

**ACCOMPANYING DOCUMENTS**

**Explanatory Notes and an Explanatory Memorandum are printed separately.**

# Draft Additional Learning Needs and Education Tribunal (Wales) Bill

[DRAFT]

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# Draft Additional Learning Needs and Education Tribunal (Wales) Bill

[DRAFT]

An Act of the National Assembly for Wales to reform the law on education and training for children and young people with additional learning needs; to confer powers on the Welsh Ministers to make provision by regulations about education and training for children looked after by local authorities; and to continue the existence of the Special Educational Needs Tribunal for Wales and to rename it the Education Tribunal for Wales.

**Having been passed by the National Assembly for Wales and having received the assent of Her Majesty, it is enacted as follows:**

## PART 1

### OVERVIEW

#### 1 Overview of this Act

- (1) Part 2 of this Act (sections 2 to 55) establishes the main statutory system for meeting the additional learning needs of children and young people in Wales.
- (2) Sections 4 and 5 provide for an Additional Learning Needs Code setting out guidance for persons exercising functions under this Act and imposing requirements on governing bodies of maintained schools and institutions in the further education sector and local authorities.
- (3) Section 6 makes provision about participation by children, their parents and young people in decisions under the Act and section 7 imposes a duty on local authorities to make arrangements to provide people with information and advice about additional learning needs and the system established by this Act.
- (4) Sections 8 to 28 provide for the preparation and maintenance of individual development plans by the governing bodies of maintained schools and institutions in the further education sector and by local authorities for children and young people with additional learning needs; and related duties to secure the additional learning provision in the plans.
- (5) Sections 29 to 36 make provision about schools and other institutions connected to meeting additional learning needs in accordance with individual development plans, including provision—
  - (a) imposing a duty on local authorities to favour education for children at mainstream maintained schools when exercising functions under Part 2 (section 29);

- (b) changing the registration system for independent schools to require the Welsh Ministers to publish a list of the registered schools which indicates the type or types of additional learning needs for which an independent school makes provision (section 31);
- 5 (c) limiting the power of local authorities to secure additional learning provision for children or young people at independent schools to registered independent schools (section 32);
- (d) imposing a duty on the Welsh Ministers to establish and maintain a list of  
10 independent special post-16 institutions and a corresponding limit on the power of local authorities to secure additional learning provision at such institutions to those on the list (section 33).
- (6) Sections 37 to 44 provide for the avoidance and resolution of disagreements about individual development plans and additional learning provision and rights of appeal to  
15 the Education Tribunal for Wales (see subsection (9)) in relation to decisions about whether or not a child or young person has additional learning needs, the contents of individual development plans and other decisions relating to plans.
- (7) Sections 45 to 55 supplement the earlier provision and makes provision generally applicable to Part 2.
- (8) Part 3 (sections 56 to 62) –  
20 (a) gives the Welsh Ministers a power to make provision by regulations about the education of children looked after and persons formerly looked after (section 56), and  
(b) makes provision about meeting the additional learning needs of detained children  
25 and young people who are detained by court order in specified kinds of secure accommodation (sections 57 to 62).
- (9) Part 4 (sections 63 to 65) continues the existence of the Special Educational Needs Tribunal for Wales and renames it the Education Tribunal for Wales.
- (10) In addition to the jurisdiction set out in Part 2 (section 40) and Part 3 (section 62), the  
30 Education Tribunal has jurisdiction in relation to disability discrimination in schools (for provision about this, see section 116 of the Equality Act 2010 (c. 15) and Schedule 17 to that Act).
- (11) Part 5 (sections 66 to 70) makes general provision applicable to the whole Act, including general interpretation of the Act at section 68.

## PART 2

### ADDITIONAL LEARNING NEEDS

#### *Key terms*

#### **2 Additional learning needs**

- 5 (1) A person has additional learning needs if he or she has a learning difficulty or disability which calls for additional learning provision.
- (2) A child of compulsory school age or person over that age has a learning difficulty or disability if he or she –
- 10 (a) has a significantly greater difficulty in learning than the majority of others of the same age, or
- (b) has a disability which prevents or hinders him or her from making use of facilities for education or training of a kind generally provided for others of the same age in mainstream maintained schools or mainstream institutions in the further education sector.
- 15 (3) A child under compulsory school age has a learning difficulty or disability if he or she is likely to be within subsection (2) when of compulsory school age (or would be likely to be, if no additional learning provision were made).
- (4) A person does not have a learning difficulty or disability solely because the language (or form of language) in which he or she is or will be taught is different from a language (or form of language) which is or has been spoken at home.
- 20 (5) This section applies for the purposes of this Act.

#### **3 Additional learning provision**

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

*Code of practice***4 Additional learning needs code**

- (1) The Welsh Ministers must issue, and may from time to time revise, a code on additional learning needs (“the code”).
- 5 (2) The code may include guidance relating to the exercise of the functions of the following persons under this Act –
- (a) a local authority in Wales or England;
  - (b) the governing body of a maintained school in Wales or England;
  - 10 (c) the governing body of an institution in the further education sector in Wales or England;
  - (d) a Local Health Board;
  - (e) an NHS trust;
  - (f) the National Health Service Commissioning Board;
  - (g) a clinical commissioning group;
  - 15 (h) an NHS foundation trust;
  - (i) a person in charge of relevant youth accommodation in Wales or England.
- (3) The persons referred to in subsection (2) must, when exercising functions under this Act, have regard to any relevant guidance contained in the code.
- (4) The code may impose requirements –
- 20 (a) on a local authority in respect of its duties under –
    - (i) section 7 (advice and information);
    - (ii) section 38 (independent advocacy services);
  - (b) on a governing body of a maintained school in Wales or an institution in the further education sector in Wales or a local authority in respect of –
    - 25 (i) the preparation, content, form, review and revision of individual development plans;
    - (ii) ceasing to maintain individual development plans.
- (5) The code may make –
- (a) different provision for different purposes or cases, and
  - 30 (b) transitory, transitional or saving provision,
- in relation to a requirement imposed under subsection (4).
- (6) The duty imposed by subsection (3) and a duty imposed under subsection (4) also apply to a person exercising a function for the purpose of the discharge of functions under this Act by the persons mentioned in subsection (2).
- 35 (7) The Education Tribunal for Wales must have regard to any provision of the code that appears to it to be relevant to a question arising on an appeal under this Act.
- (8) The Welsh Ministers must publish the code for the time being in force on their website.

## 5 Procedure for making the code

- (1) Before issuing or revising a code under section 4, the Welsh Ministers must consult the following persons on a draft of the code –
- (a) each local authority;
  - (b) the governing body of each maintained school in Wales;
  - (c) the governing body of each institution in the further education sector in Wales;
  - (d) Her Majesty's Chief Inspector of Education and Training in Wales;
  - (e) any other person the Welsh Ministers consider appropriate.
- (2) If the Welsh Ministers wish to proceed with the draft (with or without modifications) they must lay a copy of the draft before the National Assembly for Wales.
- (3) If, before the end of the 40 day period, the National Assembly for Wales resolves not to approve the draft of the code, the Welsh Ministers must not issue the proposed code in the form of that draft.
- (4) If no such resolution is made before the end of that period –
- (a) the Welsh Ministers must issue the code in the form of the draft, and
  - (b) the code comes into force on a day appointed by the Welsh Ministers in an order made by statutory instrument.
- (5) An order under subsection (4)(b) may –
- (a) appoint different days for different purposes;
  - (b) make transitory, transitional or saving provision in connection with the coming into force of a provision in the code.
- (6) The 40 day period –
- (a) begins on the day on which the draft is laid before the National Assembly for Wales, and
  - (b) does not include any time during which the National Assembly for Wales is dissolved or is in recess for more than four days.
- (7) Subsection (3) does not prevent a new draft of a proposed code from being laid before the National Assembly.
- (8) References in this section to a code include a revised code.
- (9) The requirement to consult imposed by subsection (1) may be satisfied by consultation undertaken before the coming into force of this Part.

### *Participation and access to information*

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

A person exercising functions under this Act in relation to a child or young person must have regard to the following matters –

- (a) the views, wishes and feelings of the child and the child's parent or the young person,

- (b) the importance of the child and the child's parent or the young person participating as fully as possible in decisions relating to the exercise of the function concerned, and
- (c) the importance of the child and the child's parent or the young person being provided with the information and support necessary to enable participation in those decisions.

## 7 Advice and information

- (1) A local authority must make arrangements to provide people with information and advice about additional learning needs and the system for which provision is made by this Act.
- (2) A local authority must take steps it considers appropriate for making the arrangements known to—
- (a) children and young people in its area,
  - (b) parents of children in its area,
  - (c) head teachers and proprietors of schools in its area, and
  - (d) any other persons it considers appropriate.

