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WELSH STATUTORY INSTRUMENTS

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**2021 No. 373 (W. 116) (C. 12)**

**EDUCATION, WALES**

**The Additional Learning Needs and Education Tribunal  
(Wales) Act 2018 (Commencement No. 2) Order 2021**

Made - - - - 22 March 2021

The Welsh Ministers, in exercise of the powers conferred by section 100(3) and (4) of the Additional Learning Needs and Education Tribunal (Wales) Act 2018<sup>(1)</sup>, make the following Order:

**Title and interpretation**

**1.**—(1) The title of this Order is the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 2) Order 2021.

(2) In this Order—

“the 1996 Act” (“*Deddf 1996*”) means the Education Act 1996<sup>(2)</sup>;

“the 2014 Act” (“*Deddf 2014*”) means the Children and Families Act 2014<sup>(3)</sup>;

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

“compulsory school age” (“*oedran ysgol gorfodol*”) has the same meaning as in section 8<sup>(4)</sup> of the 1996 Act;

“EHC plan” (“*cynllun AIG*”) has the same meaning as in section 37(2) of the 2014 Act;

“EHC needs assessment” (“*asesiad o anghenion AIG*”) has the same meaning as in section 36(2) of the 2014 Act;

“in the area of a local authority in England” (“*yn ardal awdurdod lleol yn Lloegr*”) has the same meaning as in section 579(3A) of the 1996 Act;

“in the area of a local authority in Wales” (“*yn ardal awdurdod lleol yng Nghymru*”) has the same meaning as in section 579(3B) of the 1996 Act;

“learning difficulty” (“*anhawster dysgu*”) has the same meaning as in—

(i) section 312(2) of the 1996 Act—

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(1) 2018 anaw 2.

(2) 1996 c. 56.

(3) 2014 c. 6.

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

- (aa) in relation to a child in the area of a local authority in Wales but not a child who is a registered pupil at a mainstream school in England,
  - (bb) in relation to a child in the area of a local authority in England who is a registered pupil at a maintained school in Wales, as if “in the area of a local authority in Wales” were omitted,
  - (ii) section 20 of the 2014 Act in relation to a child in the area of a local authority in Wales who is a registered pupil at a mainstream school in England;
- “local authority” (“*awdurdod lleol*”) has the same meaning as in section 579 of the 1996 Act;
- “mainstream school” (“*ysgol brifffrwd*”) has the same meaning as in section 83(2) of the 2014 Act;
- “maintained school” (“*ysgol a gynhelir*”) means any community, foundation or voluntary school or any community special school not established in a hospital within the meaning of the School Standards and Framework Act 1998(5);
- “proprietor” (“*perchennog*”) has the same meaning as in section 579 of the 1996 Act;
- “registered pupil” (“*disgybl cofrestredig*”) has the same meaning as in section 434 of the 1996 Act;
- “special educational provision” (“*darpariaeth addysgol arbennig*”) has the same meaning as in—
- (i) section 312(4) of the 1996 Act—
    - (aa) in relation to a child in the area of a local authority in Wales but not a child who is a registered pupil at a mainstream school in England,
    - (bb) in relation to a child in the area of a local authority in England who is a registered pupil at a maintained school in Wales as if “in relation to a child in the area of a local authority in Wales” were omitted,
  - (ii) section 21 of the 2014 Act in relation to a child in the area of a local authority in Wales who is a registered pupil at a mainstream school in England;
- “Tribunal” (“*Tribiwnlys*”) means the Education Tribunal for Wales(6);
- “Tribunal Rules” (“*Rheolau'r Tribiwnlys*”) means Special Educational Needs Tribunal for Wales Regulations 2012(7).
- (3) For the purposes of this Order an appeal is finally determined 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, the period (or each of the periods) for doing so expires without a review being requested or further appeal being brought.

### Meaning of identified special educational needs

2. A child “C” has “identified special educational needs” for the purposes of this Order if C has a learning difficulty identified by a proprietor or a local authority which calls for special educational provision to be made for C.

(5) 1998 c. 31.

(6) 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.

