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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order brings into force provisions of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (“the Act”).

The Act establishes a statutory framework for supporting children and young people with additional learning needs. This replaces the legislation surrounding special educational needs and the assessment of children and young people with learning difficulties.

The provisions listed in article 3 come into force on 1 September 2022 in relation to those who are in year 11 and below (or would be if they attended a school), and who have a statement of special educational needs.

Article 1 contains definitions, including the “new law” in the Act and the “old law” in Part 4 of the Education Act 1996. Until a child is transferred to the new law, the old law will continue to apply to the child and the new law will not have effect (article 4).

This Order requires the appropriate local authority (see article 1(7)) to give a notice to a child in a particular year group in a particular school year (articles 9 and 10). For example, a child under compulsory school age, in a nursery class, in a reception class, year 6, year 10 or year 11 (or who would be in any of those year groups if the child were a registered pupil at a school) will transfer to the new law during the school year 2022-2023. The date of the notice given to a particular child will be the date that child transfers to the new law. The duty on the appropriate local authority to give a notice does not apply when a child or the child’s parent could bring an appeal, or has brought an appeal and that appeal has not been finally determined. In such a case, the appropriate local authority must give a notice as soon as reasonably practicable after the time for bringing an appeal ends (if no appeal is brought) or the appeal is finally determined (article 11).

The appropriate local authority can give the child an IDP notice or a No IDP notice. An IDP notice means that the child is deemed to have additional learning needs for the purposes of Chapter 2 of Part 2 of the Act on the date of the notice and that it is intended that an individual development plan is prepared for the child (article 5). A No IDP notice means that the child is deemed not to have additional learning needs for the purposes of Chapter 2 of Part 2 of the Act on the date of the notice (article 6).

A child with a statement or the child’s parent can request that a notice is given (article 13). Where an individual development plan is prepared following an IDP notice, a copy of the individual development plan must be given to the child and the child’s parent within 12 weeks of the date of the notice unless certain circumstances apply (article 14).

The appropriate local authority may also, in exceptional circumstances, give any child and that child’s parent an ALN notice which will transfer the child to the new law (article 15).

If the child has not transferred to the new law by the end of the school year in which the child should have transferred, articles 16 to 19 set out the date on which the old law ceases and the new law has effect in relation to the child.

Article 21 applies where a child’s statement ceases to be maintained. The child will transfer to the new law on the date the child’s statement ceases to be maintained.

Article 22 applies to a child who ceases to be the responsibility of the local authority maintaining the statement. The child will transfer to the new law on the date that the child ceases to be the

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responsibility of the local authority unless the child or the child's parent could bring an appeal, or has brought an appeal and that appeal has not been finally determined.

When preparing an individual development plan for a child with a statement, regard must be had to the statement maintained in relation to the child immediately before transferring to the new law (article 23).

Article 24 reflects for the purposes of this Order section 84 of the Act which provides that certain duties and conditions in relation to children (e.g. to give a child a copy of an individual development plan) do not apply if it is considered that the child does not have capacity to understand the subject matter.

Article 25 provides that certain duties and conditions in relation to parents in this Order (e.g. to give a parent an IDP notice or a No IDP notice) do not apply when the child ceases to be of compulsory school age.

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