

**National Assembly for Wales**  
Finance Committee

Report on the financial implications of the  
Proposed Education (Wales) Measure

June 2009



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# NATIONAL ASSEMBLY FOR WALES

## REPORT FROM THE FINANCE COMMITTEE

### Report on the financial implications of the Proposed Education (Wales) Measure

#### Background:

1. Standing Order 14.2 states:

*The [Finance] Committee may also consider and, where it sees fit, report on:*

*(i) financial information in explanatory memoranda accompanying proposed Assembly Measures;*

#### The Proposed Measure:

2. The Welsh Assembly Government introduced the proposed Education (Wales) Measure to the Assembly on 27 April 2009.

3. The purpose of this Measure is to extend children's entitlement by providing them with rights to make special educational needs (SEN) appeals and claims of disability discrimination to the Special Educational Needs Tribunal for Wales (the Tribunal). It will amend the law that gives parents the right to make appeals and claims to the Tribunal, as set out in Part 4 of the Education Act 1996 and part 4 of the Disability Discrimination Act 1995.

4. In essence, the Measure will:

- provide for an initial legislative pilot phase during which children in specified local authority areas will be able to make appeals and claims to the Tribunal and also enable the Tribunal to register and hear appeals/claims;
- subsequently give children across Wales the right to appeal and claim to the Tribunal;
- require that Local Education Authorities (LEAs) inform children of their appeal rights;
- place a duty on LEAs to make arrangements for, and inform children about access rights to, Partnership and Disagreement Resolution Services;
- place a new duty on LEAs to provide access to independent advocacy services that can listen to and give voice to children's views and concerns. Advocates will be expected to be able to assist children in resolution processes, appeal/claim case preparation and support or represent them at hearings;
- remove Minister of the Crown functions and consent requirements in relation to regulations governing the Tribunal's disability discrimination jurisdiction;
- empower Welsh Ministers to make regulations governing the Tribunal's Disability Discrimination jurisdiction; and
- place on Welsh Ministers the responsibility for considering complaints about non-implementation of Tribunal Disability Discrimination orders.

## **Submissions and evidence**

5. At its meeting on 11 June 2009, the Finance Committee considered the proposed Measure, the accompanying Explanatory Memorandum and a further paper from the Minister for Children, Education, Life Long Learning and Skills: FIN(3) 10-09 (p3). It received oral evidence from the Minister and officials:

- Jane Hutt, Minister for Children, Education, Lifelong Learning and Skills
- Huw Maguire, Policy Manager, Education (Wales) Measure
- Chris Burdett, Head of Support for Learners Division

6. The Committee also had regard to the evidence submitted to Legislation Committee No 3 as part of its consultation on this proposed Measure.

## **Discussion**

7. The proposed Measure fulfils its objectives in two stages. Phase 1 will be undertaken as a pilot and evaluation scheme and will explore and identify options. The Measure will enable Welsh Ministers to make regulations to specify the number and duration of the pilots. Phase 2 will follow and is the full roll-out which will be informed by the results and recommendations arising from the pilot and evaluation phase. Because Phase 2 depends critically on the outcome of Phase 1 it is not possible to estimate the costs of the roll-out and the Minister has not tried to do so in the Explanatory Memorandum. The Explanatory Memorandum (8.35) says that a pilot stage over 2 years, followed by an evaluation period, may be realised at an additional programme cost of £130,000 - £150,000.

8. In her written evidence, the Minister gives figures for annual running costs for the tribunals in the past 3 years from between £340,000 and £402,000. These figures were relatively stable as the numbers of

appeals/claims varied from 94 to 162, which is what one might expect when a significant proportion of the total is fixed costs. The Minister had concluded that these demonstrated that there was some flexibility in the system and she did not envisage for the period of the pilot that these costs would increase significantly.

