
WELSH STATUTORY INSTRUMENTS

2021 No. 1243

**The Additional Learning Needs and Education
Tribunal (Wales) Act 2018 (Commencement No. 5
and Transitional and Saving Provisions) Order 2021**

Meaning of identified special educational needs

2.—(1) For the purposes of this Order, a child (“C”) has “identified special educational needs” if C is a registered pupil at a maintained school in Wales and has a learning difficulty identified by the governing body which calls for special educational provision to be made for C.

(2) But does not include a child—

- (a) in relation to whom a local authority is maintaining a statement under section 324 of the 1996 Act;
- (b) in relation to whom a local authority is maintaining an EHC plan;
- (c) who is a registered pupil at a maintained school in Wales and—
 - (i) is a registered pupil or an enrolled student at another institution (that institution being a school or an institution in the further education sector), and
 - (ii) a local authority in Wales is responsible for that child;
- (d) who is a looked after child but not a looked after child who is in the area of a local authority in England;
- (e) 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;
- (f) 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;
- (g) 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;
- (h) in relation to whom a local authority is undertaking an assessment of educational needs under section 323 of the 1996 Act;
- (i) 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;
- (j) in relation to whom a local authority must make a statement under section 324 of the 1996 Act but the making of the statement has not commenced;
- (k) 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;
- (l) in relation to whom an assessment under section 331 of the 1996 Act is ongoing;
- (m) who is not over compulsory school age but in relation to whom an assessment under section 140 of the Learning and Skills Act 2000(1)—
 - (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;
- (n) 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);
- (o) in relation to whom a local authority has determined under section 36 not to secure an EHC needs 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;
- (p) 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;
- (q) 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;
- (r) in relation to whom a local authority has determined under section 36(9) of the 2014 Act that it is necessary for special educational provision to be made in accordance with an EHC plan but that plan is not prepared;
- (s) 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.