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# Draft Additional Learning Needs Code

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## Draft guidance

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## Draft Additional Learning Needs Code

<b>Audience</b>	Those organisations or individuals who are considering responding to the Welsh Government's consultation on the draft Additional Learning Needs and Education Tribunal (Wales) Bill.
<b>Overview</b>	This is an early draft version of the Additional Learning Needs Code. The provisions which appear in it have been published solely for illustrative purposes.
<b>Action required</b>	None – this document provides information to support the current public consultation on the draft Additional Learning Needs and Education Tribunal (Wales) Bill. It is not in itself subject to that consultation.
<b>Further information</b>	Enquiries about the draft Additional Learning Needs and Education Tribunal (Wales) Bill consultation should be directed to: Additional Learning Needs Branch Support for Learners Division Infrastructure, Curriculum, Qualifications and Learner Support Directorate Welsh Government Cathays Park Cardiff CF10 3NQ Tel: 029 2082 6015 e-mail: <a href="mailto:SENReforms@wales.gsi.gov.uk">SENReforms@wales.gsi.gov.uk</a>
<b>Additional copies</b>	This document can be accessed from the Welsh Government's website at <a href="http://www.gov.wales/consultations">www.gov.wales/consultations</a>
<b>Related documents</b>	Draft Additional Learning Needs and Education Tribunal (Wales) Bill

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## **Status of this draft Code**

This is an early draft of the Additional Learning Needs Code which is published solely for illustrative purposes to support the consultation on the draft Additional Learning Needs and Education Tribunal (Wales) Bill, which closes on 18 December 2015.

This early draft Code is not in itself subject to the public consultation on the draft Additional Learning Needs and Education Tribunal (Wales) Bill.

In this document, the draft Code will be referred to as the “Code”.

The draft Additional Learning Needs and Education Tribunal (Wales) Bill will be referred to as “the Act”.

It is intended that the next iteration of the Code will be published to coincide with the introduction of the proposed legislation, into the National Assembly for Wales, subject to a decision by the next Welsh Government, in the next Assembly.

There will be a full public consultation of a further draft of the Code (pursuant to section 5 of the Act) in due course.

## **Further work on the Code**

In the interim, Welsh Government officials will continue to work with partners to develop the content of the Code. The current provisions will be supplemented and supported in areas both by greater detail and by supporting material, such as case studies of best practice.

To facilitate this further development, the intention is to establish a Content Development Group to co-design and develop the Code ahead of publication for public consultation in due course.

Particular areas of the Code that will inevitably evolve are those relating to sections of the Act containing a regulation making power, as highlighted throughout this draft.

An indicative outline of implementation has been published alongside this Code. Again, this is to aid the consultation on the draft Bill itself.

## **Welsh Language**

This early draft of the Code has been published in English only given it is a working draft that is subject to ongoing development and stakeholder engagement. Any further versions of the Code will be published bilingually, including versions for any further public consultation.



# Chapter 1: Introduction

## The Code

1. Section 4 of the Act provides for a Code on Additional Learning Needs (ALN) to be issued.
  - (i) The Code includes guidance to which the following ‘relevant persons’ **must** have regard when exercising functions under the Act:
    - a local authority in Wales or England;
    - the governing body of a maintained school in Wales or England;
    - the governing body of a further education institution<sup>1</sup> (FEI) in Wales or England;
    - a Local Health Board;
    - an NHS Trust;
    - the National Health Service Commissioning Board;
    - a clinical commissioning group;
    - a NHS Foundation Trust; and
    - a person in charge of relevant youth accommodation in Wales or England.
  - (ii) The Code imposes requirements on a local authority in respect of its duties under the Act to provide:
    - information and advice; and
    - independent advocacy services.
  - (iii) The Code imposes requirements on the governing body of a maintained school in Wales, or an institution in the further education (FE) sector in Wales, or a local authority in respect of:
    - the preparation, content, form, review and revision of individual; development plans (IDPs); and
    - ceasing to maintain IDPs.
2. The Act requires that the Education Tribunal for Wales (‘the Tribunal’) **must** have regard to any provision of the Code that appears to it to be relevant to a question arising on an appeal.
3. Where mandatory requirements are imposed by the Code, the Act or regulations, or by any other statute or statutory instrument, the body to which that provision refers **must** comply with that provision. Where the Code refers to prohibited practices, it states that the body to which the provision refers **must not** use this practice.

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<sup>1</sup> An institution within the further education sector (FEI) means an institution falling within section 91(3) of the Further and Higher Education Act (1992)

4. In all other cases, the Code provides statutory guidance. Relevant persons **are required to** follow the statutory guidance unless they can demonstrate, if challenged, that they are justified in not doing so.
5. Failure of a relevant public body to comply with any of the requirements included in this Code could result in a decision being overturned by the Tribunal, a successful complaint to the Welsh Ministers, or to a successful judicial review claim.
6. Failure to adhere to guidance within this Code could lead to the same result if relevant persons are unable to justify departing from the guidance.
7. The Code will replace the existing Special Educational Needs Code of Practice for Wales (2004).<sup>2</sup>
8. The Code does not aim to provide exhaustive guidance on all aspects of the proposed new legislative system. Relevant persons will need to ensure that in carrying out their functions that they act in accordance with the relevant legislation, including primary and secondary legislation.
9. The draft Code is primarily designed for use by relevant persons but all those with an interest in ALN matters may also find it useful.
10. Under section 68 of the Act, Local Health Board means a Local Health Board established under section 11 of the National Health Service (Wales) Act 2006. Throughout the Code, a Local Health Board is referred to as a Health Board.
11. Section 68 of the Act defines both child and young person. A child is anyone not over compulsory school age and a young person means a person over compulsory school age, but under 25 years old. References in the Code to children and young people reflect the definitions in the Act.

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<sup>2</sup> The SEN provisions under the Education Act 1996 and the Code made thereunder remain in force in the meantime.

## Chapter 2: Principles of the Code

### Summary

12. This Chapter sets out the general principles which should underpin the planning and provision of support for children and young people with ALN. These principles are reflected in guidance and mandatory requirements contained in the Code.

### Principles

13. In accordance with their duties under the Rights of Children and Young Persons (Wales) Measure 2011, the Code has been developed by the Welsh Ministers with due regard to the obligations and rights set out in the United Nations Convention on the Rights of the Child (UNCRC) and its Optional Protocols.

14. The other, general principles upon which the Code has been based, are set out below. Some of the principles below are statutory requirements under the Act:

- identification and intervention in relation to ALN should take place at the earliest possible opportunity;
- all those involved in providing support to children and young people with ALN should work together in the best interests of the child or young person;
- transitions should be planned in advance and consideration given to supporting transition into adulthood;
- the views, wishes and feelings of the child, child's parent or young person, should be at the heart of all decision making processes;
- the child, child's parent or young person should be enabled to participate as fully as possible in the decision making processes;
- meeting the needs of learners with ALN should be part of a whole school approach to school improvement;
- learners must be supported to participate in mainstream education and in the National Curriculum as fully as possible wherever this is feasible; and
- compliance with the Welsh Language Standards.

*Identification and intervention in relation to ALN should take place at the earliest possible opportunity*

15. All those providing services for children and young people with ALN need to focus on addressing the needs of children and young people through timely identification and providing the right support to enable the child or young person to reach their potential.

16. The importance of timely identification and providing the appropriate provision as soon as possible for a child or young person with ALN cannot be over-emphasised. The earlier action is taken, the more responsive the child or young person is likely to be, and the likelihood of the intervention being made without undue disruption to the organisation of the education institution is increased. Identifying ALN at an early stage and making the appropriate interventions can

also prevent more costly and less effective interventions later. The child or young person's ALN and the provision made for them should be continually reviewed to ensure that interventions remain appropriate.

*All those involved in providing support to children and young people with ALN should work together in the best interests of the child or young person*

17. Meeting the ALN of individual children and young people will often require flexibility and joint-working on the part of professionals and statutory bodies. Those involved need to communicate and agree policies and protocols to work together in the best interests of the child or young person. Working supportively, and in partnership with parents and the children and young people themselves, will ensure everyone involved understands the responses of the professionals concerned, and lead to better quality provision.

18. All statutory agencies should recognise the need for effective collaboration between services involved with the child, child's parents or young person. Consultative responsibilities and effective communication systems at management and practitioner levels should be clearly identified as critical to effective multi-agency working. Developments in organisational structures and working practices should reflect this principle.

19. Successful multi-agency working should:

- improve communication between the family, school and professionals;
- streamline services to avoid duplication;
- clearly identify which agency will be responsible for providing and funding each element of provision;
- encourage creativity and flexibility;
- take account of good practice;
- focus on solutions;
- use resources more effectively; and
- ensure consultation with all relevant services.

*Transitions should be planned in advance and consideration given to supporting transition into adulthood*

20. To support smooth transitions and provide continuity of support, provision should be planned for in advance. This is especially true when children and young people are due to move between different phases of education and/or providers. Relevant public bodies should make connections and plan these changes in advance. Public bodies should work together to secure support and improve local provision relevant to the individual needs of the child or young person, to enable an effective transition.

21. Young people should be supported to make a successful transition into adulthood once they leave formal education; this process should commence in good time ahead of the learner leaving formal education.

*The views, wishes and feelings of the child, child's parent or young person, should be at the heart of all decision making processes*

22. Anyone exercising functions under the Act or this Code will need to involve children and young people at every stage of the process, with their views, wishes and feelings listened to. This will help the child or young person to personalise their learning through the identification of targets that build on their strengths. This might be termed a person-centred approach. Being person-centred in the planning and provision of support means that the learner is truly listened to and kept at the heart of decision-making. It is the learner's needs that are the starting point when considering the support to be provided, rather than starting with what support is available and then how the learner can be fitted into it.
23. Person-centred practice encompasses the use of person-centred thinking tools that help to gather information in a way that makes sure the views of the learner and their family are included in decisions. It also covers person-centred reviews – meetings focused on an individual learner's needs, where information from professionals, families and the learners themselves is made available to all and where everyone can contribute on an equal footing.
24. Parents are a key partner and professionals will need to actively seek to work with them and value the contribution they make. Parents should feel able to challenge the process if it is not meeting their child's needs. Demonstrating to parents and families that their knowledge and experience is valued and is acted upon will be vital in securing their confidence in the process. This will be needed for them to engage in positive discussions about the best ways to support their child's needs. These discussions may be challenging, however, a positive dialogue between parents and professionals, which encourages working through varying opinions to agree solutions and achieve agreed outcomes, is in the best interests of the child.

*The child, child's parent or young person should be enabled to participate as fully as possible in the decision making processes*

25. To enable children, their parents and young people to participate fully in discussions and decisions, they will need to be provided with information, advice and appropriate support. All necessary steps should be taken to ensure that they are empowered to make their opinions known and, if needed, be helped to understand the process.

*Meeting the needs of learners with ALN should be part of a whole school approach to school improvement*

26. The way in which a maintained mainstream school meets the needs of all children has a direct bearing on the nature of the additional learning provision (ALP) required by children with ALN, and on the point at which ALP is required. The key to meeting the needs of all children and young people lies in the teacher's knowledge of each child and young person's skills and abilities. The teacher's capacity to then match this knowledge with identifying ways of providing appropriate access to the curriculum for every child and young person is also critical. Consequently, improvements in the teaching and learning of children and young people with ALN cannot be isolated from improvements in the teaching and learning for children and young people across a school as a whole. Improvement in one should be mutually supportive of improvement in the other.

*Learners must be supported to participate in mainstream education and in the National Curriculum as fully as possible wherever this is feasible*

27. The Welsh Government believes that an inclusive education, where individual learners receive a tailored education and additional support to reach their full potential, is of benefit to all. Those children and young people who have ALN should, wherever possible, be fully included within the normal school life, have access to a broad and balanced curriculum and be supported and challenged to achieve their potential. However, inclusion requires the active involvement of everyone concerned to ensure equality of education opportunity and access. For all subject areas and for all learners, including those with ALN, there should be a common set of expectations across the school that are known to everyone, and a further commitment to support those learners who have difficulty meeting those expectations.
28. Inclusive education, mainstream education is usually the most appropriate setting, unless the child or young person's needs are such that mainstream education would not be appropriate for them. There should be a general presumption of mainstream education being the most suitable setting for all learners.

#### *Compliance with the Welsh Language Standards*

*[The position relating to the Welsh Language Standards and obligations on local authorities is developing and subsequent versions of the Code will be updated to reflect this].*

29. Welsh language is supported by the Welsh Language (Wales) Measure 2011. The Measure restated the official status of Welsh in Wales, established the principle that the Welsh language should be treated no less favourably than the English language and made provision for promoting and facilitating the use of Welsh and about standards relating to the Welsh language.
30. Relevant bodies will have to ensure their services are delivered in accordance with relevant Welsh Standards. The Standards will be set out in a compliance notice given by the Welsh Language Commissioner.
31. Local authorities are required to outline the Welsh language aspects of provision for learners with ALN in their statutory Welsh in Education Strategic Plans, which are submitted to Welsh Ministers for approval.

## Chapter 3: Role of the ALNCo and DMO/DCO

### Summary

32. The Act introduces two new statutory roles:

- An Additional Learning Needs Coordinator; and
- A Designated Medical Officer/Designated Clinical Officer

33. This Chapter introduces both roles and outlines the roles and responsibilities of each.

*[Subject to further stakeholder engagement, this Chapter may be developed to include reference to other relevant roles and services.]*

### Professional development in relation to ALN – general

*[Later versions of the Code will be updated to reflect wider Welsh Government policy in relation to workforce development.]*

34. Teaching practitioners have responsibility for their own professional learning and development. All should undertake professional learning in relation to ALN, regardless of previous experience, qualifications or the education setting in which they are based.

35. Education settings are responsible for ensuring systems and processes are in place to identify the professional learning needs of its workforce and should provide appropriate support to meet those needs. Schools in particular should be utilising their School Development Plans to perform this function.

