

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

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## **EXPLANATORY NOTES**

### **GENERAL OVERVIEW OF THE ACT**

4. The Act has four Parts comprising 101 sections and one Schedule. Part 2 is separated into five chapters.
5. It establishes a statutory framework for supporting children and young people with additional learning needs ('ALN'). This replaces the legislation surrounding special educational needs ('ALN') and the assessment of children and young people with learning difficulties and/or disabilities (LDD) in post-16 education and training. The legislation being replaced on ALN is in Part 4 of the 1996 Act and that on LDD is in the 2000 Act.
6. It introduces a new statutory plan called an 'individual development plan' (referred to as an 'LDD' in these notes) to replace statutory and non-statutory education plans specifically for children and young people with ALN and LDD. The meanings of child and young person for the purposes of this Act are set out in section 99. A 'child' means a person not over compulsory school age, while a 'young person' means a person over compulsory school age but under 25.
7. It provides rights of appeal to children, the parents of children and young people in connection with this new statutory plan and related rights about additional learning provision (referred to as 'ALP' in these notes). These appeals are to the Education Tribunal for Wales ("the Tribunal"), which is the new name for the Special Educational Needs Tribunal for Wales ('ALNTW').
8. It makes consequential amendments to other Acts, including the 1996 Act, the 2000 Act, the Education (Wales) Measure 2009, and the Equality Act 2010.
9. The Act is supplemented by a code on ALN ('the code') which contains further requirements on particular bodies and guidance to bodies about the exercise of their functions. See the notes to section 4 for further detail. The Act also contains regulation making powers to set out some further details of the system.
10. Some provisions of the Act set out the general position, but they need to be read in conjunction with other sections of the Act (or of the 1996 Act) in some scenarios. In particular:
  - a. there are specific provisions for some looked after children (in particular see sections 15 – 19 and 24);
  - b. there are specific provisions dealing with how duties in the Act apply in relation to children or young people who are detained and providing for specific duties for some such situations (sections 29 – 45 and 72 – 73, as well as section 562 of the 1996 Act as it is applied by section 44);

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

- c. section 86 deals with the meaning of references to persons enrolled as students at an institution in the further education sector ('FEI'), essentially, they do not include enrolled students to the extent that they are undertaking higher education provided by the FEI;
- d. section 87 applies with modifications provisions of the Act related to local authorities' functions in respect of pupils and students who are in the area of a local authority in England but registered at a maintained school in Wales or enrolled with an FEI in Wales;
- e. many local authority functions relate to children or young people for whom the local authority is responsible. Section 99(4) defines this as the child or young person being in the area of the local authority. A partial definition of this is given in section 579(3A) and (3B) of the 1996 Act, which is amended by section 95;
- f. sections 84 and 85 are relevant to any requirement to notify or inform a child of a matter or to give a copy of a document to a child, as well as a few other duties and conditions under the Act which involve a request from, or discussion with, a child. Whether the duty or condition applies in relation to a particular child depends upon the child's capacity and section 84 sets out how it is decided whether the child has capacity. Section 85 deals with case friends for children lacking capacity and how the child's rights are exercised.