



Apprenticeships, Skills, Children and Learning Act 2009

2009 CHAPTER 22

PART 2

LEA FUNCTIONS

Persons detained in youth accommodation

48 Provision of education for persons subject to youth detention

After section 18 of the Education Act 1996 insert—

“18A Provision of education for persons subject to youth detention

- (1) A local education authority must secure that—
 - (a) enough suitable education is provided to meet the reasonable needs of children subject to youth detention in their area;
 - (b) enough suitable education and training is provided to meet the reasonable needs of persons who are—
 - (i) over compulsory school age but under 19, and
 - (ii) subject to youth detention in their area.
- (2) In deciding for the purposes of subsection (1) whether education or training is suitable to meet persons’ reasonable needs, a local education authority must (in particular) have regard to—
 - (a) the persons’ ages, abilities and aptitudes;
 - (b) any special educational needs or learning difficulties (within the meaning of section 15ZA(6) and (7)) the persons may have;
 - (c) the desirability of enabling persons to complete programmes of study or training which they have begun;

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- (d) any relevant curriculum and the desirability that education received by persons subject to youth detention should be comparable with education which they could be expected to receive if they were attending a school or institution implementing a relevant curriculum;
 - (e) the desirability of the core entitlement and the additional entitlement being satisfied in relation to persons over compulsory school age but under 19 who have elected for them.
- (3) In subsection (2)(d), “relevant curriculum” means—
- (a) in relation to a local education authority in England, the National Curriculum for England established under section 87 of the Education Act 2002 as subsisting for the time being;
 - (b) in relation to a local education authority in Wales—
 - (i) the National Curriculum for Wales established under section 108 of that Act as subsisting for the time being, or
 - (ii) any local curriculum formed by the authority under section 116A of the Education Act 2002 (formation of local curricula for pupils in Key Stage 4) or for their area under section 33A of the Learning and Skills Act 2000 (formation of local curricula for students aged 16 to 18).
- (4) Sections 17B to 17D apply for the purposes of subsection (2)(e) as they apply for the purposes of section 17A.
- (5) Any arrangements made by a local education authority under subsection (1) for the provision by another person (the “learning provider”) of education or training must require the learning provider, in making any determination as to the education or training to be provided for a particular person (“P”), to have regard to any information within subsection (6).
- (6) The information within this subsection is—
- (a) information provided under section 562F by a local education authority as to the level of P’s literacy and numeracy skills;
 - (b) any other information provided under section 562F by P’s home authority (within the meaning of Chapter 5A of Part 10) for the purpose of assisting a determination such as is mentioned in subsection (5).
- (7) In performing the duty imposed by subsection (1), a local education authority must have regard to any guidance issued—
- (a) in the case of a local education authority in England, by the Secretary of State;
 - (b) in the case of a local education authority in Wales, by the Welsh Ministers.
- (8) For the purposes of subsection (1), a person is subject to youth detention in the area of a local education authority if—
- (a) subject to a detention order, and
 - (b) detained in relevant youth accommodation in the area of the authority.”

49 Persons detained in youth accommodation: application of provisions

- (1) Section 562 of the [Education Act 1996 \(c. 56\)](#) (Act not to apply to persons detained under order of a court) is amended as follows.

- (2) In subsection (1)—
- (a) for “detained in pursuance of an order made by a court or of an order of recall made by the Secretary of State” substitute “subject to a detention order and is detained in accommodation that is not relevant youth accommodation”, and
 - (b) for “a person who is detained in pursuance of such an order” substitute “such a person”.
- (3) After that subsection insert—
- “(1A) For the purposes of this Act—
- (a) a person is subject to a detention order if detained in pursuance of—
 - (i) an order made by a court, or
 - (ii) an order of recall made by the Secretary of State, and
 - (b) relevant youth accommodation is accommodation which—
 - (i) is youth detention accommodation (within the meaning given by section 107(1) of the Powers of Criminal Courts (Sentencing) Act 2000), and
 - (ii) is not in a young offender institution, or part of such an institution, that is used wholly or mainly for the detention of persons aged 18 and over.”
- (4) In subsection (2), for “subsection (1)” substitute “this section”.
- (5) After that subsection add—
- “(3) A child or young person who is being kept in accommodation provided for the purpose of restricting liberty is not to be regarded for the purposes of this section as detained in pursuance of an order made by a court by reason of the fact that a court has authorised the person to be kept in such accommodation under section 25(4) of the Children Act 1989 (use of accommodation for restricting liberty).”
- (6) In the title, after “apply to” insert “certain”.