36. Teaching practitioners who need to improve their knowledge and/or skills in relation to different types of ALN are able to access information guidance, tools and/or training materials, which have been developed by the Welsh Government, via the Learning Wales website<sup>3</sup> and the HwB digital learning platform<sup>4</sup>.

37. There are also a range of organisations who offer support and professional learning to different education settings on specific teaching approaches for learners with ALN, as well as on specific types of ALN.

### The Additional Learning Needs Coordinator

#### The duty of governing bodies to designate an ALNCo

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<sup>3</sup> <http://learning.gov.wales>

<sup>4</sup> <http://hwb.wales.gov.uk/>

38. Section 46 of the Act deals with Additional Learning Needs Co-ordinators (or 'ALNCo').
39. This section requires that governing bodies of maintained schools in Wales and FEIs in Wales **must** designate a member of their staff – to be known as an ALNCo – who will have responsibility for coordinating provision for learners with ALN.
40. The designation of an ALNCo does not remove the need for the broader workforce training referred to above. Furthermore, all teaching practitioners have a responsibility for ensuring that their learners' needs are identified and provided for.

### **The ALNCo within the education setting**

*[Section 46 of the Act provides that regulations may be made to confer functions on ALNCos in relation to provision for pupils or students with ALN. The following paragraphs represent the Welsh Governments' view on the sorts of day-to-day activities ALNCos should undertake. However, it is subject to further development alongside the regulations in due course]*

41. The ALNCo will be the individual with overall responsibility for ensuring the needs of all learners with ALN within the education setting are met. The role should be viewed in the same light as other strategic roles undertaken within the education setting and the ALNCo should, therefore, form part of the senior leadership team.
42. It is vital that the ALNCo has sufficient time and resource to undertake their responsibilities effectively, including time away from teaching. The head of the education setting should ensure that the ALNCo is supported in this way. The role should not be combined with other, non-teaching responsibilities.
43. Learning support staff can be an important resource to the ALNCo when coordinating provision of support across the education setting. Learning support staff can provide specialist skills to support learners with ALN, and will offer both practical and administrative support to the ALNCo. The ALNCo should, therefore, have a role in the coordination of learning support staff and be given the opportunity to feed in to how they are deployed within the setting. That is not to say that the use of learning support staff is appropriate in all cases, they are just one of a number of resources available to ALNCos.
44. The ALNCo will also provide professional guidance, advice and support to teaching practitioners and, where needed, information and support to parents, carers and other agencies/institutions.

### **The role and responsibilities of the ALNCo**

*[As outlined above, section 46 of the Act provides that regulations may be made to confer functions on ALNCos in relation to provision for pupils or students with ALN. The following paragraph represents the Welsh Government's intention and is subject to further development alongside regulations in due course].*



45. The key responsibilities of the ALNCo should include the following:

- promoting inclusion within the education settings;
- becoming a source of expertise on ALN by developing specialist skills and knowledge;
- overseeing the day-to-day operation of the education setting's policy on ALN;
- coordinating provision across the education setting for learners with ALN, including a role in managing the allocation of learning support staff;
- contributing to the development and implementation of appropriate ALN procedures and systems within the education setting, including strategic financial planning, effective deployment of resources and data collection and analysis, with a view to improved outcomes for learners with ALN;
- providing professional support to all staff to enable the early identification, assessment and planning for learners with ALN, ensuring IDPs are developed and reviewed appropriately in line with the Person Centred Practice ethos;
- liaising with the child, child's parent or young person with ALN, to ensure they understand the learner's needs and how they will be met, where necessary advising on information and support available;
- ensuring that the arrangements put in place by the local authority in relation to avoiding disagreements are fully utilised as appropriate;
- acting as the key point of contact with the relevant local authority's inclusion and support services, external agencies, independent/voluntary organisations, health and social care professionals, educational psychologists, etc.;
- liaising with early years providers, maintained schools and FEI's where relevant, to facilitate a smooth transition between settings for learners with ALN;
- liaising with careers specialists to ensure that learners with ALN receive appropriate careers advice;
- assisting in the professional learning of staff within the education setting to better meet the needs of learners with ALN;
- keeping up-to-date on the latest guidance and support available for ALN;
- working strategically with the senior leadership team and governors to ensure the education setting is meeting its responsibilities under the Act, this Code and the Equality Act 2010; and

- enhancing their own professional learning by liaising with the local network of ALNCos (which local authorities should consider establishing and facilitating) and, where appropriate, special schools to develop and share experience and best practice.

### **Prescribed qualifications and experience of ALNCos**

*[Section 46 of the Act provides that regulations may be made to require bodies to ensure that ALNCos have prescribed qualifications or prescribed experience (or both). The following paragraphs, therefore, represent the Welsh Government's intentions in this respect, but they are subject to development alongside the regulations in due course.]*

46. The ALNCo will need to be a suitably qualified, senior teacher.

47. The ALNCo should have wide-ranging practical experience of supporting learners with ALN in the classroom environment. However, where an ALNCo is newly appointed, it is the Welsh Government's intention that they will be required to obtain a qualification for ALN within a set timeframe from the date of their appointment (if they have not obtained it already). We anticipate the qualification to include topics such as awareness raising and promotion, leadership and coordination in respect of ALN. We also envisage the qualification supporting ALNCos to develop expertise and become specialists on ALN. Those already acting as SENCOs will also be required to obtain the qualification, though this requirement will be phased in over time.

48. All teaching practitioners are required to register with the Education Workforce Council<sup>5</sup> who will maintain the registration and the professional standards for the teaching profession in Wales. This includes all maintained school teachers and learning support staff and FE lecturers and learning support staff. The registration includes a record of the individual's roles and professional learning. All ALNCos and teaching practitioners should ensure their registration includes an up-to-date record of their role and professional learning in respect of ALN.

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<sup>5</sup> Established as a registration body under the Education (Wales) Act 2014.

## The Designated Medical or Clinical Officer

### The duty of Health Boards to designate a DMO/DCO

49. Section 47 of the Act deals with Designated Medical Officers ('DMOs') and Designated Clinical Officers ('DCOs').

50. This section requires that Health Boards (HBs) in Wales<sup>6</sup> **must** designate an officer to have responsibility for co-ordinating the HB's functions in relation to children and young people with ALN<sup>7</sup>.

51. The individual designated **must** be:

- a registered medical practitioner (to be known as a Designated *Medical Officer*) or
- a registered nurse or other health professional (to be known as a Designated *Clinical Officer*)<sup>8</sup>.

52. Further, the HB **must** designate a person it considers to be suitably qualified and experienced in the provision of health care for children and young people with ALN<sup>9</sup>.

### The role and responsibilities of the DMO/DCO

53. Regardless of whether the person appointed is a Designated *Medical Officer* or a Designated *Clinical Officer*, their role and responsibilities are the same.

54. The DMO/DCO should be the first point of contact between the HB and the local authority and should liaise between the bodies to support meeting the needs of the child or young person.

55. They should have a strategic and operational role in co-ordinating activity across health bodies and with the local authority. This should include:

- considering how best health professionals can be pro-actively involved in the development of IDPs (where the input, help and advice of health professionals is required);
- assisting local authorities in gaining medical advice, where it is considered necessary for the development of the child or young person's IDP;
- taking responsibility for the HB's responses to requests for help from local authorities made under section 49 of the Act (see Chapter 13) (for example, by putting the systems in place to ensure that responses are in compliance with the legal duties in that section and regulations made under it);

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<sup>6</sup> Section 68 of the Act confirms that a 'Local Health Board' is a Local Health Board established under section 11 of the NHS (Wales) Act 2006. This Code uses the term "Health Board".

<sup>7</sup> Section 47(1) of the Act.

<sup>8</sup> Section 47(2), (4) and (5) of the Act.

<sup>9</sup> Section 47(3) of the Act.

- working with local authorities in relation to the powers and duties in section 14 of the Act, including, in particular:
  - agreeing what provision the HB should secure as part of an IDP in fulfilment of their general obligation to provide a comprehensive health service in Wales;
  - ensuring a consistent approach to such decisions; and
  - ensuring that the HB's legal duty to deliver agreed provision is met;
- supporting the HB to fulfil their legal duties under section 48 of the Act in relation to children under compulsory school age (see Chapter 7);
- supporting HB staff generally in dealing with additional learning needs matters.

## Chapter 4: Involving and supporting children, their parents and young people

### Summary

56. This Chapter outlines the duties in respect of, and actions that should be taken, to engage and empower children, children's parents and young people.

*[Subject to further stakeholder engagement, it is intended that this Chapter will be developed to include examples of best practice on ways in which children, their parents and young people might be involved and supported.]*

57. Section 6 of the Act introduces a duty that those exercising functions under the Act **must**:

- have regard to the views, wishes and feelings of the child, the child's parent, or young person;
- have regard to the importance of the child, the child's parent, or young person participating as fully as possible in decisions; and
- have regard to the importance of the child, the child's parent, or young person, being provided with the information and support necessary to enable participation in those decisions.<sup>10</sup>

### Duties relating to children and young people

58. In order to satisfy the duties above, the child or young person should be at the centre of the process and all decision making that affects them at every stage. Children and young people should be supported to ensure their active participation is a fundamental element of the process, both during and outside of meetings. Their views should be sought ahead of key decisions being taken - Information should be communicated in a way the child or young person understands - and their views should be used to inform those decisions.

59. Children and young people have a unique knowledge of their own needs and circumstances. They will, however, require differing levels of support to be able to make their views, wishes and feelings known.

60. The time leading up to a decision that a child or young person has, or may have, ALN may create alarm or anxiety for the child or young person. The child or young person will need to be supported throughout the process.

61. Supporting children and young people to participate meaningfully will help them to:

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<sup>10</sup> Section 6 of the Act.

- feel confident that their views, wishes and feelings are listened to and valued, even if they find it difficult to get these across;
- have an awareness of their rights and the support and services available to them; and
- develop a sense of responsibility over their learning.

62. Local authorities should assist staff to provide this support to children and young through, for example:

- mentoring;
- staff supervision;
- sharing good practice; and
- relevant continuous professional development.

63. Children and young people should be empowered by this process and not feel the process is being done to them. They should be encouraged to make choices. In order that children and young people can participate as fully as possible in decisions, they should be emboldened to take an active part in meetings which they attend, and for their voices to be heard at meetings which they do not.

64. All children and young people should be invited to meetings in which they are being discussed, especially those relating to preparing or reviewing an IDP.

65. The information and support provided to the child or young person should:

- be communicated in a way the child or young person can understand, for example via the use of Makaton;
- enable and encourage the child or young person to participate in decisions;
- reflect the child or young person's evolving maturity;
- enable the child or young person to become progressively more involved in the process and be more confident and self-aware in making decisions; and
- actively encourage the child or young person to track their own progress and record their achievements.

66. Where a child or young person has ALN, it should be explained to them in a manner which reflects their ability to understand. When an IDP is being developed or reviewed, the child or young person should be involved at an appropriate level. Children and young people should be helped to understand what is being agreed, including ALP and the outcomes that they are to aim for. The child or young person should be supported to understand the purpose of any interventions and programme of action.

67. The child or young person should be told which member of staff they can discuss any difficulties or concerns with. This might be a role for the designated ALNCo (see Chapter 3).

## **Duties relating to parents**

68. The duty to involve and support under section 6 of the Act, which is outlined above, also applies to parents.
69. Parents hold key information and have a critical role to play in their child's education. They have unique strengths, knowledge and experience to contribute to the shared view of the child's needs and the best way of supporting them. There should be no presumption about what parents can or cannot do to support the child's learning. All parents have a right to participate in decisions about their child's education and a positive attitude towards including parents should be adopted.
70. Leading up to a decision that a child has, or may have, ALN may create alarm or anxiety for the parents and family. Parents will need to be supported throughout the process.
71. Where a child has ALN this should be explained to the parents in a way that they will understand. Parents should be supported to understand what is being agreed for their child, their child's ALN, the agreed ALP and the outcomes for their child to aim for. Parents should be supported to understand the purpose of any interventions and programme of action.
72. It should be acknowledged that some parents may require support that goes further than signposting to information and advice; for example, they may experience difficulties with accessibility and understanding.
73. Some parents might need support in seeing their children as partners in decisions relating to their education. They may be concerned, for example, that their child is ill-equipped to consider all the relevant factors. Parents should be supported and encouraged to ensure the full participation of their child where this is appropriate.
74. To support and empower the parents to be able to provide their views, wishes and feelings and to take an active part in the process they should be provided with information and advice in a way they can understand. Parents' input should be encouraged from the outset and throughout the child's education.
75. Parents will require differing levels of support and every effort should be made to facilitate this. They should feel confident that they will be listened to and their input valued. Parents should be supported to be present at appropriate meetings, especially those relating to preparing or reviewing an IDP for their child, and empowered to participate as fully as possible.
76. Parents have a fundamental role in helping their child to achieve their potential. The child is far more likely to achieve their outcomes and potential when parents are actively involved and their views, wishes and feelings are taken into account. As a result, parents will be in a better position to support their child. Parents should, therefore, also be provided with support and advice on how they can support their child to reach their potential.

77. When a child attends a residential school, or is looked after by the local authority and is living away from home, every effort should be made to ensure that parents are encouraged to continue to play an active role in their child's education where this is appropriate. Parent's participation when a child is away from home is especially important because of the need to forward plan for when the child or young person returns to the family.
78. The child's parent should be told which member of staff they can discuss any difficulties or concerns with.



## Chapter 5: Advice and information

### Summary

79. Section 7 of the Act provides that local authorities **must** make arrangements to provide people with information and advice about ALN and the ALN system.

80. This Chapter provides guidance on the arrangements that should be put in place, along with the role of external service providers.

*[Subject to further stakeholder engagement, it is intended that this Chapter will be developed to include examples of best practice in respect of information and advice arrangements.]*

### Providing information and advice

81. A local authority **must** take steps it considers appropriate to make its information and advice arrangements known to:

- children and young people in its area;
- parents of children in its area;
- head teachers and proprietors of schools in its area; and
- any other persons it considers appropriate, for example relevant professionals or specialists, the local Designated Medical or Clinical Officer, or the third sector.<sup>11</sup>

82. Information and advice should be provided through dedicated and easily identifiable arrangements. Local authorities are responsible for ensuring that the information and advice given is delivered at a suitable level.

