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# 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*

VALID FROM 01/09/2021

### **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.

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VALID FROM 01/09/2021

## 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 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.

VALID FROM 01/09/2021

## 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—

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- (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.

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(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.

VALID FROM 01/09/2021

### 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—
  - (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)).

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## **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)—

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- (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).
- (9A) If the additional learning provision described in an individual development plan includes provision of the kind mentioned in section 41(1) of the Curriculum and Assessment (Wales) Act 2021, a local authority may not give directions to the governing body of a school under subsection (2)(b) or (4) in relation to the plan.
- (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.

VALID FROM 02/11/2020

*Additional learning provision for looked after children*

**15 Key terms**

- (1) A child is looked after by a local authority if he or she—
- (a) is not over compulsory school age and is looked after by a local authority for the purposes of Part 6 of the Social Services and Well-being (Wales) Act 2014 (anaw 4) (“the 2014 Act”), and
  - (b) is not a detained person.
- (2) Regulations may prescribe categories of looked after child who are not to be treated as looked after by a local authority for the purposes of this Act.
- (3) “Independent reviewing officer” means the officer appointed under section 99 of the 2014 Act for a child's case.
- (4) “Personal education plan” means the plan that is included in the care and support plan maintained for a looked after child under section 83(2A) of the 2014 Act.
- (5) This section applies for the purposes of this Act.

**16 Amendments to the Social Services and Well-being (Wales) Act 2014**

- (1) Section 83 of the Social Services and Well-being (Wales) Act 2014 (anaw 4) (care and support plans) is amended as follows.
- (2) After subsection (2) insert—

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“(2A) A care and support plan for a child must include a record of the arrangements made to meet the child's needs in relation to education and training (a “personal education plan”).

(2B) But subsection (2A) does not apply to a child if he or she is within a category of looked after child prescribed in regulations, for whom no personal education plan is to be prepared.

(2C) If—

- (a) a child has additional learning needs, and
- (b) the child's care and support plan includes a personal education plan, any individual development plan maintained for the child under section 19 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 must be incorporated within the personal education plan.

(2D) For the purposes of subsection (2C)—

- (a) a “child” means a person not over compulsory school age (within the meaning given by section 8 of the Education Act 1996 (c. 56));
- (b) “additional learning needs” has the meaning given by section 2 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018.”

(3) In subsection (3), for “under review the plans that it maintains under this section” substitute “ a care and support plan under review ”.

(4) In subsection (4), for “plan”, the first time it appears, substitute “ care and support plan ”.

(5) In subsection (5)—

- (a) at the beginning, insert “ Subject to the provisions of Part 2 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018, ”;
- (b) in paragraph (a), for “plans under this section” substitute “ care and support plans ”;
- (c) in paragraph (b), for “plan is to contain” substitute “ care and support plan is to contain (including what a personal education plan is to contain) ”;
- (d) in paragraph (c), for “plans” substitute “ care and support plans ”.

(6) In subsection (7), for “a plan under this section” substitute “ a care and support plan ”.

(7) In subsection (8), in paragraph (a), for “a plan under this section” substitute “ a care and support plan ”.

(8) In subsection (9), for “plan maintained under this section” substitute “ care and support plan ”.

(9) After subsection (9) insert—

“(10) References in subsections (2A) to (9) to a care and support plan are to be interpreted as references to a care and support plan prepared or maintained under this section.”

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VALID FROM 01/09/2021

### **17 Duty to refer a matter to a local authority that looks after a child**

- (1) Subsection (2) applies where—
- (a) it is brought to the attention of or otherwise appears to a governing body of a maintained school in Wales that a looked after child who is a registered pupil at the school may have additional learning needs, or
  - (b) it is brought to the attention of or otherwise appears to a local authority that a child for whom it is responsible, but who is looked after by another local authority, may have additional learning needs.
- (2) The governing body or local authority must refer the matter to the local authority that looks after the child.

VALID FROM 01/09/2021

### **18 Duty to decide whether a looked after child has additional learning needs**

- (1) Where it is brought to the attention of, or otherwise appears to, a local authority that looks after a child that the child may have additional learning needs, it must decide whether the child has additional learning needs, unless any of the circumstances in subsection (2) apply.
- (2) The circumstances are—
- (a) an individual development plan is being maintained for the child under section 19;
  - (b) the local authority has previously decided whether the child has additional learning needs and the local authority is satisfied that—
    - (i) the child'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 child is in the area of a local authority in England.
- (3) If the local authority decides that the looked after child does not have additional learning needs it must notify the child, the child's parent and the child's independent reviewing officer of—
- (a) the decision, and
  - (b) the reasons for the decision.

VALID FROM 01/09/2021

### **19 Duties to prepare and maintain plans for looked after children**

- (1) The duty in subsection (2) applies if a local authority that looks after a child has decided under section 18 that a looked after child has additional learning needs.



