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WELSH STATUTORY INSTRUMENTS

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**2021 No. 401**

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

**PART 2**

**INDIVIDUAL DEVELOPMENT PLANS**

**Categories of looked after child prescribed under section 15 of the 2018 Act**

5. A child is not to be treated as looked after for the purposes of the 2018 Act if by or under section 83 of the Social Services and Well-being (Wales) Act 2014<sup>(1)</sup> (looked after and accommodated children) a personal education plan (within the meaning given by section 83(2A) of that Act) is not required to be included as part of the child’s care and support plan under that section.

**Commencement Information**

**II** Reg. 5 in force at 1.9.2021, see [reg. 1\(2\)](#)

*Local authority decisions on necessity of individual development plans for young people*

**Interpretation of regulations 6 to 9 and Schedule 1**

6.—(1) In this regulation, regulations 7 to 9 and Schedule 1—

“further education or training” (“*addysg bellach neu hyfforddiant*”) means education or training suitable to the requirements of persons who are above compulsory school age and organised leisure time occupation connected with such education or training, but it does not include any education or training received by a young person whilst subject to a detention order (see regulation 2(2) for when a person is subject to a detention order);

“outcomes” (“*deilliannau*”) means outcomes related to preparing for work, progressing to other education, including higher education, or training opportunities or developing independent living skills or other useful skills or qualities for adulthood;

“programme of study” (“*rhaglen astudio*”) means one or more courses of further education or training, whether or not leading to a qualification and in the case of more than one course, whether or not the courses are taken concurrently or in succession (but if in succession they must be part of an overall programme of study).

(2) In determining the duration of a programme of study for the purposes of regulation 9 and Schedule 1—

(a) a programme of study is treated as beginning with the day on which the young person commences, or is expected to commence, the programme of study and ending with the day on which the person is expected to complete, it, and

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<sup>(1)</sup> 2014 [anaw 4](#). Section 83(2A) was inserted by, and section 83 more generally amended by, section 16 of the 2018 Act.

- (b) if the duration of the programme, or part of it, lasts for at least 38 weeks in any one year period, the programme, or that part of it, is treated as taking place over one year.
- (3) In determining the duration of other further education or training undertaken by a young person for the purposes of regulation 9 and Schedule 1—
  - (a) the further education or training is treated as having begun with the first day of the month during which the young person commenced it and ending with the last day of the month during which—
    - (i) the young person completed or otherwise ceased to receive the further education or training, or
    - (ii) the young person is expected to complete or otherwise cease receiving the further education or training;
  - (b) if the duration of the further education or training, or part of it, lasts for at least 38 weeks in any one year period, it, or that part of it, is treated as taking place over one year.

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**Commencement Information**

**I2** Reg. 6 in force at 1.9.2021, see [reg. 1\(2\)](#)

**Potential programme of study**

7.—(1) This regulation applies to a local authority’s decision under section 14(1)(c)(ii) or 31(6)(b) of the 2018 Act on whether an individual development plan is necessary for a young person who is neither a registered pupil at a maintained school in Wales nor enrolled as a student at an institution in the further education sector in Wales.

- (2) The local authority must—
  - (a) identify the young person’s desired outcomes, if any, and
  - (b) consider what programmes of study may be available that would be suitable for enabling the young person to meet those desired outcomes.
- (3) The local authority, when considering the matter in paragraph (2)(b)—
  - (a) must first consider programmes of study at mainstream maintained schools or institutions in the further education sector;
  - (b) may only consider programmes of study at institutions other than those mentioned in paragraph (7) where it appears likely that the young person’s reasonable needs for additional learning provision to undertake a suitable programme of study cannot be met unless the local authority were to secure for the young person—
    - (i) a place at an institution other than one mentioned in paragraph (7), or
    - (ii) board and lodging.

(4) When determining whether a programme of study provided by an institution other than one mentioned in paragraph (7) is suitable for a young person, the local authority must consider in accordance with paragraphs 1 and 2 of Schedule 1, whether there is a realistic prospect that the young person would meet the person’s desired outcomes by undertaking, or continuing to undertake (with any proposed modifications), the programme of study.

(5) Where the young person is already undertaking a programme of study, paragraph (2) does not require the local authority to consider other programmes of study if it is satisfied that the programme that the young person is undertaking remains suitable, or with modifications would be suitable, for enabling the young person to meet the person’s desired outcomes.

