

Draft Order laid before the National Assembly for Wales on 14 June 2011 under section 24(4) of the Education (Wales) Measure 2009, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY
INSTRUMENTS

2011 No. (W.)

**EDUCATION, EQUALITY,
WALES**

**The Right of a Child to Make a
Disability Discrimination Claim
(Schools) (Wales) Order 2011**

EXPLANATORY NOTE

(This note is not part of the Order)

The Education (Wales) Measure 2009 (“the Measure”) amended Part 4 of the Disability Discrimination Act 1995, which related to discrimination in schools, to enable children themselves to make a disability discrimination claim to the Special Educational Needs Tribunal for Wales (“the Tribunal”). The Equality Act 2010 repealed the Disability Discrimination Act 1995.

This Order, made under section 20 of the Measure, amends the Measure to remove the provisions that amended the Disability Discrimination Act 1995, and to insert instead corresponding and other appropriate provisions amending the Equality Act 2010.

Article 3 of the Order inserts a new section 9 into the Measure which amends the Equality Act 2010 in order to give a child the right to make a claim to the Tribunal.

Article 4 of the Order inserts a new section 10 into the Measure which inserts provisions into the Equality Act 2010 about time limits for bringing proceedings.

Article 5 of the Order inserts a new section 11 into the Measure which inserts provisions into the Equality Act 2010 about Tribunal procedure.

Article 6 of the Order inserts a new section 12 into the Measure, inserting provisions into the Equality Act 2010 allowing 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 responsible body of a school or to exercise a child’s right to make a claim to the Tribunal on behalf of the child.

Article 7 of the Order inserts a new section 13 into the Measure, inserting provisions into the Equality Act 2010 about arrangements for a child to be provided with advice and information.

Article 8 of the Order inserts a new section 14 into the Measure, inserting provisions into the Equality Act 2010 about resolution of disputes.

Article 9 of the Order inserts a new section 15 into the Measure, inserting provisions into the Equality Act 2010 about the provision of independent advocacy services.

Article 10 of the Order inserts a new section 16 into the Measure, inserting provisions into the Equality Act 2010 about the Welsh Ministers’ power of direction when a local authority acts or proposes to act unreasonably in the discharge of a duty or has failed to discharge a duty.

Article 11 of the Order amends section 17 of the Measure to ensure that regulations about piloting can operate by reference to the provisions inserted into the Equality Act 2010 by the Measure provisions amended by this Order.

Article 12 of the Order amends section 18 of the Measure to allow the Welsh Ministers to make provision by order under that section about the right of a person to make a claim to the Tribunal in respect of matters for which a parent of that person has a right to make a claim under paragraph 3 of Schedule 17 to the Equality Act 2010. This includes power to amend or repeal provisions of Chapter 1 of Part 6 of, and Schedule 17 to, the Equality Act 2010.

Article 13 of the Order makes minor and consequential amendments to the Measure to substitute references to the Equality Act 2010 for references to the Disability Discrimination Act 1995 and to make it clear that the Welsh Ministers’ power under section 26(3) of the Measure to commence provisions extends, in the case of provisions amended by this Order, to those provisions as amended.

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2011 No. (W.)

**EDUCATION, EQUALITY,
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**The Right of a Child to Make a
Disability Discrimination Claim
(Schools) (Wales) Order 2011**

Made 2011

Coming into force 6 July 2011

The Welsh Ministers make the following Order in exercise of the powers conferred upon them by section 20(3) of the Education (Wales) Measure 2009⁽¹⁾.

A draft of this Order has been laid before, and approved by resolution of, the National Assembly for Wales before being made, in accordance with section 24(4) of the Education (Wales) Measure 2009.

Title and commencement

1.—(1) The title of this Order is the Right of a Child to Make a Disability Discrimination Claim (Schools) (Wales) Order 2011.

(2) This Order comes into force on 6 July 2011.

Amendments to the Education (Wales) Measure 2009

2. The Education (Wales) Measure 2009 (“the Measure”) is amended in accordance with articles 3 to 13 of this Order.

(1) 2009 nawm 5.

Right of a child to make a disability claim

3. For section 9 of the Measure (right of a child to make a disability discrimination claim), substitute—

“9 Right of a child to make a disability discrimination claim

- (1) Schedule 17 to the Equality Act 2010(1) 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.”.”.

Time for bringing proceedings

4. For section 10 of the Measure (case friends), substitute—

“10 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

(1) c. 15.

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(1) before the end of the period of 6 months mentioned in sub-paragraph (1), that period is extended by 3 months.”.”.

Tribunal procedure

5. For section 11 of the Measure (advice and information), substitute—

“11 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;”.

Case friends

6. For section 12 of the Measure (resolution of disputes), substitute—

“12 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

(1) Section 27(1) of the Equality Act 2006 was amended by article 7 of the Equality Act 2010 (Public Authorities and Consequential and Supplementary Amendments) Order 2011 (S.I. 2011/1060).

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

Advice and information

7. For section 13 of the Measure (independent advocacy services), substitute—

“13 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.”.

Resolution of disputes

8. For section 14 of the Measure (Tribunal procedure), substitute—

“14 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.””.

Independent advocacy services

9. For section 15 of the Measure (role of the Welsh Ministers), substitute—

“15 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.”.”.

Role of the Welsh Ministers

10. For section 16 of the Measure (procedure for making regulations), substitute—

“16 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.”.”.

Piloting the rights of a child to appeal or make a claim

11. In section 17 of the Measure—

- (a) in subsection (1), for “Disability Discrimination Act 1995 (c 50)” substitute “Equality Act 2010 (c 15)”;
- (b) in subsection (2)—
 - (i) in paragraph (c), for “Disability Discrimination Act 1995” substitute “Equality Act 2010”;
 - (ii) in paragraph (d), for “Disability Discrimination Act 1995” substitute “Equality Act 2010”.

Power to make provision about appeals and claims by a child

12. In section 18 of the Measure—

- (a) in subsection (1), in paragraph (b), for “section 28I of the Disability Discrimination Act 1995” substitute “paragraph 3 of Schedule 17 to the Equality Act 2010”;
- (b) in subsection (2), in paragraph (c), for “Part 4 of the Disability Discrimination Act 1995” substitute “Chapter 1 of Part 6 of, and Schedule 17 to, the Equality Act 2010”.

Minor and consequential amendments

13.—(1) In section 19 of the Measure—

- (a) in subsection (1), in the definition of “disabled child”, for “section 28IB of the Disability Discrimination Act 1995” substitute “paragraph 6A of Schedule 17 to the Equality Act 2010”;
- (b) in subsection (2), for “paragraph 1 of Schedule 4A to the Disability Discrimination Act 1995” substitute “section 85(9) of the Equality Act 2010”.

(2) In section 26 of the Measure, in subsection (3), after “the remaining provisions of this Measure” insert “(including, in the case of provisions amended by the Right of a Child to Make a Disability Discrimination Claim (Schools) (Wales) Order 2011, those provisions as amended)”.

(3) In the Schedule to the Measure, omit paragraphs 6 to 9.

Name

Minister for Education and Skills, one of the Welsh Ministers

Date