



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

2018 anaw 2

## PART 2

### ADDITIONAL LEARNING NEEDS

#### CHAPTER 1

##### KEY TERMS, CODE AND PARTICIPATION

###### *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;

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*Status: This is the original version (as it was originally enacted).*

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- (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.
- (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; and in this subsection “personal data” and “data subject” have the meaning given by the [Data Protection Act 1998 \(c. 29\)](#).

- (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.

## **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—
  - (a) each local authority;
  - (b) the governing body of each maintained school in Wales;
  - (c) the governing body of each institution in the further education sector in Wales;
  - (d) Her Majesty’s Chief Inspector of Education and Training in Wales;
  - (e) the Children’s Commissioner for Wales;
  - (f) the Welsh Language Commissioner;
  - (g) the relevant committee of the National Assembly for Wales with remit for the education of children and young persons;
  - (h) 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—
  - (a) the Welsh Ministers must issue the code in the form of the draft, and
  - (b) 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—
  - (a) appoint different days for different purposes;
  - (b) 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.