



# 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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**Changes to legislation:** *Additional Learning Needs and Education Tribunal (Wales) Act 2018, Cross Heading:*

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- (h) an NHS trust;
  - [<sup>F1</sup>(i) NHS England;]
  - [<sup>F2</sup>(j) an integrated care board;]
  - (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

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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>F3</sup> ...

[<sup>F4</sup>(9A) In subsection (9)—

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

“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** S. 4(3)(i) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 1 para. 35\(a\)](#); [S.I. 2022/734, reg. 2\(a\)](#), [Sch.](#) (with regs. 13, 29, 30)
- F2** S. 4(3)(j) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 4 para. 231\(a\)](#); [S.I. 2022/734, reg. 2\(a\)](#), [Sch.](#) (with regs. 13, 29, 30)
- F3** 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\(1\)\(g\)](#)
- F4** 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\(1\)\(g\)](#)

#### Commencement Information

- I1** S. 4 in force at 2.11.2020 for specified purposes by [S.I. 2020/1182, reg. 3\(2\)\(a\)](#)
- I2** S. 4 in force at 1.9.2021 for specified purposes by [S.I. 2021/373, arts. 3, 4](#) (as amended by [S.I. 2021/938, art. 2\(3\)](#))
- I3** S. 4 in force at 1.9.2021 for specified purposes by [S.I. 2021/373, arts. 6, 7](#) (as amended by [S.I. 2021/938, art. 2\(4\)\(5\)](#))
- I4** S. 4 in force at 1.1.2022 for specified purposes by [S.I. 2021/1243, art. 3\(a\)](#) (with arts. 4-23) (as amended by [S.I. 2021/1428, art. 2](#); (10.6.2022) by [S.I. 2022/663, art. 2](#) and (21.8.2023) by [S.I. 2023/932, art. 2](#))
- I5** S. 4 in force at 1.1.2022 for specified purposes by [S.I. 2021/1244, art. 3\(a\)](#) (with arts. 4-21) (as amended by [S.I. 2021/1428, art. 3](#); (10.6.2022) by [S.I. 2022/663, art. 3](#) and (21.8.2023) by [S.I. 2023/932, art. 3](#))
- I6** S. 4 in force at 1.1.2022 for specified purposes by [S.I. 2021/1245, arts. 3\(a\), 4](#) (with art. 1(4))
- I7** S. 4 in force at 1.9.2022 for specified purposes by [S.I. 2022/896, art. 3\(a\)](#) (with arts. 4-22) (as amended (21.8.2023) by [S.I. 2023/932, art. 5](#))
- I8** S. 4 in force at 1.9.2022 for specified purposes by [S.I. 2022/893, art. 4](#) (with art. 1(2))
- I9** S. 4 in force at 1.9.2022 for specified purposes by [S.I. 2022/898, arts. 2\(a\), 3](#)
- I10** S. 4 in force at 1.9.2022 for specified purposes by [S.I. 2022/895, arts. 3\(a\), 4](#)
- I11** S. 4 in force at 1.9.2022 for specified purposes by [S.I. 2022/891, art. 3\(a\)](#) (with arts. 4-25) (as amended (21.8.2023) by [S.I. 2023/932, art. 4](#))
- I12** S. 4 in force at 1.9.2022 for specified purposes by [S.I. 2022/892, art. 3\(a\)](#) (with arts. 2, 4-18)
- I13** S. 4 in force at 1.9.2022 for specified purposes by [S.I. 2022/897, art. 3\(a\)](#) (with arts. 1(8), 4-21) (as amended (21.8.2023) by [S.I. 2023/932, art. 6](#))
- I14** S. 4 in force at 1.9.2022 for specified purposes by [S.I. 2022/894, art. 3\(a\)](#)

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## 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.

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### Commencement Information

**I15** S. 5 in force at 2.11.2020 by [S.I. 2020/1182](#), [reg. 2\(a\)](#)

**Changes to legislation:**

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**Changes and effects yet to be applied to :**

- specified provision(s) coming into force by [S.I. 2021/381 art. 23](#) (This commencement not applied to legislation.gov.uk. S.I. 2021/381 revoked (12.8.2021) by S.I. 2021/938, art. 3)
- specified provision(s) coming into force by [S.I. 2021/383 art. 23](#) (This commencement not applied to legislation.gov.uk. S.I. 2021/383 revoked (12.8.2021) by S.I. 2021/938, art. 4)

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 4(3)(ca)(cb) inserted by [2022 asc 1 Sch. 4 para. 39\(2\)](#)
- s. 5(1)(da) inserted by [2022 asc 1 Sch. 4 para. 39\(3\)](#)
- s. 65(4)(da)(db) inserted by [2022 asc 1 Sch. 4 para. 39\(5\)](#)
- Sch. 1 para. 4(32)(a)(i)para. 4(32)(a)(ii)(b) coming into force by [S.I. 2022/893 art. 2\(o\)\(xi\)](#)