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

### **Provisions coming into force on 1 September 2021**

3. The following provisions of the Act come into force on 1 September 2021 except in relation to a person who falls into any of the paragraphs in article 4 on 1 September 2021—

- (a) sections 2 to 4;
- (b) sections 6 to 14;
- (c) sections 16 to 36;
- (d) section 38;
- (e) sections 40 to 44;
- (f) sections 47 to 49;
- (g) section 50(1) for the purposes of the provisions in paragraph (h);
- (h) section 50(4) to (5);
- (i) sections 51 to 53;
- (j) section 55;
- (k) section 59;
- (l) sections 63 to 66;
- (m) sections 68 to 69;
- (n) section 96 for the purposes of the provisions in paragraph (o);
- (o) in the Schedule—
  - (i) paragraph 1;
  - (ii) paragraph 4(1) for the purposes of the provisions in sub-paragraphs (iii) to (x);
  - (iii) paragraph 4(2) to 4(8);
  - (iv) paragraph 4(9);
  - (v) paragraph 4(10);
  - (vi) paragraph 4(13) to 4(18);
  - (vii) paragraph 4(19)(b);
  - (viii) paragraph 4(20) and 4(21);
  - (ix) paragraph 4(23) to 4(29);
  - (x) paragraph 4(32)(a)(i) and (ii) and paragraph 4(32)(b);
  - (xi) paragraph 7;
  - (xii) paragraph 8;
  - (xiii) paragraph 11(a);
  - (xiv) paragraph 12(a);
  - (xv) paragraph 14(1) for the purposes of the provisions in sub-paragraph (xvi);
  - (xvi) paragraph 14(2) and (3);
  - (xvii) paragraph 19(1) for the purpose of the provision in sub-paragraph (xviii);
  - (xviii) paragraph 19(5)(e)(ii);
  - (xix) paragraph 21(1) for the purposes of the provisions in sub-paragraph (xx);
  - (xx) paragraph 21(2)(a)(i) and (2)(b)(ii);
  - (xxi) paragraph 22;
  - (xxii) paragraph 23(1) for the purpose of the provision in sub-paragraph (xxiii);

- (xxiii) paragraph 23(4);
- (xxiv) paragraph 24(1) for the purposes of the provisions in sub-paragraph (xxv);
- (xxv) paragraph 24(2) to (3), (5) and (6)(a).

4. A person—

- (a) who is over compulsory school age;
- (b) who has identified special educational needs;
- (c) in relation to whom 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;
- (d) in relation to whom 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 assess;
- (e) in relation to whom 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 brought under Part B of the Tribunal Rules has not ended;
  - (ii) an appeal to the Tribunal under section 329(2) or 329A(8) of the 1996 Act in relation to that determination has been brought 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;
- (f) in relation to whom a local authority is undertaking an assessment of educational needs under section 323 of the 1996 Act;
- (g) in relation to whom a local authority proposes not to make a statement following an assessment and—
  - (i) the time within which an appeal under section 325(2) of the 1996 Act has to be brought under Part B of the Tribunal Rules has not ended;
  - (ii) an appeal to the Tribunal under section 325(2) of the 1996 Act in relation to that decision has been brought but not finally determined;
  - (iii) an appeal to the Tribunal under section 325(2) of the 1996 Act in relation to that decision was brought 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;
- (h) in relation to whom the local authority has determined to cease to maintain a statement under paragraph 11(1) of Schedule 27 to the 1996 Act and—
  - (i) the time within which an appeal under paragraph 11(2)(b) of that Schedule has to be brought under Part B of the Tribunal Rules has not ended; or
  - (ii) an appeal to the Tribunal under paragraph 11(2)(b) of that Schedule has been brought in relation to that decision but not finally determined;
- (i) in relation to whom an assessment under section 331 of the 1996 Act is ongoing;

- (j) who is not over compulsory school age but in relation to whom an assessment under section 140 of the Learning and Skills Act 2000(8)—
  - (i) is ongoing; or
  - (ii) has resulted in a report of the person’s educational and training needs and the provision required to meet them;
- (k) in relation to whom a request to a local authority has been made to secure an EHC needs assessment under section 36(1) of the 2014 Act and the local authority has not determined that request under section 36(3);
- (l) in relation to whom a local authority has determined under section 36 not to secure an EHC assessment and—
  - (i) the period for pursuing mediation in relation to that determination under section 52 of the 2014 Act has not ended;
  - (ii) mediation under section 55 of the 2014 Act is ongoing in relation to that determination;
  - (iii) a mediation certificate has been issued under section 55(4) of the 2014 Act in relation to that determination and the period for submitting an appeal to the First-tier Tribunal under section 51 of the 2014 Act has not ended;
  - (iv) an appeal to the First-tier Tribunal under section 51(2)(a) of the 2014 Act in relation to that determination has been brought but not finally determined;
  - (v) an appeal to the First-tier Tribunal under section 51(2)(a) of the 2014 Act in relation to that determination has been brought and fully determined and the local authority was ordered to arrange an assessment or re-assessment, and that assessment or re-assessment has not commenced;
- (m) in relation to whom a local authority has served a notice under section 36(7) of the 2014 Act that it is considering securing an EHC needs assessment and —
  - (i) the assessment has not commenced,
  - (ii) the assessment is ongoing, or
  - (iii) no notice has been served under section 36(9) of the 2014 Act;
- (n) in relation to whom a local authority has determined under section 36(9) of the 2014 Act that it is not necessary for special educational provision to be made in accordance with an EHC plan and—
  - (i) the period for pursuing mediation in relation to that determination under section 52 of the 2014 Act has not ended;
  - (ii) mediation under section 55 of the 2014 Act is ongoing in relation to that determination;
  - (iii) a mediation certificate has been issued under section 55(4) of the 2014 Act in relation to that determination and the period for submitting an appeal to the First-tier Tribunal under section 51 of the 2014 Act has not ended;
  - (iv) an appeal to the First-tier Tribunal under section 51(2)(b) of the 2014 Act in relation to that determination has been brought but not finally determined;
  - (v) an appeal to the First-tier Tribunal under section 51(2)(b) of the 2014 Act in relation to that determination has been brought and finally determined and the local authority was ordered to—

