
W E L S H S T A T U T O R Y
I N S T R U M E N T S

2022 No. 891 (W. 188) (C. 55)

EDUCATION, WALES

**The Additional Learning Needs and
Education Tribunal (Wales) Act
2018 (Commencement No. 8 and
Transitional and Saving Provisions)
Order 2022**

EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force provisions of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (“the Act”).

The Act establishes a statutory framework for supporting children and young people with additional learning needs. This replaces the legislation surrounding special educational needs and the assessment of children and young people with learning difficulties.

The provisions listed in article 3 come into force on 1 September 2022 in relation to those who are in year 11 and below (or would be if they attended a school), and who have a statement of special educational needs.

Article 1 contains definitions, including the “new law” in the Act and the “old law” in Part 4 of the Education Act 1996. Until a child is transferred to the new law, the old law will continue to apply to the child and the new law will not have effect (article 4).

This Order requires the appropriate local authority (see article 1(7)) to give a notice to a child in a particular year group in a particular school year (articles 9 and 10). For example, a child under compulsory school age, in a nursery class, in a reception class, year 6, year 10 or year 11 (or who would be in any of those year groups if the child were a registered pupil at a school) will transfer to the new law during the school year 2022-2023. The date of the notice given to a particular child will be the date that child transfers to the new law. The duty on the appropriate local authority to give a notice does not

apply when a child or the child's parent could bring an appeal, or has brought an appeal and that appeal has not been finally determined. In such a case, the appropriate local authority must give a notice as soon as reasonably practicable after the time for bringing an appeal ends (if no appeal is brought) or the appeal is finally determined (article 11).

The appropriate local authority can give the child an IDP notice or a No IDP notice. An IDP notice means that the child is deemed to have additional learning needs for the purposes of Chapter 2 of Part 2 of the Act on the date of the notice and that it is intended that an individual development plan is prepared for the child (article 5). A No IDP notice means that the child is deemed not to have additional learning needs for the purposes of Chapter 2 of Part 2 of the Act on the date of the notice (article 6).

A child with a statement or the child's parent can request that a notice is given (article 13). Where an individual development plan is prepared following an IDP notice, a copy of the individual development plan must be given to the child and the child's parent within 12 weeks of the date of the notice unless certain circumstances apply (article 14).

The appropriate local authority may also, in exceptional circumstances, give any child and that child's parent an ALN notice which will transfer the child to the new law (article 15).

If the child has not transferred to the new law by the end of the school year in which the child should have transferred, articles 16 to 19 set out the date on which the old law ceases and the new law has effect in relation to the child.

Article 21 applies where a child's statement ceases to be maintained. The child will transfer to the new law on the date the child's statement ceases to be maintained.

Article 22 applies to a child who ceases to be the responsibility of the local authority maintaining the statement. The child will transfer to the new law on the date that the child ceases to be the responsibility of the local authority unless the child or the child's parent could bring an appeal, or has brought an appeal and that appeal has not been finally determined.

When preparing an individual development plan for a child with a statement, regard must be had to the statement maintained in relation to the child immediately before transferring to the new law (article 23).

Article 24 reflects for the purposes of this Order section 84 of the Act which provides that certain duties and conditions in relation to children (e.g. to give a

child a copy of an individual development plan) do not apply if it is considered that the child does not have capacity to understand the subject matter.

Article 25 provides that certain duties and conditions in relation to parents in this Order (e.g. to give a parent an IDP notice or a No IDP notice) do not apply when the child ceases to be of compulsory school age.

NOTE AS TO EARLIER COMMENCEMENT ORDERS

The following provisions of the Act have been brought into force by Commencement Orders made before the date of this Order⁽¹⁾:

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No</i>
Sections 2 to 3 (partially)	1 September 2021	S.I. 2021/373 (W. 116) (C. 12)
	1 January 2022	S.I. 2021/1243 (W. 315) (C. 68) ⁽²⁾
		S.I. 2021/1244 (W. 316) (C. 69) ⁽³⁾
		S.I. 2021/1245 (W. 317) (C. 70)
Section 4 (partially)	2 November 2020	S.I. 2020/1182 (W. 267) (C. 33)
	1 September 2021	S.I. 2021/373 (W. 116) (C. 12)
	1 January 2022	S.I. 2021/1243 (W. 315) (C. 68)
		S.I. 2021/1244 (W. 316) (C. 69)
Section 5	2 November 2020	S.I. 2020/1182 (W. 267) (C. 33)
		S.I. 2021/1245 (W. 317) (C. 70)
Section 6 (partially)	1 September 2021	S.I. 2021/373 (W. 116) (C. 12)
	1 January 2022	S.I. 2021/1243 (W. 315) (C. 68)

(1) See the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 9 and Transitional and Saving Provisions) Order 2022 (S.I. 2022/892 (W. 189) (C. 56)), the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 10) Order 2022 (S.I. 2022/893 (W. 190) (C. 57)), the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 11) Order 2022 (S.I. 2022/894 (W. 191) (C. 58)), the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 12) Order 2022 (S.I. 2022/895 (W. 192) (C. 59)), the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 13 and Transitional and Saving Provisions) Order 2022 (S.I. 2022/896 (W. 193) (C. 60)), the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 14 and Transitional and Saving Provisions) Order 2022 (S.I. 2022/897 (W. 194) (C. 61)) and the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 15) Order 2022 (S.I. 2022/898 (W. 195) (C. 62)) which bring provisions into force for certain purposes on the same date as this Order.

(2) Amended by S.I. 2021/1428 (W. 369) (C. 80).

(3) Amended by S.I. 2021/1428 (W. 369) (C. 80).

