

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 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 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:

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Section 20	11 June 2011	2011 No. 1468 (W.173) (C.56)
Section 21	1 September 2011	2011 No. 1951 (W.215) (C.70)
Section 22	1 September 2011	2011 No. 1951 (W.215) (C.70)

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);

(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.

- (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.

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

Minister for Education and Skills, one of the Welsh
Ministers

8 February 2012