

ADDITIONAL LEARNING NEEDS AND EDUCATION TRIBUNAL (WALES) ACT 2018

EXPLANATORY NOTES

COMMENTARY ON SECTIONS OF THE ACT

Part 2 – Additional Learning Needs

Chapter 2 – Individual Development Plans

Additional learning provision for looked after children

Sections 15 to 19 - Key terms, Amendments to the Social Services and Well-being (Wales) Act 2014, Duty to refer a matter to a local authority that looks after a child, Duty to decide whether a looked after child has additional learning needs, Duties to prepare and maintain plans for looked after children

53. **Sections 15 to 19** contain provisions on ALN which are to apply in the case of children looked after by a local authority in Wales. Generally, looked after children have care and support plans which include a personal education plan ('PEP') by virtue of the Social Services and Well-being (Wales) Act 2014. In the case of such children (subject to exceptions – see section 15(2)), the authority that looks after the child is to be responsible for any decision on ALN, maintaining an IDP and incorporating it into the child's PEP. Accordingly, the equivalent duties (in sections 12 – 14) on the governing body of a maintained school the child may attend and on the local authority in whose area the child is, do not apply. The result is that the educational planning, including planning for the provision of ALP of the looked after child who has ALN, is done by one body, namely the local authority looking after the child, and is set out in one document, rather than potentially being split between two documents and potentially also two bodies. For young persons who are looked after or were formerly looked after, the duties under the Act apply as they do to other young persons.
54. The duty to decide whether a looked after child has ALN does not apply if the child is in the area of a local authority in England (section 18(2)(c)). If the child is not in the area of a local authority, for example a child may be placed in Scotland, there is no duty to prepare and maintain an IDP (section 19(2)). This is because a local authority's ability to secure ALP for a child living outside Wales may be relatively limited in many cases. However, the child may be within the local education system and have entitlements under it. For example, if the child is in the area of a local authority in England, that authority may be responsible for the child under section 24 of the Children and Families Act 2014 (Part 3 of that Act deals with children and young people in England with special educational needs or disabilities).
55. **Section 15** sets out the meaning of key terms used in the Act which relate to children who are looked after by a local authority. A person who is looked after for the purposes of Part 6 of the Social Services and Well-being (Wales) Act 2014 is not looked after for the purposes of the Act if the person is a young person, a detained person (defined in section 39(1)) or within a category of looked after child prescribed in regulations.

56. **Section 16** amends the Social Services and Well-being (Wales) Act 2014 so that a PEP is usually an element of the care and support plan prepared for those who are looked after by a local authority under that Act. Furthermore, section 16 amends the Social Services and Well-being (Wales) Act 2014 so that any IDP maintained under section 19 must be incorporated into the PEP in the case of looked after children of compulsory school age and below who have ALN.
57. **Section 17** requires the governing body of a maintained school which a looked after child attends, or the local authority in whose area a looked after child is, to inform the local authority which looks after the child if it becomes aware that the child may have ALN.
58. **Section 18** imposes a duty on the local authority which looks after a child to decide whether the child has ALN which is equivalent to the duty in section 13 in relation to children and young people who are not looked after. This duty does not apply if the child is in the area of a local authority in England. See sections 84 and 85 in relation to the requirement in subsection (3) to notify a child of a decision that the child does not have ALN.
59. **Section 19** imposes on the local authority which looks after a child (provided that the child is in the area of a local authority in Wales), duties to prepare and maintain individual development plans which are equivalent to the duties on local authorities in section 14(2) in relation to children and young people who are not looked after. However, the local authority must prepare and maintain the plan itself: it cannot direct a maintained school attended by the looked after child to do so.
60. **Sections 35** (and see the related regulation making power in section 37) and 43 set out other situations in which a local authority is, in effect, subject to the duty in section 19 to maintain an IDP for a looked after child. Section 31 provides for the circumstances in which the duties in this section cease to apply. If a looked after child becomes a detained person, the duties in these sections also cease because the person ceases to be a looked after child for the purposes of the Act (section 15). The duties that apply instead are found in sections 40 – 42 . Section 562 of the Education Act 1996 and section 44 set out the effect on the local authority duties under sections 17 – 19 where the person to whom they relate is subject to a detention order.