83. Local authorities do not necessarily have to provide the information and advice themselves, they could work with other organisations, including the third sector, to provide information which best meets the needs of children, their parents and young people.

84. Local authorities should involve children, their parents and young people in the design or commissioning of arrangements for providing information and advice in order to ensure that the arrangements meet local needs. Local authorities should do this in a way which ensures that children, young people and parents feel they have participated fully in the process and have a sense of co-ownership. It need not be burdensome for local authorities and may simply take the form of focus groups or workshops.

85. Although local authorities do not necessarily have to provide the information and advice themselves, they do have a responsibility for ensuring that they are easy to find, accessible, and signpost where further information and advice can be found. This might include providing information and advice in electronic format,

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<sup>11</sup> Section 7(2) of the Act.

for instance on websites or through printed materials, and providing information and advice to groups within the community.

86. The arrangements to provide information and advice should be flexible and cases should be handled sensitively and sympathetically. The concerns of children, their parents and young people should be considered carefully.

87. The information and advice should:

- help children, their parents and young people to understand what ALN is;
- cover information on ALN legislation, including that contained in this Code;
- help children, parents and young people understand the different agencies involved;
- be free, accurate and, where appropriate, confidential, and in formats which are accessible and responsive to the needs of users – this includes being suitable for those children, their parents and young people for whom English or Welsh is not their first language, and in a format those with a disability or learning difficulty can access;
- provide accurate, neutral information and advice on the rights of children, their parents and young people;
- signpost children, their parents and young people to alternative and additional sources of information, advice and support that may be available locally or nationally;
- signpost children, their parents and young people to specific voluntary, statutory or private organisations who can provide specialist advice and support;
- help to promote independence and self-advocacy for children, their parents and young people; and
- make children, their parents and young people aware of, and help them to understand, the different complaints procedures, the local authority's services for avoiding and resolving disagreements, and the route to appeal on matters related to ALN, if necessary.

88. As well as ensuring that parents have access to information and advice, local authorities **must** also ensure that children and young people have access to information and advice on matters relating to ALN. Many children will want to access information and advice via their parents. However, some children, especially older children, may want to access information and advice separately from their parents. Local authorities **must** facilitate this.

89. Whilst young people **must** be able to access information and advice in their own right, local authorities should recognise the specific needs of young people at the same time as ensuring co-ordination and consistency in what is offered to children, their parents and young people.

90. Young people may be finding their voice for the first time and may, therefore, need support in exercising choice and control over the support they receive (see Chapter 4).

## External service providers

91. The local authority may decide to discharge their duties by asking, for example, the third or private sector to undertake these duties. Where it does so the local authority is responsible for:

- determining and monitoring the overall standard of the service;
- setting out their funding and budgeting plans for the service and ensuring value for money;
- ensuring appropriate management structures are in place for the service;
- establishing robust quality assurance arrangements and conducting evaluation of services;
- ensuring that the service has a development plan, which sets out clear targets and is regularly reviewed – such plans should specify short, medium and long term strategies and arrangements for evaluation and quality assurance;
- ensuring effective and workable contingency plans are put in place; and
- establishing a service level agreement for delivering the service which ensures sufficient levels of resource and training, and clearly sets out the quality standards expected of, and the responsibilities delegated to, the provider.

## Chapter 6: Identification of additional learning needs

### Summary

92. This Chapter outlines what ALN are and how to identify them.

93. It sets out general considerations for all maintained schools, FEIs and local authorities when taking decisions about ALN.

*[We expect to develop this Chapter in due course to take account of stakeholder input and to supplement it with supporting resources, such as good practice case studies. Additional guidance might include, for example, further detail in respect of meeting the threshold of ALN.]*

### Additional learning needs – the basic definition

94. Whenever it comes to the attention of a maintained school or FEI that a child or young person may have ALN, that education setting **must** make a determination of the issue unless specific circumstances apply<sup>12</sup>. Local authorities will also be required to make determinations about whether an individual has ALN in some circumstances<sup>13</sup>.

95. Section 2 of the Act defines the term ‘Additional Learning Needs’ (‘ALN’).

96. Section 2(1) confirms that a person will have ALN if he or she has a learning difficulty or disability which calls for ‘Additional Learning Provision’. In establishing whether a child or young person has ALN, you should work through the definition step by step.

### Learning Difficulty or Disability

97. Firstly, does the individual have a learning difficulty or disability? Section 2(2) of the Act confirms that a child of compulsory school age or person over that age has a learning difficulty or disability for the purposes of the Act if he or she:

- has a significantly greater difficulty in learning than the majority of others of the same age (section 2(2)(a)); or
- has a disability which prevents or hinders them from making use of facilities for education or training of a kind generally provided for others of the same age in mainstream maintained schools or a FEI (section 2(2)(b)).

98. The key questions to ask are therefore:

- Does the person have a significantly greater difficulty in learning than the majority of others of the same age?

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<sup>12</sup> Sections 9(1) and 10(1) of the Act.

<sup>13</sup> See Chapter 9.

- Does the person have a disability which prevents or hinders them from making use of facilities for education or training of a kind generally provided for others of the same age in mainstream maintained schools and FEIs?

If the answer to either question is 'yes', the individual is to be considered as having a learning difficulty or disability for the purposes of the Act.

### **Additional Learning Provision**

99. The next step is to determine whether that learning difficulty or disability calls for 'Additional Learning Provision'.
100. Section 3 of the Act defines the term 'Additional Learning Provision' ('ALP').
101. For a person aged three or over, ALP means educational or training provision that is additional to, or different from, that made generally for others of the same age in:
- mainstream maintained schools in Wales;
  - mainstream FEIs in Wales; or
  - places in Wales at which nursery education is provided (section 3(1)).
102. Teaching which recognises and responds to the needs of individual learners is a key component of all high quality education, and is something which is generally made available in schools and FEIs in Wales. Such differentiated teaching will not, in and of itself, constitute ALP. ALP will encompass additional or different educational or training provision, which goes beyond that generally made available – see further below.
103. **If a person has a learning difficulty or disability which calls for ALP, the individual should be considered as having ALN for the purposes of the Act.**

### *Children under 3*

104. There is a slightly different test for children under compulsory school age. In those cases, questions must be asked about whether the individual has, or is likely to have:
- a significantly greater difficulty in learning than the majority of others of the same age, or
  - have a disability which prevents or hinders them from making use of facilities for education or training of a kind generally provided for others of the same age in mainstream maintained schools or FEIs,  
*when they are of compulsory school age* (refer to section 2(3) of the Act).
105. ALP for a child aged under three means educational provision *of any kind* (section 3(2) of the Act). The definition for this cohort of learners is slightly different to reflect the fact that children under three are not at an age where education is compulsory – so if their needs call for educational provision at such a young age, that should be explicitly recognised. 'Nursery education' is

education suitable for a child who has attained the age of three but is under compulsory school age (section 3(3) of the Act).

## **Initial considerations**

106. Practitioners should always refer back to the definition of ALN at section 2 of the Act, have regard to the guidance on the application of this definition set out at the beginning of this Chapter, and apply it to the individual circumstances of the case when making a decision about whether an individual has ALN.
107. However, there are some initial considerations which all practitioners should bear in mind when making these decisions – these are as follows:

## **Initial considerations – differentiated teaching**

108. Most children and young people will require additional support in some part of their education at some point. This could be in the form of extra help with mathematics if a learner has found a topic particularly difficult, catch-up reading sessions, or a catch-up Welsh lesson following a short absence due to illness. Teaching which recognises and responds to the needs of individual learners is a key component of all high quality education, and is something which is generally made available in schools and FEIs in Wales. The processes set out in the Act in relation to ALN should not be used to compensate for a lack of good quality teaching and tailored education.
109. Slow progress and low attainment do not necessarily mean that a child has ALN and should not automatically lead to a learner being recorded as such. However, this may be an indicator of an ALN.
110. Equally, it should not be assumed that attainment in line with chronological age means that there is no ALN. Some learning difficulties and disabilities occur across the range of cognitive ability and left unaddressed may lead to frustration. This can manifest itself as disaffection, emotional or behaviour difficulties.
111. Moreover, persistent disruptive, difficult or withdrawn behaviour does not necessarily mean that a child or young person has ALN. Where there are concerns, consideration should be given to whether or not there are any causal factors, such as underlying learning or communication difficulties. If it is thought that housing, family or other domestic circumstances may be contributing to the presenting behaviour, a multi-agency approach should be adopted.
112. Professionals should also be alert to other events that can lead to learning or other, wider difficulties, for example bullying or bereavement. Such events will not always lead to a child or young person having ALN, but they can have an impact on well-being, which might affect the attainment of educational outcomes. Schools and FEIs should ensure they make appropriate provision for a child or young person's short-term needs in order to prevent problems escalating. Where there are longer-lasting difficulties which result in a '*significantly greater difficulty in learning*', and which might call for ALP, schools,

FEIs and local authorities **must** consider whether the child or young person has ALN<sup>14</sup>.

### **Initial considerations – disabilities**

113. Not all disabled children and young people will have ALN. However, if their disability prevents or hinders them from making use of educational facilities or strategies, which are of the kind generally provided for others of the same age in mainstream maintained schools or FEIs, and the individual requires ALP as a result, then they are to be regarded as having ALN<sup>15</sup>. Moreover, there will be some forms of disability, the nature of which mean it is likely that the learner will have ALN.
114. Schools, FEIs and local authorities should bear in mind their additional responsibilities under the Equality Act 2010. The Act also makes provision for disability discrimination claims made under that Act to be taken to the Education Tribunal.

### **Initial considerations – Welsh or English as an additional language**

115. A person will not have a learning difficulty or disability – and, therefore, will not have ALN – solely because the language (or form of language) in which they are taught is different from the language (or form of language) which is, or has been, spoken at home<sup>16</sup>.
116. Those with Welsh or English as an additional language might need extra support to achieve their potential, but will not necessarily have ALN. That said, when a child or young person has English or Welsh as an additional language and makes slow progress (despite differentiated teaching to support them), consideration should be given to whether there is a wider issue.
117. Identifying and assessing ALN for those whose first language is not Welsh or English requires particular care. All aspects of a child or young person's learning and development need to be considered to assess whether their difficulty is the result of the challenge of learning Welsh or English as an additional language or if it arises from ALN. The school, FEI or local authority should look carefully at all aspects of a child or young person's performance in different subjects to establish whether any difficulties they have are due to limitations in their command of the language that is used or if it arises from ALN.
118. A full assessment should be made of the exposure the child or young person has had in the past to each of the languages they speak, the use they make of them currently and their proficiency in them. Information about language skills obtained in this way will form the basis of all further work with them, both in

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<sup>14</sup> Section 9(1), 10(1) and 12(1) of the Act.

<sup>15</sup> Section 2(1) and (2) of the Act.

<sup>16</sup> Section 2(4) of the Act.

assisting understanding of their needs and in planning any additional language support required.

## **Initial considerations – more able and talented**

119. The term ‘more able and talented’ encompasses learners who are more able across the curriculum, as well as those who show talent in one or more specific area. Those children and young people who are considered more able and talented should not be considered as having ALN solely on the basis of their enhanced ability or talent. These children and young people require enhanced opportunities and challenge in order to reach their full potential, which should be provided as part of differentiated learning.
120. A child or young person could, however, be more able and talented and have ALN. For example, a child or young person may be very proficient in one part of their education but have ‘*significantly greater difficulty in learning*’ than the majority of others of the same age in other parts of their education. The impact of enhanced ability or talent on a learners’ psychological or emotional well-being should also be borne in mind and may be relevant in determining ALN.

## **Initial considerations – medical needs**

121. Schools and local authorities should make arrangements to support learners with medical conditions; this is outlined in the guidance *Access to Education and Support for Children and Young People with Medical Needs*<sup>17</sup>. However, not all children and young people with a medical need will have ALN, and the two are not synonymous.
122. In some cases, medical conditions may have a significant impact on the child or young person’s experiences and the way they function in school or further education. The impact may be a direct one, in that the medical condition may affect their cognitive abilities, physical abilities, behaviour or their emotional state. The impact could also or alternatively be indirect, for example by disrupting their access to education through unwanted effects of treatment or through the psychological effects that serious or chronic illness or disability can have on a child or young person and their family.
123. Consultation and open discussion between the child, child’s parent or young person and the school or FEI (as well as with any relevant health professionals) are essential to ensure the child or young person makes maximum progress. Schools and FEIs should also have their own pastoral arrangements to discuss health related and other problems.
124. Section 16 of the Act gives a power to schools, FEIs and local authorities to prepare, review or revise an IDP at the same time as it, or another body, is preparing, reviewing or revising another document in relation to the individual. This ensures that, for example, where a child or young person has an individual health care plan and an IDP, provision can be planned and delivered in a

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<sup>17</sup> <http://gov.wales/topics/educationandskills/publications/guidance/medicalneeds/?lang=en>



coordinated way: the IDP and the individual health care plan could be reviewed at the same time, ensuring integration of plans and/or provision where this is appropriate.

## **Identification of the potential existence of ALN – who can help?**

125. Early identification of ALN is important. Lots of different agencies, professionals and individuals have a role to play in identifying children and young people who may have ALN, including, for example:

- parents/carers;
- foster carers;
- health visitors;
- paediatricians;
- GPs;
- Flying Start staff;
- Families First staff;
- Portage;
- childcare providers;
- pre-school settings staff;
- teaching staff;
- learning and support assistants;
- ALNCoS;
- members of governing bodies;
- school nurses;
- occupational therapists;
- speech and language therapists;
- physiotherapists;
- social workers;
- consultants;
- educational psychologists;
- counselling services;
- youth offending teams;
- mentors and careers advisors; and
- tutors.