		S.I. 2021/1244 (W. 316) (C. 69)
		S.I. 2021/1245 (W. 317) (C. 70)
Section 7 (partially)	2 November 2020	S.I. 2020/1182 (W. 267) (C. 33)
	1 September 2021	S.I. 2021/373 (W. 116) (C. 12)
	1 January 2022	S.I. 2021/1243 (W. 315) (C. 68)
		S.I. 2021/1244 (W. 316) (C. 69)
		S.I. 2021/1245 (W. 317) (C. 70)
Section 8 (partially)	2 November 2020	S.I. 2020/1182 (W. 267) (C. 33)
	1 September 2021	S.I. 2021/373 (W. 116) (C. 12)
	1 January 2022	S.I. 2021/1243 (W. 315) (C. 68)
		S.I. 2021/1244 (W. 316) (C. 69)
		S.I. 2021/1245 (W. 317) (C. 70)
Sections 9 to 14 (partially)	1 September 2021	S.I. 2021/373 (W. 116) (C. 12)
	1 January 2022	S.I. 2021/1243 (W. 315) (C. 68)
		S.I. 2021/1244 (W. 316) (C. 69)
		S.I. 2021/1245 (W. 317) (C. 70)
Section 15	2 November 2020	S.I. 2020/1182 (W. 267) (C. 33)
Section 16 (partially)	2 November 2020	S.I. 2020/1182 (W. 267) (C. 33)
(fully)	1 September 2021	S.I. 2021/373 (W. 116) (C. 12)
		(1)
Sections 17 to 20 (partially)	1 September 2021	S.I. 2021/373 (W. 116) (C. 12)
	1 January 2022	S.I. 2021/1243 (W. 315) (C. 68)
		S.I. 2021/1244 (W. 316) (C. 69)
		S.I. 2021/1245 (W. 317) (C. 70)
Section 21 (partially)	2 November 2020	S.I. 2020/1182 (W. 267) (C. 33)
	1 September 2021	S.I. 2021/373 (W. 116) (C. 12)
	1 January 2022	S.I. 2021/1243

(1) Amended by S.I. 2021/735 (W. 184) (C. 34).

		(W. 315) (C. 68)
		S.I. 2021/1244
		(W. 316) (C. 69)
		S.I. 2021/1245
		(W. 317) (C. 70)
Sections 22 to 31 (partially)	1 September 2021	S.I. 2021/373
		(W. 116) (C. 12)
	1 January 2022	S.I. 2021/1243
		(W. 315) (C. 68)
		S.I. 2021/1244
		(W. 316) (C. 69)
		S.I. 2021/1245
		(W. 317) (C. 70)
Section 32 (partially)	2 November 2020	S.I. 2020/1182
		(W. 267) (C. 33)
	1 September 2021	S.I. 2021/373
		(W. 116) (C. 12)
	1 January 2022	S.I. 2021/1243
		(W. 315) (C. 68)
		S.I. 2021/1244
		(W. 316) (C. 69)
		S.I. 2021/1245
		(W. 317) (C. 70)
Sections 33 to 35 (partially)	1 September 2021	S.I. 2021/373
		(W. 116) (C. 12)
	1 January 2022	S.I. 2021/1243
		(W. 315) (C. 68)
		S.I. 2021/1244
		(W. 316) (C. 69)
		S.I. 2021/1245
		(W. 317) (C. 70)
Section 36 (partially)	2 November 2020	S.I. 2020/1182
		(W. 267) (C. 33)
	1 September 2021	S.I. 2021/373
		(W. 116) (C. 12)
	1 January 2022	S.I. 2021/1243
		(W. 315) (C. 68)
		S.I. 2021/1244
		(W. 316) (C. 69)
		S.I. 2021/1245
		(W. 317) (C. 70)
Section 37	2 November 2020	S.I. 2020/1182
		(W. 267) (C. 33)
Section 38 (partially)	1 September 2021	S.I. 2021/373
		(W. 116) (C. 12)
	1 January 2022	S.I. 2021/1243
		(W. 315) (C. 68)
		S.I. 2021/1244
		(W. 316) (C. 69)
		S.I. 2021/1245
		(W. 317) (C. 70)
Section 39	2 November 2020	S.I. 2020/1182
		(W. 267) (C. 33)
Sections 40 to 44 (partially)	1 September 2021	S.I. 2021/373
		(W. 116) (C. 12)

	1 January 2022	S.I. 2021/1243 (W. 315) (C. 68) S.I. 2021/1244 (W. 316) (C. 69) S.I. 2021/1245 (W. 317) (C. 70)
Section 45	2 November 2020	S.I. 2020/1182 (W. 267) (C. 33)
Section 46	2 November 2020	S.I. 2020/1182 (W. 267) (C. 33)
Section 47 (partially)	2 November 2020	S.I. 2020/1182 (W. 267) (C. 33)
	1 September 2021	S.I. 2021/373 (W. 116) (C. 12)
	1 January 2022	S.I. 2021/1243 (W. 315) (C. 68) S.I. 2021/1244 (W. 316) (C. 69) S.I. 2021/1245 (W. 317) (C. 70)
Sections 48 to 49 (partially)	1 September 2021	S.I. 2021/373 (W. 116) (C. 12)
	1 January 2022	S.I. 2021/1243 (W. 315) (C. 68) S.I. 2021/1244 (W. 316) (C. 69) S.I. 2021/1245 (W. 317) (C. 70)
Section 50(1), (4) and (5) (partially)	1 September 2021	S.I. 2021/373 (W. 116) (C. 12)
	1 January 2022	S.I. 2021/1243 (W. 315) (C. 68) S.I. 2021/1244 (W. 316) (C. 69) S.I. 2021/1245 (W. 317) (C. 70)
Section 50(1), (2) and (3) (fully)	1 September 2021	S.I. 2021/373 (W. 116) (C. 12)
Sections 51 to 53 (partially)	1 September 2021	S.I. 2021/373 (W. 116) (C. 12)
	1 January 2022	S.I. 2021/1243 (W. 315) (C. 68) S.I. 2021/1244 (W. 316) (C. 69) S.I. 2021/1245 (W. 317) (C. 70)
Section 54 (partially) (fully)	2 November 2020	S.I. 2020/1182 (W. 267) (C. 33)
	1 September 2021	S.I. 2021/373 (W. 116) (C. 12)
Section 55 (partially)	1 September 2021	S.I. 2021/373 (W. 116) (C. 12)
	1 January 2022	S.I. 2021/1243 (W. 315) (C. 68)

