

*Draft Regulations laid before Senedd Cymru under section 98(3) of the Additional Learning Needs and Education Tribunal (Wales) Act 2018, for approval by resolution of Senedd Cymru.*

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DRAFT WELSH STATUTORY  
INSTRUMENTS

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**2021 No. (W.)**

**EDUCATION, WALES**

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

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (“the 2018 Act”) establishes the system in Wales for meeting the additional learning needs of children and young people. These Regulations supplement the system provided for in the 2018 Act.

Part 1 of these Regulations includes provision on the interpretation of terms used throughout the Regulations. There are also specific interpretation provisions in other regulations, where the words and expressions used are used only for the purposes of regulations dealing with a particular matter (for example, regulation 34 in Part 4). Regulation 3 makes provision about notifying someone or giving someone a document under these Regulations.

Part 2 of these Regulations deals with a range of matters related to individual development plans and supplements the provisions of Chapter 1 of Part 2 of the 2018 Act. In particular, regulations 6 to 10 make provision about local authority decisions under sections 14 and 31 of the 2018 Act about the necessity of maintaining individual development plans for young people who are not at a maintained school in Wales or an institution in the further education sector in Wales. There are also provisions related to a transfer of responsibility for an individual development plan from one body to another. Regulations 20 to 25 apply, with modifications, duties in the 2018 Act in relation to children and young people who are detained in hospital under Part 3 of the Mental Health Act 1983.

Part 3 of these Regulations makes provision about supplementary functions in Chapter 3 of Part 2 of the 2018 Act and functions in sections 68 and 69 of that Act. It includes provisions relating to additional learning needs co-ordinators. Section 60 of the 2018 Act requires governing bodies of maintained schools (except special schools) and further education institutions in Wales to designate a person (or persons) as the additional learning needs co-ordinator to be responsible for co-ordinating additional learning provision for pupils or students with additional learning needs. Regulations 27 and 28 set out the qualifications or experience that additional learning needs co-ordinators must have and regulations 29 and 30 confer functions on additional learning needs co-ordinators relating to the additional learning provision for pupils or students with additional learning needs. These Regulations do not affect the governing body's ability to confer further responsibilities upon the additional learning needs co-ordinator. These provisions replace provisions of the Additional Learning Needs Co-ordinator (Wales) Regulations 2020, which are revoked by regulation 1.

Part 4 of these Regulations makes provision about parents and young people lacking capacity. It deals with young people, and parents of children, who lack mental capacity to take the decisions or actions required. For the purposes of the 2018 Act, a person lacks capacity when they lack capacity within the meaning of the Mental Capacity Act 2005, that is, when they lack mental, not legal capacity. The Regulations provide that where a child's parent lacks capacity all references to the child's parent are to be read as references to a representative of the parent. The Regulations also provide that where a young person lacks capacity, the references to the young person are to be read as references to the young person's representative, or to the young person's parent.

Part 4 makes it clear that the provisions concerning mental capacity have effect in spite of section 27(1)(g) of the Mental Capacity Act 2005.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Welsh Government at Cathays Park, Cardiff CF10 3NQ and on the Welsh Government website at [www.gov.wales](http://www.gov.wales).

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**2021 No. (W.)**

**EDUCATION, WALES**

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

*Made*

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*Coming into force*

*1 September 2021*

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The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 15(2), 21(10), 32(1)(b), 36(3), 37(1)(a) and (b), 45, 46, 60(4), 65(5), 67, 82, 83, 97 and 98(2) of the Additional

Learning Needs and Education Tribunal (Wales) Act 2018(1).

In accordance with section 98(3) of that Act, a draft of these Regulations was laid before, and approved by a resolution of, Senedd Cymru(2).

## PART 1 GENERAL

### **Title, commencement and revocation**

1.—(1) The title of these Regulations is the Additional Learning Needs (Wales) Regulations 2021.

(2) They come into force on 1 September 2021.

(3) The Additional Learning Needs Co-ordinator (Wales) Regulations 2020(3) are revoked.