### *Preparing and maintaining individual development plans*

## 8 Individual development plans

For the purposes of this Act, an individual development plan is a document that contains—

- (a) a description of a person's additional learning needs;
- (b) a description of the additional learning provision which the person's learning difficulty or disability calls for;
- (c) anything else required or authorised by or under this Act.

## 9 Individual development plans: maintained schools

- (1) Where it is brought to the attention of, or otherwise appears to, the governing body of a maintained school in Wales that a child or young person who is a registered pupil at the school—
- (a) may have additional learning needs, and
  - (b) an individual development plan is not being maintained for that child or young person,
- it must decide whether the child or young person has additional learning needs, unless section 11 applies.
- (2) If the governing body decides that the child or young person does not have additional learning needs it must notify the child and the child's parent or the young person of—
- (a) the decision, and
  - (b) the reasons for the decision.

- (3) If the governing body decides that the child or young person has additional learning needs, it must prepare and maintain an individual development plan for him or her.
- (4) Where a governing body of a maintained school has been directed to prepare and maintain, or to maintain, an individual development plan for a person under section 12(4)(b) or 18(5)(a), the governing body must prepare and maintain, or maintain, the plan (as the case may be).
- (5) If a governing body prepares an individual development plan, it must give a copy of the plan to –
- (a) the child or young person, and
  - (b) if the plan applies to a child, the child's parent.
- (6) A governing body must secure the additional learning provision described in an individual development plan it maintains under this Act.

## 10 Individual development plans: further education institutions

- (1) Where it is brought to the attention of, or otherwise appears to the governing body of an institution in the further education sector in Wales that a young person enrolled as a student at the institution –
- (a) may have additional learning needs, and
  - (b) an individual development plan is not being maintained for the young person,
- it must decide whether the young person has additional learning needs, unless section 11 applies.
- (2) If the governing body decides that the young person does not have additional learning needs it must notify him or her of –
- (a) the decision, and
  - (b) the reasons for the decision.
- (3) If the governing body decides that the young person has additional learning needs, it must prepare and maintain an individual development plan for him or her.
- (4) If a governing body prepares an individual development plan, it must give a copy of the plan to the young person.
- (5) A governing body must secure the additional learning provision described in an individual development plan it maintains under this Act.

## 11 Circumstances in which the duties in sections 9 and 10 do not apply

- (1) The duties in section 9(1) and section 10(1) do not apply if any of the following subsections apply in relation to the child or young person concerned.
- (2) This subsection applies if the person concerned is a young person who does not consent to the decision being made.
- (3) This subsection applies where the governing body has previously decided whether the child or young person has additional learning needs and the governing body is satisfied that –

- (a) the child's or young person's needs have not changed materially since that decision was made, and
  - (b) there is no new information that materially affects that decision.
- (4) This subsection applies if the governing body refers the matter to the local authority responsible for the child or young person to decide instead.
- (5) A governing body may only refer the matter under subsection (4) if it considers that—
- (a) deciding the matter is beyond its capability, or
  - (b) the child or young person is likely to have additional learning needs that call for additional learning provision it would not be reasonable for the governing body to secure.

## 12 Individual development plans: local authorities

- (1) Where it is brought to the attention of or otherwise appears to a local authority (whether following a referral under section 11(4), under section 48(4) or otherwise)—
- (a) that a child or a young person for whom it is responsible may have additional learning needs, and
  - (b) an individual development plan is not being maintained for that person,
- it must decide whether the child or young person has additional learning needs, unless section 13 applies.
- (2) If the local authority decides that the child or young person does not have additional learning needs it must notify the child or young person and, in the case of a child, the child's parent of—
- (a) the decision, and
  - (b) the reasons for the decision.
- (3) The duty in subsection (4) applies if—
- (a) in the case of a child, the local authority decides that the child has additional learning needs,
  - (b) in the case of a young person who is a registered pupil at a maintained school in Wales or enrolled as a student at an institution in the further education sector in Wales, the local authority decides that the young person has additional learning needs, or
  - (c) in the case of any other young person, the local authority—
    - (i) decides that the young person has additional learning needs, and
    - (ii) decides in accordance with regulations that it is necessary to prepare and maintain a plan under this section for the young person to meet his or her reasonable needs for education or training.
- (4) The local authority must—
- (a) prepare and maintain an individual development plan for that child or young person, or
  - (b) if the child or young person is to attend a maintained school—

- (i) prepare an individual development plan and direct the governing body of the school to maintain the plan, or
  - (ii) direct the governing body of the school to prepare and maintain the plan.
- 5 (5) If the local authority is satisfied that the reasonable needs of a child or young person for additional learning provision cannot be met unless it also secures provision of the kind mentioned in subsection (6), the authority must include a description of that other provision in the plan.
- (6) The kinds of provision are –
  - 10 (a) board and lodging;
  - (b) prescribed provision.
- (7) If the duty in subsection (5) applies to a local authority, it may not give a direction under subsection (4)(b).
- (8) If a local authority prepares an individual development plan, it must give a copy of the plan to –
  - 15 (a) the child or young person, and
  - (b) if the plan applies to a child, the child's parent.
- (9) Where a local authority maintains an individual development plan for a child or a young person, the authority must secure –
  - 20 (a) the additional learning provision described in the plan, and
  - (b) any other provision described in the plan in accordance with subsection (5).

### 13 **Circumstances in which the duty in section 12 does not apply**

- (1) The duty in section 12(1) does not apply if any of the following subsections apply in relation to the child or young person concerned.
- 25 (2) This subsection applies if the local authority is satisfied that the matter is being decided under section 9 or 10.
- (3) This subsection applies if the decision is in respect of a young person who does not consent to the decision being made.
- (4) This subsection applies if the local authority has previously decided whether the child or young person has additional learning needs and it is satisfied that –
  - 30 (a) the child's or young person's needs have not changed materially since that decision was made, and
  - (b) there is no new information that materially affects that decision.

**14 Individual development plans: Local Health Boards and NHS trusts**

- 5 (1) If a Local Health Board or NHS trust in Wales agrees, an individual development plan maintained by a governing body or a local authority for a child or young person may specify that additional learning provision described in the plan is to be secured by that Local Health Board or NHS trust for the child or young person.
- (2) The Local Health Board or NHS trust must secure the additional learning provision specified in an individual development plan under this section as provision it has agreed to secure.
- 10 (3) If the duty in subsection (2) applies in relation to an individual development plan, the following duties do not apply to the additional learning provision specified under this section—
- (a) the duty of a governing body to secure provision under section 9(6) or 10(5), or
  - (b) the duty of a local authority to secure the provision under section 12(9)(a).
- 15 (4) The description of the additional learning provision specified in a plan under this section as provision a Local Health Board or NHS trust has agreed to secure may only be removed or changed on review of the plan in accordance with section 15 and with the agreement or at the request of the Local Health Board or NHS trust.
- 20 (5) If, on review of the plan, the Local Health Board or NHS trust requests a governing body or a local authority to remove or change the description of the additional learning provision specified in a plan under this section as provision the Local Health Board or NHS trust has agreed to secure, the governing body or local authority must comply with the request.
- (6) Nothing in this section affects the power of the Education Tribunal for Wales to make an order under section 40(3).
- 25 (7) Where the Education Tribunal for Wales orders the revision of an individual development plan in relation to additional learning provision specified in a plan under this section as provision a Local Health Board or NHS trust has agreed to secure, a Local Health Board or NHS trust is not required to secure the revised additional learning provision unless the Board or trust agrees to do so.
- 30 (8) The governing body or local authority required to maintain an individual development plan must specify the additional learning provision a Local Health Board or NHS trust has agreed to secure under subsection (7) in the plan.
- 35 (9) Nothing in this section requires a Local Health Board or NHS trust to provide anything that cannot be provided as part of the comprehensive health service in Wales continued under section 1(1) of the National Health Service (Wales) Act 2006 (c. 42).

**15 Review of individual development plans**

- (1) A governing body or a local authority required to maintain an individual development plan must review it—

- (a) within the 12 month period starting with the date on which the plan is given in accordance with section 9, 10, or 12, and
- (b) within each subsequent period of 12 months starting with the date on which the plan is given in accordance with the section.
- 5 (2) But the duty in subsection (1) does not apply if the duty in subsection (3) applies.
- (3) A governing body required to maintain an individual development plan must review it –
- (a) within the 12 month period starting with the date on which a decision is notified under section 18(4) or a revised plan is given under section 18(8), and
- 10 (b) within each subsequent period of 12 months starting with the date on which the decision is notified or the revised plan is given in accordance with those provisions.
- (4) A governing body or local authority must review an individual development plan it is required to maintain if –
- 15 (a) the plan includes additional learning provision that a Local Health Board or NHS trust has agreed to secure under section 14, and
- (b) the Local Health Board or NHS trust requests it to review the plan.
- (5) The governing body or local authority may –
- (a) review the plan at any time, and
- (b) revise the plan following a review.
- 20 (6) A governing body or a local authority required to maintain an individual development plan for a child or young person must review the plan if a request is made to it by the child, the child's parent or the young person, unless it considers a review to be unnecessary.
- 25 (7) If a governing body or a local authority revises an individual development plan, it must give a copy of the revised plan to –
- (a) the child or young person;
- (b) if the plan applies to a child, the child's parent.

