



Additional Learning Needs and Education Tribunal (Wales) Act 2018

2018 anaw 2

An Act of the National Assembly for Wales to reform the law on education and training for children and young people with additional learning needs; and to continue the Special Educational Needs Tribunal for Wales and to rename it the Education Tribunal for Wales.

[24 January 2018]

Having been passed by the National Assembly for Wales and having received the assent of Her Majesty, it is enacted as follows:

Modifications etc. (not altering text)

- C1** Act excluded (1.9.2021) by [The Additional Learning Needs \(Wales\) Regulations 2021 \(S.I. 2021/401\)](#), [reg. 5](#)
- C2** Act applied (with modifications) (1.9.2021) by [The Additional Learning Needs \(Wales\) Regulations 2021 \(S.I. 2021/401\)](#), [reg. 22\(4\)](#), [Sch. 2](#)
- C3** Act restricted (1.9.2021) by 1996 (c. 56), s. 569(2BA) (as inserted by [Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(anaw 2\)](#), s. 100(3), [Sch. 1 para. 4\(30\)\(b\)](#); S.I. 2021/373, art. 8(j)(x))
- C4** Act applied (with modifications) (1.9.2021) by [The Additional Learning Needs \(Wales\) Regulations 2021 \(S.I. 2021/401\)](#), [reg. 23\(3\)](#), [Sch. 2](#)

PART 1

OVERVIEW

1 Overview of this Act

- (1) Part 2 of this Act establishes the statutory system in Wales for meeting the additional learning needs of children and young people; it contains 5 chapters.

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Additional Learning Needs and Education Tribunal (Wales) Act 2018 is up to date with all changes known to be in force on or before 12 March 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (2) Chapter 1 (sections 2 to 9)—
 - (a) gives the meaning of the key terms “additional learning needs” and “additional learning provision” (sections 2 and 3);
 - (b) provides for a code of practice on additional learning needs (sections 4 and 5);
 - (c) makes provision about participation by children, their parents and young people in decisions, about having regard to the United Nations Convention on the Rights of the Child and to the United Nations Convention on the Rights of Persons with Disabilities, and about access to information about the additional learning needs system established by Part 2 (sections 6 to 9).
- (3) Chapter 2 (sections 10 to 46) provides for individual development plans for children and young people with additional learning needs.
- (4) Provision is made for the plans to be prepared and maintained by governing bodies of maintained schools, the governing bodies of institutions in the further education sector or local authorities; and for the governing body or authority having the duty to maintain the plan to secure the additional learning provision contained in the plan.
- (5) Special provision is made for plans for looked after children (sections 15 to 19) and children and young people who are subject to a detention order and placed in certain kinds of youth detention accommodation (sections 39 to 45).
- (6) Provision is made requiring particular health bodies—
 - (a) to consider, on referral from a governing body or local authority, whether there is a relevant treatment or service they could provide that is likely to be of benefit in addressing a child's or young person's additional learning needs and, if so, to secure its provision (sections 20 and 21);
 - (b) to appoint a designated education clinical lead officer (section 61);
 - (c) to notify parents and local authorities where they form the opinion that a child under compulsory school age has, or probably has, additional learning needs (section 64).
- (7) Chapter 3 (sections 47 to 67) makes further provision for and in connection with functions related to meeting additional learning needs, including—
 - (a) a duty on local authorities to favour education in mainstream maintained schools for children with additional learning needs (section 51);
 - (b) provision changing the registration system for independent schools to require the Welsh Ministers to publish a list of the registered schools which indicates the type or types of additional learning provision that an independent school makes (section 54);
 - (c) provision limiting the power of local authorities to secure additional learning provision for children or young people at independent schools to registered independent schools (section 55);
 - (d) a duty on the Welsh Ministers to establish and maintain a list of independent special post-16 institutions and a provision limiting the power of local authorities to secure additional learning provision at such institutions to those on the list (section 56);
 - (e) a duty on governing bodies of maintained schools and institutions in the further education sector to appoint additional learning needs co-ordinators (section 60);

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- (f) a duty on health bodies, local authorities, maintained schools and other bodies to provide information and other help to local authorities that request it (section 65).
- (8) Chapter 4 (sections 68 to 81) makes provision about avoiding and resolving disagreements; it provides for—
 - (a) local authority arrangements for the avoidance and resolution of disagreements (section 68);
 - (b) independent advocacy services (section 69);
 - (c) rights of appeal to the Education Tribunal for Wales in respect of decisions as to whether or not a child or young person has additional learning needs, the contents of individual development plans and other decisions relating to plans (sections 70 and 72).
- (9) Chapter 5 (section 82 to 90) makes general provision, including—
 - (a) a power for the Welsh Ministers to make regulations about the disclosure and use of information (section 82);
 - (b) a duty on the Welsh Ministers to make regulations for the purpose of giving effect to Part 2 in a case where a parent of a child, or a young person, lacks capacity (section 83);
 - (c) provision for the disapplication of certain duties to inform or notify a child or to take action following a request by a child where the child lacks capacity and does not have a case friend (section 84);
 - (d) provision about case friends for children who lack capacity (section 85).
- (10) Part 3 (sections 91 to 94) continues the Special Educational Needs Tribunal for Wales and renames it the Education Tribunal for Wales.
- (11) In addition to the jurisdiction set out in Chapter 4, the Education Tribunal has jurisdiction in relation to disability discrimination in schools (for provision about this, see section 116 of the Equality Act 2010 (c. 15) and Schedule 17 to that Act).
- (12) Part 4 (sections 95 to 101) makes provision about the meaning of “in the area” of a local authority for the purposes of the Education Acts (section 95) and makes general provision, including provisions about interpretation that apply for the purposes of the Act (section 99).

