



Llywodraeth Cymru
Welsh Government

Implementing the Additional Learning Needs and Education Tribunal (Wales) Act 2018

A guide to the timeframes for implementing individual development plans for children of compulsory school age and under

Implementing the Additional Learning Needs and Education Tribunal (Wales) Act 2018

Audience

Local authorities, governing bodies of maintained schools in Wales, school teaching staff and special educational needs coordinators/additional learning needs coordinators.

Overview

This is the first in a series of guides about the implementation of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 ("the Act"). This guide sets out the intended mandatory timetable for local authorities and school governing bodies to move children from the special educational needs (SEN) system to the additional learning system (ALN) system.

Action required

The legal provisions necessary to commence the Act and provide for the transition from the SEN to the ALN system will be set out in subordinate legislation to be made in due course. Thus, local authorities and school governing bodies are not required to take any immediate action but may wish to familiarise themselves with this guide in advance of implementation. Local authorities, school governing bodies and others with an interest may wish to provide feedback on the guide using the e-mail address below.

Further information

Enquiries about this document should be directed to: senreforms@gov.wales



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Additional copies

This document can be accessed from the Welsh Government's website at beta.gov.wales

Related documents

Additional Learning Needs and Education Tribunal (Wales) Act 2018

Additional Learning Needs and Education Tribunal (Wales) Bill Explanatory Memorandum (2017)

Draft Additional Learning Needs Code: February 2017 (National Assembly for Wales, 2017)

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Introduction

The Additional Learning Needs and Education Tribunal (Wales) Act 2018 ('the Act') aims to create:

- a unified legislative framework to support all children of compulsory school age or below with additional learning needs (ALN) and to support young people with ALN who are in school or further education (FE)
- an integrated, collaborative process of assessment, planning and monitoring which facilitates early, timely and effective interventions
- a fair and transparent system for providing information and advice, and for resolving concerns and appeals.

It is expected the ALN system set out in the Act will be fully implemented over a three-year period. The implementation period is expected to run from September 2020 to August 2023. This will be done by mandating the conversion of particular age-based cohorts (for children under compulsory school age) or academic-based cohorts (for those of compulsory school age) in each of the years of implementation. Local authorities (LAs) and school governing bodies will be required to move learners in these cohorts to the new system in each of the three academic years – 2020–21, 2021–22 and 2022–23 – of the implementation period (in the case of LAs, implementation will take place over the first two years). Tables 2 and 3 on pages 8 and 9 set out which cohorts are converted in which year.

During implementation, the ALN system will operate in parallel to the existing special educational needs (SEN) system, which will gradually be phased out during the implementation period.

The approach to implementation set out in this guide has been informed by the views of stakeholders responding to the public consultation¹ on how the Act should be implemented. The consultation found strong support for mandating a phased approach to implementing the ALN system. Most stakeholders agreed that national timeframes for transferring specific cohorts of children to the new system would be the most manageable and consistent approach. The phased approach, set out in this guide, prioritises the youngest children to facilitate early and effective intervention, and those learners nearing points of progression to facilitate effective transition planning. In addition, the approach moves across children with statements within two years, compared with the three-year timeframe for children who receive provision through School Action (SA) and School Action Plus (SA+). The shorter timeframe acknowledges that children with statements are likely to have the most complex and severe needs.

¹ *Options for implementing the Additional Learning Needs and Education Tribunal (Wales) Bill* consultation summary of responses Welsh Government (2017)
<https://beta.gov.wales/options-implementing-additional-learning-needs-and-education-tribunal-wales-bill>

This is the first in a series of guides about how the Act is to be implemented. The guides are intended for use by organisations with duties set out in the Act. This guide will be of particular interest to LAs, governing bodies of maintained schools in Wales, school teaching staff and special education needs co-ordinators (SENCOs)/additional learning needs co-ordinators (ALNCOs).