50 Persons detained in youth accommodation: further provision

After section 562 of the [Education Act 1996 \(c. 56\)](#) insert—

“CHAPTER 5A

PERSONS DETAINED IN YOUTH ACCOMMODATION

Provisions applying to detained persons

562A Application of Act to detained persons

- (1) In its application in relation to detained persons, this Act has effect subject to modifications prescribed by regulations made by the appropriate national authority.

- (2) The power conferred by subsection (1) may not be exercised to modify the application of a provision of this Act if—
- (a) the provision makes special provision in relation to detained persons, or a description of detained persons,
 - (b) the application of the provision in relation to detained persons, or a description of detained persons, is excluded by provision made by this Act, or
 - (c) the provision has effect in relation to detained persons, or a description of detained persons, subject to modifications made by this Act.
- (3) References in this Chapter to a detained person are to a child or young person who is—
- (a) subject to a detention order, and
 - (b) detained in relevant youth accommodation;
- and, in provisions applying on a person's release, also include references to a person who, immediately before release, was a detained person.

562B Duty to take steps to promote fulfilment of potential

- (1) Subsection (2) applies in relation to a detained person who is not a looked after child.
- (2) The home authority must—
- (a) during the period of detention in relevant youth accommodation, and
 - (b) on the person's release from detention in relevant youth accommodation,
- take such steps as they consider appropriate to promote the person's fulfilment of his or her learning potential.
- (3) Those steps must include, where it appears to the home authority appropriate for them to do so, making arrangements for the provision, on the person's release from detention—
- (a) of education, or
 - (b) in the case of a person who is over compulsory school age, of education or training.
- (4) Where the host authority make any determination as to the education or training to be provided for a detained person, the authority must have regard to—
- (a) any information provided under section 562F by a local education authority as to the level of the person's literacy and numeracy skills;
 - (b) any other information provided by the home authority under section 562F for the purpose of assisting any such determination.

562C Detained persons with special educational needs

- (1) This section applies where, immediately before the beginning of the detention, a local education authority were maintaining a statement under section 324 for a detained person.
- (2) The authority must keep the statement while the person is detained in relevant youth accommodation.

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- (3) The host authority must use best endeavours to secure that appropriate special educational provision is made for the detained person while the person is detained in relevant youth accommodation.
- (4) For the purposes of subsection (3), appropriate special educational provision is—
 - (a) the special educational provision that, immediately before the beginning of the detention, was specified in the statement,
 - (b) educational provision corresponding as closely as practicable to the special educational provision so specified, or
 - (c) if it appears to the host authority that the special educational provision so specified is no longer appropriate for the person, such special educational provision as reasonably appears to the host authority to be appropriate for the person.

562D Appropriate special educational provision: arrangements between local education authorities

- (1) This section applies where special educational provision is secured for a person in circumstances where section 562C applies.
- (2) A local education authority may supply goods and services to—
 - (a) the host authority, or
 - (b) any other person making the special educational provision in question.
- (3) Goods and services may be supplied under subsection (2) only for the purpose of assisting the making or securing of that special educational provision.

562E Literacy and numeracy assessments

- (1) This section applies in relation to a detained person who is detained in particular relevant youth accommodation.
- (2) The host authority must arrange for the level of the detained person’s literacy and numeracy skills to be assessed as soon as reasonably practicable after the beginning of the period during which the person is detained in that accommodation.
- (3) Subsection (2) does not apply if the authority are satisfied that they have evidence of the current level of the person’s literacy and numeracy skills.
- (4) The “current level” of a detained person’s literacy and numeracy skills is the level of those skills at the beginning of the period during which the person is detained in the relevant youth accommodation in question.

Provision of information relating to detained persons

562F Provision of information about detained persons

- (1) Any person who has provided education or training for a detained person (whether before or during the period of detention) may provide information relating to the detained person to—

