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WELSH STATUTORY INSTRUMENTS

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**2002 No. 152 (W.20)**

**EDUCATION, WALES**

**The Education (Special Educational Needs) (Wales) Regulations 2002**

*Made* - - - - - *29th January 2002*

*Coming into force* - - - - - *1st April 2002*

The National Assembly for Wales, in exercise of the powers conferred on the Secretary of State by sections 316A(2), 322(4), 324(2), 325(2A) and (2B), 328(1), (3A), (3B) and (6), 329(2A), 329A(9), and 569(1), (2) and (4) of, and paragraphs 2, 3(1), (3) and (4) of Schedule 26, and paragraphs 2(3), 2B (3), 5(3), 6(3), 7(1) and (2), 8(3A) and (5), 11(2A) and (4) of Schedule 27 to, the Education Act 1996(1), and now vested in the National Assembly for Wales(2), hereby makes the following Regulations:

**PART 1**

**GENERAL**

**Citation and commencement**

1.—(1) These Regulations may be cited as the Education (Special Educational Needs) (Wales) Regulations 2002.

(2) These Regulations shall come into force on 1st April 2002.

(3) These Regulations apply only in relation to Wales.

**Interpretation**

2.—(1) In these Regulations—

“the Act” (“*y Ddeddf*”) means the Education Act 1996;

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(1) 1996 c. 56. For the meaning of “regulations” see section 579(1) of the Act. Sections 316A(2), 325(2A) and 2(B), 328(3A) and (3B), 329(2A) and 329A(9) were inserted by the Special Educational Needs and Disability Act 2001 (c. 10), section 1, paragraph 6 of Schedule 8, paragraph 7 of Schedule 8, paragraph 8 of Schedule 8 and section 8 respectively. Paragraphs 2(3), 2B(3), 6(3), 8(3A), 11(2A) of Schedule 27 were inserted by the Special Educational Needs and Disability Act 2001, Schedule 1, paragraphs 3 and 14 and Schedule 8, paragraphs 9(2) and 10(2) respectively.

(2) See the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I.1999/672).

“annual review” (“*adolygiad blynyddol*”) means a review of a child’s statement of special educational needs carried out within 12 months of making the statement or the previous review under section 328(5)(b) of the Act;

“assessment” (“*asesiad*”) means an assessment of a child’s educational needs under section 323 of the Act;

“authority” (“*awdurdod*”) means a local education authority;

“Careers Service” (“*Gwasanaeth Gyrfaoedd*”) means a body (whether or not having a distinct legal personality) established to provide careers services under sections 8 to 10 of the Employment and Training Act 1973(3);

“early education provider” (“*darparydd addysg gynnar*”) means a provider of relevant nursery education except that it shall not include an authority in respect of a maintained nursery school;

“head of SEN” (“*pennaeth AAA*”) means the person responsible for co-ordinating the day to day provision of education for pupils with special educational needs;

“head teacher” (“*pennaeth*”) includes any person to whom the duties or functions of a head teacher under these Regulations have been delegated by the head teacher in accordance with regulation 3;

“health authority” (“*awdurdod iechyd*”) has the same meaning as in the National Health Service Act 1977 (4);

“the National Assembly” (“*y Cynulliad Cenedlaethol*”) means the National Assembly for Wales;

“parent partnership services” (“*gwasanaethau partneriaeth rhieni*”) means the arrangements made by an authority under section 332A of the Act for the provision of advice and information about matters relating to special educational needs to parents of children with special educational needs;

“social services authority” (“*awdurdod gwasanaethau cymdeithasol*”) means a local authority for the purposes of the Local Authority Social Services Act 1970(5) acting in the discharge of such functions as are referred to in section 1A of that Act;

“statement” (“*datganiad*”) means a statement of a child’s special educational needs made under section 324 of the Act ;

“target” (“*targed*”) means the knowledge, skills and understanding which a child is expected to have by the end of a particular period;

“tenth year of compulsory education” (“*degfed flwyddyn o addysg orfodol*”) means the ninth school year after the school year in which a child reaches compulsory school age;

“transition plan” (“*cynllun trosiannol*”) means a document which sets out the appropriate arrangements for a young person during the period beginning with the commencement of the tenth year of compulsory education and ending when aged 19 years, including arrangements for special educational provision and for any other necessary provision, for suitable employment and accommodation and for leisure activities, and which will facilitate a satisfactory transition from childhood to adulthood;

“Tribunal” (“*Tribiwnlys*”) means the Special Educational Needs Tribunal having the jurisdiction granted to it by section 333 of the Act;

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(3) 1973 c. 50. Sections 8, 9 and 10 were substituted by the Trade Union Reform and Employment Rights Act 1993 (c. 19), section 45.

(4) 1977 c. 49. Amended by the Health Authorities Act 1995 (c. 17) and the Health Act 1999 (c. 32).

(5) 1970 c. 42. Section 1A was inserted by the Local Government Act 2000 (c. 22), s102(3).

“working day” (“*diwrnod gwaith*”) means a day other than a Saturday, Sunday, Christmas Day, Good Friday or Bank Holiday within the meaning of the Banking and Financial Dealings Act 1971(6);

“the 1994 Regulations” (“*Rheoliadau 1994*”) means the Education (Special Educational Needs) Regulations 1994(7).

(2) The expressions used in these Regulations set out in the first column of the table below have the meaning given by (or, as the case may be, are to be interpreted in accordance with), the provisions referred to in the second column of that table:

“compulsory school age” (“ <i>oedran ysgol gorfodol</i> ”)	Section 5 of the Act
“maintained school” (“ <i>ysgol a gynhelir</i> ”)	Section 312 of the Act
“parent” (“ <i>rhiant</i> ”)	Section 576 of the Act
“qualified teacher” (“ <i>athro neu athrawes gymwysedig</i> ”)	Section 218 of the Education Reform Act 1988(8)
“relevant nursery education” (“ <i>addysg feithrin berthnasol</i> ”)	Section 509A(5) of the Act
“responsible body” (“ <i>corff cyfrifol</i> ”)	Section 329A(13) of the Act
“school day” (“ <i>diwrnod ysgol</i> ”)	Section 579(1) of the Act
“school year” (“ <i>blwyddyn ysgol</i> ”)	Section 579(1) of the Act
“special school” (“ <i>ysgol arbennig</i> ”)	Section 337 of the Act
“young offender institution” (“ <i>sefydliad tramgwyddwyr ifanc</i> ”)	Section 43 of the Prison Act 1952(9)

(3) In these Regulations any reference to the health authority or the social services authority is, in relation to a particular child, a reference to the health authority or social services authority in whose area that child lives.

(4) Where a thing is required to be done under these Regulations—

- (a) within a period after an action is taken, the day on which that action was taken shall not be counted in the calculation of that period, and
- (b) within a period and the last day of that period is not a working day, the period shall be extended to include the following working day.

(5) Unless the context otherwise requires references in these Regulations—

- (a) to a section are references to a section of the Act;
- (b) to a Schedule are references to a Schedule of the Act;
- (c) to a regulation are references to a regulation in these Regulations.

### Delegation of functions

3. Where a head teacher has any functions or duties under these Regulations he or she may delegate those functions or duties—

(6) 1971 c. 80.  
(7) S.I. 1994/1047.  
(8) 1988 c. 40.  
(9) 1952 c. 52.

- (a) generally to a member of the staff of the school who is a qualified teacher, or
- (b) in a particular case to a member of the staff of the school who teaches the child in question.

#### **Notices**

4. Any notice required to be given by these Regulations shall be given in writing.

#### **Service of documents**

5.—(1) Where any provision in Part IV of the Act or in these Regulations authorises or requires any document to be served or sent to a person or any notice to be given to a person the document may be served or sent or the notice may be given by properly addressing, pre-paying and posting a letter containing the document or notice.

(2) For the purposes of this regulation, the proper address of a person is—

- (a) in the case of the child’s parent, the parent’s last known address;
- (b) in the case of a head teacher or other member of the staff of a school, the school’s address;
- (c) in the case of any other person, the last known address of the place where the person carries on business, profession or other employment.

(3) Where first class post is used, the document or notice shall be treated as served, sent or given on the second working day after the date of posting, unless the contrary is shown.

(4) Where second class post is used, the document or notice shall be treated as served, sent or given on the fourth working day after the date of posting, unless the contrary is shown.

(5) The date of posting shall be presumed, unless the contrary is shown, to be the date shown in the post-mark on the envelope in which the document is contained.

