



# Additional Learning Needs and Education Tribunal (Wales) Act 2018

2018 anaw 2

## PART 1

### OVERVIEW

#### 1 Overview of this Act

- (1) Part 2 of this Act establishes the statutory system in Wales for meeting the additional learning needs of children and young people; it contains 5 chapters.
- (2) Chapter 1 (sections 2 to 9)—
  - (a) gives the meaning of the key terms “additional learning needs” and “additional learning provision” (sections 2 and 3);
  - (b) provides for a code of practice on additional learning needs (sections 4 and 5);
  - (c) makes provision about participation by children, their parents and young people in decisions, about having regard to the United Nations Convention on the Rights of the Child and to the United Nations Convention on the Rights of Persons with Disabilities, and about access to information about the additional learning needs system established by Part 2 (sections 6 to 9).
- (3) Chapter 2 (sections 10 to 46) provides for individual development plans for children and young people with additional learning needs.
- (4) Provision is made for the plans to be prepared and maintained by governing bodies of maintained schools, the governing bodies of institutions in the further education sector or local authorities; and for the governing body or authority having the duty to maintain the plan to secure the additional learning provision contained in the plan.
- (5) Special provision is made for plans for looked after children (sections 15 to 19) and children and young people who are subject to a detention order and placed in certain kinds of youth detention accommodation (sections 39 to 45).
- (6) Provision is made requiring particular health bodies—

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- (a) to consider, on referral from a governing body or local authority, whether there is a relevant treatment or service they could provide that is likely to be of benefit in addressing a child's or young person's additional learning needs and, if so, to secure its provision (sections 20 and 21);
  - (b) to appoint a designated education clinical lead officer (section 61);
  - (c) to notify parents and local authorities where they form the opinion that a child under compulsory school age has, or probably has, additional learning needs (section 64).
- (7) Chapter 3 (sections 47 to 67) makes further provision for and in connection with functions related to meeting additional learning needs, including—
- (a) a duty on local authorities to favour education in mainstream maintained schools for children with additional learning needs (section 51);
  - (b) provision changing the registration system for independent schools to require the Welsh Ministers to publish a list of the registered schools which indicates the type or types of additional learning provision that an independent school makes (section 54);
  - (c) provision limiting the power of local authorities to secure additional learning provision for children or young people at independent schools to registered independent schools (section 55);
  - (d) a duty on the Welsh Ministers to establish and maintain a list of independent special post-16 institutions and a provision limiting the power of local authorities to secure additional learning provision at such institutions to those on the list (section 56);
  - (e) a duty on governing bodies of maintained schools and institutions in the further education sector to appoint additional learning needs co-ordinators (section 60);
  - (f) a duty on health bodies, local authorities, maintained schools and other bodies to provide information and other help to local authorities that request it (section 65).
- (8) Chapter 4 (sections 68 to 81) makes provision about avoiding and resolving disagreements; it provides for—
- (a) local authority arrangements for the avoidance and resolution of disagreements (section 68);
  - (b) independent advocacy services (section 69);
  - (c) rights of appeal to the Education Tribunal for Wales in respect of decisions as to whether or not a child or young person has additional learning needs, the contents of individual development plans and other decisions relating to plans (sections 70 and 72).
- (9) Chapter 5 (section 82 to 90) makes general provision, including—
- (a) a power for the Welsh Ministers to make regulations about the disclosure and use of information (section 82);
  - (b) a duty on the Welsh Ministers to make regulations for the purpose of giving effect to Part 2 in a case where a parent of a child, or a young person, lacks capacity (section 83);
  - (c) provision for the disapplication of certain duties to inform or notify a child or to take action following a request by a child where the child lacks capacity and does not have a case friend (section 84);
  - (d) provision about case friends for children who lack capacity (section 85).

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- (10) Part 3 (sections 91 to 94) continues the Special Educational Needs Tribunal for Wales and renames it the Education Tribunal for Wales.
- (11) In addition to the jurisdiction set out in Chapter 4, the Education Tribunal has jurisdiction in relation to disability discrimination in schools (for provision about this, see section 116 of the Equality Act 2010 (c. 15) and Schedule 17 to that Act).
- (12) Part 4 (sections 95 to 101) makes provision about the meaning of “in the area” of a local authority for the purposes of the Education Acts (section 95) and makes general provision, including provisions about interpretation that apply for the purposes of the Act (section 99).

## PART 2

### ADDITIONAL LEARNING NEEDS

VALID FROM 02/11/2020

#### CHAPTER 1

#### KEY TERMS, CODE AND PARTICIPATION

VALID FROM 01/09/2021

#### *Key terms*

#### **2 Additional learning needs**

- (1) A person has additional learning needs if he or she has a learning difficulty or disability (whether the learning difficulty or disability arises from a medical condition or otherwise) which calls for additional learning provision.
- (2) A child of compulsory school age or person over that age has a learning difficulty or disability if he or she—
- (a) has a significantly greater difficulty in learning than the majority of others of the same age, or
  - (b) has a disability for the purposes of the Equality Act 2010 (c. 15) which prevents or hinders him or her from making use of facilities for education or training of a kind generally provided for others of the same age in mainstream maintained schools or mainstream institutions in the further education sector.
- (3) A child under compulsory school age has a learning difficulty or disability if he or she is, or would be if no additional learning provision were made, likely to be within subsection (2) when of compulsory school age.
- (4) A person does not have a learning difficulty or disability solely because the language (or form of language) in which he or she is or will be taught is different from a language (or form of language) which is or has been used at home.

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(5) This section applies for the purposes of this Act.

### **3 Additional learning provision**

- (1) “Additional learning provision” for a person aged three or over means educational or training provision that is additional to, or different from, that made generally for others of the same age in—
  - (a) mainstream maintained schools in Wales,
  - (b) mainstream institutions in the further education sector in Wales, or
  - (c) places in Wales at which nursery education is provided.
- (2) “Additional learning provision” for a child aged under three means educational provision of any kind.
- (3) In subsection (1), “nursery education” means education suitable for a child who has attained the age of three but is under compulsory school age.
- (4) Regulations may amend this section to replace the references to the age of three with references to a different age.
- (5) This section applies for the purposes of this Act.

#### *Code of practice*

### **4 Additional learning needs code**

- (1) The Welsh Ministers must issue, and may from time to time revise, a code on additional learning needs (“the code”).
- (2) The code may include guidance about the exercise of functions under this Part and about any other matter connected with identifying and meeting additional learning needs.
- (3) The following persons must, when exercising functions under this Part, have regard to any relevant guidance contained in the code—
  - (a) a local authority in Wales or England;
  - (b) the governing body of a maintained school in Wales or England;
  - (c) the governing body of an institution in the further education sector in Wales or England;
  - (d) the proprietor of an Academy;
  - (e) a youth offending team for an area in Wales or England;
  - (f) a person in charge of relevant youth accommodation in Wales or England;
  - (g) a Local Health Board;
  - (h) an NHS trust;
  - (i) the National Health Service Commissioning Board;
  - (j) a clinical commissioning group;
  - (k) an NHS foundation trust;
  - (l) a Special Health Authority.

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- (4) For provision about local authorities requiring certain providers of nursery education to have regard to guidance contained in the code, see section 153 of the Education Act 2002 (c. 32).
- (5) The code may impose requirements—
- (a) on a local authority in respect of arrangements it must make under sections 9 (advice and information), 68 (avoidance and resolution of disagreements) and 69 (independent advocacy services);
  - (b) on a governing body of a maintained school in Wales or an institution in the further education sector in Wales or a local authority in respect of—
    - (i) decisions as to whether a child or young person has additional learning needs,
    - (ii) the preparation, content, form, review and revision of individual development plans, or
    - (iii) ceasing to maintain individual development plans;
  - (c) on a governing body of a maintained school in Wales or an institution in the further education sector in Wales in respect of the provision of information for the purposes of this Part.
- (6) The code must include the following requirements on governing bodies and local authorities—
- (a) a requirement under subsection (5)(b)(i) for the notification of a decision that a child or young person does not have additional learning needs to be given in accordance with section 11(4), 13(3), 18(3) or 40(4) before the end of a period of time specified in the code, subject to any exceptions to the requirement specified in the code;
  - (b) a requirement under subsection (5)(b)(ii) to prepare an individual development plan and give a copy of it in accordance with section 22 or 40(5) before the end of a period of time specified in the code, subject to any exceptions to the requirement specified in the code;
  - (c) a requirement under subsection (5)(b)(ii) to use the appropriate standard form set out in the code for an individual development plan; and the code must include one or more standard forms for this purpose.
- (7) The code may make—
- (a) different provision for different purposes or cases, and
  - (b) transitory, transitional or saving provision,
- in relation to a requirement imposed under subsection (5) or provision made under section 7(4) or 8(4).
- (8) The duty imposed by subsection (3) and a duty imposed under subsection (5) also apply to a person exercising a function for the purpose of the discharge of functions under this Part by the persons mentioned in subsection (3).
- (9) The power to impose requirements under subsection (5)(c) does not include the power to impose requirements in respect of the disclosure of personal data to a person who is not the data subject, except for cases where the person is the parent of a child and the data subject is the child;<sup>F1</sup>...

[<sup>F2</sup>(9A) In subsection (9)—

“data subject” (“*testun y data*”) has the meaning given by section 3(5) of the Data Protection Act 2018;

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“personal data” (“*data personol*”) has the same meaning as in Parts 5 to 7 of that Act (see section 3(2) and (14) of that Act.)]

- (10) The Education Tribunal for Wales must have regard to any provision of the code that appears to it to be relevant to a question arising on an appeal under this Part.
- (11) The Welsh Ministers must publish the code for the time being in force on their website.

#### Textual Amendments

- F1** Words in s. 4(9) omitted (25.5.2018) by virtue of [Data Protection Act 2018 \(c. 12\)](#), s. 212(1), [Sch. 19 para. 226\(2\)\(a\)](#) (with ss. 117, 209, 210); S.I. 2018/625, reg. 2(1)(g)
- F2** [S. 4\(9A\)](#) inserted (25.5.2018) by [Data Protection Act 2018 \(c. 12\)](#), s. 212(1), [Sch. 19 para. 226\(2\)\(b\)](#) (with ss. 117, 209, 210); S.I. 2018/625, reg. 2(1)(g)

## 5 Procedure for making the code

- (1) Before issuing or revising a code under section 4, the Welsh Ministers must consult the following persons on a draft of the code—
- each local authority;
  - the governing body of each maintained school in Wales;
  - the governing body of each institution in the further education sector in Wales;
  - Her Majesty's Chief Inspector of Education and Training in Wales;
  - the Children's Commissioner for Wales;
  - the Welsh Language Commissioner;
  - the relevant committee of the National Assembly for Wales with remit for the education of children and young persons;
  - any other person the Welsh Ministers consider appropriate.
- (2) If the Welsh Ministers wish to proceed with the draft (with or without modifications) they must lay a copy of the draft before the National Assembly for Wales.
- (3) The Welsh Ministers must not issue a code unless a draft of it is approved by a resolution of the National Assembly for Wales.
- (4) If the National Assembly for Wales resolves to approve a draft of the code—
- the Welsh Ministers must issue the code in the form of the draft, and
  - the code comes into force on a day appointed by the Welsh Ministers in an order made by statutory instrument.
- (5) An order under subsection (4)(b) may—
- appoint different days for different purposes;
  - make transitory, transitional or saving provision in connection with the coming into force of a provision in the code.
- (6) References in this section to a code include a revised code.
- (7) The requirement to consult imposed by subsection (1) may be satisfied by consultation undertaken before the coming into force of this Part.

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## Participation, United Nations conventions and access to information

VALID FROM 01/09/2021

### 6 Duty to involve and support children, their parents and young people

A person exercising functions under this Part in relation to a child or young person must have regard—

- (a) to the views, wishes and feelings of the child and the child's parent or the young person,
- (b) to the importance of the child and the child's parent or the young person participating as fully as possible in decisions relating to the exercise of the function concerned, and
- (c) to the importance of the child and the child's parent or the young person being provided with the information and support necessary to enable participation in those decisions.

### 7 Duty to have regard to the United Nations Convention on the Rights of the Child

- (1) A relevant body exercising functions under this Part in relation to a child or young person must have due regard to Part 1 of the United Nations Convention on the Rights of the Child adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 (“the Convention”).
- (2) For the purposes of subsection (1), Part 1 of the Convention is to be treated as having effect—
  - (a) as set out for the time being in Part 1 of the Schedule to the Rights of Children and Young Persons (Wales) Measure 2011 (nawm 2), but
  - (b) subject to any declaration or reservation as set out for the time being in Part 3 of that Schedule.
- (3) Subsection (1) does not require specific consideration of the Convention on each occasion that a function is exercised.'
- (4) A code issued under section 4 may make provision setting out what is required to discharge the duty in subsection (1); and subsection (1) is to be interpreted in accordance with any such provision.
- (5) In subsection (1), “relevant body” means—
  - (a) a local authority;
  - (b) an NHS body.

### 8 Duty to have regard to the United Nations Convention on the Rights of Persons with Disabilities

- (1) A relevant body exercising functions under this Part in relation to a disabled child or young person must have due regard to the United Nations Convention on the Rights of Persons with Disabilities and its optional protocol adopted on 13 December 2006 by General Assembly resolution A/RES/61/106 and opened for signature on 30 March 2007 (“the Convention”).

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- (2) The Convention is to be treated as having effect subject to any declaration or reservation made by the United Kingdom Government upon ratification, save where the declaration or reservation has subsequently been withdrawn.
- (3) Subsection (1) does not require specific consideration of the Convention on each occasion that a function is exercised.
- (4) A code issued under section 4 may make provision setting out what is required to discharge the duty in subsection (1); and subsection (1) is to be interpreted in accordance with any such provision.
- (5) In subsection (1), “relevant body” means—
  - (a) a local authority;
  - (b) an NHS body.

VALID FROM 01/09/2021

## 9 Advice and information

- (1) A local authority must make arrangements to provide people with information and advice about additional learning needs and the system for which provision is made by this Part.
- (2) In making arrangements under subsection (1), a local authority must have regard to the principle that information and advice provided under the arrangements must be provided in an impartial manner.
- (3) A local authority must take reasonable steps to make the arrangements made under this section, sections 68 (avoidance and resolution of disagreements) and 69 (independent advocacy services) known to—
  - (a) children and young people in its area,
  - (b) parents of children in its area,
  - (c) children it looks after who are outside its area,
  - (d) governing bodies of maintained schools in its area,
  - (e) governing bodies of institutions in the further education sector in its area,
  - (f) case friends of children in its area, and
  - (g) any other persons it considers appropriate.
- (4) Where the governing body of a maintained school is informed of arrangements under subsection (3), it must take reasonable steps to make the arrangements known to—
  - (a) its pupils and their parents, and
  - (b) case friends of its pupils.
- (5) Where the governing body of an institution in the further education sector is informed of arrangements under subsection (3), it must take reasonable steps to make the arrangements known to its students.



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## CHAPTER 2

### INDIVIDUAL DEVELOPMENT PLANS

#### *Preparing and maintaining individual development plans*

VALID FROM 01/09/2021

#### **10 Individual development plans**

For the purposes of this Act, an individual development plan is a document that contains—

- (a) a description of a person's additional learning needs;
- (b) a description of the additional learning provision which the person's learning difficulty or disability calls for;
- (c) anything else required or authorised by or under this Part.