(6) The local authority need not comply with paragraph (2) or any part of it, if the local authority is satisfied that complying with it, or that part of it, would not affect its decision under section 14(1)(c)(ii) or 31(6)(b) of the 2018 Act.

(7) Regulation 8 applies where the young person is, or is to be, a registered pupil or enrolled student at any of the following institutions to undertake, or continue to undertake, a programme of study to meet the young person's desired outcomes—

- (a) a maintained school in Wales or England;
- (b) an institution in the further education sector in Wales or England;
- (c) an Academy.

(8) Regulation 9 applies to all other cases.

#### **Commencement Information**

**I3** Reg. 7 in force at 1.9.2021, see **reg. 1(2)**

### **Necessity of a plan: programmes of study at maintained schools and further education institutions in Wales and certain institutions in England**

**8.—(1)** It is necessary for the local authority to prepare and maintain, or continue to maintain, an individual development plan for the young person if the local authority, in preparing or maintaining the plan for the young person, would be or is under the duty in section 14(6) of the 2018 Act to describe provision of a kind listed in section 14(7) of that Act.

(2) It is also necessary for a local authority to continue to maintain an individual development plan for the young person if the young person is to register as a pupil at a maintained school in Wales or enrol as a student at an institution in the further education sector in Wales to undertake a programme of study.

(3) For cases not falling within paragraph (1) or (2), the local authority must consider—

- (a) in the case of a young person who is to register as a pupil at a maintained school in Wales or enrol as a student at an institution in the further education sector in Wales, whether it is reasonable for the governing body of the school or institution to secure the additional learning provision;
- (b) in the case of a young person who is, or is to be, a registered pupil or enrolled student at a maintained school in England, Academy or institution in the further education sector in England, whether the governing body of the school or institution or, in the case of an Academy, the proprietor would secure the additional learning provision.

(4) In considering a matter referred to in paragraph (3), the local authority must consult the governing body or proprietor.

(5) It is necessary for the local authority to prepare and maintain, or to continue to maintain, an individual development plan for the young person if—

- (a) in the case referred to in paragraph (3)(a), the local authority considers that it is not reasonable for the governing body of the school or institution to secure the additional learning provision;
- (b) in the case referred to in paragraph (3)(b), the local authority is not satisfied that the governing body or proprietor would secure the additional learning provision.

(6) Otherwise it is not necessary for the local authority to prepare and maintain, or to continue to maintain, an individual development plan for the young person.

(7) References in this regulation to additional learning provision are to the additional learning provision which is called for by the young person's additional learning needs in order to undertake, or continue to undertake, the programme of study.

**Commencement Information**

**I4** Reg. 8 in force at 1.9.2021, see [reg. 1\(2\)](#)

**Other cases: reasonable needs for education or training and necessity of an individual development plan**

**9.—(1)** The young person has reasonable needs for education or training where the duration of the suitable programme of study that it is proposed the young person undertake, or continue to undertake, together with any other further education or training undertaken by the young person is not more than 2 years.

(2) The local authority may determine that the young person has reasonable needs for education or training if any of the circumstances described in paragraphs 3(1), 4(1), 5(1) and 6(1) of Schedule 1 apply.

(3) For the purposes of determining whether the young person has reasonable needs for education or training under paragraph (2), paragraphs 3(2), 4(2), 5(2) and 6(2) of Schedule 1 set out the respective factors which the local authority must take into account for each of the circumstances that apply.

(4) For the purposes of section 31(6)(b) of the 2018 Act, a young person has reasonable needs for education or training where the young person is undertaking a suitable programme of study in accordance with a determination under paragraph (2).

(5) Where the young person has, or a local authority determines that the young person has, reasonable needs for education or training under this regulation—

- (a) for the purposes of section 14(1)(c)(ii) of the 2018 Act, it is necessary for the local authority to prepare and maintain an individual development plan for the young person if the local authority, were it to be preparing an individual development plan for the young person, would be under the duty in section 14(6) of that Act to specify in the plan provision of the kind listed in section 14(7)(a) of that Act;
- (b) for the purposes of section 31(6)(b) of that Act, it is necessary for the local authority to continue to maintain the young person's individual development plan if the local authority is under the duty in section 14(6) of that Act to specify in the plan provision of the kind listed in section 14(7)(a) of that Act.