## **PART II**

### **ASSESSMENTS**

#### **Notices relating to assessment**

6.—(1) Paragraph (2) applies where—

- (a) under section 323(1) or 329A(3) an authority serve notice on a child’s parent that they are considering whether to make an assessment, or
- (b) no notice has been given in relation to a particular assessment under section 323(1) or 329A(3), and under section 323(4) or 329A(7) an authority give notice to a child’s parent of their decision to make an assessment.

(2) Where this paragraph applies an authority shall send copies of the relevant notice—

- (a) to the social services authority,
- (b) to the health authority,
- (c) if the child is registered at a school, to the head teacher of that school, or
- (d) if the child receives education from an early education provider, to the head of SEN in relation to that provider.

(3) Where a copy of a notice is sent under paragraph (2) an endorsement on the copy or a notice accompanying that copy shall inform the recipient what help the authority are likely to request.

(4) Where—

- (a) under section 328(2) or 329(1) a child's parent asks an authority to arrange for an assessment, and
- (b) no assessment has been made for that child within the period of six months ending with the date on which the request is made

the authority shall give notice to the persons referred to in paragraph (2)(a) to (d) that the request has been made and inform them what help the authority are likely to request.

(5) Where—

- (a) under section 329A(1) a responsible body asks an authority to arrange for an assessment, and
- (b) no assessment has been made for that child within the period of six months ending with the date on which the request is made

the authority shall give notice to the persons referred to in paragraph (2)(a) to (d) that the request has been made and inform them what help the authority are likely to request.

(6) Where the head teacher at a school or head of SEN in relation to an early education provider is the responsible body referred to at paragraph (5)(a) the authority may—

- (a) choose not to serve a notice on the head teacher or head of SEN under paragraph (5), and
- (b) endorse the notice served on the responsible body under section 329A(7) or serve a further notice accompanying that notice informing the head teacher of the school or the head of SEN in relation to the early education provider of the help the authority are likely to request.

### **Advice to be sought**

7.—(1) For the purpose of making an assessment an authority shall seek—

- (a) advice from the child's parent;
- (b) educational advice as provided for in regulation 8;
- (c) medical advice from the health authority as provided for in regulation 9;
- (d) psychological advice as provided for in regulation 10;
- (e) advice from the social services authority; and
- (f) any other advice which the authority consider appropriate for the purpose of arriving at a satisfactory assessment.

(2) The advice referred to in paragraph (1) shall be written advice relating to—

- (a) the educational, medical, psychological or other features of the case (according to the nature of the advice sought) which appear to be relevant to the child's educational needs (including his likely future needs);
- (b) how those features could affect the child's educational needs; and
- (c) the provision which is appropriate for the child in light of those features of the child's case, whether by way of special educational provision or non-educational provision, but not relating to any matter which is required to be specified in a statement by virtue of section 324(4)(b).

(3) A person from whom the advice referred to in paragraph (1) is sought may in connection therewith consult such persons as it appears to him or her expedient to consult; and he or she shall consult such persons, if any, as are specified in the particular case by the authority as persons who have relevant knowledge of, or information relating to, the child.

(4) When seeking the advice referred to in paragraph (1)(b) to (f), an authority shall provide the person from whom it is sought with copies of—

- (a) any representations made by the parent, and
  - (b) any evidence submitted by, or at the request of, the parent
- under section 323(1)(d) or section 329A(3)(d) as the case may be.
- (5) The authority need not seek the advice referred to in paragraph (1)(b),(c),(d),(e) or (f) if—
    - (a) the authority have obtained advice under paragraph (1)(b),(c),(d),(e) or (f) respectively within the preceding 12 months, and
    - (b) the authority, the person from whom the advice was obtained and the child’s parent are satisfied that the existing advice is sufficient for the purpose of arriving at a satisfactory assessment.

**Educational advice**

8.—(1) The educational advice referred to in regulation 7(1)(b) shall, subject to paragraphs (2) to (5), be sought—

- (a) from the head teacher of any school which the child is currently attending;
- (b) if advice cannot be obtained from a head teacher of a school which the child is currently attending (because the child is not attending a school or otherwise) from a person who the authority are satisfied has experience of teaching children with special educational needs or knowledge of the differing provision which may be called for in different cases to meet those needs;
- (c) if the child is not currently attending a school and if advice obtained under subparagraph (b) is not advice from such a person, from a person responsible for educational provision for the child; and
- (d) if any of the child’s parents is a serving member of Her Majesty’s armed forces, from Service Children’s Education.

(2) Subject to paragraph (3), the advice sought as provided in paragraph (1)(a) to (c) shall not be sought from any person who is not a qualified teacher.

(3) If the advice sought as provided in paragraph 1(c) is to be obtained in respect of a child receiving education from an early education provider and there is no person responsible for that child’s educational provision who is a qualified teacher, advice shall be sought from a person responsible for the child’s educational provision who is not a qualified teacher.

(4) The advice sought from a head teacher as provided in paragraph (1)(a) shall, if the head teacher has not taught the child within the preceding 18 months, be advice given after consultation with a teacher who has taught the child.

(5) The advice sought from a head teacher as provided in paragraph (1)(a) shall include advice relating to the steps which have been taken by the school to identify and assess the special educational needs of the child and to make provision for the purpose of meeting those needs.

(6) The advice sought under paragraphs (1)(b) or (1)(c) in relation to a child receiving education from an early education provider shall include advice relating to the steps which have been taken by the provider to identify and assess the special educational needs of the child and to make provision for meeting those needs.

(7) Where it appears to the authority, in consequence of medical advice or otherwise, that the child in question is—

- (a) hearing impaired;
- (b) visually impaired; or
- (c) both hearing impaired and visually impaired,

and any person from whom advice is sought as provided in paragraph (1) is not qualified to teach pupils who are so impaired then the advice sought shall be advice given after consultation with a person who is so qualified.

(8) For the purposes of paragraph (7) a person shall be considered to be qualified to teach pupils who are hearing impaired or visually impaired or who are both hearing impaired and visually impaired if that person is qualified to be employed at a school as a teacher of a class for pupils who are so impaired otherwise than to give instruction in a craft, trade, or domestic subject.

(9) Paragraphs (4) and (7) are without prejudice to regulation 7(3).

### **Medical advice**

9. The advice referred to in paragraph 7(1)(c) shall be sought from the health authority, who shall obtain the advice from a fully registered medical practitioner.

### **Psychological advice**

10.—(1) The psychological advice referred to in regulation 7(1)(d) shall be sought from a person—

- (a) regularly employed by the authority as an educational psychologist, or
- (b) engaged by the authority as an educational psychologist in the case in question.

(2) The advice sought from a person as provided in paragraph (1) shall, if that person has reason to believe that another psychologist has relevant knowledge of, or information relating to, the child, be advice given after consultation with that other psychologist.

(3) Paragraph (2) is without prejudice to regulation 7(3).

### **Matters to be taken into account in making an assessment**

11. When making an assessment an authority shall take into consideration—

- (a) any representations made by the child's parent under section 323(1)(d) or section 329A(3)(d);
- (b) any evidence submitted by, or at the request of, the child's parent under section 323(1)(d) or section 329A(3)(d); and
- (c) the advice obtained under regulation 7.

### **Time limits and prescribed information**

12.—(1) Where under section 323(1) an authority serve a notice on a child's parent informing the parent that they are considering whether to make an assessment they shall within 6 weeks of the date of service of that notice give notice to the child's parent of—

- (a) their decision to make an assessment, and of their reasons for making that decision, or
- (b) their decision not to assess the educational needs of the child and of their reasons for making that decision, and
- (c) in either case the availability to the parent of advice and information on matters related to the child's special educational needs from the parent partnership service.