## 16 Relationship of individual development plans to other similar documents

A governing body or local authority may –

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

*Local authority reconsideration of governing body decisions and plans***17 Reconsideration by local authorities of decisions under section 9(1)**

(1) Subsection (2) applies where –

- 5 (a) a governing body of a maintained school has made a decision about a registered pupil under section 9(1) or has refused to make a decision under that section, and
- (b) the child or young person or, in the case of a child, the child’s parent requests the local authority responsible for the child or young person to reconsider the matter.

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

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

(4) Subsections (2) to (9) of section 12 apply to a decision under subsection (2) as if it were a decision under subsection (1) of that section.

15 (5) Where a local authority makes a decision under subsection (2) the previous decision of the governing body under section 9(1) ceases to have effect.

**18 Reconsideration by local authorities of plans maintained under section 9**

(1) Subsection (2) applies where –

- 20 (a) a governing body of a maintained school maintains an individual development plan for a registered pupil under section 9(3) or (4), and
- (b) the child or young person or, in the case of a child, the child’s parent requests the local authority responsible for the child or young person to reconsider the plan with a view to it being revised.

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

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

(4) If the local authority decides that the plan should not be revised it must notify the child or young person and, in the case of a child, the child’s parent of –

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

30 (5) If the local authority decides that the plan should be revised it must prepare a revised plan and either –

- (a) direct the governing body to maintain it, or
- (b) exercise the power in section 19(4) to take over responsibility for maintaining the plan.

(6) If the local authority is satisfied that the reasonable needs of a child or young person for additional learning provision cannot be met unless it also secures provision of the kind mentioned in section 12(6), the authority must include a description of that other provision in the revised plan.

5 (7) If the duty in subsection (6) applies to a local authority, it may not give a direction under subsection (5)(a).

(8) The local authority must give a copy of the revised plan to—

(a) the governing body,

(b) the child or young person, and

10 (c) in the case of a child, the child's parent.

### 19 Local authority taking over responsibility for governing body plans

(1) A local authority must decide whether it should take over responsibility for maintaining an individual development plan maintained by a governing body under section 9 or 10 for a child or young person for whom the authority is responsible if the authority is requested to consider doing so by—

15 (a) the governing body,

(b) the child or young person to whom the plan applies, or

(c) in the case of a child, the child's parent.

20 (2) Where a governing body makes the request, the local authority must inform the child or young person and, in the case of a child, the child's parent of the request and invite representations.

(3) Where a child, a child's parent or a young person makes the request, the local authority must inform the governing body of the request and invite representations from the governing body.

25 (4) A local authority may decide to take over responsibility for maintaining a plan maintained by a governing body of a maintained school if it decides under section 18(5) that the plan should be revised.

(5) The local authority must notify the child, the child's parent or the young person and the governing body of—

30 (a) a decision under subsection (1) or (4), and

(b) the reasons for the decision.

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

(a) it is to be treated as maintained by the authority under section 12 for the purposes of this Act, and

35 (b) the governing body is not required to maintain it,

from the date on which notice is given under subsection (5).

*Ceasing to maintain plans***20 Ceasing to maintain individual development plans**

- (1) A governing body or a local authority may cease to maintain an individual development plan for a child or young person only if it is no longer necessary to maintain it.
- 5 (2) Before a governing body or a local authority decides to cease to maintain a plan for a child or young person, it must notify the child or young person and, in the case of a child, the child's parent that it proposes to make such a decision.
- (3) After the governing body or local authority has made its decision, it must notify the child or young person and, in the case of a child, the child's parent of –
- 10 (a) the decision, and  
(b) the reasons for the decision.
- (4) And the governing body of a maintained school must also notify the child or young person and, in the case of a child, the child's parent of his or her right to request the local authority to reconsider the matter under section 21.

**21 Reconsideration by local authorities of decisions under section 20**

- 15 (1) Subsection (2) applies where –
- (a) a child, a child's parent or a young person has been notified of a decision of a governing body of a maintained school under section 20, and
- 20 (b) the child, the child's parent or the young person makes a request within a prescribed period to the local authority responsible for the child or young person for it to decide whether the governing body's duty to maintain the plan should cease.
- (2) The local authority must decide whether the governing body's duty to maintain the plan should cease.
- 25 (3) The local authority must notify the governing body and the child or young person and, in the case of a child, the child's parent of –
- (a) the decision, and  
(b) the reasons for the decision.
- (4) If the local authority decides that the plan should be maintained, the governing body  
30 must continue to maintain the plan.
- (5) If the local authority decides that the the plan should not be maintained, the governing body may cease to maintain the plan, subject to section 22.

**22 Limitation on ceasing to maintain to allow reconsideration or appeal**

- 35 (1) A governing body of a maintained school may not cease to maintain an individual development plan unless subsection (2) or (3) applies.
- (2) This subsection applies if the period prescribed under section 21(1)(b) has ended and no request has been made under that section.

- (3) This subsection applies if the local authority has decided under section 21 that the plan should not be maintained and –
- (a) the period prescribed under section 41 within which an appeal may be brought against the local authority’s decision has ended, where no such appeal is brought before the end of that period, or
  - (b) an appeal has been fully determined, where an appeal is brought before the end of that period.
- (4) A governing body of an institution in the further education sector or a local authority may not cease to maintain an individual development plan until –
- (a) after the end of the period prescribed under section 41 within which an appeal may be brought against a decision not to maintain the plan, where no such appeal is brought before the end of that period, or
  - (b) after the appeal has been fully determined, where an appeal is brought before the end of that period.

15 **23 Regulations about transfer of individual development plans**

- (1) Regulations may provide for the duty to maintain an individual development plan for a child or young person to be transferred from –
- (a) a local authority to another local authority;
  - (b) the governing body of a maintained school or institution in the further education sector to the governing body of another maintained school or institution in the further education sector;
  - (c) the governing body of a maintained school or institution in the further education sector to a local authority;
  - (d) a local authority to the governing body of a maintained school or institution in the further education sector.
- (2) Regulations under this section may (for example) –
- (a) impose a duty on the other local authority or governing body to maintain the plan;
  - (b) treat the things done by the transferring authority in relation to the plan as done by the other authority or governing body.

30 **24 Individual development plan after a young person’s 25th birthday**

- (1) A governing body of an institution in the further education sector or a local authority may continue to maintain an individual development plan for a young person until the end of the academic year during which the young person attains the age of 25.
- (2) In this section, “academic year” means –
- (a) in relation to a young person who attends an institution in the further education sector, a period of 12 months ending on 31 July, and

- (b) in relation to any other young person, a period of twelve months ending on the day the young person's course of education or training ends or the day before the young person attains the age of 26 (whichever is earlier).

*Functions relating to securing additional learning provision*

5 **25 Duties of governing bodies to help local authorities secure additional learning provision**

- 10 (1) Where a child or young person who is a registered pupil at a maintained school in Wales has an individual development plan which is maintained by a local authority, the governing body must take all reasonable steps to help the authority secure the additional learning provision which the child's or young person's additional learning needs call for.
- 15 (2) Where a young person enrolled as a student at an institution in the further education sector in Wales has an individual development plan which is maintained by a local authority, the governing body must take all reasonable steps to help the authority secure the additional learning provision which the young person's additional learning needs call for.

**26 Duty to admit children to named institutions**

- 20 (1) Subsection (2) applies if a maintained school in Wales is named in an individual development plan prepared for a child by a local authority for the purpose of securing admission of the child to the school.
- (2) The governing body of the school must admit the child.
- (3) Before naming a school under this section, the local authority must consult—
- 25 (a) the governing body of the school, and
- (b) in the case of a maintained school where neither the local authority nor its governing body is the admissions authority for the school, the local authority for the area in which the school is located.
- (4) A local authority may only name a maintained school in an individual development plan for the purpose of securing admission of the child if—
- 30 (a) the authority is satisfied that the child's interest requires the additional learning provision identified in his or her plan to be made at the school, and
- (b) it is appropriate for the child to be provided with education or training at the school.
- (5) Subsection (2) has effect regardless of any duty imposed on the governing body of a school by section 1(6) of the School Standards and Framework Act 1998 (c. 31) (limits on infant class sizes).
- 35 (6) Subsection (2) does not affect any power to exclude a pupil from a school.
- (7) In this section, "admissions authority" has the meaning given by section 88 of the School Standards and Framework Act 1998.