		S.I. 2021/1244 (W. 316) (C. 69)
		S.I. 2021/1245 (W. 317) (C. 70)
Section 56 (partially)	2 November 2020	S.I. 2020/1182 (W. 267) (C. 33)
(fully)	1 September 2021	S.I. 2021/373 (W. 116) (C. 12)
Section 56(1)	4 January 2021	S.I. 2020/1182 (W. 267) (C. 33)
Section 56(4) to (6)	4 January 2021	S.I. 2020/1182 (W. 267) (C. 33)
Sections 57 to 58	1 September 2021	S.I. 2021/373 (W. 116) (C. 12)
Section 59 (partially)	1 September 2021	S.I. 2021/373 (W. 116) (C. 12)
	1 January 2022	S.I. 2021/1243 (W. 315) (C. 68)
		S.I. 2021/1244 (W. 316) (C. 69)
		S.I. 2021/1245 (W. 317) (C. 70)
Section 60	4 January 2021	S.I. 2020/1182 (W. 267) (C. 33)
Section 61	4 January 2021	S.I. 2020/1182 (W. 267) (C. 33)
Section 62	4 January 2021	S.I. 2020/1182 (W. 267) (C. 33)
Sections 63 to 64 (partially)	1 September 2021	S.I. 2021/373 (W. 116) (C. 12)
	1 January 2022	S.I. 2021/1243 (W. 315) (C. 68)
		S.I. 2021/1244 (W. 316) (C. 69)
		S.I. 2021/1245 (W. 317) (C. 70)
Section 65 (partially)	2 November 2020	S.I. 2020/1182 (W. 267) (C. 33)
	1 September 2021	S.I. 2021/373 (W. 116) (C. 12)
	1 January 2022	S.I. 2021/1243 (W. 315) (C. 68)
		S.I. 2021/1244 (W. 316) (C. 69)
		S.I. 2021/1245 (W. 317) (C. 70)
Section 66 (partially)	1 September 2021	S.I. 2021/373 (W. 116) (C. 12)
	1 January 2022	S.I. 2021/1243 (W. 315) (C. 68)
		S.I. 2021/1244 (W. 316) (C. 69)
		S.I. 2021/1245 (W. 317) (C. 70)

Section 67	2 November 2020	S.I. 2020/1182 (W. 267) (C. 33)
Sections 68 to 69 (partially)	1 September 2021	S.I. 2021/373 (W. 116) (C. 12)
	1 January 2022	S.I. 2021/1243 (W. 315) (C. 68)
		S.I. 2021/1244 (W. 316) (C. 69)
		S.I. 2021/1245 (W. 317) (C. 70)
Sections 70 to 73	1 September 2021	S.I. 2021/373 (W. 116) (C. 12)
Section 74	2 November 2020	S.I. 2020/1182 (W. 267) (C. 33)
Section 75 (partially)	2 November 2020	S.I. 2020/1182 (W. 267) (C. 33)
(fully)	1 September 2021	S.I. 2021/373 (W. 116) (C. 12)
Section 76 (partially)	2 November 2020	S.I. 2020/1182 (W. 267) (C. 33)
(fully)	1 September 2021	S.I. 2021/373 (W. 116) (C. 12)
Section 77 (partially)	2 November 2020	S.I. 2020/1182 (W. 267) (C. 33)
(fully)	1 September 2021	S.I. 2021/373(W. 116) (C. 12)
Sections 78 to 81	1 September 2021	S.I. 2021/373 (W. 116) (C. 12)
Section 82	2 November 2020	S.I. 2020/1182 (W. 267) (C. 33)
Section 83 (partially)	2 November 2020	S.I. 2020/1182 (W. 267) (C. 33)
(fully)	1 September 2021	S.I. 2021/373 (W. 116) (C. 12)
Section 84	1 September 2021	S.I. 2021/373 (W. 116) (C. 12)
Section 85 (partially)	2 November 2020	S.I. 2020/1182 (W. 267) (C. 33)
(fully)	1 September 2021	S.I. 2021/373 (W. 116) (C. 12)
Sections 86 to 90	1 September 2021	S.I. 2021/373 (W. 116) (C. 12)
Section 91 (partially)	2 November 2020	S.I. 2020/1182 (W. 267) (C. 33)
(fully)	1 September 2021	S.I. 2021/373 (W. 116) (C. 12)
Section 92 (partially)	2 November 2020	S.I. 2020/1182 (W. 267) (C. 33)
(fully)	1 September 2021	S.I. 2021/373 (W. 116) (C. 12)
Sections 93 to 94	1 September 2021	S.I. 2021/373 (W. 116) (C. 12)
Section 95 (partially)	2 November 2020	S.I. 2020/1182 (W. 267) (C. 33)
(fully)	1 September	S.I. 2021/373

