
WELSH STATUTORY INSTRUMENTS

2021 No. 1428 (W. 369) (C. 80)

EDUCATION, WALES

**The Additional Learning Needs and Education Tribunal
(Wales) Act 2018 (Amendment of Commencement Order
No. 5 and Commencement Order No. 6) Order 2021**

Made - - - - 14 December 2021

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

1. The title of this Order is the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Amendment of Commencement Order No. 5 and Commencement Order No. 6) Order 2021.

**Amendment of the Additional Learning Needs and Education Tribunal (Wales) Act 2018
(Commencement No. 5 and Transitional and Saving Provisions) Order 2021**

2.—(1) The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 5 and Transitional and Saving Provisions) Order 2021(2) is amended as follows.

(2) After article 22 insert—

“Capacity of children

23.—(1) Paragraph (2) applies to—

- (a) the duty to give a child an IDP notice or a No IDP notice in articles 9(2), 10(2) and 11(2);
- (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 35 school days in article 13(1);
- (d) the power to give a child an ALN notice in article 14(2);
- (e) the duty to give an ALN notice following a request by a child under article 14(3).

(1) 2018 anaw 2.

(2) S.I. 2021/1243 (W. 315) (C. 68).

(2) The duty or power does not apply if the governing body or the appropriate local authority (as the case may be) considers that the child does not have capacity to understand the subject matter.

(3) Where paragraph (2) applies in relation to the duty in paragraph (1)(a) or (b), the first reference to a child in article 5 is to be read as if it were omitted.

(4) Where paragraph (2) applies in relation to the duty in paragraph (1)(a) or (b), the first reference to a child in article 6 is to be read as if it were omitted.”

Amendment of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 6 and Transitional and Saving Provisions) Order 2021

3.—(1) The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 6 and Transitional and Saving Provisions) Order 2021⁽³⁾ is amended as follows.

(2) After article 20 insert—

“Capacity of children

21.—(1) Paragraph (2) applies to—

- (a) the duty to give a child an IDP notice or a No IDP notice in articles 9(2), 10(2) and 11(2);
- (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);
- (d) the power to give a child an ALN notice in article 14(2).

(2) The duty or power does not apply if the appropriate local authority considers that the child does not have capacity to understand the subject matter.

(3) Where paragraph (2) applies in relation to the duty in paragraph (1)(a) or (b), the first reference to a child in article 5 is to be read as if it were omitted.

(4) Where paragraph (2) applies in relation to the duty in paragraph (1)(a) or (b), the first reference to a child in article 6 is to be read as if it were omitted.”

14 December 2021

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

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 5 and Transitional and Saving Provisions) Order 2021 and the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 6 and Transitional and Saving Provisions) Order 2021 to make provision relating to the capacity of children. This reflects section 84 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 which provides that certain duties and conditions in that Act 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.