



Education (Wales) Measure 2009

2009 nawm 5

PART 1

EDUCATION APPEALS AND CLAIMS BY CHILDREN

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.

Status: This is the original version (as it was originally enacted).

- (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—
 - (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.

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- (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;
 - (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,

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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.”.