	2021	(W. 116) (C. 12)
Section 96 (partially)	2 November	S.I. 2020/1182
	2020	(W. 267) (C. 33)
	1 September	S.I. 2021/373
	2021	(W. 116) (C. 12)
	1 January 2022	S.I. 2021/1243
		(W. 315) (C. 68)
		S.I. 2021/1244
		(W. 316) (C. 69)
		S.I. 2021/1245
		(W. 317) (C. 70)
The Schedule, paragraph 1 (partially)	1 September	S.I. 2021/373
	2021	(W. 116) (C. 12)
	1 January 2022	S.I. 2021/1243
		(W. 315) (C. 68)
		S.I. 2021/1244
		(W. 316) (C. 69)
		S.I. 2021/1245
		(W. 317) (C. 70)
The Schedule, paragraph 2(1), 2(2)(b) and 2(3)	1 September	S.I. 2021/373
	2021	(W. 116) (C. 12)
The Schedule, paragraph 3	1 September	S.I. 2021/373
	2021	(W. 116) (C. 12)
The Schedule, paragraph 4(1), 4(2) to 4(8), 4(9), 4(10), 4(13) to 4(18), 4(19)(b), 4(20), 4(21), 4(23) to 4(29), 4(32)(a)(i) and (ii), 4(32)(b) (partially)	1 September	S.I. 2021/373
	2021	(W. 116) (C. 12)
	1 September	S.I. 2021/373
	2021	(W. 116) (C. 12)
	1 January 2022	S.I. 2021/1243
		(W. 315) (C. 68)
		S.I. 2021/1244
		(W. 316) (C. 69)
		S.I. 2021/1245
		(W. 317) (C. 70)
The Schedule, paragraph 4(9) (in so far as it omits sections 333(1ZA), 333(2) to 333(6) and 334 to 335), 4(12), 4(19)(a), 4(22), 4(30)(a)(ii), 4(30)(b), 4(31), 4(32)(a)(iii), 4(33)(a), 4(33)(b) (in so far as it omits certain definitions), 4(33)(d), 4(33)(e) and 4(33)(g)	1 September	S.I. 2021/373
	2021	(W. 116) (C. 12)

The Schedule, paragraph 6(d)(v), 6(f), 6(g), 6(j)(i), 6(l)(i), 6(l)(iii), 6(n)(ii) (in so far as it omits paragraph 11 of Schedule 2), and 6(t)	1 September 2021	S.I. 2021/373 (W. 116) (C. 12)
The Schedule, paragraph 7 (partially)	1 September 2021 1 January 2022	S.I. 2021/373 (W. 116) (C. 12) S.I. 2021/1243 (W. 315) (C. 68) S.I. 2021/1244 (W. 316) (C. 69) S.I. 2021/1245 (W. 317) (C. 70)
The Schedule, paragraph 8 (partially)	1 September 2021 1 January 2022	S.I. 2021/373 (W. 116) (C. 12) S.I. 2021/1243 (W. 315) (C. 68) S.I. 2021/1244 (W. 316) (C. 69) S.I. 2021/1245 (W. 317) (C. 70)
The Schedule, paragraphs 9 and 10	1 September 2021	S.I. 2021/373 (W. 116) (C. 12)
The Schedule, paragraph 11(a) (partially)	1 September 2021 1 January 2022	S.I. 2021/373 (W. 116) (C. 12) S.I. 2021/1243 (W. 315) (C. 68) S.I. 2021/1244 (W. 316) (C. 69) S.I. 2021/1245 (W. 317) (C. 70)
The Schedule, paragraph 11(b)	1 September 2021	S.I. 2021/373 (W. 116) (C. 12)
The Schedule, paragraph 12(a) (partially)	1 September 2021 1 January 2022	S.I. 2021/373 (W. 116) (C. 12) S.I. 2021/1243 (W. 315) (C. 68) S.I. 2021/1244 (W. 316) (C. 69) S.I. 2021/1245 (W. 317) (C. 70)
The Schedule, paragraph 12(b)	1 September 2021	S.I. 2021/373 (W. 116) (C. 12)
The Schedule, paragraph 13	1 September 2021	S.I. 2021/373 (W. 116) (C. 12)
The Schedule, paragraph 14(1) to (3) (partially)	1 September 2021 1 January 2022	S.I. 2021/373 (W. 116) (C. 12) S.I. 2021/1243 (W. 315) (C. 68)

		S.I. 2021/1244 (W. 316) (C. 69)
		S.I. 2021/1245 (W. 317) (C. 70)
The Schedule, paragraph 14(1) and 14(4)	1 September 2021	S.I. 2021/373 (W. 116) (C. 12)
The Schedule, paragraph 15(1) and 15(3) to 15(4)	1 September 2021	S.I. 2021/373 (W. 116) (C. 12)
The Schedule, paragraphs 17 and 18	1 September 2021	S.I. 2021/373 (W. 116) (C. 12)
The Schedule, paragraph 19(1), (2), (3), (5)(a) to (d), (5)(e)(i), (5)(f) and (6)	1 September 2021	S.I. 2021/373 (W. 116) (C. 12)
The Schedule, paragraph 19(1),(4) and (5)(g) and (h) (partially) (fully)	2 November 2020	S.I. 2020/1182 (W. 267) (C. 33)
	1 September 2021	S.I. 2021/373 (W. 116) (C. 12)
The Schedule, paragraph 19(1), (5)(e)(ii) (partially)	1 September 2021 1 January 2022	S.I. 2021/373 (W. 116) (C. 12) S.I. 2021/1243 (W. 315) (C. 68) S.I. 2021/1244 (W. 316) (C. 69) S.I. 2021/1245 (W. 317) (C. 70)
The Schedule, paragraph 20	1 September 2021	S.I. 2021/373 (W. 116) (C. 12)
The Schedule, paragraph 21 (1), (2)(a)(i) and (2)(b)(ii) (partially)	1 September 2021 1 January 2022	S.I. 2021/373 (W. 116) (C. 12) S.I. 2021/1243 (W. 315) (C. 68) S.I. 2021/1244 (W. 316) (C. 69) S.I. 2021/1245 (W. 317) (C. 70)
The Schedule, paragraph 21(1) and 21(b)(i)	1 September 2021	S.I. 2021/373 (W. 116) (C. 12)
The Schedule, paragraph 22 (partially)	1 September 2021 1 January 2022	S.I. 2021/373 (W. 116) (C. 12) S.I. 2021/1243 (W. 315) (C. 68) S.I. 2021/1244 (W. 316) (C. 69) S.I. 2021/1245 (W. 317) (C. 70)