VALID FROM 01/09/2021

#### **11 Duty to decide: maintained schools and further education institutions**

- (1) Where it is brought to the attention of, or otherwise appears to, the governing body of a maintained school in Wales that a child or young person who is a registered pupil at the school may have additional learning needs, it must decide whether the child or young person has additional learning needs, unless any of the circumstances in subsection (3) apply.
- (2) Where it is brought to the attention of, or otherwise appears to the governing body of an institution in the further education sector in Wales that a young person enrolled as a student at the institution may have additional learning needs, it must decide whether the young person has additional learning needs, unless any of the circumstances in subsection (3) apply.
- (3) The circumstances are—
  - (a) an individual development plan is being maintained for the child or young person under this Part;
  - (b) the governing body has previously decided whether the child or young person has additional learning needs and the governing body is satisfied that—
    - (i) the child's or young person's needs have not changed materially since that decision was made, and
    - (ii) there is no new information that materially affects that decision;
  - (c) the decision is about a young person and the young person does not consent to the decision being made;
  - (d) the child or young person 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 a local authority is responsible for him or her;

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- (e) a local authority in England maintains an EHC plan for the child or young person.
- (4) If the governing body decides that the child or young person does not have additional learning needs it must notify the child or young person and, in the case of a child, the child's parent of—
- (a) the decision, and
  - (b) the reasons for the decision.
- (5) This section does not apply to a child who is looked after by a local authority (see section 17 (duty to refer a matter to an authority that looks after a child)), unless the child is in the area of a local authority in England.

VALID FROM 01/09/2021

## 12 Duties to prepare and maintain plans: maintained schools and further education institutions

- (1) If a governing body decides under section 11 that a child or young person has additional learning needs, it must—
- (a) prepare an individual development plan for him or her, unless any of the circumstances in subsection (2) apply, and
  - (b) maintain the plan, unless the circumstances in paragraph (b) or (d) of subsection (2) apply.
- (2) The circumstances are—
- (a) the governing body considers that the child or young person has additional learning needs—
    - (i) that may call for additional learning provision it would not be reasonable for the governing body to secure,
    - (ii) the extent or nature of which the governing body cannot adequately determine, or
    - (iii) for which the governing body cannot adequately determine additional learning provision,
 and the governing body refers the child's or young person's case to the local authority responsible for the child or young person to decide under section 13(1);
  - (b) the plan is about a young person and the young person does not consent to the plan being prepared or maintained;
  - (c) the governing body requests a local authority in England to secure an assessment under section 36(1) of the Children and Families Act 2014 (c. 6) and, by virtue of the request or otherwise, the authority is responsible for the child or young person (within the meaning given by section 24(1) of that Act);
  - (d) a local authority in England maintains an EHC plan for the child or young person.
- (3) Where a governing body of a maintained school has been directed to prepare and maintain, or to maintain, an individual development plan for a person under section 14(2)(b), 14(4) or 27(6)(a), the governing body must prepare and maintain,

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or maintain, the plan (as the case may be), unless the circumstances in paragraph (b) or (d) of subsection (2) apply.

- (4) Where a governing body of an institution in the further education sector has agreed to a request under section 36(2) to become responsible for maintaining an individual development plan for a young person, or where the Welsh Ministers have determined under section 36(4) that the governing body should maintain the plan, the governing body must maintain the plan unless the circumstances in paragraph (b) or (d) of subsection (2) apply.
- (5) If, following a request under subsection (2)(c), the governing body is notified by the local authority in England that it is not required to secure an EHC plan for the child or young person, the governing body must prepare and maintain an individual development plan for the child or young person, unless the circumstances in paragraph (b) or (d) of subsection (2) apply.
- (6) A governing body that prepares or maintains an individual development plan for a child or young person must—
- (a) consider whether additional learning provision should be provided to the child or young person in Welsh, and
  - (b) if it decides that a particular kind of additional learning provision should be provided in Welsh, specify in the plan that it should be provided in Welsh.
- (7) A governing body must—
- (a) secure the additional learning provision described in an individual development plan it maintains under this Part, and
  - (b) if the plan specifies that a particular kind of additional learning provision should be provided in Welsh, take all reasonable steps to secure that it is provided to the child or young person in Welsh.

VALID FROM 01/09/2021

### 13 Duty to decide: local authorities

- (1) Where it is brought to the attention of, or otherwise appears to, a local authority that a child or a young person for whom it is responsible may have additional learning needs, the authority must decide whether the child or young person has additional learning needs, unless any of the circumstances in subsection (2) apply.
- (2) The circumstances are—
- (a) an individual development plan is being maintained for the child or young person under this Part;
  - (b) the local authority has previously decided whether the child or young person has additional learning needs and it is satisfied that—
    - (i) the child's or young person's needs have not changed materially since that decision was made, and
    - (ii) there is no new information that materially affects that decision;
  - (c) section 11(1) applies and the local authority is satisfied that the question of whether or not the child or young person has additional learning needs is being decided under that section;

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- (d) the decision is about a young person and the young person does not consent to the decision being made;
- (e) the decision is about a young person who—
  - (i) is an enrolled student at an institution in the further education sector in Wales, and
  - (ii) is not also enrolled as a student at another institution in the further education sector or a registered pupil at a school,
 and no request in respect of the young person has been made to the local authority under section 12(2)(a).
- (3) If the local authority decides that the child or young person does not have additional learning needs it must notify the child or young person and, in the case of a child, the child's parent of—
  - (a) the decision, and
  - (b) the reasons for the decision.
- (4) This section does not apply to a child who is looked after by a local authority (see sections 17 (duty to refer a matter to an authority that looks after a child) and 18 (duty to decide whether a looked after child has additional learning needs)).

#### 14 Duties to prepare and maintain plans: local authorities

- (1) The duty in subsection (2) applies if a local authority is responsible for a child or young person and—
  - (a) in the case of a child the local authority decides under section 13 that the child has additional learning needs,
  - (b) in the case of a young person who is a registered pupil at a maintained school in Wales or enrolled as a student at an institution in the further education sector in Wales, the local authority decides under section 13 that the young person has additional learning needs, or
  - (c) in the case of any other young person, the local authority—
    - (i) decides under section 13 that the young person has additional learning needs, and
    - (ii) decides in accordance with regulations under section 46 that it is necessary to prepare and maintain a plan under this section for the young person to meet his or her reasonable needs for education or training.
- (2) The local authority must—
  - (a) prepare and maintain an individual development plan for that child or young person, or
  - (b) if the child or young person is, or is to be, a registered pupil at a maintained school in Wales and the authority considers it appropriate—
    - (i) prepare an individual development plan and direct the governing body of the school to maintain the plan, or
    - (ii) direct the governing body of the school to prepare and maintain a plan.
- (3) But the duty in subsection (2) does not apply if the plan is about a young person and the young person does not consent to the plan being prepared or maintained.

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- (4) A local authority that maintains an individual development plan for a child or young person who is a registered pupil at a maintained school in Wales may direct the governing body of the school to maintain the plan.
- (5) A local authority that prepares or maintains an individual development plan for a child or young person, or reconsiders a plan under section 27, must—
- (a) consider whether additional learning provision should be provided to the child or young person in Welsh, and
  - (b) if it decides that a particular kind of additional learning provision should be provided in Welsh, specify in the plan that it should be provided in Welsh.
- (6) If the reasonable needs of a child or young person for additional learning provision cannot be met unless a local authority also secures provision of the kind mentioned in subsection (7), the authority must include a description of that other provision in the plan.
- (7) The kinds of provision are—
- (a) a place at a particular school or other institution;
  - (b) board and lodging.
- (8) The duty in subsection (6)—
- (a) does not apply to a place at a particular school or other institution that is not a maintained school in Wales if the person or body responsible for admissions to the school or other institution does not consent;
  - (b) is subject to the duties in sections 55, 56(3) and 59.
- (9) If the duty in subsection (6) applies to a local authority, it may not give a direction under subsection (2)(b) or (4).
- (9A) If the additional learning provision described in an individual development plan includes provision of the kind mentioned in section 41(1) of the Curriculum and Assessment (Wales) Act 2021, a local authority may not give directions to the governing body of a school under subsection (2)(b) or (4) in relation to the plan.
- (10) Where a local authority maintains an individual development plan for a child or a young person, the authority must—
- (a) secure the additional learning provision described in the plan,
  - (b) secure any other provision described in the plan in accordance with subsection (6), and
  - (c) if the plan specifies that a particular kind of additional learning provision should be provided in Welsh, take all reasonable steps to secure that it is provided to the child or young person in Welsh.

VALID FROM 02/11/2020

*Additional learning provision for looked after children*

**15 Key terms**

- (1) A child is looked after by a local authority if he or she—

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- (a) is not over compulsory school age and is looked after by a local authority for the purposes of Part 6 of the Social Services and Well-being (Wales) Act 2014 (anaw 4) (“the 2014 Act”), and
  - (b) is not a detained person.
- (2) Regulations may prescribe categories of looked after child who are not to be treated as looked after by a local authority for the purposes of this Act.
- (3) “Independent reviewing officer” means the officer appointed under section 99 of the 2014 Act for a child's case.
- (4) “Personal education plan” means the plan that is included in the care and support plan maintained for a looked after child under section 83(2A) of the 2014 Act.
- (5) This section applies for the purposes of this Act.

## 16 Amendments to the Social Services and Well-being (Wales) Act 2014

- (1) Section 83 of the Social Services and Well-being (Wales) Act 2014 (anaw 4) (care and support plans) is amended as follows.
- (2) After subsection (2) insert—
- “(2A) A care and support plan for a child must include a record of the arrangements made to meet the child's needs in relation to education and training (a “personal education plan”).
- (2B) But subsection (2A) does not apply to a child if he or she is within a category of looked after child prescribed in regulations, for whom no personal education plan is to be prepared.
- (2C) If—
- (a) a child has additional learning needs, and
  - (b) the child's care and support plan includes a personal education plan, any individual development plan maintained for the child under section 19 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 must be incorporated within the personal education plan.
- (2D) For the purposes of subsection (2C)—
- (a) a “child” means a person not over compulsory school age (within the meaning given by section 8 of the Education Act 1996 (c. 56));
  - (b) “additional learning needs” has the meaning given by section 2 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018.”
- (3) In subsection (3), for “under review the plans that it maintains under this section” substitute “ a care and support plan under review ”.
- (4) In subsection (4), for “plan”, the first time it appears, substitute “ care and support plan ”.
- (5) In subsection (5)—
- (a) at the beginning, insert “ Subject to the provisions of Part 2 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018, ”;

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- (b) in paragraph (a), for “plans under this section” substitute “ care and support plans ”;
  - (c) in paragraph (b), for “plan is to contain” substitute “ care and support plan is to contain (including what a personal education plan is to contain) ”;
  - (d) in paragraph (c), for “plans” substitute “ care and support plans ”.
- (6) In subsection (7), for “a plan under this section” substitute “ a care and support plan ”.
- (7) In subsection (8), in paragraph (a), for “a plan under this section” substitute “ a care and support plan ”.
- (8) In subsection (9), for “plan maintained under this section” substitute “ care and support plan ”.
- (9) After subsection (9) insert—
- “(10) References in subsections (2A) to (9) to a care and support plan are to be interpreted as references to a care and support plan prepared or maintained under this section.”

VALID FROM 01/09/2021

## **17 Duty to refer a matter to a local authority that looks after a child**

- (1) Subsection (2) applies where—
- (a) it is brought to the attention of or otherwise appears to a governing body of a maintained school in Wales that a looked after child who is a registered pupil at the school may have additional learning needs, or
  - (b) it is brought to the attention of or otherwise appears to a local authority that a child for whom it is responsible, but who is looked after by another local authority, may have additional learning needs.
- (2) The governing body or local authority must refer the matter to the local authority that looks after the child.

VALID FROM 01/09/2021

## **18 Duty to decide whether a looked after child has additional learning needs**

- (1) Where it is brought to the attention of, or otherwise appears to, a local authority that looks after a child that the child may have additional learning needs, it must decide whether the child has additional learning needs, unless any of the circumstances in subsection (2) apply.
- (2) The circumstances are—
- (a) an individual development plan is being maintained for the child under section 19;
  - (b) the local authority has previously decided whether the child has additional learning needs and the local authority is satisfied that—
    - (i) the child's needs have not changed materially since that decision was made, and

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- (ii) there is no new information that materially affects that decision;
- (c) the child is in the area of a local authority in England.

- (3) If the local authority decides that the looked after child does not have additional learning needs it must notify the child, the child's parent and the child's independent reviewing officer of—
- (a) the decision, and
  - (b) the reasons for the decision.

VALID FROM 01/09/2021

## 19 Duties to prepare and maintain plans for looked after children

- (1) The duty in subsection (2) applies if a local authority that looks after a child has decided under section 18 that a looked after child has additional learning needs.
- (2) The local authority must prepare and maintain an individual development plan for the child if the child is in the area of a local authority in Wales.
- (3) A local authority that prepares or maintains an individual development plan for a child it looks after must—
- (a) consider whether additional learning provision should be provided to the child in Welsh, and
  - (b) if it decides that a particular kind of additional learning provision should be provided in Welsh, specify in the individual development plan that it should be provided in Welsh.
- (4) If the reasonable needs of the child for additional learning provision cannot be met unless the local authority also secures provision of the kind mentioned in subsection (5), the authority must include a description of that other provision in the individual development plan.
- (5) The kinds of provision are—
- (a) a place at a particular school or other institution;
  - (b) board and lodging.
- (6) The duty in subsection (4)—
- (a) does not apply to a place at a particular school or other institution that is not a maintained school in Wales if the person or body responsible for admissions to the school or other institution does not consent;
  - (b) is subject to the duties in sections 55, 56(3) and 59.
- (7) Where a local authority that looks after a child maintains an individual development plan for the child, the authority must—
- (a) secure the additional learning provision described in the plan,
  - (b) secure any other provision described in the plan in accordance with subsection (4), and
  - (c) if the plan specifies that a particular kind of additional learning provision should be provided in Welsh, take all reasonable steps to secure that it is provided to the child in Welsh.



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- (8) See section 35 for provision about the transfer of duties to maintain individual development plans for children who already have plans when they become looked after.

VALID FROM 02/11/2020

*Additional learning provision and NHS bodies*

VALID FROM 01/09/2021

**20 Additional learning provision: Local Health Boards and NHS trusts**

- (1) The bodies specified in subsection (2) may refer a matter to an NHS body, asking it to consider whether there is any relevant treatment or service that is likely to be of benefit in addressing the additional learning needs of a child or young person.
- (2) The bodies are—
- (a) where the referral would relate to a child, or to a young person who is a registered pupil at a maintained school, a local authority;
  - (b) where the referral would relate to a young person who is not a registered pupil at a maintained school, the body that prepares or maintains an individual development plan for the young person.
- (3) But a body may not make a referral under subsection (1) unless—
- (a) it has informed the child or young person and, in the case of a child, the child's parent, that it intends to make the referral,
  - (b) it has given the child or young person and, in the case of a child, the child's parent, an opportunity to discuss whether the referral should be made, and
  - (c) it is satisfied that making the referral is in the best interests of the child or young person.
- (4) If a matter is referred to an NHS body under this section, the NHS body must consider whether there is a relevant treatment or service that is likely to be of benefit in addressing the child's or young person's additional learning needs.
- (5) If the NHS body identifies such a treatment or service, it must—
- (a) secure the treatment or service for the child or young person,
  - (b) decide whether the treatment or service should be provided to the child or young person in Welsh, and
  - (c) if it decides that the treatment or service should be provided to the child or young person in Welsh, take all reasonable steps to secure that the treatment or service is provided in Welsh.
- (6) In this section, and in section 21, “relevant treatment or service” means any treatment or service that an NHS body would normally provide as part of the comprehensive health service in Wales continued under section 1(1) of the National Health Service (Wales) Act 2006 (c. 42).

