
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, attend a maintained school (including a pupil referral unit) and who have identified special educational needs. 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. This Order requires the governing body 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, 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 governing body 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 an IDP notice or a No IDP notice is given (article 11).

Where an individual development plan is prepared following an IDP notice, the governing body must give a copy of the individual development plan to the child and the child’s parent within 35 school days of the date of the notice unless certain circumstances apply (article 12).

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 and 15).

Articles 16 to 18 deal with the situation where the circumstances of the child changes after 1 September 2022.

If the child is no longer registered at a maintained school (and has not transferred to the new law), the child or the child’s parent can ask the appropriate local authority for an ALN notice, which will mean the child is transferred to the new law on the date of the notice (article 13). The appropriate local authority must give an ALN notice within 10 working days of the request.

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.

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 (articles 19 and 20).

Changes to legislation: *There are currently no known outstanding effects for the The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 13 and Transitional and Saving Provisions) Order 2022. (See end of Document for details)*

Article 21 reflects section 84 of the Act 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.

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