The Schedule, paragraph 23(1), 23(3)(a) to (c) and (5)	1 September 2021	S.I. 2021/373 (W. 116) (C. 12)
The Schedule, paragraph 23(1) and (4) (partially)	1 September 2021 1 January 2022	S.I. 2021/373 (W. 116) (C. 12) S.I. 2021/1243 (W. 315) (C. 68) S.I. 2021/1244 (W. 316) (C. 69) S.I. 2021/1245 (W. 317) (C. 70)
The Schedule, paragraph 24(1) and 24(3) and (6)(a) (partially)	1 September 2021 1 January 2022	S.I. 2021/373 (W. 116) (C. 12) S.I. 2021/1243 (W. 315) (C. 68) S.I. 2021/1244 (W. 316) (C. 69) S.I. 2021/1245 (W. 317) (C. 70)
The Schedule, paragraph 24(1), 24(2), (5) and (6)(b) and (c)	1 September 2021	S.I. 2021/373 (W. 116) (C. 12) (1)

(1) Amended by S.I. 2021/735 (W. 184) (C. 34).

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2022 No. 891 (W. 188) (C. 55)

EDUCATION, WALES

**The Additional Learning Needs and
Education Tribunal (Wales) Act
2018 (Commencement No. 8 and
Transitional and Saving Provisions)
Order 2022**

Made

16 August 2022

The Welsh Ministers, in exercise of the powers conferred by section 100(3) and (4) of the Additional Learning Needs and Education Tribunal (Wales) Act 2018(1), make the following Order:

Title and interpretation

1.—(1) The title of this Order is the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 8 and Transitional and Saving Provisions) Order 2022.

(2) In this Order—

“the 1996 Act” (“*Deddf 1996*”) means the Education Act 1996(2);

“the Act” (“*y Ddeddf*”) means the Additional Learning Needs and Education Tribunal (Wales) Act 2018;

“child” (“*plentyn*”) means a person who is not over compulsory school age;

“code” (“*cod*”) means a code on additional learning needs issued under section 4 of the Act;

“compulsory school age” (“*oedran ysgol gorfodol*”) has the same meaning as in section 8(3) of the 1996 Act;

(1) 2018 anaw 2.

(2) 1996 c. 56.

(3) Section 8 was amended by section 52 of the Education Act 1997 (c. 44).

“in the area” (“*yn ardal*”) has the same meaning as in section 579(3B)(1) of the 1996 Act;

“individual development plan” (“*cynllun datblygu unigol*”) means a plan prepared and maintained under Chapter 2 of Part 2 of the Act;

“local authority” (“*awdurdod lleol*”) has the same meaning as in section 99 of the Act;

“looked after child” (“*plentyn sy’n derbyn gofal*”) has the same meaning as in section 15 of the Act;

“maintained school” (“*ysgol a gynhelir*”) has the same meaning as in section 99 of the Act;

“parent” (“*rhiant*”) has the same meaning as in section 576(2) of the 1996 Act;

“reception class” (“*dosbarth derbyn*”) means a year group in which the majority of children will, in the school year, attain the age of 5;

“registered pupil” (“*disgybl cofrestredig*”) has the same meaning as in section 434(3) of the 1996 Act;

“school year” (“*blwyddyn ysgol*”) has the same meaning as in section 579(4) of the 1996 Act;

“Tribunal” (“*Tribiwnlys*”) means the Education Tribunal for Wales(5);

“Tribunal Rules” (“*Rheolau’r Tribiwnlys*”) means the Special Educational Needs Tribunal for Wales Regulations 2012(6);

“year 6” (“*blwyddyn 6*”) means a year group in which the majority of children will, in the school year, attain the age of 11;

“year 10” (“*blwyddyn 10*”) means a year group in which the majority of children will, in the school year, attain the age of 15;

“year 11” (“*blwyddyn 11*”) means a year group in which the majority of children will, in the school year, attain the age of 16;

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- (1) Inserted by Children and Families Act 2014 (c. 6), section 82 and paragraphs 1 and 59 of Schedule 3 and amended by section 95 of the Act.
 - (2) Amended by School Standards and Framework Act 1998 (c. 31), section 140 and paragraph 180 of Schedule 30 and Schedule 31.
 - (3) Amended by School Standards and Framework Act 1998 (c. 31), section 140 and paragraph 111 of Schedule 30 and by the Local Education Authorities and Children’s Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158), article 3.
 - (4) Definition of “school year” was inserted by the Education Act 1997 (c. 44), section 57, paragraph 43 of Schedule 7.
 - (5) The Education Tribunal for Wales was previously known as the Special Educational Needs Tribunal for Wales. See section 91 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018.
 - (6) S.I. 2012/322 (W. 53).