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- (2) The local authority must prepare and maintain an individual development plan for the child if the child is in the area of a local authority in Wales.
- (3) A local authority that prepares or maintains an individual development plan for a child it looks after must—
  - (a) consider whether additional learning provision should be provided to the child in Welsh, and
  - (b) if it decides that a particular kind of additional learning provision should be provided in Welsh, specify in the individual development plan that it should be provided in Welsh.
- (4) If the reasonable needs of the child for additional learning provision cannot be met unless the local authority also secures provision of the kind mentioned in subsection (5), the authority must include a description of that other provision in the individual development plan.
- (5) The kinds of provision are—
  - (a) a place at a particular school or other institution;
  - (b) board and lodging.
- (6) The duty in subsection (4)—
  - (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.
- (7) Where a local authority that looks after a child maintains an individual development plan for the child, 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 (4), 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 in Welsh.
- (8) See section 35 for provision about the transfer of duties to maintain individual development plans for children who already have plans when they become looked after.

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VALID FROM 02/11/2020

### *Additional learning provision and NHS bodies*

VALID FROM 01/09/2021

#### **20 Additional learning provision: Local Health Boards and NHS trusts**

- (1) The bodies specified in subsection (2) may refer a matter to an NHS body, asking it to consider whether there is any relevant treatment or service that is likely to be of benefit in addressing the additional learning needs of a child or young person.
- (2) The bodies are—
  - (a) where the referral would relate to a child, or to a young person who is a registered pupil at a maintained school, a local authority;
  - (b) where the referral would relate to a young person who is not a registered pupil at a maintained school, the body that prepares or maintains an individual development plan for the young person.
- (3) But a body may not make a referral under subsection (1) unless—
  - (a) it has informed the child or young person and, in the case of a child, the child's parent, that it intends to make the referral,
  - (b) it has given the child or young person and, in the case of a child, the child's parent, an opportunity to discuss whether the referral should be made, and
  - (c) it is satisfied that making the referral is in the best interests of the child or young person.
- (4) If a matter is referred to an NHS body under this section, the NHS body must consider whether there is a relevant treatment or service that is likely to be of benefit in addressing the child's or young person's additional learning needs.
- (5) If the NHS body identifies such a treatment or service, it must—
  - (a) secure the treatment or service for the child or young person,
  - (b) decide whether the treatment or service should be provided to the child or young person in Welsh, and
  - (c) if it decides that the treatment or service should be provided to the child or young person in Welsh, take all reasonable steps to secure that the treatment or service is provided in Welsh.
- (6) In this section, and in section 21, “relevant treatment or service” means any treatment or service that an NHS body would normally provide as part of the comprehensive health service in Wales continued under section 1(1) of the National Health Service (Wales) Act 2006 (c. 42).

#### **21 Individual development plans: Local Health Boards and NHS trusts**

- (1) If an NHS body identifies a relevant treatment or service that is likely to be of benefit in addressing a child's or young person's additional learning needs following a referral under section 20 it must—

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- (a) inform the body that made the referral of that treatment or service,
  - (b) if the referral was not made by a body that maintains an individual development plan for the child or young person, inform the body that maintains the individual development plan of that treatment or service, and
  - (c) if it considers that the treatment or service should be provided to the child or young person in Welsh, inform the persons mentioned in paragraphs (a) and (b) that the treatment or service should be provided in Welsh.
- (2) If an NHS body does not identify a relevant treatment or service that is likely to be of benefit in addressing a child's or young person's additional learning needs following a referral under section 20 it must—
  - (a) inform the body that made the referral of that fact, and
  - (b) if the referral was not made by a body that maintains an individual development plan for the child or young person, inform the body that maintains the individual development plan of that fact.
- (3) If an NHS body informs a body that maintains an individual development plan for a child or young person that there is a relevant treatment or service likely to be of benefit in addressing a child's or young person's additional learning needs, the body that maintains the plan must describe the treatment or service in the plan, specifying that it is additional learning provision to be secured by the NHS body.
- (4) If an NHS body informs a body that maintains an individual development plan for a child or young person that a relevant treatment or service should be provided to a child or young person in Welsh, the body that maintains the plan must specify in the plan that the treatment or service is additional learning provision that should be provided in Welsh.
- (5) If an individual development plan specifies under this section that additional learning provision is to be secured by an NHS body, the following duties do not apply to that additional learning provision—
  - (a) the duty of a governing body to secure provision under section 12(7) (including the duty to take reasonable steps to secure provision in Welsh);
  - (b) the duty of a local authority to secure provision under section 14(10)(a) and the duty to take reasonable steps to secure provision in Welsh under section 14(10)(c);
  - (c) the duty of a local authority to secure provision under section 19(7)(a) and the duty to take reasonable steps to secure provision in Welsh under section 19(7)(c).
- (6) The description of the additional learning provision specified in a plan under this section as provision an NHS body is to secure may only be removed or changed on review of a plan in accordance with section 23 or 24 and with the agreement or at the request of the NHS body.
- (7) If, on review of a plan, the NHS body requests a governing body or a local authority that maintains an individual development plan for a child or young person to remove or change the description of the additional learning provision specified in the plan under this section as provision the NHS body is to secure, the governing body or local authority must comply with the request.
- (8) Nothing in this section affects the power of the Education Tribunal for Wales to make an order under this Part.

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- (9) If the Education Tribunal for Wales orders the revision of an individual development plan in relation to additional learning provision specified under this section as provision an NHS body is to secure, an NHS body is not required to secure the revised additional learning provision unless it agrees to do so.
- (10) Regulations must provide that where an NHS body is under a duty to inform under subsection (1) or (2), it must comply with that duty within a prescribed period, unless a prescribed exception applies.

