



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

2018 anaw 2

## PART 2

### ADDITIONAL LEARNING NEEDS

#### CHAPTER 1

##### KEY TERMS, CODE AND PARTICIPATION

###### *Key terms*

### **2 Additional learning needs**

- (1) A person has additional learning needs if he or she has a learning difficulty or disability (whether the learning difficulty or disability arises from a medical condition or otherwise) which calls for additional learning provision.
- (2) A child of compulsory school age or person over that age has a learning difficulty or disability if he or she—
  - (a) has a significantly greater difficulty in learning than the majority of others of the same age, or
  - (b) has a disability for the purposes of the [Equality Act 2010 \(c. 15\)](#) which prevents or hinders him or her from making use of facilities for education or training of a kind generally provided for others of the same age in mainstream maintained schools or mainstream institutions in the further education sector.
- (3) A child under compulsory school age has a learning difficulty or disability if he or she is, or would be if no additional learning provision were made, likely to be within subsection (2) when of compulsory school age.

- (4) A person does not have a learning difficulty or disability solely because the language (or form of language) in which he or she is or will be taught is different from a language (or form of language) which is or has been used at home.
- (5) This section applies for the purposes of this Act.

### **3 Additional learning provision**

- (1) “Additional learning provision” for a person aged three or over means educational or training provision that is additional to, or different from, that made generally for others of the same age in—
  - (a) mainstream maintained schools in Wales,
  - (b) mainstream institutions in the further education sector in Wales, or
  - (c) places in Wales at which nursery education is provided.
- (2) “Additional learning provision” for a child aged under three means educational provision of any kind.
- (3) In subsection (1), “nursery education” means education suitable for a child who has attained the age of three but is under compulsory school age.
- (4) Regulations may amend this section to replace the references to the age of three with references to a different age.
- (5) This section applies for the purposes of this Act.

#### *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;
  - (h) an NHS trust;
  - (i) the National Health Service Commissioning Board;
  - (j) a clinical commissioning group;
  - (k) an NHS foundation trust;

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

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- (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 \(c. 29\)](#).

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- (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.

*Participation, United Nations conventions and access to information*

## **6 Duty to involve and support children, their parents and young people**

A person exercising functions under this Part in relation to a child or young person must have regard—

- (a) to the views, wishes and feelings of the child and the child’s parent or the young person,
- (b) to the importance of the child and the child’s parent or the young person participating as fully as possible in decisions relating to the exercise of the function concerned, and

- (c) to the importance of the child and the child’s parent or the young person being provided with the information and support necessary to enable participation in those decisions.

## **7 Duty to have regard to the United Nations Convention on the Rights of the Child**

- (1) A relevant body exercising functions under this Part in relation to a child or young person must have due regard to Part 1 of the United Nations Convention on the Rights of the Child adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 (“the Convention”).
- (2) For the purposes of subsection (1), Part 1 of the Convention is to be treated as having effect—
  - (a) as set out for the time being in Part 1 of the Schedule to the [Rights of Children and Young Persons \(Wales\) Measure 2011 \(nawm 2\)](#), but
  - (b) subject to any declaration or reservation as set out for the time being in Part 3 of that Schedule.
- (3) Subsection (1) does not require specific consideration of the Convention on each occasion that a function is exercised.<sup>7</sup>
- (4) A code issued under section 4 may make provision setting out what is required to discharge the duty in subsection (1); and subsection (1) is to be interpreted in accordance with any such provision.
- (5) In subsection (1), “relevant body” means—
  - (a) a local authority;
  - (b) an NHS body.

## **8 Duty to have regard to the United Nations Convention on the Rights of Persons with Disabilities**

- (1) A relevant body exercising functions under this Part in relation to a disabled child or young person must have due regard to the United Nations Convention on the Rights of Persons with Disabilities and its optional protocol adopted on 13 December 2006 by General Assembly resolution A/RES/61/106 and opened for signature on 30 March 2007 (“the Convention”).
- (2) The Convention is to be treated as having effect subject to any declaration or reservation made by the United Kingdom Government upon ratification, save where the declaration or reservation has subsequently been withdrawn.
- (3) Subsection (1) does not require specific consideration of the Convention on each occasion that a function is exercised.
- (4) A code issued under section 4 may make provision setting out what is required to discharge the duty in subsection (1); and subsection (1) is to be interpreted in accordance with any such provision.
- (5) In subsection (1), “relevant body” means—
  - (a) a local authority;
  - (b) an NHS body.

## **9 Advice and information**

- (1) A local authority must make arrangements to provide people with information and advice about additional learning needs and the system for which provision is made by this Part.
- (2) In making arrangements under subsection (1), a local authority must have regard to the principle that information and advice provided under the arrangements must be provided in an impartial manner.
- (3) A local authority must take reasonable steps to make the arrangements made under this section, sections 68 (avoidance and resolution of disagreements) and 69 (independent advocacy services) known to—
  - (a) children and young people in its area,
  - (b) parents of children in its area,
  - (c) children it looks after who are outside its area,
  - (d) governing bodies of maintained schools in its area,
  - (e) governing bodies of institutions in the further education sector in its area,
  - (f) case friends of children in its area, and
  - (g) any other persons it considers appropriate.
- (4) Where the governing body of a maintained school is informed of arrangements under subsection (3), it must take reasonable steps to make the arrangements known to—
  - (a) its pupils and their parents, and
  - (b) case friends of its pupils.
- (5) Where the governing body of an institution in the further education sector is informed of arrangements under subsection (3), it must take reasonable steps to make the arrangements known to its students.