(2) Where under sections 328(2) or 329(1) a parent asks the authority to arrange for an assessment to be made they shall within 6 weeks of the date of receipt of the request give notice to the child's parent—

- (a) of—

- (i) their decision to make an assessment;
  - (ii) their reasons for making that decision; and
  - (iii) the availability to the parent of advice and information on matters related to the child's special educational needs from the parent partnership service; or
- (b) of—
- (i) their determination not to comply with the parent's request;
  - (ii) their reasons for making that determination;
  - (iii) the availability to the parent of advice and information on matters related to the child's special educational needs from the parent partnership service;
  - (iv) the availability to the parent of arrangements for the prevention and resolution of disagreements between parents and authorities made by the authority under section 332B(1);
  - (v) the parent's right to appeal to the Tribunal against the determination not to make an assessment;
  - (vi) the time limit within which an appeal must be made to the Tribunal; and
  - (vii) the fact that the arrangements made under section 332B(1) cannot affect the parent's right to appeal to the Tribunal and that the parent may appeal to the Tribunal and enter into any arrangements made under section 332B(1).
- (3) Where section 329A applies an authority shall, within 6 weeks of the date of receipt of a request from a responsible body that an assessment of a child be made, give notice to that body—
- (a) of their decision to make an assessment, and of their reasons for making that decision, or
  - (b) of their decision not to assess the educational needs of the child, and of their reasons for making that decision.
- (4) Where section 329A applies an authority shall, within 6 weeks of the date of receipt of a request from a responsible body that an assessment of a child be made, give notice to the child's parent—
- (a) of—
- (i) their decision to make an assessment;
  - (ii) their reasons for making that decision; and
  - (iii) the availability to the parent of advice and information on matters related to the child's special educational needs from the parent partnership service; or
- (b) of—
- (i) their decision not to assess the educational needs of the child;
  - (ii) their reasons for making that decision;
  - (iii) the availability to the parent of advice and information on matters related to the child's special educational needs from the parent partnership service;
  - (iv) the availability to the parent of arrangements for the prevention and resolution of disagreements between parents and authorities made by the authority under section 332B(1);
  - (v) the parent's right to appeal to the Tribunal against the decision not to make an assessment;
  - (vi) the time limit within which an appeal must be made to the Tribunal; and

(vii) the fact that the arrangements made under section 332B(1) cannot affect the parent's right to appeal to the Tribunal and that the parent may appeal to the Tribunal and enter into the arrangements made under section 332B(1) .

(5) An authority need not comply with the time limits referred to in paragraphs (1) to (4) if it is impractical to do so because—

- (a) the authority have requested advice from the head teacher of a school during a period beginning one week before any date on which that school was closed for a continuous period of not less than 4 weeks from that date and ending one week before the date on which it re-opens;
- (b) the authority have requested advice from the head of SEN or other person responsible for a child's education at an early education provider during a period beginning one week before any date on which that early education provider was closed for a continuous period of not less than four weeks from that date and ending one week before the date on which it re-opens;
- (c) exceptional personal circumstances affect the child or the child's parent during the 6 week period referred to in paragraphs (1) to (4); or
- (d) the child or the child's parent are absent from the area of the authority for a continuous period of not less than 4 weeks during the 6 week period referred to in paragraphs (1) to (4).

(6) Subject to paragraph (7), where under sections 323(4) or 329A(7) an authority have given notice to the child's parent of their decision to make an assessment they shall complete that assessment within 10 weeks of the date on which such notice was given.

(7) An authority need not comply with the time limit referred to in paragraph (6) if it is impractical to do so because—

- (a) in exceptional cases after receiving advice sought under regulation 7 it is necessary for the authority to seek further advice;
- (b) the child's parent has indicated to the authority that he or she wishes to provide advice to the authority after the expiry of 6 weeks from the date on which a request for such advice under regulation 7(1)(a) was received, and the authority have agreed to consider such advice before completing the assessment;
- (c) the authority have requested advice from the head teacher of a school under regulation 7(1)
  - (b) during a period beginning one week before any date on which that school was closed for a continuous period of not less than 4 weeks from that date and ending one week before the date on which it re-opens;
- (d) the authority have requested advice from the head of SEN in relation to, or other person responsible for, a child's education at an early education provider under regulation 7(1)
  - (b) during a period beginning one week before any date on which that early education provider was closed for a continuous period of not less than four weeks from that date and ending one week before the date on which it re-opens;
- (e) the authority have requested advice from a health authority or a social services authority under regulation 7(1)(c) or (e) respectively and the health authority or the social services authority have not complied with that request within 6 weeks from the date on which it was made;
- (f) exceptional personal circumstances affect the child or the child's parent during the 10 week period referred to in paragraph (6);
- (g) the child or the child's parent are absent from the area of the authority for a continuous period of not less than 4 weeks during the 10 week period referred to in paragraph (6); or

(h) the child fails to keep an appointment for an examination or a test during the 10 week period referred to in paragraph (6).

(8) Subject to paragraphs (9), (10) and (11) where an authority have requested advice from a health authority or a social services authority under regulation 7(1)(c) or (e) respectively the health authority or social services authority shall comply with that request within 6 weeks of the date on which they receive it.

(9) A health authority or a social services authority need not comply with the time limit referred to in paragraph (8) if it is impractical to do so because—

- (a) exceptional personal circumstances affect the child or the child's parent during the 6 week period referred to in paragraph (8);
- (b) the child or the child's parent are absent from the area of the authority for a continuous period of not less than 4 weeks during the 6 week period referred to in paragraph (8); or
- (c) the child fails to keep an appointment for an examination or a test made by the health authority or the social services authority respectively during the 6 week period referred to in paragraph (8).

(10) A health authority need not comply with the time limit referred to in paragraph (8) if they have not before the date on which a copy of a notice has been served on them in accordance with regulation 6(1), 6(3) or 6(4) produced or maintained any information or records relevant to the assessment of the child.

(11) A social services authority need not comply with the request referred to in paragraph (8) if they have not before the date on which a copy of a notice has been served on them in accordance with regulation 6(1), 6(3) or 6(4) produced or maintained any information or records relevant to the assessment of the child.

### **Children without statements in special schools**

**13.** If a child without a statement has been admitted to a special school for the purposes of an assessment, as provided for in section 316A(2), the child may remain at that school—

- (a) until the expiry of ten school days after the authority serve a notice under section 325 informing the child's parent that they do not propose to make a statement, or
- (b) until a statement is made<sup>(10)</sup>.

## **PART III STATEMENTS**

### **Notices accompanying a proposed statement, or proposed amended statement**

**14.** The notice which shall be served by an authority on a parent pursuant to paragraph 2B(2) of Schedule 27 to accompany

- (a) a copy of a proposed statement (served under paragraph 2(1) of Schedule 27), or
- (b) a copy of a proposed amended statement (served under paragraph 2A(2) of Schedule 27)

shall contain the information as specified in Part A of Schedule 1 to these Regulations.

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<sup>(10)</sup> Once a statement has been made for a child that statement will determine whether the child will be educated in a special school or elsewhere.

### **Notices accompanying amendment notices**

15. The notice which shall be served on a parent pursuant to paragraph 2B(2) of Schedule 27 to accompany an amendment notice (served under paragraph 2A (4) of Schedule 27) shall contain the information as specified in Part B of Schedule 1 to these Regulations.

### **Statement of special educational needs**

16. A statement shall—

- (a) be in a form substantially corresponding to that set out in Schedule 2 to these Regulations;
- (b) contain the information therein specified;
- (c) be dated and authenticated by the signature of a duly authorised officer of the authority concerned;
- (d) set out whether it is the first statement made by the authority for the child or a subsequent statement;
- (e) indicate on the front page if it is—
  - (i) amended pursuant to an annual review and the date of any such annual review;
  - (ii) amended pursuant to a review other than an annual review, and the date of such review;
  - (iii) amended pursuant to an order of the Tribunal, and the date of such order; or
  - (iv) amended pursuant to a direction of the National Assembly, and the date of any such direction.

### **Time limits and prescribed information**

17.—(1) Where an authority have made an assessment of a child for whom no statement is maintained they shall within two weeks of the date on which the assessment was completed either—

- (a) serve a copy of a proposed statement and a notice on the child's parent under paragraphs 2(1) and 2B(2) of Schedule 27 respectively, or
- (b) give notice to the child's parent—
  - (i) under section 325(1) that they have decided not to make a statement;
  - (ii) of their reasons for that decision;
  - (iii) of the parent's right of appeal against that decision to the Tribunal; and
  - (iv) of the time limit within which an appeal to the Tribunal must be made.

(2) Where an authority have made an assessment of a child for whom a statement is maintained they shall within two weeks of the date on which the assessment was completed—

- (a) serve on the child's parent a copy of a proposed amended statement and a notice under paragraphs 2A(2) and 2B(2) of Schedule 27 respectively; or
- (b) give notice to the child's parent—
  - (i) under paragraph 11(2) of Schedule 27 that they have determined to cease to maintain the statement;
  - (ii) of the parent's right of appeal against that determination to the Tribunal; and
  - (iii) of the time limit within which an appeal to the Tribunal must be made; or
- (c) serve on the child's parent a notice—
  - (i) under section 329(2) which informs the parent that they have determined not to amend the statement;

- (ii) which informs the parent of their reasons for that determination;
- (iii) which is accompanied by copies of the professional advice obtained during the assessment;
- (iv) which informs the parent of the right of appeal under section 326(1)(c) to the Tribunal against the description in the statement of the authority's assessment of the child's special educational needs, the special educational provision specified in the statement (including the name of a school so specified) or, if no school is named in the statement, that fact; and
- (v) which informs the parent of the time limit within which an appeal to the Tribunal must be made.