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## 21 Individual development plans: Local Health Boards and NHS trusts

- (1) If an NHS body identifies a relevant treatment or service that is likely to be of benefit in addressing a child's or young person's additional learning needs following a referral under section 20 it must—
  - (a) inform the body that made the referral of that treatment or service,
  - (b) if the referral was not made by a body that maintains an individual development plan for the child or young person, inform the body that maintains the individual development plan of that treatment or service, and
  - (c) if it considers that the treatment or service should be provided to the child or young person in Welsh, inform the persons mentioned in paragraphs (a) and (b) that the treatment or service should be provided in Welsh.
- (2) If an NHS body does not identify a relevant treatment or service that is likely to be of benefit in addressing a child's or young person's additional learning needs following a referral under section 20 it must—
  - (a) inform the body that made the referral of that fact, and
  - (b) if the referral was not made by a body that maintains an individual development plan for the child or young person, inform the body that maintains the individual development plan of that fact.
- (3) If an NHS body informs a body that maintains an individual development plan for a child or young person that there is a relevant treatment or service likely to be of benefit in addressing a child's or young person's additional learning needs, the body that maintains the plan must describe the treatment or service in the plan, specifying that it is additional learning provision to be secured by the NHS body.
- (4) If an NHS body informs a body that maintains an individual development plan for a child or young person that a relevant treatment or service should be provided to a child or young person in Welsh, the body that maintains the plan must specify in the plan that the treatment or service is additional learning provision that should be provided in Welsh.
- (5) If an individual development plan specifies under this section that additional learning provision is to be secured by an NHS body, the following duties do not apply to that additional learning provision—
  - (a) the duty of a governing body to secure provision under section 12(7) (including the duty to take reasonable steps to secure provision in Welsh);
  - (b) the duty of a local authority to secure provision under section 14(10)(a) and the duty to take reasonable steps to secure provision in Welsh under section 14(10)(c);
  - (c) the duty of a local authority to secure provision under section 19(7)(a) and the duty to take reasonable steps to secure provision in Welsh under section 19(7)(c).
- (6) The description of the additional learning provision specified in a plan under this section as provision an NHS body is to secure may only be removed or changed on review of a plan in accordance with section 23 or 24 and with the agreement or at the request of the NHS body.
- (7) If, on review of a plan, the NHS body requests a governing body or a local authority that maintains an individual development plan for a child or young person to remove or change the description of the additional learning provision specified in the plan

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under this section as provision the NHS body is to secure, the governing body or local authority must comply with the request.

- (8) Nothing in this section affects the power of the Education Tribunal for Wales to make an order under this Part.
- (9) If the Education Tribunal for Wales orders the revision of an individual development plan in relation to additional learning provision specified under this section as provision an NHS body is to secure, an NHS body is not required to secure the revised additional learning provision unless it agrees to do so.
- (10) Regulations must provide that where an NHS body is under a duty to inform under subsection (1) or (2), it must comply with that duty within a prescribed period, unless a prescribed exception applies.

VALID FROM 01/09/2021

### *Information about plans*

#### **22 Provision of information about individual development plans**

- (1) If a governing body or a local authority prepares an individual development plan for a child or young person, it must give a copy of the plan—
  - (a) to the child or young person, and
  - (b) if the plan is for a child, to the child's parent.
- (2) If a governing body or a local authority becomes responsible for maintaining an individual development plan that was previously being maintained for a child or young person by another body, the governing body or local authority must—
  - (a) inform the child or young person that it has become responsible for maintaining the plan, and
  - (b) if the plan is for a child, inform the child's parent.
- (3) If a local authority prepares an individual development plan for a looked after child or becomes responsible for maintaining an individual development plan for a looked after child that was previously being maintained for the child by another body, it must also give a copy of the plan to the child's independent reviewing officer.

VALID FROM 01/09/2021

### *Review of plans*

#### **23 Review and revision of individual development plans**

- (1) A governing body or a local authority required to maintain an individual development plan must review it before the end of each review period.
- (2) The first review period is a period of 12 months starting with the date on which a copy of the plan is given under section 22.

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- (3) Each subsequent review period is a period of 12 months starting with—
  - (a) the date during the preceding review period on which a copy of a revised plan is given under subsection (11) in relation to that review period, or
  - (b) where the plan has not been revised in the preceding review period—
    - (i) the date during that preceding review period on which notice of a decision is given under subsection (10) in relation to that review period, or
    - (ii) the date during that preceding review period on which notice of a decision is given under section 27(4) in relation to that review period.
- (4) But where none of the documents referred to in subsection (3)(a) and (b) has been given during the preceding review period, the subsequent review period is a period of 12 months starting with the first day after the end of that preceding review period.
- (5) Where a copy of a plan, revised plan or notice of decision is required to be given to more than one person, the reference in subsections (2) and (3) to the date on which it is given is a reference to the date on which the plan, revised plan or notice of decision is first given.
- (6) The duty in subsection (1) to review a plan before the end of a review period is treated as met if, before the end of that period—
  - (a) the plan is reconsidered by a local authority under section 27,
  - (b) the Education Tribunal for Wales orders a governing body or a local authority to revise the plan, or
  - (c) in the case of a plan maintained by the governing body of a maintained school, the Education Tribunal for Wales orders a local authority to review the plan.
- (7) A governing body or local authority must review an individual development plan it is required to maintain if—
  - (a) the plan includes additional learning provision that an NHS body is required to secure under section 20, and
  - (b) the NHS body asks it to review the plan.
- (8) A governing body or a local authority required to maintain an individual development plan for a child or young person must review the plan if a request is made to it by the child, the child's parent or the young person, unless it considers a review to be unnecessary.
- (9) A governing body or local authority may—
  - (a) review an individual development plan at any time, and
  - (b) revise a plan following a review.
- (10) If a governing body or a local authority decides following a review (required or authorised by or under this Part) that the plan should not be revised it must notify the child or young person and, in the case of a child, the child's parent of—
  - (a) the decision, and
  - (b) the reasons for the decision.
- (11) If a governing body or a local authority revises an individual development plan (as required or authorised by or under this Part), it must give a copy of the revised plan to—

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- (a) the child or young person, and
- (b) if the plan is for a child, the child's parent.

(12) This section does not apply if an individual development plan relates to a child who is looked after by a local authority, unless the child is in the area of a local authority in England.

## **24 Review and revision of individual development plans for looked after children**

- (1) A local authority required to maintain an individual development plan for a looked after child must review the plan before the end of each review period.
- (2) The first review period is a period of 12 months starting with the date on which a copy of the plan is first given under section 22.
- (3) Each subsequent review period is a period of 12 months starting with—
  - (a) the date during the preceding review period on which a copy of a revised plan is first given under subsection (10) in relation to that review period, or
  - (b) where the plan has not been revised in the preceding review period the date during that period on which notice of a decision is first given under subsection (9) in relation to that period.
- (4) But where neither document referred to in subsection (3)(a) and (b) has been given during the preceding review period, the subsequent review period is a period of 12 months starting with the first day after the end of that preceding review period.
- (5) The duty in subsection (1) to review a plan before the end of a review period is treated as met if, before the end of that period, the Education Tribunal for Wales orders the local authority to revise the plan.
- (6) A local authority required to maintain an individual development plan for a looked after child must review the plan if—
  - (a) the plan includes additional learning provision that an NHS body is required to secure under section 20, and
  - (b) the NHS body asks the local authority to review the plan.
- (7) A local authority required to maintain an individual development plan for a looked after child must review the plan if a request is made to it by the looked after child or the looked after child's parent, unless the authority considers a review to be unnecessary.
- (8) A local authority may—
  - (a) review an individual development plan at any time, and
  - (b) revise a plan following a review.
- (9) If a local authority decides following a review (required or authorised by or under this Part or by or under section 83 of the Social Services and Well-being (Wales) Act 2014 (anaw 4)) that the plan should not be revised it must notify the child, the child's parent and the child's independent reviewing officer of—
  - (a) the decision, and
  - (b) the reasons for the decision.
- (10) If a local authority revises a looked after child's individual development plan (as required or authorised by or under this Part or by or under section 83 of the Social

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Services and Well-being (Wales) Act 2014 (anaw 4)), it must give a copy of the revised individual development plan to—

- (a) the looked after child,
- (b) the looked after child's parent, and
- (c) the looked after child's independent reviewing officer.

## **25 Relationship of individual development plans to other similar documents**

A governing body or local authority may—

- (a) prepare, review or revise a plan under this Part at the same time as it or another body is preparing, reviewing or revising another document in the case of the person concerned, and
- (b) include the other document in the plan or include the plan in the other document.

VALID FROM 01/09/2021

### *Local authority reconsideration of governing body decisions and plans*

## **26 Reconsideration by local authorities of decisions under section 11(1)**

(1) Subsection (2) applies where—

- (a) a governing body of a maintained school has made a decision about a registered pupil under section 11(1) or has refused to make a decision under that section, and
- (b) the child or young person or, in the case of a child, the child's parent requests the local authority responsible for the child or young person to reconsider the matter.

(2) The local authority must decide whether the child or young person has additional learning needs.

(3) Before it makes its decision, the local authority must inform the governing body of the request and invite representations from the governing body.

(4) For the purposes of this Part, a decision under subsection (2) is to be treated as a decision under section 13(1).

(5) Where a local authority makes a decision under subsection (2), the previous decision of the governing body under section 11(1) ceases to have effect.

## **27 Reconsideration by local authorities of plans maintained under section 12**

(1) Subsection (2) applies where—

- (a) a governing body of a maintained school maintains an individual development plan for a registered pupil under section 12(1) or 12(3), and
- (b) the child or young person or, in the case of a child, the child's parent requests the local authority responsible for the child or young person to reconsider the plan with a view to it being revised.

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- (2) The local authority must reconsider the plan and decide whether or not to revise the plan.
- (3) Before it makes its decision, the local authority must inform the governing body of the request and invite representations from the governing body.
- (4) If the local authority decides that the plan should not be revised it must notify the child or young person and, in the case of a child, the child's parent of—
  - (a) the decision, and
  - (b) the reasons for the decision.
- (5) The local authority must give a copy of a notification under subsection (4) to the governing body.
- (6) If the local authority decides that the plan should be revised, or is ordered to revise it by the Education Tribunal for Wales, it must prepare a revised plan and either—
  - (a) direct the governing body to maintain it, or
  - (b) exercise the power in section 28(6) to take over responsibility for maintaining the plan.
- (7) The local authority must give a copy of the revised plan to the governing body (for provision about others to whom a copy must be given, see section 23(11)).

## **28 Local authority duty to decide whether to take over governing body plans**

- (1) Subsection (3) applies where—
  - (a) a governing body of a maintained school or an institution in the further education sector maintains an individual development plan for a child or young person under section 12(1) or 12(3), and
  - (b) any of the persons mentioned in subsection (2) requests the local authority responsible for a child or young person to consider taking over responsibility for maintaining the plan.
- (2) The persons are—
  - (a) the child or young person,
  - (b) in the case of a child, the child's parent, or
  - (c) the governing body.
- (3) The local authority must decide whether it should take over responsibility for maintaining an individual development plan maintained by the governing body.
- (4) Where a governing body makes the request, the local authority must inform the child or young person and, in the case of a child, the child's parent of the request and invite representations.
- (5) Where a child, a child's parent or a young person makes the request, the local authority must inform the governing body of the request and invite representations from the governing body.
- (6) A local authority may decide to take over responsibility for maintaining a plan maintained by a governing body of a maintained school if it decides under section 27(6) that the plan should be revised.

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- (7) The local authority must notify the child or young person, in the case of a child, the child's parent, and the governing body of—
  - (a) a decision under subsection (3) or (6), and
  - (b) the reasons for the decision.
- (8) If the local authority decides to take over responsibility for maintaining the plan—
  - (a) it is to be treated as maintained by the authority under section 14 for the purposes of this Part, and
  - (b) the governing body is not required to maintain it, from the date on which notice is given under subsection (7).

**29 Circumstances in which the duties in sections 26(2), 27(2) and 28(3) do not apply**

- (1) Following a request under section 26(1)(b), 27(1)(b) or 28(1)(b), the duty in section 26(2), 27(2) or 28(3) (as the case may be) does not apply in relation to a child or young person if any of the circumstances in subsection (2) apply.
- (2) The circumstances are—
  - (a) the local authority has previously made a decision under the same section in relation to the same child or young person and it is satisfied that—
    - (i) the child's or young person's needs have not changed materially since the previous decision, and
    - (ii) there is no new information that would materially affect that decision.
  - (b) the request relates to a child who has become looked after by a local authority.

**30 Registration or enrolment at more than one institution**

- (1) Subsection (2) applies where—
  - (a) it is brought to the attention of, or otherwise appears to the governing body of a maintained school in Wales or an institution in the further education sector in Wales that a child or young person who is a registered pupil or enrolled student at the school or institution (as the case may be) may have additional learning needs,
  - (b) the child or young person is a registered pupil or an enrolled student at another institution (that institution being a school or an institution in the further education sector),
  - (c) the child or young person is to be provided with education or training at each of the institutions at which he or she is a registered pupil or an enrolled student,
  - (d) an individual development plan is not being maintained for the child or young person, and
  - (e) a local authority is responsible for the child or young person.
- (2) The governing body must refer the child's or young person's case to the local authority responsible for the child or young person for the authority to decide under section 13(1).
- (3) Subsections (4), (5) and (6) apply where—



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- (a) the governing body of a maintained school in Wales or an institution in the further education sector in Wales maintains an individual development plan for a child or young person,
  - (b) the child or young person becomes a registered pupil or an enrolled student at another institution (that institution being a school or an institution in the further education sector),
  - (c) the child or young person is to be provided with education or training at each of the institutions at which he or she is a registered pupil or an enrolled student, and
  - (d) a local authority is responsible for the child or young person.
- (4) The local authority responsible for the child or young person must maintain the individual development plan instead of the governing body and the plan is to be treated as maintained by the local authority under section 14 for the purposes of this Part.
- (5) The local authority's duty in subsection (4) takes effect on the day on which the authority is informed under subsection (6) or otherwise becomes aware that the circumstances mentioned in subsection (3) apply.
- (6) If the governing body of a maintained school in Wales or an institution in the further education sector in Wales is aware that the circumstances described in subsection (3) apply in respect of a child or young person who is a registered pupil or an enrolled student at the school or institution (as the case may be), the governing body must inform the local authority responsible for the child or young person of that fact.
- (7) A local authority may not exercise its power to direct under subsections (2)(b) or (4) of section 14 in relation to a child or young person who is a registered pupil or an enrolled student at more than one institution (whether a school or an institution in the further education sector) if he or she is to be provided with education or training at each of those institutions.

VALID FROM 02/11/2020

### *Ceasing to maintain plans*

VALID FROM 01/09/2021

## **31 Ceasing to maintain individual development plans**

- (1) The duty of the governing body of a maintained school to prepare or maintain a plan for a child or young person under section 12 ceases to apply—
  - (a) in the case of a child or young person, if he or she ceases to be a registered pupil of the school, or
  - (b) in the case of a child, if the child becomes looked after by a local authority.
- (2) The duty of the governing body of an institution in the further education sector under section 12 to prepare or maintain a plan for a young person ceases to apply if the young person ceases to be enrolled as a student at the institution.

