

Explanatory Memorandum to the Education (Wales) Measure 2009 (Pilot) (Revocation) Regulations 2014.

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) (Revocation) Regulations 2014. I am satisfied that the benefits outweigh any costs.

Huw Lewis

Minister for Education and Skills

11 December 2014

1. Description

- 1.1 Part 1 of the Education (Wales) Measure 2009 (“Measure”) makes amendments to the Education Act 1996 and Equality Act 2010 to give children the right to make special educational needs (SEN) appeals and claims of disability discrimination in respect of school pupils to the Special Educational Needs Tribunal for Wales (“SENTW”) themselves. The Measure also places a number of new duties on local authorities to make the new rights effective in practice and enabled the Welsh Ministers, under section 17 of the Measure, to pilot these rights and duties for a period of up to 40 months.
- 1.2 The Education (Wales) Measure 2009 (Commencement No. 3 and Transitional Provisions) Order 2012 (*“the Commencement Order”*) brought into force on 6 March 2012 the provisions in Part 1 of the Measure 2009 giving these rights to children and placing duties on local authorities. However, the Education (Wales) Measure 2009 (Pilot) Regulations 2012 (*“the Pilot Regulations 2012”*) limited those rights and duties to the pilot areas, namely the local authority areas of Carmarthenshire and Wrexham for the pilot period. The pilot period was from 6 March 2012 until the end of June 2015.
- 1.3 These Regulations bring the pilot within Carmarthenshire and Wrexham to an end earlier. They revoke the Pilot Regulations 2012 on 5 January 2015, with the effect that the rights and duties under the Measure will automatically apply to the whole of Wales from that date.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

- 2.1 There are no matters of specific interest to be brought to the attention of the Constitutional and Legislative Affairs Committee.

3. Legislative background

- 3.1 Under section 17 of the Measure, the Welsh Ministers made the Pilot Regulations 2012 to pilot the amendments made by Part 1 of the Measure to the Education Act 1996 (on special educational needs appeals) and the Equality Act 2010 (on disability discrimination claims) until the end of June 2015.
- 3.2 Under section 24(2) of the Measure, the power of the Welsh Ministers to make regulations includes power to make different provision for different cases or areas; to make provision generally or in relation to specific cases; and to make such incidental, supplementary, transitory, transitional or saving provision as the Welsh Ministers think fit. The revocation of article 4 (transitional provisions) of the Commencement Order is made under section 24(2).
- 3.3 These Regulations are subject to the negative resolution procedure.

4. Purpose & intended effect of the legislation

- 4.1 The purpose of these Regulations is to revoke the Pilot Regulations 2012, which has the intended effect, from 5 January 2015 of extending the rights to all children in Wales to make an SEN appeal or a claim of disability discrimination to the SEN Tribunal for Wales
- 4.2 Section 17 of the Measure required the Welsh Ministers to publish a report of how the piloted provisions were implemented and how effective they were in promoting the well-being of children. It required the Welsh Ministers to lay a copy of the report before the National Assembly for Wales before the end of the pilot period (though not less than 12 months after its start, nor later than 30 months after the Pilot Regulations 2012 came into force).
- 4.3 The rights and duties under the Measure have been piloted in Carmarthenshire and Wrexham local authorities since 6 March 2012. The Welsh Government commissioned an evaluation of these pilots and a report was published in June 2014. A copy of the evaluation report was also laid before the National Assembly for Wales on the 26 June 2014 (<http://wales.gov.uk/statistics-and-research/evaluation-pilot-young-peoples-rights-appeal-claim-sen-tribunal/?lang=en>).
- 4.4 Following the positive findings of the evaluation report, I issued a written statement outlining my decision to bring forward the new rights and duties across Wales from January 2015. My statement can be found on the Welsh Government website:
<http://wales.gov.uk/about/cabinet/cabinetstatements/2014/sentw/?lang=en>
- 4.5 The Pilot Regulations 2012 have a “sunset clause” of 30 June 2015, however these Regulations will bring to an end the pilot within Carmarthenshire and Wrexham earlier by revoking them in their entirety from 5 January 2015. These Regulations also revoke article 4 (transitional provisions) of the Commencement Order which provides for the application (for as long as regulations under section 17 of the Measure are in force) to local authorities in Wales not within the pilot, of sections 332A and 332B of the Education Act 1996 as if the amendments to those sections by the Measure were not in force.
- 4.6 The Welsh Government is committed to the United Nations Convention on the Rights of the Child (UNCRC) as a basis for its policy with children and young people, as encapsulated in the Rights of Children and Young Persons (Wales) Measure 2011. Allowing all children and young people in Wales to exercise the rights provided for by the Measure builds on the principles of the UNCRC.
- 4.7 A Children’s Rights Impact Assessment has been undertaken and will be published at the same time the rights and duties under the Measure roll out across Wales.