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- (a) the home authority, or
 - (b) the host authority,for the purposes of, or in connection with, the provision of education or training for the detained person.
- (2) A local education authority must, on a request under subsection (3), as soon as practicable provide to the person making the request such information that they hold relating to a detained person as is requested.
- (3) A request is made under this subsection if it—
 - (a) is made by a person within subsection (4), and
 - (b) asks only for information which the person requires for the purposes of, or in connection with, the provision of education or training for the detained person (including education or training to be provided after the detained person’s release from detention).
- (4) Those persons are—
 - (a) any other local education authority;
 - (b) a youth offending team established under section 39 of the Crime and Disorder Act 1998;
 - (c) the person in charge of any place at which the detained person is detained or is expected to be detained;
 - (d) any person providing or proposing to provide education or training for the detained person.
- (5) The Welsh Ministers must, on a request by the home authority or the host authority, provide a copy of any relevant assessment report for the purposes of the exercise of any function of that authority under section 18A or this Chapter.
- (6) In subsection (5), “relevant assessment report” means a report of an assessment of a detained person conducted (whether before or during the period of detention)—
 - (a) under section 140 of the Learning and Skills Act 2000, and
 - (b) by virtue of arrangements made by the Welsh Ministers.
- (7) Subsection (8) applies in relation to a detained person if it appears to the host authority that the person is to be released from detention in relevant youth accommodation.
- (8) The host authority must provide to the home authority any information they hold which—
 - (a) relates to the detained person, and
 - (b) may be relevant for the purposes of, or in connection with, the provision of education or training for the detained person after the release.
- (9) The information required to be provided under subsection (8) must be provided at such time as the host authority think reasonable for the purpose of enabling education or training to be provided for the detained person after the release.
- (10) Nothing in subsections (7) to (9) requires the host authority to provide to the home authority information which it appears to the host authority that the home authority already have.

- (11) In this section any reference to the host authority, in relation to a detained person, includes a reference to any local education authority in whose area the person is expected to be detained.

562G Information to be provided where statement of special educational needs previously maintained

- (1) This section applies in relation to a detained person if, immediately before the beginning of the detention, a local education authority were maintaining a statement under section 324 for the person.
- (2) Subsections (3) and (4) apply where the home authority become aware (whether by notice under section 39A(2) of the Crime and Disorder Act 1998 (detention of child or young person: local education authorities to be notified) or otherwise)—
- (a) that the person—
 - (i) has become subject to a detention order, and
 - (ii) is detained in relevant youth accommodation, or
 - (b) that the person has been transferred from one place of accommodation to another place of accommodation which is relevant youth accommodation.
- (3) If, immediately before the beginning of the detention, the home authority were maintaining the statement, they must send a copy of the statement to the host authority.
- (4) If the home authority are or become aware that, immediately before the beginning of the detention, another local education authority were maintaining a statement for the person under section 324, they must notify the host authority—
- (a) of that fact, and
 - (b) of the identity of that other local education authority.
- (5) The local education authority who, immediately before the beginning of the detention, were maintaining the statement must, on a request by the host authority, send a copy of the statement to the host authority.
- (6) Subsections (7) and (8) apply where the person is released from detention in relevant youth accommodation.
- (7) The host authority must notify the following of the person's release—
- (a) the home authority, and
 - (b) if different, the authority who, immediately before the beginning of the detention, were maintaining the statement under section 324.
- (8) If the home authority are not the authority who, immediately before the beginning of the detention, were maintaining the statement, the host authority must also notify the home authority—
- (a) of the fact that immediately before the beginning of the detention a statement was being maintained for the person by a local education authority under section 324, and
 - (b) of the identity of that authority.

- (9) Nothing in this section requires any local education authority to notify another authority of any matter of which the other authority are already aware, or to send a copy of any statement to another authority who already have a copy of it.

562H Release of detained person appearing to host authority to require assessment

- (1) This section applies in relation to the release from detention in relevant youth accommodation of a detained person in relation to whom section 562G does not apply.
- (2) Subsection (3) applies where it appears to the host authority that the detained person will, on release, be a child within the meaning of Part 4.
- (3) If the host authority are of the opinion that the person has, or may have, special educational needs, they must, on the person's release, notify the home authority of their opinion.
- (4) Subsections (5) and (6) apply where, on release, the detained person—
- (a) will be over compulsory school age, or
 - (b) will cease to be of compulsory school age within one year.
- (5) If—
- (a) the host authority are of the opinion that the person has, or may have, a learning difficulty (within the meaning of section 15ZA (6) and (7)), and
 - (b) the home authority are a local education authority in England,
- the host authority must, on the person's release, notify the home authority of their opinion.
- (6) If—
- (a) the host authority are of the opinion that the person has, or may have, a learning difficulty (within the meaning of section 41 of the Learning and Skills Act 2000 (assessments relating to learning difficulties: Wales)) and
 - (b) the home authority are a local education authority in Wales,
- the host authority must, on the person's release, notify the Welsh Ministers of their opinion.

Supplementary

562I Guidance

In performing their functions under this Chapter a local education authority must have regard to any guidance issued by the appropriate national authority.

