

SCHEDULE 1

Regulations 6, 7 and 9

REASONABLE NEEDS FOR EDUCATION OR TRAINING

Suitable programme of study

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

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

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

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

Additional factors where young person on programme of study

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

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

Programme of study intended to last for more than 2 years

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

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

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

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

Extension to a programme of study

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

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

Additional programme of study

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

- (2) The factors, where relevant, that the local authority must take into account are—
 - (a) that the young person is unable to benefit in a meaningful way from the previous further education or training due to—
 - (i) the previous further education or training falling so far below the expected standard that the provider of it cannot reasonably be said to have delivered the education or training necessary to meet the young person's desired outcomes in undertaking it,
 - (ii) a significant change in the personal circumstances or needs of the young person, or
 - (iii) any other exceptional circumstances;

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

Other exceptional circumstances

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

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

SCHEDULE 2

Regulations 20, 22 and 23

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

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

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

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

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

(4) The modifications are—

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

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- (ii) at the end of paragraph (b) insert “and”;
- (iii) after paragraph (b) insert—
 - “(c) is not—
 - (i) subject to a detention order (within the meaning given by section 562(1A)(a), (2) and (3) of the Education Act 1996), and
 - (ii) detained in a hospital under Part 3 of the Mental Health Act 1983.”;
- (e) omit section 36;
- (f) if the hospital is relevant youth accommodation, the duties imposed on a home authority by sections 40 and 42 do not apply;
- (g) in section 84(1)(a), at the end insert “or regulation 22(5) of the Additional Learning Needs (Wales) Regulations 2021”;
- (h) in section 85(5)(a), after “42(6)” insert “and regulation 22(5) of the Additional Learning Needs (Wales) Regulations 2021”;
- (i) in regulation 16(1)(b), after “2018 Act” insert “or regulation 22(2)”.