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- (3) The duty of a local authority under section 14 to prepare or maintain a plan for a child or young person ceases to apply—
  - (a) in the case of a child or young person, if the local authority ceases to be responsible for the child or young person, or
  - (b) in the case of a child, if the child becomes looked after by a local authority.
- (4) The duty of a local authority to prepare or maintain a plan for a looked after child under section 19 ceases to apply if—
  - (a) he or she ceases to be a looked after child for the purposes of this Part (whether because he or she is over compulsory school age or otherwise (see section 15)), or
  - (b) he or she ceases to be in the area of a local authority in Wales.
- (5) Where the governing body of a maintained school or an institution in the further education sector has a duty under this Part to maintain an individual development plan for a child or young person, the governing body may cease to maintain the plan if it decides that the child or young person no longer has additional learning needs.
- (6) Where a local authority has a duty under this Part to maintain an individual development plan for a child or young person, the authority may cease to maintain the plan if the authority—
  - (a) decides that the child or young person no longer has additional learning needs, or
  - (b) in the case of a young person who is neither a registered pupil at a maintained school nor enrolled as a student at an institution in the further education sector in Wales, decides in accordance with regulations under section 46 that it is no longer necessary to maintain it to meet the young person's reasonable needs for education or training.
- (7) Before a governing body decides under subsection (5), or a local authority decides under subsection (6), it must notify—
  - (a) the child or young person,
  - (b) in the case of a child, the child's parent, and
  - (c) in the case of a looked after child, the child's independent reviewing officer, that it proposes to make such a decision.
- (8) After the governing body or local authority has made its decision, it must notify the child or young person, in the case of a child, the child's parent and, in the case of a looked after child, the child's independent reviewing officer of—
  - (a) the decision, and
  - (b) the reasons for the decision.
- (9) And the governing body of a maintained school must also notify the child or young person and, in the case of a child, the child's parent of his or her right to request the local authority to reconsider the matter under section 32.
- (10) See section 44 (provisions that do not apply to children and young persons in detention) for further circumstances in which the duty to maintain a plan ceases.

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### **32 Reconsideration by local authorities of decisions of governing bodies under section 31**

- (1) Subsection (2) applies where—
  - (a) a child, a child's parent or a young person has been notified of a decision of a governing body of a maintained school under section 31, and
  - (b) the child, the child's parent or the young person makes a request within a prescribed period to the local authority responsible for the child or young person for it to decide whether the governing body's duty to maintain the plan should cease.
- (2) The local authority must decide whether the governing body should cease to maintain the plan.
- (3) The local authority must notify the governing body and the child or young person and, in the case of a child, the child's parent of—
  - (a) the decision, and
  - (b) the reasons for the decision.
- (4) If the local authority decides that the plan should be maintained, the governing body must continue to maintain the plan.
- (5) If the local authority decides that the plan should not be maintained, the governing body must cease to maintain the plan, subject to section 33.

VALID FROM 01/09/2021

### **33 Limitation on ceasing to maintain plans to allow reconsideration or appeal**

- (1) A governing body of a maintained school may not cease to maintain an individual development plan under section 31(5) unless subsection (2) or (3) applies.
- (2) This subsection applies if the period prescribed under section 32(1)(b) has ended and no request has been made under that section.
- (3) This subsection applies if the local authority has decided under section 32 that the plan should cease to be maintained and—
  - (a) the period prescribed under section 75 within which an appeal may be brought against the local authority's decision has ended without an appeal having been brought, or
  - (b) an appeal has been brought before the end of the period prescribed under section 75, and has been fully determined.
- (4) A governing body of an institution in the further education sector acting under section 31(5), or a local authority acting under section 31(6), may not cease to maintain an individual development plan until the later of—
  - (a) the period prescribed under section 75 within which an appeal may be brought against a decision not to maintain the plan having ended without an appeal having been brought, or
  - (b) an appeal having been brought before the end of the period prescribed under section 75, and having been fully determined.

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VALID FROM 01/09/2021

### 34 Individual development plan after a young person's 25th birthday

- (1) The duty of the governing body of an institution in the further education sector under section 12, or of a local authority under section 14, to prepare or maintain a plan for a young person ceases to apply at the end of the academic year during which the young person attains the age of 25.
- (2) In this section, “academic year” means—
  - (a) in relation to a young person who attends an institution in the further education sector, a period of 12 months ending on 31 July, and
  - (b) in relation to any other young person, a period of 12 months ending on the day the young person's course of education or training ends or the day before the young person attains the age of 26 (whichever is earlier).

VALID FROM 02/11/2020

### *Transfer of plans*

VALID FROM 01/09/2021

### 35 Transfer of duties to maintain plans

- (1) Subsection (3) applies where—
  - (a) a child or young person becomes a registered pupil at a maintained school in Wales,
  - (b) immediately before the child or young person became a registered pupil at the school an individual development plan was being maintained for the child or young person under section 12 by the governing body of another maintained school, and
  - (c) it is not intended that the child or young person will continue to be provided with education or training at that other school.
- (2) Subsection (3) also applies where—
  - (a) a child or young person becomes a registered pupil at a maintained school in Wales before the end of September in an academic year,
  - (b) the child or young person was a registered pupil at another maintained school during the previous academic year, and
  - (c) an individual development plan was being maintained for the child or young person under section 12 by the governing body of the other school on the last day of education or training provided for him or her at the school.
- (3) The governing body of the school mentioned in subsection (1)(a) or (2)(a) must maintain the individual development plan; and the plan is to be treated as being maintained under section 12 for the purposes of this Part.
- (4) Subsection (6) applies where—

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- (a) a young person becomes enrolled as a student at an institution in the further education sector in Wales before the end of September in an academic year,
  - (b) the young person was a registered pupil at a maintained school during the previous academic year, and
  - (c) an individual development plan was being maintained for the young person under section 12 by the governing body of the school on the last day of education or training provided for him or her at the school.
- (5) In subsection (4)(a) and (b), “academic year” means any period from 1 August to 31 July.
- (6) The governing body of the institution in the further education sector in Wales must maintain the individual development plan; and the plan is to be treated as being maintained under section 12 for the purposes of this Part.
- (7) Subsection (8) applies where—
- (a) a child or young person becomes the responsibility of a local authority, and
  - (b) immediately before the child or young person became the responsibility of the authority an individual development plan was being maintained for the child or young person under section 14 by another local authority.
- (8) The local authority mentioned in subsection (7)(a) must maintain the individual development plan; and the plan is to be treated as being maintained under section 14 for the purposes of this Part.
- (9) Subsection (10) applies where—
- (a) a child becomes looked after by a local authority, and
  - (b) immediately before the child became looked after, an individual development plan was being maintained for the child under section 12 or 14.
- (10) The local authority that looks after the child must maintain the individual development plan; and the plan is to be treated as being maintained under section 19 for the purposes of this Part, with any provision described in the plan in accordance with section 14(6) being treated as described in accordance with section 19(4).
- (11) Subsection (12) and (13) apply where—
- (a) a person ceases to be a looked after child (whether because he or she is over compulsory school age or otherwise (see section 15)),
  - (b) a local authority is responsible for the child or young person, and
  - (c) immediately before ceasing to be looked after, an individual development plan was being maintained for the child or young person under section 19.
- (12) The local authority that is responsible for the child or young person must maintain the individual development plan.
- (13) The plan is to be treated as being maintained under section 14 for the purposes of this Part, with any provision described in the plan in accordance with section 19(4) being treated as described in accordance with section 14(6).

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### **36 Request to transfer plan to governing body of further education institution**

- (1) This section applies where a local authority maintains an individual development plan for a young person who is enrolled as a student at an institution in the further education sector in Wales.
- (2) The local authority may request the governing body of the institution to become responsible for maintaining the plan.
- (3) If the governing body fails to agree to the request within a prescribed period, the local authority may refer the matter to the Welsh Ministers.
- (4) The Welsh Ministers must determine whether the governing body of the further education institution should maintain the plan.

### **37 Regulations about transfer of individual development plans**

- (1) Regulations may make further provision for, and in connection with—
  - (a) the transfer under section 35 of a duty to maintain an individual development plan for a child or young person;
  - (b) the making of a request under section 36, a reference or determination under that section and the transfer of a duty to maintain an individual development plan for a young person following such a request or determination;
  - (c) the transfer in prescribed circumstances of a duty to maintain an individual development plan for a child or young person from—
    - (i) a local authority to another local authority;
    - (ii) the governing body of a maintained school or institution in the further education sector to the governing body of another maintained school or institution in the further education sector;
    - (iii) the governing body of a maintained school or institution in the further education sector to a local authority;
    - (iv) a local authority to the governing body of a maintained school or institution in the further education sector.
- (2) In this section, a reference to the governing body of a maintained school or an institution in the further education sector is to the governing body of a school or institution in Wales.

VALID FROM 01/09/2021

#### *Powers to direct governing bodies of maintained schools*

### **38 Local authority power to direct governing bodies of maintained schools**

Any power of a local authority under this Chapter to direct the governing body of a maintained school is not exercisable in respect of a school that the authority does not maintain unless the authority has consulted the local authority that maintains the school about its intention to exercise the power.

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VALID FROM 02/11/2020

### *Additional learning provision for detained persons*

#### **39 Meaning of “detained person” and other key terms**

(1) For the purposes of this Act—

“beginning of the detention” (“*dechrau'r cyfnod o gadw person yn gaeth*”) has the meaning given by section 562J of the Education Act 1996 (c. 56);

“detained person” (“*person sy'n cael ei gadw'n gaeth*”) means a child or young person who is—

- (a) subject to a detention order (within the meaning given by section 562(1A)(a), (2) and (3) of the Education Act 1996), and
- (b) detained in relevant youth accommodation in Wales or England,

and in provisions applying on a person's release includes a person who, immediately before release, was a detained person;

“home authority” (“*awdurdod cartref*”) has the meaning given by section 562J of the Education Act 1996, subject to regulations under subsection (2);

“relevant youth accommodation” (“*llety ieuenctid perthnasol*”) has the meaning given by section 562(1A)(b) of the Education Act 1996.

(2) Regulations may provide for—

- (a) paragraph (a) of the definition of “home authority” in section 562J(1) of the Education Act 1996 (the home authority of a looked after child) to apply with modifications for the purposes of this Part;
- (b) provision in regulations made by the Welsh Ministers under section 562J(4) of the Education Act 1996 to apply with or without modifications for the purposes of this Part.

VALID FROM 01/09/2021

#### **40 Duty to prepare individual development plans for detained persons**

(1) Subsection (2) applies where it is brought to the attention of, or otherwise appears to, a home authority in Wales that—

- (a) a detained person may have additional learning needs, and
- (b) an individual development plan is not being kept by a local authority under section 42.

(2) The authority must—

- (a) decide whether the detained person has additional learning needs, and
- (b) if it decides that the detained person has additional learning needs, decide in accordance with regulations under section 46 whether it will be necessary for an individual development plan to be maintained for the detained person when he or she is released from detention to meet the detained person's reasonable needs for education or training.

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- (3) Before the home authority makes its decision it must invite the person in charge of the relevant youth accommodation to participate in the decision and, if needed, the preparation of an individual development plan.
- (4) If the home authority decides that the detained person does not have additional learning needs or that it will not be necessary for an individual development plan to be maintained for the detained person when he or she is released from detention, it must notify the detained person, the parent of a detained person who is a child and the person in charge of the relevant youth accommodation of the decision and the reasons for the decision.
- (5) If the home authority decides that a detained person has additional learning needs and that it will be necessary for an individual development plan to be maintained for the detained person when he or she is released from detention, it must—
  - (a) prepare an individual development plan for the detained person, and
  - (b) give a copy of the plan to the detained person, the parent of a detained person who is a child and the person in charge of the relevant youth accommodation.
- (6) If the home authority prepares an individual development plan, it must—
  - (a) decide whether additional learning provision should be provided to the detained person in Welsh, and
  - (b) if it decides that a particular kind of additional learning provision should be provided in Welsh, specify in the plan that it should be provided in Welsh.
- (7) If it will not be possible to meet the reasonable needs of the detained person for additional learning provision when he or she is released from detention unless the home authority also secures provision of the kind mentioned in subsection (8), the authority must include a description of that other provision in the plan.
- (8) The kinds of provision are—
  - (a) a place at a particular school or other institution;
  - (b) board and lodging.
- (9) The duty in subsection (7)—
  - (a) does not apply to a place at a particular school or other institution that is not a maintained school in Wales if the person or body responsible for admissions to the school or other institution does not consent;
  - (b) is subject to the duties in sections 55, 56(3) and 59.

VALID FROM 01/09/2021

#### **41 Circumstances in which the duty in section 40(2) does not apply**

- (1) The duty in section 40(2) does not apply if either of the circumstances in subsection (2) apply.
- (2) The circumstances are—
  - (a) the detained person is a young person who does not consent to a decision under section 40(2)(a) being made or to a plan being prepared;



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- (b) the home authority has previously decided whether the detained person has additional learning needs and it is satisfied that—
  - (i) the detained person's needs have not changed materially since that decision was made, and
  - (ii) there is no new information that materially affects a decision under section 40(2)(a) or (b).

VALID FROM 01/09/2021

#### 42 Duty to keep individual development plans for detained persons

- (1) This section applies where an individual development plan was being maintained for a detained person immediately before the beginning of his or her detention by—
  - (a) the governing body of a maintained school in Wales or an institution in the further education sector in Wales under section 12, or
  - (b) a local authority in Wales under section 14 or 19.
- (2) This section also applies where an individual development plan is prepared under section 40(5).
- (3) If the home authority for the detained person is a home authority in Wales, the home authority must keep the individual development plan for the detained person during his or her detention in relevant youth accommodation.
- (4) But the duty in subsection (3) does not apply where the detained person is a young person who does not consent to the individual development plan being kept.
- (5) Nor does the duty in subsection (3) apply in relation to an individual development plan that was being maintained by the governing body of a maintained school or an institution in the further education sector, or by a local authority other than the home authority, unless the fact that the plan was being maintained is brought to the attention of the home authority.
- (6) The home authority must inform the detained person and the parent of a detained person who is a child that it is keeping an individual development plan while the person is detained in relevant youth accommodation.
- (7) The home authority must give a copy of the individual development plan to the person in charge of the relevant youth accommodation.
- (8) Where a home authority keeps an individual development plan, it must—
  - (a) arrange for appropriate additional learning provision to be provided to the detained person, and
  - (b) if the plan specifies that the additional learning provision should be provided in Welsh, take all reasonable steps to secure that the appropriate additional learning provision is provided to the detained person in Welsh.
- (9) In this section “appropriate additional learning provision” is—
  - (a) the additional learning provision specified in the individual development plan,
  - (b) if it appears to the home authority that it is not practicable for the additional learning provision specified in the plan to be provided, educational

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provision corresponding as closely as possible to that additional learning provision, or

- (c) if it appears to the home authority that the additional learning provision specified in the plan is no longer appropriate for the detained person, additional learning provision which the home authority considers appropriate.

