
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. 897 (W. 194) (C. 61)

EDUCATION, WALES

**The Additional Learning Needs and
Education Tribunal (Wales) Act
2018 (Commencement No. 14 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, who have certain identified special educational needs and who—

- (a) are looked after children,
- (b) attend a maintained school and are also registered at another institution, or
- (c) are educated other than at school pursuant to arrangements made by a local authority in Wales.

It excludes some others engaged with the current statutory framework including those with a statement of special educational needs (article 2).

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 in a nursery class, in a reception class, or in year 2, 4, 6, 8, 10 or 11 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 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 identified special educational needs or the child's parent can request that a notice is given (article 11). 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 exceptional circumstances apply (article 12).

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 13).

If the child has not transferred to the new law by the end of the school year that the child should have transferred, the old law ceases and the new law has effect on the final day of the relevant school year (articles 14 to 15).

Article 16 applies where a child ceases to be a registered pupil or an enrolled student at another institution and is not looked after. The child will transfer to the new law on the date the child ceases to be a registered pupil or an enrolled student at another institution.

Article 17 applies to a child who ceases to be looked after. The child will transfer to the new law on the date that the child ceases to be looked after by the local authority.

Article 18 applies to a child who ceases to be educated other than at school. The child will transfer to the new law on the date that the child ceases to be educated other than at school.

When preparing an individual development plan for a child with identified special educational needs, in certain circumstances, regard must be had to the special educational provision the child was receiving

immediately before transferring to the new law (article 19).

Article 20 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 21 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)
		S.I. 2021/1244

⁽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. 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)), 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).

		(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 10 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)

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

		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
(fully)	1 September 2021	(W. 267)(C. 33)
		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 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)
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)	
The Schedule, paragraph 1 (partially)	1 September 2021	S.I. 2021/373 (W. 116)(C. 12)	
		S.I. 2021/1245 (W. 317)(C. 70)	
	1 January 2022	S.I. 2021/1243 (W. 315)(C. 68)	
		S.I. 2021/1244 (W. 316)(C. 69)	
The Schedule, paragraph 2(1), 2(2)(b) and 2(3)	1 September 2021	S.I. 2021/1245 (W. 317)(C. 70)	
		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)	
		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)	
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. 2021/1245 (W. 317)(C. 70)	
		S.I. 2021/373 (W. 116)(C. 12)	
	The Schedule, paragraph	1 September 2021	S.I. 2021/373 (W. 116)(C. 12)
			S.I. 2021/373 (W. 116)(C. 12)

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)			
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),	1 September 2021	S.I. 2021/373 (W. 116)(C. 12)

23(3)(a) to (c) and (5)		
The Schedule, paragraph 23(1) and (4)	1 September 2021	S.I. 2021/373 (W. 116)(C. 12)
(partially)	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 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)
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. 897 (W. 194) (C. 61)

EDUCATION, WALES

**The Additional Learning Needs and
Education Tribunal (Wales) Act
2018 (Commencement No. 14 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. 14 and Transitional and Saving Provisions) 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;

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

(a) is of compulsory school age,

(1) 2018 anaw 2.
(2) 1996 c. 56.
(3) 2014 c. 6.

(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, and

(c) is not a registered pupil at a maintained school;

“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 of the 1996 Act;

“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 England” (*“yn ardal awdurdod lleol yn Lloegr”*) has the same meaning as in section 579(3A)(2) of the 1996 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)(3) 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;

“institution in the further education sector” (*“sefydliad yn y sector addysg bellach”*) has the same meaning as in section 99 of the Act;

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

(a) section 312(2)(4) of the 1996 Act—

(i) 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,

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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) 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.
- (4) 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.

