

ADDITIONAL LEARNING NEEDS AND EDUCATION TRIBUNAL (WALES) ACT 2018

EXPLANATORY NOTES

COMMENTARY ON SECTIONS OF THE ACT

Part 2 – Additional Learning Needs

Chapter 5 – General

Higher education courses provided by further education institutions

Section 86 – Students at further education institutions undertaking higher education courses

182. Various functions of local authorities and governing bodies of FEIs in Part 2 relate to young people who are enrolled as students at an FEI. Section 86 provides that an enrolled student undertaking a course of higher education provided by the FEI, is not to be treated as an enrolled student of the FEI for the purposes of Part 2. However if an enrolled student is being provided by the FEI with both higher education and education (defined in section 99 to exclude higher education) or training, the student is only a higher education student in relation to the higher education and not for the other education or training (subsection (4)).
183. The effect is that functions of local authorities and governing bodies of FEIs which relate to enrolled students do not apply to students to the extent that they are higher education students. For example, a governing body of an FEI is not under the duty to decide (in section 11) whether a student for whom it is only providing higher education has ALN. A course of higher education is a course of any description mentioned in Schedule 6 to the Education Reform Act 1988.

Section 87 - Application of reconsideration provisions to pupils and students resident in England

184. This section applies, with modifications, specific local authority functions under the Act to children or young people who are in the area of a local authority in England but attend a maintained school in Wales. The Act gives local authorities functions to reconsider decisions of, and plans maintained by, governing bodies of maintained schools, in respect of pupils in its area (see, for example, section 26). Appeal rights lie against those local authority decisions, rather than those of the governing body (see section 70). However, registered pupils at the school may be in the area of a local authority in England. In order to ensure that such English resident learners can challenge decisions of schools in relation to ALN, this section applies with modifications the sections which link to local authorities reconsidering school governing body decisions.
185. Accordingly, it is the local authority maintaining the school in Wales attended by the English resident child or young person that is responsible for reconsidering decisions about ALN (in accordance with section 26), reconsidering governing body IDPs (in

accordance with section 27), and reconsidering governing body decisions to cease to maintain IDPs (in accordance with section 32). There are some differences in the application of these provisions regarding what the maintaining local authority may do, which reflect that there is a local authority in England with responsibilities under the Children and Families Act 2014 in relation to special educational needs. For example, the local authority may only direct the governing body to maintain, or prepare and maintain an IDP – it cannot itself maintain or take over responsibility for the IDP. In addition, the local authority is not required to prepare an IDP or direct a governing body to do so where it has requested the relevant English local authority to conduct an assessment of the child or young person’s needs under section 36 of the Children and Families Act 2014 or where an Education, Health and Care Plan (EHC Plan) is maintained for the child or young person under that Act. A local authority’s arrangements for avoiding and resolving disputes and independent advocacy services must also be available to such pupils and also to young people in the area of a local authority in England who are enrolled as students at an FEI in the area of the local authority in Wales (subsection (4)).

Section 88 - Giving notice etc. under this Part

186. Where Part 2 requires or authorises a governing body or local authority to give a document to or notify a person, it may be done by the methods of delivery listed in this section. Electronic delivery can only take place where the person has indicated that they wish to receive notifications or documents electronically and has provided a suitable address.

Section 89 - Review of additional learning provision in Welsh

187. **Section 89** requires the Welsh Ministers to arrange reviews and reports on the sufficiency of additional learning provision in Welsh. The first report must be published before 1 September in the fifth year following the commencement by order of any provision of Part 2, and thereafter before 1 September in the fifth year following the last year in which a report was required to be published.

Section 90 - Power to amend duties to secure additional learning provision in Welsh

188. **Section 90** provides the Welsh Ministers with a power to make regulations which remove the words “take all reasonable steps to” from those provisions of the Act (listed in subsection (1)) which relate to securing ALP in Welsh or provide that in those provisions, the words “take all reasonable steps to” no longer apply in relation to certain prescribed bodies or for a prescribed purpose, or for a prescribed purpose in relation to a prescribed body. The effect of removing the words is that the duty concerned changes from being a duty to take all reasonable steps to secure that ALP is provided to a person in Welsh to a duty to secure that it is provided in Welsh.
189. **Section 90** also provides the Welsh Ministers with the power to omit section 89 (i.e. the duty to arrange reviews of the sufficiency of Welsh language ALP) if the words “take all reasonable steps” are removed from all the provisions listed in subsection (2). This section links to section 89 because the outcome of the reviews will be a relevant consideration in the decision to exercise this regulation making power.