



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

2018 anaw 2

## PART 2

### ADDITIONAL LEARNING NEEDS

#### 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.
- (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

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- (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.

#### **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](#).

#### **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”.

**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)—
    - (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*

**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.

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- (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.

## **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.

## **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—

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“(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).”

## **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;

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- (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;
    - (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.

## **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).

## **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.

## **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.

**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.
- (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”.

**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***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.

**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



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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;
  - (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.

## **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—

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- (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.