- (aa) make and maintain an EHC plan and the making of the EHC plan has not commenced; or
  - (bb) reconsider its decision and that reconsideration has not commenced;
  - (o) in relation to whom a local authority has determined under section 45 of the 2014 Act that it is no longer necessary for an EHC plan to be maintained and—
    - (i) the period for pursuing mediation in relation to that determination under section 52 of the 2014 Act has not ended;
    - (ii) mediation under section 55 of the 2014 Act is ongoing in relation to that determination;
    - (iii) a mediation certificate has been issued under section 55(4) of the 2014 Act in relation to that determination and the period for submitting an appeal to the First-tier Tribunal under section 51 of the 2014 Act has not ended;
    - (iv) an appeal to the First-tier Tribunal under section 51(2)(f) of the 2014 Act in relation to that determination has been brought but not finally determined.
5. Sections 40 to 44 of the Act come into force on 1 September 2021 in relation to a child who on 1 September 2021 is not over compulsory school age.
6. The following provisions of the Act come into force on 1 September 2021 in relation to a person who falls into article 7 —
- (a) sections 2 to 4;
  - (b) sections 6 to 14;
  - (c) sections 16 to 36;
  - (d) section 38;
  - (e) sections 40 to 44;
  - (f) sections 47 to 49;
  - (g) section 50(1) for the purposes of the provisions in paragraph (h);
  - (h) section 50(4) to (5);
  - (i) sections 51 to 53;
  - (j) section 55;
  - (k) section 59;
  - (l) sections 63 to 66;
  - (m) sections 68 to 69;
  - (n) section 96 for the purposes of the provisions in paragraph (o);
  - (o) in the Schedule—
    - (i) paragraph 1;
    - (ii) paragraph 4(1) for the purposes of the provisions in sub-paragraphs (iii) to (x);
    - (iii) paragraph 4(2) to 4(8);
    - (iv) paragraph 4(9);
    - (v) paragraph 4(10);
    - (vi) paragraph 4(13) to 4(18);
    - (vii) paragraph 4(19)(b);
    - (viii) paragraph 4(20) and 4(21);

- (ix) paragraph 4(23) to 4(29);
- (x) paragraph 4(32)(a)(i) and (ii) and paragraph 4(32)(b);
- (xi) paragraph 7;
- (xii) paragraph 8;
- (xiii) paragraph 11(a);
- (xiv) paragraph 12(a);
- (xv) paragraph 14(1) for the purposes of the provisions in sub-paragraph (xvi);
- (xvi) paragraph 14(2) and (3);
- (xvii) paragraph 19(1) for the purpose of the provision in sub-paragraph (xviii);
- (xviii) paragraph 19(5)(e)(ii);
- (xix) paragraph 21(1) for the purposes of the provisions in sub-paragraph (xx);
- (xx) paragraph 21(2)(a)(i) and (2)(b)(ii);
- (xxi) paragraph 22;
- (xxii) paragraph 23(1) for the purpose of the provision in sub-paragraph (xxiii);
- (xxiii) paragraph 23(4);
- (xxiv) paragraph 24(1) for the purposes of the provisions in sub-paragraph (xxv);
- (xxv) paragraph 24(2) to (3), (5) and (6)(a).

7. A person in relation to whom an individual development plan is being prepared under section 40 or kept under section 42 of the Act.

