



Education (Wales) Measure 2009

2009 nawm 5

PART 1

EDUCATION APPEALS AND CLAIMS BY CHILDREN

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—

Status: This is the original version (as it was originally enacted).

- (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;
 - (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,
- (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.