This list is not exhaustive.

126. In relation to children, parents will play a key role in observing and if appropriate monitoring their child's development. They should raise any concerns with the child's education setting at first instance, though they have the option of contacting the local authority if necessary, and should do this in the case of children not yet attending an education setting.

127. However, the duties of maintained schools, FEIs and local authorities to determine whether an individual has ALN apply whenever it is brought to their attention, or otherwise appears to them, that the individual may have ALN<sup>18</sup>.

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<sup>18</sup> Section 9(1), 10(1) and 12(1) of the Act.

Maintained schools, FEIs and local authorities are not required to – and should not – wait to take steps until an individual or parent or actively seeks assistance.

## Chapter 7: Identification of ALN – guidance for specific bodies and educational settings

### Summary

128. This Chapter provides specific guidance in respect of the identification of ALN to assist those working with particular groups of children and young people: those under compulsory school age; maintained school pupils; and FEI students. In all cases, early identification and intervention can significantly reduce the need for (potentially more costly) interventions at a later stage.

*[We expect to develop this Chapter in due course to take account of stakeholder input and to supplement it with supporting resources, such as good practice case studies. Additional guidance might include, for example, further detail in respect of meeting the threshold of ALN and the levels of intervention.]*

*[Furthermore, the Welsh Government is developing an Early Years Development and Assessment Framework (EYDAF). This is intended for the use of all early years practitioners, including those working in health services, Flying Start settings, the Foundation Phase and childcare. It is intended that the Code will set out detail of how the EYDAF can be applied to assist the identification of children with ALN.]*

### Children under compulsory school age – health bodies’ role and power to notify

129. Health bodies support early identification of young children who may have ALN through a range of services. Children with more complex developmental and sensory needs may be identified at birth whilst standard health assessments, such as the hearing screening test, which is used to check the hearing of all new-born babies, enable very early identification of a range of medical and physical difficulties. Paediatricians, in conjunction with other health professionals, are often the first people to notify local authorities that young children for whom they are responsible have, or may have, ALN.

130. Section 48 of the Act sets out the powers of and legal duties placed on health bodies in relation to this early identification of ALN.

131. It applies to the following health bodies (which may be in England):

- Health Boards;
- NHS Trusts;
- Clinical Commissions Groups; and
- NHS Foundation Trusts<sup>19</sup>.

132. Where a health body, in the course of exercising its functions in relation to a child who is under compulsory school age, and for whom a local authority in

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<sup>19</sup> Section 48(2) of the Act.

Wales is responsible, forms the opinion that the child has (or probably has) ALN, the health body may bring the matter to the attention of the appropriate local authority. The health body may only do this if it is satisfied that it is in the best interests of the child<sup>20</sup>.

133. Whether notifying the local authority is in the best interests of the child is for the health body to determine. It is likely to be in a child's best interests where:
- informing the local authority will help the authority plan for provision that the child will require when he/she attends an early years setting or primary school;
  - as a consequence, the local authority is able to put provision in place before the child reaches compulsory school age – this early intervention may reduce the likely impact of ALN on the child or prevent the impact of ALN on the child from becoming more severe;
  - the local authority would be able to implement early intervention which would support parents to support their child (such support might be emotional or help to establish trust and positive relationships between the local authority and the parent).
134. Before doing this, the health body **must** inform the child's parent of its opinion and of its power to notify the relevant local authority<sup>21</sup>. It **must** also give the parent an opportunity to discuss the issue, before approaching the local authority<sup>22</sup>.
135. If the health body is of the opinion that a particular voluntary organisation is likely to be able to provide the parent with advice or other assistance in connection with the child's ALN, it **must** inform the parent of that voluntary organisation<sup>23</sup>.
136. Whenever a health body contacts a local authority in this way, it will have been brought to the attention of the local authority that the child has, or may have, ALN. Local authorities **must** go on to determine this issue in accordance with their duties under section 12(1) of the Act (see Chapter 13).
137. At a later stage in the process, health bodies may also provide diagnostic services and health reports to assist with the preparation of IDPs – see Chapter 13 for more details.

### **Children under compulsory school age – non-maintained settings**

138. Many children under compulsory school age attend non-maintained settings such as private or voluntary run playgroups, nurseries or meithrin. Where parents of children at such a setting have concerns, it is open to them to contact the local authority to determine whether the child has ALN. Local

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<sup>20</sup> Section 48(1) and (4) of the Act.

<sup>21</sup> Section 48(3) of the Act.

<sup>22</sup> Section 48(4) of the Act.

<sup>23</sup> Section 48(5) of the Act.

authorities **must** then go on to determine this issue in accordance with their duties under section 12(1) of the Act (see Chapter 9).

## **Children and young people at maintained schools**

139. This section gives guidance on how a maintained school (which will include maintained nursery schools) should deal with identification of ALN for school pupils.

140. Every maintained school has duties under the Act to identify and address the ALN of the pupils registered with them. All maintained schools should, therefore, have a clear approach to identifying and responding to ALN.

141. As noted in Chapter 6, the school **must** determine whether a pupil has ALN whenever it is brought to their attention, or appears to them, that ALN may exist<sup>24</sup>. There are potentially three exceptions to this in the case of schools:

- The school has previously decided the issue, is satisfied that the needs have not changed materially since that decision and there is no new information which might affect that decision<sup>25</sup>.
- The school refers the matter to the local authority for determination. A school may only do this where either deciding the matter is beyond their capability or the pupil is likely to have ALN which calls for ALP that it would not be reasonable for that school to secure<sup>26</sup> (see Chapter 9).
- The pupil is a young person (that is, over compulsory school age) who does not consent to the decision being made<sup>27</sup>.

142. The benefits of early identification are widely recognised. Identifying need at the earliest point and then making effective provision greatly enhances the opportunity for the child or young person to achieve their potential. The earlier action is taken, the more responsive the individual is likely to be and the intervention required is likely to be less intense and most cost effective.

## **Determination as to whether a Pupil has ALN - Triggers**

143. For some children and young people, ALN can be identified at an early age; for others, difficulties become evident only as they develop. Some learners' ALN might not have been identified previously. Further, ALN can change over time and will need to be continually reviewed. All those working with children and young people should be alert to emerging difficulties and respond quickly and emphatically.

144. All maintained schools should assess each child's current level of attainment on entry in order to ensure they build upon the pattern of learning and experience already established. Maintained schools should make full use of information

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<sup>24</sup> Section 9(1) of the Act.

<sup>25</sup> Section 11(1) and (3) of the Act.

<sup>26</sup> Section 11(1), (4) and (5) of the Act.

<sup>27</sup> Section 11(1) and (2) of the Act.

passed to them from early years settings or any previous school (such as a primary school), including any IDPs which are transferred to them. This process should ensure that the potential existence of ALN is identified early, which will trigger the duty of the school to determine the issue.

145. Concerns may arise, for example, where a pupil, despite receiving appropriate education experiences:
- makes little or no progress towards meeting their potential, even when teaching approaches are particularly targeted to improve the child or young person's identified area of weakness;
  - continues working at levels significantly below those expected for children or young people of a similar age, or those expected of the individual themselves, such as showing signs of difficulty in developing literacy or mathematics skills, which result in poor attainment in curriculum areas;
  - presents persistent emotional or behavioral difficulties, which are not ameliorated by the behavior management techniques usually employed in the school;
  - has sensory or physical problems, and continues to make little or no progress against that which is expected of the individual, despite the provision of specialist equipment; or
  - has communication and/or interaction difficulties, and continues to make little or no progress despite the provision of a differentiated curriculum.
146. Assessment against the National Curriculum level descriptions for each subject will enable a school to consider the individual pupil's attainment and progress against the expected levels for the majority of their peers. Similarly, a school will regularly assess and report progress to parents on literacy and numeracy skills, including – but not exclusively – through national reading and numeracy tests. Those children and young people whose overall attainments or attainment in specific subjects fall significantly outside the expected range may have ALN. Wider consideration should also be given to whether the learner is meeting their own potential.
147. Whenever teaching staff have concerns, they should notify the school's ALNCo, who will be able to provide further support and assistance.
148. Concerns might also be expressed by the pupil or their parents. Parents' observations of their child are often crucial to early identification, and schools should be open and responsive to such expressions of concern and take account of any information provided.

### **The ALN Determination**

149. In determining whether a pupil has ALN, consideration needs to be given to a range of factors and a full assessment made. Practitioners should refer back to the definition of ALN at section 2 of the Act, have regard to the guidance on the application of this definition set out at the beginning of Chapter 6, and apply it to the individual circumstances of the case.

150. To help identify children or young people who may have ALN, schools can measure children or young people's progress by referring to:
- their performance, including whether they are meeting their own potential, monitored by the teacher as part of ongoing observation and assessment;
  - their progress in literacy and numeracy and other curriculum areas;
  - their performance against the level descriptions within the National Curriculum at the end of a key stage; and
  - standardised screening or assessment tools and frameworks.
151. Class and subject teachers, supported by the senior leadership team, should make regular assessments of progress for all learners. These assessments should seek to identify learners making less than expected progress, which can be characterised as progress which:
- is significantly slower than that of their peers starting from the same baseline;
  - fails to match or better the child's previous rate of progress; or
  - fails to close, or widens, the attainment gap between the child and their peers.
152. It can include progress in areas other than attainment, for instance where a learner needs to develop wider social or emotional behaviours in order to make a successful transition to adult life.
153. A judgement has to be made in each case as to what it is reasonable to expect a particular child or young person to achieve. Where progress is not adequate, it will be necessary to take some additional or different action to enable the learner to learn more effectively.
154. A school's system for observing and assessing the progress of individual children and young people should provide information about areas where a child or young person is not progressing satisfactorily, despite the teaching style having been differentiated. These observations should be complemented by knowledge built up over time of a pupil's strengths and weaknesses. Using this evidence, class teachers may decide that the strategies they are currently using are not resulting in the child or young person learning as effectively as possible. Under these circumstances, they should proceed to determine whether ALN exist. The school's ALNCo should be able to assist if required. The starting point will always be to review and consider the development of the strategies currently in place. The review may lead to the conclusion that the child or young person requires help over and above that which is normally available within the particular class or subject.
155. The first response to inadequate progress should be high quality teaching targeted at their areas of weakness. Schools should not delay in putting in place differentiated teaching or other targeted interventions designed to secure better progress where appropriate, for all pupils. This is a fundamental element of high quality – but routine – teaching. That said, where progress continues to be less than expected, the class or subject teacher may come to consider that

a pupil has ALN. In that case, and working with the ALNCo, the school **must** make a determination of the matter (unless one of the exceptions applies – see above).

156. Where it is determined that the pupil has ALN, section 9(3) of the Act confirms that the school **must** prepare and maintain an IDP. See Chapters 10-15 for further information about IDPs.

## **Children of compulsory school age – non-maintained settings**

*[It is intended that further guidance will be inserted into this section, subject to ongoing engagement with stakeholders].*

157. Some children attend non-maintained (independent) schools. Where children, their parents or young people at such a setting have concerns, it is open to them to contact the local authority for a determination about whether ALN exist. The local authority will then have duties to consider the issue (and, if ALN are found, to put an IDP in place) pursuant to section 12 of the Act (see Chapter 9).

## **Young people at further education institutions**

*[It is intended that further guidance will be inserted into this section, and more generally in respect of Further Education, subject to ongoing engagement with stakeholders.].*

158. This section gives guidance on how a Further Education Institution (FEI) should deal with identification of ALN for enrolled students.
159. Every FEI has duties under the Act to identify and address the ALN of the students enrolled with them. All FEIs should have a clear approach to identifying and responding to ALN.
160. The FEI **must** determine whether an enrolled student has ALN whenever it is brought to their attention, or appears to them, that ALN may exist<sup>28</sup>. There are potentially three exceptions to this in the case of FEIs:
- The FEI has previously decided the issue, is satisfied that the needs have not changed materially since that decision and there is no new information which might affect that decision<sup>29</sup>.
  - The FEI refers the matter to the local authority for determination. An FEI may only do this where either deciding the matter is beyond their capability or the student is likely to have ALN which calls for ALP that it would not be reasonable for that FEI to secure<sup>30</sup> (see Chapter 9).
  - The student does not consent to the decision being made<sup>31</sup>.

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<sup>28</sup> Section 10(1) of the Act.

<sup>29</sup> Section 11(1) and (3) of the Act.

<sup>30</sup> Section 11(1), (4) and (5) of the Act.

<sup>31</sup> Section 11(1) and (2) of the Act.



161. The benefits of early identification are widely recognised. Identifying need at the earliest point and then making effective provision greatly enhances the opportunity for the young person to achieve their potential. The earlier action is taken, the more responsive the young person is likely to be and the intervention required is likely to be less intense and more cost effective.

### **Determination as to whether a student has ALN - Triggers**

162. The majority of recent school leavers enrolling with FEIs will have had their ALN identified whilst at school. FEIs should be involved in transition planning between the school and FEI, and between the FEI and other post-16 providers, so that they can understand the learner's needs and prepare to meet those needs (see Chapter 17).

163. FEIs will need to be particularly alert to the fact that the needs of young people change over time. Some might no longer have ALN and, therefore, no longer require ALP; some might require a different form of ALP; and others might require ALP for the first time.

164. All applicants and enrolled learners should be given the opportunity, either before or at entry, and at subsequent points, to declare whether they have a learning need, disability or medical condition that will affect their learning. If a learner does make a declaration, the FEI should discuss with the learner how they will provide support. Any screenings and assessments should be differentiated and proportionate to the likely level of ALN.

165. Some learning needs may not become apparent until a learner has begun their programme of study. Teaching staff should work with student support services to identify whether a learner's difficulties are a result of ALN. It should not be assumed that a learner has ALN just because they have lower attainment levels than the majority of their peers. Equally it should not be assumed that learners working on higher level courses do not have ALN.