**27 No power to charge for provision secured under this Act**

- (1) No charge may be made by a governing body or a local authority to a child, a child's parent or a young person for anything that the governing body or local authority must secure for a child or young person under this Act.
- (2) A child, a child's parent or a young person is not liable to pay any charge made by a person for anything that a governing body or local authority must secure for a child or young person under this Act.

**28 General duties to secure post-16 education and training for persons with additional learning needs**

- (1) The Learning and Skills Act 2000 (c. 21) is amended as follows.
- (2) In section 33N (the local curriculum: interpretation), in the definition of "institution" for "a learning difficulty" to the end substitute "additional learning needs (within the meaning given by the Additional Learning Needs and Education Tribunal (Wales) Act 2016);".
- (3) In section 33P (application of local curriculum provisions to students who are registered pupils of special schools or who have learning difficulties) –
- (a) in the heading, for "learning difficulties" substitute "additional learning needs";
  - (b) in subsection (3)(b)(ii), for "a learning difficulty" substitute "additional learning needs".
- (4) In section 41 (persons with learning difficulties) –
- (a) in the heading for "learning difficulties" substitute "additional learning needs";
  - (b) in subsection (1) –
    - (i) in paragraph (a), for "learning difficulties, and" substitute "additional learning needs";
    - (ii) for paragraph (b) substitute –
      - "(b) the desirability of facilities being available which would assist the discharge of duties under the Additional Learning Needs and Education Tribunal (Wales) Act 2016";
  - (c) omit subsections (2), (3) and (4);
  - (d) for subsection (5) substitute –
    - "(5A) In this Part, "additional learning needs" has the meaning given by section 2 of the Additional Learning Needs and Education Tribunal (Wales) Act 2016.";
  - (e) omit subsection (6).
- (5) Section 140 (assessments relating to learning difficulties) is repealed.

*Additional learning provision in particular kinds of school or other institution***29 Duty to favour education for children at mainstream maintained schools**

- 5 (1) A local authority exercising functions under this Act in relation to a child of compulsory school age with additional learning needs who should be educated in a school, must secure that the child is educated in a mainstream maintained school unless that is incompatible with—
- (a) the wishes of the child's parent, or
  - (b) the provision of efficient education for other children.
- 10 (2) A local authority may not rely on the exception in subsection (1)(b) unless there are no reasonable steps the authority could take to prevent the incompatibility.
- (3) Subsection (1) does not prevent a child from being educated in—
- (a) an independent school, or
  - (b) a school approved under section 342 of the Education Act 1996 (c. 56), if the cost is met otherwise than by a local authority.
- 15 (4) Regulations may provide for circumstances in which subsection (1) does not apply.

**30 Additional learning provision otherwise than in schools**

- 20 (1) A local authority may arrange for the additional learning provision identified in an individual development plan it maintains for a child, or any part of that provision, to be made otherwise than in a school.
- (2) But a local authority may only do so if it is satisfied that it would be inappropriate for the additional learning provision to be made in a school.

**31 Amendments to registration requirements for independent schools in Wales**

- (1) The Education Act 2002 (c. 32) is amended as follows.
- (2) In section 158 (registers), after subsection (3) insert—
- 25 “(4) The Welsh Ministers must publish a list of the schools included in the register of independent schools in Wales, as amended from time to time.
- (5) If the Welsh Ministers have been provided with the necessary information by the proprietor of the school, the published list must
- 30 specify the type or types of additional learning provision made by a school on the list for pupils with additional learning needs (if any).”
- (3) In section 160 (applications for registration) in subsection (2), for paragraph (e) substitute—
- 35 “(e) the type or types of additional learning provision made by the school for pupils with additional learning needs (if any).”

**32 Conditions applicable to securing additional learning provision at independent schools**

- (1) A local authority may not exercise its functions under this Part to secure that a child or young person is educated at an independent school in Wales unless –
- 5 (a) the school is included in the register of independent schools in Wales, and
- (b) the local authority is satisfied that the school can make additional learning provision that corresponds to the additional learning needs of the child or young person described in his or her individual development plan.
- (2) A local authority may not exercise its functions under this Part to secure that a child or young person is educated at an independent educational institution in England unless –
- 10 (a) the institution is included in the register of independent educational institutions in England, and
- (b) the local authority is satisfied that the institution can make additional learning provision that corresponds to the additional learning needs of the child or young person described in his or her individual development plan.
- 15 (3) In this section, “independent educational institution” has the meaning given by Chapter 1 of Part 4 of the Education and Skills Act 2008 (c. 25).

**33 List of independent special post-16 institutions**

- (1) The Welsh Ministers must establish and maintain a list of independent special post-16 institutions in Wales and England (“the list”) for the purpose of subsection (3).
- 20 (2) The Welsh Ministers must publish the list, as amended from time to time.
- (3) A local authority may only exercise its functions under this Act to secure education or training for a child or young person at an independent special post-16 institution in Wales or England if the institution is entered on the list.
- 25 (4) The Welsh Ministers may only include an institution on the list on application by its proprietor.
- (5) Regulations may provide for –
- (a) the contents of the list;
- (b) requirements to be complied with as a condition of being included on the list;
- 30 (c) requirements to be complied with while the institution is on the list (including requirements for approval by the Welsh Ministers of arrangements at the institution and change of such arrangements);
- (d) removal of the institution from the list;

(e) rights of appeal to the First-tier Tribunal for proprietors of institutions against decisions –

(i) to refuse to list an institution;

(ii) to remove an institution from the list;

(iii) not to approve or not to approve a change to arrangements at the institution;

(f) exemptions from the prohibition in subsection (3).

(6) In this section, “independent special post-16 institution” means an institution which provides education or training for persons over compulsory school age and is specially organised to provide such education or training for persons with additional learning needs, and which is not –

(a) an institution within the further education sector,

(b) an independent school entered on the register of independent schools in Wales (kept under section 158 of the Education Act 2002 (c. 32)),

(c) an independent educational institution (within the meaning of Chapter 1 of Part 4 of the Education and Skills Act 2008 (c. 25)), which has been entered on the register of independent educational institutions in England (kept under section 95 of that Act), or

(d) a 16 to 19 Academy.

#### 34 Abolition of approval for non-maintained special schools in Wales

(1) The Education Act 1996 (c. 56) is amended as follows.

(2) In section 337A (interpretation of Chapter) omit the definition of “the appropriate national authority”.

(3) In section 342 (approval on non-maintained special schools) –

(a) in subsection (1) –

(i) for “appropriate national authority” substitute “Secretary of State”, and

(ii) after “school”, the first time it appears, insert “in England”;

(b) in subsection (5)(a), for “appropriate national authority” substitute “Secretary of State”;

(c) omit subsection (6).

#### 35 Abolition of approval of independent schools in Wales

Section 347 of the Education Act 1996 (approval of independent schools as suitable for admission of children with statements of special educational needs) is repealed.

**36 Additional learning provision outside England and Wales**

A local authority may not exercise its functions under this Act to make arrangements for a child or young person with additional learning needs to attend an institution outside England and Wales unless it is organised to make additional learning provision that corresponds to the additional learning needs of the child or young person described in his or her individual development plan.

*Disagreements and appeals***37 Avoidance and resolution of disagreements**

(1) A local authority must make arrangements with a view both to avoiding and to resolving disagreements between –

(a) education bodies, and

(b) children or young people for whom the authority is responsible, or in the case of such children, their parents,

about the exercise by education bodies of their functions under this Act.

(2) A local authority must make arrangements with a view both to avoiding and to resolving disagreements between –

(a) proprietors of relevant institutions, and

(b) children or young people who have additional learning needs for whom the authority is responsible or, in the case of such children, their parents,

about the additional learning provision made for children or young people.

(3) The arrangements under subsections (1) and (2) must include provision for parties to a disagreement to access help in resolving it from persons who are independent of the parties.

(4) A local authority must take steps which it considers appropriate for making the arrangements under this section known to –

(a) children and young people for whom it is responsible;

(b) parents of children for whom it is responsible;

(c) head teachers and governing bodies of the schools it maintains;

(d) other persons it considers appropriate.

(5) A local authority must promote the use of the arrangements made under this section.

(6) A local authority must take steps which it considers appropriate to inform children, their parents and young people that arrangements made under this section do not affect any rights they may have to appeal to the Education Tribunal for Wales.

(7) In this section, an “education body” means any of the following –

(a) the governing body of a maintained school;

(b) the governing body of an institution in the further education sector;

(c) a local authority.

