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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

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**2022 No. 894 (W. 191) (C. 58)**

**EDUCATION, WALES**

**The Additional Learning Needs and  
Education Tribunal (Wales) Act  
2018 (Commencement No. 11)  
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 of compulsory school age and below, who have certain identified special educational needs (but not a statement) and who are educated at an independent school or are home educated (article 2).

**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<sup>(1)</sup>:

<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) <sup>(2)</sup>
		S.I. 2021/1244 (W. 316) (C. 69) <sup>(3)</sup>
		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)
	1 September 2021	S.I. 2021/373 (W. 116) (C. 12)
	1 January 2022	S.I. 2021/1243 (W. 315) (C. 68)
Section 6 (partially)		S.I. 2021/1244 (W. 316) (C. 69)

(1) See the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 8 and Transitional and Saving Provisions) Order 2022 (S.I. 2022/891 (W. 188) (C. 55)), 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. 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. 2021/1245 (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 (W. 315) (C. 68)
		S.I. 2021/1244

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

		(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	1 September	S.I. 2021/373

69 (partially)	2021 1 January 2022	(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)
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) (fully)	2 November 2020 1 September 2021	S.I. 2020/1182 (W. 267) (C. 33) S.I. 2021/373 (W. 116) (C. 12)
Section 76 (partially) (fully)	2 November 2020 1 September 2021	S.I. 2020/1182 (W. 267) (C. 33) S.I. 2021/373 (W. 116) (C. 12)
Section 77 (partially) (fully)	2 November 2020 1 September 2021	S.I. 2020/1182 (W. 267) (C. 33) 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) (fully)	2 November 2020 1 September 2021	S.I. 2020/1182 (W. 267) (C. 33) S.I. 2021/373 (W. 116) (C. 12)
Section 84	1 September 2021	S.I. 2021/373 (W. 116) (C. 12)
Section 85 (partially) (fully)	2 November 2020 1 September 2021	S.I. 2020/1182 (W. 267) (C. 33) 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) (fully)	2 November 2020 1 September 2021	S.I. 2020/1182 (W. 267) (C. 33) S.I. 2021/373 (W. 116) (C. 12)
Section 92 (partially) (fully)	2 November 2020 1 September 2021	S.I. 2020/1182 (W. 267) (C. 33) 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) (fully)	2 November 2020 1 September 2021	S.I. 2020/1182 (W. 267) (C. 33) S.I. 2021/373 (W. 116) (C. 12)
Section 96 (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)
The Schedule, paragraph 1 (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)
The Schedule, paragraph 2(1), 2(2)(b) and 2(3)	1 September 2021	S.I. 2021/373 (W. 116) (C. 12)
The Schedule, paragraph 3	1 September 2021	S.I. 2021/373 (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 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)
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 2021	S.I. 2021/373 (W. 116) (C. 12)
The Schedule, paragraph 6(d)(v), 6(f), 6(g), 6(j)(i),	1 September 2021	S.I. 2021/373 (W. 116) (C. 12)

6(l)(i), 6(l)(iii), 6(n)(ii) (in so far as it omits paragraph 11 of Schedule 2), and 6(t)		
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)
The Schedule, paragraph 19(1), (5)(e)(ii) (partially)	1 September 2021	S.I. 2021/373 (W. 116) (C. 12)
	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)
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	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)
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	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)
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	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)
		S.I. 2021/373 (W. 116) (C. 12)
The Schedule, paragraph 24(1) and 24(3) and (6)(a) (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)
		S.I. 2021/373 (W. 116) (C. 12)
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)

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

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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

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**2022 No. 894 (W. 191) (C. 58)**

**EDUCATION, WALES**

**The Additional Learning Needs and  
Education Tribunal (Wales) Act  
2018 (Commencement No. 11)  
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. 11) Order 2022.

(2) In this Order—

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

“the 2014 Act” (“*Deddf 2014*”) means the Children and Families Act 2014(3);

“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;

“compulsory school age” (“*oedran ysgol gorfodol*”) has the same meaning as in section 8(4) of the 1996 Act;

“a child educated other than at school” (“*plentyn a addysgir ac eithrio yn yr ysgol*”) means a child for whom a local authority in Wales has made

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(1) 2018 anaw 2.

(2) 1996 c. 56.

(3) 2014 c. 6.