VALID FROM 01/09/2021

### *Information about plans*

#### **22 Provision of information about individual development plans**

- (1) If a governing body or a local authority prepares an individual development plan for a child or young person, it must give a copy of the plan—
- (a) to the child or young person, and
  - (b) if the plan is for a child, to the child's parent.
- (2) If a governing body or a local authority becomes responsible for maintaining an individual development plan that was previously being maintained for a child or young person by another body, the governing body or local authority must—
- (a) inform the child or young person that it has become responsible for maintaining the plan, and
  - (b) if the plan is for a child, inform the child's parent.
- (3) If a local authority prepares an individual development plan for a looked after child or becomes responsible for maintaining an individual development plan for a looked after child that was previously being maintained for the child by another body, it must also give a copy of the plan to the child's independent reviewing officer.

VALID FROM 01/09/2021

### *Review of plans*

#### **23 Review and revision of individual development plans**

- (1) A governing body or a local authority required to maintain an individual development plan must review it before the end of each review period.
- (2) The first review period is a period of 12 months starting with the date on which a copy of the plan is given under section 22.
- (3) Each subsequent review period is a period of 12 months starting with—
- (a) the date during the preceding review period on which a copy of a revised plan is given under subsection (11) in relation to that review period, or
  - (b) where the plan has not been revised in the preceding review period—

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- (i) the date during that preceding review period on which notice of a decision is given under subsection (10) in relation to that review period, or
  - (ii) the date during that preceding review period on which notice of a decision is given under section 27(4) in relation to that review period.
- (4) But where none of the documents referred to in subsection (3)(a) and (b) has been given during the preceding review period, the subsequent review period is a period of 12 months starting with the first day after the end of that preceding review period.
- (5) Where a copy of a plan, revised plan or notice of decision is required to be given to more than one person, the reference in subsections (2) and (3) to the date on which it is given is a reference to the date on which the plan, revised plan or notice of decision is first given.
- (6) The duty in subsection (1) to review a plan before the end of a review period is treated as met if, before the end of that period—
- (a) the plan is reconsidered by a local authority under section 27,
  - (b) the Education Tribunal for Wales orders a governing body or a local authority to revise the plan, or
  - (c) in the case of a plan maintained by the governing body of a maintained school, the Education Tribunal for Wales orders a local authority to review the plan.
- (7) A governing body or local authority must review an individual development plan it is required to maintain if—
- (a) the plan includes additional learning provision that an NHS body is required to secure under section 20, and
  - (b) the NHS body asks it to review the plan.
- (8) A governing body or a local authority required to maintain an individual development plan for a child or young person must review the plan if a request is made to it by the child, the child's parent or the young person, unless it considers a review to be unnecessary.
- (9) A governing body or local authority may—
- (a) review an individual development plan at any time, and
  - (b) revise a plan following a review.
- (10) If a governing body or a local authority decides following a review (required or authorised by or under this Part) that the plan should not be revised 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.
- (11) If a governing body or a local authority revises an individual development plan (as required or authorised by or under this Part), it must give a copy of the revised plan to—
- (a) the child or young person, and
  - (b) if the plan is for a child, the child's parent.

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- (12) This section does not apply if an individual development plan relates to a child who is looked after by a local authority, unless the child is in the area of a local authority in England.

## **24 Review and revision of individual development plans for looked after children**

- (1) A local authority required to maintain an individual development plan for a looked after child must review the plan before the end of each review period.
- (2) The first review period is a period of 12 months starting with the date on which a copy of the plan is first given under section 22.
- (3) Each subsequent review period is a period of 12 months starting with—
- (a) the date during the preceding review period on which a copy of a revised plan is first given under subsection (10) in relation to that review period, or
  - (b) where the plan has not been revised in the preceding review period the date during that period on which notice of a decision is first given under subsection (9) in relation to that period.
- (4) But where neither document referred to in subsection (3)(a) and (b) has been given during the preceding review period, the subsequent review period is a period of 12 months starting with the first day after the end of that preceding review period.
- (5) The duty in subsection (1) to review a plan before the end of a review period is treated as met if, before the end of that period, the Education Tribunal for Wales orders the local authority to revise the plan.
- (6) A local authority required to maintain an individual development plan for a looked after child must review the plan if—
- (a) the plan includes additional learning provision that an NHS body is required to secure under section 20, and
  - (b) the NHS body asks the local authority to review the plan.
- (7) A local authority required to maintain an individual development plan for a looked after child must review the plan if a request is made to it by the looked after child or the looked after child's parent, unless the authority considers a review to be unnecessary.
- (8) A local authority may—
- (a) review an individual development plan at any time, and
  - (b) revise a plan following a review.
- (9) If a local authority decides following a review (required or authorised by or under this Part or by or under section 83 of the Social Services and Well-being (Wales) Act 2014 (anaw 4)) that the plan should not be revised it must notify the child, the child's parent and the child's independent reviewing officer of—
- (a) the decision, and
  - (b) the reasons for the decision.
- (10) If a local authority revises a looked after child's individual development plan (as required or authorised by or under this Part or by or under section 83 of the Social Services and Well-being (Wales) Act 2014 (anaw 4)), it must give a copy of the revised individual development plan to—

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- (a) the looked after child,
- (b) the looked after child's parent, and
- (c) the looked after child's independent reviewing officer.

