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Securing provision for learners with learning difficulties at specialist further education establishments



Information

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- Audience** Principals of institutions in the further education sector in Wales; heads of specialist further education establishments; learners; parents/carers; Careers Wales; local education authorities; social services departments; local health boards and other interested organisations.
- Overview** This document sets out the process by which the Welsh Ministers determine the funding of placements for learners aged 16–25 with learning difficulties at specialist further education establishments.
- Action required** Applications from Careers Wales for placements at post-16 specialist further education establishments should be posted to the address below to arrive by 31 January each year at the latest.
- Further information** Enquiries about this document should be directed to:
Additional Learning Needs Branch
Support for Learners Division
Infrastructure, Curriculum, Qualifications and Learner Support Directorate
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- Additional copies** This document can be accessed from the Welsh Government's website at www.gov.wales/educationandskills

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Introduction

The purpose of this document is to set out, for the benefit of interested parties, the process by which the Welsh Ministers determine the funding of placements for learners, aged 16-25, with learning difficulties, at specialist further education establishments. It includes an overview of the Welsh Ministers relevant legislative responsibilities, sets out the key principles and criteria that the Welsh Ministers apply when considering whether such placements should be funded and gives an overview of the timescales within which the Welsh Ministers seek to act. Those with an interest in the information it contains will include (amongst others) the learners themselves, their parents, Principals or Heads of sector and specialist further education establishments, Careers Wales, local authority education and social services departments and health boards.

This document is not intended as a guide to the assessment of learner needs nor does it describe a set of rigid requirements which must be met. The Welsh Ministers overriding objective is to ensure that post 16 learners with learning difficulties can access education and training which is appropriate to their individual assessed needs and circumstances. The Welsh Ministers will exercise their powers in a flexible and responsible way to achieve this objective.

The Welsh Government intends to replace the existing law relating to post-16 education for young people with learning difficulties with legislation aimed at supporting learners with additional learning needs aged from 0 to 25. Until this change takes place, however, the current law remains in force.

Statutory background

The Welsh Ministers' duties in respect of the funding of placements at specialist post 16 provision for those with learning difficulties are set out in the Learning and Skills Act 2000 ('the 2000 Act'), the key provisions of which are summarised below.

A person will be considered to have a learning difficulty if:

(a) he has a significantly greater difficulty in learning than the majority of persons of his age, or

(b) he has a disability which either prevents or hinders him from making use of facilities of a kind generally provided by institutions providing post-16 education or training (see s41(5) of the 2000 Act).

However, section 41(6) says that a person is not to be taken to have a learning difficulty solely because the language (or form of language) in which he is or will be taught is different from a language (or form of language) which has at any time been spoken in his home.

Section 31 and 32 of the Learning and Skills Act 2000

Under section 31(1) of the 2000 Act the Welsh Ministers must secure (amongst other things) the provision of proper facilities for–

- (a) education (other than higher education) suitable to the requirements of persons who are above compulsory school age but have not attained the age of 19; and
- (b) training suitable to the requirements of such persons.

Section 31(2) states that facilities are ‘proper’ if they are–

- (a) of a quantity sufficient to meet the reasonable needs of individuals;
- (b) of a quality adequate to meet those needs and
- (c) sufficient to satisfy the entitlements conferred under section 33F (students’ local curriculum entitlements).

Under Section 32 of the 2000 Act, the Welsh Ministers must secure (amongst other things) the provision of reasonable facilities for–

- (a) education (other than higher education) suitable to the requirements of persons who have attained the age of 19,
- (b) training suitable to the requirements of such persons,

In performing the duties imposed on them sections 31 and 32, the 2000 Act requires the Welsh Ministers to–

- (a) take account of the places where facilities are provided, the character of facilities and the way they are equipped;
- (b) take account of the different abilities and aptitudes of different persons;
- (c) take account of the education and training required in different sectors of employment for employees and potential employees; and
- (d) take account of facilities whose provision the Welsh Ministers think might reasonably be secured by other persons (see sections 31(3) and 32(3)).

Section 41 of the 2000 Act

Section 41(1) of the 2000 Act requires that in discharging their functions under sections 31 and 32, the Welsh Ministers must have regard–

- (a) to the needs of persons with learning difficulties, and

(b) in particular, to any report of an assessment conducted under section 140 of the 2000 Act (see below).

Under section 41, if the Welsh Ministers are satisfied that they cannot secure the provision of facilities for education or training which are sufficient in quantity and adequate in quality for a person with a learning difficulty who is over compulsory school age but who has not attained the age of 19 unless they also secure the provision of boarding accommodation for him, the Welsh Ministers must secure the provision of boarding accommodation for him (see section 41(2)).