VALID FROM 01/09/2021

#### **43 Release of a detained person**

- (1) Subsection (2) applies where—
- (a) a detained person is released,
  - (b) on the release date, a local authority in Wales is responsible for the person, and
  - (c) an individual development plan was kept for the person under section 42 during the detention.
- (2) The local authority must maintain the plan; and the plan is to be treated as maintained under section 14 for the purposes of this Part, with any provision described in the plan in accordance with section 19(4) or 40(7) being treated as described in accordance with section 14(6).
- (3) But subsection (4) applies instead of subsection (2) if—
- (a) the person who has been released is a child, and
  - (b) immediately on release, the child is looked after by a local authority.
- (4) The local authority that looks after the child must maintain the plan; and the plan is to be treated as maintained under section 19 for the purposes of this Part, with any provision described in the plan in accordance with section 14(6) or 40(7) being treated as described in accordance with section 19(4).

VALID FROM 01/09/2021

#### **44 Certain provisions of Part 2 not to apply to children and young persons in detention**

- (1) The duties imposed by the provisions in subsection (2) on the following bodies cease to apply in relation to a detained person from the beginning of that person's detention—
- (a) the governing body of a maintained school;
  - (b) the governing body of an institution in the further education sector;
  - (c) a local authority.
- (2) The provisions are—
- (a) section 11 (governing body's duty to decide);
  - (b) section 12 (governing body's duty to prepare and maintain a plan);
  - (c) section 13 (local authority's duty to decide);

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- (d) section 14 (local authority's duty to prepare and maintain a plan);
  - (e) section 26 (local authority's duty to reconsider governing body's decision);
  - (f) section 30(2) (governing body's duty to refer where child or young person registered or enrolled at more than one institution);
  - (g) section 47(2) (governing body's duty to take all reasonable steps to secure additional learning provision).
- (3) The duties imposed by the provisions in subsection (4) on the governing body of a maintained school or on the governing body of an institution in the further education sector do not apply in relation to a child or young person at any time while that child or young person is—
- (a) subject to a detention order (within the meaning given by section 562(1A) (a), (2) and (3) of the Education Act 1996), and
  - (b) detained in accommodation other than relevant youth accommodation in Wales or England.
- (4) The provisions are—
- (a) section 11 (duty to decide);
  - (b) section 12 (duty to prepare and maintain a plan);
  - (c) section 17 (duty to refer a matter to a local authority that looks after a child);
  - (d) section 30(2) (duty to refer where child or young person registered or enrolled at more than one institution);
  - (e) section 47(2) (duty to take all reasonable steps to secure additional learning provision).
- (5) Subsection (6) applies until section 49 of the Apprenticeships, Skills, Children and Learning Act 2009 (c. 22) (application of provisions to persons detained in relevant youth accommodation) comes fully into force in relation to Wales.
- (6) Section 562 of the Education Act 1996 (c. 56) is to have effect for the purpose of the powers and duties conferred or imposed by or under this Part on local authorities as though section 49 of the Apprenticeships, Skills, Children and Learning Act 2009 (c. 22) were fully in force in relation to Wales.
- (7) For the purposes of this Part, the reference in subsection (1) of section 562 of the Education Act 1996 (c. 56) to relevant youth accommodation is to have effect as though it were a reference to relevant youth accommodation in Wales or England.

#### **45 Detention under Part 3 of the Mental Health Act 1983**

- (1) Subsection (2) applies where, because of section 44 or section 562 of the Education Act 1996 (c.56), powers or duties conferred or imposed by or under this Part on local authorities or on the governing bodies of maintained schools or institutions in the further education sector do not apply in relation to a child or young person who is—
- (a) subject to a detention order (within the meaning given by section 562(1A) (a), (2) and (3) of the Education Act 1996), and
  - (b) detained in a hospital under Part 3 of the Mental Health Act 1983 (c. 20).
- (2) Regulations may provide for those powers or duties to be applied, with or without modification, in relation to the child or young person.

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VALID FROM 02/11/2020

### *Necessity of plans*

#### **46 Regulations about deciding whether an individual development plan is necessary**

- (1) Regulations under this section apply to the following provisions and decisions made under them—
- (a) section 14(1)(c)(ii);
  - (b) section 31(6)(b);
  - (c) section 40(2)(b).
- (2) Regulations may—
- (a) specify factors to be taken into account in assessing whether it is necessary to prepare or maintain a plan;
  - (b) specify circumstances in which it is, or is not, necessary to prepare or maintain a plan;
  - (c) provide for what are, and what are not, to be considered reasonable needs for education or training (whether in specifying factors, specifying circumstances or otherwise);
  - (d) make further provision about the definition of “education or training”;
  - (e) make provision about the process for making decisions.

VALID FROM 02/11/2020

## **CHAPTER 3**

### **SUPPLEMENTARY FUNCTIONS**

#### *Functions relating to securing additional learning provision*

#### **47 Duty to take all reasonable steps to secure additional learning provision**

- (1) Subsection (2) applies to a child or young person—
- (a) who has additional learning needs,
  - (b) for whom an individual development plan is not being maintained, and
  - (c) who is a registered pupil at a maintained school in Wales or an enrolled student at an institution in the further education sector in Wales.
- (2) The governing body of the maintained school or institution in the further education sector (as the case may be) must, in exercising its functions in relation to the school or institution, take all reasonable steps to secure that the additional learning provision called for by the child's or young person's additional learning needs is made.

**Status:** Point in time view as at 25/01/2018. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Additional Learning Needs and Education Tribunal (Wales) Act 2018 is up to date with all changes known to be in force on or before 28 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (3) The Code under section 4 must include guidance about the exercise of the function in subsection (2) during the period in which an individual development plan is being prepared for a child or young person but has not been given.
- (4) Subsection (5) applies to a child or young person—
  - (a) for whom an individual development plan is being maintained by a local authority, and
  - (b) who is a registered pupil at a maintained school in Wales or an enrolled student at an institution in the further education sector in Wales.
- (5) The governing body of the maintained school or institution in the further education sector (as the case may be) must take all reasonable steps to help the local authority that maintains the plan to secure the additional learning provision specified in it.

VALID FROM 01/09/2021

#### **48 Duty to admit children to named maintained schools**

- (1) Subsection (2) applies if a maintained school in Wales is named in an individual development plan prepared or maintained for a child by a local authority for the purpose of securing admission of the child to the school.
- (2) The governing body of the school must admit the child.
- (3) Before naming a school under this section, the local authority must consult—
  - (a) the governing body of the school, and
  - (b) in the case of a maintained school where neither the local authority nor its governing body is the admissions authority for the school, the local authority for the area in which the school is located.
- (4) A local authority may only name a maintained school in an individual development plan for the purpose of securing admission of a child if—
  - (a) the authority is satisfied that the child's interest requires the additional learning provision identified in his or her plan to be made at the school, and
  - (b) it is appropriate for the child to be provided with education or training at the school.
- (5) Subsection (2) has effect despite any duty imposed on the governing body of a school by section 1(6) of the School Standards and Framework Act 1998 (c. 31) (limits on infant class sizes).
- (6) Subsection (2) does not affect any power to exclude a pupil from a school.
- (7) In this section, “admissions authority” has the meaning given by section 88 of the School Standards and Framework Act 1998.

**Status:** Point in time view as at 25/01/2018. This version of this Act contains provisions that are not valid for this point in time.

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VALID FROM 01/09/2021

#### **49 No power to charge for provision secured under this Part**

- (1) No charge may be made by a governing body or a local authority to a child, a child's parent or a young person for anything that the governing body or local authority secures for a child or young person under this Part.
- (2) A child, a child's parent or a young person is not liable to pay any charge made by a person for anything that a governing body or local authority secures for a child or young person under this Part.
- (3) In this section, “parent” does not include a parent who is not an individual.
- (4) Schedule 1 to the Social Services and Well-being (Wales) Act 2014 (anaw 4) is amended as follows.
- (5) In paragraph 1, in sub-paragraph (1), after “other than in the cases mentioned in sub-paragraph (8)” insert “, and in cases where charging is prohibited by or under an enactment”.

VALID FROM 01/09/2021

#### **50 Welsh Ministers' duties to secure post-16 education and training**

- (1) The Learning and Skills Act 2000 (c. 21) is amended as follows.
- (2) In section 31(3) (education and training for persons aged 16 to 19), after paragraph (c) insert—
  - “(cc) take account of the education and training that is required in order to ensure that employees and potential employees are available who are able to deliver additional learning provision in Welsh;
  - (cd) take account of the education and training that is required in order to ensure that facilities are available for assessing through the medium of Welsh whether persons have additional learning needs;”.
- (3) In section 32(3) (education and training for persons over 19), after paragraph (c) insert—
  - “(cc) take account of the education and training that is required in order to ensure that employees and potential employees are available who are able to deliver additional learning provision in Welsh;
  - (cd) take account of the education and training that is required in order to ensure that facilities are available for assessing through the medium of Welsh whether persons have additional learning needs;”.
- (4) In section 41 (persons with learning difficulties)—
  - (a) in the heading, for “learning difficulties” substitute “ additional learning needs ”;
  - (b) in subsection (1)—

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(i) in paragraph (a), for “learning difficulties, and” substitute “additional learning needs;”;

(ii) for paragraph (b) substitute—

“(b) to the desirability of facilities being available which would assist the discharge of duties under the Additional Learning Needs and Education Tribunal (Wales) Act 2018.”;

(c) omit subsections (2), (3) and (4);

(d) for subsection (5) substitute—

“(5A) In this Part, “additional learning needs” has the meaning given by section 2 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018, and “additional learning provision” has the meaning given by section 3 of that Act.”;

(e) omit subsection (6).

(5) Omit section 140 (assessments relating to learning difficulties).

*Additional learning provision in particular kinds of school or other institution*

VALID FROM 01/09/2021

**51 Duty to favour education for children at mainstream maintained schools**

(1) A local authority exercising functions under this Part in relation to a child of compulsory school age with additional learning needs who should be educated in a school must secure that the child is educated in a mainstream maintained school unless any of the circumstances in paragraphs (a) to (c) of subsection (2) apply.

(2) The circumstances are—

(a) that educating the child in a mainstream maintained school is incompatible with the provision of efficient education for other children;

(b) that educating the child otherwise than in a mainstream maintained school is appropriate in the best interests of the child and compatible with the provision of efficient education for other children;

(c) that the child's parent wishes the child to be educated otherwise than in a mainstream maintained school.

(3) A local authority may not rely on the exception in subsection (2)(a) unless there are no reasonable steps the authority could take to prevent the incompatibility.

(4) Where a child's parent wishes his or her child to be educated otherwise than in a mainstream maintained school, subsection (2)(c) does not require a local authority to secure that the child is educated otherwise than in a mainstream maintained school.

(5) Subsection (1) does not prevent a child from being educated in—

(a) an independent school, or

(b) a school approved under section 342 of the Education Act 1996 (c. 56), if the cost is met otherwise than by a local authority.

**Status:** Point in time view as at 25/01/2018. This version of this Act contains provisions that are not valid for this point in time.

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VALID FROM 01/09/2021

## 52 Children with additional learning needs in mainstream maintained schools

- (1) Where a child with additional learning needs is being educated in a mainstream maintained school in Wales, those concerned with making additional learning provision for the child must secure that the child engages in the activities of the school together with children who do not have additional learning needs.
- (2) The duty in subsection (1) applies only so far as is reasonably practicable and compatible with—
  - (a) the child receiving the additional learning provision called for by his or her additional learning needs,
  - (b) the provision of efficient education for the children with whom he or she will be educated, and
  - (c) the efficient use of resources.

VALID FROM 01/09/2021

## 53 Additional learning provision otherwise than in schools

- (1) A local authority may arrange for the additional learning provision described in an individual development plan it maintains for a child, or any part of that additional learning provision, to be made otherwise than in a school.
- (2) But a local authority may only do so if it is satisfied that it would be inappropriate for the additional learning provision to be made in a school.

## 54 Amendments to registration requirements for independent schools in Wales

- (1) The Education Act 2002 (c. 32) is amended as follows.
- (2) In section 158 (registers), after subsection (3) insert—
  - “(4) The Welsh Ministers must publish a list of the schools included in the register of independent schools in Wales, as amended from time to time.
  - (5) If the Welsh Ministers have been provided with the necessary information by the proprietor of the school, the published list must specify the type or types of additional learning provision made by a school on the list for pupils with additional learning needs (if any).”
- (3) In section 160 (applications for registration), in subsection (2), for paragraph (e) substitute—
  - “(e) the type or types of additional learning provision made by the school for pupils with additional learning needs (if any).”



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VALID FROM 01/09/2021

## **55 Conditions applicable to securing additional learning provision at independent schools**

- (1) A local authority may not exercise its functions under this Part to secure that a child or young person is educated at an independent school in Wales unless—
  - (a) the school is included in the register of independent schools in Wales, and
  - (b) the local authority is satisfied that the school can make the additional learning provision described in the child's or young person's individual development plan.
- (2) A local authority may not exercise its functions under this Part to secure that a child or young person is educated at an independent educational institution in England unless—
  - (a) the institution is included in the register of independent educational institutions in England (kept under section 95 of the Education and Skills Act 2008 (c. 25) (“the 2008 Act”)), and
  - (b) the local authority is satisfied that the institution can make the additional learning provision described in the child's or young person's individual development plan.
- (3) In this section, “independent educational institution” has the meaning given by Chapter 1 of Part 4 of the 2008 Act.

## **56 List of independent special post-16 institutions**

- (1) The Welsh Ministers must establish and maintain a list of independent special post-16 institutions in Wales and England (“the list”) for the purpose of subsection (3).
- (2) The Welsh Ministers must publish the list, as amended from time to time.
- (3) A local authority may only exercise its functions under this Part to secure education or training for a child or young person at an independent special post-16 institution in Wales or England if the institution is included in the list, subject to any prescribed exemptions.
- (4) The Welsh Ministers may only include an institution in the list on application by its proprietor.
- (5) Regulations must provide for—
  - (a) the contents of the list;
  - (b) requirements to be complied with as a condition of being included in the list;
  - (c) requirements to be complied with while the institution is listed (including requirements for approval by the Welsh Ministers of arrangements at the institution and change of such arrangements);
  - (d) removal of the institution from the list;
  - (e) rights of appeal to the First-tier Tribunal for proprietors of institutions against decisions—
    - (i) to refuse to list an institution;
    - (ii) to remove an institution from the list;

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(iii) not to approve or not to approve a change to arrangements at the institution.

(6) In this section, “independent special post-16 institution” means an institution which provides education or training for persons over compulsory school age and is specially organised to provide such education or training for persons with additional learning needs, and which is not—

- (a) an institution within the further education sector,
- (b) an independent school included in the register of independent schools in Wales (kept under section 158 of the Education Act 2002 (c. 32)),
- (c) an independent educational institution (within the meaning of Chapter 1 of Part 4 of the Education and Skills Act 2008 (c. 25)), which has been included in the register of independent educational institutions in England (kept under section 95 of that Act), or
- (d) a 16 to 19 Academy.

VALID FROM 01/09/2021

#### **57 Abolition of approval of non-maintained special schools in Wales**

- (1) The Education Act 1996 (c. 56) is amended as follows.
- (2) In section 337A (interpretation of Chapter), omit the definition of “the appropriate national authority”.
- (3) In section 342 (approval of non-maintained special schools)—
  - (a) in subsection (1)—
    - (i) for “appropriate national authority” substitute “ Secretary of State ”, and
    - (ii) after “school”, the first time it appears, insert “ in England ”;
  - (b) in subsection (5)(a), for “appropriate national authority” substitute “ Secretary of State ”;
  - (c) omit subsection (6).

VALID FROM 01/09/2021

#### **58 Abolition of approval of independent schools in Wales**

Section 347 of the Education Act 1996 (c. 56) (approval of independent schools as suitable for admission of children with statements of special educational needs) is repealed.