5. Consultation

5.1 Details of the consultation undertaken are included in the Regulatory Impact Assessment.

6. Regulatory Impact Assessment (RIA)

Options

Option 1: Do nothing

In the event of these Regulations not coming into force, then:

- the Education (Wales) Measure (Pilot) Regulations 2012 will continue to run their course until the end of June 2015 at which point the rights and duties under the Measure will come into force across Wales;
- children and young people outside of the pilot authorities of Carmarthenshire and Wrexham will be denied the opportunity to exercise the right to make SEN appeals and claims of disability discrimination to the SENTW themselves until July 2015.

Option 2: Make the legislation

By making the legislation, we will:

- extend the rights to make appeals and claims to all children in Wales from January 2015;
- ensure that the wishes of Peter Clarke, the first Children's Commissioner for Wales of children being able to make appeals to the SENTW where their parents do not access their own rights are met at the earliest opportunity following the successful completion of the pilots;
- take an important step in our commitment to the United Nations Convention on the Rights of the Child (UNCRC).

Costs and benefits

Option 1: Do nothing

This option would maintain the current policy and therefore the rights and duties under the Measure will come into force in July 2015. The majority of duties placed on local authorities under the Measure extend existing duties already placed upon them. These duties relate to:

- notice and service of documents;

- arrangements for the provision of advice and information;
- arrangements with a view to avoiding or resolving disputes; and
- arrangements for the provision of independent advocacy services

As such, there are no additional costs or benefits associated with this option.

Option 2: Make the legislation

Under this option local authorities will be required to discharge their duties as defined within the Measure nearly 6 months sooner. Therefore, while this option is not expected to generate additional costs, it does mean that costs might be incurred at an earlier stage than would otherwise have been the case.

The pilots undertaken have developed important information and literature that is available to all local authorities.

Supporting statutory guidance will provide local authorities with a clear understanding of their roles and responsibilities and signpost to good practice that has been established under the pilots. As such, any associated costs for local authorities in undertaking these duties earlier are expected to be negligible.

Consultation

As these Regulations simply end the pilot earlier than would have been the case, no consultation was undertaken on them. However, extensive consultations were undertaken for both the Education (Wales) Measure 2009, including 2 separate consultation papers, facilitated workshops in 3 schools and two facilitated public workshops. The Special Educational Needs Tribunal for Wales Regulations 2012 were also extensively consulted upon, including the SENTW user group, of which local authorities are members of. Therefore, local authorities have been aware of the rights and duties detailed within the Measure for sometime.

Welsh Ministers may give guidance under powers given by the Measure and local authorities must have regard to that guidance in performing the statutory responsibilities conferred on them by the Measure. A draft version of the statutory guidance was shared with local authorities, the SENTW and the Children's Commissioner for Wales for their views between the 26 September 2014 and the 03 November 2014. A total of 6 responses were received as part of this targeted consultation along with comments from the Children's Rights to Appeal and Make a Claim Pilot Group (The pilot authorities, SENTW, representatives from the Children's Commissioner for Wales and SNAP Cymru). Comments received have resulted in some minor revisions to the statutory guidance. The statutory guidance is intended to be published and issued to local authorities by the 5 January 2015.

To support local authorities further in understanding their statutory responsibilities under the Measure, the Welsh Government hosted an information sharing event on 20 November 2014 with local authorities and the SENTW. This provided an opportunity for all relevant stakeholders to hear about and discuss the best practice

coming from the pilots. The event was attended by 10 LAs and SNAP Cymru and involved presentations from the SENTW, the pilot authorities and the People in Work Unit who undertook the evaluation into the pilots. The event was well received from those in attendance.

Post implementation assessment

The Welsh Government will work with SENTW and local authorities to monitor how children are accessing their rights under the Measure on an ongoing basis. The timing of any review would need to take into account the changes proposed under legislation for additional learning needs.