166. The first response to inadequate progress, or progress which does not represent the individual student's potential, should be high quality teaching targeted at their area or areas of weakness. FEIs should not delay in putting in place differentiated teaching or other targeted interventions designed to secure better progress, where appropriate, for all students. This is a fundamental element of high quality – but routine – teaching. That said, if the FEI considers that a learner may have ALN, it **must** make a determination of the matter (unless one of the exceptions applies – see above).

167. FEIs should be alert to a range of factors which might affect the young person's learning, such as housing, family and other domestic situations. These might not result in ALN but may be a casual factor.

168. Where it is determined that the student has ALN, section 19(3) of the Act confirms that the FEI **must** prepare and maintain an IDP. See Chapter 10-15 for further information about IDPs.

## Chapter 8: Decisions that a child or young person does not have ALN

### Summary

This Chapter outlines the steps which **must** be taken when a decision is made that a child or young person does not have ALN. It also details what steps might be taken by the child, their parent, or young person to challenge such a decision.

### Maintained school decisions

169. As explained in Chapters 6 and 7, a maintained school **must** decide whether a child or young person has ALN in accordance with section 9(1) of the Act. In some cases, the school will determine that the individual does not have ALN. In those circumstances, section 9(2) of the Act confirms that the school **must** notify the child and the child's parent, or the young person, of the decision and the reasons for it.

170. The notification should be made as soon as possible.

171. As well as outlining the decision and the reasons for it, the notification should contain:

- the name and contact details of the ALNCo in the school;
- copies of the relevant information and advice made available by the local authority or details of how to access it<sup>32</sup>;
- details of the independent advocacy services available and of the relevant avoidance of disagreement service;
- an outline of the right to contact their local authority to discuss the issue further.

172. The notification should also contain an outline of what action the school will undertake to ensure the child or young person's needs are met. This might include any strategies or facilities that form part of the differentiated classroom teaching which can be utilised.

173. It might be helpful to offer an opportunity to the child and their parent, or the young person, to meet to discuss this further.

### Maintained school decisions – referrals to local authorities

174. Where a child or their parent, or a young person, does not agree with a maintained school's decision that they do not have ALN, they may initially wish to engage the independent advocacy services made available by the local authority, with the aim of resolving the issue at school level (see also Chapter 20 for avoiding and resolving disagreements).

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<sup>32</sup> As per the duty on local authorities set out at section 7 of the Act.

175. Alternatively, the individual may wish to seek a decision on the issue from their local authority, pursuant to section 17 of the Act. In that circumstance, the local authority **must** make its own decision as to whether the child or young person has ALN<sup>33</sup>.
176. Before the local authority makes this decision, it **must** inform the school and invite representations from it<sup>34</sup>.
177. Local authorities should take into account all available information and obtain any further information necessary in order to take an informed decision. It may be that the local authority wishes to adopt the decision of the school as its own; it may be that the local authority takes a different view.
178. If the local authority determines that the individual does not have ALN, section 12(2) of the Act provides that the local authority **must** notify the child and the child's parent, or the young person, of the decision and the reasons for it. The notification of the decision should also be sent to the relevant education institution.
179. The notification should be made as soon as possible.
180. As well as outlining the decision and the reason/s for it, the notification should contain:
- the name and contact details of the relevant contact at the local authority;
  - copies of the relevant information and advice made available by the local authority or details of how to access it<sup>35</sup>;
  - details of the independent advocacy services available and of the relevant avoidance of disagreement service; and
  - an outline of the right to appeal to the Education Tribunal against the decision.
181. The notification should also contain an outline of what action the school and/or local authority will undertake to ensure the child or young person's needs are met. This might include any strategies or facilities that form part of the differentiated classroom teaching which can be utilised.
182. It might be helpful to offer an opportunity to the child, child's parent or young person to meet to discuss this further.
183. A local authority decision that an individual does not have ALN is appealable to the Education Tribunal – see Chapter 21.

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<sup>33</sup> Section 17(2) of the Act.

<sup>34</sup> Section 17(3) of the Act.

<sup>35</sup> As per the duty on local authorities set out at section 7 of the Act.

## Local authorities – moderating groups for ALN decisions

184. Local authorities may wish to set up moderating groups to support consistent and transparent decision making in relation to identification of ALN. Through sampling and retrospective comparison, moderating groups can help local authority practice become more robust and clearly understood by children, parents, young people and education institutions. Feedback and evidence gathered from professionals should feed into such moderation.
185. The information established as a result of the moderating groups should contribute to understanding the needs of the children and young people in the area and should be used to consider how to continue to meet these needs. The lessons learned and decisions taken as a result of moderating groups should be shared with the education institutions in the local authority's area.
186. The lessons that are learned should also be used nationally to facilitate consistency across all regions.

## FEI decisions

187. As explained in Chapters 6 and 7, an FEI **must** decide whether a young person has ALN in accordance with section 10 of the Act. In some cases, the FEI will determine that the individual does not have ALN. In those circumstances, the FEI **must** notify the young person of the decision and the reasons for it<sup>36</sup>.
188. The notification should be made as soon as possible.
189. As well as outlining the decision and the reason/s for it, the notification should contain:
- the name and contact details of the ALNCo in the FEI;
  - copies of the relevant information and advice made available by the local authority or details of how to access it<sup>37</sup>;
  - details of the independent advocacy services available and of the relevant avoidance of disagreement service; and
  - an outline of the right to appeal to the Education Tribunal against the decision.
190. The notification should also contain an outline of what action the FEI will undertake to ensure the young person's needs are met. This might include any strategies or facilities that form part of the differentiated classroom teaching which can be utilised.
191. It might be helpful to offer an opportunity to the young person to meet to discuss this further.

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<sup>36</sup> Section 10(2) of the Act.

<sup>37</sup> As per the duty on local authorities set out at section 7 of the Act.

192. An FEI decision that an individual does not have ALN is appealable to the Education Tribunal – see Chapter 21 for further information.

## Chapter 9: Local authority involvement

### Summary

193. This Chapter outlines the responsibilities of maintained schools, FEIs and local authorities in making decisions about ALN and IDPs. In particular, the Chapter sets out when local authorities might be required to make and review decisions in relation to ALN and IDPs, and the steps they should subsequently take.

### Introduction

194. IDPs may be prepared and maintained by local authorities, maintained schools or FEIs depending on the circumstances.

195. In most instances, where it is identified that a child or young person may have ALN, the maintained school or FEI which the child or young person attends will be responsible for deciding if the child or young person has ALN, and if so, putting an IDP in place.

196. Local authorities will normally only make these decisions or prepare and maintain an IDP in instances where the child or young person's needs are more severe or complex.

### ALN decisions – school and FEI referrals to local authorities

197. Where a maintained school or FEI becomes aware that a child or young person may have ALN, it **must** determine whether or not that is the case<sup>38</sup>.

198. There are limited circumstances in which this duty is disapplied (see Chapter 6 for full detail). In particular, a school or FEI can refer a decision about whether or not a child or young person has ALN to the relevant local authority if it considers that:

- deciding the matter is beyond the institutions' capability; or
- the child or young person is likely to have ALN that call for additional learning provision which it would not be reasonable for the institution itself to secure<sup>39</sup>.

199. This situation might arise, for example, where the child or young person:

- has a low incidence condition which requires specialism that the school or FEI cannot provide;
- requires regular advice and support from external agencies;
- requires equipment which can only be used by one child or young person / can not be reused / is beyond the reasonable resources of the school or FEI; or

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<sup>38</sup> Section 9(1) and 10(1) of the Act.

<sup>39</sup> Section 11(1), (4) and (5) of the Act.

- requires very intensive daily support which can not be reasonably funded or secured by the school or FEI's budget.
200. Where a case is referred to a local authority in this way, the local authority's duties under section 12 of the Act (set out in detail later in this Chapter) will apply.
201. Where a school or FEI refers an ALN decision to the local authority, it should provide to the local authority any information it holds about the child or young person which would support the local authority's determination of whether or not the child or young person has ALN. This includes any action already taken to meet the needs of the child or young person, such as any resources or special arrangements put in place. It would also include any existing reports or written advice from external agencies received. *[Section 52 of the Act includes a power to make regulations about the disclosure and use of information, which will set out further detail on this topic in due course].*

## **ALN decisions – local authorities' general duties under section 12**

202. Local authorities may be required to decide whether or not a child or young person has ALN in other circumstances, without the need for a referral from an educational institution.
203. In particular, section 12 of the Act states that, where it is brought to the attention of, or appears to, a local authority that a child or young person for whom it is responsible may have ALN, and an IDP is not being maintained for that person, the local authority **must** decide whether the individual has ALN (unless the exemptions below apply). This duty is broken down below.

### **'Brought to the attention of / appears to'**

204. An individual's case could be brought to the attention of a local authority in a number of ways. The below list of potential scenarios is not exhaustive:
- A child or their parent, or a young person, has made a direct request to the local authority to reconsider a maintained school's decision about ALN (section 17(1) and (2) of the Act). This provides children, their parents, and young people with an effective means of challenging the decision of a maintained school. See Chapter 9 for more information on the steps a local authority **must** take when considering such a request.
  - A non-maintained setting has alerted the local authority that they believe the child or young person has, or may have, ALN.
  - A relevant health body has formed the opinion that a child under compulsory school age has, or may have, ALN and brought it to the attention of the local authority (see Chapter 7 and section 48 of the Act).
  - A third party, for example a friend or family member, has alerted the local authority that they consider the child or young person may have ALN.

## Individuals for whom the Local Authority is Responsible

205. Section 55 of the Act determines when a local authority will be responsible for a child or young person. In the vast majority of cases, it will be very clear – a local authority will be responsible for a child or young person if they:

- are ordinarily resident in the local authority's area; or
- have no ordinary residence, but are resident in the authority's area for the time being<sup>40</sup>.

206. This means that a school or FEI's local authority area might be different to the local authority which is responsible for the child or young person. The Act includes provisions to ensure that local authorities work together in circumstances such as this (see, for example, sections 49 and 50).

*[The Act also includes a power to make regulations on when a local authority will be 'responsible' for an individual for the purposes of the Act. It is intended that this power will be used to deal with more complex cases, for example, where a child attends a boarding school away from the 'home' local authority area.]*

## Circumstances in which No Local Authority Decision is Required

207. Section 13 of the Act confirms that the general duty on local authorities referred to above (that is, the duty under section 12(1) of the Act) will not apply where any of the following three circumstances exists:

- Where the local authority is satisfied that the matter is already being decided by the education setting itself<sup>41</sup>. This exception ensures that there is no duplication of resource, and that a single decision follows.
- Where the individual is a young person who does not consent to a decision being made<sup>42</sup>.
- Where the local authority has previously decided the issue, is satisfied that the needs have not changed materially since that decision and there is no new information which might affect that decision<sup>43</sup>.

208. However, where a child or their parent, or a young person, requests that a local authority reconsiders the decision of a maintained school regarding the existence of ALN under section 17 of the Act, the local authority **must** take a decision in every case – it cannot rely on the exceptions above. That local authority decision is then appealable to the Education Tribunal under section 40(2)(a) of the Act.

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<sup>40</sup> Section 55 of the Act.

<sup>41</sup> Section 13(2) of the Act.

<sup>42</sup> Section 13(3) of the Act.

<sup>43</sup> Section 13(4) of the Act.



## The local authority decision on ALN – next steps

209. Where the local authority decides that the child or young person does not have ALN it **must** notify the child and their parent, or the young person, of the decision and the reasons for that decision<sup>44</sup>. A local authority decision that a child or young person does not have ALN is appealable to the Education Tribunal – see Chapter 21.
210. Where the local authority decides that a child or young person has ALN, the next steps will depend on the circumstances of the case, as set out below.

### Children and Young People Attending or to Attend a Maintained School

211. Where a child or young person attends, or is to attend, a maintained school, and the local authority determines that they have ALN, the local authority **must** either:
- prepare and maintain an IDP;
  - prepare an IDP and direct the school to maintain it; or
  - direct the school to both prepare and maintain an IDP<sup>45</sup>.
212. A local authority might direct a maintained school to prepare, or prepare and maintain an IDP where they consider that it would be reasonable for the school to secure the ALP called for by the child or young person's ALN.
213. However, if the IDP includes board and lodging provision, the local authority **must** prepare and maintain it – it cannot direct a school to do so<sup>46</sup>.
214. Further, if a decision of this type is taken following a reconsideration of a maintained school's original decision (that is, the local authority has been asked to look at the matter by a child, their parent or a young person), the local authority decision will replace the maintained school's decision<sup>47</sup>.

### Children Attending or to Attend a non-Maintained Setting

215. Where a child attends, or is to attend, a non-maintained school, and the local authority determines that the individual has ALN, the local authority **must** prepare and maintain an IDP<sup>48</sup>.

### Young People Enrolled at an FEI

216. Where a young person is enrolled as a student at an FEI, and a local authority determines that the individual has ALN, the local authority **must** prepare and

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<sup>44</sup> Sections 17(4) and 12(2) of the Act.

<sup>45</sup> Section 12(3)(a) and (b), and 12(4) of the Act.

<sup>46</sup> Section 12(5), (6) and (7) of the Act.

<sup>47</sup> Section 17(5) of the Act.

<sup>48</sup> Section 12(3)(a) and (4)(a) of the Act.

maintain an IDP<sup>49</sup>. That FEI will then have a legal duty to help the local authority under section 25 of the Act.

## Other Young People

*[Section 12(4) of the Act provides that the local authority **must** prepare and maintain an IDP for young people who are not enrolled as a student at an FEI where it considers this necessary in order to meet the individual's reasonable needs for education or training. These decisions must be made in accordance with regulations made by the Welsh Ministers. The current intention is that the regulations will capture individuals with severe and/or complex needs that can only be met at an Independent Special Post-16 Institution. Further guidance on this will then be incorporated into the Code in due course.]*

## Local authority reconsideration of maintained school IDPs

217. Section 18 of the Act sets out the circumstances in which a local authority **must** reconsider an IDP put in place by the governing body of a maintained school in Wales. A child, child's parent or young person may request that a local authority reconsiders an IDP, with a view to it being revised. This provides children, their parents and young people with an effective means of challenging the content of the IDP put in place for them by the school.