In addition, if the Welsh Ministers are satisfied that they cannot secure the provision of reasonable facilities for education or training for a person with a learning difficulty who has attained the age of 19 but not the age of 25 unless they also secure the provision of boarding accommodation for him, the Welsh Ministers must secure the provision of boarding accommodation for him (see section 41(3)).

Section 140 of the 2000 Act

Section 140 of the 2000 Act requires that if a school pupil has a statement of special educational needs under section 324 of the Education Act 1996, and the Welsh Ministers believe that the person will leave school at the end of his last year of compulsory schooling to receive post-16 education or training or higher education, the Welsh Ministers must arrange for an assessment of the pupil to be conducted at some time during the pupil's last year of compulsory schooling.

Furthermore, section 140(3) says that the Welsh Ministers may at any time arrange for an assessment to be conducted of a person—

(a) who is in his last year of compulsory schooling or who is over compulsory school age but has not attained the age of 25,

(b) who appears to the Welsh Ministers to have a learning difficulty (within the meaning given in section 41(5)), and

(c) who is receiving, or in the opinion of the Welsh Ministers is likely to receive, post-16 education or training or higher education.

For the purposes of section 140, an assessment of a person is an assessment resulting in a written report of—

(a) his educational and training needs, and

(b) the provision required to meet them (see section 140(4)).

Summary of effect

Taken together, one of the practical effects of sections 31, 32, 41 and 140 is to require the Welsh Ministers to consider whether they should fund the placement of a learner with learning difficulties at a specialist further education establishment, and to provide funding (where that is necessary) in order for the Welsh Ministers to comply with their statutory duties.

Principles underpinning determination

In determining whether to fund placements at specialist post 16 provision, the Welsh Ministers approach is based on the following principles and objectives:

- the Welsh Ministers' statutory obligations are met (including consideration of availability of resources, where appropriate);
- learners are treated fairly and equitably;
- the interests of the individual learner are considered;
- the views and wishes of learners are considered;
- all the available evidence and advice is considered;
- a balanced conclusion is reached on the basis of the evidence and advice;
- decisions are communicated in full to the learner and other interested parties, as appropriate; and
- decisions are made in a timely way.

Whilst the Welsh Government will take account of the wishes of the learner, their families and/or carers, it does not have a legal duty to fund the independent specialist provision of their choice if it is satisfied that it can secure suitable alternative provision locally in line with the requirements of the 2000 Act.

The process

Section 140 assessment (Learning and Skills Plan)

The starting point for the consideration of funding for specialist placements is the conduct of an assessment under section 140 of the 2000 Act. These are usually undertaken in accordance with the Welsh Ministers mandatory duty under s140(1) and (2) of the 2000 Act in respect of learners with statements of special educational needs whom the Welsh Ministers believe will leave school at the end of their last year of compulsory schooling to receive post-16 education or training or higher education. Assessments may also be undertaken in accordance with Welsh Ministers' discretionary powers in relation to such assessments, pursuant to s140(3) of the 2000 Act.

Section 140 assessments are carried out on behalf of the Welsh Ministers by Careers Wales. The assessment is undertaken in conjunction with the learner and

his/her parents and with appropriate input from other relevant agencies including the local authority, school, social services and health care professionals etc. In order to carry out the Section 140 assessment Careers Wales may need to ask the local authority or other relevant agencies for copies of available relevant and up to date information relating to the learner's needs. Where the assessment is being conducted in relation to a learner with a statement of special educational needs, it will form part of the transition planning process relating to such statements and is in effect the culmination of that process.

The transition planning process is set out in the SEN Code of Practice for Wales. The process begins in Year 9 and should be person-centred. The Special Educational Needs (SEN) Code of Practice for Wales¹ highlights the importance of multi-agency input early in the SEN transition process in order that relevant multi-disciplinary assessments and care plans, which may include the provision of further education facilities, are conducted and can contribute to the formation of a young person's Transition Plan.

The transition planning process culminates in a Section 140 assessment in the final year of schooling. The Section 140 assessment is in the form of a written report, known as a Learning and Skills Plan, which sets out the learner's post 16 educational and training needs and provision required in order to meet those needs. The suitability of all available provision, local and otherwise, will form part of the assessment process. The local college's view on the extent to which it can meet a young person's needs is an important part of the assessment process, but a visit by the learner to the college is not always necessary.