### **General interpretation**

2.—(1) In these Regulations, “the 2018 Act” means the Additional Learning Needs and Education Tribunal (Wales) Act 2018.

(2) A reference in these Regulations to a person being subject to a detention order (however expressed) has the meaning given to that expression by section 562(1A)(a), (2) and (3) of the Education Act 1996(4).

(3) Words and expressions used in these Regulations have the same meaning as they have in the 2018 Act except so far as a contrary intention appears.

(4) Where these Regulations provide for a period within which, or before the end of which, something is required to be done and the last day of that period is not a working day, the period is extended to include the following working day.

### **Giving notice etc. under these Regulations**

3.—(1) Paragraph (2) applies where a provision of these Regulations requires or authorises (in whatever terms) a governing body, local authority or the Welsh Ministers to—

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- (1) 2018 anaw 2. See section 99(1) for the definitions of “prescribed” and “regulations”.
- (2) The references in section 98(3) to the National Assembly for Wales now have effect as references to Senedd Cymru by virtue of section 150A(2) of the Government of Wales Act 2006 (c. 32).
- (3) S.I. 2020/1351 (W. 299).
- (4) 1996 c. 56. These subsections have 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 and S.I. 2016/413 (W. 131), regulations 153 and 157.

- (a) notify a person of something, or
- (b) give a document to a person (including a notice or a copy of a document).

(2) Section 88 of the 2018 Act (giving notice etc. under this Part) applies to the provision as if—

- (a) it were a provision of Part 2 of the 2018 Act,
- (b) references in that section to a governing body or local authority were to a governing body, local authority or the Welsh Ministers, and
- (c) the reference in section 88(4) to section 7 of the Interpretation Act 1978<sup>(1)</sup> (references to service by post) were to section 13 of the Legislation (Wales) Act 2019<sup>(2)</sup> (service of documents by post or electronically).

**Giving notice etc. under Part 2 of the 2018 Act: amendment of section 88**

4. At the end of section 88 of the 2018 Act insert—

“(6) A notification or document given to a person by sending it electronically in accordance with this section is to be treated for the purposes of this Part as having been given, unless the contrary is proved, on the day on which the electronic communication was sent.”

## 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>(3)</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.

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(1) 1978 c. 30.  
 (2) 2019 anaw 4. Section 13 is amended by the Senedd and Elections (Wales) Act 2020 (anaw 1), Schedule 1, paragraph 5(1), (3)(b) and (4)(a). There are other amendments to section 13 which are not relevant.  
 (3) 2014 anaw 4. Section 83(2A) was inserted by, and section 83 more generally amended by, section 16 of the 2018 Act.

### **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
- (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.

### **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.

**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.

**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.

**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.

*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 sub-paragraph (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.

**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.

*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.

### **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.

### **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.

**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.



## **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.

### *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.

#### **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);”.

*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.

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(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.

(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>(1)</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>(2)</sup> or by a local authority in England for the purposes of the Children Act 1989<sup>(3)</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.

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

**22.—**(1) This regulation applies where—

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- (1) 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).
  - (2) 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.
  - (3) 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).

- (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).

(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<sup>(1)</sup> 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.

**PART 3**

**SUPPLEMENTARY FUNCTIONS**

*Additional learning needs co-ordinator*

**Interpretation of regulations 26 to 30**

26. In this regulation and regulations 27 to 30—

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(1) 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.

