
WELSH STATUTORY INSTRUMENTS

2021 No. 401

The Additional Learning Needs (Wales) Regulations 2021

PART 2

INDIVIDUAL DEVELOPMENT PLANS

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

Interpretation of regulations 6 to 9 and Schedule 1

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

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

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

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

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

- (a) a programme of study is treated as beginning with the day on which the young person commences, or is expected to commence, the programme of study and ending with the day on which the person is expected to complete, it, and
- (b) if the duration of the programme, or part of it, lasts for at least 38 weeks in any one year period, the programme, or that part of it, is treated as taking place over one year.

(3) In determining the duration of other further education or training undertaken by a young person for the purposes of regulation 9 and Schedule 1—

- (a) the further education or training is treated as having begun with the first day of the month during which the young person commenced it and ending with the last day of the month during which—
 - (i) the young person completed or otherwise ceased to receive the further education or training, or
 - (ii) the young person is expected to complete or otherwise cease receiving the further education or training;

- (b) if the duration of the further education or training, or part of it, lasts for at least 38 weeks in any one year period, it, or that part of it, is treated as taking place over one year.

Potential programme of study

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

(2) The local authority must—

- (a) identify the young person’s desired outcomes, if any, and
- (b) consider what programmes of study may be available that would be suitable for enabling the young person to meet those desired outcomes.

(3) The local authority, when considering the matter in paragraph (2)(b)—

- (a) must first consider programmes of study at mainstream maintained schools or institutions in the further education sector;
- (b) may only consider programmes of study at institutions other than those mentioned in paragraph (7) where it appears likely that the young person’s reasonable needs for additional learning provision to undertake a suitable programme of study cannot be met unless the local authority were to secure for the young person—

- (i) a place at an institution other than one mentioned in paragraph (7), or
- (ii) board and lodging.

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

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

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

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

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

(8) Regulation 9 applies to all other cases.

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

8.—(1) It is necessary for the local authority to prepare and maintain, or continue to maintain, an individual development plan for the young person if the local authority, in preparing or maintaining

the plan for the young person, would be or is under the duty in section 14(6) of the 2018 Act to describe provision of a kind listed in section 14(7) of that Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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