“year group” (“*grŵp blwyddyn*”) means a group of children at a school the majority of whom will, in a particular school year, attain the same age.

- (3) References in this Order to “the old law” are to Chapter 1 of Part 4 of the 1996 Act.
- (4) References in this Order to “the new law” are to—
- (a) the Act,
 - (b) a regulation or the code made under that Act, and
 - (c) any other provision of, or made under, an act that has effect for the purposes of or in relation to—
 - (i) a provision of the Act or such regulations or code, or
 - (ii) a person to whom the Act or such regulations or code applies.
- (5) For the purposes of this Order an appeal is finally determined if it is withdrawn, or if—
- (a) a decision is made by a tribunal or court on the appeal, and
 - (b) if a request may be made to review the decision or it may be further appealed, and the period (or each of the periods) for doing so expires without a review being requested or further appeal being made.
- (6) For the purposes of this Order, a local authority is responsible for a child if he or she is in the area of the authority.
- (7) For the purposes of this Order, where a child is—
- (a) a looked after child, the appropriate local authority is the local authority that looks after the child;
 - (b) not a looked after child, the appropriate local authority is the local authority responsible for the child.
- (8) For the purposes of this Order, an appeal is ongoing where—
- (a) the period within which an appeal under sections 326(1), 328(3)(b) or 329A(8) of the 1996 Act, or paragraph 11 of Schedule 27 to the 1996 Act could be made under Part B of the Tribunal Rules has not expired;
 - (b) the child or the child’s parent has made an appeal under section 326(1), 328(3)(b) or 329A(8) of the 1996 Act, or paragraph 11 of Schedule 27 to the 1996 Act and that appeal has not been finally determined.

Meaning of a child with a statement

2. For the purposes of this Order, a child (“C”) has “a statement” if C is a child in relation to whom a local

authority is maintaining a statement of special educational needs under section 324 or 331 of the 1996 Act.

Provisions coming into force on 1 September 2022

3. The following provisions of the Act come into force on 1 September 2022 in relation to a child who has a statement on 1 September 2022—

- (a) sections 2 to 4;
- (b) sections 6 to 14;
- (c) sections 17 to 36;
- (d) section 38;
- (e) sections 40 to 44;
- (f) sections 47 to 49;
- (g) section 50(1) for the purposes of the provisions in paragraph (h);
- (h) section 50(4) and (5);
- (i) sections 51 to 53;
- (j) section 55;
- (k) section 59;
- (l) sections 63 to 66;
- (m) sections 68 and 69;
- (n) section 96 for the purposes of the provisions in paragraph (o);
- (o) in the Schedule—
 - (i) paragraph 1;
 - (ii) paragraph 4(1) for the purposes of the provisions in sub-paragraphs (iii) to (xi);
 - (iii) paragraph 4(2) to 4(6);
 - (iv) paragraph 4(7) to the extent that the paragraph has not been repealed in relation to the child⁽¹⁾;
 - (v) paragraph 4(8) and 4(9);
 - (vi) paragraph 4(10);
 - (vii) paragraph 4(13) to 4(18);
 - (viii) paragraph 4(19)(b);
 - (ix) paragraph 4(20) and 4(21);

(1) Paragraph 4(7) (“the provision”) has been repealed by paragraph 75 of Schedule 2 to the Curriculum and Assessment (Wales) Act 2021 (asc 4) (“the 2021 Act”). However, the provision has been saved by the Curriculum and Assessment (Wales) Act 2021 (Transitional and Saving Provision) Regulations 2022 (S.I. 2022/111 (W. 39)) in relation to a child or pupil provided with education under the old curriculum (i.e. in relation to whom the 2021 Act has not been commenced). The effect of that saving provision is that paragraph 4(7) of the Schedule to the Act remains in force until such time as the child or pupil is provided with education under the 2021 Act.

- (x) paragraph 4(23) to 4(29);
- (xi) paragraph 4(32)(a)(i) and (ii) and paragraph 4(32)(b);
- (xii) paragraph 7;
- (xiii) paragraph 8;
- (xiv) paragraph 11(a);
- (xv) paragraph 12(a);
- (xvi) paragraph 14(1) for the purposes of the provisions in sub-paragraph (xvii);
- (xvii) paragraph 14(2) and (3);
- (xviii) paragraph 19(1) for the purpose of the provision in sub-paragraph (xix);
- (xix) paragraph 19(5)(e)(ii);
- (xx) paragraph 21(1) for the purposes of the provisions in sub-paragraph (xxi);
- (xxi) paragraph 21(2)(a)(i) and (2)(b)(ii);
- (xxii) paragraph 22;
- (xxiii) paragraph 23(1) for the purpose of the provision in sub-paragraph (xxiv);
- (xxiv) paragraph 23(4);
- (xxv) paragraph 24(1) for the purposes of the provisions in sub-paragraph (xxvi);
- (xxvi) paragraph 24(3) and (6)(a).

Saving provision

4. Subject to articles 9 to 12 and 15 to 22, despite the disapplication by section 96 and paragraph 4(9) of the Schedule to the Act of Chapter 1 of Part 4 of the 1996 Act⁽¹⁾ in relation to a child who has a statement—

- (a) the old law continues to have effect in relation to that child, and
- (b) the new law does not have effect in relation to that child.

IDP notice

5. An IDP notice is a notice given to a child and a child's parent which confirms that—

- (a) the child has additional learning needs for the purposes of Chapter 2 of Part 2 of the Act, and
- (b) an individual development plan will be prepared for the child.