(3) Subject to paragraph (4), where an authority have served a copy of a proposed statement or proposed amended statement on the child's parent under paragraphs 2(1) or 2A(2) of Schedule 27 they shall within 8 weeks of the date on which the proposed statement or proposed amended statement was served serve a copy of the completed statement or completed amended statement and a written notice on the child's parent under paragraphs 6(1) and 6(2) respectively of Schedule 27.

(4) The authority need not comply with the time limit referred to in paragraph (3) if it is impractical to do so because—

- (a) exceptional personal circumstances affect the child or the child's parent during the 8 week period referred to in paragraph (3);
- (b) the child or the child's parent are absent from the area of the authority for a continuous period of not less than 4 weeks during the 8 week period referred to in paragraph (3);
- (c) the child's parent indicates that he or she wishes to make representations to the authority about the content of the statement under paragraph 4(1) of Schedule 27 after the expiry of the 15 day period for making such representations provided for in paragraph 4(4) of that Schedule;
- (d) a meeting between the child's parent and an officer of the authority has been held pursuant to paragraph 4(1) of Schedule 27 and the child's parent under paragraph 4(2) of that Schedule has either required that another such meeting be arranged or has required a meeting with the appropriate person be arranged; or
- (e) the authority have sent a written request to the National Assembly seeking its consent under section 347(5) to the child being educated at an independent school which is not approved by it and such consent has not been received by the authority within two weeks of the date on which the request was sent.

(5) Where under paragraph 8(1) of Schedule 27 the child's parent asks the authority to substitute for the name of a school or institution specified in a statement the name of another school specified by the parent and where the conditions referred to in paragraph 8(1)(b) of Schedule 27 have been satisfied the authority shall within 8 weeks of the date on which the request was received either—

- (a) comply with the request; or
- (b) give notice to the child's parent under paragraph 8(3) of Schedule 27 that they have determined not to comply with the request, their reasons for that decision, and of the right to appeal against that determination to the Tribunal.

(6) Where under paragraph 2A(4) of Schedule 27 an authority serve an amendment notice on the child's parent informing the parent of their proposal to amend a statement they shall amend the statement before the expiry of 8 weeks from the date on which the notice was served.

(7) The authority need not comply with the time limit in paragraph (6) where—

- (a) the amendment notice contained an amendment about the type or name of a school or institution or the provision made for the child concerned under arrangements made under section 319, and
- (b) it is impractical to do so because any of the circumstances referred to in paragraph (4)(a) to (e) apply in relation to the eight week period referred to in paragraph (6).

(8) Where under paragraph 11(1) of Schedule 27 an authority give notice to the child's parent that they have determined to cease to maintain a statement they shall not cease to maintain the statement before the expiry of the prescribed period during which the parent may appeal to the Tribunal against the determination<sup>(11)</sup>.

(9) Any notice given in accordance with this regulation shall inform the parent on whom it is served of—

- (a) the availability to the parent of arrangements for the prevention and resolution of disagreements between parents and authorities made by the authority under section 332B, and
- (b) the fact that the arrangements made under section 332B cannot affect any right the parent has to appeal to the Tribunal and that the parent may appeal to the Tribunal and take up the arrangements made under section 332B.

### Reviews of statements

**18.**—(1) Not less than two weeks before the first day of every school term an authority shall serve a notice on the head teacher of every school listing those pupils registered at that school—

- (a) for whom the authority is responsible, and
- (b) whose annual reviews fall to be carried out before the commencement of the second term after the notice is given.

(2) In this regulation “school” means

- (a) a community, voluntary, foundation, community or foundation special school,
- (b) a maintained nursery school,
- (c) a pupil referral unit,
- (d) a school approved by the National Assembly under section 342, or
- (e) a City College for Technology and the Arts, a City Technology College or City Academy,

at which a pupil for whom the authority is responsible is a registered pupil.

(3) The notice served in accordance with paragraph (1) shall—

- (a) require the head teacher to submit a report to the authority in respect of each child mentioned in it which shall be prepared by the head teacher and reviewed by the authority in accordance with—
  - (i) paragraphs (4) to (15) of regulation 21 in respect of a child other than a child in the tenth year of compulsory education, or
  - (ii) paragraphs (4) to (15) of regulation 22 in respect of a child in the tenth year of compulsory education, and
- (b) specify for each child any person from whom the authority consider advice should be sought for the purpose of arriving at a satisfactory report.

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<sup>(11)</sup> The Special Educational Needs Tribunal Regulations 2001 (S.I. 2001/600) provide that an appeal must be made no later than the first working day after the expiry of two months from when the authority notify a parent of the right of appeal. Under paragraph 11(5) of Schedule 27 to the Education Act 1996 a local authority may not cease to maintain a statement if a parent has appealed against the authority's determination to cease to maintain a statement and that appeal has not been determined by the tribunal or withdrawn.

- (4) The report referred to in paragraph (3) shall be prepared by the head teacher—
- (a) by the end of the term which follows service of the notice, or if earlier
  - (b) within ten school days of the review meeting referred to in regulation 20(6), or in the case of a child in the tenth year of compulsory education, regulation 21(6).
- (5) Not less than two weeks before the first day of a school year an authority shall serve on the Careers Service for their area, a notice—
- (a) listing all the children for whom the authority is responsible and who will be in the tenth year of compulsory education in that school year, and
  - (b) indicating the school attended by each of those children or the educational provision made in respect of them.
- (6) Not less than two weeks before the first day of every school term an authority shall serve a notice on the health authority and on the social services authority—
- (a) listing—
    - (i) those children living in the area of the health authority or social services authority;
    - (ii) for whom the authority is responsible; and
    - (iii) whose annual reviews fall to be carried out before the commencement of the second term after the notice is given; and
  - (b) indicating the school attended by those children or the educational provision made in respect of them.

### **Phase transfers**

- 19.**—(1) This regulation applies where—
- (a) a statement is maintained for a child, and
  - (b) the child is within twelve calendar months of a transfer between phases of his or her schooling.
- (2) In this regulation a transfer between phases of schooling means a transfer from—
- (a) primary school to middle school;
  - (b) primary school to secondary school;
  - (c) middle school to secondary school;
  - (d) secondary school to an institution specified in section 2A of the Act.
- (3) Where this regulation applies an authority must ensure that the child's statement is amended so that before 15th February in the calendar year of the child's transfer the statement names the school or other institution which the child will be attending following that transfer.

### **Review of statement of child attending school (other than a review in respect of a child in tenth year of compulsory education)**

- 20.**—(1) This regulation applies where—
- (a) an authority carry out an annual review of a child's statement;
  - (b) the child concerned attends a school; and
  - (c) the child is not in the tenth year of compulsory education.
- (2) Subject to paragraph (3) the authority shall by notice in writing require the head teacher of the child's school to submit a report to them under this regulation by a specified date not less than two months from the date the notice is given.

(3) If the name of the child is included in the notice served under paragraph (1) of regulation 18 no further notice need be served on the head teacher in respect of that child under paragraph (2) of this regulation.

(4) The head teacher shall for the purpose of preparing the report referred to in paragraph (2) of this regulation or paragraph (3) of regulation 18 seek the advice referred to in paragraph (5) from—

- (a) the child's parent (in relation to all the matters referred to in paragraph (5));
- (b) any person whose advice the authority consider appropriate for the purpose of arriving at a satisfactory report and whom they specify in the notice referred to in paragraph (2) of this regulation or in paragraph (1) of regulation 18 in relation to the particular child (in relation to such of the matters referred to in paragraph (5) as the head teacher considers are within that person's knowledge or expertise); and
- (c) any person whose advice the head teacher considers appropriate for the purpose of arriving at a satisfactory report (in relation to such of the matters referred to in paragraph (5) as the head teacher considers are within that person's knowledge or expertise).

(5) The advice referred to in paragraph (4) shall be written advice as to—

- (a) the child's progress towards meeting the objectives specified in the statement;
- (b) the child's progress towards attaining any targets established in furtherance of the objectives specified in the statement;
- (c) where the school is a community, foundation or voluntary school or a community or foundation special school other than a special school established in a hospital, the application of the provisions of the National Curriculum to the child, and the progress made in relation to those provisions by the child since the statement was made or the last review under section 328;
- (d) the application of any provisions substituted for the provisions of the National Curriculum in order to maintain a balanced and broadly based curriculum and the progress made in relation to those provisions by the child since the statement was made or the last review under section 328;
- (e) the progress made by the child since the statement was made or the last review under section 328 in the child's behaviour and attitude to learning;
- (f) where appropriate, and in any case where a transition plan exists, any matters which are the appropriate subject of such a plan;
- (g) whether the statement continues to be appropriate;
- (h) any amendments to the statement which would be appropriate; and
- (i) whether the authority should cease to maintain the statement.