## **25 Relationship of individual development plans to other similar documents**

A governing body or local authority may—

- (a) prepare, review or revise a plan under this Part at the same time as it or another body is preparing, reviewing or revising another document in the case of the person concerned, and
- (b) include the other document in the plan or include the plan in the other document.

VALID FROM 01/09/2021

*Local authority reconsideration of governing body decisions and plans*

## **26 Reconsideration by local authorities of decisions under section 11(1)**

(1) Subsection (2) applies where—

- (a) a governing body of a maintained school has made a decision about a registered pupil under section 11(1) or has refused to make a decision under that section, and
- (b) the child or young person or, in the case of a child, the child's parent requests the local authority responsible for the child or young person to reconsider the matter.

(2) The local authority must decide whether the child or young person has additional learning needs.

(3) Before it makes its decision, the local authority must inform the governing body of the request and invite representations from the governing body.

(4) For the purposes of this Part, a decision under subsection (2) is to be treated as a decision under section 13(1).

(5) Where a local authority makes a decision under subsection (2), the previous decision of the governing body under section 11(1) ceases to have effect.

## **27 Reconsideration by local authorities of plans maintained under section 12**

(1) Subsection (2) applies where—

- (a) a governing body of a maintained school maintains an individual development plan for a registered pupil under section 12(1) or 12(3), and
- (b) the child or young person or, in the case of a child, the child's parent requests the local authority responsible for the child or young person to reconsider the plan with a view to it being revised.

(2) The local authority must reconsider the plan and decide whether or not to revise the plan.

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- (3) Before it makes its decision, the local authority must inform the governing body of the request and invite representations from the governing body.
- (4) If the local authority decides that the plan should not be revised 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) The local authority must give a copy of a notification under subsection (4) to the governing body.
- (6) If the local authority decides that the plan should be revised, or is ordered to revise it by the Education Tribunal for Wales, it must prepare a revised plan and either—
  - (a) direct the governing body to maintain it, or
  - (b) exercise the power in section 28(6) to take over responsibility for maintaining the plan.
- (7) The local authority must give a copy of the revised plan to the governing body (for provision about others to whom a copy must be given, see section 23(11)).

## **28 Local authority duty to decide whether to take over governing body plans**

- (1) Subsection (3) applies where—
  - (a) a governing body of a maintained school or an institution in the further education sector maintains an individual development plan for a child or young person under section 12(1) or 12 (3) , and
  - (b) any of the persons mentioned in subsection (2) requests the local authority responsible for a child or young person to consider taking over responsibility for maintaining the plan.
- (2) The persons are—
  - (a) the child or young person,
  - (b) in the case of a child, the child's parent, or
  - (c) the governing body.
- (3) The local authority must decide whether it should take over responsibility for maintaining an individual development plan maintained by the governing body.
- (4) Where a governing body makes the request, the local authority must inform the child or young person and, in the case of a child, the child's parent of the request and invite representations.
- (5) Where a child, a child's parent or a young person makes the request, the local authority must inform the governing body of the request and invite representations from the governing body.
- (6) A local authority may decide to take over responsibility for maintaining a plan maintained by a governing body of a maintained school if it decides under section 27(6) that the plan should be revised.
- (7) The local authority must notify the child or young person, in the case of a child, the child's parent, and the governing body of—
  - (a) a decision under subsection (3) or (6), and



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(b) the reasons for the decision.

(8) If the local authority decides to take over responsibility for maintaining the plan—

(a) it is to be treated as maintained by the authority under section 14 for the purposes of this Part, and

(b) the governing body is not required to maintain it, from the date on which notice is given under subsection (7).

### **29 Circumstances in which the duties in sections 26(2), 27(2) and 28(3) do not apply**

(1) Following a request under section 26(1)(b), 27(1)(b) or 28(1)(b), the duty in section 26(2), 27(2) or 28(3) (as the case may be) does not apply in relation to a child or young person if any of the circumstances in subsection (2) apply.

(2) The circumstances are—

(a) the local authority has previously made a decision under the same section in relation to the same child or young person and it is satisfied that—

(i) the child's or young person's needs have not changed materially since the previous decision, and

(ii) there is no new information that would materially affect that decision.

(b) the request relates to a child who has become looked after by a local authority.

### **30 Registration or enrolment at more than one institution**

(1) Subsection (2) applies where—

(a) it is brought to the attention of, or otherwise appears to the governing body of a maintained school in Wales or an institution in the further education sector in Wales that a child or young person who is a registered pupil or enrolled student at the school or institution (as the case may be) may have additional learning needs,

(b) 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),

(c) the child or young person is to be provided with education or training at each of the institutions at which he or she is a registered pupil or an enrolled student,

(d) an individual development plan is not being maintained for the child or young person, and

(e) a local authority is responsible for the child or young person.

(2) The governing body must refer the child's or young person's case to the local authority responsible for the child or young person for the authority to decide under section 13(1).