(1) See article 3 of this Order which commenced those provisions.

No IDP notice

6. A No IDP notice is a notice given to a child and a child's parent which confirms that the appropriate local authority has decided that the child does not have additional learning needs for the purposes of Chapter 2 of Part 2 of the Act.

Effect of IDP notice

7. The effect of the IDP notice is that—

- (a) the appropriate local authority is deemed to have decided on the date of the notice that the child has additional learning needs under Chapter 2 of Part 2 of the Act,
- (b) the new law applies in relation to the child on that date, and
- (c) the old law ceases to apply in relation to the child on that date.

Effect of No IDP notice

8. The effect of the No IDP notice is that—

- (a) the appropriate local authority is deemed to have decided on the date of the notice that the child does not have additional learning needs under Chapter 2 of Part 2 of the Act,
- (b) the new law applies in relation to the child on that date, and
- (c) the old law ceases to apply in relation to the child on that date.

Duty to give a notice

9.—(1) This article applies to a child who on 1 September 2022 has a statement and who is—

- (a) under compulsory school age, or
- (b) of compulsory school age and in a reception class, year 6, year 10 or year 11 or would be in any of those year groups if the child were a registered pupil at a maintained school.

(2) Unless the new law applies in relation to the child, the appropriate local authority must either give an IDP notice or a No IDP notice to the child and the child's parent during the 2022-2023 school year.

(3) This article does not apply in relation to a child when an appeal is ongoing in relation to that child.

10.—(1) This article applies to a child who on 1 September 2022 has a statement and who did not come within article 9.

(2) Unless the new law applies in relation to the child, the appropriate local authority must give an IDP

notice or a No IDP notice to the child and the child's parent during the 2023-2024 school year.

(3) This article does not apply in relation to a child when an appeal is ongoing in relation to that child.

Duty to give a notice when an ongoing appeal ends

11.—(1) When an IDP notice or a No IDP notice is not given pursuant to articles 9 or 10 because of an ongoing appeal, paragraph (2) applies.

(2) Unless the new law applies in relation to the child, the appropriate local authority must either give an IDP notice or a No IDP notice to the child and the child's parent as soon as is reasonably practicable after—

- (a) the period within which an appeal could be made has expired, if no appeal has been made;
- (b) the appeal has been finally determined, where an appeal has been made.

Right to request an IDP notice or a No IDP notice

12.—(1) A child who on 1 September 2022 had a statement or that child's parent may request that the appropriate local authority gives an IDP notice or a No IDP notice and the appropriate local authority must give either an IDP notice or a No IDP notice as soon as reasonably practicable after the request.

(2) The duty to give an IDP notice or a No IDP notice in paragraph (1) does not apply when—

- (a) an appeal is ongoing in relation to that child, or
- (b) articles 15 to 22 apply.

Time for giving an individual development plan

13.—(1) When an IDP notice is given pursuant to articles 9, 10, 11 or 12 a copy of the individual development plan must be given to the child and the child's parent within 12 weeks of the date of the notice, unless—

- (a) any of the circumstances in section 12(2) of the Act apply,
- (b) section 31 of the Act applies, or
- (c) there are exceptional circumstances.

(2) If any of the circumstances in section 12(2) of the Act apply or there are exceptional circumstances a copy of the individual development plan must be given as soon as is reasonably practicable.

(3) Any timescales in the code relating to the preparation of an individual development plan do not apply when an individual development plan is prepared following the giving of an IDP notice.

ALN Notice

14.—(1) This article applies to a child who had a statement on 1 September 2022.

(2) Subject to paragraphs (4) and (5), the appropriate local authority may at any time give an ALN notice to a child and that child's parent.

(3) The effect of the ALN notice is that—

- (a) the new law applies in relation to the child on the date of the notice, and
- (b) the old law ceases to apply in relation to the child on the date of the notice.

(4) The appropriate local authority may only give an ALN notice in exceptional circumstances.

(5) The appropriate local authority must not give an ALN notice when there is an appeal ongoing in relation to the child.

Children for whom the new law does not apply by a certain date

15.—(1) This article applies to a child—

- (a) who had a statement on 1 September 2022,
- (b) who was during the 2022-2023 school year—
 - (i) under compulsory school age, or
 - (ii) of compulsory school age and in a reception class, year 6, year 10 or year 11 or would be in any of those year groups if the child were a registered pupil at a maintained school,
- (c) in relation to whom there is no appeal ongoing on 30 August 2023,
- (d) to whom article 16 does not apply, and
- (e) in relation to whom the new law does not apply on 30 August 2023.

(2) On 31 August 2023—

- (a) the new law applies in relation to the child, and
- (b) the old law ceases to apply in relation to the child.

16.—(1) This article applies to a child—

- (a) who had a statement on 1 September 2022,
- (b) who was during the 2022-2023 school year—
 - (i) under compulsory school age,
 - (ii) of compulsory school age and in a reception class, year 6, year 10 or year 11 or would be in any of those year groups if the child were a registered pupil at a maintained school,

- (c) where the local authority is ordered to perform an action as a result of an appeal being finally determined and the action has not been performed by 30 August 2023,
- (d) in relation to whom no further appeal is ongoing on 30 August 2023, and
- (e) in relation to whom the new law does not apply on 30 August 2023.

(2) On the transfer day—

- (a) the new law applies in relation to the child, and
- (b) the old law ceases to apply in relation to the child.

(3) In this article “transfer day” means the day after which the action referred to in paragraph (1)(c) is performed, or all of the actions have been performed if there is more than one action.