Applications for placement funding

For most post 16 learners with learning difficulties, appropriate education and training can be delivered at an institution within the mainstream further education sector and is funded through the institution. However, where the Learning and Skills Plan identifies the potential suitability of a placement at a specialist establishment outside of the mainstream further education sector, Careers Wales will compile and submit an application for funding to the Welsh Ministers, including, where appropriate, funding for boarding accommodation.

Criteria for consideration

In determining the application for funding, the Welsh Ministers will apply the general principles and objectives set out in section 3 above.

In particular, the Welsh Ministers will consider the Learning and Skills Plan and the evidence and advice accompanying the Plan. Where insufficient detail is included in the Learning and Skills Plan or the supporting evidence is insufficient for the Welsh

¹ The SEN Code of Practice for Wales is issued pursuant to section 313 of the Education Act 1996. Local Authorities and Governing Bodies exercising functions under Part IV of the Education Act ('Special Educational Needs') have a legal duty to have regard to the provisions of the Code.

Minister to determine whether funding should be provided, the Welsh Ministers will make reasonable enquiries to secure the necessary evidence and/or commission a new assessment/Learning and Skills Plan for the learner. The Learning and Skills Plan should be based on up to date information. For this reason, it should not be more than one year old at the date the application is received, and requests for funding should not be made more than one academic year before the start of the placement.

The Welsh Ministers will fund a placement for a learner at a specialist further education establishment on a day basis where they are satisfied that such provision is necessary to enable the learner to participate in education and training, and there is no alternative providing:

- proper facilities for education or training, that is, facilities which are sufficient in quantity and adequate in quality to meet the reasonable needs of that learner, where s/he is above compulsory school age but has not attained the age of 19; or
- reasonable facilities for education or training suitable to the requirements of that learner, where s/he has attained the age of 19.

Furthermore, the Welsh Ministers will fund boarding accommodation at a specialist further education establishment where they are satisfied that they cannot secure:

- the provision of facilities for education and training which are sufficient in quantity and adequate in quality to the requirements of the relevant learner, where s/he is over compulsory school age but has not attained the age of 19, unless they also secure the provision of boarding accommodation for her/him; or
- the provision of reasonable facilities for education or training suitable to the requirements of the relevant learner where s/he has attained the age of 19 but not the age of 25, unless they also secure the provision of boarding accommodation for her/him.

In making these judgements the Welsh Ministers will have regard to all relevant information before them, and to the following specific considerations:

- whether evidence demonstrates that specialist provision is essential to meet the learner's assessed education and training needs;
- whether alternative options are available, in particular locally based options, including packages of provision (that is, with local authorities or other providers);
- whether evidence demonstrates that an essential element of the learner's education or training needs can only be provided in a residential setting;

- whether the learner requires an educational setting with an extended curriculum which cannot be provided in a non-residential setting;
- whether the learner has medical and/or social services care needs that cannot be met by or in conjunction with local providers in an education setting and which would prevent the learner from accessing education or training suitable to meet his/her assessed needs;
- whether the specialist establishment is a further education establishment inspected by Estyn or Ofsted, and has obtained a grading that is 'Adequate' or Grade 3 or above, in its most recent inspection. The Welsh Government reserves the right to withdraw learners or not to place new learners at an establishment where 'Unsatisfactory' or Grade 4 is recorded for any aspect of the establishment's most recent Estyn or Ofsted inspection report; and
- whether the specialist further education establishment has confirmed it's ability to meet the conditions of funding set out in the Welsh Government's annual Agreement.

Additional factors

Funding for placements cannot be backdated and establishments who enrol a learner may not subsequently apply for retrospective funding. An offer of a placement by a specialist further education establishment or any officer of an organisation other than the Welsh Government is no guarantee of funding. Where a young person has been placed with a specialist further education establishment by Social Services or the Local Health Board and a subsequent application been submitted by Careers Wales, funding cannot be confirmed by Welsh Government until a full review of supporting documentation has been considered and joint funding secured with the respective agency where appropriate (see below).

Funding is agreed by the Welsh Government on an academic year basis (maximum of 38 weeks/year). Specialist further education establishments set their fees based on learners' assessed needs, and are inclusive of any pre-entry assessment of the learner by the independent specialist provider.

Welsh Ministers do not fund home to college transport. Local authorities will consider this issue on a case by case basis, having regard to their statutory duties.