“the 2014 Act” (“*Deddf 2014*”) means the Education (Wales) Act 2014<sup>(1)</sup>;

“further education learning support worker” (“*gweithiwr cymorth dysgu mewn addysg bellach*”) means a person who is registered with the Education Workforce Council in the category of further education learning support worker as described in table 1 of Schedule 2 to the 2014 Act;

“further education teacher” (“*athro neu athrawes addysg bellach*”) means a person who is registered with the Education Workforce Council in the category of further education teacher as described in table 1 of Schedule 2 to the 2014 Act;

“relevant services” (“*gwasanaethau perthnasol*”) means—

- (a) advice or assistance in relation to additional learning provision,
- (b) the management of additional learning provision,
- (c) the assessment of additional learning needs,
- (d) advice or assistance in relation to additional learning needs, and
- (e) the management of pupils or students (as the case may be) with additional learning needs;

“school learning support worker” (“*gweithiwr cymorth dysgu mewn ysgol*”) means a person who is registered with the Education Workforce Council in the category of school learning support worker as described in table 1 of Schedule 2 to the 2014 Act;

“school teacher” (“*athro neu athrawes ysgol*”) means a person who is registered with the Education Workforce Council in the category of school teacher as described in table 1 of Schedule 2 to the 2014 Act and does not include a person registered on a provisional basis under section 9(5) of that Act;

“special educational needs co-ordinator” (“*cydlynnydd anghenion addysgol arbennig*”) means a person having responsibility for co-ordinating the provision for pupils identified as having special educational needs under Part 4 of the Education Act 1996<sup>(2)</sup>.

### **Prescribed qualification or experience of an additional learning needs co-ordinator at a school**

**27.** The governing body of a school may designate a person as an additional learning needs co-ordinator

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(1) 2014 anaw 5.

(2) 1996 c. 56.



under section 60(2) of the 2018 Act only if that person—

- (a) is a school teacher, or
- (b) was a special educational needs co-ordinator within the school immediately prior to 4 January 2021<sup>(1)</sup>.

**Prescribed qualification of an additional learning needs co-ordinator at an institution in the further education sector**

28. The governing body of an institution in the further education sector may designate a person as an additional learning needs co-ordinator under section 60(2) of the 2018 Act only if that person is a further education teacher.

**Additional learning needs co-ordinator functions at a school**

29. The tasks an additional learning needs co-ordinator at a school is responsible for carrying out, or ensuring are carried out, are—

- (a) identifying a pupil's additional learning needs and co-ordinating the making of additional learning provision that meets a pupil's additional learning needs,
- (b) securing relevant services that will support a pupil's additional learning provision as required,
- (c) keeping records of decisions about additional learning needs and individual development plans,
- (d) promoting a pupil with additional learning needs' inclusion in the school and access to the school's curriculum, facilities and extra-curricular activities,
- (e) monitoring the effectiveness of any additional learning provision made,
- (f) advising school teachers at the school about differentiated teaching methods appropriate for individual pupils with additional learning needs,
- (g) supervising and training school learning support workers who work with pupils with additional learning needs, and
- (h) contributing to in-service training for school teachers at the school to assist the additional

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(1) The Additional Learning Needs Co-ordinator (Wales) Regulations 2020 (S.I. 2020/1351 (W. 299)) came into force on 4 January 2021.

learning needs co-ordinator in carrying out the tasks referred to in paragraphs (a) to (e).

**Additional learning needs co-ordinator functions at an institution in the further education sector**

**30.** The tasks an additional learning needs co-ordinator at an institution in the further education sector is responsible for carrying out, or ensuring are carried out, are—

- (a) identifying a student's additional learning needs and co-ordinating the making of additional learning provision that meets a student's additional learning needs,
- (b) securing relevant services that will support a student's additional learning provision as required,
- (c) keeping records of decisions about additional learning needs and individual development plans,
- (d) promoting a student with additional learning needs' inclusion in the institution in the further education sector and access to the institution in the further education sector's curriculum, facilities and extra-curricular activities,
- (e) monitoring the effectiveness of any additional learning provision made,
- (f) advising teachers at the institution in the further education sector about differentiated teaching methods appropriate for individual students with additional learning needs,
- (g) supervising and training further education learning support workers who work with students with additional learning needs, and
- (h) contributing to training for further education teachers at the institution in the further education sector to assist the additional learning needs co-ordinator in carrying out the tasks referred to in paragraphs (a) to (e).

