



Additional Learning Needs and Education Tribunal (Wales) Act 2018

2018 anaw 2

PART 2

ADDITIONAL LEARNING NEEDS

CHAPTER 3

SUPPLEMENTARY FUNCTIONS

Additional learning provision in particular kinds of school or other institution

51 Duty to favour education for children at mainstream maintained schools

- (1) A local authority exercising functions under this Part in relation to a child of compulsory school age with additional learning needs who should be educated in a school must secure that the child is educated in a mainstream maintained school unless any of the circumstances in paragraphs (a) to (c) of subsection (2) apply.
- (2) The circumstances are—
 - (a) that educating the child in a mainstream maintained school is incompatible with the provision of efficient education for other children;
 - (b) that educating the child otherwise than in a mainstream maintained school is appropriate in the best interests of the child and compatible with the provision of efficient education for other children;
 - (c) that the child's parent wishes the child to be educated otherwise than in a mainstream maintained school.
- (3) A local authority may not rely on the exception in subsection (2)(a) unless there are no reasonable steps the authority could take to prevent the incompatibility.

- (4) Where a child’s parent wishes his or her child to be educated otherwise than in a mainstream maintained school, subsection (2)(c) does not require a local authority to secure that the child is educated otherwise than in a mainstream maintained school.
- (5) Subsection (1) does not prevent a child from being educated in—
 - (a) an independent school, or
 - (b) a school approved under section 342 of the [Education Act 1996 \(c. 56\)](#), if the cost is met otherwise than by a local authority.

52 Children with additional learning needs in mainstream maintained schools

- (1) Where a child with additional learning needs is being educated in a mainstream maintained school in Wales, those concerned with making additional learning provision for the child must secure that the child engages in the activities of the school together with children who do not have additional learning needs.
- (2) The duty in subsection (1) applies only so far as is reasonably practicable and compatible with—
 - (a) the child receiving the additional learning provision called for by his or her additional learning needs,
 - (b) the provision of efficient education for the children with whom he or she will be educated, and
 - (c) the efficient use of resources.

53 Additional learning provision otherwise than in schools

- (1) A local authority may arrange for the additional learning provision described in an individual development plan it maintains for a child, or any part of that additional learning provision, to be made otherwise than in a school.
- (2) But a local authority may only do so if it is satisfied that it would be inappropriate for the additional learning provision to be made in a school.

54 Amendments to registration requirements for independent schools in Wales

- (1) The [Education Act 2002 \(c. 32\)](#) is amended as follows.
- (2) In section 158 (registers), after subsection (3) insert—
 - “(4) The Welsh Ministers must publish a list of the schools included in the register of independent schools in Wales, as amended from time to time.
 - (5) If the Welsh Ministers have been provided with the necessary information by the proprietor of the school, the published list must specify the type or types of additional learning provision made by a school on the list for pupils with additional learning needs (if any).”
- (3) In section 160 (applications for registration), in subsection (2), for paragraph (e) substitute—
 - “(e) the type or types of additional learning provision made by the school for pupils with additional learning needs (if any).”

55 Conditions applicable to securing additional learning provision at independent schools

- (1) A local authority may not exercise its functions under this Part to secure that a child or young person is educated at an independent school in Wales unless—
 - (a) the school is included in the register of independent schools in Wales, and
 - (b) the local authority is satisfied that the school can make the additional learning provision described in the child’s or young person’s individual development plan.
- (2) A local authority may not exercise its functions under this Part to secure that a child or young person is educated at an independent educational institution in England unless—
 - (a) the institution is included in the register of independent educational institutions in England (kept under section 95 of the [Education and Skills Act 2008 \(c. 25\)](#) (“the 2008 Act”), and
 - (b) the local authority is satisfied that the institution can make the additional learning provision described in the child’s or young person’s individual development plan.
- (3) In this section, “independent educational institution” has the meaning given by Chapter 1 of Part 4 of the 2008 Act.

56 List of independent special post-16 institutions

- (1) The Welsh Ministers must establish and maintain a list of independent special post-16 institutions in Wales and England (“the list”) for the purpose of subsection (3).
- (2) The Welsh Ministers must publish the list, as amended from time to time.
- (3) A local authority may only exercise its functions under this Part to secure education or training for a child or young person at an independent special post-16 institution in Wales or England if the institution is included in the list, subject to any prescribed exemptions.
- (4) The Welsh Ministers may only include an institution in the list on application by its proprietor.
- (5) Regulations must provide for—
 - (a) the contents of the list;
 - (b) requirements to be complied with as a condition of being included in the list;
 - (c) requirements to be complied with while the institution is listed (including requirements for approval by the Welsh Ministers of arrangements at the institution and change of such arrangements);
 - (d) removal of the institution from the list;
 - (e) rights of appeal to the First-tier Tribunal for proprietors of institutions against decisions—
 - (i) to refuse to list an institution;
 - (ii) to remove an institution from the list;
 - (iii) not to approve or not to approve a change to arrangements at the institution.

- (6) In this section, “independent special post-16 institution” means an institution which provides education or training for persons over compulsory school age and is specially organised to provide such education or training for persons with additional learning needs, and which is not—
- (a) an institution within the further education sector,
 - (b) an independent school included in the register of independent schools in Wales (kept under section 158 of the [Education Act 2002 \(c. 32\)](#)),
 - (c) an independent educational institution (within the meaning of Chapter 1 of Part 4 of the [Education and Skills Act 2008 \(c. 25\)](#)), which has been included in the register of independent educational institutions in England (kept under section 95 of that Act), or
 - (d) a 16 to 19 Academy.

57 Abolition of approval of non-maintained special schools in Wales

- (1) The [Education Act 1996 \(c. 56\)](#) is amended as follows.
- (2) In section 337A (interpretation of Chapter), omit the definition of “the appropriate national authority”.
- (3) In section 342 (approval of non-maintained special schools)—
 - (a) in subsection (1)—
 - (i) for “appropriate national authority” substitute “Secretary of State”, and
 - (ii) after “school”, the first time it appears, insert “in England”;
 - (b) in subsection (5)(a), for “appropriate national authority” substitute “Secretary of State”;
 - (c) omit subsection (6).

58 Abolition of approval of independent schools in Wales

Section 347 of the [Education Act 1996 \(c. 56\)](#) (approval of independent schools as suitable for admission of children with statements of special educational needs) is repealed.

59 Additional learning provision outside England and Wales

A local authority may exercise its functions under this Part to make arrangements for a child or young person with additional learning needs to attend an institution outside England and Wales, but only if the institution is organised to make the additional learning provision described in the child’s or young person’s individual development plan.