(3) Subsections (4), (5) and (6) apply where—

(a) the governing body of a maintained school in Wales or an institution in the further education sector in Wales maintains an individual development plan for a child or young person,

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- (b) the child or young person becomes a registered pupil or an enrolled student at another institution (that institution being a school or an institution in the further education sector),
  - (c) the child or young person is to be provided with education or training at each of the institutions at which he or she is a registered pupil or an enrolled student, and
  - (d) a local authority is responsible for the child or young person.
- (4) The local authority responsible for the child or young person must maintain the individual development plan instead of the governing body and the plan is to be treated as maintained by the local authority under section 14 for the purposes of this Part.
- (5) The local authority's duty in subsection (4) takes effect on the day on which the authority is informed under subsection (6) or otherwise becomes aware that the circumstances mentioned in subsection (3) apply.
- (6) If the governing body of a maintained school in Wales or an institution in the further education sector in Wales is aware that the circumstances described in subsection (3) apply in respect of a child or young person who is a registered pupil or an enrolled student at the school or institution (as the case may be), the governing body must inform the local authority responsible for the child or young person of that fact.
- (7) A local authority may not exercise its power to direct under subsections (2)(b) or (4) of section 14 in relation to a child or young person who is a registered pupil or an enrolled student at more than one institution (whether a school or an institution in the further education sector) if he or she is to be provided with education or training at each of those institutions.

VALID FROM 02/11/2020

### *Ceasing to maintain plans*

VALID FROM 01/09/2021

#### **31 Ceasing to maintain individual development plans**

- (1) The duty of the governing body of a maintained school to prepare or maintain a plan for a child or young person under section 12 ceases to apply—
- (a) in the case of a child or young person, if he or she ceases to be a registered pupil of the school, or
  - (b) in the case of a child, if the child becomes looked after by a local authority.
- (2) The duty of the governing body of an institution in the further education sector under section 12 to prepare or maintain a plan for a young person ceases to apply if the young person ceases to be enrolled as a student at the institution.
- (3) The duty of a local authority under section 14 to prepare or maintain a plan for a child or young person ceases to apply—

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- (a) in the case of a child or young person, if the local authority ceases to be responsible for the child or young person, or
  - (b) in the case of a child, if the child becomes looked after by a local authority.
- (4) The duty of a local authority to prepare or maintain a plan for a looked after child under section 19 ceases to apply if—
- (a) he or she ceases to be a looked after child for the purposes of this Part (whether because he or she is over compulsory school age or otherwise (see section 15)), or
  - (b) he or she ceases to be in the area of a local authority in Wales.
- (5) Where the governing body of a maintained school or an institution in the further education sector has a duty under this Part to maintain an individual development plan for a child or young person, the governing body may cease to maintain the plan if it decides that the child or young person no longer has additional learning needs.
- (6) Where a local authority has a duty under this Part to maintain an individual development plan for a child or young person, the authority may cease to maintain the plan if the authority—
- (a) decides that the child or young person no longer has additional learning needs, or
  - (b) in the case of a young person who is neither a registered pupil at a maintained school nor enrolled as a student at an institution in the further education sector in Wales, decides in accordance with regulations under section 46 that it is no longer necessary to maintain it to meet the young person's reasonable needs for education or training.
- (7) Before a governing body decides under subsection (5), or a local authority decides under subsection (6), it must notify—
- (a) the child or young person,
  - (b) in the case of a child, the child's parent, and
  - (c) in the case of a looked after child, the child's independent reviewing officer, that it proposes to make such a decision.
- (8) After the governing body or local authority has made its decision, it must notify the child or young person, in the case of a child, the child's parent and, in the case of a looked after child, the child's independent reviewing officer of—
- (a) the decision, and
  - (b) the reasons for the decision.
- (9) And the governing body of a maintained school must also notify the child or young person and, in the case of a child, the child's parent of his or her right to request the local authority to reconsider the matter under section 32.
- (10) See section 44 (provisions that do not apply to children and young persons in detention) for further circumstances in which the duty to maintain a plan ceases.

### **32 Reconsideration by local authorities of decisions of governing bodies under section 31**

- (1) Subsection (2) applies where—

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- (a) a child, a child's parent or a young person has been notified of a decision of a governing body of a maintained school under section 31, and
  - (b) the child, the child's parent or the young person makes a request within a prescribed period to the local authority responsible for the child or young person for it to decide whether the governing body's duty to maintain the plan should cease.
- (2) The local authority must decide whether the governing body should cease to maintain the plan.
- (3) The local authority must notify the governing body and 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) If the local authority decides that the plan should be maintained, the governing body must continue to maintain the plan.
- (5) If the local authority decides that the plan should not be maintained, the governing body must cease to maintain the plan, subject to section 33.

VALID FROM 01/09/2021

### **33 Limitation on ceasing to maintain plans to allow reconsideration or appeal**

- (1) A governing body of a maintained school may not cease to maintain an individual development plan under section 31(5) unless subsection (2) or (3) applies.
- (2) This subsection applies if the period prescribed under section 32(1)(b) has ended and no request has been made under that section.
- (3) This subsection applies if the local authority has decided under section 32 that the plan should cease to be maintained and—
- (a) the period prescribed under section 75 within which an appeal may be brought against the local authority's decision has ended without an appeal having been brought, or
  - (b) an appeal has been brought before the end of the period prescribed under section 75, and has been fully determined.
- (4) A governing body of an institution in the further education sector acting under section 31(5), or a local authority acting under section 31(6), may not cease to maintain an individual development plan until the later of—
- (a) the period prescribed under section 75 within which an appeal may be brought against a decision not to maintain the plan having ended without an appeal having been brought, or
  - (b) an appeal having been brought before the end of the period prescribed under section 75, and having been fully determined.