(6) The notice referred to in paragraph (2) of this regulation or paragraph (1) of regulation 18 shall require the head teacher to invite the following persons to attend a meeting to be held on a date before the report referred to in that paragraph is submitted—

- (a) the representative of the authority specified in the notice;
- (b) the child's parent;
- (c) a member or members of the staff of the school who teach the child or who are otherwise responsible for the provision of education for the child whose attendance the head teacher considers appropriate;
- (d) any other person whose attendance the head teacher considers appropriate; and
- (e) any person whose attendance the authority consider appropriate and who is specified in the notice.

(7) The head teacher shall not later than two weeks before the date on which a meeting referred to in paragraph (6) is to be held send to all the persons invited to that meeting and who have not informed the head teacher that they will not be attending it copies of the advice received pursuant to the request under paragraph (4) and by written notice accompanying the copies shall request the recipients to submit to him or her before or at the meeting written comments on that advice and any other advice which they think appropriate.

(8) The meeting referred to in paragraph (6) shall consider—

- (a) the matters referred to in paragraph (5); and
- (b) any significant changes in the child's circumstances since the date on which the statement was made or last reviewed.

(9) The meeting shall recommend—

- (a) any steps which it concludes ought to be taken, including whether the authority should amend or cease to maintain the statement,
- (b) any targets to be established in furtherance of the objectives specified in the statement which it concludes the child ought to meet during the period until the next review, and
- (c) where a transition plan exists, the matters which it concludes ought to be included in that plan.

(10) If the meeting cannot agree the recommendations to be made under paragraph (9) the persons who attended the meeting shall make differing recommendations as appears necessary to each of them.

(11) The report to be submitted under paragraph (2) of this regulation or paragraph (3) of regulation 18 shall be completed after the meeting is held and shall include the head teacher's assessment of the matters referred to in paragraph (8) and the head teacher's recommendations as to the matters referred to in paragraph (9), and shall refer to any difference between the head teacher's assessment and recommendations and those of the meeting.

(12) When the head teacher submits a report to the authority under paragraph (2) of this regulation or paragraph (3) of regulation 18 the head teacher shall at the same time send copies to—

- (a) the child's parent,
- (b) any other person who submitted advice under paragraph (4) or paragraph (7),
- (c) any other person to whom the authority consider it appropriate that a copy be sent and to whom they direct the head teacher to send a copy, and
- (d) any other person to whom the head teacher considers it appropriate that a copy be sent.

(13) The authority shall review the statement under section 328 in light of the report and any other information or advice which they consider relevant, record in writing their decisions on the matters referred to in paragraph (9)(a) and (b) and, where a transition plan exists, shall make written recommendations for amendments to the plan as they consider appropriate.

(14) The authority shall within one week of completing the review under section 328 send copies of their decisions and recommendations to—

- (a) the child's parent;
- (b) the head teacher;
- (c) any other person to whom the authority consider it appropriate that a copy be sent.

(15) The head teacher shall be responsible for ensuring that any necessary amendments to any transition plan are made.

(16) In this regulation "school" has the same meaning as in regulation 18.

## **Review of statements where child in tenth year of compulsory education attends school**

21.—(1) This regulation applies where—

- (a) an authority carry out an annual review of a child’s statement;
- (b) the child concerned attends a school; and
- (c) the review is the first review after the child has commenced the tenth year of compulsory education.

(2) Subject to paragraph (3) the authority shall by notice in writing require the head teacher of the child’s school to submit a report to them under this regulation by a specified date not less than two months from the date when the notice is given.

(3) If the name of the child is included in the notice served under paragraph (1) of regulation 18 no further notice need be served on the head teacher in respect of that child under paragraph (2) of this regulation.

(4) The head teacher shall for the purposes of the report referred to in paragraph (2) of this regulation or paragraph (3) of regulation 18 seek the advice referred to in paragraph (5) from—

- (a) the child’s parent (in relation to all matters referred to in paragraph (5));
- (b) any person whose advice the authority consider appropriate for the purpose of arriving at a satisfactory report and whom they specify in the notice referred to in paragraph (2) or in paragraph (1) of regulation 18 in relation to a particular child (in relation to such of the matters referred to in paragraph (5) as the head teacher considers are within that person’s knowledge or expertise);
- (c) a representative of the Careers Service (in relation to the matters referred to in sub-paragraph (5)(f) and such other matters referred to in paragraph (5) as the head teacher considers are within that person’s knowledge or expertise); and
- (d) any person whose advice the head teacher considers appropriate for the purpose of arriving at a satisfactory report (in relation to such of the matters referred to in paragraph (5) as the head teacher considers are within that person’s knowledge or expertise).

(5) The advice referred to in paragraph (4) shall be written advice as to—

- (a) the child’s progress towards meeting the objectives specified in the statement;
- (b) the child’s progress towards attaining any targets established in furtherance of the objectives specified in the statement;
- (c) where the school is a community, foundation or voluntary school or a community or foundation special school other than a special school established in a hospital, the application of the provisions of the National Curriculum to the child, and the progress made in relation to those provisions by the child since the statement was made or the last review under section 328;
- (d) the application of any provisions substituted for the provisions of the National Curriculum in order to maintain a balanced and broadly based curriculum and the progress made in relation to the provisions by the child since the statement was made or the last review under section 328;
- (e) the progress made by the child since the statement was made or the last review under section 328 in his or her behaviour and attitude to learning;
- (f) any matters which are the appropriate subject of a transition plan;
- (g) whether the statement continues to be appropriate;
- (h) any amendments to the statement which would be appropriate; and
- (i) whether the authority should cease to maintain the statement.

(6) The notice referred to in paragraph (2) of this regulation or paragraph (1) of regulation 18 shall require the head teacher to invite the following persons to attend a meeting to be held on a date before the report referred to in that paragraph is required to be submitted—

- (a) the child's parent;
- (b) a member or members of the staff of the school who teach the child or who are otherwise responsible for the provision of education for the child whose attendance the head teacher considers appropriate;
- (c) a representative of the social services authority;
- (d) a representative of the Careers Service;
- (e) any person whose attendance the head teacher considers appropriate;
- (f) any person whose attendance the authority consider appropriate and who is specified in the notice; and
- (g) a representative of the authority.

(7) The head teacher shall not later than two weeks before the date on which the meeting referred to in paragraph (6) is to be held serve on all the persons invited to attend that meeting and who have not informed the head teacher that they will not be attending it copies of the advice received pursuant to the request under paragraph (4) and shall by written notice request the recipients to submit to him or her before or at the meeting written comments on that advice and any other advice which they think appropriate.

(8) The meeting referred to in paragraph (6) shall consider—

- (a) the matters referred to in paragraph (5), in all cases including the matters referred to in 5(f), and
- (b) any significant changes in the child's circumstances since the date on which the statement was made or last reviewed under section 328.

(9) The meeting shall recommend—

- (a) any steps which it concludes ought to be taken, including whether the authority should amend or cease to maintain the statement,
- (b) any targets to be established in furtherance of the objectives specified in the statement which it concludes the child ought to meet during the period until the next review, and
- (c) the matters which it concludes ought to be included in a transition plan.

(10) If the meeting cannot agree the recommendations to be made under paragraph (9) the persons who attended the meeting shall make differing recommendations as appears necessary to each of them.

(11) The report to be submitted under paragraph (2) of this regulation or paragraph (3) of regulation 18 shall be completed after the meeting is held, shall include the head teacher's assessment of the matters referred to in paragraph (8) and the head teacher's recommendations as to the matters referred to in paragraph (9), and shall refer to any difference between head teacher's assessment and recommendations and those of the meeting.

(12) When the head teacher submits a report to the authority under paragraph (2) of this regulation or paragraph (3) of regulation 18 the head teacher shall at the same time send copies to—

- (a) the child's parent;
- (b) any other person to whom the authority considers it appropriate that a copy be sent and to whom they direct the head teacher to send a copy, and
- (c) any other person to whom the head teacher considers it appropriate that a copy be sent.

(13) The authority shall review the statement under section 328 in light of the report and any other information or advice which they consider relevant, shall make written recommendations as to the matters referred to in paragraphs 9(a), (b) and (c).

(14) The authority shall within one week of completing the review under section 328 send copies of the recommendations and the transition plan to—

- (a) the child’s parent;
- (b) the head teacher;
- (c) any other person to whom they consider it appropriate to send a copy.

(15) The head teacher shall be responsible for ensuring that a transition plan is drawn up.

(16) In this regulation “school” has the same meaning as in regulation 18.

