
WELSH STATUTORY INSTRUMENTS

2022 No. 892

The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 9 and Transitional and Saving Provisions) Order 2022

Title and interpretation

1.—(1) The title of this Order is the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 9 and Transitional and Saving Provisions) Order 2022.

(2) In this Order—

“the 1996 Act” (“*Deddf 1996*”) means the Education Act 1996(1);

“the Act” (“*y Ddeddf*”) means the Additional Learning Needs and Education Tribunal (Wales) Act 2018;

“child” (“*plentyn*”) means a person who is not over compulsory school age;

“code” (“*cod*”) means a code on additional learning needs issued under section 4 of the Act;

“compulsory school age” (“*oedran ysgol gorfodol*”) has the same meaning as in section 8(2) of the 1996 Act;

“in the area” (“*yn ardal*”) has the same meaning as in section 579(3B)(3) of the 1996 Act;

“individual development plan” (“*cynllun datblygu unigol*”) means a plan prepared and maintained under Chapter 2 of Part 2 of the Act;

“local authority” (“*awdurdod lleol*”) has the same meaning as in section 99 of the Act;

“looked after child” (“*plentyn sy’n derbyn gofal*”) has the same meaning as in section 15 of the Act;

“parent” (“*rhiant*”) has the same meaning as in section 576(4) of the 1996 Act;

“Tribunal” (“*Tribiwnlys*”) means the Education Tribunal for Wales(5);

“Tribunal Rules” (“*Rheolau’r Tribiwnlys*”) means Special Educational Needs Tribunal for Wales Regulations 2012(6).

(3) References in this Order to “the old law” are to Chapter 1 of Part 4 of the 1996 Act.

(4) References in this Order to “the new law” are to—

(a) the Act,

(b) a regulation or the code made under that Act, and

(1) 1996 c. 56.

(2) Section 8 was amended by section 52 of the Education Act 1997 (c. 44).

(3) Inserted by Children and Families Act 2014 (c. 6), section 82 and paragraphs 1 and 59 of Schedule 3 and amended by section 95 of the Act.

(4) Amended by School Standards and Framework Act 1998 (c. 31), section 140 and paragraph 180 of Schedule 30 and Schedule 31.

(5) The Education Tribunal for Wales was previously known as the Special Educational Needs Tribunal for Wales. See section 91 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018.

(6) S.I. 2012/322 (W. 53).

- (c) any other provision of, or made under, an act that has effect for the purposes of or in relation to—
 - (i) a provision of the Act or such regulations or code, or
 - (ii) a person to whom the Act or such regulations or code applies.
- (5) For the purposes of this Order an appeal is finally determined if it is withdrawn, or if—
 - (a) a decision is made by a tribunal or court on the appeal, and
 - (b) if a request may be made to review the decision or it may be further appealed, and the period (or each of the periods) for doing so expires without a review being requested or further appeal being made.
- (6) For the purposes of this Order, a local authority is responsible for a child if he or she is in the area of the authority.
- (7) For the purposes of this Order, where a child is—
 - (a) a looked after child, the appropriate local authority is the local authority that looks after the child;
 - (b) not a looked after child, the appropriate local authority is the local authority responsible for the child.
- (8) For the purposes of this Order, a matter is ongoing when—
 - (a) a local authority has served a notice under section 323 of the 1996 Act and the assessment has not commenced and no notice has been given under section 323(6) of the 1996 Act;
 - (b) a request has been made under section 329 or 329A of the 1996 Act for an assessment under section 323 of the 1996 Act and the local authority has not determined whether to comply with the request;
 - (c) a request has been made under section 329 or 329A of the 1996 Act for an assessment under section 323 of the 1996 Act and the local authority determines not to comply with the request and—
 - (i) the time within which an appeal under section 329(2) or 329A(8) of the 1996 Act has to be made under Part B of the Tribunal Rules has not expired;
 - (ii) an appeal to the Tribunal under section 329(2) or 329A(8) of the 1996 Act in relation to that determination has been made but not finally determined; or
 - (iii) an appeal to the Tribunal under section 329(2) or 329A(8) of the 1996 Act in relation to that determination was finally determined and the local authority was ordered to arrange an assessment, and that assessment has not commenced;
 - (d) a local authority is undertaking an assessment of educational needs under section 323 of the 1996 Act;
 - (e) a local authority proposes not to make a statement following an assessment and—
 - (i) the period within which an appeal under section 325(2) of the 1996 Act has to be made under Part B of the Tribunal Rules has not expired;
 - (ii) an appeal to the Tribunal under section 325(2) of the 1996 Act in relation to that decision has been made but not finally determined; or
 - (iii) an appeal to the Tribunal under section 325(2) of the 1996 Act in relation to that decision was made and finally determined and the local authority was ordered to—
 - (aa) make and maintain a statement and the making of the statement has not commenced; or
 - (bb) reconsider its decision and that reconsideration has not commenced;

- (f) a local authority must make a statement under section 324 of the 1996 Act but the making of the statement has not commenced;
 - (g) a local authority must make a statement under section 324 of the 1996 Act but the statement has not been made;
 - (h) an assessment under section 331 of the 1996 Act is ongoing.
- (9) For the purposes of this Order, an appeal is ongoing when—
- (a) a request has been made under section 329 or 329A of the 1996 Act for an assessment under section 323 of the 1996 Act and the local authority determines not to comply with the request and—
 - (i) an appeal to the Tribunal under section 329(2) or 329A(8) of the 1996 Act in relation to that determination has been made but not finally determined; or
 - (ii) an appeal to the Tribunal under section 329(2) or 329A(8) of the 1996 Act in relation to that determination was finally determined and the local authority was ordered to arrange an assessment, and that assessment has not commenced;
 - (b) a local authority proposes not to make a statement following an assessment and—
 - (i) an appeal to the Tribunal under section 325(2) of the 1996 Act in relation to that decision has been made but not finally determined; or
 - (ii) an appeal to the Tribunal under section 325(2) of the 1996 Act in relation to that decision was made and finally determined and the local authority was ordered to—
 - (aa) make and maintain a statement and the making of the statement has not commenced; or
 - (bb) reconsider its decision and that reconsideration has not commenced.