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PART 2

ADDITIONAL LEARNING NEEDS

CHAPTER 1

KEY TERMS, CODE AND PARTICIPATION

Key terms

2 Additional learning needs

- (1) A person has additional learning needs if he or she has a learning difficulty or disability (whether the learning difficulty or disability arises from a medical condition or otherwise) which calls for additional learning provision.
- (2) A child of compulsory school age or person over that age has a learning difficulty or disability if he or she—
 - (a) has a significantly greater difficulty in learning than the majority of others of the same age, or
 - (b) has a disability for the purposes of the Equality Act 2010 (c. 15) which prevents or hinders him or her from making use of facilities for education or training of a kind generally provided for others of the same age in mainstream maintained schools or mainstream institutions in the further education sector.
- (3) A child under compulsory school age has a learning difficulty or disability if he or she is, or would be if no additional learning provision were made, likely to be within subsection (2) when of compulsory school age.
- (4) A person does not have a learning difficulty or disability solely because the language (or form of language) in which he or she is or will be taught is different from a language (or form of language) which is or has been used at home.
- (5) This section applies for the purposes of this Act.

Commencement Information

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| I1 | S. 2 in force at 1.9.2021 for specified purposes by S.I. 2021/373 , arts. 3, 4 (as amended by S.I. 2021/938 , art. 2(3)) |
| I2 | S. 2 in force at 1.9.2021 for specified purposes by S.I. 2021/373 , arts. 6, 7 (as amended by S.I. 2021/938 , art. 2(4)(5)) |
| I3 | S. 2 in force at 1.1.2022 for specified purposes by S.I. 2021/1245 , arts. 3(a), 4 (with art. 1(4)) |
| I4 | S. 2 in force at 1.1.2022 for specified purposes by S.I. 2021/1244 , art. 3(a) (with arts. 4-21) (as amended by S.I. 2021/1428 , art. 3) |
| I5 | S. 2 in force at 1.1.2022 for specified purposes by S.I. 2021/1243 , art. 3(a) (with arts. 4-23) (as amended by S.I. 2021/1428 , art. 2) |

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3 Additional learning provision

- (1) “Additional learning provision” for a person aged three or over means educational or training provision that is additional to, or different from, that made generally for others of the same age in—
 - (a) mainstream maintained schools in Wales,
 - (b) mainstream institutions in the further education sector in Wales, or
 - (c) places in Wales at which nursery education is provided.
- (2) “Additional learning provision” for a child aged under three means educational provision of any kind.
- (3) In subsection (1), “nursery education” means education suitable for a child who has attained the age of three but is under compulsory school age.
- (4) Regulations may amend this section to replace the references to the age of three with references to a different age.
- (5) This section applies for the purposes of this Act.

Commencement Information

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| 16 | S. 3 in force at 1.9.2021 for specified purposes by S.I. 2021/373 , arts. 3, 4 (as amended by S.I. 2021/938 , art. 2(3)) |
| 17 | S. 3 in force at 1.9.2021 for specified purposes by S.I. 2021/373 , arts. 6, 7 (as amended by S.I. 2021/938 , art. 2(4)(5)) |
| 18 | S. 3 in force at 1.1.2022 for specified purposes by S.I. 2021/1244 , art. 3(a) (with arts. 4-21) (as amended by S.I. 2021/1428 , art. 3) |
| 19 | S. 3 in force at 1.1.2022 for specified purposes by S.I. 2021/1243 , art. 3(a) (with arts. 4-23) (as amended by S.I. 2021/1428 , art. 2) |
| 110 | S. 3 in force at 1.1.2022 for specified purposes by S.I. 2021/1245 , arts. 3(a), 4 (with art. 1(4)) |

Code of practice

4 Additional learning needs code

- (1) The Welsh Ministers must issue, and may from time to time revise, a code on additional learning needs (“the code”).
- (2) The code may include guidance about the exercise of functions under this Part and about any other matter connected with identifying and meeting additional learning needs.
- (3) The following persons must, when exercising functions under this Part, have regard to any relevant guidance contained in the code—
 - (a) a local authority in Wales or England;
 - (b) the governing body of a maintained school in Wales or England;
 - (c) the governing body of an institution in the further education sector in Wales or England;
 - (d) the proprietor of an Academy;
 - (e) a youth offending team for an area in Wales or England;
 - (f) a person in charge of relevant youth accommodation in Wales or England;