 2009 Measure were not in force.

*Leighton Andrews*

Y Gweinidog Addysg a Sgiliau, un o Weinidogion  
Cymru

Minister for Education and Skills, one of the Welsh  
Ministers

8 Chwefror 2012

8 February 2012

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**2012 Rhif 320 (Cy.51) (C.10)**

**ADDYSG, CYMRU**

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INSTRUMENTS

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**2012 No. 320 (W.51) (C.10)**

**EDUCATION, WALES**

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