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VALID FROM 01/09/2021

### **34 Individual development plan after a young person's 25th birthday**

- (1) The duty of the governing body of an institution in the further education sector under section 12, or of a local authority under section 14, to prepare or maintain a plan for a young person ceases to apply at the end of the academic year during which the young person attains the age of 25.
- (2) In this section, “academic year” means—
  - (a) in relation to a young person who attends an institution in the further education sector, a period of 12 months ending on 31 July, and
  - (b) in relation to any other young person, a period of 12 months ending on the day the young person's course of education or training ends or the day before the young person attains the age of 26 (whichever is earlier).

VALID FROM 02/11/2020

### *Transfer of plans*

VALID FROM 01/09/2021

### **35 Transfer of duties to maintain plans**

- (1) Subsection (3) applies where—
  - (a) a child or young person becomes a registered pupil at a maintained school in Wales,
  - (b) immediately before the child or young person became a registered pupil at the school an individual development plan was being maintained for the child or young person under section 12 by the governing body of another maintained school, and
  - (c) it is not intended that the child or young person will continue to be provided with education or training at that other school.
- (2) Subsection (3) also applies where—
  - (a) a child or young person becomes a registered pupil at a maintained school in Wales before the end of September in an academic year,
  - (b) the child or young person was a registered pupil at another maintained school during the previous academic year, and
  - (c) an individual development plan was being maintained for the child or young person under section 12 by the governing body of the other school on the last day of education or training provided for him or her at the school.
- (3) The governing body of the school mentioned in subsection (1)(a) or (2)(a) must maintain the individual development plan; and the plan is to be treated as being maintained under section 12 for the purposes of this Part.
- (4) Subsection (6) applies where—

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- (a) a young person becomes enrolled as a student at an institution in the further education sector in Wales before the end of September in an academic year,
  - (b) the young person was a registered pupil at a maintained school during the previous academic year, and
  - (c) an individual development plan was being maintained for the young person under section 12 by the governing body of the school on the last day of education or training provided for him or her at the school.
- (5) In subsection (4)(a) and (b), “academic year” means any period from 1 August to 31 July.
- (6) The governing body of the institution in the further education sector in Wales must maintain the individual development plan; and the plan is to be treated as being maintained under section 12 for the purposes of this Part.
- (7) Subsection (8) applies where—
- (a) a child or young person becomes the responsibility of a local authority, and
  - (b) immediately before the child or young person became the responsibility of the authority an individual development plan was being maintained for the child or young person under section 14 by another local authority.
- (8) The local authority mentioned in subsection (7)(a) must maintain the individual development plan; and the plan is to be treated as being maintained under section 14 for the purposes of this Part.
- (9) Subsection (10) applies where—
- (a) a child becomes looked after by a local authority, and
  - (b) immediately before the child became looked after, an individual development plan was being maintained for the child under section 12 or 14.
- (10) The local authority that looks after the child must maintain the individual development plan; and the plan is to be treated as being maintained under section 19 for the purposes of this Part, with any provision described in the plan in accordance with section 14(6) being treated as described in accordance with section 19(4).
- (11) Subsection (12) and (13) apply where—
- (a) a person ceases to be a looked after child (whether because he or she is over compulsory school age or otherwise (see section 15)),
  - (b) a local authority is responsible for the child or young person, and
  - (c) immediately before ceasing to be looked after, an individual development plan was being maintained for the child or young person under section 19.
- (12) The local authority that is responsible for the child or young person must maintain the individual development plan.
- (13) The plan is to be treated as being maintained under section 14 for the purposes of this Part, with any provision described in the plan in accordance with section 19(4) being treated as described in accordance with section 14(6).

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### **36 Request to transfer plan to governing body of further education institution**

- (1) This section applies where a local authority maintains an individual development plan for a young person who is enrolled as a student at an institution in the further education sector in Wales.
- (2) The local authority may request the governing body of the institution to become responsible for maintaining the plan.
- (3) If the governing body fails to agree to the request within a prescribed period, the local authority may refer the matter to the Welsh Ministers.
- (4) The Welsh Ministers must determine whether the governing body of the further education institution should maintain the plan.

### **37 Regulations about transfer of individual development plans**

- (1) Regulations may make further provision for, and in connection with—
  - (a) the transfer under section 35 of a duty to maintain an individual development plan for a child or young person;
  - (b) the making of a request under section 36, a reference or determination under that section and the transfer of a duty to maintain an individual development plan for a young person following such a request or determination;
  - (c) the transfer in prescribed circumstances of a duty to maintain an individual development plan for a child or young person from—
    - (i) a local authority to another local authority;
    - (ii) the governing body of a maintained school or institution in the further education sector to the governing body of another maintained school or institution in the further education sector;
    - (iii) the governing body of a maintained school or institution in the further education sector to a local authority;
    - (iv) a local authority to the governing body of a maintained school or institution in the further education sector.
- (2) In this section, a reference to the governing body of a maintained school or an institution in the further education sector is to the governing body of a school or institution in Wales.

VALID FROM 01/09/2021

*Powers to direct governing bodies of maintained schools*

### **38 Local authority power to direct governing bodies of maintained schools**

Any power of a local authority under this Chapter to direct the governing body of a maintained school is not exercisable in respect of a school that the authority does not maintain unless the authority has consulted the local authority that maintains the school about its intention to exercise the power.

