
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

2021 No. 1243 (W. 315) (C. 68)

EDUCATION, WALES

**The Additional Learning Needs and
Education Tribunal (Wales) Act
2018 (Commencement No. 5 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 January 2022 in relation to those who are in year 10 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 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 to 11). For example, a child in a nursery class, or in year 1, 3, 5, 7, or 10 will transfer to the new law during the school year 2021-2022. 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 12).

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 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 15 to 17).

Articles 18 to 20 deal with the situation where the circumstances of the child changes after 1 January 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 14). 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 (article 21 and 22).

NOTE AS TO EARLIER COMMENCEMENT ORDERS

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

(1) See the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 6 and Transitional

<i>Provision</i>	<i>Date</i>	<i>of</i>	<i>S.I. No</i>
	<i>Commencement</i>		
Sections 2 to 3 (partially)	1 September 2021		S.I. 2021/373 (W. 116)(C. 12)
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)
Section 5	2 November 2020		S.I. 2020/1182 (W. 267)(C. 33)
Section 6 (partially)	1 September 2021		S.I. 2021/373 (W. 116)(C. 12)
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)
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)
Sections 10 to 14 (partially)	1 September 2021		S.I. 2021/373 (W. 116)(C. 12)
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)
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)
Sections 22 to 31 (partially)	1 September 2021		S.I. 2021/373 (W. 116)(C. 12)
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)
Sections 33 to 35 (partially)	1 September 2021		S.I. 2021/373 (W. 116)(C. 12)
Section 36 (partially)	2 November 2020		S.I. 2020/1182 (W. 267)(C. 33)
	1 September		S.I. 2021/373

and Saving Provisions) Order 2021 (S.I. 2021/1244 (W. 316) (C. 69)) and the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 7) Order 2021 (S.I. 2021/1245 (W. 317) (C. 70)) which bring provisions into force for certain purposes on the same date as this Order.

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

	2021	(W. 116)(C. 12)
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)
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)
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)
Sections 48 to 49 (partially)	1 September 2021	S.I. 2021/373 (W. 116)(C. 12)
Section 50(1), (4) and (5) (partially)	1 September 2021	S.I. 2021/373 (W. 116)(C. 12)
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)
Section 54 (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 55 (partially)	1 September 2021	S.I. 2021/373 (W. 116)(C. 12)
Section 56 (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 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)
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)
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)
Section 66 (partially)	1 September 2021	S.I. 2021/373 (W. 116)(C. 12)
Section 67	2 November 2020	S.I. 2020/1182 (W. 267)(C. 33)
Sections 68 to 69 (partially)	1 September 2021	S.I. 2021/373 (W. 116)(C. 12)
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. 2021/374 (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	2 November	S.I. 2020/1182

(partially)	2020	(W. 267)(C. 33)
	1 September	S.I. 2021/373
	2021	(W. 116)(C. 12)
The Schedule, paragraph 1 (partially)	1 September 2021	S.I. 2021/373 (W. 116)(C. 12)
The Schedule, paragraph 2(1), 2(2)(b) and 2(3)	1 September 2021	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)
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. 2021/373 (W. 116)(C. 12)
The Schedule, paragraph 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)	1 September 2021	S.I. 2021/373 (W. 116)(C. 12)
The Schedule, paragraph 7 (partially)	1 September 2021	S.I. 2021/373 (W. 116)(C. 12)
The Schedule, paragraph 8	1 September 2021	S.I. 2021/373 (W. 116)(C. 12)

(partially)		
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	S.I. 2021/373 (W. 116)(C. 12)
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	S.I. 2021/373 (W. 116)(C. 12)
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	S.I. 2021/373 (W. 116)(C. 12)
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)
The Schedule, paragraph 19(1), (5)(e)(ii) (partially)	1 September 2021	S.I. 2021/373 (W. 116)(C. 12)
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	S.I. 2021/373 (W. 116)(C. 12)
The Schedule, paragraph 21(1) and 21(b)(i)	1 September 2021	S.I. 2021/373 (W. 116)(C. 12)
The Schedule,	1 September	S.I. 2021/373

paragraph 22 (partially)	2021	(W. 116)(C. 12)
The Schedule, paragraph 23(1), 23(3)(a) to (c) and (5)	1 September 2021	S.I. 2021/373 (W. 116)(C. 12)
The Schedule, paragraph 23(1) and (4) (partially)	1 September 2021	S.I. 2021/373 (W. 116)(C. 12)
The Schedule, paragraph 24(1) and 24(3) and (6)(a) (partially)	1 September 2021	S.I. 2021/373 (W. 116)(C. 12)
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

2021 No. 1243 (W. 315) (C. 68)

EDUCATION, WALES

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

Made

9 November 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. 5 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 but does not include a person who is in year 11;

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

“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;

“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;

-
- (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 the 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 the 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.

“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 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*”) 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;

“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;

“registered pupil” (“*disgybl cofrestredig*”) has the same meaning as in section 434(2) 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(3) of the 1996 Act;

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

(i) section 312(4)(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 “in relation to a child in the area of a local authority in Wales” were omitted,

(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) 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.

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

(4) 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.

- (ii) 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 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 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.

(4) References in this Order to “the new law” are to—

(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).