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VALID FROM 01/09/2021

## 59 Additional learning provision outside England and Wales

A local authority may exercise its functions under this Part to make arrangements for a child or young person with additional learning needs to attend an institution outside England and Wales, but only if the institution is organised to make the additional learning provision described in the child's or young person's individual development plan.

### *Additional learning needs co-ordinating officers*

## 60 Additional learning needs co-ordinator

- (1) The duty in subsection (2) applies to—
  - (a) the governing body of a school in Wales that is—
    - (i) a community, foundation or voluntary school,
    - (ii) a maintained nursery school, or
    - (iii) a pupil referral unit;
  - (b) the governing body of an institution in the further education sector in Wales.
- (2) The governing body must designate a person, or more than one person, to have responsibility for co-ordinating additional learning provision for pupils or students (as the case may be) with additional learning needs.
- (3) A person designated under this section is to be known as an “additional learning needs co-ordinator”.
- (4) Regulations may—
  - (a) require governing bodies to ensure that additional learning needs co-ordinators have prescribed qualifications or prescribed experience (or both);
  - (b) confer functions on additional learning needs co-ordinators in relation to provision for pupils or students (as the case may be) with additional learning needs.
- (5) In subsections (2) and (4)(b), “students” means students enrolled at the institution in the further education sector.

VALID FROM 04/01/2021

## 61 Designated education clinical lead officer

- (1) A Local Health Board must designate an officer to have responsibility for co-ordinating the Board's functions in relation to children and young people with additional learning needs.
- (2) A Local Health Board may only designate an officer who is—
  - (a) a registered medical practitioner, or
  - (b) a registered nurse or another health professional.

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- (3) A Local Health Board may only designate an officer it considers to be suitably qualified and experienced in the provision of health care for children and young people with additional learning needs.
- (4) An officer designated under this section is to be known as a “designated education clinical lead officer”.

VALID FROM 04/01/2021

## **62 Early years additional learning needs lead officer**

- (1) A local authority must designate an officer to have responsibility for co-ordinating the authority's functions under this Part in relation to children under compulsory school age who are not attending maintained schools.
- (2) An officer designated under this section is to be known as an “early years additional learning needs lead officer”.

### *Miscellaneous functions*

VALID FROM 01/09/2021

## **63 Duty to keep additional learning provision under review**

- (1) A local authority must keep under review the arrangements made by the authority and by the governing bodies of maintained schools in its area for children and young people who have additional learning needs.
- (2) The local authority must consider the extent to which the arrangements referred to in subsection (1) are sufficient to meet the additional learning needs of the children and young people for whom it is responsible, having regard to the additional learning provision that may reasonably be arranged by others.
- (3) The duty in subsection (2) includes a duty to consider—
  - (a) the sufficiency of additional learning provision in Welsh;
  - (b) the size and capability of the workforce available.
- (4) If a local authority considers that the arrangements referred to in subsection (1) (including the availability of additional learning provision in Welsh) are not sufficient, it must take all reasonable steps to remedy the matter.
- (5) In exercising its functions under this section, the local authority must consult such persons, and at such times, as they consider appropriate.

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VALID FROM 01/09/2021

#### **64 Duty of health bodies to notify parents etc.**

- (1) This section applies where a health body mentioned in subsection (2), in the course of exercising its functions in relation to a child who is under compulsory school age and for whom a local authority is responsible, forms the opinion that the child has, or probably has, additional learning needs.
- (2) The health bodies are—
  - (a) a Local Health Board;
  - (b) an NHS trust;
  - (c) a clinical commissioning group;
  - (d) an NHS foundation trust;
  - (e) a Special Health Authority.
- (3) The health body must inform the child's parent of its opinion and of its duty in subsection (4).
- (4) After giving the parent an opportunity to discuss the health body's opinion with an officer of the body, the health body must bring it to the attention of the local authority that is responsible for the child or, if the child is looked after, to the attention of the local authority that looks after the child, if the health body is satisfied that doing so would be in the best interests of the child.
- (5) If the health body is of the opinion that a particular voluntary organisation is likely to be able to give the parent advice or other assistance in connection with any additional learning needs that the child may have, it must inform the parent accordingly.

#### **65 Duties to provide information and other help**

- (1) Subsection (2) applies if a local authority requests a person mentioned in subsection (4) to exercise the person's functions to provide the authority with information or other help, which it requires for the purpose of exercising its functions under this Part.
- (2) The person must comply with the request unless the person considers that doing so would—
  - (a) be incompatible with the person's own duties, or
  - (b) otherwise have an adverse effect on the exercise of the person's functions.
- (3) A person that decides not to comply with a request under subsection (1) must give the local authority that made the request written reasons for the decision.
- (4) The persons are—
  - (a) another local authority;
  - (b) a local authority in England;
  - (c) the governing body of a maintained school in Wales or England;
  - (d) the governing body of an institution in the further education sector in Wales or England;

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- (e) the proprietor of an Academy;
- (f) a youth offending team for an area in Wales or England;
- (g) a person in charge of relevant youth accommodation in Wales or England;
- (h) a Local Health Board;
- (i) an NHS trust;
- (j) the National Health Service Commissioning Board;
- (k) a clinical commissioning group;
- (l) an NHS foundation trust;
- (m) a Special Health Authority.

- (5) Regulations may provide that, where a person is under a duty to comply with a request under this section, the person must comply with the request within a prescribed period, unless a prescribed exception applies.

VALID FROM 01/09/2021

#### **66 Right of local authority to access premises of schools and other institutions**

- (1) This section applies where a local authority maintains an individual development plan under this Part for a child or young person.
- (2) A person authorised by the local authority is entitled to have access at any reasonable time to any place where education or training is provided for the child or young person at the premises of an institution listed in subsection (3) if access to the place is necessary for the purpose of exercising the local authority's functions under this Part.
- (3) The institutions are—
- (a) an independent school in Wales or England;
  - (b) a maintained school in the area of another local authority in Wales or England;
  - (c) an institution within the further education sector in Wales or England;
  - (d) an Academy;
  - (e) a non-maintained special school;
  - (f) an independent special post-16 institution included in the list under section 56.

#### **67 Provision of goods or services in relation to additional learning provision**

- (1) Regulations may provide for a local authority to supply goods or services to—
- (a) a person exercising functions under this Part, or
  - (b) a person making additional learning provision in connection with the exercise of functions under this Part.
- (2) The regulations may, among other things, provide for the terms and conditions on which goods and services may be supplied.

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VALID FROM 02/11/2020

## CHAPTER 4

### AVOIDING AND RESOLVING DISAGREEMENTS

VALID FROM 01/09/2021

#### *Local authority arrangements*

#### **68 Arrangements for the avoidance and resolution of disagreements**

- (1) A local authority must make arrangements with a view both to avoiding and to resolving disagreements between—
  - (a) education bodies, and
  - (b) children or young people for whom the authority is responsible, or in the case of such children, their parents,about the exercise by education bodies of their functions under this Part.
- (2) A local authority must make arrangements with a view both to avoiding and to resolving disagreements between—
  - (a) proprietors of relevant institutions, and
  - (b) children or young people who have additional learning needs for whom the authority is responsible and, in the case of such children, their parents,about the additional learning provision made for children or young people.
- (3) The arrangements under subsections (1) and (2) must include provision for parties to a disagreement to access help in resolving it from persons who are independent of the parties.
- (4) A local authority must promote the use of the arrangements made under this section.
- (5) A local authority must take reasonable steps to inform children, their parents and young people that arrangements made under this section do not affect any rights they may have to appeal to the Education Tribunal for Wales.
- (6) In this section, an “education body” means any of the following—
  - (a) the governing body of a maintained school;
  - (b) the governing body of an institution in the further education sector;
  - (c) a local authority.
- (7) In this section, “relevant institution” means—
  - (a) a maintained school in Wales or England;
  - (b) an institution in the further education sector in Wales or England;
  - (c) an independent special post-16 institution on the list maintained under section 56;
  - (d) an independent school in Wales or England;
  - (e) a non-maintained special school;

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(f) an Academy.

(8) For the purposes of this section and section 69 a local authority is also responsible for children it looks after who are not in its area.

## **69 Independent advocacy services**

(1) A local authority must—

- (a) make arrangements for the provision of independent advocacy services for the children and young people for whom it is responsible;
- (b) refer any child or young person for whom it is responsible who requests independent advocacy services to an independent advocacy service provider;
- (c) refer any person who is a case friend for a child for whom it is responsible and who requests independent advocacy services to an independent advocacy service provider.

(2) In this section “independent advocacy services” means advice and assistance (by way of representation or otherwise) to a child, a young person or a case friend—

- (a) making, or intending to make, an appeal to the Education Tribunal for Wales under this Part,
- (b) considering whether to appeal to the Tribunal, or
- (c) taking part in or intending to take part in arrangements made under section 68.

(3) In making arrangements under this section, a local authority must have regard to the principle that any services provided under the arrangements must be independent of any person who is—

- (a) the subject of an appeal to the Tribunal, or
- (b) involved in investigating or adjudicating on such an appeal.

(4) The arrangements may include provision for the local authority to make payments to, or in relation to, any person carrying out functions in accordance with the arrangements made under this section.

### *Appeals and applications to the Tribunal*

VALID FROM 01/09/2021

## **70 Appeal and application rights**

(1) Subsection (2) applies to—

- (a) decisions of the governing body of an institution in the further education sector in Wales or a local authority;
- (b) individual development plans prepared or maintained by the governing body of an institution in the further education sector in Wales or a local authority;
- (c) individual development plans revised by a local authority under section 27(6).



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- (2) A child or young person and, in the case of a child, the child's parent, may appeal to the Education Tribunal for Wales against the following matters—
- (a) a decision by the governing body of an institution in the further education sector in Wales under section 11 or a local authority under section 13, 18 or 26 as to whether a person has additional learning needs;
  - (b) in the case of a young person, a decision by a local authority under section 14(1)(c)(ii) as to whether it is necessary to prepare and maintain an individual development plan;
  - (c) the description of a person's additional learning needs in an individual development plan;
  - (d) the additional learning provision in an individual development plan or the fact that additional learning provision is not in a plan (including whether the plan specifies that additional learning provision should be provided in Welsh);
  - (e) the provision included in an individual development plan under section 14(6) or 19(4) or the fact that provision under those sections is not in the plan;
  - (f) the school named in an individual development plan for the purpose of section 48;
  - (g) if no school is named in an individual development plan for the purpose of section 48, that fact;
  - (h) a decision under section 27 not to revise an individual development plan;
  - (i) a decision under section 28 not to take over responsibility for an individual development plan following a request to consider doing so;
  - (j) a decision to cease to maintain an individual development plan under section 31(5) or 31(6);
  - (k) a decision under section 32(2) that a governing body of a maintained school should cease to maintain a plan;
  - (l) a refusal to decide a matter on the basis that section 11(3)(b), 13(2)(b), 18(2)(b) or 29(2)(a) applies (no material change in needs and no new information that materially affects the decision).
- (3) A child or a child's parent may apply to the Education Tribunal for Wales for a declaration that the child either does or does not have the capacity to understand—
- (a) information or documents that must be given to a child under this Part, or
  - (b) what it means to exercise the rights conferred on a child by this Part.
- (4) The exercise of rights under this section is subject to—
- (a) provision made by regulations under sections 74, 75, 83 and 85(8);
  - (b) section 85(4).

VALID FROM 01/09/2021

## 71 Decisions on appeals and applications under section 70

- (1) On appeal under section 70(2), the Education Tribunal for Wales may—
- (a) dismiss the appeal;

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- (b) order that a person has, or does not have, additional learning needs of a kind specified in the order;
  - (c) order the governing body of an institution in the further education sector in Wales or a local authority to prepare an individual development plan;
  - (d) order the governing body of an institution in the further education sector in Wales or a local authority to revise an individual development plan as specified in the order;
  - (e) order a governing body of a maintained school in Wales or an institution in the further education sector in Wales or local authority to continue to maintain an individual development plan (with or without revisions);
  - (f) order a local authority to take over responsibility for maintaining an individual development plan;
  - (g) order a governing body of an institution in the further education sector in Wales or local authority to review an individual development plan;
  - (h) remit the case to the governing body of an institution in the further education sector in Wales or local authority responsible for the matter for it to reconsider whether, having regard to any observations made by the Tribunal, it is necessary for a different decision to be made or different action to be taken.
- (2) On application under section 70(3) in respect of a child, the Education Tribunal for Wales may declare that the child either does or does not have the capacity to understand—
- (a) information or documents that must be given to a child under this Part, or
  - (b) what it means to exercise the rights conferred on a child by this Part.

VALID FROM 01/09/2021

## 72 Appeal rights: detained persons

- (1) Subsection (2) applies to—
- (a) decisions of a home authority in Wales under section 40;
  - (b) individual development plans kept by a home authority under section 42.
- (2) A detained person and, in the case of a detained person who is a child, the detained person's parent, may appeal to the Education Tribunal for Wales against the following matters—
- (a) a decision of the home authority as to whether a detained person has additional learning needs;
  - (b) a decision of the home authority as to whether it will be necessary for an individual development plan to be maintained for a detained person when he or she is released from detention;
  - (c) the description of a person's additional learning needs in an individual development plan;
  - (d) the additional learning provision in an individual development plan or the fact that additional learning provision is not in a plan (including whether the plan specifies that additional learning provision should be provided in Welsh);

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- (e) the provision included in an individual development plan under section 40(7) or the fact that provision under that section is not in the plan;
  - (f) the school named in an individual development plan for the purpose of section 48;
  - (g) if no school is named in an individual development plan for the purpose of section 48, that fact;
  - (h) a refusal to make a decision under section 40(2) on the basis that section 41(2)(b) applies (no material change in needs and no new information that materially affects the decision).
- (3) The exercise of rights under this section is subject to—
- (a) provision made by regulations under sections 74, 75, 83 and 85(8);
  - (b) section 85(4).

VALID FROM 01/09/2021

### **73 Decisions on appeals under section 72**

On appeal under section 72, the Education Tribunal for Wales may—

- (a) dismiss the appeal;
- (b) order that a detained person has or does not have additional learning needs of a kind specified in the order;
- (c) order a home authority to prepare an individual development plan;
- (d) order a home authority to revise an individual development plan as specified in the order;
- (e) remit the case to the home authority responsible for the matter for it to reconsider whether, having regard to any observations made by the Tribunal, it is necessary for a different decision to be made or different action to be taken.

### **74 Regulations about appeals and applications**

- (1) Regulations may make further provision about appeals and applications to the Education Tribunal for Wales under this Part, including, for example, provision—
- (a) about other matters relating to an individual development plan against which appeals may be brought;
  - (b) about making and determining appeals or applications;
  - (c) conferring further powers on the Tribunal on determining appeals or applications;
  - (d) for unopposed appeals or applications.
- (2) Regulations under subsection (1)(c) may include provision conferring power on the Tribunal, on determining an appeal against a matter or an application, to make recommendations in respect of other matters (including matters against which no appeal or application may be brought).

