

# **ADDITIONAL LEARNING NEEDS AND EDUCATION TRIBUNAL (WALES) ACT 2018**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS OF THE ACT**

#### ***Schedule 1 – Minor and Consequential Amendments and Repeals***

206. Paragraphs 1-24 of Schedule 1, as appropriate, repeal provisions in primary legislation replaced by provisions included in this Act (including, for example, the whole of Chapter 1 of Part 4 (children in Wales with special educational needs) of the 1996 Act), substitute references to terms made obsolete by this Act with the references to the terms it introduces (for example, replacing references to special educational needs with additional learning needs), and substitute references to repealed or amended provisions with references to equivalent provisions in the Act.
207. In addition, the Schedule makes the following minor amendments.
208. In relation to the provisions relating to school attendance orders found in the 1996 Act, paragraph 4, subparagraphs (14), (15), (17) and (18), modifies the relevant processes so that reference to statements of special educational needs are replaced by the most appropriate equivalent in the context of such orders, that is individual development plans that name a particular school (not all individual development plans will name a particular school).
209. Paragraph 4, sub-paragraph (30) amends the 1996 Act so that if a statutory instrument is to be made containing regulations under both section 562J(4) of the 1996 Act and section 39(2) (both of which relate to the meaning of “home authority” in respect of detained persons), it will be subject to affirmative rather than negative resolution procedure.
210. Sub-paragraph (30) also requires that regulations which make further provision about the meaning of references in the 1996 Act to a person who is “in the area” of a local authority in Wales (in regulations under subsection (3C) of section 579 of that Act as inserted by section 95(c)), are subject to the affirmative rather than negative resolution procedure.
211. Paragraph 5 amends section 333(5) of the 1996 Act so that regulations made by the Welsh Ministers in relation to the ALNTW no longer require the agreement of the Secretary of State. This is a transitional provision which will not be needed once Part 3 (Education Tribunal for Wales) comes into force. Paragraph 6(t) therefore provides for the omission of paragraph 5 once section 333(5) of the 1996 Act has been repealed under paragraph 4 (9).
212. Paragraph 9, sub-paragraph (2) inserts a duty into section 153(2) of the Education Act 2002 requiring the arrangements under which non-maintained providers of nursery education are funded by local authorities, to include a requirement on the providers to have regard to any relevant guidance in the ALN code. Section 153 already requires

*These notes refer to the Additional Learning Needs and Education Tribunal  
(Wales) Act 2018 (c.2) which received Royal Assent on 24 January 2018*

local authorities to exercise their functions with a view to securing that those nursery education providers meet the requirements placed on them by the local authority.

213. [Paragraph 12](#) inserts a reference to section 61 of the Children and Families Act 2014 into paragraph 2 of Schedule 1 to the National Health Service (Wales) Act 2006. This secures appropriate reciprocity between the Welsh ALN and English special educational needs systems in relation to the power to provide for medical inspection and treatment of pupils in attendance at educational establishments other than schools maintained by local authorities.
214. [Paragraph 14](#), subparagraph (4) replaces the term ‘special educational needs’ in section 14 of the Learner Travel (Wales) Measure 2008 with a reference to ‘learning difficulty’ which has the effect of requiring learning difficulties generally to be taken into consideration in decisions relating to the withdrawal of travel arrangements.
215. [Paragraph 19](#), subparagraph (5)(f) inserts a new paragraph in Schedule 17 to the Equality Act 2010 to make clear on the face of the Equality Act 2010 that any party to proceedings on a disability discrimination claim to the Education Tribunal may appeal to the Upper Tribunal on any point of law arising from a decision of the Education Tribunal. Subparagraphs (g) and (h) replace the existing paragraph 6A and add a new paragraph 6F in Schedule 17 dealing respectively with case friends and the capacity of parents and persons over compulsory school age. This ensures that the legislative framework for the making of disability discrimination claims to the Education Tribunal remains compatible with the legislative framework for making appeals to the Education Tribunal under the Act.
216. [Paragraph 23](#), subparagraph (3), amends section 43(1) of the Children and Families Act 2014 so that schools in Wales are not under a duty to admit a child because the school has been named in a Education, Health and Care Plan (EHC plan). Paragraph 21, subparagraph (5) amends section 83(6) of that Act so that the definition of “in the area” of a local authority included in that Act’s interpretation section has the same meaning as that term has in section 579 of the 1996 Act (as amended by section 95 of this Act).