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

arrangements for the provision of education otherwise than at school who is within the authority's area and—

- (a) is of compulsory school age, and
- (b) by reason of illness, exclusion from school or otherwise, may not receive suitable education for a period unless such arrangements are made for the child;

“EHC needs assessment” (“*asesiad o anghenion AIG*”) has the same meaning as in section 36(2) of the 2014 Act;

“EHC plan” (“*cynllun AIG*”) has the same meaning as in section 37(2)(1) of the 2014 Act;

“in the area of a local authority in Wales” (“*yn ardal awdurdod lleol yng Nghymru*”) has the same meaning as in section 579(3B)(2) of the 1996 Act;

“learning difficulty” (“*anhawster dysgu*”) has the same meaning as in—

- (i) section 312(2)(3) of the 1996 Act in relation to a child in the area of a local authority in Wales but not a child who is a registered pupil at a school in England,
- (ii) section 20 of the 2014 Act in relation to a child in the area of a local authority in Wales who is a registered pupil at a school in England;

“local authority” (“*awdurdod lleol*”) has the same meaning as in section 579(4) of the 1996 Act;

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

“mainstream school” (“*ysgol brif ffrwd*”) has the same meaning as in section 83(2) of the 2014 Act;

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

“proprietor” (“*perchennog*”) has the same meaning as in section 579 of the 1996 Act;

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- (1) Amended by the Care Act 2014 and Children and Families Act 2014 (Consequential Amendments) Order 2015 (S.I. 2015/914), article 2 and paragraph 97 of the Schedule.
  - (2) 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.
  - (3) Amended by the Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), section 59 and paragraphs 1 and 6 of Schedule 2, by the Children and Families Act 2014 (c. 6), section 82 and paragraphs 1 and 11 of Schedule 3, by the Local Education Authorities and Children's Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158), article 5 and paragraph 7 of Schedule 2, by the Education Act 1997 (c. 44), section 57, paragraph 23 of Schedule 7 and Schedule 8.
  - (4) Definition of “local authority” was substituted by the Local Education Authorities and Children's Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158), article 3.

“registered pupil” (*“disgybl cofrestredig”*) has the same meaning as in section 434(1) of the 1996 Act;

“special educational provision” (*“darpariaeth addysgol arbennig”*) has the same meaning as in—

- (i) section 312(4)(2) of the 1996 Act in relation to a child in the area of a local authority in Wales but not a child who is a registered pupil at a mainstream school in England,
- (ii) section 21 of the 2014 Act in relation to a child in the area of a local authority in Wales who is a registered pupil at a mainstream school in England;

“Tribunal” (*“Tribiwnlys”*) means the Education Tribunal for Wales(3);

“Tribunal Rules” (*“Rheolau’r Tribiwnlys”*) means Special Educational Needs Tribunal for Wales Regulations 2012(4).

(3) For the purposes of this Order an appeal is finally determined 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 brought.

(4) 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.

### **Meaning of identified special educational needs**

2.—(1) For the purposes of this Order, a child (“C”) has “identified special educational needs” if —

- (a) a local authority in Wales is responsible for C; and

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(1) 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 5 and paragraph 7(3) of Schedule 2.

(2) Amended by the Children and Families Act 2014 (c. 6), section 82 and paragraphs 1 and 11 of Schedule 3, by the Local Education Authorities and Children’s Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158), article 5 and paragraph 7 of Schedule 2, by the School Standards and Framework Act 1998 (c. 31), section 140 and paragraph 71 of Schedule 30 and Schedule 31.

(3) The Education Tribunal for Wales was previously known as the Special Educational Needs Tribunal for Wales. *See* section 91 of the Act.

(4) S.I. 2012/322 (W. 53).

- (b) C has a learning difficulty identified by—
  - (i) the proprietor of the school at which the child is a registered pupil, or
  - (ii) a local authority,which calls for special educational provision to be made for C.
- (2) But does not include a child—
  - (a) who is a child educated other than at school;
  - (b) who is a registered pupil at a maintained school in Wales;
  - (c) who is a looked after child;
  - (d) in relation to whom a local authority is maintaining a statement under section 324 of the 1996 Act;
  - (e) in relation to whom a local authority is maintaining an EHC plan;
  - (f) in relation to whom a local authority has served a notice under section 323 of the 1996 Act and the assessment has not commenced and no notice has been given under section 323(6) of the 1996 Act;
  - (g) in relation to whom a request has been made under section 329 or 329A of the 1996 Act for an assessment under section 323 of the 1996 Act and the local authority has not determined whether to assess;
  - (h) in relation to whom a request has been made under section 329 or 329A of the 1996 Act for an assessment under section 323 of the 1996 Act and the local authority determines not to comply with the request and—
    - (i) the time within which an appeal under section 329(2) or 329A(8) of the 1996 Act has to be brought under Part B of the Tribunal Rules has not ended;
    - (ii) an appeal to the Tribunal under section 329(2) or 329A(8) of the 1996 Act in relation to that determination has been brought but not finally determined; or
    - (iii) an appeal to the Tribunal under section 329(2) or 329A(8) of the 1996 Act in relation to that determination was finally determined and the local authority was ordered to arrange an assessment, and that assessment has not commenced;
  - (i) in relation to whom a local authority is undertaking an assessment of educational needs under section 323 of the 1996 Act;
  - (j) in relation to whom a local authority proposes not to make a statement following an assessment and—