(ii) in relation to a child in the area of a local authority in England who is a registered pupil at a maintained school in Wales, as if “a child in the area of a local authority in Wales” were omitted,

(b) 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 mainstream school in England;

“local authority” (*“awdurdod lleol”*) has the same meaning as in section 579(1) 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;

“nursery class” (*“dosbarth meithrin”*) means a class of pupils who are provided with nursery education at a maintained school;

“nursery education” (*“addysg feithrin”*) has the same meaning as in section 117 of the School Standards and Framework Act 1998(2);

“parent” (*“rhiant”*) has the same meaning as in section 576(3) 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(4) of the 1996 Act;

“school year” (*“blwyddyn ysgol”*) has the same meaning as in section 579(5) of the 1996 Act;

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

(a) section 312(4)(6) of the 1996 Act—

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- (1) 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.
 - (2) 1998 c. 31.
 - (3) Amended by School Standards and Framework Act 1998 (c. 31), section 140 and paragraph 180 of Schedule 30 and Schedule 31.
 - (4) 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.
 - (5) Definition of “school year” was inserted by the Education Act 1997 (c. 44), section 57, paragraph 43 of Schedule 7.
 - (6) 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.

- (i) 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) in relation to a child in the area of a local authority in England who is a registered pupil at a maintained school in Wales as if “in relation to a child in the area of a local authority in Wales” were omitted,
- (b) 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⁽¹⁾;

“Tribunal Rules” (“*Rheolau’r Tribiwnlys*”) means Special Educational Needs Tribunal for Wales Regulations 2012⁽²⁾;

“year 2” (“*blwyddyn 2*”) means a year group in which the majority of children will, in the school year, attain the age of 7;

“year 4” (“*blwyddyn 4*”) means a year group in which the majority of children will, in the school year, attain the age of 9;

“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 8” (“*blwyddyn 8*”) means a year group in which the majority of children will, in the school year, attain the age of 13;

“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;

“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 but excluding—

- (a) section 323;
- (b) section 329;
- (c) section 329A.

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.

(1) 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.

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

(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—

- (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) This Order does not apply to a person in relation to whom provisions of the Act were commenced by the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 5 and Transitional and Saving Provisions) Order 2021(1) or the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 6 and Transitional and Saving Provisions) Order 2021(2).

Meaning of identified special educational needs

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

- (a) is a looked after child but not a looked after child who is in the area of a local authority in England;

(1) S.I. 2021/1243 (W. 315) (C. 68) amended by S.I. 2021/1428 (W. 369) (C. 80).

(2) S.I. 2021/1244 (W. 316) (C. 69) amended by S.I. 2021/1428 (W. 369) (C. 80).

- (b) is a registered pupil at a maintained school in Wales and—
 - (i) is a registered pupil or an enrolled student at another institution (that institution being a school or an institution in the further education sector), and
 - (ii) a local authority in Wales is responsible for that child;
- (c) is a child educated other than at school;

and has a learning difficulty identified by the proprietor of the school at which the child is a registered pupil or by the appropriate local authority which calls for special educational provision to be made for C.

(2) But does not include a child—

- (a) in relation to whom a local authority is maintaining a statement under section 324 of the 1996 Act;
- (b) in relation to whom a local authority is maintaining an EHC plan;
- (c) 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;
- (d) 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;
- (e) 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;
- (f) in relation to whom a local authority is undertaking an assessment of educational needs under section 323 of the 1996 Act;

- (g) 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;
- (h) 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 concluded;
- (i) in relation to whom the local authority has determined to cease to maintain a statement under paragraph 11(1) of Schedule 27 to the 1996 Act and—
 - (i) the time within which an appeal under paragraph 11(2)(b) of that Schedule has to be brought under Part B of the Tribunal Rules has not ended, or
 - (ii) an appeal to the Tribunal under paragraph 11(2)(b) of that Schedule has been brought in relation to that decision but not finally determined;
- (j) in relation to whom an assessment under section 331 of the 1996 Act is ongoing;
- (k) who is not over compulsory school age but in relation to whom an assessment under section 140 of the Learning and Skills Act 2000(1)—
 - (i) is ongoing, or
 - (ii) has resulted in a report of the person's educational and training needs and the provision required to meet them;
- (l) 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

(1) 2000 c. 21.