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## 75 Regulations about procedure

- (1) Regulations may make provision about—
  - (a) the initiation of an appeal or application under this Part;
  - (b) the proceedings of the Education Tribunal for Wales on an appeal or application under this Part.
- (2) Regulations under subsection (1) may include provision—
  - (a) as to the period within which, and the manner in which, appeals or applications are to be commenced;
  - (b) where the jurisdiction of the Tribunal is being exercised by more than one tribunal—
    - (i) for determining by which tribunal any appeal or application is to be heard, and
    - (ii) for the transfer of proceedings from one tribunal to another;
  - (c) for enabling any functions relating to matters preliminary or incidental to an appeal or application to be performed by the President or by the legal chair;
  - (d) for hearings to be conducted in the absence of a member other than the legal chair;
  - (e) as to the persons who may appear on behalf of the parties;
  - (f) for granting such rights to disclosure or inspection of documents or to further particulars as may be granted by the county court;
  - (g) requiring persons to attend to give evidence and produce documents;
  - (h) for authorising the administration of oaths to witnesses;
  - (i) for the determination of appeals or applications without a hearing in prescribed circumstances;
  - (j) as to withdrawal of appeals or applications;
  - (k) as to the award of costs or expenses;
  - (l) for assessing or otherwise settling any costs or expenses (and, in particular, for enabling such costs or expenses to be assessed in the county court);
  - (m) for the registration and proof of decisions and orders;
  - (n) for enabling the Tribunal to review its decisions, or revoke or vary its orders, in prescribed circumstances;
  - (o) for enabling the Tribunal to stay proceedings;
  - (p) for adding and substituting parties;
  - (q) for enabling appeals or applications by different persons to be dealt with together;
  - (r) for an appeal or application under this Part to be heard, in circumstances prescribed in the regulations, with a claim under Chapter 1 of Part 6 of the Equality Act 2010 (c. 15).
- (3) Proceedings before the Tribunal must be held in private, except in prescribed circumstances.
- (4) Part 1 of the Arbitration Act 1996 (c. 23) does not apply to any proceedings before the Tribunal but regulations may make provision corresponding to any provision of that Part.

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## 76 NHS Bodies: evidence and Tribunal recommendations

- (1) The Education Tribunal for Wales may, in relation to an appeal under this Part,—
  - (a) exercise its functions to require an NHS body to give evidence about the exercise of the body's functions;
  - (b) make recommendations to an NHS body about the exercise of the body's functions.
- (2) Nothing in subsection (1) affects the generality of the powers to make regulations in sections 74 and 75.
- (3) An NHS body to whom a recommendation has been made by the Tribunal must make a report to the Tribunal before the end of any prescribed period beginning with the date on which the recommendation is made.
- (4) The report under subsection (3) must state –
  - (a) the action that the NHS body has taken or proposes to take in response to the recommendation, or
  - (b) why the NHS body has not taken and does not propose to take any action in response to the recommendation.

## 77 Compliance with orders

- (1) If the Education Tribunal for Wales makes an order under this Part, the governing body or local authority concerned must comply with the order before the end of any prescribed period beginning with the date on which it is made.
- (2) The governing body or local authority concerned must make a report to the Tribunal stating whether and how it has complied with the order before the end of a period of 14 days beginning with the first day after end of the period prescribed under subsection (1).

VALID FROM 01/09/2021

## 78 Power to share documents and other information with the Welsh Ministers

The Education Tribunal for Wales may share with the Welsh Ministers any document or other information in its possession that relates to whether or not an order or recommendation made by the Tribunal under this Part has been or will be complied with or followed.

VALID FROM 01/09/2021

## 79 Offence

- (1) A person commits an offence if without reasonable excuse that person fails to comply with any requirement—
  - (a) in respect of the disclosure or inspection of documents, or
  - (b) to attend to give evidence and produce documents,

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where that requirement is imposed by regulations under section 74 or 75 in relation to an appeal or application under section 70 or 72.

- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

VALID FROM 01/09/2021

## **80 Allowances for attendance at the Education Tribunal for Wales**

The Welsh Ministers may pay allowances for the purpose of or in connection with the attendance of persons at the Education Tribunal for Wales.

VALID FROM 01/09/2021

## **81 Appeals from the Education Tribunal for Wales to the Upper Tribunal**

- (1) A party to any proceedings under section 70 or 72 before the Education Tribunal for Wales may appeal to the Upper Tribunal on any point of law arising from a decision made by the Education Tribunal for Wales in those proceedings.
- (2) An appeal may be brought under subsection (1) only if, on an application made by the party concerned, the Education Tribunal for Wales or the Upper Tribunal has given its permission.
- (3) Section 12 of the Tribunals, Courts and Enforcement Act 2007 (c. 15) (proceedings on appeal to the Upper Tribunal) applies in relation to appeals to the Upper Tribunal under this section as it applies in relation to appeals to it under section 11 of that Act, but as if references to the First-tier Tribunal were references to the Education Tribunal for Wales.

VALID FROM 02/11/2020

## **CHAPTER 5**

### **GENERAL**

#### *Information*

## **82 Regulations about disclosure and use of information**

- (1) Regulations may make provision about disclosure or use of information for the purposes of this Part or for other purposes connected with the education of a child or young person.
- (2) Regulations under subsection (1) may, for example—

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- (a) specify further persons to whom notice of decisions must be given (including, in specified cases, giving notice of decisions without the consent of the person to whom the decision relates or, in the case of a child, without the consent of that person's parent);
- (b) specify further persons to whom written copies of a plan must be provided (including, in specified cases, the provision of copies without the consent of the person to whom the plan relates or, in the case of a child, without the consent of that person's parent);
- (c) make provision about disclosure of plans;
- (d) make provision about the use of information gathered in preparing and maintaining plans.

### *Capacity*

#### **83 Parents and young people lacking capacity**

- (1) The Welsh Ministers must make regulations for the purpose of giving effect to this Part in a case where a parent of a child, or a young person, lacks capacity at the relevant time.
- (2) Regulations under subsection (1) may include provision applying any enactment with modifications, including (for example) provision for—
  - (a) references to a child's parent to be interpreted as references to, or as including references to, a representative of the parent;
  - (b) references to a young person to be interpreted as references to, or as including references to, a representative of the young person, the young person's parent, or a representative of the young person's parent;
  - (c) modifications to have effect despite section 27(1)(g) of the Mental Capacity Act 2005 (c. 9) (which does not permit decisions on discharging parental responsibilities in matters not relating to a child's property to be made on a person's behalf).
- (3) In subsection (1) “the relevant time” means the time at which, under the enactment in question, something is required or permitted to be done by or in relation to the parent or young person.
- (4) The reference in subsection (1) to lacking capacity is to lacking capacity within the meaning of the Mental Capacity Act 2005.
- (5) “Representative”, in relation to a parent or young person, means—
  - (a) a deputy appointed by the Court of Protection under section 16(2)(b) of the Mental Capacity Act 2005 to make decisions on the parent's or young person's behalf in relation to matters within this Part;
  - (b) the donee of a lasting power of attorney (within the meaning of section 9 of that Act) appointed by the parent or young person to make decisions on his or her behalf in relation to matters within this Part;
  - (c) an attorney in whom an enduring power of attorney (within the meaning of Schedule 4 to that Act) created by the parent or young person is vested, where the power of attorney is registered in accordance with paragraphs 4 and 13 of that Schedule or an application for registration of the power of attorney has been made.

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VALID FROM 01/09/2021

## 84 Capacity of children

- (1) Subsections (2) to (7) apply to—
  - (a) the duty to notify or inform a child under section 11(4), 13(3), 18(3), 22(2), 23(10), 24(9), 27(4), 28(4), 28(7), 31(7), 31(8), 31(9), 32(3), 40(4) or 42(6);
  - (b) the duty to give a copy of a plan or a revised plan to a child under section 22(1), 23(11), 24(10) or 40(5);
  - (c) the conditions in paragraphs (a) and (b) of section 20(3) as they apply to a child;
  - (d) the duty to review a plan following a request by a child under section 23(8) or 24(7);
  - (e) the duty to reconsider following a request by a child under section 26(1), 27(1) or 32(1)(b);
  - (f) the duty to decide following a request by a child under section 28(1).
- (2) The condition or duty does not apply if the governing body, local authority or NHS body (as the case may be) considers that the child does not have the capacity to understand the subject matter, unless subsection (3) applies.
- (3) This subsection applies if—
  - (a) in the case of a decision by a governing body of a maintained school, the local authority responsible for the child informs the governing body that it considers that the child does have the capacity to understand the subject matter,
  - (b) a case friend has been appointed for the child under section 85 by order of the Education Tribunal for Wales, subject to provision in or under that section, or
  - (c) a declaration is made by the Education Tribunal for Wales under section 71(2) that the child does have the capacity to understand the subject matter.
- (4) The condition or duty does not apply to a governing body of a maintained school if the local authority responsible for the child informs the governing body that the authority considers that the child does not have the capacity to understand the subject matter.
- (5) Subsection (6) applies where—
  - (a) a governing body of a maintained school considers that a child either does or does not have the capacity to understand the subject matter relating to the exercise of a function to which this section applies, and
  - (b) the child or the child's parent requests the local authority responsible for the child to reconsider the matter.
- (6) The local authority must decide whether the child has the capacity to understand the subject matter.
- (7) The condition or duty does not apply if the Education Tribunal for Wales declares under section 71(2) that the child does not have the capacity to understand.



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- (8) In this section “the capacity to understand the subject matter” means the capacity to understand—
- (a) information or documents that must be given to a child under this Part, or
  - (b) what it means to exercise the rights conferred on a child by this Part.

## 85 Case friends for children who lack capacity

- (1) This section applies to a child who lacks the capacity to understand—
  - (a) information or documents that must be given to a child under this Part, or
  - (b) what it means to exercise the rights conferred on a child by this Part.
- (2) The Education Tribunal for Wales may by order—
  - (a) appoint a person to be a case friend for a child to whom this section applies, or
  - (b) remove the person from being a case friend for the child,
 on the application of any person or on its own initiative, subject to provision in regulations under subsection (8).
- (3) A case friend appointed for a child under this section may—
  - (a) represent and support the child, and
  - (b) take decisions and act on behalf of the child,
 in respect of matters arising under or by virtue of this Part, subject to provision in regulations under subsection (8).
- (4) Where a person is appointed to be a case friend by order of the Tribunal under this section, the rights of a child under the provisions in subsection (5) are to be exercised by the case friend on behalf of the child and the provisions are to be interpreted accordingly.
- (5) The provisions are—
  - (a) sections 11(4), 13(3), 18(3), 22(2), 23(10), 24(9), 27(4), 28(4), 28(7), 31(7), 31(8), 31(9), 32(3), 40(4) and 42(6) (duties to notify or inform);
  - (b) sections 22(1), 23(11), 24(10) and 40(5) (duties to give a copy of a plan or a revised plan);
  - (c) section 20(3) (duty to inform and give an opportunity to discuss);
  - (d) sections 23(8) and 24 (7) (duty to review a plan following a request);
  - (e) sections 26(1), 27(1) and 32(1)(b) (duties to reconsider following a request);
  - (f) section 28(1) (duty to decide following a request);
  - (g) section 70(2) (right of appeal);
  - (h) section 72 (right of appeal: detained persons).
- (6) A case friend appointed under this section must—
  - (a) act fairly and competently,
  - (b) not have any interest adverse to that of the child,
  - (c) ensure that all steps and decisions taken by the case friend are for the benefit of the child, and
  - (d) take account of the child's views, so far as possible.
- (7) In deciding whether to appoint a person to be a case friend, or to remove a person from being a case friend, the Tribunal must have regard, in particular, to whether the

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person is likely to comply (in the case of appointment) or has complied (in the case of removal) with the duty in subsection (6).

- (8) Regulations may make further provision about case friends, including (among other things) provision—
- (a) conferring functions on the Education Tribunal for Wales;
  - (b) conferring functions on case friends;
  - (c) for procedures in relation to case friends;
  - (d) specifying the circumstances in which a person may or may not act as a case friend;
  - (e) specifying the circumstances in which a child must have a case friend;
  - (f) specifying requirements in respect of the conduct of case friends;
  - (g) applying any enactment with or without modifications for the purpose of enabling a case friend to make decisions or act on behalf of a child in respect of matters arising under or by virtue of this Part.

VALID FROM 01/09/2021

*Higher education courses provided by further education institutions*

**86 Students at further education institutions undertaking higher education courses**

- (1) For the purposes of this Part, a higher education student at an institution in the further education sector is not to be treated as enrolled as a student at the institution.
- (2) The duty imposed on a local authority by section 68(2) (arrangements for the avoidance and resolution of disagreements) does not apply in so far as it would otherwise apply in relation to a young person in so far as that person is a higher education student at an institution in the further education sector.
- (3) A person is a higher education student at an institution in the further education sector if the person is undertaking a higher education course provided by the institution and is not also receiving education or training provided by it.
- (4) Where a person enrolled as a student at an institution in the further education sector is receiving education or training provided by it, and is also undertaking a higher education course provided by it, the person is a higher education student at the institution in relation to the higher education course (but is otherwise to be treated as enrolled as a student at the institution).
- (5) In this section, “higher education course” means a course of any description mentioned in Schedule 6 to the Education Reform Act 1988 (c. 40).

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VALID FROM 01/09/2021

*Pupils and students at Welsh institutions who are resident in England*

**87 Application of reconsideration provisions to pupils and students resident in England**

- (1) Subsections (2) and (3) of this section apply to a child or young person who is—
  - (a) in the area of a local authority in England, and
  - (b) a registered pupil at a maintained school in Wales.
- (2) Sections 26, 27, 29 (in its application to sections 26 and 27 only) and 32 apply to the child or young person with the following modifications—
  - (a) in section 26(1)(b), 27(1)(b) and 32(1)(b) for “the local authority responsible for the child or young person” substitute “ the local authority that maintains the school ”;
  - (b) in section 27(1)(a), for “or 12 (3) ” substitute “ , 12 (3) or 12(5) ”;
  - (c) in section 29(2), omit paragraph (b);
  - (d) in each of the sections the other references to “local authority” are to be interpreted as references to the local authority that maintains the school;
  - (e) the duty in section 27(6) may only be discharged in accordance with paragraph (a) of that provision.
- (3) Section 14 applies to the child or young person by virtue of subsection (2) and section 26(4) with the following modifications—
  - (a) in section 14(1), omit “a local authority is responsible for a child or young person, and”;
  - (b) the references to “local authority” are to be interpreted as references to the local authority that maintains the school;
  - (c) the duty in section 14(2) may only be discharged in accordance with paragraph (b) of that provision;
  - (d) the duty in section 14(2) does not apply if—
    - (i) the local authority requests a local authority in England to secure an assessment under section 36 of the Children and Families Act 2014 (c. 6) and, by virtue of that request or otherwise, the authority in England is responsible for the child or young person (within the meaning given by section 24(1) of that Act), or
    - (ii) a local authority in England maintains an EHC plan for the child or young person;
  - (e) if, following a request under paragraph (d)(i), the local authority is notified by the local authority in England that it is not required to secure an EHC plan for the child, the duty in section 14(2) applies again in respect of the child or young person;
  - (f) subsections (6) to (10) of section 14 do not apply.
- (4) A local authority is responsible for a child or young person who is in the area of a local authority in England for the purposes of sections 68 and 69 if he or she is—
  - (a) a registered pupil at a school maintained by the authority, or

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- (b) enrolled as a student at an institution in the further education sector in the authority's area.