(6) Otherwise it is not necessary for the local authority to prepare and maintain, or continue to maintain, an individual development plan for the young person.

**Commencement Information**

**I5** Reg. 9 in force at 1.9.2021, see [reg. 1\(2\)](#)

**Notification of decision under section 14(1)(c)(ii) of the 2018 Act that plan not necessary**

**10.—(1)** This regulation applies where a local authority decides under section 14(1)(c)(ii) of the 2018 Act that it is not necessary to prepare and maintain an individual development plan for a young person.

(2) The local authority must notify the young person of—

- (a) the decision, and
- (b) the reasons for the decision.

(3) The local authority must make the decision and give the notification mentioned in paragraph (2), promptly and in any event before the end of the period of 12 weeks beginning with the day after the day on which the young person consented to the decision under section 13(1) of the 2018 Act being made.

(4) The local authority need not comply with the requirement to make the decision and give the notification before the end of the 12 week period if it is impractical to do so due to circumstances beyond its control.

(5) When giving the notification referred to in paragraph (2), the local authority must also give the young person—

- (a) contact details for the local authority;
- (b) information about how to access the local authority’s arrangements under section 9 of the 2018 Act for providing people with information and advice about additional learning needs and the system for which provision is made by Part 2 of that Act;
- (c) details of the local authority’s arrangements for the avoidance and resolution of disagreements under section 68 of the 2018 Act;
- (d) details of the local authority’s arrangements for the provision of independent advocacy services under section 69 of the 2018 Act;
- (e) information about the right to appeal to the Education Tribunal under section 70 of the 2018 Act against the decision.

**Commencement Information**

**I6** [Reg. 10](#) in force at 1.9.2021, see [reg. 1\(2\)](#)

*Time limits for section 20 referrals and requesting reconsideration of decision to cease to maintain plans*

**Time limit for NHS body responding to section 20 referral**

**11.—**(1) An NHS body under a duty to inform under section 21(1) or (2) of the 2018 Act (individual development plans: Local Health Boards and NHS trusts) must comply with that duty promptly and in any event within the period prescribed by paragraph (2).

- (2) The prescribed period—
- (a) begins with the day on which the NHS body receives the referral under section 20 of the 2018 Act, and
  - (b) ends at the end of 6 weeks beginning with the day after the day mentioned in subparagraph (a).

(3) The NHS body need not comply with the duty to inform under section 21(1) or (2) within the period prescribed by paragraph (2) if it is impractical to do so due to circumstances beyond its control.

**Commencement Information**

**I7** [Reg. 11](#) in force at 1.9.2021, see [reg. 1\(2\)](#)

### **Time limit for requesting reconsideration of decision to cease to maintain plan**

**12.**—(1) The period prescribed for the purposes of section 32(1)(b) of the 2018 Act (reconsideration by local authorities of decisions of governing bodies under section 31)—

- (a) begins with the day on which the governing body gives the notifications under section 31(8) and (9) of that Act, and
- (b) ends at the end of 4 weeks beginning with the day after the day mentioned in sub-paragraph (a).

(2) Where the notifications under section 31(8) and (9) are given on different days (whether because given to different persons on different days or given under each subsection on different days), the reference in paragraph (1)(a) to the day on which the governing body gives the notifications is a reference to the later of those days.

#### **Commencement Information**

**I8** [Reg. 12](#) in force at 1.9.2021, see [reg. 1\(2\)](#)

### *Transfer of responsibility for individual development plans*

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

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

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

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

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

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

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

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

#### **Commencement Information**

**I9** [Reg. 13](#) in force at 1.9.2021, see [reg. 1\(2\)](#)

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

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

(2) The referral must be—

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

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

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

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

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

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

#### **Commencement Information**

**I10** [Reg. 14](#) in force at 1.9.2021, see [reg. 1\(2\)](#)

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

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

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

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

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

**Commencement Information**

**I11** [Reg. 15](#) in force at 1.9.2021, see [reg. 1\(2\)](#)

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

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

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

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

**Commencement Information**

**I12** [Reg. 16](#) in force at 1.9.2021, see [reg. 1\(2\)](#)

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

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

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

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

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

**Commencement Information**

**I13** [Reg. 17](#) in force at 1.9.2021, see [reg. 1\(2\)](#)



### *Detained persons*

#### **Necessity of individual development plan for detained person upon release**

**18.**—(1) This regulation applies for the purpose of a home authority's decision under section 40(2)(b) of the 2018 Act.