(8) In this section “relevant institution” means –

- (a) a maintained school in Wales or England;
- (b) an institution in the further education sector in Wales or England;
- (c) an independent special post-16 institution on the list maintained under section 33;
- (d) an independent school in Wales or England;
- (e) a non-maintained special school;
- (f) an Academy.

### 38 Independent advocacy services

(1) A local authority must –

- (a) make arrangements for the provision of independent advocacy services for the children and young people for whom it is responsible,
- (b) refer any child or young person for whom it is responsible who requests independent advocacy services to an independent advocacy service provider, and
- (c) refer any person who is a case friend for a child or young person for whom it is responsible and who requests independent advocacy services to an independent advocacy service provider.

(2) In this section “independent advocacy services” means advice and assistance (by way of representation or otherwise) to a child, a young person or a case friend –

- (a) making, or intending to make an appeal to the Education Tribunal for Wales under this Act,
- (b) considering whether to appeal to the Tribunal, or
- (c) taking part in or intending to take part in arrangements made under section 37.

(3) In making arrangements under this section, a local authority must have regard to the principle that any services provided under the arrangements must be independent of any person who is –

- (a) the subject of an appeal to the Tribunal, or
- (b) involved in investigating or adjudicating on such an appeal.

(4) The arrangements may include provision for payments to be made to, or in relation to, any person carrying out functions in accordance with the arrangements made under this section.

(5) A local authority must take reasonable steps to make the arrangements under this section known to –

- (a) children and young people for whom it is responsible,
- (b) parents of such children,
- (c) head teachers and governing bodies of the schools it maintains,
- (d) case friends for children for whom it is responsible, and
- (e) other persons it considers appropriate.

**39 Case friends**

(1) Regulations may provide for a child or young person to have a person (to be known as a “case friend”) –

(a) to make representations on behalf of the child or young person with a view to avoiding and resolving disagreements about the exercise by governing bodies of maintained schools in Wales, the governing bodies of institutions in the further education sector in Wales or local authorities of functions under this Act, and

(b) to do anything the child or young person may or must do under or by virtue of this Act on behalf of the child or young person.

(2) A case friend must –

(a) act fairly and competently,

(b) have no interest adverse to that of the child or young person,

(c) ensure that all steps and decisions taken by the case friend are for the benefit of the child or young person, and

(d) take account of the child’s views or the young person’s views.

(3) Regulations made under this section may (among other things) –

(a) confer functions on the Education Tribunal for Wales;

(b) make provision about procedures in relation to case friends;

(c) make provision about the appointment and removal of case friends;

(d) specify the circumstances in which a person may or may not act as a case friend;

(e) specify the circumstances in which a child or young person must have a case friend;

(f) specify further requirements in respect of the conduct of case friends;

(g) apply any enactment with modifications for the purpose of enabling a case friend to do the things a child or young person may or must do under or by virtue of this Act, including, for example, provision for references to a child or young person to be read as references to, or as including references to, a case friend.

**40 Appeals**

(1) This section applies only to –

(a) decisions of the governing body of an institution in the further education sector in Wales or a local authority, and

(b) individual development plans prepared and maintained by the governing body of an institution in the further education sector in Wales or a local authority,

which relate to a child or young person for whom a local authority is responsible.

5 (2) A child, a child's parent or a young person, may appeal to the Education Tribunal for Wales against the following matters –

(a) a decision by the governing body of an institution in the further education sector in Wales under section 10 or a local authority under section 12 or 17 as to whether a person has additional learning needs;

10 (b) in the case of a young person, a decision by a local authority under section 12(3)(c)(ii) as to whether it is necessary to prepare and maintain an individual development plan;

(c) the description of a person's additional learning needs in an individual development plan;

15 (d) the additional learning provision in an individual development plan or the fact that additional learning provision is not in a plan;

(e) the school named in an individual development plan for the purpose of section 26;

(f) if no school is named in an individual development plan for the purpose of section 26, that fact;

20 (g) a decision not to take over responsibility for an individual development plan following a request to consider doing so under section 19;

(h) a decision to not revise an individual development plan under section 18;

(i) a decision to cease to maintain an individual development plan.

(3) On appeal, the Education Tribunal for Wales may –

(a) dismiss the appeal;

25 (b) order that a person has, or does not have, additional learning needs of a kind specified in the order;

(c) order a governing body or a local authority to revise an individual development plan as specified in the order;

30 (d) order a governing body or local authority to continue to maintain an individual development plan (with or without revisions);

(e) order a local authority to take over responsibility for maintaining an individual development plan;

35 (f) remit the case to the governing body or local authority responsible for the matter for it to reconsider whether, having regard to any observations made by the Tribunal, it is necessary for a different decision to be made or different action to be taken.

(4) Regulations may make further provision about appeals to the Education Tribunal for Wales, including, for example, provision –

(a) about making and determining appeals;

40 (b) conferring further powers on the Tribunal on determining an appeal;

(c) for unopposed appeals.

(5) Regulations under subsection (4)(b) may include provision conferring power on the Tribunal, on determining an appeal against a matter, to make recommendations in respect of other matters (including matters against which no appeal may be brought).

(6) A person commits an offence if without reasonable excuse that person fails to comply with any requirement—

(a) in respect of the discovery or inspection of documents, or

(b) to attend to give evidence and produce documents,

where that requirement is imposed by regulations under section 41 in relation to an appeal under this section or by regulations under subsection (4).

(7) A person guilty of an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### **41 Procedure on appeals**

(1) Regulations may make provision about—

(a) the initiation of an appeal under this Act, and

(b) the proceedings of the Education Tribunal for Wales on an appeal under this Act.

(2) Regulations under subsection (1) may include provision—

(a) as to the period within which, and the manner in which, appeals are to be commenced;

(b) where the jurisdiction of the Tribunal is being exercised by more than one tribunal—

(i) for determining by which tribunal any appeal is to be heard, and

(ii) for the transfer of proceedings from one tribunal to another;

(c) for enabling any functions relating to matters preliminary or incidental to an appeal to be performed by the President or by the legal chair;

(d) for hearings to be conducted in the absence of a member other than the legal chair;

(e) as to the persons who may appear on behalf of the parties;

(f) for granting such rights to disclosure or inspection of documents or to further particulars as may be granted by the county court;

(g) requiring persons to attend to give evidence and produce documents;

(h) for authorising the administration of oaths to witnesses;

(i) for the determination of appeals without a hearing in prescribed circumstances;

(j) as to withdrawal of appeals;

(k) as to the award of costs or expenses;

(l) for assessing or otherwise settling any costs or expenses (and, in particular, for enabling such costs or expenses to be assessed in the county court);

- (m) for the registration and proof of decisions and orders;
- (n) for enabling the Tribunal to review its decisions, or revoke or vary its orders, in prescribed circumstances;
- (o) for enabling the Tribunal to stay proceedings;
- (p) for adding and substituting parties;
- (q) for enabling appeals by different persons to be dealt with together;
- (r) for an appeal under this Part to be heard, in circumstances prescribed in the regulations, with a claim under Chapter 1 of Part 6 of the Equality Act 2010 (c. 15).

(3) Proceedings before the Tribunal must be held in private, except in prescribed circumstances.

(4) Part 1 of the Arbitration Act 1996 (c. 23) does not apply to any proceedings before the Tribunal but regulations may make provision corresponding to any provision of that Part.

#### **42 Compliance with orders**

If the Education Tribunal for Wales makes an order, the governing body or local authority concerned must comply with the order before the end of the prescribed period beginning with the date on which it is made.

#### **43 Allowances for attendance at the Education Tribunal for Wales**

The Welsh Ministers may pay allowances for the purpose of or in connection with the attendance of persons at the Education Tribunal for Wales.

#### **44 Appeals from the Education Tribunal for Wales to the Upper Tribunal**

(1) A party to any proceedings under section 40 or 62 before the Education Tribunal for Wales may appeal to the Upper Tribunal on any point of law arising from a decision made by the Education Tribunal for Wales in those proceedings.

(2) An appeal may be brought under subsection (1) only if, on an application made by the party concerned, the Education Tribunal for Wales or the Upper Tribunal has given its permission.

(3) Section 12 of the Tribunals, Courts and Enforcement Act 2007 (c. 15) (proceedings on appeal to the Upper Tribunal) applies in relation to appeals to the Upper Tribunal under this section as it applies in relation to appeals to it under section 11 of that Act, but as if references to the First-tier Tribunal were references to the Education Tribunal for Wales.

#### *Supplementary*

#### **45 Duty to keep additional learning provision under review**

(1) A local authority must keep under review the arrangements made by the authority and by the governing bodies of maintained schools in its area for children and young people who have additional learning needs.

(2) The local authority must consider the extent to which the arrangements referred to in subsection (1) are sufficient to meet the additional learning needs of the children and young people for whom it is responsible, having regard to the additional learning provision that may reasonably be arranged by others.

