
WELSH STATUTORY INSTRUMENTS

2021 No. 401

The Additional Learning Needs (Wales) Regulations 2021

PART 2

INDIVIDUAL DEVELOPMENT PLANS

Detention under Part 3 of Mental Health Act 1983; application of 2018 Act

Interpretation of regulations 20 to 25 and Schedule 2

20.—(1) For the purposes of this regulation, regulations 21 to 25 and Schedule 2—

“the 1983 Act” (“*Deddf 1983*”) means the Mental Health Act 1983(1);

“beginning of the detention in hospital” (“*dechrau’r cyfnod o gadw’n gaeth mewn ysbyty*”) in relation to a child or young person detained in hospital under Part 3 of the 1983 Act means—

- (a) the beginning of the period of detention in hospital under that Part, or
- (b) where that period is immediately preceded by detention in a place of safety in accordance with court directions under that Part, the beginning of the period of detention in the place of safety;

“relevant local authority” (“*awdurdod lleol perthnasol*”) in relation to a child or young person detained in hospital under Part 3 of the 1983 Act has the meaning given in regulation 21.

(2) Regulation 2(2) deals with the meaning of references to a person being subject to a detention order.

(3) For the purposes of the definition of “beginning of the detention in hospital” in paragraph (1), it is immaterial whether or not the period of detention is pursuant to a single order.

Relevant local authority

21.—(1) Where the child or young person was a detained person immediately before the beginning of the child or young person’s detention in hospital under Part 3 of the 1983 Act, “the relevant local authority” means the child or young person’s home authority.

(2) Where the child or young person was not a detained person immediately before the beginning of the child or young person’s detention in hospital under Part 3 of the 1983 Act—

- (a) if the child or young person was looked after immediately before the beginning of that detention or has been looked after at any time since then, the “relevant local authority” means the local authority in Wales or England that looks after, or that most recently looked after, the child or young person;
- (b) otherwise the “relevant local authority” means the local authority in whose area the child or young person is ordinarily resident.

(1) 1983 c. 20. The Crime (Sentences) Act 1997 (c. 43), section 46 inserted sections 45A and 45B into Part 3. There are other amendments to Part 3 which are not relevant.

(3) But a local authority in England is not a relevant local authority.

(4) For the purpose of paragraph (1), the definitions of “home authority” and “the beginning of the detention” (see section 39 of the 2018 Act applying meanings given in section 562J of the Education Act 1996⁽²⁾ subject, in the case of “home authority” to any regulations under section 39(2)) apply as if the detention in hospital under Part 3 of the 1983 Act continues to be detention in relevant youth accommodation.

(5) For the purpose of paragraph (2), a child or young person is looked after by a local authority if the child or young person is looked after by a local authority for the purposes of Part 6 of the Social Services and Well-being (Wales) Act 2014⁽³⁾ or by a local authority in England for the purposes of the Children Act 1989⁽⁴⁾.

(6) In determining for the purpose of paragraph (2) where a child or young person is ordinarily resident, any period when the person is subject to a detention order is to be disregarded.

Child or young person with individual development plan prior to detention in hospital

22.—(1) This regulation applies where—

- (a) a child or young person is subject to a detention order,
- (b) the child or young person is detained in hospital under Part 3 of the 1983 Act, and
- (c) immediately before the beginning of the detention in hospital, an individual development plan was being maintained or kept for the child or young person under Part 2 of the 2018 Act.

(2) The relevant local authority for the child or young person must maintain the individual development plan; and the plan is to be treated as being maintained under section 14 of the 2018 Act for the purposes of Part 2 of that Act, with any provision described in the plan in accordance with section 19(4) or 40(7) of the 2018 Act being treated as described in accordance with section 14(6).

(3) But the duty to maintain the plan in paragraph (2) does not apply in relation to a plan that was being maintained or kept by a governing body or a local authority other than the relevant local authority unless the fact that the plan was being maintained or kept is brought to the attention of the relevant local authority.

(4) The 2018 Act and other provisions under Part 2 of that Act (including these Regulations) apply with the modifications provided for in Schedule 2 in relation to the child or young person while that child or young person is subject to a detention order and detained in hospital under Part 3 of the 1983 Act.