The Additional Learning Needs Code (the 'Code') will place further requirements on LAs and governing bodies and contain guidance on their functions under the Act. The draft Code is expected to be published for public consultation late in the autumn term, 2018. It is expected to be laid before the National Assembly for Wales for approval in 2019, with the intention the Code will be issued and published by the end of 2019.

This guide focuses on the implementation of individual development plans (IDPs) for children of compulsory school age and under and sets out the intended mandatory timetable for LAs and school² governing bodies to move learners with SEN plans – statements and individual education plans (IEPs)³ – to the new system. The guide covers the move away from the existing statements of SEN and associated processes set out in Part 4 of the Education Act 1996 and the arrangements set out in the *Special Educational Needs Code of Practice for Wales* (Welsh Assembly Government, 2004) (the 'SEN Code')⁴ in relation to IEPs for children who receive provision through early years action (EYA), early years action plus (EYA+), SA and SA+⁵.

This guide sets out the broad timeframe for moving the following children from their existing plans to the new system, under which children with ALN have an IDP:

- children under compulsory school age who attend a maintained setting
- children under compulsory school age who do not attend a maintained setting
- children of compulsory school age who attend a maintained setting.

The guide does not deal with the position for children in specific circumstances or cases where there is a particular process in progress under the existing SEN system. Table 1 below provides examples of instances which are not covered by this guide. The arrangements for such instances will be set out in a separate guide. Separate guidance will also be published about ALN implementation arrangements for young people in post-16 education, including the arrangements for young people who require specialist placements.

² Within this document the term 'school' refers to maintained nurseries, maintained special schools (not in a hospital) and other maintained schools but not PRUs, except where the context otherwise requires.

³ The term 'IEP' is used in this guide to refer to plans (whatever they may be called) setting out the special educational provision (SEP) for children with SEN in receipt of EYA, EYA+, SA or SA+ under the SEN Code.

⁴ <http://learning.gov.wales/docs/learningwales/publications/131016-sen-code-of-practice-for-wales-en.pdf>

⁵ EYA, EYA+, SA and SA+ are used in this guide to refer to provision delivered through these programmes as set out in the SEN Code.

The mandatory timetable will **not** apply to children who are not engaged with the SEN system at the start of the implementation period⁶. This group of children will be subject to the ALN system from the outset and LAs and schools will need to adhere to the timescales for identifying ALN and preparing plans provided for in the Code.

Table 1: Specific circumstances and cases excluded from the guide

Young people over compulsory school age
Children who are looked after by the local authority
Children of compulsory school age who are: <ul style="list-style-type: none"> • educated otherwise than at school⁷ • educated in an independent school⁸ • electively home educated (EHE) • detained under the Mental Health Act 1983 • detained in relevant youth accommodation • registered at more than one setting.
Children of compulsory school age and below who are waiting for a process under the existing system to conclude. – This includes, but is not limited to, children who: <ul style="list-style-type: none"> • have an SEN statement assessment in progress • have received a proposed statement and the period for making representations to the LA has not expired • have received a final statement and the period for lodging an appeal to Tribunal has not expired • have received a decision from the LA not to issue a statement and the period for lodging an appeal has not expired..

Throughout this implementation guide, SEN and associated terminology is used to refer to the current system under the Education Act 1996⁹ (including the *Special Educational Needs Code of Practice for Wales*), and ALN and associated terminology is used to refer to the new system which is planned to be introduced from September 2020, provided for by the Act, regulations made under the Act and the Code.

The legal provisions necessary to commence the Act and those setting out the arrangements for moving from the SEN system to the new ALN system will be set out in subordinate legislation to be made by the Welsh Ministers in due course. In the meantime, this guide reflects the Welsh Government’s intentions as to the provision to be made in that subordinate legislation. Later guides will provide further details, including information on the proposed arrangements for other situations. This guide may be updated as the details of implementation are further refined.

⁶ That is, if they are newly identified with ALN or are thought to have ALN, at any time throughout the implementation period, the new system will apply irrespective of what cohort they are in.