*Time limit for complying with section 65 request*

**Time limit for complying with local authority request for information or other help**

**31.—**(1) A person under a duty to comply with a local authority's request under section 65 of the 2018 Act (duties to provide information and other help) must comply with the request promptly and in any event within the period prescribed by paragraph (2).

(2) The prescribed period—

- (a) begins with the day on which the person receives the request, and
  - (b) ends at the end of 6 weeks beginning with the day after the day mentioned in subparagraph (a).
- (3) The person need not comply with the request within the period prescribed by paragraph (2) if—
- (a) it is impractical to do so due to circumstances beyond the person’s control, or
  - (b) the request does not relate to the exercise of a function in respect of a particular child or young person.

*Goods and services*

**Provision of goods or services in relation to additional learning provision**

**32.**—(1) A local authority may supply goods or services to—

- (a) a person exercising functions under Part 2 of the 2018 Act, or
- (b) a person making additional learning provision in connection with the exercise of functions under that Part,

provided that the supply of those goods or services is for the purpose of the exercise of those functions or the making of that additional learning provision, as the case may be.

(2) The terms and conditions on which a local authority supplies goods or services under paragraph (1) may include terms and conditions as to payment and may be different for different persons or on different occasions.

(3) But the local authority must secure that any terms and conditions as to payment would not, taking one financial year with another, result in payments to the authority in excess of the reasonable cost to it of supplying the goods or services in respect of which the payments are made.

*Arrangements for the avoidance and resolution of disputes and independent advocacy services for detained persons*

**Amendment to section 68 of the 2018 Act**

**33.** In section 68(8) of the 2018 Act (arrangements for the avoidance and resolution of disagreements), after “area” insert “and detained persons for whom it is the home authority”.

**PART 4**  
**PARENTS AND YOUNG PEOPLE**  
**LACKING CAPACITY**

**Interpretation of this Part**

**34.** In this Part—

“the relevant time” (“*yr adeg berthnasol*”) has the same meaning as in section 83(3) of the 2018 Act;

“representative” (“*cynrychiolydd*”) means—

- (a) a deputy appointed by the Court of Protection under section 16(2)(b) of the Mental Capacity Act 2005<sup>(1)</sup> to make decisions on the parent’s or young person’s behalf in relation to matters within Part 2 of the 2018 Act;
- (b) the donee of a lasting power of attorney (within the meaning of section 9 of the Mental Capacity Act 2005) appointed by the parent of a child or by a young person to make decisions on the parent or young person’s behalf in relation to matters within Part 2 of the 2018 Act;
- (c) an attorney in whom an enduring power of attorney (within the meaning of Schedule 4 to the Mental Capacity Act 2005<sup>(2)</sup>) created by the parent or young person is vested, where the power of attorney is registered in accordance with paragraphs 4 and 13 of that Schedule or an application for registration of the power of attorney has been made;
- (d) the young person’s parent, where the young person does not have a representative listed in paragraph (a), (b) or (c).

**When a child’s parent lacks capacity**

**35.**—(1) When a child’s parent lacks capacity at the relevant time, references in the provisions of the 2018 Act listed below to a child’s parent are to be read as references to a representative of that parent—

- (a) section 11(4);
- (b) section 13(3);
- (c) section 18(3);
- (d) section 20(3)(a) and (b);
- (e) section 22(1)(b) and (2)(b);
- (f) section 23(8), (10) and (11);

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(1) 2005 c. 9.

(2) Relevant amendments to Schedule 4 are made by S.I. 2012/2404, Schedule 2, paragraph 53(1) and (6).

- (g) section 24(7), (9) and (10);
- (h) section 26(1)(b);
- (i) section 27(1)(b) and (4);
- (j) section 28(2)(b), (4), (5) and (7);
- (k) section 31(7)(b), (8) and (9);
- (l) section 32(1)(a) and (b) and (3);
- (m) section 64(3) and (4).

(2) When a child’s parent lacks capacity at the relevant time, references to parents of children, and parents of pupils in section 9(3)(b) and (4)(a) of the 2018 Act respectively are to be read as including both the parents and a representative of the parents.