5 (3) In exercising its functions under this section, the local authority must consult such persons, and at such times, as they consider appropriate.

#### 46 Additional learning needs co-ordinator

(1) The duty in subsection (2) applies to the following bodies –

- 10 (a) the governing body of a maintained school in Wales;  
(b) the governing body of an institution in the further education sector in Wales.

(2) The body must designate a member of its staff (to be known as the “additional learning needs co-ordinator”) as having responsibility for co-ordinating additional learning provision for pupils or students (as the case may be) with additional learning needs.

(3) Regulations may –

- 15 (a) require bodies to ensure that additional learning needs co-ordinators have prescribed qualifications or prescribed experience (or both);  
(b) confer functions on additional learning needs co-ordinators in relation to provision for pupils or students (as the case may be) with additional learning needs.

#### 20 47 Designated medical or clinical officer

(1) A Local Health Board must designate an officer to have responsibility for co-ordinating the Board’s functions in relation to children and young people with additional learning needs.

(2) The person designated must be –

- 25 (a) a registered medical practitioner, or  
(b) a registered nurse or another health professional.

(3) The Board must designate a person it considers to be suitably qualified and experienced in the provision of health care for children and young people with additional learning needs.

30 (4) Where the person designated is a registered medical practitioner, the officer is to be known as the designated medical officer.

(5) Where the person designated is a registered nurse or another health professional, the officer is to be known as the designated clinical officer.

#### 48 Functions of health bodies to notify parents etc.

35 (1) This section applies where a health body mentioned in subsection (2), in the course of exercising its functions in relation to a child who is under compulsory school age and for whom a local authority is responsible, forms the opinion that the child has, or probably has, additional learning needs.

- (2) The health bodies are –
- (a) a Local Health Board;
  - (b) an NHS trust;
  - (c) a clinical commissioning group;
  - (d) an NHS foundation trust.
- (3) The health body must inform the child's parent of its opinion and of its power in subsection (4).
- (4) After giving the parent an opportunity to discuss the health body's opinion with an officer of the body, the health body may bring it to the attention of the appropriate local authority if the health body is satisfied that doing so would be in the best interests of the child.
- (5) If the health body is of the opinion that a particular voluntary organisation is likely to be able to give the parent advice or other assistance in connection with any additional learning needs that the child may have, it must inform the parent accordingly.

**49 Duties of certain public bodies to provide information and other help**

- (1) Subsection (2) applies if a local authority requests a person mentioned in subsection (4) to exercise the person's functions to provide the authority with information or other help, which it requires for the purpose of exercising its functions under this Act.
- (2) The person must comply with the request unless the person considers that doing so would –
- (a) be incompatible with the person's own duties, or
  - (b) otherwise have an adverse effect on the exercise of the person's functions.
- (3) A person that decides not to comply with a request under subsection (1) must give the local authority that made the request written reasons for the decision.
- (4) The persons are –
- (a) another local authority;
  - (b) a local authority in England;
  - (c) the governing body of a maintained school in Wales or England;
  - (d) the governing body of an institution in the further education sector in Wales or England;
  - (e) an Academy;
  - (f) a youth offending team for an area in Wales or England;
  - (g) the person in charge of any relevant youth accommodation in Wales or England;
  - (h) a Local Health Board;
  - (i) an NHS trust;
  - (j) the National Health Service Commissioning Board;
  - (k) a clinical commissioning group;
  - (l) an NHS foundation trust.

(5) Regulations may provide that where a person is under a duty to comply with a request under this section, the person must comply with the request within a prescribed period, unless a prescribed exception applies.

(6) In this section, “youth offending team” means a team established under section 39 of the Crime and Disorder Act 1998 (c. 37).

## 50 Right of local authority to access premises of schools and other institutions

(1) This section applies where a local authority maintains an individual development plan under this Part for a child or young person.

(2) A person authorised by the local authority is entitled to have access at any reasonable time to the premises of an institution listed in subsection (3) where education or training is provided for the child or young person if access to the premises is necessary for the purpose of exercising its functions under this Part.

(3) The institutions are –

(a) an independent school in Wales or England;

(b) a maintained school in the area of another local authority in Wales or England;

(c) an institution within the further education sector in Wales or England;

(d) an Academy;

(e) a non-maintained special school;

(f) an independent special post-16 institution included in the list under section 33.

## 51 Provision of goods or services in relation to additional learning provision

(1) Regulations may provide for a local authority to supply goods or services to –

(a) a person exercising functions under this Act, or

(b) a person making additional learning provision in connection with the exercise of functions under this Act.

(2) The regulations may, among other things, provide for the terms and conditions on which goods and services may be supplied.

## 52 Regulations about disclosure and use of information

(1) Regulations may make provision about disclosure or use of information gathered in the exercise of functions under this Part and Part 3.

(2) Regulations under subsection (1) may, for example –

(a) specify further persons to whom written copies of a plan must be provided (including, in specified cases, the provision of copies without the consent of the person to whom the plan relates or, in the case of a child, that person’s parent);

(b) make provision about disclosure of plans;

- (c) make provision about the use of information gathered in preparing and maintaining plans.

### 53 Parents lacking capacity

- (1) Regulations may apply any enactment with modifications for the purpose of –

- (a) enabling someone other than the parent of a child to do the things the parent may or must do under or by virtue of this Act on behalf of the parent where the parent lacks capacity at the relevant time;
- (b) making further provision the Welsh Ministers consider appropriate in connection with provision made under paragraph (a).

- (2) Regulations under subsection (1) may, for example, include provision for –

- (a) references to a child's parent to be read as references to, or as including references to, a representative of the parent;
- (b) modifications to have effect despite section 27(1)(g) of the Mental Capacity Act 2005 (c. 9) (Act 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).

- (3) "The relevant time" means the time at which, under the enactment in question, something is required or permitted to be done by or in relation to the parent.

- (4) The reference in subsection (1) to lacking capacity is to lacking capacity within the meaning of the Mental Capacity Act 2005.

- (5) "Representative", in relation to a parent, means –

- (a) a deputy appointed by the Court of Protection under section 16(2)(b) of the Mental Capacity Act 2005 to make decisions on the parent's behalf in relation to matters within this Part;
- (b) the donee of a lasting power of attorney (within the meaning of section 9 of that Act) appointed by the parent to make decisions on his or her behalf in relation to matters within this Part;
- (c) an attorney in whom an enduring power of attorney (within the meaning of Schedule 4 to that Act) is vested where –
  - (i) the power is created by the parent, and
  - (ii) 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.

#### *General*

### 54 Giving notice etc. under this Act

- (1) This section applies where a provision of this Act requires or authorises (in whatever terms) a governing body or local authority to –

- (a) notify a person of something, or

(b) give a document to a person (including a notice or a copy of a document).

(2) The notification or document may be given to the person in question—

(a) by delivering it to the person,

(b) by sending it by post to the person's proper address,

(c) by leaving it at the person's proper address, or

(d) if the conditions in subsection (3) are met, by sending it electronically.

(3) A governing body or local authority may send a notification or document to a person electronically only if the following requirements are met—

(a) the person to whom the notification or document is to be given must have—

(i) indicated to the relevant person a willingness to receive the notification or document electronically, and

(ii) provided the relevant person with an address suitable for that purpose, and

(b) the relevant person must send the notification or document to that address.

(4) For the purposes of this section and section 7 of the Interpretation Act 1978 (c. 30) (references to service by post) in its application to this section, the proper address of a person is the last known address of the person.

(5) A notification or document given to a person by leaving it at the person's proper address is to be treated for the purposes of this Part as having been given at the time at which it was left at that address.

## 55 Persons for whom a local authority is responsible

(1) For the purposes of this Act, a local authority in Wales is responsible for a child or young person if he or she—

(a) is ordinarily resident in the authority's area, or

(b) he or she has no ordinary residence, but is resident in the authority's area for the time being.

(2) But this is subject to provision in regulations under subsection (3).

(3) Regulations may make further provision about the persons for whom a local authority in Wales is responsible for the purposes of this Act.

### PART 3

#### LOOKED AFTER CHILDREN AND DETAINED PERSONS

##### *Looked after children*

#### 56 Regulations about looked after children and persons formerly looked after

5 (1) Regulations may make provision about –

- (a) support from local authorities to promote the educational achievement of children looked after by them and persons formerly looked after, and
- (b) additional learning provision for children looked after by a local authority and persons formerly looked after who have, or may have, additional learning needs.

10 (2) Regulations under this section may amend, repeal or revoke any enactment.