### **Review of statement where child does not attend school**

**22.**—(1) This regulation applies where an authority review a statement under section 328 and the child concerned does not attend a school.

(2) The authority shall prepare a report addressing the matters referred to in regulation 20(5), including the matters referred to in regulation 20(5)(f) in any case where the review referred to in paragraph (1) is commenced after the child begins the tenth year of compulsory education, and for that purpose shall seek advice on those matters from the child’s parent and on such of those matters from any other person whose advice they consider appropriate in the case in question for the purpose of arriving at a satisfactory report.

(3) The authority shall invite the following persons to attend a meeting to be held on a date before the review referred to in paragraph (1) is required to be completed—

- (a) the child’s parent;
- (b) where the review referred to in paragraph (1) is the first review commenced after the child has begun the tenth year of compulsory education, a representative of the social services authority;
- (c) where sub-paragraph (b) applies, a representative of the Careers Service; and
- (d) any person or persons whose attendance the authority consider appropriate.

(4) The authority shall not later than two weeks before the date on which the meeting referred to in paragraph (3) is to be held send to all the persons invited to that meeting a copy of the report which they propose to make under paragraph (2) and by written notice accompanying the copies shall request the recipients to submit to the authority written comments on the report and any other advice which they think appropriate.

(5) A representative of the authority shall attend the meeting.

(6) The meeting shall consider the matters referred to in regulation 20(5), and in any case where the review is commenced after the child has begun the tenth year of compulsory education, the matters referred to in regulation 20(5)(f), and shall make recommendations in accordance with regulation 20(9), and in any case where the child has begun the tenth year of compulsory education, recommendations as to the matters which it concludes ought to be included in a transition plan.

(7) The report prepared by the authority under paragraph (2) shall be completed after the meeting referred to in paragraph (3) is held, shall contain the authority’s assessment of the matters required to be considered by the meeting and their recommendations as to the matters required to be recommended by it, and shall refer to any difference between their assessment and recommendations and those of the meeting.

(8) The authority shall within one week of the date on which the meeting referred to in paragraph (3) was held send copies of the report completed under paragraph (7) to—

- (a) the child's parent;
- (b) any person to whom they consider it appropriate to send a copy.

(9) The authority shall review the statement under section 328 in light of the report and any other information or advice which it considers relevant, shall make written recommendations as to the matters referred to in regulation 20(9) and in any case where the review is the first review commenced after the child has commenced the tenth year of compulsory education, prepare a transition plan, and in any case where a transition plan exists amend the plan as they consider appropriate.

(10) The authority shall within one week of completing the review under section 328 send copies of the recommendations and any transition plan referred to in paragraph (9) to the persons referred to in paragraph (8).

(11) In this regulation "school" has the same meaning as in regulation 18.

### **Transfer of statements**

**23.**—(1) This regulation applies where a child in respect of whom a statement is maintained moves from the area of the authority which maintains the statement ('the old authority') into that of another ('the new authority').

(2) The old authority shall transfer the statement to the new authority.

(3) From the date of the transfer—

- (a) the statement shall be treated for the purposes of the new authority's duties and functions under Part IV of the Act and these Regulations as if it had been made by the new authority on the date on which it was made by the old authority, and
- (b) where the new authority make an assessment and the old authority have supplied the new authority with advice obtained in pursuance of a previous assessment regulation 7(5) shall apply as if the new authority had obtained the advice on the date on which the old authority obtained it.

(4) The new authority shall within 6 weeks of the date of the transfer serve a notice on the child's parent informing the parent—

- (a) that the statement has been transferred,
- (b) whether they propose to make an assessment, and
- (c) when they propose to review the statement in accordance with paragraph (5).

(5) The new authority shall review the statement under section 328(5)(b) before the expiry of whichever of the following two periods expires later—

- (a) the period of twelve months beginning with the making of the statement, or as the case may be, with the previous review, or
- (b) the period of three months beginning with the date of the transfer.

(6) Where by virtue of the transfer the new authority come under a duty to arrange the child's attendance at a school specified in the statement but in light of the child's move that attendance is no longer practicable the new authority may arrange for the child's attendance at another school appropriate for the child until such time as it is possible to amend the statement in accordance with the procedure set out in Schedule 27.

(7) In this regulation "the new authority" shall include a local education authority in England for the purposes of paragraphs (1) and (2) only.

(8) An authority to whom a statement is transferred from a local education authority in England shall treat the statement as having been transferred by an old authority for the purposes of paragraphs (3) to (6).

## Restriction on disclosure of statements

24.—(1) Subject to the provisions of the Act and of these Regulations, a statement in respect of a child shall not be disclosed without the child's consent except—

- (a) to persons to whom, in the opinion of the authority concerned, it is necessary to disclose the statement in the interests of the child;
- (b) for the purposes of any appeal under the Act;
- (c) for the purposes of educational research which, in the opinion of the authority, may advance the education of children with special educational needs, if, but only if, the person engaged in that research undertakes not to publish anything contained in, or derived from, a statement otherwise than in a form which does not identify any individual concerned including, in particular, the child concerned and his parent;
- (d) on the order of any court or for the purposes of any criminal proceedings;
- (e) for the purposes of any investigation under Part III of the Local Government Act 1974<sup>(12)</sup> (investigation of maladministration);
- (f) to the National Assembly when it requests such disclosure for the purposes of deciding whether to give directions or make an order under section 496, 497 or 497A of the Act;
- (g) for the purposes of an assessment of the needs of the child with respect to the provision of any statutory services for the child being carried out by officers of a social services authority by virtue of arrangements made under section 5(5) of the Disabled Persons (Services, Consultation and Representation) Act 1986<sup>(13)</sup>;
- (h) for the purposes of a local authority in the performance of their duties under sections 22(3) (a), 85(4)(a), 86(3)(a) and 87(3) of the Children Act 1989<sup>(14)</sup>;
- (i) to Her Majesty's Chief Inspector of Education and Training in Wales, one of Her Majesty's Inspectors of Education and Training in Wales, or to a registered inspector or a member of an inspection team, who requests the right to inspect or take copies of a statement in accordance with section 2(8) or 3(3) of or paragraph 7 of Schedule 2 to the School Inspections Act 1996<sup>(15)</sup> respectively;
- (j) to the Careers Service for the purposes of writing or amending a transition plan; or
- (k) to a Young Offender Institution for the purposes of the performance of its duties under Rule 38 of the Young Offender Institution Rules 2000<sup>(16)</sup>.

(2) A child may consent to the disclosure of a statement for the purposes of this regulation if the child's age and understanding are sufficient to allow the child to understand the nature of that consent.

(3) If a child does not have sufficient age or understanding to allow the child to consent to disclosure of his or her statement, the child's parent may consent on his or her behalf.

(4) The arrangements for keeping such statements shall be such as to ensure, so far as is reasonably practicable, that unauthorised persons do not have access to them.

(5) In this regulation any reference to a statement includes a reference to any representations, evidence, advice or information which is set out in the appendices to a statement.

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(12) 1974 c. 7.

(13) 1986 c. 33; section 5 is amended by the Special Education Needs and Disability Act 2001, paragraphs 16 to 18 of Schedule 8.

(14) 1989 c. 41; section 87(3) is prospectively amended by the Care Standards Act 2000 (c. 14), section 105.

(15) 1996 c. 57; section 2(8) is amended by the Education Act 1997 (c. 44), section 42 and Schedule 6, and paragraph 7 of Schedule 3 is amended by the Education Act 1997, section 42 and Schedule 6, paragraph 12.

(16) S.I. 2000/3371.

## **PART IV**

### **REVOCATION AND TRANSITIONAL PROVISIONS**

#### **Revocation of the 1994 Regulations**

25. Subject to regulation 26, the 1994 Regulations are hereby revoked.

#### **Transitional provisions**

26.—(1) Subject to the following provisions of this regulation references in these Regulations to anything done under these Regulations shall be read in relation to the times, circumstances or purposes in relation to which a corresponding provision of the 1994 Regulations had effect and so far as the nature of the reference permits as including a reference to that corresponding provision.

(2) Regulations 6 to 11 of the 1994 Regulations shall continue to apply in relation to any assessment where before 1st April 2002 in pursuance of section 323(4) the authority notify the parent that they have decided to make an assessment, and regulations 6 to 12 shall not apply in relation to any such assessment.

(3) Where regulations 6 to 11 of the 1994 Regulations continue to apply in relation to any assessment but the authority have not before 1st September 2002—

- (a) notified the parent of their decision that they are not required to determine the special educational provision of the child in accordance with section 325(1);
- (b) served on the parent a copy of a proposed statement in accordance with paragraph 2 of Schedule 27, or
- (c) served on the parent a copy of a proposed amended statement under paragraph 3 of Schedule 27

regulations 6 to 12 shall apply in relation to the assessment from 1st September 2002 as if on that date the authority had given notice to the parent under section 323(4) of their decision to make an assessment.