(3) When a child’s parent lacks capacity at the relevant time, the reference in regulation 22(5)(b) to the child’s parent is to be read as a reference to a representative of that parent.

**When a parent of a child who is a detained person lacks capacity**

**36.** When a parent of a detained person who is a child lacks capacity at the relevant time—

- (a) references in sections 40(4) and (5)(b) and 42(6) of the 2018 Act to the parent of a detained person who is a child are to be read as references to a representative of that parent;
- (b) the reference in regulation 18(6) to the child’s parent is to be read as a reference to a representative of that parent.

**When a young person lacks capacity**

**37.—**(1) When a young person lacks capacity at the relevant time, references to a young person in the provisions of the 2018 Act listed below are to be read as references to the representative of the young person—

- (a) section 11(3)(c) in the second place it occurs;
- (b) section 11(4) in the second place it occurs;
- (c) section 12(2)(b) in the second place it occurs;
- (d) section 13(2)(d) in the second place it occurs;
- (e) section 13(3) in the second place it occurs;
- (f) section 14(3) in the second place it occurs;
- (g) section 20(3)(a) and (b);
- (h) section 22(1)(a) and (2)(a);
- (i) section 23(8) in the second place it occurs;
- (j) section 23(10) and (11)(a);

- (k) section 26(1)(b) in the first place it occurs;
- (l) section 27(1)(b) in the first place it occurs;
- (m) section 27(4);
- (n) section 28(2)(a), (4), (5) and (7);
- (o) section 31(7)(a), (8) and (9);
- (p) section 32(1)(a);
- (q) section 32(1)(b) in the first place it occurs;
- (r) section 32(3).

(2) When a young person lacks capacity at the relevant time, the references to young people in section 9(3)(a) and to students in section 9(5) of the 2018 Act respectively are to be read as including both the young person and the representative of the young person.

(3) When a young person lacks capacity at the relevant time, references to a young person in the regulations below are to be read as references to the representative of the young person—

- (a) regulation 10(2), (3) and (5);
- (b) regulation 14(3) and (4);
- (c) regulation 22(5)(a).

**When a detained person who is a young person lacks capacity**

**38.** When a detained person who is a young person lacks capacity at the relevant time, the references in the provisions below are to be read as references to a representative of that young person—

- (a) the reference to the detained person in the third place it occurs in section 40(4) of the 2018 Act;
- (b) the reference to a detained person in the first place it occurs in section 40(5)(b) of the 2018 Act;
- (c) the references in sections 41(2)(a) and 42(4) of the 2018 Act to a detained person who is a young person;
- (d) the reference to a detained person in the first place it occurs in section 42(6) of the 2018 Act;
- (e) the reference to a young person in the second place it occurs in regulation 18(4)(b);
- (f) the reference to a detained person in the first place it occurs in regulation 18(6).

**Arrangements for avoidance and resolution of disagreements under section 68 of the 2018 Act**

**39.** When a child’s parent or a young person lacks capacity at the relevant time, arrangements made by a local authority under section 68 of the 2018 Act must

provide for a representative to engage in the arrangements on behalf of that child's parent or that young person.

**Independent advocacy services under section 69 of the 2018 Act**

**40.** When a young person for whom a local authority is responsible lacks capacity at the relevant time, that local authority must refer that young person's representative to an independent advocacy service if the representative requests an independent advocacy service.

**Representation in appeals**

**41.** When a child's parent, or a parent of a detained person who is a child, lacks capacity at the relevant time, or a young person, or detained person who is a young person, lacks capacity at the relevant time, their representative may appeal to the Education Tribunal for Wales on their behalf and sections 70 and 72 of the 2018 Act are to be interpreted accordingly.

**Mental Capacity Act 2005**

**42.** Regulations 35, 36, 37 and 39 have effect despite section 27(1)(g) of the Mental Capacity Act 2005<sup>(1)</sup>.

*Name*

Minister for Education, one of the Welsh Ministers

Date

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(1) Section 27(1)(g) does not permit decisions on discharging parental responsibilities in matters not relating to a child's property to be made on a person's behalf.