(3) In this section –

“children looked after” (*“plant sy’n derbyn gofal”*) means children looked after by a local authority for the purposes of Part 6 of the Social Services and Well-being (Wales) Act 2014 (anaw 4);

15 “persons formerly looked after” (*“personau a fu gynt yn derbyn gofal”*) means persons who were, but are no longer, children looked after by a local authority (including persons who were looked after by a local authority for the purposes of Part 3 of the Children Act 1989 (c. 41) before the coming into force of Part 6 of the Social Services and Well-being (Wales) Act 2014).

##### *Detained persons*

#### 57 Meaning of “detained person” and other key terms

(1) For the purposes of this Part –

25 “beginning of the detention” (*“dechrau’r cyfnod o gadw person yn gaeth”*) has the meaning given by in Chapter 5A of Part 10 of the Education Act 1996 (c. 56) (persons detained in youth accommodation);

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

(a) subject to a detention order (within the meaning of section 562(1A)(a) of the Education Act 1996), and

30 (b) detained in relevant youth accommodation in Wales or England,

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

“home authority” (“*awdurdod cartref*”) has the meaning given by Chapter 5A of Part 10 of the Education Act 1996, subject to regulations under subsection (2) (and regulations made under section 562J(4) of the Education Act 1996 by the Welsh Ministers may also make provision in relation to the definition of home authority for the purposes of this Part).

- 5
- (2) For the purposes of this Part, regulations may provide for paragraph (a) of the definition of “home authority” in section 562J(1) of the Education Act 1996 (the home authority of a looked after child) to apply with modifications in relation to provisions of this Part specified in the regulations.

10 **58 Preparing individual development plans for detained persons**

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

- 15
- (a) a detained person may have additional learning needs, and
  - (b) an individual development plan is not being kept by a local authority under section 60.

- (2) The authority—

- 20
- (a) must decide whether the detained person has additional learning needs, and
  - (b) if it decides that the detained person has additional learning needs, must decide, in accordance with regulations, whether it may be necessary for an individual development plan to be maintained for the detained person when he or she is released from detention,

unless section 59 applies.

- 25
- (3) Before the home authority makes its decision it must invite the person in charge of the relevant youth accommodation to participate in the decision and, if needed, the preparation of an individual development plan.

- 30
- (4) If the home authority decides that the detained person does not have additional learning needs or that it would not be necessary for an individual development plan to be maintained for the detained person when he or she is released from detention, it must notify the detained person, the parent of a detained person who is a child and the person in charge of the relevant youth accommodation of—

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

- 35
- (5) If the home authority decides that a detained person has additional learning needs, and that it may be necessary for an individual development plan to be maintained for the detained person when he or she is released from detention, it must—

- (a) prepare an individual development plan for the detained person, and

- (b) give a copy of the plan to the detained person, the parent of a detained person who is a child and the person in charge of the relevant youth accommodation.

**59 Circumstances in which the duty in section 58 does not apply**

- (1) The duty in section 58(2) does not apply if subsection (2) or (3) applies.
- 5 (2) This subsection applies if the detained person is a young person who does not consent to the decision being made.
- (3) This subsection applies if the home authority has previously decided whether the detained person has additional learning needs and it is satisfied that—
  - 10 (a) the detained person's needs have not changed materially since that decision was made, and
  - (b) there is no new information that materially affects that decision.

**60 Duty to keep individual development plans for detained persons**

- (1) This section applies in relation to a detained person for whom an individual development plan was being maintained immediately before the beginning of his or her detention by—
  - 15 (a) the governing body of a maintained school in Wales under section 9,
  - (b) the governing body of a institution in the further education sector in Wales under section 10, or
  - (c) a local authority in Wales under section 12 or 19.
- (2) This section also applies in relation to a detained person for whom the home authority has prepared an individual development plan under section 58.
- (3) The duty to maintain the individual development plan under section 9, 10, 12 or 19 ceases from the beginning of the person's detention.
- (4) The home authority must keep the individual development plan while the person is detained in relevant youth accommodation.
- 25 (5) But the duty in subsection (4) does not apply in relation to a detained person for whom an individual development plan was being maintained by the governing body of a maintained school or an institution in the further education sector before the beginning of his or her detention unless and until the fact that the plan was being maintained is brought to the attention of the home authority.
- 30 (6) The home authority must inform the detained person, the parent of a detained person who is a child and the person in charge of the relevant youth accommodation in writing that it is keeping an individual development plan while the person is detained in relevant youth accommodation.

(7) Where a home authority keeps an individual development plan, it must arrange for appropriate additional learning provision to be provided to the detained person.

(8) In this section “appropriate learning provision” is—

- (a) the additional learning provision specified in the individual development plan,
- (b) if it appears to the home authority that it is not practicable for the additional learning provision specified in the plan to be provided, educational provision corresponding as closely as possible to that additional learning provision, or
- (c) if it appears to the home authority that the additional learning provision specified in the plan is no longer appropriate for the detained person, additional learning provision which the home authority considers appropriate.

## **61 Release of a detained person**

(1) This section applies where—

- (a) a detained person is released,
- (b) on the release date, a local authority in Wales is responsible for the person, and
- (c) an individual development plan was kept for him or her under section 60 during the detention.

(2) The local authority must maintain the plan and the plan is to be treated as maintained under section 12 for the purposes of this Act.

## **62 Appeals**

(1) This section applies only to—

- (a) decisions of a home authority in Wales under section 58, and
- (b) individual development plans prepared under that section.

(2) A detained person or the parent of a detained person who is a child may appeal to the Education Tribunal for Wales against the following matters—

- (a) decisions of the home authority under section 58;
- (b) the additional learning provision in an individual development plan or the fact that additional learning provision is not in a plan;
- (c) the school or other institution named in an individual development plan for the purpose of section 26;
- (d) if no school or institution is named in an individual development plan for the purpose of section 26, that fact.

(3) On appeal, the Education Tribunal for Wales may—

- (a) dismiss the appeal;
- (b) order that a detained person has additional learning needs of a kind specified in the order;

- (c) order the home authority to revise an individual development plan as specified in the order;
- (d) remit the case to the home authority responsible for the matter for it to reconsider whether, having regard to any observations made by the Tribunal, it is necessary for a different decision to be made or different action to be taken.
- 5
- (4) Regulations may make provision about appeals to the Education Tribunal for Wales, including, for example, provision—
- (a) about making and determining appeals;
- (b) conferring further powers on the Tribunal on determining an appeal;
- 10 (c) for unopposed appeals.
- (5) Regulations under subsection (4)(b) may include provision conferring power on the Tribunal, on determining an appeal against a matter, to make recommendations in respect of other matters (including matters against which no appeal may be brought).
- (6) A person commits an offence if without reasonable excuse that person fails to comply with any requirement—
- 15 (a) in respect of the discovery or inspection of documents, or
- (b) to attend to give evidence and produce documents,
- where that requirement is imposed by regulations under section 41 in relation to an appeal under this section or by regulations under subsection (4).
- 20 (7) A person guilty of an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (8) See the following sections for provision related to appeals under this section—
- (a) section 38 (independent advocacy services);
- (b) section 39 (case friends);
- 25 (c) section 41 (procedure);
- (d) section 42 (compliance with orders);
- (e) section 43 (allowances for attendance at the Education Tribunal for Wales);
- (f) section 44 (appeals from the Education Tribunal for Wales to the Upper Tribunal).

## PART 4

### EDUCATION TRIBUNAL FOR WALES

#### 63 Constitution of the Education Tribunal for Wales

- 5
- (1) The Special Educational Needs Tribunal for Wales continues to exist and is renamed the Education Tribunal for Wales.
- (2) The Tribunal is to consist of –
- 10
- (a) a President of the Tribunal,
- (b) a panel of persons who may serve as a the legal chair of the Tribunal, and
- (c) a panel of persons who may serve as the other two members of the Tribunal but not as the legal chair.
- (3) The President is to be appointed by the Lord Chancellor with the agreement of the Lord Chief Justice.
- (4) Each member of the legal chair panel is to be appointed by the Lord Chancellor with the agreement of the President.
- 15
- (5) The members of the lay panel are to be appointed by the Welsh Ministers with the agreement of the Secretary of State and the President.
- (6) Regulations made by the Welsh Ministers with the agreement of the Secretary of State may –
- 20
- (a) provide for the jurisdiction of the Tribunal to be exercised by such number of tribunals as the President may determine from time to time, and
- (b) make any other provision in connection with the establishment and continuation of the Tribunal which are considered necessary or desirable.
- (7) The Welsh Ministers may provide staff and accommodation for the Tribunal.

