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WELSH STATUTORY INSTRUMENTS

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**2021 No. 401**

**The Additional Learning Needs (Wales) Regulations 2021**

**PART 2**

**INDIVIDUAL DEVELOPMENT PLANS**

*Transfer of responsibility for individual development plans*

**Local authority request to transfer plan to governing body of further education institution**

**13.**—(1) A request by a local authority under section 36(2) of the 2018 Act that a governing body of an institution in the further education sector becomes responsible for maintaining an individual development plan for a young person who is enrolled as a student at the institution must be—

- (a) made in writing, and
- (b) accompanied by a copy of the plan, unless the governing body already has a copy of it.

(2) The period prescribed for the purposes of section 36(3) of the 2018 Act (period after which local authority may refer matter to the Welsh Ministers)—

- (a) begins with the day on which the governing body receives the request under section 36(2), and
- (b) ends at the end of the period of 20 term time days beginning with the day after the day mentioned in sub-paragraph (a).

(3) Where a governing body agrees to a local authority's request under section 36(2), it—

- (a) must inform the local authority in writing of its agreement, and
- (b) becomes responsible for the plan under section 12(4) of the 2018 Act—
  - (i) on the day agreed between the governing body and the authority for responsibility to transfer;
  - (ii) otherwise on the day on which the authority receives the governing body's agreement in writing to the request.

(4) In paragraph (2), “term time day” in relation to an institution in the further education sector means a day on which the institution is due to meet for the purpose of teaching students provided that day is within a time period in which the institution delivers the majority of its full-time courses.

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**Commencement Information**

**II** [Reg. 13](#) in force at 1.9.2021, see [reg. 1\(2\)](#)

### **Local authority referral to the Welsh Ministers to determine whether governing body of further education institution should maintain plan**

14.—(1) This regulation applies in relation to a referral under section 36 of the 2018 Act by a local authority to the Welsh Ministers for a determination as to whether a governing body of an institution in the further education sector should maintain an individual development plan for a young person who is enrolled as a student at the institution.

(2) The referral must be—

- (a) made within the period of 4 weeks beginning with the day after the end of the period prescribed by regulation 13(2),
- (b) made in writing,
- (c) accompanied by a copy of the sections of the individual development plan containing the description of the young person’s additional learning needs and the description of the additional learning provision, and
- (d) accompanied by a copy of any other information in the individual development plan which the local authority considers is necessary to determine the matter.

(3) The Welsh Ministers must notify the young person and the governing body of the referral and invite representations.

(4) The Welsh Ministers must notify the young person, the local authority and the governing body of—

- (a) their determination under section 36(4) of the 2018 Act, and
- (b) the reasons for the determination.

(5) If the Welsh Ministers determine that the governing body should maintain the plan, the governing body’s duty to maintain it under section 12(4) of the 2018 Act takes effect—

- (a) on the day which may be specified in the notification under paragraph (4);
- (b) otherwise on the day on which that notification is received by the governing body.

#### **Commencement Information**

**I2** [Reg. 14](#) in force at 1.9.2021, see [reg. 1\(2\)](#)

### **Giving copies of individual development plans in transfer situations**

15.—(1) Paragraph (2) applies in each of the following circumstances—

- (a) a governing body or a local authority (“the new body”) becomes responsible under Part 2 of the 2018 Act for maintaining or keeping an individual development plan which was previously maintained or kept under that Part by another governing body or local authority (“the old body”);
- (b) a local authority (“the new body”) would become responsible under Part 2 of the 2018 Act for maintaining or keeping an individual development plan which was previously maintained or kept under that Part by a governing body or another local authority (“the old body”) but for the new body’s lack of knowledge of circumstances which give rise to it being responsible for the plan (see sections 30(5) and 42(5) of the 2018 Act and regulation 22(3));
- (c) a governing body of a maintained school (“the new body”) becomes responsible for maintaining an individual development plan by virtue of a local authority (“the old body”) directing the governing body under section 14(2)(b)(i) or (4) of the 2018 Act.

(2) The old body must give a copy of the plan to the new body unless the new body already has a copy of it.

(3) But where the old body is not aware of the circumstances giving rise to the transfer of responsibility for the plan, the duty in paragraph (2) does not apply until the old body is aware of those circumstances.

**Commencement Information**

**I3** [Reg. 15](#) in force at 1.9.2021, see [reg. 1\(2\)](#)

**Review periods where child has become looked after or child or young person has ceased to be looked after**

**16.**—(1) Paragraph (2) applies in each of the following circumstances—

- (a) a local authority becomes responsible, by virtue of section 35(10) of the 2018 Act, for maintaining an individual development plan for a child who has become looked after by the local authority (“the transfer”);
- (b) a local authority becomes responsible, by virtue of section 35(12) and (13) of the 2018 Act, for maintaining an individual development plan for a child or young person who has ceased to be a looked after child (“the transfer”).

(2) For the purposes of determining the review period within which the local authority must, under section 24(1) (for a case within paragraph (1)(a)) or 23(1) (for a case within paragraph (1)(b)) of the 2018 Act, first review the plan following the transfer, sections 23 and 24 of that Act apply (despite section 23(12) for a case within paragraph (1)(a)) as they did immediately before the transfer.

**Commencement Information**

**I4** [Reg. 16](#) in force at 1.9.2021, see [reg. 1\(2\)](#)

**Securing other provision where transfer of responsibility for plan**

**17.**—(1) Paragraphs (2) and (3) apply where—

- (a) following a transfer of responsibility for maintaining an individual development plan under section 35 of the 2018 Act, a local authority is under a duty to secure a place at a particular school or other institution described in the plan in accordance with section 14(6) or 19(4) of that Act, and
- (b) in light of the circumstances which have given rise to the transfer, it is no longer practicable for the child or young person to attend the school or other institution.

(2) The local authority’s duty to secure the place at the school or other institution does not apply until such time as it is possible to revise the plan except where the authority arranges board and lodging under paragraph (3).

(3) The local authority may arrange board and lodging to enable the child or young person to continue to attend the school or other institution until such time as it is possible to revise the individual development plan.

**Commencement Information**

**I5** [Reg. 17](#) in force at 1.9.2021, see [reg. 1\(2\)](#)

**Changes to legislation:**

There are currently no known outstanding effects for the The Additional Learning Needs (Wales) Regulations 2021, Cross Heading: Transfer of responsibility for individual development plans.