Joint funding

The Welsh Government does not act alone in securing and providing appropriate facilities for young people with learning difficulties. The Welsh Government,

therefore, takes account of the role and responsibilities of other organisations towards young people. These organisations may include Careers Wales, Jobcentre Plus, local authority education and social services departments, health boards and voluntary organisations; all of which may be involved in providing advice and/or support for individuals. By promoting inter-agency collaboration the Welsh Government aims to ensure the best possible response to learners needs. In circumstances where, in addition to educational needs, there are medical, domestic or social services reasons leading to a recommendation for specialist further education provision, the Welsh Ministers will look to the appropriate agency to enter into an arrangement for joint funding.

According to the SEN Code of Practice for Wales, 'all agencies should recognise their respective funding responsibilities as early into the transition planning stage as possible. Joint planning arrangements should identify elements of planned provision and the agencies responsible for funding each of those elements, particularly where there is a recommendation for post-16 provision in a residential establishment'.

Early involvement by agencies in the SEN transition process and early recognition of any respective funding responsibilities by local authorities facilitates an informed and timely response to applications for funding at a specialist further education establishment.

Duration of funding

Programmes of study at further education establishments usually span two academic years. Accordingly, the Welsh Ministers generally only expect to fund placements lasting up to a maximum of two academic years, based on a programme of study agreed in advance. Welsh Ministers do not expect to receive an application for a programme of study lasting more than two years unless good reasons relating to the particular circumstances of the individual are demonstrated. The duration of a programme of study will be confirmed prior to approval. Funding for each year of an agreed programme of study is dependent on progress and subject to review. It is not the Welsh Ministers' policy to routinely fund continuous education / training up until the age of 25. Welsh Ministers do not generally expect to fund a second programme of study at a particular residential college, nor to see transition from one residential college to another, unless good reasons relating to the particular circumstances of the individual are demonstrated.

Extension requests

Requests to extend a learner's placement beyond the learning programme's original agreed end date will only be agreed in **exceptional** circumstances.

Effective transition planning is expected to be embedded in the learner's programme of study. It is not expected that extension requests will be sought to offer additional time at an independent specialist establishment where effective transition planning has not taken place. An example of where an extension request might be considered necessary may include cases where a learner has been unable to complete his/her agreed programme of study due to unexpected illness.

It is expected that any concerns or problems relating to achievement will be raised in termly reviews and recorded in the student's progress reports. Where such concerns or problems are such that they might affect the cost of the placement or the learner's ability to complete their agreed programme, they should be identified to Careers Wales, the Welsh Government and other funding partners such as social services or health boards as soon as they arise and prior to any written request being made. Any proposed amendments to the original programme of study or support requirements will require prior agreement by the Welsh Government.

Requests for extensions of funding, with reasons, should be made in writing by the specialist further education establishment and accompanied by a comprehensive and up-to-date progress report. The request should set out the need for an extension of funding, the length of additional time required by the learner to complete the programme of study with reasons, and demonstrable consideration of other local options which should be informed by discussion with Careers Wales and other interested parties, including social services/health boards where they have a direct interest.

Careers Wales will be required to write to Welsh Ministers to contribute their views on the proposed extension. In circumstances where a learner's needs have changed significantly, the Welsh Government may need to arrange for a full assessment of education and training needs and provision to meet those needs.

In the best interests of the learner, extension requests should be submitted as soon as the need is identified, and no later than 30 April. Where a learner has started their placement later in the academic year, the extension request should be received no later than the end of the penultimate term of the academic year in which the learner's existing placement ends.

Where a learner's place is jointly funded with other agencies, securing the continuation of funding by those agencies may take significant time. Where the need for an extension of funding arises other agencies should be involved as early as possible in order to allow sufficient time for all respective funding agencies to make decisions about continued funding.

Timescales

Where an application for funding relates to an expected enrolment in September in any calendar year, it should arrive at the Welsh Government offices in Cathays Park by 31 January in that year in order to guarantee a decision in time for the start of the academic year. However, the Welsh Government recognises that establishments may accept learners at various times in the academic year and will, therefore, accept and deal with applications accordingly. Priority will be given to applications received by the published submission date.

The Welsh Government will normally issue a decision on applications received by 31 January within 6 weeks of receipt and will confirm its decision in writing. However, it may take longer to reach a decision where further information is required or where joint funding is necessary. In these circumstances, the Welsh Government will contact Careers Wales who will keep learners/parents informed of progress towards a decision.

It should be noted that where applications are received after the 31 January deadline, it may not be possible to secure funding in time for the start of the academic year. In these circumstances, the Welsh Government would expect to see the specialist careers adviser liaising with the appropriate specialist further education establishment and families with a view to securing a later start date. Where applications are late, an explanatory letter will be issued to the learner/parents on receipt of the application.