17.—(1) This article applies to a child—

- (a) who had a statement on 1 September 2022,
- (b) who was during the 2022-2023 school year—
 - (i) under compulsory school age,
 - (ii) of compulsory school age and in a reception class, year 6, year 10 or year 11 or would be in any of those year groups if the child were a registered pupil at a maintained school, and
- (c) in relation to whom an appeal is ongoing on 30 August 2023.

(2) On the transfer day—

- (a) the new law applies in relation to the child, and
- (b) the old law ceases to apply in relation to the child.

(3) In this article “transfer day” means—

- (a) the day after the end of the period within which an appeal could be made, if no appeal has been made;
- (b) unless sub-paragraph (c) applies, the day after the appeal has been finally determined, where an appeal has been made;
- (c) where the local authority is ordered to perform an action as a result of an ongoing appeal being finally determined, the day after which the action is performed, or all of the actions have been performed if there is more than one action.

18.—(1) This article applies to a child—

- (a) who had a statement on 1 September 2022,

- (b) in relation to whom there is no appeal ongoing on 30 August 2024,
- (c) to whom article 19 does not apply, and
- (d) in relation to whom the new law does not apply on 30 August 2024.

(2) On 31 August 2024—

- (a) the new law applies in relation to the child, and
- (b) the old law ceases to apply in relation to the child.

19.—(1) This article applies to a child—

- (a) who had a statement on 1 September 2022,
- (b) where the local authority is ordered to perform an action as a result of an ongoing appeal being finally determined and the action has not been performed by 30 August 2024,
- (c) in relation to whom no further appeal is ongoing on 30 August 2024, and
- (d) in relation to whom the new law does not apply on 30 August 2024.

(2) On the transfer day—

- (a) the new law applies in relation to the child, and
- (b) the old law ceases to apply in relation to the child.

(3) In this article “transfer day” means the day after which the action referred to in paragraph (1)(b) is performed, or all of the actions have been performed if there is more than one action.

20.—(1) This article applies to a child—

- (a) who had a statement on 1 January 2022, and
- (b) in relation to whom there is an ongoing appeal on 30 August 2024.

(2) On the transfer day—

- (a) the new law applies in relation to the child, and
- (b) the old law ceases to apply in relation to the child.

(3) In this article “transfer day” means—

- (a) the day after the end of the period within which an appeal could be made, if no appeal has been made;
- (b) unless sub-paragraph (c) applies, the day after the appeal has been finally determined, where an appeal has been made;
- (c) where the local authority is ordered to perform an action as a result of the ongoing appeal being finally determined, the day after which the action is performed, or all of the

actions have been performed if there is more than one action.

Change of circumstances

21.—(1) This article applies to a child who had a statement on 1 September 2022 whose statement ceases to be maintained.

(2) On the date that the local authority ceases to maintain the statement—

- (a) the new law applies in relation to the child, and
- (b) the old law ceases to apply in relation to the child.

22.—(1) This article applies to a child who had a statement on 1 September 2022—

- (a) who moves from the area of the local authority that on 1 September 2022 was maintaining the statement, and
- (b) in relation to whom the old law applies.

(2) Unless an appeal is ongoing in relation to the child, on the date that the child moves from the area of the local authority that was maintaining the statement—

- (a) the new law applies in relation to the child, and
- (b) the old law ceases to apply in relation to the child.

Regard to statement of special educational needs when preparing an individual development plan

23. Where an individual development plan is being prepared for a child within 12 weeks of moving to the new law, regard must be had to the contents of the statement which was maintained for that child immediately before moving to the new law.

Capacity of children

24.—(1) Subject to paragraph (2), paragraph (3) applies to a child who had a statement on 1 September 2022.

(2) Nothing in this article applies to a person when that person ceases to be of compulsory school age.

(3) A duty in paragraph (4) or the power in paragraph (5) does not apply if the appropriate local authority considers that the child does not have capacity to understand the subject matter.

(4) The duties referred to in paragraph (3) are—

- (a) the duty to give a child an IDP notice or a No IDP notice in articles 9(2), 10(2) and 11;

(b) the duty to give a notice following a request by a child under article 12;

(c) the duty to give a child a copy of the individual development plan within 12 weeks in article 13(1).

(5) The power referred to in paragraph (3) is the power to give a child an ALN notice in article 14.

(6) Where paragraph (3) applies in relation to a duty in paragraph (4)(a) or (b), the first reference to a child in article 5 is to be read as if it were omitted.

(7) Where paragraph (3) applies in relation to a duty in paragraph (4)(a) or (b), the first reference to a child in article 6 is to be read as if it were omitted.

Children who become young persons before the new law applies

25.—(1) Paragraph (2) applies to a child who had a statement on 1 September 2022.

(2) A duty in paragraph (3) or a power in paragraph (4) does not apply when a person ceases to be of compulsory school age.

(3) The duties referred to in paragraph (2) are—

(a) the duty to give a parent an IDP notice or a No IDP notice in articles 9(2), 10(2) and 11;

(b) the duty to give a notice following a request by a parent under article 12;

(c) the duty to give a parent a copy of the individual development plan within 12 weeks in article 13(1).

(4) The powers referred to in paragraph (2) are—

(a) the power for a parent to request an IDP notice or a No IDP notice in article 12;

(b) the power to give a parent an ALN notice in article 14.

(5) Where paragraph (2) applies in relation to a duty in paragraph (3)(a) or (b), the first reference to a child's parent in article 5 is to be read as if it were omitted.

(6) Where paragraph (2) applies in relation to a duty in paragraph (3)(a) or (b), the first reference to a child's parent in article 6 is to be read as if it were omitted.

Jeremy Miles

Minister for Education and Welsh Language, one of the Welsh Ministers

16 August 2022