(4) Where in accordance with paragraph (3) above regulations 6 to 12 apply in relation to an assessment the authority shall obtain advice in accordance with Part II, but advice obtained in accordance with the 1994 Regulations shall be considered to have been obtained under Part II if such advice is appropriate for the purpose of arriving at a satisfactory assessment under that Part.

(5) Where before 1st April 2002 in accordance with section 323(1) the authority have served notice on the child's parent that they propose to make an assessment but they have not before that date notified the parent under section 323(4) that they have decided to make the assessment or notified the parent under section 323(6) that they have decided not to make the assessment, regulation 11 of the 1994 Regulations shall continue to apply for the purpose of any such notification under section 323(4) or 323(6) only.

(6) Where before 1st April 2002 in accordance with section 328 or 329 a parent has asked the authority to arrange for an assessment to be made of his or her child's educational needs but the authority have not before that date notified the parent under section 323(4) that they have decided to make the assessment or notified the parent under section 328(3) or 329(2) that they have decided not to make the assessment regulation 11 of the 1994 Regulations shall continue to apply for the purpose of any notification under section 323(4), 328(3) or 329(2) only.

(7) Regulations 13 and 14 of the 1994 Regulations shall continue to apply to the making of any statement where before 1st April 2002 the authority have served on the parent a copy of a proposed statement in accordance with paragraph 2 of Schedule 27.

(8) Regulation 14 of the 1994 Regulations shall continue to apply in relation to a proposal to amend or cease to maintain a statement where an authority serve a notice under paragraph 10(1) or 11(2) of Schedule 27 before 1st April 2002 .

(9) Regulation 15 of the 1994 Regulations shall continue to apply to a review of a statement in respect of which an authority serve a notice as required by regulation 15(2) of the 1994 Regulations before 1st April 2002.

(10) Regulation 16 of the 1994 Regulations shall continue to apply to a review of a statement in respect of which an authority serve a notice as required by regulation 16(2) of the 1994 Regulations before 1st April 2002.

(11) Regulation 17 of the 1994 Regulations shall continue to apply to a review in respect of which an authority in accordance with regulation 17(3) of the 1994 Regulations have before 1st April 2002 invited the attendance of the persons specified in that regulation to a meeting.

(12) The first occasion before which an authority must, under regulation 19 of these Regulations, ensure that a child's statement is amended, is 15th February 2003.

29th January 2002

*D. Elis-Thomas*  
The Presiding Officer of the National Assembly

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

## SCHEDULE 1

Regulation 14

### Part A

#### Notice to parent

Name and address of authority

Date

Address of Parents

Dear *[here insert name of parents]*

I am pleased to enclose a copy of *[child's name (s)]* (proposed statement of special educational needs/proposed amended statement of special educational needs). We have attached to it copies of all the advice we were given during *[child's name(s)]* assessment for the statement.

If you want to meet us to talk about the statement you need to tell us within 15 days of receiving this letter. This is not the final statement. You can ask for changes to be made to it. The rest of this letter tells you how you can do this.

#### **As you will see the statement is in six parts:**

- Part 1 Introduction
- Part 2 Special Educational Needs
- Part 3 Special Educational Provision, including objectives and monitoring arrangements
- Part 4 Placement
- Part 5 Non-educational Needs
- Part 6 Non-educational Provision

We have left part 4 blank so that you can tell us where you think *[child's name]* should be educated. You can tell us which maintained (LEA) school, including an LEA-maintained special school, you would like *[child's name]* to go to and tell us the reasons. To help you decide, a list of all the maintained *[primary/secondary]* schools in the area is attached.

*[A list of all primary or secondary schools, depending on whether the child requires primary or secondary education must be attached to this letter].*

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If you suggest the name of a maintained school, including a maintained special school, we must name the school in part 4 of the statement unless -

- (a) the school is unsuitable to [child's name] age, ability or aptitude or to his/her special educational needs, or
- (b) the attendance of [child's name] at the school would be incompatible with the provision of efficient education for the children with whom he/she would be educated or the efficient use of resources.

If you think that [child's name] should attend a non-maintained special school or an independent school you can suggest the name of a school and tell us why you think that school should be named in [child's name] statement. A list of non-maintained special schools and independent schools approved by the National Assembly for Wales or the Secretary of State is attached to help you.

*[Such lists of independent and non-maintained special schools as the National Assembly for Wales or the Secretary of State may issue from time to time must be attached to this letter]*

If you want to tell us the name of a school you want [child's name] to go to you must do so within 15 days of getting this letter. However, if you attend a meeting with us to discuss this statement after getting this letter you will have another 15 days from that meeting to suggest a name. You can also tell us if you disagree with what the statement says. If you do disagree with the statement you must also tell us within 15 days of getting this letter, or 15 days from when you meet us to talk about the statement. If you still disagree with the statement, or any of the advice given during the assessment after you meet us, you can ask us for another meeting to discuss the advice you disagree with but you must ask us within 15 days of the first meeting. We will arrange for the person who gave the advice, or someone else they suggest, to attend this new meeting. We can arrange more than one meeting if necessary, if you disagree with more than one part of the advice.

Once all these stages are finished we will send you a final statement that will have part 4 completed.

If you have any concerns or questions about this process, or disagree with any part of the statement you may wish to get advice or support from the local parent partnership service. They can be contacted at [contact address and telephone number].

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They can also put you in touch with the informal arrangements to help resolve or prevent any disagreements between you and the authority. Using either of these services does not prevent you from appealing to the SEN Tribunal about parts 2, 3 or 4 of the Statement at the same time; your rights are not affected and an appeal to the Tribunal can run at the same time as any disagreement resolution.

When you receive the final statement, if you disagree with parts 2, 3 or 4 you can appeal to the Special Educational Needs Tribunal. The Tribunal can hold a hearing to decide what should be in these parts of [child's name] statement. You have to appeal to the Tribunal within two months of getting the final statement. The address of the Tribunal is 50 Victoria Street, London, SW1H 0HW.

If you have any questions, now or at any time, about this process or about the statement itself, our case officer [name] can be contacted at [address and telephone number]. Please do not hesitate to get in touch.

Yours sincerely

[Signature of officer responsible]

Regulation 15

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## PART B

Name and address of authority

Date

Address of Parents

Dear [*here insert name of parents*]

As you know [*child's name*] has a statement of special educational needs dated [*here insert date of statement*].

We propose amending [*child's name*] statement [*insert reasons e.g. following an annual review*]. Details of the amendments are in the amendment notice attached.

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If you disagree with the suggested changes and want to meet us to talk please tell us within 15 days.

*(when amendment to part 4 is recommended)*

We [also] want to amend part 4 of the statement [explain reasons why e.g. so that a child can go to secondary school].

You can tell us which maintained (LEA) school, including an LEA-maintained special school, you would like [child's name] to go to and tell us the reasons. To help you decide, a list of all the maintained [primary/secondary] schools in the area is attached.

*[A list of all primary or secondary schools, depending on whether the child requires primary or secondary education must be attached to this letter]*

If you suggest the name of a maintained school, including a maintained special school, we must name the school in part 4 of the statement unless -

1. the school is unsuitable to [child's name] age, ability or aptitude or to his/her special educational needs, or
2. the attendance of [child's name] at the school would be incompatible with the provision of efficient education for the children with whom he/she would be educated or the efficient use of resources.

If you think that [child's name] should attend a non-maintained special school or an independent school you can suggest the name of a school and tell us why you think that school should be named in [child's name] statement. A list of non-maintained special schools and independent schools approved by the National Assembly for Wales or the Secretary of State is attached to help you.

*[Such lists of independent and non-maintained special schools as the National Assembly for Wales or the Secretary of State may issue from time to time must be attached to this letter]*

If you want to tell us the name of a school you want [child's name] to go to you must do so within 15 days of getting this letter. However, if you attend a meeting

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with us to discuss the suggested changes to this statement after getting this letter you will have another 15 days from that meeting to tell us. You can also tell us if you disagree with the changes to the statement that we are suggesting. If you do disagree with the suggested changes you must also tell us within 15 days of getting this letter.

Once all these stages are finished we will send you an amended final statement. If you have any concerns or disagree with any part of the amended final statement you may wish to get advice or support from the local parent partnership service. They can be contacted [*here insert contact address and telephone number*]. They can also put you in touch with the informal arrangements to help resolve or prevent any disagreements between you and the authority. Using either of these services does not prevent you from appealing to the SEN Tribunal about parts 2, 3 or 4 of the Statement at the same time; your rights are not affected and an appeal to the Tribunal can run at the same time as any disagreement resolution.