⁷ Which includes children who attend independent school where the placement is funded by the LA.

⁸ Which excludes children who attend independent school where the placement is funded by the LA.

⁹ <https://www.legislation.gov.uk/ukpga/1996/56/contents>

Terminology

A number of terms relating to the process of converting plans and preparing IDPs are used in this guide and the new system. These are set out below.

Schools

Duties in the Act relating to schools are placed on the governing bodies of schools. However, in this guide, when describing a duty which is placed on the governing body (or may be placed on it in subordinate legislation yet to be made), for brevity 'school' is used, rather than referring to the governing body of the school each time. This also reflects the practical operation of the system where, for the most part, the functions of governing bodies are undertaken by staff members acting for the governing body.

'Deciding' – the process of deciding whether a child has ALN

Generally, where it is brought to the attention of, or appears to, an LA or a school in Wales that a child may have ALN, the LA or the school must decide whether the child has ALN¹⁰. In this document, we refer to this process as 'deciding' or 'identifying' ALN. Where the school or LA decides the child has ALN, the school or LA will then usually be required to prepare and maintain an IDP for the child¹¹. Under the Act, where the child does not attend a maintained school, the LA will be responsible for deciding whether the child has ALN, and if so, for preparing and maintaining an IDP. Where a child attends a maintained school, the school will usually be responsible for deciding whether the child has ALN and if so, for preparing and maintaining an IDP. Under certain circumstances, such as where the school cannot adequately determine the extent or nature of the ALN, the school will be able to refer the child's case to the LA for it to decide whether the child has ALN¹². Usually, where a child is looked after by an LA in Wales, the LA will be responsible for deciding whether the child has ALN even if the child attends a maintained school in Wales¹³.

¹⁰ Sections 11, 13, 18 and 40 of the Act. The definition of ALN is in section 2 of the Act and that of additional learning provision (ALP) in section 3.

¹¹ Sections 12, 14, 19 and 40 of the Act. Generally, maintained schools will be responsible for preparing and maintaining IDPs for the majority of their learners who have ALN. LAs will be responsible for preparing and maintaining IDPs for some learners, typically those with the most complex and/or severe needs and those who do not attend a maintained school or FEI in Wales (including those below school age). LAs will also be responsible for preparing and maintaining IDPs in specific cases, including for those children who are dual registered or who are looked after by an LA.

¹² Section 12(2) of the Act.

¹³ Section 18 of the Act. This is not the case if the child is in the area of a local authority in England and not the case in respect of children who may be looked after for the purposes of the Social Services and Well-being (Wales) Act 2014 but are not looked after for the purposes of the Act (see section 15 of the Act).

‘Converting’ – moving a learner from the SEN system to the ALN system

The process of moving a learner from the SEN system to the ALN system will, where the learner has ALN, in effect involve converting an existing plan – an IEP or a statement – into an IDP. An IDP will need to be prepared and once it is in place, the existing SEN plan will cease. In this guide, we refer to this process as ‘converting’.

Existing plans must be converted and new IDPs must be in place by the end of the academic school year in which the academic-based cohort is due to convert (see tables 2 and 3 on pages 8 and 9). Conversion could take place when the existing plan is due to be reviewed. Where this happens, the conversion process will replace the review.

Person-centred practice (PCP) will be integral to the ALN system, including the process of converting existing plans and preparing IDPs. As part of the preparation for the implementation of the ALN system, LAs and schools may wish to adopt PCP when developing and reviewing IEPs and statements under the SEN system¹⁴. This will enable information already developed using a PCP approach, and documented in an IEP or statement, to be transferred to an IDP, which may facilitate the conversion process.

‘Preparing’ – the process of creating an IDP

Where it has been decided a child has ALN, an IDP must be prepared for the child. During the implementation period, the preparation of the majority of IDPs will involve the conversion of existing plans into IDPs. Conversion of existing plans will not apply to situations where it appears a child, who is not engaged with the SEN system, may have ALN. In such cases, there will be no existing plan to convert and a fresh plan – the IDP – will be prepared.