- (i) the time within which an appeal under section 325(2) of the 1996 Act has to be brought under Part B of the Tribunal Rules has not ended;
- (ii) an appeal to the Tribunal under section 325(2) of the 1996 Act in relation to that decision has been brought but not finally determined;
- (iii) an appeal to the Tribunal under section 325(2) of the 1996 Act in relation to that decision was brought and finally determined and the local authority was ordered to—
  - (aa) make and maintain a statement and the making of the statement has not commenced, or
  - (bb) reconsider its decision and that reconsideration has not commenced;
- (k) in relation to whom a local authority must make a statement under section 324 of the 1996 Act but the making of the statement has not been completed;
- (l) in relation to whom an assessment under section 331 of the 1996 Act is ongoing;
- (m) in relation to whom a request to a local authority has been made to secure an EHC needs assessment under section 36(1) of the 2014 Act and the local authority has not determined that request under section 36(3);
- (n) in relation to whom a local authority has determined under section 36 of the 2014 Act not to secure an EHC needs assessment and—
  - (i) the period for pursuing mediation in relation to that determination under section 52 of the 2014 Act has not ended;
  - (ii) mediation under section 55 of the 2014 Act is ongoing in relation to that determination;
  - (iii) a mediation certificate has been issued under section 55(4) of the 2014 Act in relation to that determination and the period for submitting an appeal to the First-tier Tribunal under section 51 of the 2014 Act has not ended;
  - (iv) an appeal to the First-tier Tribunal under section 51(2)(a) of the 2014 Act in relation to that determination has been brought but not finally determined;
  - (v) an appeal to the First-tier Tribunal under section 51(2)(a) of the 2014 Act in relation to that determination has been brought and fully determined and the

- local authority was ordered to arrange an assessment or re-assessment, and that assessment or re-assessment has not commenced;
- (o) in relation to whom a local authority has served a notice under section 36(7) of the 2014 Act that it is considering securing an EHC needs assessment and—
    - (i) the assessment has not commenced,
    - (ii) the assessment is ongoing, or
    - (iii) no notice has been served under section 36(9) of the 2014 Act;
  - (p) in relation to whom a local authority has determined under section 36(9) of the 2014 Act that it is not necessary for special educational provision to be made in accordance with an EHC plan and—
    - (i) the period for pursuing mediation in relation to that determination under section 52 of the 2014 Act has not ended;
    - (ii) mediation under section 55 of the 2014 Act is ongoing in relation to that determination;
    - (iii) a mediation certificate has been issued under section 55(4) of the 2014 Act in relation to that determination and the period for submitting an appeal to the First-tier Tribunal under section 51 of the 2014 Act has not ended;
    - (iv) an appeal to the First-tier Tribunal under section 51(2)(b) of the 2014 Act in relation to that determination has been brought but not finally determined;
    - (v) an appeal to the First-tier Tribunal under section 51(2)(b) of the 2014 Act in relation to that determination has been brought and finally determined and the local authority was ordered to—
      - (aa) make and maintain an EHC plan and the making of the EHC plan has not commenced, or
      - (bb) reconsider its decision and that reconsideration has not commenced;
  - (q) in relation to whom a local authority has determined under section 36(9) of the 2014 Act that it is necessary for special educational provision to be made in accordance with an EHC plan but that plan is not prepared.

**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 identified special educational needs 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) to (5);
- (i) sections 51 to 53;
- (j) section 55;
- (k) section 59;
- (l) sections 63 to 66;
- (m) sections 68 to 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 (x);
  - (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<sup>(1)</sup>;
  - (v) paragraph 4(8) to 4(10);
  - (vi) paragraph 4(13) to 4(18);
  - (vii) paragraph 4(19)(b);
  - (viii) paragraph 4(20) and 4(21);
  - (ix) paragraph 4(23) to 4(29);
  - (x) paragraph 4(32)(a)(i) and (ii) and paragraph 4(32)(b);
  - (xi) paragraph 7;

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(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.

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

*Jeremy Miles*

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

16 August 2022