(2) It is necessary to prepare an individual development plan for a detained person except where—

- (a) it is likely that the detained person will have attained the age of 25 before being released from detention, or
- (b) in the case of a detained young person, it is unlikely that the person will have reasonable needs for education or training when released.

(3) For the purposes of paragraph (2)(b), a young person has reasonable needs for education or training in each of the following circumstances—

- (a) the young person is registered as a pupil or enrolled as a student at a maintained school, an institution in the further education sector or an Academy (whether the maintained school or institution in the further education sector is in Wales or England);
- (b) the young person has reasonable needs for education or training under regulation 9(1);
- (c) a local authority has determined under regulation 9(2) that the young person has reasonable needs for education or training.

(4) Where the home authority decides that it will not be necessary for an individual development plan to be maintained for the detained person when that person is released from detention, the home authority must make that decision and give the notification of it under section 40(4) of the 2018 Act promptly and in any event before the end of the period of 12 weeks beginning with the day after the day on which—

- (a) in the case of a child, it was brought to the attention of, or otherwise appeared to, the home authority that the child may have additional learning needs;
- (b) in the case of a young person, the young person consented to the decision being made on whether the young person has additional learning needs.

(5) The home authority need not comply with the requirement to make that decision and give the notification before the end of the 12 week period if it is impractical to do so due to circumstances beyond its control.

(6) When notifying a detained person and if the detained person is a child, the child's parent, under section 40(4) of the 2018 Act that an individual development plan will not be necessary, the home authority must also give—

- (a) contact details for the home authority;
- (b) information about how to access the home authority's arrangements under section 9 of the 2018 Act for providing people with information and advice about additional learning needs and the system for which provision is made by Part 2 of that Act;
- (c) details of the home authority's arrangements for the avoidance and resolution of disagreements under section 68 of the 2018 Act;
- (d) details of the home authority's arrangements for the provision of independent advocacy services under section 69 of the 2018 Act;
- (e) information about the right to appeal to the Education Tribunal under section 72 of the 2018 Act against the decision.

#### Commencement Information

**I14** Reg. 18 in force at 1.9.2021, see [reg. 1\(2\)](#)

#### Amendments to section 44 of the 2018 Act

**19.**—(1) Section 44 of the 2018 Act (certain provisions of Part 2 not to apply to children and young persons in detention) is amended as follows—

(a) in subsection (1), after paragraph (c) insert—

“(d) an NHS body.”;

(b) in subsection (2), after paragraph (d) insert—

“(da) section 20(5)(a) and (c) (NHS body’s duty to secure a treatment or service and to take all reasonable steps to secure it in Welsh);”.

#### Commencement Information

**I15** Reg. 19 in force at 1.9.2021, see [reg. 1\(2\)](#)

#### *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(2);

“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.

#### Commencement Information

**I16** Reg. 20 in force at 1.9.2021, see [reg. 1\(2\)](#)

(2) 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.

## 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.

(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<sup>(3)</sup> 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<sup>(4)</sup> or by a local authority in England for the purposes of the Children Act 1989<sup>(5)</sup>.

(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.

### Commencement Information

**I17** Reg. 21 in force at 1.9.2021, see [reg. 1\(2\)](#)

## 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) [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).
- (4) [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.
- (5) [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).

(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).

(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.

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**Commencement Information**

**I18** [Reg. 22](#) in force at 1.9.2021, see [reg. 1\(2\)](#)

**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).

#### Commencement Information

**I19** [Reg. 23](#) in force at 1.9.2021, see [reg. 1\(2\)](#)

### 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.

#### Commencement Information

**I20** [Reg. 24](#) in force at 1.9.2021, see [reg. 1\(2\)](#)

### 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(6) 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.

(6) [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.

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**Changes to legislation:** There are currently no known outstanding effects for the The Additional Learning Needs (Wales) Regulations 2021, PART 2. (See end of Document for details)

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**Commencement Information**

**I21** [Reg. 25](#) in force at 1.9.2021, see [reg. 1\(2\)](#)

**Changes to legislation:**

There are currently no known outstanding effects for the The Additional Learning Needs (Wales) Regulations 2021, PART 2.