218. Where such a request is made, the local authority **must** inform the school and invite representations from it before the local authority decides whether the IDP should be revised<sup>50</sup>.

219. If the local authority determines that the IDP should not be revised, section 18(4) of the Act confirms that the local authority **must** notify the child and the child's parent, or the young person, of the decision and the reasons for it.

220. If the local authority decides that the plan should be revised, it **must** prepare a revised plan and either:

- direct the school to maintain the IDP; or
- take over responsibility for maintaining the plan (see further below)<sup>51</sup>.

221. The local authority should direct a maintained school to maintain the IDP where it considers that the content of the IDP can reasonably be expected to be delivered by the school. Where the provision of the IDP would be beyond the capability of the school, the local authority should take over responsibility for maintaining the plan.

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<sup>49</sup> Section 12(3)(b) and (4)(a) of the Act.

<sup>50</sup> Section 18(3) of the Act.

<sup>51</sup> Section 18(5) of the Act.

## Local authority taking over responsibility for an IDP

222. Section 19 of the Act allows both maintained schools and FEIs, as well as children, their parents and young people, to request that a local authority decide whether it should take over responsibility for an IDP that is currently being maintained by the educational institution.
223. A school or FEI might request the local authority to take over responsibility for maintaining an IDP where, for example, the school or FEI believes that it would no longer be reasonable for them to secure the ALP called for by child or young person's ALN.
224. Alternatively, a child, child's parent or young person might request the local authority to take over responsibility for an IDP where they do not believe the school or FEI has fully met their needs, or they believe they require further or alternative ALP.
225. Where the school or FEI has requested that the local authority consider taking over responsibility for maintaining an IDP, the local authority **must** inform the child and their parent, or the young person, and invite representations<sup>52</sup>. Where the request is from a child, child's parent or young person, the local authority **must** inform the school or FEI and invite representations<sup>53</sup>. These processes ensure that all parties with an interest in the issue are able to feed into the local authority's decision.
226. The local authority **must** then decide whether to take over responsibility for maintaining the plan.
227. A local authority can also decide that it should take over responsibility for maintaining a plan when it determines that a plan should be revised (see above regarding revision of plans and section 18(5)(b) of the Act).
228. A child and their parent, or young person, **must** be informed of any local authority decision on the issue, and given reasons for it<sup>54</sup>.
229. Where a local authority decides not to take over responsibility, the child and/or their parent or the young person may appeal this decision to the Education Tribunal<sup>55</sup>.
230. Where the local authority decides to take over responsibility, from the date of receiving notification, the school or FEI is no longer required to maintain the plan. *[Further detail on the technicalities of such notifications will be inserted into the Code in due course].*

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<sup>52</sup> Section 19(2) of the Act.

<sup>53</sup> Section 19(3) of the Act.

<sup>54</sup> Section 19(5) of the Act.

<sup>55</sup> Section 40(2)(g) of the Act.

## Local authority duty to keep ALP under review

231. Section 45(1) of the Act confirms that a local authority **must** keep under review the arrangements made both by the authority, and by the governing bodies of the maintained schools in its area, for children and young people who have ALN.
232. As part of their review, local authorities **must** consider the extent to which these arrangements are sufficient to meet the ALN of the children and young people for whom it is responsible. In doing so, it **must** also have regard to the ALP that may reasonably be arranged by others (such as health bodies)<sup>56</sup>.
233. In undertaking this review, the local authority **must** consult the persons/bodies it considers appropriate<sup>57</sup>.
234. The review is not intended as a method for measuring or monitoring the quality of individual ALP. Instead, the review should enable local authorities to establish whether or not the *overall* ALP delivered in their area meets the *overall* need.
235. The review will also enable local authorities to assess likely future need, plan for future provision requirements, consider commissioning plans in advance and provide maintained schools with an opportunity to have a say in how provision is planned. Reviews should support strategic decision making within the local authority on whether or not the authority has the correct type and capacity of provision to meet the needs of their population with ALN. A review such as this might equip a local authority with information about, for example, the take up of specialist dyslexia services in their area and how well the current arrangements work, allowing the authority to consider whether there is a more efficient way of meeting those needs in the future.

## Local authority right of access to premises

236. Section 50 of the Act gives local authorities a right of access to the premises of certain schools and other education institutions in specific circumstances.
237. The right of access applies in relation to the following types of institutions:
- an independent school in Wales or England;
  - a maintained school in the area of another local authority in Wales or England;
  - an institution within the FE sector in Wales or England;
  - an Academy;
  - a non-maintained special school; and
  - an Independent Special Post-16 Institution included in the list of such institutions maintained by the Welsh Government.

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<sup>56</sup> Section 45(2) of the Act.

<sup>57</sup> Section 45(3) of the Act.

238. The following conditions apply:

- the local authority must be maintaining an IDP for a child or young person registered / enrolled at the institution;
- access is only permitted where it is *necessary* for the purpose of exercising the local authority's functions under the Act (such as monitoring the delivery of provision set out in the IDP);
- only persons authorised by the local authority may have access; and
- the local authority may only have access at reasonable times.

## Chapter 10: Mandatory content for IDPs

### Summary

239. This Chapter sets out the mandatory content of IDPs, that is, the information which all IDPs **must** contain.

### The content of an IDP – general

240. An IDP is intended to be a flexible document. However, it is important that all IDPs contain certain key elements. This will ensure broad consistency and equality in terms of the way that learners are treated and will underpin the cohesion of the ALN system as a whole and the portability of individual plans.

241. Section 8 of the Act defines the term ‘Individual Development Plan’. It confirms that an IDP is a document which contains a description of the person’s ALN and a description of the ALP that the person’s learning difficulty or disability calls for.

242. It is a legal requirement that an IDP **must** also contain certain other mandatory information, as well as the information referred to above. Details of this mandatory content are set out below<sup>58</sup>.

### Mandatory IDP content

243. All IDPs **must** include the information set out below.

244. Furthermore, the sentences in bold and underlined **must** be used as headings within the IDP.

245. Words and expressions used in this Chapter are to be interpreted in line with the meaning of the Act<sup>59</sup>.

246. Responsibility for the IDP

- i. The name of the school, FEI or local authority responsible for maintaining the IDP;
- ii. The name of an individual to act as a main point of contact at the school, FEI or local authority responsible for maintaining the IDP; and
- iii. The name of the school, FEI or local authority which prepared the IDP (if different to the body currently maintaining it).

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<sup>58</sup> This content is made mandatory pursuant to sections 8(c) of the Act (which confirms that an IDP must also contain any other information required or authorised by or under the Act) and 4(b) of the Act (which permits the Code to impose legal requirements in respect of the content of IDPs).

<sup>59</sup> Section 11 of the Interpretation Act 1978 states: “Where an Act confers power to make subordinate legislation, expressions used in that legislation have, unless the contrary intention appears, the meaning which they bear in the Act.”

#### 247. Basic biographical information

- i. The child or young person's full name;
- ii. The child or young person's date of birth;
- iii. If the child or young person attends an education setting, the name of that setting;
- iv. The child or young person's home address;
- v. The language spoken at home by the child or young person;
- vi. Where a child is looked after by a local authority<sup>60</sup>, that fact;
- vii. The name of the local authority with parental responsibility for the child, where the child is a looked after by a local authority<sup>61</sup>;
- viii. Where a child or young person is a person formerly looked after by a local authority<sup>62</sup>, that fact;
- ix. The address(es) of the parent(s) of a child;
- x. The contact telephone number(s) of the parent(s) of a child (where available);
- xi. The contact email address(es) of the parent(s) of a child (where available);
- xii. The following information, where a young person has consented to its inclusion:
  - a. The address(es) of the parent(s) of the young person;
  - b. The contact telephone number(s) of the parent(s) of the young person (where available); and
  - c. The contact email address(es) of the parent(s) of the young person (where available).
- xiii. The name of the local authority with responsibility for the child or young person as defined in the Act<sup>63</sup>.

#### 248. The views, wishes and feelings of the child or young person

- i. A summary of the information about the child or young person's views, wishes and feelings gathered by the school, FEI or local authority when preparing the IDP in pursuance of their duties under section 6 of the Act.

#### 249. Record of information used to develop the IDP

- i. A record of discussions at meetings held in relation to the development of the IDP;
- ii. Any written advice or evidence reviewed by the school, FEI or local authority when preparing the IDP; and
- iii. The name, job title, organisation and contact details of anyone who contributed to the development of the IDP, and whether their contribution was made at a meeting or via a written submission.

#### 250. Description of the child or young person's ALN

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<sup>60</sup> within the meaning of section 56(3) of the Act.

<sup>61</sup> within the meaning of section 56(3) of the Act.

<sup>62</sup> within the meaning of section 56(3) of the Act.

<sup>63</sup> within the meaning of section 55 of the Act.

- i. A description of the child or young person's ALN.

#### 251. Description and delivery of the child or young person's ALP

- i. The following information for each separate element of ALP that is recorded:
  - o a description of the ALP to be provided;
  - o the organisation to provide the ALP;
  - o the name and job title of a contact at the providing organisation;
  - o details of how regularly the ALP is to be provided (which may include, for example, confirmation that it will be provided daily, at weekends, school days only or once each term);
  - o the date from which the ALP will be provided;
  - o the date until which the ALP will be provided (where an end date is set); and
  - o the name of the body that is to be responsible for funding the ALP.
- ii. Details of any disapplication of the National Curriculum;
- iii. Any special examination provision required to enable the child or young person to have full access to the examination in order to demonstrate their attainment; and
- iv. The name of any school named by the local authority for the purpose of securing admission to it, pursuant to section 26 of the Act.

#### 252. Intended outcomes

- i. A record of the outcomes intended to result from the provision of the ALP described in the IDP.

#### 253. Reasons for decisions made

- i. The reasons for:
  - a. deciding that the child or young person has ALN;
  - b. the description of ALN included in the IDP; and
  - c. the description of the ALP included in the IDP.
- ii. Where a school is named for the purpose of securing admission to it pursuant to section 26 of the Act, the reasons for that decision (see Chapter 15); and
- iii. Where a school is not named for the purpose of securing admission to it pursuant to section 26 of the Act, despite a request from the child or parent to do so, the reasons for that decision.

#### 254. Timeline of key events

- i. A summary of key events in the child or young person's life, which are important to them or relevant to their ALN. This **must** include:



- a. the date of the next proposed IDP meeting – the month and year is sufficient, but the full date **must** be included if known;
  - b. the date by which the IDP **must** be reviewed pursuant to section 15 of the Act;
  - c. a record of the dates and organiser of each previous IDP meeting; and
  - d. a record of early years settings/education settings attended since their first IDP.
- ii. The IDP **must** be dated and authenticated by the signature of an individual authorised to do so on behalf of the school, FEI or local authority that prepared the IDP.

## Chapter 11: Guidance on IDP content

255. This Chapter sets out guidance on the content of IDPs. In particular, it gives guidance on:

- the mandatory IDP content set out in Chapter 10; and
- further information which should be routinely incorporated into an IDP.

256. This Chapter gives guidance where needed, but does not repeat the mandatory IDP content set out in Chapter 10 in full - practitioners should refer to that Chapter directly when preparing an IDP.

257. Relevant persons are required to follow this statutory guidance unless they can demonstrate if challenged that they are justified in not doing so. Therefore, where this Chapter suggests a particular piece of information 'should' be included in an IDP, a body or institution preparing one is required to ensure it is included, unless they are justified in not doing so.

258. It is open to those drafting IDPs to include any other information in the IDP that they deem is relevant and appropriate for inclusion.

### The purpose of an IDP

259. The purpose of an IDP is to provide a record of both the ALN, which acts as a barrier to a child or young person achieving their educational potential, and the ALP, which is necessary to overcome or mitigate that barrier. The IDP also sets out what was discussed and agreed throughout the process of creating the IDP and also provides a record against which a child or young person's progress can be monitored and reviewed. The school, FEI or local authority responsible for maintaining an IDP **must** ensure that the ALP set out in it is secured (see sections 9(6), 10(5) and 12(9) of the Act). Those responsible for maintaining an IDP should be mindful that the IDP only has any value if it results in the successful implementation of provision that meets the needs of the child or young person.

260. The content of an IDP should be:

- created by agencies and professionals working together to identify and provide for the child or young person's ALN;
- developed on a flexible, person-centred basis that reflects the needs of the child or young person;
- written in a style that reflects that it is the child or young person's plan and not simply part of the administrative process. The style and, whenever possible, the language should reflect the age of the child or young person;
- written in plain Welsh or English, avoiding the use of jargon and explaining the relevance of any technical terminology that needs to be included; and
- reviewed at appropriate intervals, in line with section 15 of the Act and Chapter 16 of this Code.

261. A child or young person with less severe or complex needs is likely to have a simpler (and therefore shorter) IDP than a child or young person with more severe or complex needs, whose IDP may contain contributions from a wide range of agencies and detail a much wider range of interventions.

## **Basic biographical information**

262. The purpose of including biographical information is to ensure that accurate and consistent information is available across all agencies involved in supporting the child or young person.

263. This information is usually maintained within an education organisation's management information system and it is expected that the biographical information for the IDP would be supplied as a report from such systems.

264. In addition to the mandatory requirements, the IDP should also include any communication and/or access requirements relevant to the child, young person or their families, which may require consideration in order to facilitate their attendance or participation at any IDP meetings. A summary of how to communicate more generally with the child or young person and engage them in decision-making might also be useful.

265. Where of use, the IDP should also include the child or young person's Unique Learner Number (ULN) if allocated. Practitioners will wish to note that the ULN is not the same as the Unique Pupil Number.

266. Paragraph 247 requires the name of the local authority with responsibility for the child or young person to be included in an IDP as part of the basic biographical information recorded. See paragraphs 205-206 of Chapter 9 for more information about local authority responsibility (which is largely dependant on the ordinary residence of the child or young person).