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VALID FROM 02/11/2020

### *Additional learning provision for detained persons*

#### **39 Meaning of “detained person” and other key terms**

(1) For the purposes of this Act—

“beginning of the detention” (“*dechrau'r cyfnod o gadw person yn gaeth*”) has the meaning given by section 562J of the Education Act 1996 (c. 56);

“detained person” (“*person sy'n cael ei gadw'n gaeth*”) means a child or young person who is—

- (a) subject to a detention order (within the meaning given by section 562(1A)(a), (2) and (3) of the Education Act 1996), and
- (b) detained in relevant youth accommodation in Wales or England,

and in provisions applying on a person's release includes a person who, immediately before release, was a detained person;

“home authority” (“*awdurdod cartref*”) has the meaning given by section 562J of the Education Act 1996, subject to regulations under subsection (2);

“relevant youth accommodation” (“*llety ieuencid perthnasol*”) has the meaning given by section 562(1A)(b) of the Education Act 1996.

(2) Regulations may provide for—

- (a) paragraph (a) of the definition of “home authority” in section 562J(1) of the Education Act 1996 (the home authority of a looked after child) to apply with modifications for the purposes of this Part;
- (b) provision in regulations made by the Welsh Ministers under section 562J(4) of the Education Act 1996 to apply with or without modifications for the purposes of this Part.

VALID FROM 01/09/2021

#### **40 Duty to prepare individual development plans for detained persons**

(1) Subsection (2) applies where it is brought to the attention of, or otherwise appears to, a home authority in Wales that—

- (a) a detained person may have additional learning needs, and
- (b) an individual development plan is not being kept by a local authority under section 42.

(2) The authority must—

- (a) decide whether the detained person has additional learning needs, and
- (b) if it decides that the detained person has additional learning needs, decide in accordance with regulations under section 46 whether it will be necessary for an individual development plan to be maintained for the detained person when he or she is released from detention to meet the detained person's reasonable needs for education or training.



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- (3) Before the home authority makes its decision it must invite the person in charge of the relevant youth accommodation to participate in the decision and, if needed, the preparation of an individual development plan.
- (4) If the home authority decides that the detained person does not have additional learning needs or that it will not be necessary for an individual development plan to be maintained for the detained person when he or she is released from detention, it must notify the detained person, the parent of a detained person who is a child and the person in charge of the relevant youth accommodation of the decision and the reasons for the decision.
- (5) If the home authority decides that a detained person has additional learning needs and that it will be necessary for an individual development plan to be maintained for the detained person when he or she is released from detention, it must—
  - (a) prepare an individual development plan for the detained person, and
  - (b) give a copy of the plan to the detained person, the parent of a detained person who is a child and the person in charge of the relevant youth accommodation.
- (6) If the home authority prepares an individual development plan, it must—
  - (a) decide whether additional learning provision should be provided to the detained 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) If it will not be possible to meet the reasonable needs of the detained person for additional learning provision when he or she is released from detention unless the home authority also secures provision of the kind mentioned in subsection (8), the authority must include a description of that other provision in the plan.
- (8) The kinds of provision are—
  - (a) a place at a particular school or other institution;
  - (b) board and lodging.
- (9) The duty in subsection (7)—
  - (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.

VALID FROM 01/09/2021

#### **41 Circumstances in which the duty in section 40(2) does not apply**

- (1) The duty in section 40(2) does not apply if either of the circumstances in subsection (2) apply.
- (2) The circumstances are—
  - (a) the detained person is a young person who does not consent to a decision under section 40(2)(a) being made or to a plan being prepared;

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- (b) the home authority has previously decided whether the detained person has additional learning needs and it is satisfied that—
  - (i) the detained person's needs have not changed materially since that decision was made, and
  - (ii) there is no new information that materially affects a decision under section 40(2)(a) or (b).

VALID FROM 01/09/2021

#### **42 Duty to keep individual development plans for detained persons**

- (1) This section applies where an individual development plan was being maintained for a detained person immediately before the beginning of his or her detention by—
  - (a) the governing body of a maintained school in Wales or an institution in the further education sector in Wales under section 12, or
  - (b) a local authority in Wales under section 14 or 19.
- (2) This section also applies where an individual development plan is prepared under section 40(5).
- (3) If the home authority for the detained person is a home authority in Wales, the home authority must keep the individual development plan for the detained person during his or her detention in relevant youth accommodation.
- (4) But the duty in subsection (3) does not apply where the detained person is a young person who does not consent to the individual development plan being kept.
- (5) Nor does the duty in subsection (3) apply in relation to an individual development plan that was being maintained by the governing body of a maintained school or an institution in the further education sector, or by a local authority other than the home authority, unless the fact that the plan was being maintained is brought to the attention of the home authority.
- (6) The home authority must inform the detained person and the parent of a detained person who is a child that it is keeping an individual development plan while the person is detained in relevant youth accommodation.
- (7) The home authority must give a copy of the individual development plan to the person in charge of the relevant youth accommodation.
- (8) Where a home authority keeps an individual development plan, it must—
  - (a) arrange for appropriate additional learning provision to be provided to the detained person, and
  - (b) if the plan specifies that the additional learning provision should be provided in Welsh, take all reasonable steps to secure that the appropriate additional learning provision is provided to the detained person in Welsh.
- (9) In this section “appropriate additional learning provision” is—
  - (a) the additional learning provision specified in the individual development plan,
  - (b) if it appears to the home authority that it is not practicable for the additional learning provision specified in the plan to be provided, educational

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provision corresponding as closely as possible to that additional learning provision, or

- (c) if it appears to the home authority that the additional learning provision specified in the plan is no longer appropriate for the detained person, additional learning provision which the home authority considers appropriate.

