

Explanatory Memorandum to the Education (Wales) Measure 2009 (Pilot) Regulations 2012

This Explanatory Memorandum has been prepared by the Department for Education and Skills and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Education (Wales) Measure 2009 (Pilot) Regulations 2012

Leighton Andrews

Minister for Education and Skills

8 February 2012

1. Description

- 1.1** The Education (Wales) Measure 2009 (Pilot) Regulations 2012 make provision to pilot the provisions of the Education Act 1996 (“1996 Act”) and the Equality Act 2010 (“2006 Act”) as amended by Part 1 of the Education (Wales) Measure 2009 (“Measure”). The Measure gives children a right to make special educational need appeals and claims of disability discrimination against schools to the Special Educational Needs Tribunal for Wales themselves.
- 1.2** These Regulations, when taken together with the Commencement Order that will bring the new rights and duties under Part 1 of the Measure into force, is that the provisions will apply only for the purposes of piloting in the local authority areas of Carmarthenshire and Wrexham whilst these regulations are in force.
- 1.3** Once these Regulations cease to have effect the rights and duties will automatically apply to the whole of Wales.

2. Matters of special interest to the Constitutional Affairs Committee

- 2.1** There are no matters of special interest to the Constitutional Affairs Committee.

3. Legislative background

- 3.1** The Education (Wales) Measure 2009 was passed by the National Assembly for Wales on 3 November 2009 and received Royal Approval on 9 December 2009.
- 3.2** Sections 1 to 8 of the Measure amend Part 4 of the 1996 Act to give children a right of appeal in respect of special educational needs to the Special Educational Needs Tribunal for Wales (“Tribunal”). Sections 9 to 16 of the Measure amended Part 4 of the Disability Discrimination Act 1995, which related to discrimination in schools, to give children the right to make claims of disability discrimination to the Tribunal.
- 3.3.** However, on 1 October 2010 the 2010 Act repealed Part 4 of the Disability Discrimination Act 1995 and as a consequence the disability discrimination provisions in sections 9 to 16 of the Measure were repealed on that date. The 2010 Act consolidates discrimination law and re-states with modifications, the provisions that were in Part 4 of the Disability Discrimination Act 1995
- 3.4** To address this issue, The Education (Wales) Measure 2009 (Commencement No.1) Order 2011 was made on the 10 June 2011. The order brought section 20 of the Measure into force on 11 June 2011.

Section 20 of the Measure gives the Welsh Ministers the power to make an order to remove the provisions in the Measure that amended Part 4 of the Disability Discrimination Act 1995 and to insert instead corresponding and consequential provisions to amend the 2010 Act.

- 3.5** The Right of a Child to Make a Disability Discrimination Claim (Schools) (Wales) Order 2011, made under section 20 of the Measure, was approved by the National Assembly for Wales on 5 July 2011 and came into force on 6 July 2011. The Order inserts into the 2010 Act provisions that correspond with the amendments that were previously made to the Disability Discrimination Act 1995 by the Measure.
- 3.6** Section 17 of the Measure gives the Welsh Ministers the power to make regulations to pilot the right of a child to make an appeal or claim to the Tribunal themselves.
- 3.7** The Education (Wales) Measure 2009 (Commencement No.3 and Transitional Provisions) Order 2012 was made on 9 February 2012 and brought the Welsh Minister's regulation making power, under section 17 of the Measure, into force on 10 February 2012. The majority of the remaining provisions under Part 1 of the Measure will come into force on 6 March 2012.

4. Purpose & intended effect of the legislation

- 4.1** These Regulations will enable the Welsh Ministers to test the new duties and rights under Part 1 of the Measure before they are automatically rolled out across the whole of Wales.
- 4.2** The effect of these Regulations when taken together with the Education (Wales) Measure 2009 (Commencement No.3 and Transitional Provisions) Order 2012 is that Carmarthenshire County Council and Wrexham County Borough Council and their respective areas will pilot the new duties and rights. These areas are chosen as the intention is to pilot the new rights for children in the north and south of Wales. One of the pilot areas was sited in an authority that had previously had relatively high numbers of appeals whereas the other pilot area had, in comparison, relatively low numbers of appeals. In addition, Carmarthenshire County Council has been involved in a pilot to develop the inter-disciplinary model for children and young people with severe and complex needs as part of the preparation for statutory reform of the statementing framework. It is envisaged that lessons learned and examples of best practice gleaned from the work that Carmarthenshire has already undertaken within their current pilots will help develop how children are communicated to and are involved in the process of decisions affecting them.
- 4.3** The pilot period will begin on 6 March 2012 and end on 30 June 2015. This period will enable the Welsh Government to assess, monitor and

evaluate the operation of the pilot. It will also enable the Welsh Ministers to bring forward any necessary legislation, under section 18 of the Measure, prior to full roll out of the provisions across Wales.

- 4.4 The Regulations will oblige the Tribunal, the pilot local authorities and a responsible body for a school in the pilot areas, to provide information to the Welsh Ministers on request, about the pilot.
- 4.5 The provisions in Part 1 of the Measure will automatically apply to the whole of Wales when these Regulations cease to apply.

5. Consultation

- 5.1 The pilot scheme aligns with the policy intention set out in the Measure. Welsh Government officials have therefore consulted the local authorities in Carmarthenshire and Wrexham who have agreed to pilot the new rights and duties in their respective areas. The Special Educational Needs Tribunal for Wales has also been consulted and is in agreement with the proposal.

6. Regulatory Impact Assessment (RIA)

- 6.1 No Regulatory Impact Assessment has been conducted as these Regulations are designed to replicate the intended effect of the Measure.
 - 6.1.1 The pilot phase will run across three financial years (2011-12, 2012-13 and 2013-14). £32,500 has been allocated by the Welsh Government for 2011-12 pre-commencement costs. £48,750 will be provided in 2012-13 and a further £48,750 in 2013-14.
 - 6.1.2 Whilst the pilot scheme provides the opportunity to develop an evidence-base, there is uncertainty about the likely take up. The pilots and the outcome of the Action Research Project that will evaluate them will help to identify any costs for implementing the new rights and duties across Wales in 2015. The new duties to be imposed on all local authorities in Wales, overlap significantly with their existing duties towards parents and the resources and services in place to meet them. Local authorities are currently required to make arrangements to provide parents with Parent Partnership Services and make provision for access to Disagreement Resolution Services. Recasting these services in order that they are accessible to children is but an extension of an existing duty and, as such, may involve only marginal increases in local authority expenditure. If final child appeal and claim numbers are as low as anticipated, costs to local authorities, most of whom generate single figure appeals, would be marginal and there would be no reflection in the Welsh Government's financial settlement. Naturally, subsequent to the pilot phase and the full roll-out of children's rights, trends would be carefully monitored and any adjustments made as necessary.

6.2 We do not believe that the Regulations have any impact on the statutory duties of Welsh Ministers (sections 77 -79 Government of Wales Act 2006).