VALID FROM 01/09/2021

*Giving notice etc.*

### **88 Giving notice etc. under this Part**

- (1) This section applies where a provision of this Part requires or authorises (in whatever terms) a governing body or local authority to—
- (a) notify a person of something, or
  - (b) give a document to a person (including a notice or a copy of a document).
- (2) The notification or document may be given to the person in question—
- (a) by delivering it to the person,
  - (b) by sending it by post to the person's proper address,
  - (c) by leaving it at the person's proper address, or
  - (d) if the conditions in subsection (3) are met, by sending it electronically.
- (3) A governing body or local authority may send a notification or document to a person electronically only if the following requirements are met—
- (a) the person to whom the notification or document is to be given must have—
    - (i) indicated to the governing body or local authority a willingness to receive the notification or document electronically, and
    - (ii) provided the governing body or local authority with an address suitable for that purpose, and
  - (b) the governing body or local authority sends the notification or document to that address.
- (4) For the purposes of this section and section 7 of the Interpretation Act 1978 (c. 30) (references to service by post) in its application to this section, the proper address of a person is the last known address of the person.
- (5) A notification or document given to a person by leaving it at the person's proper address is to be treated for the purposes of this Part as having been given at the time at which it was left at that address.

VALID FROM 01/09/2021

*Review of additional learning provision in Welsh*

### **89 Review of additional learning provision in Welsh**

- (1) The Welsh Ministers must arrange—
- (a) for reviews of the sufficiency of additional learning provision in Welsh;
  - (b) for reports on the outcome of the reviews to be produced and published.

**Status:** Point in time view as at 25/01/2018. This version of this Act contains provisions that are not valid for this point in time.

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- (2) Subsection (1) does not prevent reviews from also dealing with other matters.
- (3) The first report on the outcome of a review must be published before 1 September in the fifth year following the year in which any of the provisions of this Part are brought into force by order (whether for all or limited purposes).
- (4) The Welsh Ministers must publish subsequent reports before 1 September in every fifth year following the last year in which a report was required to be published.

## **90 Power to amend duties to secure additional learning provision in Welsh**

- (1) This section applies to the following provisions—
  - section 12(7)(b);
  - section 14(10)(c);
  - section 19(7)(c);
  - section 20(5)(c);
  - section 21(5);
  - section 42(8)(b).
- (2) Regulations may omit the words “take all reasonable steps to” from a provision.
- (3) Regulations may provide that a provision has effect as if the words “take all reasonable steps to” were omitted—
  - (a) for a prescribed purpose,
  - (b) in relation to a prescribed body, or
  - (c) for a prescribed purpose in relation to a prescribed body.
- (4) If the words “take all reasonable steps to” are omitted by regulations under subsection (2) from each provision to which this section applies, regulations may omit section 89.

VALID FROM 02/11/2020

## **PART 3**

### **EDUCATION TRIBUNAL FOR WALES**

## **91 Constitution of the Education Tribunal for Wales**

- (1) The Special Educational Needs Tribunal for Wales is to continue and is renamed the Education Tribunal for Wales.
- (2) The Tribunal is to consist of—
  - (a) a President of the Tribunal,
  - (b) a panel of persons who may serve as the legal chair of the Tribunal (“the legal chair panel”), and
  - (c) a panel of persons who may serve as the other two members of the Tribunal but not as the legal chair (“the lay panel”).

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- (3) The President is to be appointed by the Lord Chancellor <sup>F4</sup>... .
- (4) Each member of the legal chair panel is to be appointed by the Lord Chancellor <sup>F5</sup>....
- (5) The members of the lay panel are to be appointed by the Welsh Ministers with the agreement of the Secretary of State and the President.
- (6) Regulations made by the Welsh Ministers may—
  - (a) provide for the jurisdiction of the Tribunal to be exercised by such number of tribunals as the President may determine from time to time, and
  - (b) make any other provision in connection with the establishment and continuation of the Tribunal which are considered necessary or desirable.
- (7) The Welsh Ministers may provide staff and accommodation for the Tribunal.

#### Textual Amendments

- F4** Words in s. 91(3) omitted (10.4.2019) by virtue of [The Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(Supplementary Provisions\) Regulations 2019 \(S.I. 2019/794\)](#), regs. 1(2), 2(2)
- F5** Words in s. 91(4) omitted (10.4.2019) by virtue of [The Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(Supplementary Provisions\) Regulations 2019 \(S.I. 2019/794\)](#), regs. 1(2), 2(3)

## 92 The President and members of the panels

- (1) A person may not be appointed as President or member of the legal chair panel unless he or she satisfies the judicial-appointment eligibility condition on a 5-year basis.
- (2) A person may not be appointed as a member of the lay panel unless he or she satisfies requirements which may be prescribed in regulations made by the Welsh Ministers.
- (3) If in the opinion of the Lord Chancellor and of the Lord Chief Justice the President is unfit to continue in office or is incapable of performing his or her duties, the Lord Chancellor may (with the agreement of the Lord Chief Justice) remove him or her from office.
- (4) Each member of the legal chair panel or lay panel is to hold and vacate office under the terms of the instrument under which he or she is appointed.
- (5) But a member of the legal chair panel or the lay panel may only be removed from office under the terms of the instrument with the agreement of the President.
- (6) The President or a member of the legal chair panel or lay panel—
  - (a) may resign office by notice in writing to the Lord Chancellor or (as the case may be) the Welsh Ministers, and
  - (b) is eligible for re-appointment if he or she ceases to hold office.

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VALID FROM 01/09/2021

### 93 Deputy President of the Tribunal

- (1) The President may appoint a member of the legal chair panel as Deputy President of the Tribunal.
- (2) A person appointed as Deputy President of the Tribunal holds and vacates that position in accordance with the terms of appointment.
- (3) A person ceases to be Deputy President if he or she ceases to be a member of the legal chair panel.
- (4) A person may resign as Deputy President by notice in writing to the President.
- (5) A Deputy President may exercise functions of the President if—
  - (a) the President has delegated their exercise to the Deputy President,
  - (b) the office of President is vacant, or
  - (c) the President is unable for any reason to exercise them.

VALID FROM 01/09/2021

### 94 Remuneration and expenses

The Welsh Ministers may—

- (a) pay remuneration and allowances to the President and any other person in respect of his or her service as a member of the Tribunal, and
- (b) defray the expenses of the Tribunal.

## PART 4

### MISCELLANEOUS AND GENERAL

VALID FROM 02/11/2020

#### *Miscellaneous*

### 95 Meaning of “in the area” of a local authority

In section 579 of the Education Act 1996 (c. 56)—

- (a) in subsection (3A), after “Wales” insert “ or who would be wholly or mainly resident in the area of a local authority in Wales were it not for provision secured for the person under Part 2 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 ”.
- (b) in subsection (3B), after “England” insert “ or who would be wholly or mainly resident in the area of a local authority in England were it not for

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provision secured for the person under Part 3 of the Children and Families Act 2014 ”.

(c) After subsection (3B) insert—

“(3C) The Welsh Ministers may make further provision by regulations about the meaning of references in this Act to a person who is “in the area” of a local authority in Wales.”

### General

VALID FROM 02/11/2020

#### 96 Minor and consequential amendments and repeals

Schedule 1 provides for minor and consequential amendments and repeals.

#### 97 Power to make consequential and transitional provision etc.

- (1) If the Welsh Ministers consider it necessary or expedient for the purposes of, in consequence of, or for giving full effect to any provision of this Act, they may by regulations make—
  - (a) any supplementary, incidental or consequential provision, and
  - (b) any transitory, transitional or saving provision.
- (2) Regulations under this section may amend, repeal or revoke any enactment or statutory document.
- (3) A statutory document amended by regulations under this section must be published in its amended form by the person having the function of making or issuing the document.
- (4) In this section, “statutory document” means an instrument (other than a statutory instrument) that is—
  - (a) made or issued under an enactment, and
  - (b) subject to a National Assembly for Wales procedure required by an enactment before it may be made or issued.

#### 98 Regulations

- (1) A power to make regulations under this Act is to be exercised by statutory instrument.
- (2) A power to make regulations under this Act includes power to make—
  - (a) different provision for different purposes or cases;
  - (b) incidental, supplementary, consequential, transitory, transitional or saving provision.
- (3) A statutory instrument containing any of the following may not be made unless a draft of the instrument has been laid before, and approved by resolution of, the National Assembly for Wales—
  - (a) regulations under section 3(4), 39(2), 45, 46, 60(4), 74(1), 75, 82, 83, 85, 90 or 99(8);



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- (b) the first regulations made under section 15(2);
  - (c) regulations made under section 97 which amend or repeal any provision of an Act of Parliament or a Measure or Act of the National Assembly for Wales.
- (4) Any other statutory instrument containing regulations made by the Welsh Ministers under this Act is subject to annulment in pursuance of a resolution of the National Assembly for Wales.

## 99 General interpretation

### (1) In this Act—

“additional learning needs” (“*anghenion dysgu ychwanegol*”) has the meaning given by section 2;

“additional learning provision” (“*darpariaeth ddysgu ychwanegol*”) has the meaning given by section 3;

“beginning of detention” (“*dechrau'r cyfnod o gadw person yn gaeth*”) has the meaning given by section 39;

“case friend” (“*cyfaill achos*”) means a person appointed under section 85;

“child” (“*plentyn*”) means a person not over compulsory school age;

“clinical commissioning group” (“*grŵp comisiynu clinigol*”) means a body established under section 14D of the National Health Service Act 2006 (c. 41);

“detained person” (“*person sy'n cael ei gadw'n gaeth*”) has the meaning given by section 39;

“education” (“*addysg*”) includes full-time and part-time education, but does not include higher education; and “educational” (“*addysgol*”) and “educate” (“*addysgu*”) (and other related terms) are to be interpreted accordingly;

“EHC plan” (“*cynllun AIG*”) means a plan within section 37(2) of the Children and Families Act 2014 (c. 6) (education, health and care plans);

“enactment” (“*deddfiad*”) means a provision contained in any of the following (whenever enacted or made)—

- (a) an Act of Parliament;
- (b) a Measure or an Act of the National Assembly for Wales (including a provision of this Act);
- (c) subordinate legislation made under an Act falling within paragraph (a) or a Measure or Act falling within paragraph (b);

“governing body” (“*corff llywodraethu*”), in relation to the governing body of an institution in the further education sector, has the meaning given by section 90 of the Further and Higher Education Act 1992 (c. 13);

“home authority” (“*awdurdod cartref*”) has the meaning given by section 39;

“independent reviewing officer” (“*swyddog adolygu annibynnol*”) has the meaning given by section 15;

“individual development plan” (“*cynllun datblygu unigol*”) has the meaning given by section 10;

“institution in the further education sector” (“*sefydliad yn y sector addysg bellach*”) means an institution falling within section 91(3) of the Further and Higher Education Act 1992;

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“lay panel” (“*panel lleyg*”) means the panel of persons appointed under section 91(5);

“legal chair panel” (“*panel cadeirydd cyfreithiol*”) means the panel of persons appointed under section 91(4) (and “legal chair” (“*cadeirydd cyfreithiol*”) means a member of the panel);

“local authority” (“*awdurdod lleol*”) means the council of a county or county borough in Wales, except where specific reference is made to a local authority in England;

“Local Health Board” (“*Bwrdd Iechyd Lleol*”) means a Local Health Board established under section 11 of the National Health Service (Wales) Act 2006 (c. 42);

“mainstream institution in the further education sector” (“*sefydliad prif ffrwd yn y sector addysg bellach*”) means an institution in the further education sector that is not specially organised to provide education or training for persons with additional learning needs;

“mainstream maintained school” (“*ysgol brif ffrwd a gynhelir*”) means a maintained school that is not—

- (a) a special school, or
- (b) a pupil referral unit;

“maintained school” (“*ysgol a gynhelir*”) means—

- (a) a community, foundation or voluntary school,
- (b) a community or foundation special school not established in a hospital,
- (c) a maintained nursery school, or
- (d) a pupil referral unit;

“National Health Service Commissioning Board” (“*Bwrdd Comisiynu'r Gwasanaeth Iechyd Gwladol*”) means the body established under section 1H of the National Health Service Act 2006;

“NHS body” (“*corff GIG*”) means—

- (a) a Local Health Board, or
- (b) an NHS trust;

“NHS foundation trust” (“*ymddiriedolaeth sefydledig GIG*”) has the meaning given by section 30 of the National Health Service Act 2006;

“NHS trust” (“*ymddiriedolaeth GIG*”) means a National Health Service trust established under section 18 of the National Health Service (Wales) Act 2006;

“personal education plan” (“*cyllun addysg personol*”) has the meaning given by section 15;

“President” (“*Llywydd*”) means the President of the Education Tribunal for Wales appointed under section 91;

“proprietor” (“*perchennog*”), in relation to an institution that is not a school, means the person or body of persons responsible for the management of the institution;

“prescribed” (“*rhagnodedig*” and “*a ragnodir*”) means prescribed in regulations;

“pupil referral unit” (“*uned cyfeirio disgyblion*”) has the meaning given by section 19(2) of the Education Act 1996 (c. 56);

“regulations” (“*rheoliadau*”) means regulations made by the Welsh Ministers;

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“relevant youth accommodation” (“*llety ieuenctid perthnasol*”) has the meaning given by section 39;

“Special Health Authority” (“*Awdurdod Iechyd Arbennig*”) means a Special Health Authority established under section 22 of the National Health Service (Wales) Act 2006 or section 28 of the National Health Service Act 2006;

“training” (“*hyfforddiant*”) includes—

- (a) full-time and part-time training;
- (b) vocational, social, physical and recreational training;

“Tribunal” (“*Tribiwnlys*”) means the Education Tribunal for Wales (see section 91);

“young person” (“*person ifanc*”) means a person over compulsory school age, but under 25;

“youth offending team” (“*tîm troseddwyd ifanc*”) means a team established under section 39 of the Crime and Disorder Act 1998 (c. 37).

- (2) In the definition of “maintained school” in subsection (1)—
  - (a) a community, foundation or voluntary school, and
  - (b) a community or foundation special school,
 have the meaning given by the School Standards and Framework Act 1998 (c. 31).
- (3) In this Act—
  - (a) an institution in the further education sector is in Wales if its activities are carried on wholly or mainly in Wales;
  - (b) an institution in the further education sector is in England if its activities are carried on wholly or mainly in England.
- (4) For the purposes of this Act, a local authority is responsible for a child or young person if he or she is in the area of the authority.
- (5) A reference in this Act (however expressed) to a child who is looked after by a local authority has the meaning given by section 15.
- (6) The Education Act 1996 (“the 1996 Act”) and the preceding provisions of this Act (except so far as they amend other Acts) are to be interpreted as if those provisions were contained in the 1996 Act.
- (7) Where an expression is given for the purposes of any provision of this Act a meaning different from that given to it for the purposes of the 1996 Act, that meaning is to apply for the purposes of that provision instead of the one given for the purposes of the 1996 Act.
- (8) Regulations may amend the definition of “NHS body” so that it includes a Special Health Authority established under section 22 of the National Health Service (Wales) Act 2006.

## 100 Coming into force

- (1) This section and sections 1, 97, 98, 99 and 101 come into force on the day after the day on which this Act receives Royal Assent.
- (2) Paragraph 5 of Schedule 1 comes into force at the end of the period of two months beginning with the day on which this Act receives Royal Assent.

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- (3) The remaining provisions of this Act come into force on a day appointed by the Welsh Ministers in an order made by statutory instrument.
- (4) An order under subsection (3) may—
  - (a) appoint different days for different purposes or cases;
  - (b) make transitory, transitional or saving provision in connection with the coming into force of a provision of this Act.

## **101 Short title and inclusion as one of the Education Acts**

- (1) The short title of this Act is the Additional Learning Needs and Education Tribunal (Wales) Act 2018.
- (2) This Act is to be included in the list of Education Acts set out in section 578 of the Education Act 1996 (c. 56).

**Status:**

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**Changes to legislation:**

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