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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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**2021 No. 383 (W. 121) (C. 14)**

**EDUCATION, WALES**

**The Additional Learning Needs and  
Education Tribunal (Wales) Act  
2018 (Commencement No. 4 and  
Transitional and Saving Provisions)  
Order 2021**

**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 2021 in relation to those who are not over compulsory school age, attend a maintained school, who have certain identified special educational needs and who are either looked after children or registered at another institution. The provisions also come into force for those who are not over compulsory school age and who attend a pupil referral unit and have certain identified special educational needs. It excludes some others engaged with the current statutory framework including those with a statement of special educational needs.

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 transfers a child to the new law depending on the child’s year group in a particular school year (articles 5 and 6). For example, a child who on 1 September 2021 is in a nursery class or in

year 1, 3, 5, 7 or 10 will transfer to the new law on 1 September 2021. A child who is in a nursery class or in year 1, 5, 9 or 10 during the school year 2022-2023 will transfer to the new law on 1 September 2022. Any child who had identified special educational needs on 1 September 2021 and who did not transfer to the new law by virtue of article 5 or 6, will transfer to the new law on 1 September 2023 (article 7).

A child with identified special educational needs or the child's parent can request that the appropriate person decides under Part 2 of the Act whether the child has additional learning needs. Such a request will trigger a transfer to the new law (article 8).

When preparing an individual development plan for a child with identified special educational needs regard must be had to the special educational provision the child was receiving immediately before the decision was made under Part 2 of the Act that the child has additional learning needs (article 9).

#### **NOTE AS TO EARLIER COMMENCEMENT**

The following provisions of the Act have been brought into force by Commencement Order made before the date of this Order<sup>(1)</sup>:

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No</i>
Section 4 (partially)	2 November 2020	S.I. 2020/1182 (W. 267)(C. 33)
Section 5	2 November 2020	S.I. 2020/1182 (W. 267)(C. 33)
Section 7 (partially)	2 November 2020	S.I. 2020/1182 (W. 267)(C. 33)
Section 8 (partially)	2 November 2020	S.I. 2020/1182 (W. 267)(C. 33)
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)
Section 21 (partially)	2 November 2020	S.I. 2020/1182 (W. 267)(C. 33)
Section 32 (partially)	2 November 2020	S.I. 2020/1182 (W. 267)(C. 33)
Section 36	2 November	S.I. 2020/1182

(1) See the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No.2) Order 2021 (S.I. 2021/373 (W. 116) (C. 12)) and the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No.3 and Transitional and Saving Provisions) Order 2021 (S.I. 202138/381 (W. 120) (C. 13)) which bring provisions into force for certain purposes on the same date as this Order.

(partially)	2020	(W. 267)(C. 33)
Section 37	2 November	S.I. 2020/1182
	2020	(W. 267)(C. 33)
Section 39	2 November	S.I. 2020/1182
	2020	(W. 267)(C. 33)
Section 45	2 November	S.I. 2020/1182
	2020	(W. 267)(C. 33)
Section 46	2 November	S.I. 2020/1182
	2020	(W. 267)(C. 33)
Section 47	2 November	S.I. 2020/1182
(partially)	2020	(W. 267)(C. 33)
Section 54	2 November	S.I. 2020/1182
(partially)	2020	(W. 267)(C. 33)
Section 56	2 November	S.I. 2020/1182
(partially)	2020	(W. 267)(C. 33)
Section 56(1)	4 January 2021	S.I. 2020/1182
		(W. 267)(C. 33)
Section 56(4) to	4 January 2021	S.I. 2020/1182
(6)		(W. 267)(C. 33)
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)
Section 65	2 November	S.I. 2020/1182
(partially)	2020	(W. 267)(C. 33)
Section 67	2 November	S.I. 2020/1182
	2020	(W. 267)(C. 33)
Section 74	2 November	S.I. 2020/1182
	2020	(W. 267)(C. 33)
Section 75	2 November	S.I. 2020/1182
(partially)	2020	(W. 267)(C. 33)
Section 76	2 November	S.I. 2020/1182
(partially)	2020	(W. 267)(C. 33)
Section 77	2 November	S.I. 2020/1182
(partially)	2020	(W. 267)(C. 33)
Section 82	2 November	S.I. 2020/1182
	2020	(W. 267)(C. 33)
Section 83	2 November	S.I. 2020/1182
(partially)	2020	(W. 267)(C. 33)
Section 85	2 November	S.I. 2020/1182
(partially)	2020	(W. 267)(C. 33)
Section 91	2 November	S.I. 2020/1182
(partially)	2020	(W. 267)(C. 33)
Section 92	2 November	S.I. 2020/1182
(partially)	2020	(W. 267)(C. 33)
Section 95	2 November	S.I. 2020/1182
(partially)	2020	(W. 267)(C. 33)
Section 96	2 November	S.I. 2020/1182
(partially)	2020	(W. 267)(C. 33)
The Schedule,	2 November	S.I. 2020/1182
paragraph	2020	(W. 267)(C. 33)
19(1),(4) and		
(5)(g) and (h)		

(partially)

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**2021 No. 383 (W. 121) (C. 14)**

**EDUCATION, WALES**

**The Additional Learning Needs and  
Education Tribunal (Wales) Act  
2018 (Commencement No. 4 and  
Transitional and Saving Provisions)  
Order 2021**

*Made*

*22 March 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 and interpretation**

**1.**—(1) The title of this Order is the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 4 and Transitional and Saving Provisions) Order 2021.

