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WELSH STATUTORY INSTRUMENTS

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**2002 No. 152**

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

**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>(1)</sup>.

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(1) 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.