8. The following provisions of the Act come into force on 1 September 2021—

- (a) section 50(1) for the purposes of the provisions in sub-paragraph (b);
- (b) section 50(2) to 50(3);
- (c) section 54 so far as not already in force;
- (d) section 56 so far as not already in force;
- (e) sections 57 to 58;
- (f) sections 70 to 73;
- (g) sections 75 to 81;
- (h) sections 83 to 95;
- (i) section 96 for the purposes of the provisions in paragraph (j);
- (j) in the Schedule—
  - (i) paragraph 2(1) for the purposes of the provisions in sub-paragraph (ii) to (iii);
  - (ii) paragraph 2(2)(b);
  - (iii) paragraph 2(3);
  - (iv) paragraph 3;
  - (v) paragraph 4(1) for the purposes of the provisions in sub paragraphs (vi) to (xv);
  - (vi) paragraph 4(9) in so far as it omits section 333(1ZA), section 333(2) to 333(6) and sections 334 to 335;
  - (vii) paragraph 4(12);
  - (viii) paragraph 4(19)(a);
  - (ix) paragraph 4(22);

- (x) paragraph 4(30)(a)(ii) and 4(30)(b);
- (xi) paragraph 4(31);
- (xii) paragraph 4(32)(a)(iii);
- (xiii) paragraph 4(33)(a);
- (xiv) paragraph 4(33)(b) in so far as it omits the following entries—
  - “the appropriate national authority (in Chapter 2 of Part 4)”
  - “the chairman’s panel”
  - “the lay panel”
  - “the President”
  - “the Tribunal”
- (xv) paragraph 4(33)(d), 4(33)(e) and 4(33)(g);
- (xvi) paragraph 6(d)(v) and paragraphs 6(f) and 6(g);
- (xvii) paragraph 6(j)(i);
- (xviii) paragraph 6(l)(i) and 6(l)(iii);
- (xix) paragraph 6(n)(ii) in so far as it omits paragraph 11 of Schedule 2 to the Apprenticeships, Skills, Children and Learning Act 2009;
- (xx) paragraph 6(t);
- (xxi) paragraph 9;
- (xxii) paragraph 10;
- (xxiii) paragraph 11(b);
- (xxiv) paragraph 12(b);
- (xxv) paragraph 13;
- (xxvi) paragraph 14(1) for the purpose of the provision in sub-paragraph (xxvii);
- (xxvii) paragraph 14(4);
- (xxviii) paragraph 15(1) for the purposes of the provisions in sub-paragraph (xxix);
- (xxix) paragraphs 15(3) to 15(4);
- (xxx) paragraph 17;
- (xxxi) paragraph 18;
- (xxxii) paragraph 19(1) for the purposes of the provisions in sub-paragraph (xxxiii);
- (xxxiii) paragraphs 19(2), (3), (4), (5)(a) to (d), 5(e)(i), 5(f) to (h) and (6);
- (xxxiv) paragraph 20;
- (xxxv) paragraph 21(1) for the purpose of the provision in sub-paragraph (xxxvi);
- (xxxvi) paragraph 21(2)(b)(i);
- (xxxvii) paragraph 23(1) for the purposes of the provisions in sub-paragraph (xxxviii);
- (xxxviii) paragraph 23(3)(a) to (c) and (5);
- (xxxix) paragraph 24(1) for the purposes of the provisions in sub-paragraph (xl);
- (xl) paragraphs 24(4) and (6)(b) and (c).



22 March 2021

*Kirsty Williams*  
Minister for Education, one of the Welsh  
Ministers

*Status: This is the original version (as it was originally made).*

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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 2021 in relation to certain persons. The Order does this by excepting from that commencement persons who fall into a category set out in article 4 on 1 September 2021. The categories excepted include those over compulsory school age and those engaged with the current statutory framework. This includes those who have identified special educational needs (see article 2).

The provisions listed in article 5 (additional learning provision for detained persons) come into force on 1 September 2021 for those who are not over compulsory school age.

The provisions listed in article 6 also come into force on 1 September 2021 for persons in relation to whom an individual development plan is being prepared or kept under section 40 or 42 of the Act.

The provisions listed in article 8 will come into force fully on 1 September 2021.

