

SEN factsheet

Changes to SEND law in Wales

Special Educational Needs law is changing in Wales. The changes are, in some ways, similar to the changes following from the Children and Families Act 2014 in England, but also differ in some respects. A worrying proposed change (highlighted below) is the removal of statutory assessments and placing the duty on schools and further education colleges to prepare and maintain the equivalent of Statements.

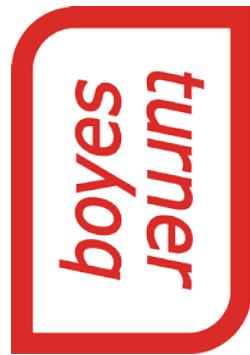
The changes are on hold until after the elections in May 2016 when a new Government may take forward the changes proposed in the draft Additional Learning Needs (ALN) and Education Tribunal (Wales) Bill Consultation.

This is a brief guide to help you understand the proposed changes.

The proposed changes

The draft Bill was published for consultation on 6 July 2015. Comments were requested by December 2015 and a new draft ALN Code of Practice was published at the end of September 2015. A summary of the consultation will be published by the next Government. Key aspects of the proposals are:

- Statements, School Action and School Action Plus to be replaced by single category of ALN (equivalent to Special Educational Needs (SEN) in England).
- Additional Learning Provision (ALP) is to replace Special Educational Provision – no real change.
- All children under ALN will have an Individual Development Plan (IDP) to be reviewed annually (equivalent to an Education, Health and Care Plan (EHCP) in England).
- The IDP will go up to 25 years.
- The IDP will include health and social care needs and provision.



- Duty on local authorities (LA) to favour education at mainstream maintained schools.

The power of LAs to secure ALP at independent schools will be limited.

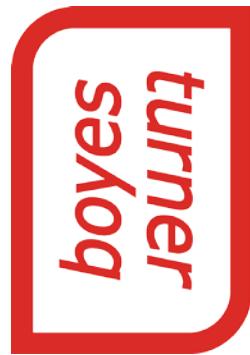
- The draft ALN Code of Practice is similar in many ways to the new SEND Code of Practice in England.
- Removal of statutory assessment leaving schools/FE colleges to identify ALN in place of expert assessments. If the school identifies ALN, it must prepare and maintain an IDP.
- Teacher assessment to follow guidance in the proposed Code of Practice – this throws up concerns about unqualified assessments and that the Code of Practice is guidance only. Schools and LAs should have regard to it but the proposals give less legal protection against inadequate assessments.
- For IDPs following teacher assessments, the duty is on the school (governing body) or FE college to secure the ALP – not the LA.
- For more complex cases, the school/FE college can refer the matter to the LA to but only if it is beyond the school's capability or the ALP would not be reasonable for the school to secure. But the absurdity is, for maintained schools, the LA can send it back to the school i.e. direct the school to prepare and maintain the plan. Maintaining the plan would presumably include organising the Annual Reviews (which many schools already do), arrange assessments as required, amend the plan and make provision. It is unclear whether there will be any additional funding for provision agreed in plans but the proposals exclude board and lodging and other 'prescribed provision' from the need to maintain the plan.
- It is proposed that the SENTW (Special Educational Needs Tribunal for Wales) is to be renamed Education Tribunal for Wales.

Existing law

In 2011 Wales gained sovereignty in respect of education law.

Until the changes are made, the Education Act 1996 and associated Regulations remain the primary legislation for children being supported with Statements. Wales has its own SEN Code of Practice. SEN Code of Practice 2002 for Wales applies – not the 2015 England version -
<http://learning.wales.gov.uk/docs/learningwales/publications/131016-sen-code-of-practice-for-wales-en.pdf>

No differences in legal terminology or definitions.



- Broadly the same as the England COP (2001 issue) save for Welsh language translation requirements.
- Welsh-specific law.
 - Education (SEN) Wales Regulations 2002.
 - Details assessments, notices, Statements, transfers and reviews.
 - Essentially same as 2001 England consolidation regulations.
 - SEN (provision of information by LAs)(Wales) Regulations 2002.
 - Requirement to explain how budgets work and promote high standard.
- Education (SEN)(Information)(Wales) Regulations 1999.
 - Regulations covering the publication of SEN information by LAs and governing bodies.
- SENT (Time Limits) (Wales) Regulations 2001.
 - Revoked (even though cited in the SEN Code of Practice).

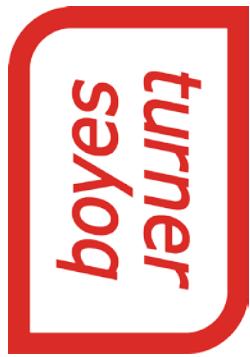
Making an appeal to Special Educational Needs Tribunal Wales

The SENTW procedure rules and powers are almost identical to the SEND Tribunal Rules (England) but there are slight differences.

The full rules can be found here: <http://www.legislation.gov.uk/wsi/2012/322/made>.

Points to note:

- Two months to appeal.
- No requirement to use or consider mediation but can use Disagreement Resolution Service (DRS). If so, the time limit may be extended but need to ask the SENTW about any extension before the two months is up.
- Can decide to use DRS after appeal has been registered. Can ask the Tribunal to stop the appeal for a period of time.
- Cannot appeal if the LA decides not to make any changes following an Annual Review.
- The Education (Wales) Measure 2009 gives children the right to make their own appeal to SENTW. The child can appoint a case friend.
- But parents can still have the right to make an appeal whether or not their child makes one.



- Full reasons for the appeal must be sent either with the appeal form or within the case statement, which is six weeks for both parties following registration of the appeal.
- Parents are required to obtain the child's views; the child, if appealing, is required to obtain their parents' views – in England, it is the LA's responsibility.
- Both parties will be asked for their and their witnesses' availability in order to set a hearing date.
- Both parties can bring up to two witnesses and a representative.

If you have any questions or require advice, please contact the Special Educational Needs team on **0118 467 6547** or senexpertsolicitors@boyesturner.com.

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