WELSH STATUTORY INSTRUMENTS

2011 No. 1651 (W.187)

EDUCATION, WALES
EQUALITY, WALES

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

Made - - - -	*5 July 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.

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—

"**Right of a child to make a disability discrimination claim**

9.—(1) Schedule 17 to the Equality Act 2010(**2**) is amended in accordance with this section.

(**1**) 2009 nawm 5.
(**2**) 2010 c. 15.

(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—

"**Time for bringing proceedings**

10.—(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(**3**) 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—

"**Tribunal procedure**

11.—(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—

(**3**) 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).

"**Case friends**

12.—(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

(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—

"**Advice and information**

13.—(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—

"**Resolution of disputes**

14.—(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.