## NOTE AS TO EARLIER COMMENCEMENT

The following provisions of the Act have been brought into force by Commencement Order made before the date of this Order:

| <i>Provision</i>       | <i>Date of Commencement</i> | <i>S.I. No</i>                                  |
|------------------------|-----------------------------|-------------------------------------------------|
| Section 4 (partially)  | 2 November 2020             | <a href="#">S.I. 2020/1182 (W. 267) (C. 33)</a> |
| Section 5              | 2 November 2020             | <a href="#">S.I. 2020/1182 (W. 267) (C. 33)</a> |
| Section 7 (partially)  | 2 November 2020             | <a href="#">S.I. 2020/1182 (W. 267) (C. 33)</a> |
| Section 8 (partially)  | 2 November 2020             | <a href="#">S.I. 2020/1182 (W. 267) (C. 33)</a> |
| Section 15             | 2 November 2020             | <a href="#">S.I. 2020/1182 (W. 267) (C. 33)</a> |
| Section 16 (partially) | 2 November 2020             | <a href="#">S.I. 2020/1182 (W. 267) (C. 33)</a> |
| Section 21 (partially) | 2 November 2020             | <a href="#">S.I. 2020/1182 (W. 267) (C. 33)</a> |
| Section 32 (partially) | 2 November 2020             | <a href="#">S.I. 2020/1182 (W. 267) (C. 33)</a> |
| Section 36 (partially) | 2 November 2020             | <a href="#">S.I. 2020/1182 (W. 267) (C. 33)</a> |
| Section 37             | 2 November 2020             | <a href="#">S.I. 2020/1182 (W. 267) (C. 33)</a> |
| Section 39             | 2 November 2020             | <a href="#">S.I. 2020/1182 (W. 267) (C. 33)</a> |
| Section 45             | 2 November 2020             | <a href="#">S.I. 2020/1182 (W. 267) (C. 33)</a> |
| Section 46             | 2 November 2020             | <a href="#">S.I. 2020/1182 (W. 267) (C. 33)</a> |
| Section 47 (partially) | 2 November 2020             | <a href="#">S.I. 2020/1182 (W. 267) (C. 33)</a> |

| <i>Provision</i>                                                          | <i>Date of Commencement</i> | <i>S.I. No</i>                  |
|---------------------------------------------------------------------------|-----------------------------|---------------------------------|
| Section 54 (partially)                                                    | 2 November 2020             | S.I. 2020/1182 (W. 267) (C. 33) |
| Section 56 (partially)                                                    | 2 November 2020             | S.I. 2020/1182 (W. 267) (C. 33) |
| Section 56(1)                                                             | 4 January 2021              | S.I. 2020/1182 (W. 267) (C. 33) |
| Section 56(4) to (6)                                                      | 4 January 2021              | S.I. 2020/1182 (W. 267) (C. 33) |
| Section 60                                                                | 4 January 2021              | S.I. 2020/1182 (W. 267) (C. 33) |
| Section 61                                                                | 4 January 2021              | S.I. 2020/1182 (W. 267) (C. 33) |
| Section 62                                                                | 4 January 2021              | S.I. 2020/1182 (W. 267) (C. 33) |
| Section 65 (partially)                                                    | 2 November 2020             | S.I. 2020/1182 (W. 267) (C. 33) |
| Section 67                                                                | 2 November 2020             | S.I. 2020/1182 (W. 267) (C. 33) |
| Section 74                                                                | 2 November 2020             | S.I. 2020/1182 (W. 267) (C. 33) |
| Section 75 (partially)                                                    | 2 November 2020             | S.I. 2020/1182 (W. 267) (C. 33) |
| Section 76 (partially)                                                    | 2 November 2020             | S.I. 2020/1182 (W. 267) (C. 33) |
| Section 77 (partially)                                                    | 2 November 2020             | S.I. 2020/1182 (W. 267) (C. 33) |
| Section 82                                                                | 2 November 2020             | S.I. 2020/1182 (W. 267) (C. 33) |
| Section 83 (partially)                                                    | 2 November 2020             | S.I. 2020/1182 (W. 267) (C. 33) |
| Section 85 (partially)                                                    | 2 November 2020             | S.I. 2020/1182 (W. 267) (C. 33) |
| Section 91 (partially)                                                    | 2 November 2020             | S.I. 2020/1182 (W. 267) (C. 33) |
| Section 92 (partially)                                                    | 2 November 2020             | S.I. 2020/1182 (W. 267) (C. 33) |
| Section 95 (partially)                                                    | 2 November 2020             | S.I. 2020/1182 (W. 267) (C. 33) |
| Section 96 (partially)                                                    | 2 November 2020             | S.I. 2020/1182 (W. 267) (C. 33) |
| The Schedule,<br>paragraph 19(1),(4)<br>and (5)(g) and (h)<br>(partially) | 2 November 2020             | S.I. 2020/1182 (W. 267) (C. 33) |