

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

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS OF THE ACT

#### **Part 2 – Additional Learning Needs** **Chapter 3 – Supplementary Functions**

#### **Functions relating to securing additional learning provision**

##### ***Section 47 - Duty to take all reasonable steps to secure additional learning provision***

119. **Section 47(1)** and **(2)** requires that where a child or young person with ALN is a registered pupil at a maintained school or an enrolled student at an FEI, but has no IDP maintained for them, the relevant governing body must take all reasonable steps to secure the ALP called for by the person's ALN. This is to ensure, for example, that such children and young people receive appropriate support whilst their needs are being determined or a plan is being prepared for them. The code must include guidance about situations where a plan is being prepared for the learner (subsection (3)). The duty on the governing bodies will also apply in respect of pupils or students resident in England who do not have an IDP (in which case, they may have an EHC plan, or there may have been a request to the England local authority for an EHC assessment - see section 12).
120. **Section 47(4)** and **(5)** require that when a local authority maintains an IDP for a child or young person attending a maintained school or FEI, the relevant governing body takes all reasonable steps to help the local authority secure the ALP set out in the IDP.

##### ***Section 48 - Duty to admit children to named maintained schools***

121. **Section 48** places a duty on governing bodies of maintained schools in Wales to admit children where that school is named for the purpose of admission by a local authority in an IDP. This is similar to the position under the 1996 Act in relation to the naming of a school in a statement of ALN. However, this section limits the circumstances in which schools may be named to those where the local authority is satisfied that the child's interest requires the ALP to be made at that school, and it is appropriate for the child to be provided with education or training there. Before naming a school under this section, the local authority must consult the governing body of the school, and in the case of a maintained school where neither the local authority nor its governing body is the admissions authority for the school (as defined by section 88 of the School Standards and Framework Act 1998), the local authority for the area in which the school is located.
122. Where a maintained school is named under this section, the governing body must admit the child even if this would result in any limit on the size of an infant class being exceeded (see subsection (5)). The duty in this section to admit a child does not affect any power to exclude that child from the school (subsection (6)).

***Section 49 - No power to charge for provision secured under this Part***

123. **Section 49** ensures that a child, parent (who is an individual rather than a local authority who looks after a child) or a young person does not have to pay for any provision that a governing body or local authority secures for that child or young person under the Act. The section amends the Social Services and Well-being (Wales) Act 2014 to ensure that a local authority's functions under that Act related to recovering contributions from parents of looked after children towards the maintenance of the child, cannot be used for matters which the authority secures under the Act.

***Section 50 - Welsh Ministers' duties to secure post-16 education and training***

124. The Act amends provisions of the 2000 Act dealing with post-16 learners who have 'learning difficulties'. That Act places functions on the Welsh Ministers relating to: undertaking assessments for post-16 learners with learning difficulties (section 140); securing boarding accommodation for post-16 learners in specified circumstances (section 41); and more generally, securing facilities for post-16 education or training (sections 31, 32 and 34), but in doing so, the Welsh Ministers must have regard to the needs of persons with learning difficulties and to learning and skills assessments (section 41).
125. **Section 50** amends the 2000 Act to remove functions related to securing boarding accommodation and undertaking assessments for post-16 learners with learning difficulties, as these matters are superseded by the ALN system provided for in Part 2, which includes duties to determine whether a young person has ALN, to prepare and maintain IDPs and to secure board and lodging for young persons in specified circumstances.
126. **Section 50** also amends the 2000 Act so that the Welsh Ministers, when planning the provision of post-16 education or training, take into account the capacity of the further education workforce to deliver ALP in Welsh and the availability of facilities for assessing whether persons have ALN through the medium of Welsh. It also amends what remains of section 41 to reflect the terminology in this Act. Paragraph 8 of Schedule 1 makes further consequential changes to terminology in the 2000 Act.

***Section 51 - Duty to favour education for children at mainstream maintained schools***

127. **Section 51** requires that where a child of compulsory school age with ALN should be educated in a school, the local authority must ensure that the child is educated in a mainstream maintained school, unless any of the circumstances set out in subsection (2) apply. These exceptions recognise that it might sometimes be appropriate to educate a child with ALN elsewhere. However, the exception regarding parental wishes does not require the local authority to secure the child's education otherwise than in a mainstream maintained school (subsection (4)). Also, the requirement on the local authority in this subsection does not prevent a child from being educated at an approved non-maintained special school in England or an independent school, if it is not meeting the cost of that education (subsection (5)).