‘Maintaining’ an IDP – securing the additional learning provision set out in the IDP and reviewing the IDP

The school or LA that maintains an IDP must secure the additional learning provision (ALP) described within the IDP and, where an IDP specifies ALP should be provided in Welsh, the school or the LA must take all reasonable steps to secure that provision in Welsh¹⁵.

¹⁴ Further information on PCP can be found in *Person-centred practice in education: a guide for early years, schools and colleges in Wales* (Welsh Government, 2015) <http://learning.gov.wales/docs/learningwales/publications/151210-person-centred-practice-in-education-en.pdf> and *Person-centred reviews toolkit: a guide for early years, schools and colleges in Wales* (Welsh Government, 2015) <http://learning.gov.wales/docs/learningwales/publications/150909-reviews-toolkit-en.pdf>

¹⁵ The exception to this is where the IDP specifies that the ALP is to be secured by an NHS body, in which case it is the NHS body’s duty to secure that ALP, and if it is specified that that ALP should be provided in Welsh, the NHS body must take all reasonable steps to secure that provision in Welsh: sections 20 and 21 of the Act.

Implementation timeframe for moving to IDPs

Children with existing plans

It is intended that from September 2020, IDPs will begin to replace plans that currently support learners with SEN. Conversion for learners with statements will take place during the two academic years 2020–21 and 2021–22. Children supported via EYA, EYA+, SA and SA+ will be converted during the three academic years 2020–21, 2021–22 and 2022–23.

Until a child has moved to the ALN system, provisions of the SEN system will continue to apply. LAs and governing bodies of maintained schools must continue to comply with the 1996 Act and regulations made under it while they still apply to the child. Subordinate legislation under the Act, and future guides, will deal with how provisions of the SEN system continue to apply during the implementation period.

Children newly identified with ALN, or thought to have ALN, during the implementation period

The ALN system will apply to children who are not engaged with the SEN system at the start of the implementation period. That is, if they are newly identified with ALN, or are thought to have ALN, at any time throughout the implementation period, the new system will apply irrespective of what cohort they are in.

The following sections set out the intended arrangements and timeframe for moving children of compulsory school age and under, identified as having SEN and supported with a statement or through EYA/EYA+/SA/SA+, to the ALN system.

Conversion timeframe

LAs

Table 2 below sets out a two-year timetable for children moving to the ALN system who:

- attend a maintained school and have a statement
- are under compulsory school age and do not attend a maintained school and have either a statement or are supported by EYA or EYA+.

The table includes the number of children in each of the age and academic year cohorts, from birth to Year 10, who had a statement in 2017¹⁶. Using these figures for illustrative purposes, LAs would convert a total of approximately 6,200 statements to IDPs in the first year of implementation and 4,100 in the second year of implementation.

Table 2: Timetable for converting statements; and for converting IEPs for children supported by EYA/EYA+ who do not attend a maintained setting

	Under 2 years	Nursery 1	Nursery 2	Reception	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11
Number of plans – first year of implementation	*	100	300		700		800		800		1,100		1,200	1,200	
Number of plans – second year of implementation					500		700		900		900		1,100		

* unknown

Source: 2017 PLASC data

Key	
	Plans created in first year of implementation and reviewed in subsequent years
	Plans created in second year of implementation and reviewed in subsequent years

¹⁶ Rounded to the nearest 100. Figures are not available for the number of children under compulsory school age who have SEN but who do not have a statement and do not attend a maintained setting.

Schools

Table 3 below sets out a three-year timetable for converting plans for children attending maintained school who are supported through EYA, EYA+, SA and SA+.