## **Views, wishes and feelings of the child or young person**

267. The IDP **must** include a summary of the information about child or young person's views, wishes and feelings gathered by the school, FEI or local authority<sup>64</sup>. These could include their aspirations about, for example, education and career, independent living and community participation.

268. It might also include details about play, health, independence, the people that the child or young person considers important to them (family, friends or paid staff), friendships, or anything else the child or young person considers important.

269. If written in the first person, the plan should make clear whether the child or young person is being quoted directly, either from something they have said or written.

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<sup>64</sup> Paragraph 248 of Chapter 10.

## One-Page Profiles

270. One way of having regard to the views, wishes and feelings of the child or young person is through the creation of a one-page profile.
271. Such profiles provide key information about a child or young person in a format that can be quickly shared and understood. They describe a child or young person's character, their gifts and talents, what is important to them, and the best way to support them.
272. One-page profiles are developed and revised with the active involvement of the child or young person to ensure that their voice is heard. They provide a positive rounded picture of their interests and outline what is important both to and for the child or young person. For children of compulsory school age, parents might be involved in developing one-page profiles and, for very young children, parents will provide the information about the child's interests and support needs.
273. A good one-page profile would include what:
- others value, admire and appreciate about the child or young person;
  - is important to the child or young person from their own point of view; and
  - is objectively important for the child or young person.
274. There is no one way to develop and present a one-page profile and the style and language should reflect the individuality of the child or young person. However, for a profile to operate effectively, it is important that everything included within it is accurate, clear and easy to read. It should focus on the positives and be short and specific, yet include enough detail so that anyone can use the information straight away.

## Record of information used to develop an IDP

275. The IDP **must** include a record of discussions held in relation to the development of the IDP. This need not be a verbatim record; rather a note of what was discussed and by whom. The IDP **must** also include any written advice or evidence reviewed by the school, FEI or local authority when preparing the IDP<sup>65</sup>. This would include reports and assessments undertaken by the school, FEI or local authority responsible for the IDP and by other agencies or professionals, such as relevant health and social care reports. The full report(s) can be provided in an annex.
276. For those IDPs which have been in existence for some time, it would also include information arising from the monitoring of the ALP, including analysis of whether the ALP detailed has led to the intended outcomes.

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<sup>65</sup> Paragraph 249 of Chapter 10.

277. It may be helpful if the information gathered is organised under the headings:

- What is important to the learner;
- What is important for the learner;
- What is working and should be built on;
- What is not working and needs to change; and
- Priorities.

278. Any information provided by or arising from discussion of any presentation or video shown at the IDP meeting, by or on behalf of the child or young person, could also be included under these headings.

279. Where professionals, children, children's parents or young people have different opinions, these should be recorded. This should be recorded using generic terms such as parents, or teachers. Specific names or titles should be used if only if the individual that holds that view wishes it to be recorded as such. The 'Reasons for Decisions Made' section of the IDP should be used to explain in clear language how these different opinions have been taken into consideration to arrive at any decisions, for example about the ALP.

280. Where parents have secured advice from professionals directly, this should be clearly recorded and can be provided in an annex.

281. The name, job title, organisation and contact details of individuals who were invited to attend a meeting and/or contribute to the preparation of an IDP should also be recorded.

## **A description of the child or young person's ALN**

282. An IDP **must** contain a description of the child or young person's ALN<sup>66</sup>. This should be as clear and comprehensive as possible and include the impact of the need on the child or young person's learning in as much detail as possible. Where there is a relevant diagnosis this should be included as part of the description. Those responsible for drafting the IDP should ensure that they do not confuse the description of ALN with the ALP necessary to meet those needs.

## **Description and delivery of the child or young person's ALP**

283. The information required by 251 of Chapter 10 should be written without jargon, in plain language so that all who attend the meeting, including the child or young person, can understand it.

284. The ALP recorded in accordance with paragraph 251 of Chapter 10 could include a range of activities or types of support, for instance:

- a professional providing a strategy or training to deliver the ALP to other professionals with a day-to-day role with the child or young person; or

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<sup>66</sup> Section 8 of the Act, and paragraph 250 of Chapter 10.

- guidance or support provided by the education setting or others, for the child, child's parent or young person themselves.
285. The ALP which best meets the ALN of the child or young person may be different depending on the type of institution they attend. For instance, the provision that a special school provides might be different to that which a mainstream school provides because of the different way that a special school is organised.
286. The information recorded in relation to ALP will be more useful the clearer it is. This clarity might result from describing the specific tasks or actions that will be undertaken; it could also detail the training or qualifications any staff will require. Simply stating that support will be provided will not meet the need for clarity; describing the tasks any learning support workers will undertake or facilitate, what they will be responsible for, and, if necessary, what qualifications or training they will require, is more useful. Where specialist equipment is needed, consideration should be given to any ongoing maintenance or updates, which might helpfully be recorded.
287. The detailed ALP information included in the IDP pursuant to paragraph 251 of Chapter 10 will have been agreed by those responsible for its delivery and funding before it is included. The detail included should reflect the agreement reached. For example, where a child or young person requires speech and language therapy, details such as 'x numbers of sessions of speech and language therapy will be provided' should only be included with the agreement of the service provider.
288. In order to determine the progress towards achieving the intended outcome(s), it may be necessary to set interim targets and to monitor the impact of the ALP on the child or young person's progress. This could include a continual process of tracking and, where necessary, set out details of any assessment that will take place in the educational setting on a regular basis. Any concerns raised as a result of this monitoring might lead to a review of the IDP as a whole (see Chapter 16).
289. Schools, FEIs and local authorities **must not** require a child, parent or young person to pay for any provision that they are required to secure for the child or young person under the Act<sup>67</sup>.

## Intended outcomes

290. The IDP **must** include a record of the outcomes intended to result from the provision of the ALP described in the IDP<sup>68</sup>.
291. These should have a strong focus on the aspirations of the child and their parents or the young person.

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<sup>67</sup> Section 27 of the Act.

<sup>68</sup> Paragraph 252 of Chapter 10.

292. A good outcome would include:

- building on something that is working well; or
- changing something that does not work well; and
- moving the learner towards their future aspirations.

293. The intended outcomes should focus on enabling children and young people to move towards long-term aspirations, be they employment or further or higher education, independent living and/or community participation. IDPs can also include outcomes with a wider focus, such as positive social relationships and emotional resilience and stability.

294. For some children and young people, an intended outcome can be about minimising the impact of impairment on their learning.

295. When agreeing intended outcomes, it is essential to consider what is important to the child or young person and what they want to achieve. What is important for them as judged by others with the child or young person's best interests in mind and relevant experience and/or qualifications should also be considered.

296. All intended outcomes detailed in the IDP should be drafted in such a way that it is possible to measure whether they have been successfully achieved, as well as being realistic and challenging. This should be done by making outcomes "SMART" (Specific, Measurable, Achievable, Realistic and Time-bound).

297. Intended outcomes should be set to challenge. A suitable outcome for the child or young person will depend on their current level and their potential within a given time. The table below gives some examples of what to aim for and what to avoid when developing outcomes:

<b>What to aim for</b>	<b>What to avoid and why</b>
<b>To be able to write my name so that I can write my own Christmas cards this year.</b>	<b>To be able to form letters correctly.</b>  This has no meaning for a child and is also not specific enough or measurable. Being able to write your name gives focus and meaning and the link to Christmas cards provides interest and a timescale.
<b>To learn the skills to get a paid job working with cars, working at least 16hrs per week.</b>	<b>Go to college to do a car mechanics course.</b>  This is an example of provision, not an

	outcome. The purpose of going to college is to get paid work; it is not an end in itself.
<b>To feel confident to catch the bus to school with my friend, and know how to get support if I need to, before the summer holiday.</b>	<b>To develop independent living skills.</b>  This is too broad, making it hard to measure. It does not reflect the kind of person the young person is or wants to be, which is to be confident. It also does not set the context of the goal, which is travelling to school with a friend.

### Timeline of key events

298. The IDP **must** include a summary of key events in the child or young person's life<sup>69</sup>.

299. Where a child or young person's support is being provided solely by their education setting, this summary may only consist of actual and proposed dates of IDP meetings, and dates relating to arriving at or leaving education settings. The key is to ensure that the timeline includes all events that are significant and relevant to understanding the child or young person's ALN and planning the necessary ALP.

300. Examples of such events include:

- a referral for assessment/examination by a professional, for example a referral to a Speech and Language service;
- a screening test that resulted in identifying the child or young person was or was not dyslexic;
- a test/observation by an Educational Psychologist or any other professional;
- a diagnosis of a condition such as Autistic Spectrum Disorder;
- an illness; or
- a bereavement.

301. The events do not need to be recorded in detail, but the following information should be noted:

- an indicator of what happened or the nature of the event;
- the organisation/service/individual responsible for the event, such as a diagnosis or undertaking a screening or test, where appropriate; and
- the date of event.

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<sup>69</sup> Paragraph 254 of Chapter 10.



302. Events that occurred prior to the development of the first IDP should also be included where they relate to the child or young person's ALN and required ALP.
303. The summary should be continued from one IDP to another, even if IDPs are discontinued for a time. There should be no need to start from scratch each time the IDP is reviewed. A copy or snapshot of the summary, as it exists when each IDP is agreed, should be kept as part of each new IDP.

## Chapter 12: Preparing an IDP

### Summary

304. This Chapter outlines the process in respect of preparing an IDP. The Chapter sets mandatory duties and provides guidance in relation to the parties involved in development of an IDP, IDP meetings and timescales and disclosure of IDPs. This should be read in conjunction with Chapters 10 and 11, which deal with the content of IDPs.

### Preparing an IDP – considerations in all cases

#### Involving children, young people and parents in preparing an IDP

305. Chapter 4 describes the duty to involve children, their parents and young people in decisions that affect them, which is provided for in section 6 of the Act, by having regard to their views, wishes and feelings and by providing them with the information and support necessary to enable participation in those decisions.

306. Putting the child or young person at the heart of the process that identifies their ALN and determines their ALP is fundamental to the system of legislative support set out in the Act. The child, child parents or young person **must** be invited to participate in the IDP process and any meetings where the child or young person's ALN or IDP is being discussed.

307. To ensure the child or young person is actively involved in planning the support for their ALN, the school, FEI or local authority responsible for preparing an IDP should:

- take a person-centred approach to the gathering and presentation of information; and
- both develop and revise an IDP at an IDP meeting run using a person-centred approach.

*[Subject to engagement with stakeholders, it is expected that more detail and best practice examples in relation to person-centred practice will be inserted into the Code.]*

308. The Welsh Government has published a range of resources to support practitioners in using person-centred practice approaches, which are available on the Learning Wales website.

*Developing as a Person-centred Organisation: a self-assessment tool & practical steps for progress*

<http://learning.gov.wales/resources/browse-all/developing-as-a-person-centred-organisation/?lang=en>

*Person-centred Reviews toolkit: a guide for early years, schools and colleges in Wales*

(<http://learning.gov.wales/resources/browse-all/person-centred-reviews-toolkit/?lang=en>)

Further guidance entitled *Person-centred Practice in Education: a guide for early years, schools and colleges in Wales*, is expected to be published in the Resource library of the Learning Wales website in the near future.

## **Participating in the meeting to prepare the IDP**

309. Not everyone who works with the child or young person needs to be at the meeting where the IDP is prepared; what is crucial is that all those able to contribute relevant information to inform the IDP's preparation do so. Contributions to the meeting should cover all the aspects of the child or young person's ALN, whether made in person at the meeting or in writing prior to the meeting.
310. As outlined in Chapter 11, it is useful if the information is organised under the headings of:
- what is important to the learner;
  - what is important for the learner;
  - what is working and should be built on;
  - what is not working and requires change; and
  - priorities.
311. For some children or young people the IDP planning meeting could be very small. For example, for a child under 16, it might include only the ALNCo, the child and their parent(s). A meeting for a young person over 16 might include just the ALNCo and the young person if they do not wish their parent(s) to attend.
312. A larger number of professionals would only need to attend the meeting where contributions are required from a wide range of agencies (see below for information regarding the preparation of more complex IDPs).
313. Agencies and professionals should be invited to meetings and reviews as soon as possible to ensure they have sufficient notice to make themselves available to provide advice in good time or to attend meetings.
314. Advice should be provided to professionals on the format of the IDP meeting and on how they will be able to contribute, either by attending the meeting or providing a written contribution. This information should be provided with any request for participation.

## Timescales

### Timescales for preparing an IDP

*[Subject to engagement with stakeholders, further detail on the timescales for preparing an IDP, which is a complicated and technical matter, will be inserted in the Code. The following information, therefore, sets out our initial assumptions as regarding timescales.]*

315. When a school or FEI considers that a child or young person has ALN and requires an IDP, an initial IDP **must** be prepared within 7 weeks. An initial meeting with the child, child's parent or young person should be established quickly, as this is included within the 7 week timeframe. It should be borne in mind that the IDP is a working document and the child or young person's needs and progress will be constantly evaluated. An action point of the meeting might be to request the input of other agencies and professionals, including the local authority, where it is felt to be necessary.
316. If it is not possible to meet the child or child's parent within the 7 weeks and it is still considered that the child or young person has ALN then, to prevent unnecessary delay in putting in place the support the learner needs, an IDP **must** be established within the time limits and a meeting organised to discuss with the child and the child's parent as soon as possible thereafter.
317. In the context of a young person, an IDP cannot be established until their consent has been sought and obtained to allow a decision to be made about whether they have ALN<sup>70</sup>.
318. Where a school or FEI decides that the matter needs to be referred to the local authority – either to make a determination as to whether or not the child or young person has ALN, or because it is felt that the child or young person is likely to have ALN that calls for ALP it would not be reasonable for the governing body to secure – the local authority **must** respond within 1 week to acknowledge the request.
319. Following this request, the local authority has 10 weeks to:
- determine if the child or young person has ALN and prepare and maintain an IDP for that child or young person;
  - determine if the child or young person has ALN and, where the child or young person attends a maintained school, prepare an IDP and direct the school to maintain the plan;
  - determine if the child or young person has ALN and, where the child or young person attends a maintained school, direct the school to prepare and maintain the plan; or
  - determine if the child or young person does not have ALN.