***Section 52 - Children with additional learning needs in mainstream maintained schools***

128. **Section 52** requires that children with ALN educated in mainstream maintained schools take part in activities alongside their peers who do not have ALN, in so far as that is reasonably practicable and compatible with the matters listed in subsection (2). In particular, the matter in subsection (2)(a) (the child receiving the ALP called for by his or her ALN) is included because the nature of the child's ALN or the ALP they require may be such that they should be, or even must be, educated separately from their peers for at least part of the time. For example, this might mean that a child needs to spend some of the school day allocated to classroom teaching time in a special unit attached

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

to the school which is able to deliver specialist provision for the child's needs, but at other times the child should be able to engage with the other pupils in school activities such as assemblies, breaks, sports days, trips and some classroom activities.

### ***Section 53 - Additional learning provision otherwise than in schools***

129. **Section 53** allows a local authority to secure the ALP or any part of it identified in an IDP it maintains for a child to be made elsewhere when it is satisfied that it would be inappropriate for it to be made in a school. For example, certain forms of ALP may involve the use of specialist equipment which cannot be made available in a school setting.

### ***Section 54 - Amendments to registration requirements for independent schools in Wales***

130. **Section 54** amends the Education Act 2002 so that the Welsh Ministers must publish a list of the schools included in the register of independent schools in Wales. Furthermore, when independent schools register with the Welsh Ministers, as a result of the amendment in subsection (3) to section 160 of the 2002 Act, they will be required by regulations, to specify the type(s) of ALP they make for pupils with ALN (if any). This information must also be specified in the published register.

### ***Section 55 - Conditions applicable to securing additional learning provision at independent schools***

131. Under section 55, a local authority may not place a child or young person at an independent school in Wales unless the school is on the register of independent schools in Wales and the local authority is satisfied that it can make the ALP described in the person's IDP.
132. Similarly, a local authority is prohibited from placing children and young people at independent educational institutions in England (as defined in the Education and Skills Act 2008), unless the institution is included in the register of independent educational institutions in England and the local authority is satisfied that the institution can make the ALP described in the person's IDP.
133. These provisions replace the approval and individual consent provisions in section 347 of the 1996 Act, which are removed by section 58.

### ***Section 56 - List of independent special post-16 institutions***

134. **Section 56** requires the Welsh Ministers to establish and maintain a published list of independent special post-16 institutions (defined in subsection (6)) in Wales and England. Proprietors of such institutions (which are specially organised to provide education and training for persons over compulsory school age with ALN) may apply to the Welsh Ministers to be placed on the list. Local authorities may not exercise their functions under Part 2 to place children and young people at such institutions which are not on the list, unless an exemption set out in regulations applies (subsection (3)). The application requirements, and matters related to the list, including rights of appeal against decisions to refuse to list, or to remove, an institution, must be provided for by regulations made by the Welsh Ministers (subsection (5)).

### ***Section 57 - Abolition of approval of non-maintained special schools in Wales***

135. **Section 57** amends the 1996 Act to remove the power of the Welsh Ministers to approve non-maintained special schools in Wales. New schools that are not maintained will have to register as independent schools under the Education Act 2002.

### ***Section 58 - Abolition of approval of independent schools in Wales***

136. **Section 58** repeals section 347 of the 1996 Act (approval of independent schools as suitable for admission of children with statements of ALN). Sections 54 and 55 provide for matters related to registration requirements for independent schools and conditions for a local authority securing education for a child or young person with ALN at an independent school.

### ***Section 59 - Additional learning provision outside England and Wales***

137. **Section 59** allows a local authority to arrange for a child or young person with ALN to attend an institution outside England and Wales, where that institution is organised to make the ALP described in their IDP.