- (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) 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 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 at a maintained school in Wales and has a learning difficulty identified by the governing body 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) who 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;
- (d) who is a looked after child but not a looked after child who is in the area of a local authority in England;
- (e) 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;
- (f) 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;
 - (g) 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;
 - (h) in relation to whom a local authority is undertaking an assessment of educational needs under section 323 of the 1996 Act;
 - (i) 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;
 - (j) 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;
- (k) 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;
 - (l) in relation to whom an assessment under section 331 of the 1996 Act is ongoing;
 - (m) 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;
 - (n) 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);
 - (o) 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 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

(1) 2000 c. 21.

- 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;
- (p) 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;
 - (q) 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;
 - (r) 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;
 - (s) 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 January 2022

3. The following provisions of the Act come into force on 1 January 2022 in relation to a child who has identified special educational needs on 1 January 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 (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(3) and (6)(a).

Saving provision

4. Subject to articles 9 to 12 and articles 14 to 20, 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

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

- (b) an individual development plan will be prepared for the child (unless a local authority is required to secure an EHC plan following a request under section 12(2)(c) of the Act).

No IDP notice

6. A No IDP notice is a notice given to a child and a child's parent which confirms that the governing body 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 governing body 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;
- (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 governing body 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 January 2022 has identified special educational needs and who is in a nursery class, year 1, year 3, year 5, year 7 or year 10.

(2) Unless the new law applies in relation to the child, the governing body which provides the special educational provision to the child must either give an IDP notice or a No IDP notice to the child and the child's parent during the 2021-2022 school year.

10.—(1) This article applies to a child who on 1 September 2022 has identified special educational needs and who is in a nursery class, year 1, year 5, year 9 or year 10 during the school year 2022-2023.

(2) Unless the new law applies in relation to the child, the governing body which provides the special

educational provision to the child 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.

11.—(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 or 10.

(2) Unless the new law applies in relation to the child, the governing body which provides the special educational provision to the child 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

12. A child who on 1 January 2022 had identified special educational needs or that child's parent may request that the governing body of the school at which the child is a registered pupil gives an IDP notice or a No IDP notice and the governing body must give either an IDP notice or a No IDP notice within 15 school days of the request.

Time for giving an individual development plan

13.—(1) When an IDP notice is given pursuant to articles 9, 10, 11 or 12 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—

- (a) any of the circumstances in section 12(2) of the Act apply; or
- (b) there are exceptional circumstances.

(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 governing body of an individual development plan do not apply when an individual development plan is prepared following the giving of an IDP notice.

ALN Notice

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

(2) Subject to paragraph (5), the appropriate local authority may at any time give an ALN notice to a child and that child's parent.

(3) A child who has ceased to be a registered pupil at a maintained school in Wales and to whom the new law does not apply, or that child's parent may request that the appropriate local authority gives an ALN notice, and the appropriate local authority must give an ALN notice within 10 working days of the request.

(4) 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.

(5) The appropriate local authority may only give an ALN notice in exceptional circumstances, unless the ALN notice is given as a result of a request made under paragraph (3).

(6) In this article the “appropriate local authority” means—

- (a) the local authority in Wales which is responsible for the child,
- (b) where a local authority in Wales is not responsible for the child, a local authority in Wales in whose area the maintained school at which the child is a registered pupil is located.

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

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

- (a) who had identified special educational needs on 1 January 2022,
- (b) who was in a nursery class, year 1, year 3, year 5, year 7 or year 10 during the 2021-2022 school year, and
- (c) in relation to whom the new law does not apply on 30 August 2022.

(2) On 31 August 2022—

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

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

- (a) who had identified special educational needs on 1 January 2022,
- (b) who was in a nursery class, year 1, year 5, year 9 or year 10 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.

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

- (a) who had identified special educational needs on 1 January 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

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

- (a) who ceases to be a registered pupil at a maintained school in Wales,
- (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 registered pupil at that school—

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

(3) In this article “ceases to be a registered pupil” means that the pupil’s name is deleted from the admission register of the school in accordance with the Education (Pupil Registration) (Wales) Regulations 2010⁽¹⁾ but does not include a pupil who ceases to be a registered pupil as a result of one or more of the following—

- (i) reaching the end of the third term of the final year that the school generally provides education;
- (ii) the school being discontinued as a result of the implementation of a proposal made under section 43 (proposals to discontinue mainstream schools), section 44 (proposals to establish, alter or discontinue community special schools), section 59 (making and publication of proposals by Welsh Ministers), section 68 (proposals by Welsh Ministers) or section 80 (notice by governing body to discontinue foundation or voluntary school) of the School Standards and Organisation (Wales) Act 2013⁽²⁾;
- (iii) the school being discontinued as a result of a direction made under section 16

(1) S.I. 2010/1954 (W. 187).

(2) 2013 anaw. 1.

(power of Welsh Ministers to direct closure of school) or section 81 (direction requiring discontinuance of community special school) of the School Standards and Organisation (Wales) Act 2013;

- (iv) the pupil referral unit being permanently closed.

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

- (a) who becomes a registered pupil or an enrolled student at another institution (that institution being a school or institution in the further education sector),
- (b) for whom a local authority in Wales is responsible,
- (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 becomes 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.

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

- (a) who becomes 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 becomes 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.

Regard to special educational provision provided before IDP notice

21. Where a governing body is required to prepare an individual development plan for a child within 35 school days of moving to the new law, the governing body must have regard to the special educational provision provided to the child immediately before moving to the new law.

22. 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.

Jeremy Miles

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

9 November 2021