(5) Where, immediately before the beginning of the detention in hospital, the plan was being kept under Part 2 of the 2018 Act, the relevant local authority must—

- (a) inform the child or young person that it has become responsible for maintaining the plan,
- (b) if the plan is for a child, inform the child’s parent, and
- (c) review the plan,

(for where the plan was being maintained by another body immediately before the beginning of the detention in hospital, see sections 22(2) and 23 of the 2018 Act as applied by this regulation).

(2) 1996 c. 56. Section 562J was inserted by the Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), section 50. Relevant amendments to it are made by S.I. 2010/1158, Schedule 2, Part 1, paragraph 16(1), (2) and (4).

(3) 2014 anaw 4. Section 74 provides for the interpretation of references in that Act to a child who is looked after by a local authority.

(4) 1989 c. 41. Sections 22(1) and 105(4) provide for the interpretation of references to a child who is looked after. Section 22(1) has been amended by the Local Government Act 2000 (c. 22), Schedule 5, paragraph 19, the Children (Leaving Care) Act 2000 (c. 35), section 2(1) and (2) and S.I. 2016/413, regulations 55 and 69(a). Section 105(4) was substituted by S.I. 2016/413, regulations 55 and 106(b).

(6) The relevant local authority must complete the review of the plan promptly and in any event within the period of 7 weeks starting with the day after the day on which the child or young person is detained in hospital.

(7) The relevant local authority need not complete the review within that 7 week period if it is impractical to do so due to circumstances beyond the authority's control.

(8) For the purposes of paragraph (6) a review is completed when the relevant local authority gives, under Part 2 of the 2018 Act, any of the following—

- (a) a copy of the revised individual development plan;
- (b) notification of a decision that the plan should not be revised;
- (c) notification of a decision that the child or young person no longer has additional learning needs;
- (d) if the person is a young person, notification of a decision that it is no longer necessary to maintain the plan to meet the young person's reasonable needs for education or training.

Child or young person without individual development plan prior to detention in hospital

23.—(1) This regulation applies where—

- (a) a child is subject to a detention order,
- (b) the child is detained in hospital under Part 3 of the 1983 Act, and
- (c) immediately before the beginning of the detention in hospital, an individual development plan was neither being maintained nor being kept for the child under Part 2 of the 2018 Act.

(2) This regulation also applies where—

- (a) on or after 1 September 2022—
 - (i) a young person is subject to a detention order,
 - (ii) the young person is detained in hospital under Part 3 of the 1983 Act, and
- (b) immediately before the beginning of the detention in hospital, an individual development plan was neither being maintained nor being kept for the young person under Part 2 of the 2018 Act.

(3) The 2018 Act and other provisions under Part 2 of that Act (including these Regulations) apply with the modifications provided for in Schedule 2 in relation to the child or young person while that child or young person is subject to a detention order and detained in hospital under Part 3 of the 1983 Act (in particular, see section 13).

Release of child or young person detained in hospital

24.—(1) This regulation applies where—

- (a) a child or young person subject to a detention order and detained in hospital under Part 3 of the 1983 Act, is released from detention,
- (b) immediately before release, a relevant local authority was maintaining an individual development plan under section 14 of the 2018 Act for the child or young person,
- (c) on the release date, a local authority is responsible for the child or young person, and
- (d) immediately on release, the person released is not a child who is looked after by a local authority (for where a child is looked after by a local authority immediately on release, see section 35(9) and (10) of the 2018 Act).

(2) The local authority mentioned in paragraph (1)(c) must maintain the individual development plan; and the plan is to be treated as maintained under section 14 of the 2018 Act for the purposes of Part 2 of that Act.

Child or young person transfers from hospital detention to detention in relevant youth accommodation

25.—(1) This regulation applies where a child or young person subject to a detention order transfers from detention in hospital under Part 3 of the 1983 Act to detention in relevant youth accommodation in Wales or England (for where such a child or young person transfers to detention in accommodation other than relevant youth accommodation in Wales or England, see section 562 of the Education Act 1996⁽⁵⁾ and section 44 of the 2018 Act).

(2) In the application of the definition of “beginning of the detention” (in section 562J of the Education Act 1996) for the purposes of section 42 of the 2018 Act, the continuous period referred to does not include the period of detention in hospital under Part 3 of the 1983 Act nor any period before it.

(5) 1996 c. 56. Section 562 has been amended by the Criminal Justice and Immigration Act 2008 (c. 4), Schedule 4, Part 1, paragraph 47, the Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), section 49, S.I. 2010/1158, Schedule 2, Part 1, paragraph 7(1) to (3) and S.I. 2016/413, regulations 153 and 157.