# SCHEDULE 1

Regulations 6, 7 and 9

## REASONABLE NEEDS FOR EDUCATION OR TRAINING

### Suitable programme of study

1.—(1) The factors that the local authority must take into account when determining whether there is a realistic prospect that undertaking a proposed programme of study or continuing to undertake a programme of study (with any proposed modifications to it) would enable the young person to meet the person's desired outcomes are—

- (a) the young person's ability to undertake the programme of study;
- (b) the suitability of the programme of study to meet the young person's desired outcomes;
- (c) any other factors the local authority reasonably considers to be relevant.

(2) When considering the factors mentioned in subparagraph (1), the local authority must take into account relevant information relating to those factors, including any provided by—

- (a) those involved in providing education or training to the young person, or those who have recently done so;
- (b) health or social care professionals, including any involved with the young person;
- (c) the proprietor of the educational institution at which a proposed programme of study may be undertaken;
- (d) persons who provide, or who are employed by bodies that provide, services pursuant to arrangements made or directions given under section 10 of the Employment and Training Act 1973<sup>(1)</sup> (provision of careers services).

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(1) 1973 c. 50. Section 10 was substituted by the Trade Union Reform and Employment Rights Act 1993 (c. 19), section 45 and amended by S.I. 2010/1158, Schedule 2, Part 2, paragraph 28(1) and (2). The Secretary of State's functions under section 10, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by S.I. 1999/672, article 2 and Schedule 1 and then to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).



### **Additional factors where young person on programme of study**

2. Where the young person is already undertaking the programme of study, the local authority may not conclude that there is no longer a realistic prospect that continuing to undertake the programme of study as intended at the outset would enable the young person to meet the person's desired outcomes unless it has taken into account the following factors—

- (a) that young people progress at different rates and a young person's progress towards meeting the desired outcomes may not be apparent until later in the programme of study;
- (b) the young person's expectation of having the opportunity to complete the programme of study as intended at the outset;
- (c) whether the young person's capability to learn has been affected by a significant change in the young person's personal circumstances or needs.

### **Programme of study intended to last for more than 2 years**

3.—(1) The duration of the suitable programme of study that it is proposed the young person undertake (including where it is an additional programme of study under paragraph 5(1)) is intended at the outset to take place over a period of more than 2 years.

(2) The factors, where relevant, that the local authority must take into account are—

- (a) where the programme is designed to allow the young person to access a course of further education or training which is undertaken by young people who do not have additional learning needs—
  - (i) the usual length of the course for young people who do not have additional learning needs, and
  - (ii) whether the young person requires additional time in comparison to the majority of other young people who do not have additional learning needs, to complete the course;
- (b) where the programme of study is specially designed to provide additional learning provision for the young person, whether there are any exceptional reasons relating to the young person's capability to learn such that the person's desired outcomes cannot realistically be met within the period of 2 years.

### **Extension to a programme of study**

4.—(1) The young person has been unable to complete a programme of study (including where it is an additional programme of study under paragraph 5(1)) within the programme's duration as intended at the outset and it is proposed to extend the programme to enable the young person to meet the person's desired outcomes at the start of the programme ("original outcomes") or ones that are substantially similar to the original outcomes ("adjusted outcomes").

(2) The factors, where relevant, that the local authority must take into account are—

- (a) whether the circumstances giving rise to the proposed extension are unavoidable;
- (b) whether the proposed extension is necessary to enable the young person to complete the programme of study and meet the original or adjusted outcomes;
- (c) whether the proposed extension is for a purpose that should have been addressed during the original duration of the programme of study and where that is the case, the reasons why it was not addressed;
- (d) whether the proposed extension is proportionate to the original outcomes which are not yet met or the adjusted outcomes and whether an alternative length of extension is required in the circumstances;
- (e) where the programme of study has previously been extended—
  - (i) whether the proposed extension arises from the same facts as the previous one, and
  - (ii) whether there are exceptional reasons why the young person was unable to achieve the outcomes during the previous extension.

