

ADDITIONAL LEARNING NEEDS AND EDUCATION TRIBUNAL (WALES) ACT 2018

EXPLANATORY NOTES

COMMENTARY ON SECTIONS OF THE ACT

Part 2 – Additional Learning Needs

Chapter 1 – Key Terms, Code and Participation

Key terms

Section 2 - Additional learning needs

12. **Section 2** defines the term ‘additional learning needs’ (ALN) for the purposes of the Act. This definition is very similar to the definition of ‘special educational needs’ (ALN) under the 1996 Act but is not limited to children and registered pupils of a school below the age of 19, as in the case of the definition of ALN. A person has ALN if the person has a “learning difficulty or disability” (see subsections (2) – (3) for the meaning of this) which calls for additional learning provision (see section 3 for the definition of this).
13. Subsection (1) clarifies that a learning difficulty or disability may, but need not, arise from a medical condition. Also, a person is not considered to have ALN because their home language is different to the language in which they are taught (subsection (4)).

Section 3 - Additional learning provision

14. **Section 3** defines the meaning of ‘additional learning provision’ (ALP), which itself forms part of the definition of ALN in section 2. This definition is very similar to the definition of ‘special educational provision’ found in the 1996 Act but in particular widens the definition by reference to mainstream institutions in the further education sector in Wales (mainstream FEIs) because, unlike the ALN definition, it applies in relation to young people who are students at such institutions. Mainstream FEIs are defined in section 99.
15. The definition of ALP included in the Act has been made by reference to a child’s age, with a slightly different definition operating in relation to children under the age of three (compared to children under the age of two in the 1996 Act). This reflects the fact that for children under the age of three there is no formal educational provision made by the state. Regulations under this section allow the Welsh Ministers to replace the references to the age of three with references to a different age.

Code of practice

Section 4 - Additional learning needs code

16. **Section 4** requires the Welsh Ministers to issue and publish on their website a code on ALN. This can contain guidance about the exercise of functions under Part 2 of

the Act, and about other matters relating to ALN and it must include guidance on a governing body's duty to take all reasonable steps to secure ALP for a pupil or student whilst an IDP is being prepared for that person (see section 47(3)). The persons listed in section 4(3) must have regard to the code when exercising their functions under this Act in relation to ALN. This means that the guidance in the code should be adhered to unless there is a good reason to depart from it. Subsection (4) signposts section 153 of the Education Act 2002 which, as amended by this Act (see Schedule 1), requires local authorities, in funding non-maintained providers of nursery education, to require the provider to have regard to relevant guidance in the code.

17. The code may also impose requirements on local authorities and governing bodies of maintained schools or FEIs in respect of specific matters (see subsection (5)). It may also set out what is required of a local authority and local health board to discharge their duties in sections 7(1) and 8(1) to have due regard to particular United Nations Conventions (see sections 7(4) and 8(4)).
18. There are certain requirements on governing bodies and local authorities which the code must include (subsection (6)). It must include one or more standard form or forms for an IDP and require that the appropriate form is used. It must also require those bodies to do the following within a period of time set by the code, subject to any exceptions (also provided for in the code):
 - a. give any notification that a child or young person does not have ALN; and
 - b. where it is determined that the child or young person has ALN, prepare and give a copy of the IDP.
19. The code may make different provision for different purposes or cases, and make transitory, transitional or saving provision in relation to both a requirement imposed under subsection (5) or provision made under section 7 or 8.
20. The Tribunal must have regard to the code where relevant to any questions arising on an appeal under Part 2 (subsection (10)).

Section 5 - Procedure for making the code

21. **Section 5** ensures that there is consultation on the code (or a revised code) and scrutiny by the National Assembly for Wales before it is issued. Subsection (1) lists the public bodies or persons who must be consulted on a draft code or a draft revised code, which includes anyone else the Welsh Ministers consider appropriate. Then, a proposed code or revised code (which may have been modified from the draft consulted upon) cannot be issued unless the draft has been laid before and approved by resolution of the Assembly. If the draft is approved, it must be issued as the code. The code comes into force on the day or days appointed by the Welsh Ministers in an order. The code must be published on the Welsh Ministers' website (section 4(11)).

Participation, United Nations conventions and access to information

Section 6 - Duty to involve and support children, their parents and young people

22. **Section 6** seeks to ensure that local authorities, governing bodies and others exercising functions under Part 2 place children, their parents and young people at the centre of decisions taken under the Act which directly affect them, and so enable them to participate in a fully informed way. It does this by requiring persons exercising functions under Part 2 in relation to a child or young person to have regard to the matters listed. In practice, this means that, for example, if a governing body is preparing an IDP for a child under section 14, it would need to provide information and support to the child and their parent to enable them to participate in decisions such as what ALP is called for by the child's ALN, give them an opportunity to do so and take into account their views, wishes and feelings.

Sections 7 and 8 – Duties to have regard to the United Nations Convention on the Rights of the Child and the United Nations Convention of the Rights of Persons with Disabilities

23. **Sections 7 and 8** place duties on local authorities and NHS bodies (that is, Local Health Boards and NHS trusts) exercising functions under Part 2 to have due regard to the United Nations Convention on the Rights of the Child (section 7) and to the United Nations Convention on the Rights of Persons with Disabilities (section 8). See subsection (2) of each section for how each Convention is to be treated as having effect for these purposes.
24. These duties do not require local authorities and NHS bodies to give specific consideration to the Conventions on each occasion that a function is exercised (see sections 7(3) and 8(3)) and the code may make provision about what is required in order to discharge the duty in which case, the duty is to be interpreted accordingly (sections 7(4) and 8(4)).

Section 9 - Advice and information

25. **Section 9** requires local authorities to ensure that those who have an interest in the operation of the new ALN system (including children, children’s parents and young people) are provided with information and advice about ALN and the system provided for by the Act. In doing so local authorities must have regard to the principle that the information and advice is provided in an impartial manner. Local authorities must also make the availability of information and advice services, dispute avoidance and resolution services, and independent advocacy services, known to schools and others. In turn, governing bodies, when informed of these matters, have a duty to make them known to their pupils, pupils’ parents and case friends or their students (subsections (4) and (5)). The ALN code may impose further requirements related to advice and information (see section 4(5)).