The table includes the number of children in each of the academic year cohorts from nursery to year 10, who had provision via EYA, EYA+, SA and SA+ in 2017¹⁷. Using these figures for illustrative purposes, it is estimated schools will convert up to a total of approximately 40,700 plans to IDPs in the first year of implementation, 28,600 in the second year of implementation and 15,900 in the third year of implementation.

Table 3: Timetable for converting plans for children who are in maintained settings supported through EYA, EYA+, SA or SA+

	Nursery 1	Nursery 2	Reception	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11
Number of plans – first year of implementation	200	2,400		6,700		8,500		8,500		7,900			6,500	
Number of plans – second year of implementation				4,800				8,900				7,700	7,200	
Number of plans – third year of implementation							7,812				8,110			

Source: 2017 PLASC data

Key	
	Plans created in first year of implementation and reviewed in subsequent years
	Plans created in second year of implementation and reviewed in subsequent years
	Plans created in third year of implementation and reviewed in subsequent years

¹⁷ Rounded to the nearest 100.

Conversion timetable for children under compulsory school age

Plans for children under compulsory school age will be converted during two academic years – 2020–21 and 2021–22.

First year of implementation

During the first year of implementation, LAs will:

- convert statements for children from birth up to and including second year of nursery age (aged 3–4 years)
- convert plans for children from birth up to and including second year of nursery age who do not attend a maintained setting but are supported in a non-maintained setting by EYA/EYA+.

Maintained schools will be responsible for converting IEPs for children supported by EYA/EYA+ in the first year of maintained nursery (aged 2–3 years) and second year of maintained nursery.

At the end of the first year of implementation, all children with ALN from birth up to and including second year of nursery should have an IDP.

Second year of implementation

Only one cohort of children with ALN under compulsory school age will not have an IDP at the end of the first year of implementation – those who were in Reception in the first year of implementation. This cohort will be converted in the second year of implementation, during their first year of compulsory education.

Conversion timetable for children of compulsory school age

The implementation period for converting existing plans for children of compulsory school age is two years where they have a statement, and three years where they have an IEP and receive provision via SA/SA+.

First year of implementation

As set out in tables 2 and 3 on pages 8 and 9, during the first year of implementation LAs will convert statements, and schools will convert plans, for children on EYA, EYA+, SA or SA+ for those in the following academic years: 1, 3, 5, 7, 9 and 10.

Second year of implementation

In the second year of implementation, plans for children with statements and those who receive provision through SA/SA+ will be converted for those in the following academic years:

Statements: 1, 3, 5, 7 and 9
EYA/+ or SA/SA+: 1, 5, and 9.

Year three of implementation

In the third year of implementation, plans for children who receive provision through SA/SA+ will be converted for those in the following academic years: 4 and 8.

Next steps

As outlined above, further guides will be published which will provide information on the proposed arrangements for children in specific circumstances, such as children who are looked after by the LA, and arrangements for cases where there is a particular process in progress under the SEN system, such as an appeal about a statement.

Separate guidance will also be published about ALN implementation arrangements for young people in post-16 education, including the arrangements for young people who require specialist placements.

This guide may be updated as the details of implementation are further refined. We welcome feedback from schools, LAs and other interested parties on the intended approach set out in this guide. Feedback can be e-mailed to senreforms@gov.wales

The Code will place requirements on LAs and governing bodies and contain guidance on their functions under the Act. The draft Code is expected to be published for public consultation late in the autumn term, 2018. It is expected to be laid before the National Assembly for Wales for approval in 2019, with the intention that the Code will be published by the end of 2019. Further information about the ALN transformation programme can be found at <https://gov.wales/topics/educationandskills/schoolshome/additional-learning-special-educational-needs/transformation-programme/?lang=en>.

Regional ALN transformation leads will be working with organisations that will have duties under the Act. The transformation leads can provide information about the specific transformation and implementation arrangements for each region. Information on the role of the transformation leads can be found at <https://gov.wales/topics/educationandskills/schoolshome/additional-learning-special-educational-needs/transformation-programme/implementation-transition-support/?lang=en>.