9. In the consultation, the Welsh Local Government Association said that there would be additional direct costs in tribunals' budgets due to the need to provide an ad litem service. The Minister said she did not accept this because the tribunal was committed to informality through its regulations and involving a third party service would not fit with this. She believed that it was the proper role of the tribunal to weigh up all the evidence and make the decision itself<sup>1</sup>.

10. The Welsh Local Government Association also expressed concerns that the Measure would bring additional duties and potential significant cost to local authorities that were already facing reduction in staff. The Minister emphasised that a great deal of consultation had been undertaken with local authorities and that they also were part of the pilot, implementation and design group<sup>2</sup>. She indicated that she was not convinced that such costs would increase. She did not see the proposed Measure as something that would result in a large increase in appeals from children and noted that, in some authorities, changes to systems had reduced appeals<sup>3</sup>.

11. Similarly, the Minister said that she had been working closely with the Legal Services Commission and the Ministry of Justice to evaluate the impact that the new rights might have on their resources. She said it was accepted that if there was a marginal increase in the number of onward appeals from the tribunal derived from child appellants, this would not add any significant burden<sup>4</sup>.

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<sup>1</sup> Record of Proceedings, Finance Committee, 11 June 2009, paragraph 12

<sup>2</sup> Record of Proceedings, Finance Committee, 11 June 2009, paragraph 51

<sup>3</sup> Record of Proceedings, Finance Committee, 11 June 2009, paragraph 56

<sup>4</sup> Record of Proceedings, Finance Committee, 11 June 2009, paragraph 58



12. On that basis, Members noted that the costs of the pilot and the costs of the tribunals during the pilot period seem reasonably assessed and are not likely to present any significant problems for funding.

13. In relation to Phase 2, Members noted that the scope of the Measure would provide a Minister with the opportunity to make fundamental changes via Regulations after the pilot phase. Given the extent of this power, there is some difficulty in examining the financial implications of these changes because we simply do not know what they might be. The Committee noted that this means a substantial part of the powers created by the proposed Measure are not just uncostered but unspecified.

14. Members were concerned about this because, as a Finance Committee, they were able to scrutinise only a small part of the financial implications of the proposed legislation. In support of her approach, the Minister said that the proposed Measure had a very clear and defined intended purpose, namely to extend the appeal rights to children for the special educational needs tribunal. Consequently, any changes that might emerge through regulations would relate only to the very specific extension of the role of the Tribunal. The proposed Measure would not be opening up other policy areas. The Minister said also that any regulations would have a full regulatory and financial assessment to support them<sup>5</sup>. She added that she would ensure scrutiny was under the affirmative process if any such changes were to be considered as a result of the pilot phase.

15. Members recognised that whenever the Assembly considered a proposed Measure it could not foresee what policies might be implemented in the medium to long term, or by another Government, using a particular piece of legislation. The same applied to any government anywhere and it was therefore important to be careful about the scope of a piece of legislation<sup>6</sup>.

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<sup>5</sup> Record of Proceedings, Finance Committee, 11 June 2009, paragraph 45 and 47

<sup>6</sup> Record of Proceedings, Finance Committee, 11 June 2009, paragraph 45

## **Conclusion**

16. The Finance Committee has considered the Proposed Education (Wales) Measure. It notes that the costs of Phase 1 of the Measure are relatively modest and that they are not likely to present any difficulties in relation to funding.

17. The Finance Committee is, nonetheless, concerned that the proposed Measure takes substantial powers for the development of Phase 2 at an early stage and at a point in the project where it is not possible to specify them, let alone cost them. It notes the Minister's assurances that any regulations required to implement Phase 2 would have a full regulatory and financial assessment to support them and that they would be approved under the affirmative process. While recognising that this is a far from ideal situation the Committee nonetheless concludes that there are no objections on financial grounds to the proposed Measure proceeding for the purpose it is currently intended. The Finance Committee recommends that further developments arising from this Measure are subject to additional financial scrutiny at the appropriate time.

**Angela Burns**

**Chair, Finance Committee**