



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

2018 anaw 2

## PART 2

### ADDITIONAL LEARNING NEEDS

#### CHAPTER 2

#### INDIVIDUAL DEVELOPMENT PLANS

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

#### **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.

#### **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

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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;
  - (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.

## **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, 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.

### **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—

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- (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;
  - (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.
- (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).
- (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.