- 2014 Act and the local authority has not determined that request under section 36(3);
- (m) 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;
 - (n) 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;
 - (o) 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;
 - (p) 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;
 - (q) in relation to whom a local authority has determined under section 45 of the 2014 Act that it is no longer necessary for an EHC plan to be maintained 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)(f) of the 2014 Act in relation to that determination has been brought but not finally determined.

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 (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 (9);
 - (vi) paragraph 4(10);
 - (vii) paragraph 4(13) to 4(18);
 - (viii) paragraph 4(19)(b);
 - (ix) paragraph 4(20) and 4(21);
 - (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);

(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.

- (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 11 and 13 to 18, 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 identified special educational needs—

- (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.

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,

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

- (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 identified special educational needs and who is in a nursery class, reception class, year 2, year 4, year 6, year 8, year 10 or year 11, or would be in a nursery class or 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.

10.—(1) This article applies to a child who on 1 September 2023 has identified special educational needs and who did not come within article 9.

(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 2023-2024 school year.

Right to request an IDP notice or a No IDP notice

11. A child who on 1 September 2022 had identified special educational needs or that child's parent may request that the appropriate local authority gives an IDP notice or a No IDP notice and the local authority must give either an IDP notice or a No IDP notice within 15 working days of the request.

Time for giving an individual development plan

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

- (a) there are exceptional circumstances,
- (b) section 31 of the Act applies.

(2) If 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 by a local authority of an individual development plan do not apply when an individual development plan is prepared following the giving of an IDP notice.

ALN Notice

13.—(1) This article applies to a child who on 1 September 2022 had identified special educational needs.

(2) Subject to paragraph (4), 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.

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

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

- (a) who had identified special educational needs on 1 September 2022,
- (b) who was in a nursery class, reception class, year 2, year 4, year 6, year 8, year 10 or year 11 during the 2022-2023 school year, and
- (c) 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.

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

- (a) who had identified special educational needs on 1 September 2022, and
- (b) 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.

Change of circumstances

16.—(1) This article applies to a child who had identified special educational needs on 1 September 2022—

- (a) who ceases to be a registered pupil or an enrolled student at another institution (that institution being a school or institution in the further education sector),
- (b) who is not a looked after child,
- (c) for whom a request for an IDP notice or a No IDP notice has not been made, and
- (d) in relation to whom the old law applies.

(2) On the date that the child ceases to be a registered pupil or an enrolled student at another institution—

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

17.—(1) This article applies to a child who had identified special educational needs on 1 September 2022—

- (a) who ceases to be a looked after child,
- (b) for whom a request for an IDP notice or a No IDP notice has not been made, and
- (c) in relation to whom the old law applies.

(2) On the date that the child ceases to be a looked after child—

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

18.—(1) This article applies to a child who had identified special educational needs on 1 September 2022—

- (a) who ceases to be a child educated other than at school,
- (b) is not a looked after child,
- (c) for whom a request for an IDP notice or a No IDP notice has not been made, and
- (d) in relation to whom the old law applies.

(2) On the date that the child ceases to be a child educated other than at school—

- (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 special educational provision when preparing an individual development plan

19. Where a local authority is required to prepare an individual development plan for a child within 12 weeks of moving to the new law, the local authority must have regard to the special educational provision provided to the child immediately before moving to the new law.

Capacity of children

20.—(1) Subject to paragraph (2), paragraph (3) applies to a child who had identified special educational needs 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 person 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) and 10(2);
- (b) the duty to give a notice following a request by a child under article 11;
- (c) the duty to give a child a copy of the individual development plan within 12 weeks in article 12(1).

(5) The power referred to in paragraph (3) is the power to give a child an ALN notice in article 13.

(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

21.—(1) Paragraph (2) applies to a child who had identified special educational needs 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) and 10(2);

(b) the duty to give a notice following a request by a parent under article 11;

(c) the duty to give a parent a copy of the individual development plan within 12 weeks in article 12(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 11;

(b) the power to give a parent an ALN notice in article 13.

(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