When you receive the amended final statement, if you disagree with parts 2, 3 or 4 of the statement you can appeal to the Special Educational Needs Tribunal. The Tribunal can hold a hearing to decide what should be in these parts of [*child's name*] statement. You have to appeal to the Tribunal within two months of getting the final statement. The address of the Tribunal is 50 Victoria Street, London, SW1H 0HW.

If you have any questions, now or at any time, about this process or about the statement itself, our case officer [*name*] can be contacted at [*address and telephone number*]. Please do not hesitate to get in touch.

Yours sincerely

[Signature of officer responsible]

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## SCHEDULE 2

Regulation 16

### STATEMENT OF SPECIAL EDUCATIONAL NEEDS

#### PART 1:

#### INTRODUCTION

*Set out name of Authority*

1. In accordance with Section 324 of the Education Act 1996 ('the Act'), and the Education (Special Educational Needs) (Wales) Regulations 2002, the following statement is made on [*here set out date*] by [*here set out name of authority*] ('the education authority') in respect of [*here set out name of child*] whose particulars are set out below.

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<b>Child</b>	
Surname:	Other Names:
Home Address:	
	Sex:
Date of Birth:	Religion:
	Home Language:
<b>Child's Parent or person responsible</b>	
Surname:	Other Names:
Home Address:	Relationship to Child:
Telephone Number:	

2. When assessing [*child's name*] educational needs under Section 323 of the Education Act 1996 the authority took into consideration, in accordance with Regulation 11 of the Regulations, the evidence and advice set out in Appendices A to F to this statement.

<i>Name of parent:</i>	Parental Advice	Dated:
<i>Name of head teacher/head of SEN or other person responsible:</i>	Educational Advice	Dated:
<i>Name of Doctor:</i>	Medical Advice	Dated:
<i>Name of Educational Psychologist:</i>	Psychological Advice	Dated:
<i>Name of Social Worker:</i>	Advice for Social Services Authority	Dated:
<i>Name of persons providing other advice:</i>	Advice from others	Dated:

(In making this statement the authority has taken into account the additional representations, evidence and advice set out in Appendix G to this statement).

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## **PART 2:**

### **SPECIAL EDUCATIONAL NEEDS**

*[Here set out child's special educational needs, in terms of the child's learning difficulties which call for special educational provision, as assessed by the authority.]*

## **PART 3:**

### **SPECIAL EDUCATIONAL PROVISION**

#### **Objectives**

*[Here specify the objectives which the special educational provision for the child should aim to meet.]*

#### **Educational provision to meet needs and objectives**

*[Here specify the special educational provision which the authority consider appropriate to meet the needs specified in Part 2 and to meet the objectives specified in this Part, and in particular specify -*

- (a) any appropriate facilities and equipment, staffing arrangements and curriculum,
- (b) any appropriate modifications to the application of the National Curriculum,
- (c) any appropriate exclusions from the application of the National Curriculum, in detail, and the provision which it is proposed to substitute for any such exclusions in order to maintain a balanced and broadly based curriculum, and
- (d) where residential accommodation is appropriate, that fact].

#### **Monitoring**

*[Here specify the arrangements to be made for -*

- (a) regularly monitoring progress in meeting objectives specified in this Part,
- (b) establishing targets in furtherance of those objectives,
- (c) regularly monitoring the targets referred to in (b),
- (d) regularly monitoring the appropriateness of any modifications to the application of the National Curriculum and
- (e) regularly monitoring the appropriateness of any provision substituted for exclusions from the application of the National Curriculum.

Here also specify any special arrangements for reviewing this statement.]



#### **Appendix A: Parental Advice**

(a)

*[Here set out*

- (1) any written representations made by the child's parent under section 323(1)(d) or 329A(3)(d) of or paragraph 4(1) of Schedule 27 to the Act and a summary which the parent has accepted as accurate of any oral representations so made or record that no such representations were made,*
- (2) any written evidence either submitted by the parent of the child under section 323(1)(d) or 329A(3)(d) of the Act or record that no such evidence was submitted, and*
- (3) the advice obtained under regulation 7(1)(a).]*

#### **Appendix B: Educational Advice**

*[Here set out the advice obtained under regulation 7(1)(b).]*

#### **Appendix C: Medical Advice**

*[Here set out the advice obtained under regulation 7(1)(c).]*

#### **Appendix D: Psychological Advice**

*[Here set out the advice obtained under regulation 7(1)(d).]*

#### **Appendix E: Advice from the Social Services Authority**

*[Here set out the advice obtained under regulation 7(1)(e).]*

#### **Appendix F: Other Advice Obtained by the Authority**

*[Here set out the advice obtained under regulation 7(1)(f).]*

#### **Appendix G: Advice Obtained by the Authority since the last assessment of the child under section 323 of the Education Act 1996 was made**

*[Here set out the advice about the child obtained by the authority since the last assessment of the child under section 323 of the Education Act 1996 was made.]*

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## EXPLANATORY NOTE

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

These Regulations relate to the assessment of special educational needs and to statements of such needs under Part IV of the Education Act 1996. They replace with modifications the Education (Special Educational Needs) Regulations 1994, which are revoked (regulation 25).

The Regulations make provision for a head teacher to delegate functions under them generally to a qualified teacher, or in a particular case to the staff member who teaches the child (regulation 3).

The Regulations also supplement the procedural framework for making an assessment and a statement contained in Part IV of the Education Act 1996 and Schedules 26 and 27 thereto. Detailed provision is made for the service of documents by post (regulation 5). The Regulations require copies of notices of a local education authority's proposal to make an assessment, their decision to make an assessment or notices of a parent's or responsible body's request for an assessment, to be served on the social services authority, the health authority and the head teacher of the child's school, or the head of SEN if a child is receiving relevant nursery education (regulation 6). Subject to exceptions, they require local education authorities to carry out various steps in making an assessment or a statement within prescribed time limits, including the provision of prescribed information (regulations 12 and 17 respectively).

The Regulations provide that local education authorities in making an assessment of a child's special educational needs must seek advice from the child's parent, educational advice, medical advice, psychological advice, advice from the social services authority and any other advice which they consider appropriate for the purpose of arriving at a satisfactory assessment (regulation 7). If such advice has been obtained on making a previous assessment within the last 12 months and certain persons are satisfied that it is sufficient, it is not necessary to obtain new advice (regulation 7(5)). Provision is made as to the persons from whom educational, medical and psychological advice must be sought (regulations 8 to 10). It is provided that in making an assessment an authority shall take into consideration representations from the parent, evidence submitted by the parent, and the advice which has been obtained (regulation 11).

Provision is made for a child without a statement admitted to a special school for the purpose of an assessment to remain there once the assessment is complete (regulation 13).

The Regulations prescribe the draft of a notice to be served on a parent with a draft statement of special educational needs or amended statement, or amendment notice (regulations 14 and 15 and Part A and B of Schedule 1 respectively). The form and content of a statement is also prescribed (regulation 16 and Schedule 2).

Detailed provision is made as to how an annual review of a statement by a local education authority under section 328 of the Education Act 1996 is to be carried out (regulations 18 to 22). Local education authorities are required to send composite lists of pupils requiring annual reviews to head teachers and health and social services authorities in advance of each term and to the Careers Service annually (regulation 18). Special provision for reviews is made where the review is the first review after a child has commenced his tenth year of compulsory education. Regulation 20 requires authorities to ensure that statements are amended by 15 February in the year of a child's transfer between phases of his schooling.

The Regulations provide for the transfer of a statement from one local education authority to another (regulation 23). The duties of the transferor are transferred to the transferee, and within 6 weeks of the transfer the transferee must serve a notice on the parent informing him or her of the transfer,

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whether they propose to make an assessment, and when they propose to review the statement (regulation 23(2), (3) and (4)). It is provided that where it would not be practicable to require the transferee to arrange for the child's attendance at a school specified in the statement they need not do so, but can arrange for attendance at another school until it is possible to amend the statement (regulation 23(6)).

There are restrictions on the disclosure of statements and steps are to be taken to avoid unauthorised persons having access to them (regulation 24).

Provision is made for the transition from the regime imposed by the 1994 Regulations to the regime imposed by these Regulations (regulation 26). Broadly, any action taken under the 1994 Regulations can be completed under those regulations. If an assessment has been commenced before 1st April 2002 the local education authority may continue to make the assessment under the 1994 Regulations. However if the assessment is not complete before 1st September 2002 these Regulations will apply to the assessment as if it had been commenced under them on that date (regulation 26(3)).