562J Interpretation of Chapter

- (1) In this Chapter—
- “the appropriate national authority” means—
- (a) in relation to England, the Secretary of State;

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- (b) in relation to Wales, the Welsh Ministers;
“beginning of the detention”, in relation to a person detained in relevant youth accommodation, means—
 - (a) the beginning of the period of detention in such accommodation, or
 - (b) where that period is part of a continuous period, comprising periods of detention in relevant youth accommodation and in other accommodation, the beginning of that continuous period;“detained person” has the meaning given by section 562A(3);
“the home authority”—
 - (a) in relation to a child or young person who immediately before the beginning of the detention was, or at any time since then has been, a looked after child, means the local education authority who are the local authority looking after, or who have most recently been looking after, the person;
 - (b) in relation to any other child or young person, means the local education authority in whose area the person is ordinarily resident;“the host authority”, in relation to a child or young person detained in relevant youth accommodation, means the local education authority in whose area the child or young person is detained;
“looked after child” means a person who, for the purposes of the Children Act 1989 is a child looked after by a local authority; and references to the local authority looking after the person are to be read accordingly;
“young person” includes a person aged 18.
- (2) For the purposes of the definition of “beginning of the detention” in subsection (1), it is immaterial whether or not a period of detention is pursuant to a single order.
- (3) In determining for the purpose of subsection (1) where a child or young person is ordinarily resident, any period when the person is subject to a detention order is to be disregarded.
- (4) Regulations made by the appropriate national authority may make further provision for determining where a person is ordinarily resident for the purpose of that subsection.”

51 Detention of child or young person: local education authorities to be notified

After section 39 of the [Crime and Disorder Act 1998 \(c. 37\)](#) insert—

“39A Detention of child or young person: local education authorities to be notified

- (1) Subsection (2) applies where a youth offending team becomes aware that—
 - (a) a child or young person has become subject to a detention order and is detained in relevant youth accommodation, or

- (b) a child or young person who is subject to a detention order has been transferred from one place of accommodation to another which is relevant youth accommodation.
- (2) The youth offending team must as soon as practicable notify—
 - (a) the home local education authority, and
 - (b) the host local education authority,
 of the place where the child or young person is detained.
- (3) Subsection (4) applies where a youth offending team becomes aware that a person has been released having immediately before release been—
 - (a) subject to a detention order, and
 - (b) detained in relevant youth accommodation.
- (4) The youth offending team must as soon as practicable notify the following authorities of the release—
 - (a) the home local education authority;
 - (b) the host local education authority;
 - (c) any other local education authority in whose area the youth offending team expects the person to live on release.
- (5) Nothing in this section requires a youth offending team to notify a local education authority of any matter of which the authority is already aware.
- (6) In this section—
 - “home local education authority”, in relation to a child or young person, means the local education authority which is the home authority in relation to that person within the meaning of Chapter 5A of Part 10 of the Education Act 1996 (persons detained in youth accommodation);
 - “host local education authority”, in relation to a child or young person who is detained in relevant youth accommodation, means the local education authority for the area in which that person is detained;
 - “young person” includes a person who is aged 18;
 and references in this section to a person subject to a detention order and to relevant youth accommodation have the same meanings as they have in the Education Act 1996 (see section 562(1A) of that Act).”

52 Release from detention of child or young person with special educational needs

- (1) The [Education Act 1996 \(c. 56\)](#) is amended as follows.
- (2) After section 312 insert—

“312A Children subject to detention

- (1) No provision of, or made under, this Part applies in relation to a child who is subject to a detention order and detained in relevant youth accommodation.
- (2) The following provisions of this section apply where a child who has been subject to a detention order is released having, immediately before release, been detained in relevant youth accommodation.

- (3) Subject to subsection (6), a statement which was maintained for the child by a local education authority under section 324 immediately before the beginning of the detention is, from the child's release, to be treated as being maintained by that authority under section 324.
 - (4) In subsection (3) "the beginning of the detention" means—
 - (a) the beginning of the period of detention in relevant youth accommodation, or
 - (b) where that period is part of a continuous period, comprising periods of detention in relevant youth accommodation and in other accommodation, the beginning of that continuous period.
 - (5) For the purposes of subsection (4), it is immaterial whether or not a period of detention is pursuant to a single order.
 - (6) Where, on the child's release, a local education authority ("the new authority") other than the authority mentioned in subsection (3) ("the old authority") becomes responsible for the child for the purposes of this Part—
 - (a) the old authority must transfer the statement to the new authority, and
 - (b) from the child's release, the statement is to be treated as being maintained by the new authority under section 324."
- (3) In section 328(5) (reviews of educational needs), at the end of paragraph (a) (but before "and") insert—
- "(aa) where the child concerned—
 - (i) has been subject to a detention order, and
 - (ii) immediately before release was detained in relevant youth accommodation,on the child's release from detention,".