(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;

“code” (“*cod*”) means a code on additional learning needs issued under section 4 of the Act;

“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 of the 1996 Act;

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

“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;

“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;

“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;

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

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

(aa) 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,

(bb) 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,

(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 mainstream school in England;

“local authority” (“*awdurdod lleol*”) has the same meaning as in section 579(5) 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) 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.
- (5) Definition of “local authority” was substituted by the Local Education Authorities and Children’s Services Authorities

“looked after child” (“*plentyn sy’n derbyn gofal*”) has the same meaning as a child looked after by a local authority 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*”) means any community, foundation or voluntary school, maintained nursery school, or any community special school not established in a hospital within the meaning of the School Standards and Framework Act 1998(1);

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

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

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

“pupil referral unit” (“*uned cyfeirio disgyblion*”) has the same meaning as in section 19(2)(2) of the 1996 Act;

“registered pupil” (“*disgybl cofrestredig*”) has the same meaning as in section 434(3) of the 1996 Act;

“school day” (“*diwrnod ysgol*”) has the same meaning as in section 579(1) of the 1996 Act;

“school year” (“*blwyddyn ysgol*”) has the same meaning as in section 579(4) of the 1996 Act;

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

(iii) section 312(4)(5) of the 1996 Act—

(aa) 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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(Integration of Functions) Order 2010 (S.I. 2010/1158), article 3.

(1) 1998 c. 31.

(2) Amended by the Children and Families Act 2014 (c. 6), section 25 and paragraph 1 of Schedule 3.

(3) 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.

(4) Definition of “school year” was inserted by the Education Act 1997 (c. 44), section 57, paragraph 43 of Schedule 7.

(5) 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.

- (bb) 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,
- (iv) 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<sup>(1)</sup>;

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

“year 1” (“*blwyddyn 1*”) means a year group in which the majority of children will, in the school year, attain the age of 6;

“year 3” (“*blwyddyn 3*”) means a year group in which the majority of children will, in the school year, attain the age of 8;

“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 5” (“*blwyddyn 5*”) means a year group in which the majority of children will, in the school year, attain the age of 10;

“year 7” (“*blwyddyn 7*”) means a year group in which the majority of children will, in the school year, attain the age of 12;

“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 9” (“*blwyddyn 9*”) means a year group in which the majority of children will, in the school year, attain the age of 14;

“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 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;

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(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).



(c) section 329A.

(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 that Act or such regulations or code, or
  - (ii) a person to whom that 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) a request may be made to review the decision or it may be further appealed, the period (or each of the periods) for doing so expires without a review being requested or further appeal being brought.

(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.

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

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

- (a) at a maintained school in Wales and is a looked after child but not a looked after child who is in the area of a local authority in England;
- (b) at a pupil referral unit in Wales; or
- (c) 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 C;

and has a learning difficulty identified by the governing body of the school or unit at which the child is a registered pupil 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 commenced;
- (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 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 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

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(1) 2000 c. 21.

- 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 2021**

3. The following provisions of the Act come into force on 1 September 2021 in relation to a child who has identified special educational needs on 1 September 2021—

- (a) sections 2 to 4;
- (b) sections 6 to 14;
- (c) sections 16 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(8);

- (iv) paragraph 4(9);
- (v) paragraph 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;
- (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(2) to (3), (5) and (6)(a).

#### **Saving provision**

**4.** Subject to articles 5, 6, 7 and 8, 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<sup>(1)</sup> 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.

#### **Application of new law**

**5.**—(1) This article applies to a child who on 1 September 2021 has identified special educational needs and who at the start of the 2021-2022 school

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

year is in a nursery class, year 1, year 3, year 5, year 7 or year 10.

(2) The new law applies in relation to the child at the start of the 2021-2022 school year.

(3) The old law ceases to apply in relation to the child at the start of the 2021-2022 school year.

**6.**—(1) Subject to article 8, this article applies to a child who on 1 September 2021 has identified special educational needs and who at the start of the 2022-2023 school year is in a nursery class, year 1, year 5, year 9 or year 10 .

(2) The new law applies in relation to the child at the start of the 2022-2023 school year.

(3) The old law ceases to apply in relation to the child at the start of the 2022-2023 school year.

**7.**—(1) Subject to article 8, this article applies to a child who on 1 September 2021 has identified special educational needs and to whom article 5 or 6 did not apply.

(2) The new law applies in relation to the child at the start of the 2023-2024 school year.

(3) The old law ceases to apply in relation to the child at the start of the 2023-2024 school year.

### **Right to ask for a decision whether a child has additional learning needs**

**8.**—(1) A child, who on 1 September 2021 has identified special educational needs or that child’s parent, may request that the appropriate person decides under Part 2 of the Act whether the child has additional learning needs.

(2) The new law applies in relation to the child on the date that the request is received.

(3) The old law ceases to apply in relation to the child on that date.

(4) In this article—

(a) the “appropriate person” means—

(i) the local authority in Wales which is responsible for the child where that child is a registered pupil at a maintained school in Wales or a pupil referral unit in Wales and is—

(aa) a looked after child;

(bb) a registered pupil or an enrolled student at another institution (that institution being a school or an institution in the further education sector) and a local authority in Wales is responsible for the child;

- (ii) the management committee of the pupil referral unit at which the child is a registered pupil if the child does not come within paragraph (i)(aa) or (bb);
- (b) the “management committee” means a management committee established for a pupil referral unit by virtue of paragraph 15 of Schedule 1 to the 1996 Act.

**Regard to special educational provision when preparing an individual development plan**

9. When preparing an individual development plan for the first time for a child who, on 1 September 2021 has identified special educational needs, the governing body or local authority (as the case may be) must have regard to the special educational provision provided to the child immediately before the decision under Part 2 of the Act was made that the child has additional learning needs.

*Kirsty Williams*

Minister for Education, one of the Welsh Ministers  
22 March 2021