#### 64 The President and members of the panels

- 25
- (1) A person may not be appointed as President or member of the legal chair panel unless he or she satisfies the judicial-appointment eligibility condition on a 5-year basis.
- (2) A person may not be appointed as a member of the lay panel unless he or she satisfies requirements which may be prescribed in regulations made by the Welsh Ministers with the agreement of the Secretary of State.
- 30
- (3) If in the opinion of the Lord Chancellor and of the Lord Chief Justice the President is unfit to continue in office or is incapable of performing his or her duties, the Lord Chancellor may (with the agreement of the Lord Chief Justice) remove him or her from office.
- (4) Each member of the legal chair panel or lay panel is to hold and vacate office under the terms of the instrument under which he or she is appointed.
- 35
- (5) But a member of the legal chair panel or the lay panel may only be removed from office under the terms of the instrument with the agreement of the President.

- (6) The President or a member of the legal chair panel or lay panel—
- (a) may resign office by notice in writing to the Lord Chancellor or (as the case may be) the Welsh Ministers, and
  - (b) is eligible for re-appointment if he or she ceases to hold office.

5 **65 Remuneration and expenses**

The Welsh Ministers may—

- (a) pay remuneration and allowances to the President and any other person in respect of his or her service as a member of the Tribunal, and
- (b) defray the expenses of the Tribunal.

10

**PART 5**

**GENERAL**

**66 Power to make consequential and transitional provision etc.**

- 15 (1) If the Welsh Ministers consider it necessary or expedient for the purpose of giving full effect to any provision of this Act, or in consequence of any such provision, they may by regulations make—
- (a) any supplementary, incidental or consequential provision, and
  - (b) any transitory, transitional or saving provision.
- (2) Regulations under this section may amend, repeal or revoke any enactment or statutory document.
- 20 (3) A statutory document amended by regulations under this section must be published in its amended form by the person having the function of making or issuing the document.
- (4) In this section, “statutory document” means an instrument (other than a statutory instrument) made or issued under an enactment that—
- (a) must be approved by the National Assembly for Wales before being made or issued, or
  - (b) is subject to annulment in pursuance of a resolution of the National Assembly for Wales.

25

**67 Regulations**

- 30 (1) A power to make regulations under this Act is exercisable by statutory instrument.
- (2) A power to make regulations under this Act includes power to make—
- (a) different provision for different purposes or cases;
  - (b) incidental, supplementary, consequential, transitory, transitional or saving provision.
- 35 (3) A statutory instrument containing any of the following may not be made unless a draft of the instrument has been laid before, and approved by resolution of, the National Assembly for Wales—

- (a) regulations under section 3(4), 12(3)(c)(ii), 23, 39, 40(4), 41, 52, 53, 62(4);
- (b) regulations made under section 56 or 66 which amend or repeal any provision of an Act of Parliament or a Measure or Act of the National Assembly for Wales.
- (4) Any other statutory instrument containing regulations made by the Welsh Ministers under this Act is subject to annulment in pursuance of a resolution of the National Assembly for Wales.

## 68 General interpretation

- (1) In this Act –

“additional learning needs” (*“anghenion dysgu ychwanegol”*) has the meaning given by section 2;

“additional learning provision” (*“darpariaeth ddysgu ychwanegol”*) has the meaning given by section 3;

“beginning of detention” (*“dechrau’r cyfnod o gadw person yn gaeth”*) is defined in section 57 for the purposes of Part 3;

“case friend” (*“cyfaill achos”*) means a person appointed under section 39;

“child” (*“plentyyn”*) means a person not over compulsory school age;

“clinical commissioning group” (*“grŵp comisiynu clinigol”*) means a body established under section 14D of the National Health Service Act 2006 (c. 41);

“detained person” (*“person sy’n cael ei gadw’n gaeth”*) is defined in section 57 for the purposes of Part 3;

“education” (*“addysg”*) includes full-time and part-time education, but does not include higher education; and “educational” (*“addysgol”*) and “educate” (*“addysgu”*) (and other related terms) are to be interpreted accordingly;

“enactment” (*“deddfiad”*) means a provision contained in any of the following (whenever enacted or made) –

- (a) an Act of Parliament;
- (b) a Measure or an Act of the National Assembly for Wales (including a provision of this Act);
- (c) subordinate legislation made under an Act falling within paragraph (a) or a Measure or Act falling within paragraph (b);

“governing body” (*“corff llywodraethu”*), in relation to the governing body of an institution in the further education sector, has the meaning given by section 90 of the Further and Higher Education Act 1992 (c. 13);

“home authority” (*“awdurdod cartref”*) is defined in section 57 for the purposes of Part 3;

“individual development plan” (*“cynllun datblygu unigol”*) has the meaning given by section 8;

“institution in the further education sector” (*“sefydliad yn y sector addysg bellach”*) means an institution falling within section 91(3) of the Further and Higher Education Act 1992 (c. 13);

“lay panel” (*“panel lleyg”*) means the panel of persons appointed under 63(5);

“legal chair panel” (*“panel y cadeirydd cyfreithiol”*) means the panel of persons appointed under section 63(4) (and “legal chair” (*“cadeirydd cyfreithiol”*) means a member of the panel);

“local authority” (*“awdurdod lleol”*) means the council of a county or county borough in Wales (except where the reference is to a local authority in England);

“Local Health Board” (*“Bwrdd Iechyd Lleol”*) means a Local Health Board established under section 11 of the National Health Service (Wales) Act 2006 (c. 42);

“mainstream institution in the further education sector” (*“sefydliad prif ffrwd yn y sector addysg bellach”*) means an institution in the further education sector that is not specially organised to provide education or training for persons with additional learning needs;

“mainstream maintained school” (*“ysgol brif ffrwd a gynhelir”*) means a maintained school that is not –

- (a) a special school, or
- (b) a pupil referral unit;

“maintained school” (*“ysgol a gynhelir”*) means –

- (a) a community, foundation or voluntary school,
- (b) a community or foundation special school not established in a hospital,
- (c) a maintained nursery school, or
- (d) a pupil referral unit;

“National Health Service Commissioning Board” (*“Bwrdd Comisiynu’r Gwasanaeth Iechyd Gwladol”*) means the body established under section 1H of the National Health Service Act 2006 (c. 41);

“NHS foundation trust” (*“ymddiriedolaeth sefydledig GIG”*) has the meaning given by section 30 of the National Health Service Act 2006 (c. 41);

“NHS trust” (*“ymddiriedolaeth GIG”*) means a National Health Service trust established under section 18 of the National Health Service (Wales) Act 2006 (c. 42);

“President” (*“Llywydd”*) means the President of the Education Tribunal for Wales appointed under section 63;

“proprietor” (*“perchennog”*), in relation to an institution that is not a school, means the person or body of persons responsible for the management of the institution;

“prescribed” (*“rhagnodedig”* and *“a ragnodir”*) means prescribed in regulations;

“regulations” (*“rheoliadau”*) means regulations made by the Welsh Ministers;

“relevant youth accommodation” (*“llety ieuenctid perthnasol”*) has the meaning

given by section 562(1A)(b) of the Education Act 1996 (c. 56);

“social services functions” (*“swyddogaethau gwasanaethau cymdeithasol”*) has the meaning given by section 143 of the Social Services and Well-being (Wales) Act 2014 (anaw 4);

“training” (*“hyfforddiant”*) includes –

- (a) full-time and part-time training;
- (a) vocational, social, physical and recreational training;

“Tribunal” (*“y Tribiwnlys”*) means the Education Tribunal for Wales (see section 63);

“young person” (*“person ifanc”*) means a person over compulsory school age, but under 25.

(2) A child has a disability for the purposes of this Act if he or she has a disability for the purposes of the Equality Act 2010 (c. 15).

(3) In the definition of “maintained school” in subsection (1) –

- (a) a community, foundation or voluntary school, or
- (b) a community or foundation special school,

have the meaning given by the School Standards and Framework Act 1998 (c. 31).

(4) In this Act –

- (a) an institution in the further education sector is in Wales if its activities are carried on wholly or principally in Wales;
- (b) an institution in the further education sector is in England if its activities are carried on wholly or principally in England.

(5) The Education Act 1996 (c.56) and the preceding provisions of this Act (except so far as they amend other Acts that are not Education Acts) are to be interpreted as if those provisions were contained in Education Act 1996.

## 69 Coming into force

(1) This section, and sections 1, 67, 68 and 70 come into force on the day on which this Act receives Royal Assent.

(2) The remaining provisions of this Act come into force on a day appointed by the Welsh Ministers in an order made by statutory instrument.

(3) An order under subsection (2) may –

- (a) appoint different days for different purposes or cases;
- (b) make transitory, transitional or saving provision in connection with the coming into force of a provision of this Act.

**70 Short title and inclusion as one of the Education Acts**

- (1) The short title of this Act is the Additional Learning Needs and Education Tribunal (Wales) Act 2016.
- (2) This Act is to be included in the list of Education Acts set out in section 578 of the Education Act 1996 (c. 56).

5