

ADDITIONAL LEARNING NEEDS AND EDUCATION TRIBUNAL (WALES) ACT 2018

EXPLANATORY NOTES

COMMENTARY ON SECTIONS OF THE ACT

Part 4 – Miscellaneous and General

Section 95 - Meaning of “in the area” of a local authority

194. **Section 95** amends the 1996 Act’s partial definition of “in the area” of a local authority. That partial definition provides that references to a person who is “in the area” of a local authority in England in the 1996 Act, do not include a person who would be wholly or mainly resident in the area of a local authority in Wales (for example, a person living permanently in Wales). The amendments made by this section qualify this to ensure that references to a person “in the area” of a local authority in England do not include a person who would be wholly or mainly resident in the area of a local authority in Wales were it not for provision secured under Part 2. This means, for example, that a young person living in the area of a local authority in Wales who is then placed by that authority at a residential educational institution in England for a two year course in order to secure ALP, is still in the area of the local authority in Wales and therefore that authority continues to be responsible for the person under Part 2 (and so must maintain the person’s IDP, review it, secure the ALP, etc.).
195. Similarly, the partial definition in the 1996 Act for references to a person who is in the area of a local authority in Wales, is amended so that such references do not include a person who would be wholly or mainly resident in a local authority area in England, were it not for provision secured under Part 3 of the Children and Families Act 2014.
196. This section also inserts a regulation power into the 1996 Act allowing the Welsh Ministers to make further provision about the meaning of references to a person being in the area of a local authority in Wales.
197. The 1996 Act definition as amended by this section applies for the purposes of the 1996 Act, this Act (see section 99(6)) and provisions of other Education Acts to which the 1996 Act definition applies.

Section 96 - Minor and consequential amendments and repeals

198. **Section 96** introduces Schedule 1, which makes minor and consequential amendments and repeals.

Section 97 - Power to make consequential and transitional provision etc.

199. **Section 97** provides the Welsh Ministers with power to make regulations to make supplementary, incidental, consequential, transitory, transitional or saving provisions if they consider it necessary or expedient to give full effect to any provisions in this Act or in consequence of any provisions in the Act or for the purposes of any provisions of

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

the Act. The regulations may amend, repeal or revoke any provisions in an enactment (defined in section 99(1)) and statutory documents (defined in subsection (4)).

Section 98 - Regulations

200. **Section 98** sets out that powers to make regulations under this Act are to be exercised by statutory instrument. It allows for such regulations to make different provision for different purposes or cases; and to make incidental, supplementary, consequential, transitory, transitional or saving provisions. It also sets out the procedure of the National Assembly for Wales applicable to the regulation making powers.

Section 99 - General interpretation

201. **Section 99** provides interpretations and definitions of terms and references used in the Act. It also provides for definitions in the 1996 Act to apply where the defined term is used in this Act, unless the term is given a different meaning in this Act, in which case this Act's definition applies (subsections (6) and (7)). As a result, various terms in the Act bear the 1996 Act's meaning (for example, 'school' and 'parent').
202. Amongst other things, this section provides that for the purposes of the Act, a local authority is responsible for a child or young person if he or she is "in the area of" the local authority. The 1996 Act meaning of "in the area of" a local authority applies (section 95 amends the partial definition of that term in section 579 of the 1996 Act).

Section 100 - Coming into force

203. **Section 100** provides for a number of sections to come into force on the day after the day of Royal Assent; these sections are listed in subsection (1). It also provides for paragraph 5 of Schedule 1 to come into force two months after the day of Royal Assent. It provides for the remaining provisions within the Act to come into force on the day set out in an order made by the Welsh Ministers, exercisable by statutory instrument, which may appoint different days for different purposes or cases; and the order may make transitory, transitional or saving provisions connected to commencement.

Section 101- Short title and inclusion as one of the Education Acts

204. The short title of the Act is '**the Additional Learning Needs and Education Tribunal (Wales) Act 2018**'
205. The Act is included in the list of Education Acts set out in section 578 of the 1996 Act (subsection (2)). The effect of this and section 99(6) (which provides for provisions of this Act to be read as if in the 1996 Act) is that the Welsh Ministers have powers to intervene in the event of a governing body of a maintained school or local authority failing to comply with duties under the Act or unreasonably exercising functions under the Act. These are the Welsh Ministers' powers in Part 2 of the Schools Standards and Organisation (Wales) Act 2013 to intervene in the conduct of maintained schools and in a local authority's exercise of its education functions. The Welsh Ministers also have powers to intervene (under section 57 of the Further and Higher Education Act 1992) in relation to governing bodies of FEIs in the event of breaches of duties under this Act or unreasonably exercising functions under this Act.