### **Additional programme of study**

5.—(1) The programme of study that it is proposed the young person undertake is additional to further education or training which the young person has already undertaken.

(2) The factors, where relevant, that the local authority must take into account are—

- (a) that the young person is unable to benefit in a meaningful way from the previous further education or training due to—
  - (i) the previous further education or training falling so far below the expected standard that the provider of it cannot reasonably

- be said to have delivered the education or training necessary to meet the young person's desired outcomes in undertaking it,
- (ii) a significant change in the personal circumstances or needs of the young person, or
  - (iii) any other exceptional circumstances;
- (b) where the previous further education or training was undertaken by the young person at a maintained school or institution in the further education sector, that an essential and substantial element of the further education or training necessary to meet the young person's desired outcomes could not have been delivered as part of that previous further education or training;
  - (c) where the duration of the previous education or training was less than 2 years, the total duration of that previous education or training and that of the proposed programme of study and whether the extent to which that total duration exceeds 2 years is reasonable in all the circumstances;
  - (d) whether there are any other exceptional circumstances to suggest that the young person has not received effective access to further education or training.

#### **Other exceptional circumstances**

6.—(1) The circumstances are substantially similar to one or more of the circumstances set out in paragraph 3(1), 4(1) or 5(1).

(2) The factors, where relevant, that the local authority must take into account are the factors set out in paragraph 3(2), 4(2) or 5(2) corresponding to whichever of the circumstances in paragraph 3(1), 4(1) or 5(1) are substantially similar.

## SCHEDULE 2

Regulations 20, 22 and 23

### APPLICATION WITH MODIFICATIONS OF THE 2018 ACT IN RELATION TO PERSONS DETAINED IN HOSPITAL UNDER PART 3 OF THE 1983 ACT

1.—(1) The powers and duties conferred or imposed on a local authority by Part 2 of the 2018 Act, by these Regulations or otherwise under that Part, to the extent that they would not apply in relation to a child or young person within sub-paragraph (3) because of section 562 of the Education Act 1996 or section 44(1) of the 2018 Act, apply to the child or young person with the modifications provided for in sub-paragraph (4).

(2) Other provisions of the 2018 Act, these Regulations and any other provisions under Part 2 of that Act, in so far as they apply for the purposes of those powers and duties or otherwise relate to the child or young person, apply in relation to the child or young person with the modifications provided for in sub-paragraph (4).

(3) A child or young person is within this sub-paragraph if the child or young person is—

- (a) subject to a detention order, and
- (b) detained in a hospital under Part 3 of the 1983 Act.

(4) The modifications are—

- (a) references, however expressed, to a local authority being responsible (or becoming or ceasing to be responsible) for a child or young person are to be interpreted as references to a local authority that is (or becomes or ceases to be) the relevant local authority for the child or young person and accordingly section 99(4) is not to apply to those references;
- (b) omit section 13(2)(e);
- (c) in section 14, omit subsections (2)(b) and (4);
- (d) in section 15(1)—
  - (i) at the end of paragraph (a), omit “and”;
  - (ii) at the end of paragraph (b) insert “and”;
  - (iii) after paragraph (b) insert—
    - “(c) is not—
      - (i) subject to a detention order (within the meaning given by section

562(1A)(a), (2) and (3) of the Education Act 1996), and

(ii) detained in a hospital under Part 3 of the Mental Health Act 1983.”;

- (e) omit section 36;
- (f) if the hospital is relevant youth accommodation, the duties imposed on a home authority by sections 40 and 42 do not apply;
- (g) in section 84(1)(a), at the end insert “or regulation 22(5) of the Additional Learning Needs (Wales) Regulations 2021”;
- (h) in section 85(5)(a), after “42(6)” insert “and regulation 22(5) of the Additional Learning Needs (Wales) Regulations 2021”;
- (i) in regulation 16(1)(b), after “2018 Act” insert “or regulation 22(2)”.