VALID FROM 01/09/2021

#### **43 Release of a detained person**

- (1) Subsection (2) applies where—
  - (a) a detained person is released,
  - (b) on the release date, a local authority in Wales is responsible for the person, and
  - (c) an individual development plan was kept for the person under section 42 during the detention.
- (2) The local authority must maintain the plan; and the plan is to be treated as maintained under section 14 for the purposes of this Part, with any provision described in the plan in accordance with section 19(4) or 40(7) being treated as described in accordance with section 14(6).
- (3) But subsection (4) applies instead of subsection (2) if—
  - (a) the person who has been released is a child, and
  - (b) immediately on release, the child is looked after by a local authority.
- (4) The local authority that looks after the child must maintain the plan; and the plan is to be treated as maintained under section 19 for the purposes of this Part, with any provision described in the plan in accordance with section 14(6) or 40(7) being treated as described in accordance with section 19(4).

VALID FROM 01/09/2021

#### **44 Certain provisions of Part 2 not to apply to children and young persons in detention**

- (1) The duties imposed by the provisions in subsection (2) on the following bodies cease to apply in relation to a detained person from the beginning of that person's detention—
  - (a) the governing body of a maintained school;
  - (b) the governing body of an institution in the further education sector;
  - (c) a local authority.
- (2) The provisions are—
  - (a) section 11 (governing body's duty to decide);
  - (b) section 12 (governing body's duty to prepare and maintain a plan);
  - (c) section 13 (local authority's duty to decide);

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- (d) section 14 (local authority's duty to prepare and maintain a plan);
  - (e) section 26 (local authority's duty to reconsider governing body's decision);
  - (f) section 30(2) (governing body's duty to refer where child or young person registered or enrolled at more than one institution);
  - (g) section 47(2) (governing body's duty to take all reasonable steps to secure additional learning provision).
- (3) The duties imposed by the provisions in subsection (4) on the governing body of a maintained school or on the governing body of an institution in the further education sector do not apply in relation to a child or young person at any time while that child or young person is—
- (a) subject to a detention order (within the meaning given by section 562(1A) (a), (2) and (3) of the Education Act 1996), and
  - (b) detained in accommodation other than relevant youth accommodation in Wales or England.
- (4) The provisions are—
- (a) section 11 (duty to decide);
  - (b) section 12 (duty to prepare and maintain a plan);
  - (c) section 17 (duty to refer a matter to a local authority that looks after a child);
  - (d) section 30(2) (duty to refer where child or young person registered or enrolled at more than one institution);
  - (e) section 47(2) (duty to take all reasonable steps to secure additional learning provision).
- (5) Subsection (6) applies until section 49 of the Apprenticeships, Skills, Children and Learning Act 2009 (c. 22) (application of provisions to persons detained in relevant youth accommodation) comes fully into force in relation to Wales.
- (6) Section 562 of the Education Act 1996 (c. 56) is to have effect for the purpose of the powers and duties conferred or imposed by or under this Part on local authorities as though section 49 of the Apprenticeships, Skills, Children and Learning Act 2009 (c. 22) were fully in force in relation to Wales.
- (7) For the purposes of this Part, the reference in subsection (1) of section 562 of the Education Act 1996 (c. 56) to relevant youth accommodation is to have effect as though it were a reference to relevant youth accommodation in Wales or England.

#### **45 Detention under Part 3 of the Mental Health Act 1983**

- (1) Subsection (2) applies where, because of section 44 or section 562 of the Education Act 1996 (c.56), powers or duties conferred or imposed by or under this Part on local authorities or on the governing bodies of maintained schools or institutions in the further education sector do not apply in relation to a child or young person who is—
- (a) subject to a detention order (within the meaning given by section 562(1A) (a), (2) and (3) of the Education Act 1996), and
  - (b) detained in a hospital under Part 3 of the Mental Health Act 1983 (c. 20).
- (2) Regulations may provide for those powers or duties to be applied, with or without modification, in relation to the child or young person.

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VALID FROM 02/11/2020

### *Necessity of plans*

#### **46 Regulations about deciding whether an individual development plan is necessary**

- (1) Regulations under this section apply to the following provisions and decisions made under them—
- (a) section 14(1)(c)(ii);
  - (b) section 31(6)(b);
  - (c) section 40(2)(b).
- (2) Regulations may—
- (a) specify factors to be taken into account in assessing whether it is necessary to prepare or maintain a plan;
  - (b) specify circumstances in which it is, or is not, necessary to prepare or maintain a plan;
  - (c) provide for what are, and what are not, to be considered reasonable needs for education or training (whether in specifying factors, specifying circumstances or otherwise);
  - (d) make further provision about the definition of “education or training”;
  - (e) make provision about the process for making decisions.

**Status:**

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