### **Additional learning needs co-ordinating officers**

#### ***Section 60 - Additional learning needs co-ordinator***

138. **Section 60** requires governing bodies of maintained schools (which includes maintained nursery schools and pupil referral units) except special schools and governing bodies of FEIs to designate a person (or persons) as the additional learning needs co-ordinator (ALNCO) to be responsible for co-ordinating ALP for pupils and students with ALN. It also allows regulations to confer functions on ALNCOs relating to provision for pupils or students with ALN. The ALNCO of an FEI does not have these functions in relation to enrolled students in so far as they are undertaking higher education provided by the FEI (subsection (5) and section 86). Regulations may also require governing bodies to ensure that ALNCOs have qualifications or experience (or both) as prescribed in the regulations.

#### ***Section 61 - Designated education clinical lead officer***

139. **Section 61** places a duty on Local Health Boards to designate an officer to be responsible for co-ordinating the Board's functions in relation to children and young people with ALN. The officer must be suitably qualified and experienced in the provision of health care for children and young people with ALN and be either a registered medical practitioner, a registered nurse or other health professional.

#### ***Section 62 – Early years additional learning needs lead officer***

140. **Section 62** places a duty on local authorities to designate an officer with responsibility for co-ordinating the authority's functions under Part 2 in relation to children under compulsory school age, who have or may have ALN, and are not in a maintained nursery or school.

### **Miscellaneous functions**

#### ***Section 63 - Duty to keep additional learning provision under review***

141. **Section 63** places a duty on local authorities to keep under review the arrangements that they and the governing bodies of maintained schools in their area make for children and young people with ALN. This includes considering the extent to which the arrangements are sufficient to meet the ALN of the children and young people for whom they are responsible. As part of their considerations, local authorities must have regard to the ALP that may reasonably be arranged by other bodies (such as health bodies). It also requires local authorities to consider the sufficiency of ALP in Welsh and the size and capability of the workforce available. If a local authority considers that the arrangements are not sufficient in any way, it must take all reasonable steps to remedy the matter. Local authorities must consult any persons that they consider appropriate in order to inform the consideration and review, and at times which they consider appropriate.

***Section 64 - Duty of health bodies to notify parents etc.***

142. This section relates to situations in which a health body in Wales or England of a type listed in subsection (2) is exercising any of its functions in relation to a child who is under compulsory school age and for whom a local authority in Wales is responsible. If the health body forms the opinion that the child has (or probably has) ALN, the health body must bring its opinion to the attention of the local authority in Wales responsible for the child (or if the child is looked after, the authority that looks after the child), if the health body is satisfied that doing so would be in the best interests of the child.
143. Before doing so, the health body must inform the child's parent of its opinion and its duty to inform the appropriate local authority. This safeguard is to ensure that the parent has an opportunity to discuss the opinion with an officer of the health body, before the health body brings its opinion to the attention of the appropriate local authority and the discussion may also help inform the health body's assessment of the best interests of the child.
144. This section also places a duty on the health body to inform the parent about any voluntary organisations which it considers are likely to be able to provide the parent with advice or assistance in connection with any ALN that the child may have.

***Section 65 - Duties to provide information and other help***

145. **Section 65** provides that when local authorities request information or other help from certain persons in order to exercise their functions under Part 2, those requests are complied with, except in the circumstances set out in subsection (2). The persons who are subject to this duty are listed in sub-section (4) and are all public bodies or other persons exercising public functions.
146. Such a person can decline to comply with the request for help or information if they consider that it is incompatible with their own duties or would have an adverse effect on the exercise of their functions (subsection (2)). However, if the person does not comply with such a request for help or information, they must provide their reasons for refusing the request to the local authority in writing (subsection (3)).
147. Subsection (5) allows for regulations to set out a period within which the person must comply with a request, and for exceptions to apply to the requirement to comply within this period.

***Section 66 - Right of local authority to access premises of schools and other institutions***

148. **Section 66** ensures that a local authority that maintains an IDP for a child or young person has a right to access any place at the premises of the school or other institution in Wales or England where education or training is provided for that child or young person. This right of access only applies where it is necessary for the local authority to exercise its functions under this Part, and it must be at a reasonable time.
149. The institutions that a local authority has a right to access are listed in subsection (3).

***Section 67 - Provision of goods or services in relation to additional learning provision***

150. **Section 67** gives the Welsh Ministers powers to make for regulations to provide for local authorities to supply goods and services to persons providing ALP or exercising functions under this Part. This may include regulations about terms and conditions for the supply of such goods and services.