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<sup>70</sup> See section 11 of the Act – circumstances in which section 9 and 10 duties do not apply.

320. At the end of the 10 week period there may be some outstanding reports, where these have been requested. This **must not** stop the local authority from determining if the child or young person has ALN and preparing and maintaining an IDP or, if the child or young person attends a mainstream school, directing the maintained school to prepare or prepare and maintain an IDP. The IDP will need to be reviewed once any outstanding reports have been finalised. *[This proposed aspect of the process requires further consideration, which will be developed with stakeholders and inserted into the Code in due course.]*
321. Where staff at a non-maintained setting consider that a child or young person may have ALN, it is open to them to contact the local authority to determine whether the child has ALN (though staff should usually discuss any concerns with the parents first) (see Chapter 7). The local authority **must** respond within 1 week to acknowledge the referral. The local authority has 10 weeks to determine whether the child or young person has ALN and, if so, to put in place an IDP. If the local authority requires input from other agencies, this should be requested as soon as possible, but **must not** prevent an IDP from being put in place within the 10 week timeframe. The IDP can then be updated following receipt of any subsequent evidence.

### **Children under compulsory school age**

322. A local authority may be made aware that a child under compulsory school age, who does not attend an education setting of any kind, has, or probably has, ALN via a number of possible routes, for example, a referral from a health professional, social worker or parent. In these instances, the local authority **must** respond within 1 week to acknowledge the referral. The local authority then has 7 weeks to determine whether the child has ALN and, if so, to put in place an initial IDP. If the local authority requires input from other agencies, this should be requested as soon as possible but **must not** prevent an interim IDP from being put in place within the 7 week timeframe. The IDP can then be updated following receipt of any subsequent evidence.

## **Finalising an IDP**

### **Duty to provide a final copy of an IDP to parties**

323. After preparing an IDP the school, FEI or local authority **must** send the IDP to the child, child's parent or the young person, and anyone else who attended the IDP preparation meeting. Where the local authority has reconsidered and revised the IDP, it **must** send the revised IDP on to the child, child parent or young person, along with the school or FEI the child or young person attends.<sup>71</sup>
324. This provides an opportunity to comment on the IDP and check that it accurately reflects the meeting. If anyone believes that the IDP is not an accurate reflection of what was discussed or agreed at the meeting, they should inform the organisation responsible for preparing the IDP as early as

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<sup>71</sup> Sections 9(5), 10(4), 12(8), 18(8) of the Act.

possible. If any comments are made, the school, FEI or local authority responsible for preparing the IDP **must** consider the comments and, if it believes it necessary, the IDP **must** be updated as quickly as possible in order to meet the prescribed timescales, and shared as required. If the school, FEI or local authority does not consider the IDP should be updated, it should provide reasons for that decision.

325. When changes are suggested by the child, child's parents or young person to the proposed IDP and agreed by the school, FEI or local authority responsible for preparing it, every effort should be made to ensure that the child, child's parent or the young person, and the relevant professionals, understand the significance of any such changes and the nature of the ALP that is proposed.
326. The school, FEI or local authority responsible for preparing the IDP **must** send the child, child's parent or young person notification of the local authority's information, advice, independent advocacy, avoidance of disagreements and disagreement resolution services.

### **Disclosure of an IDP**

*[Section 52 of the Act allows for regulations to be made about the disclosure and use of information gathered during the course of preparing an IDP. Following engagement with stakeholders and work to develop those regulations, further information will be inserted into the Code.]*

## Chapter 13: Preparing an IDP – multi-agency working

### Summary

327. This Chapter sets mandatory duties and provides guidance in relation to multi-agency working in the context of preparing an IDP and is particularly relevant in more severe and complex cases. This should be read in conjunction with Chapters 10 and 11, which deal with the content of IDPs.

### Multi-agency working

328. A key principle of this Code is that all those involved in providing support to children and young people with ALN should work together in the best interests of the child or young person (see Chapter 2). All professionals involved in supporting the needs of the child or young person should support the principles of person-centred practice.

329. Some children or young people with ALN will only need the support provided or managed by their education setting. When this is the case, there is no requirement to include other professionals or the local authority in the development of the IDP, or its day-to-day operation.

330. In other, more complex, cases, ensuring the needs of a child or young person are met might require the input and support of different agencies coming together to provide a comprehensive package of support. External support services can help education providers by providing:

- advice on IDPs and targets;
- more specialist assessments;
- advice on the use of new or specialist strategies or materials; and
- in some cases, support for particular activities.

331. If there is an identified lack of expertise amongst the staff in a mainstream school or FEI, then the school or FEI should consider seeking external advice.

332. After deciding that a child or young person may have ALN, the body responsible for preparing an IDP (see Chapter 7 and Chapter 9) **must** consider whether input from external agencies or other suitably qualified professionals is required. The level of engagement and advice needed from different agencies and professionals will vary, depending on the nature of the child or young person's needs and circumstances. It might include, for example:

- educational advice and information from the head teacher or principal of an early years setting, school, post-16 setting or other institution attended by the child or young person;
- consultation with a person who is qualified to teach children or young people with specific impairments, for example, with a vision and/or hearing impairment;

- medical advice and information from health care professionals with a role in relation to the child or young person's health;
  - psychological advice and information from an educational psychologist, who should normally be provided by the local authority where a child attends a maintained school, and who should consult any other psychologists known to be involved with the child or young person;
  - social care advice and information from or on behalf of a local authority, if they are involved with the child or young person;
  - in the case of a looked after child – the authority that looks after the child, LACE Co-ordinator, designated member of staff, and, if appropriate, designated health professional;
  - specialist careers advice to assist the child or young person in preparation for further learning, adulthood and independent living;
  - advice from a youth offending team, where the child or young person is detained in a Young Offender Institution, or where the young person is serving their sentence in the community (Chapter 22); and
  - in the case of children of members of the Armed Forces, advice should be sought from the Children's Education Advisory Service where appropriate (Chapter 22).
333. The body responsible for preparing an IDP should check with the child, child's parents or young person to find out if there are any professionals already working with the child or young person, or whether there are any other professionals or persons that they believe should be consulted. This consultation should be undertaken as soon as possible to allow sufficient notice and time for their input.
334. Any agency which deals with a child or young person with ALN (or which forms the opinion that they may have ALN) should be invited to contribute to developing and updating an IDP.
335. When professionals from external agencies are included, they should be suitably qualified and, whenever possible, authorised to make decisions and be accountable for those decisions.
336. If the organisation responsible for leading the preparation of the IDP considers it necessary to involve other agencies, the school, FEI or local authority **must** inform the child, child's parents or young person that advice has been sought from external agencies, and as part of the process of putting together all the relevant advice, the child or young person may be called for an examination or assessment. If their child is to be examined or assessed, parents **must** be informed of their right to be present with their child at any interview, test, medical or other assessment that is being conducted and **must** be told of the time, place and purpose of appointments. Parents should be advised that, whilst it is their right to be present, in certain circumstances it may be unhelpful and potentially a hindrance to the process. For instance, where a classroom observation is carried out as part of the assessment, a child will behave differently if their parents are present, which would negate the purpose of the observation.



337. External support services, provided by both the local authority and outside agencies, will see the child or young person in their education setting if appropriate and practicable. External support services can provide advice in preparing IDPs, undertake more specialist assessments that can inform planning and the measurement of a learner's progress, setting targets and accompanying strategies, advise on the use of new or specialist strategies or materials, and in some cases, provide support for particular activities. The kinds of advice and support available to institutions will vary according to local policies.

### **Statutory requests by local authorities for help or for information from other public bodies**

338. Section 49 of the Act provides that a local authority in Wales may request information or help from other bodies, which it requires for the purpose of exercising its functions under the Act.

339. These bodies/persons are:

- another local authority;
- a local authority in England;
- the governing body of a maintained school in Wales or England;
- the governing body of an institution in the FE sector in Wales or England;
- an Academy;
- a youth offending team for an area in Wales or England;
- the person in charge of any relevant youth accommodation in Wales or England;
- a Health Board;
- a NHS Trust;
- the National Health Service Commissioning Board;
- a clinical commissioning group; and
- a NHS Foundation Trust.

340. These bodies **must** comply with the requests unless doing so would be incompatible with the bodies other duties or would have an adverse effect on the exercise of their functions.

341. If the body decides not to comply with the request from the local authority for information or help because it believes it would be incompatible with their other duties or would have an adverse effect on the exercise of their functions, the Act provides that they **must** write to the local authority providing reasons for their decision.

342. Where a school or FEI is preparing the IDP, but is not able to obtain the help or information they require from relevant public bodies, they should notify the local authority. The local authority may need to take over responsibility for the preparation of the IDP and then seek information from the relevant public body using its statutory powers.

## **ALP to be secured by Health Boards and NHS Trusts**

343. Where the school, FEI or local authority preparing an IDP believes that the child or young person requires the input of a health professional, under section 14 of the Act, they **must** seek it, following the relevant referral processes.
344. If a HB or NHS Trust in Wales agrees, an IDP maintained by a school, FEI or local authority for a child or young person may specify that ALP described in the plan is to be secured by that HB or NHS Trust.
345. The IDP **must** clearly specify the ALP to be secured by the HB or NHS Trust. The HB or NHS Trust **must** then secure the ALP specified in the IDP, which it has agreed to secure. Where the HB or NHS Trust is securing ALP, the school, FEI or local authority will no longer be under a duty to secure that provision.
346. Any ALP that is specified as provision the HB or NHS Trust has agreed to secure can only be removed when the HB or NHS Trust:
- agree to the removal or change of the ALP;
  - requests a change in the description of the ALP it has agreed to secure; or
  - requests the removal from the IDP of ALP that it has agreed to secure.

The school, FEI or local authority **must** comply with the request and at this point the IDP **must** be reviewed.

347. Where the Tribunal orders the revision of an IDP in relation to ALP specified in the IDP as provision a HB or NHS Trust has agreed to secure, a HB or NHS Trust is only required to secure the revised ALP where they agree to do so.

## **Information sharing between agencies**

*Section 52 of the Act provides a regulation making power in relation to information sharing. Further guidance will be developed alongside these regulations in due course.*

## **Coordinating IDP preparation, review and revision with other plans**

348. A school, FEI or local authority may prepare, review or revise an IDP at the same time as it, or another body, is preparing, reviewing or revising another document in the case of the person concerned<sup>72</sup>. Consideration should also be given to integrating or closely aligning the plans where the relevant legislative frameworks allow.
349. To ensure efficiency and effectiveness, there should be as much synergy as possible with any other planning or review processes that are required to take place in relation to a child or young person. This could mean having one meeting where the child or young person's ALN is discussed at the same time

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<sup>72</sup> Section 16 of the Act.

as any other needs or requirements. This will allow solutions to be found in an integrated manner and facilitate holistic solutions to different problems.

350. This approach will ensure the child, child's parent or young person is not required to attend unnecessarily a series of similar meetings. It will reduce the need for the child, child's parent or young person to repeat the same information lots of times for different people or purposes. It should also assist professionals by reducing the number of meetings they are required to attend and, therefore, deliver improved value for money.
351. The management of the relevant school, FEI or local authority should endeavour to send the same person where there are different meetings, so that they have a rounded and comprehensive understanding of the child or young person's needs. For instance, it may be appropriate for the ALNCo to attend safeguarding meetings about a child with ALN as well as the child's IDP meeting.

## Chapter 14: Preparing an IDP – transport

### Summary

352. This Chapter signposts transport considerations in the context of preparing an IDP. This should be read in conjunction with Chapters 10 and 11, which deal with the content of IDPs.

*[Further guidance and good practice examples will be inserted in future in the light of stakeholder input.]*

### Transport

353. The Learner Travel (Wales) Measure 2008 (“Measure”) and associated subordinate legislation sets out the legal framework specifically related to travel and transport provisions for learners travelling from home to school in Wales.

354. *The Learner Travel Statutory Provision and Operational Guidance*<sup>73</sup> dated June 2014 provides guidance on the current law. It is issued under section 15 of the Measure.

355. Some of the local authority duties under the Measure and described in the guidance above are to:

- assess the travel needs of learners in their authority area’
- provide free home to school transport for learners of compulsory school age attending primary school who live 2 miles or further from their nearest suitable school; and
- provide free home to school transport for learners of compulsory school age attending secondary school who live 3 miles or further from their nearest suitable school.

356. The local authority is required to have regard to the needs of disabled learners, and learners with learning difficulties<sup>74</sup>.

357. Further specific guidance on SEN, disabilities and learning difficulties is currently provided at paragraph 183 onwards of the above guidance.

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<sup>73</sup> <http://gov.wales/docs/det/publications/140616-ltgg-en.pdf>

<sup>74</sup> Section 24(1) of the Measure

358. .As part of the process of creating an IDP, home to education institution travel arrangements, including the availability of suitable transport, should be discussed fully with the child, child's parent or young person where relevant.
359. Those preparing IDPs for young people should consider the local authority's transport policy for those aged between 16-19 and, if it has one, the local authority's transport policy for those aged between 19-25. In particular, they should consider what concessionary schemes are available and what support, including financial assistance, is available. If, in preparing the IDP, it is considered that specific transport arrangements are required, relevant transport officers from the local authority should be invited to discuss the options available.
360. Where learners are able to travel independently to their educational establishment, it might be appropriate for the local authority to provide Blue Badges, concessionary bus passes or community transport.

## Chapter 15: Considerations for local authorities when preparing IDPs

### Summary

361. Local authorities are likely to be responsible for the preparation of IDPs for children and young people with more severe or complex ALN – cases which have been referred on from schools and FEIs in particular. When doing so, local authorities should always prepare the IDP with reference to the child or young person’s individual needs and circumstances. However, there are some further specific considerations – underpinned by provisions in the Act – which they will need to bear in mind, particularly in relation to the education setting the individual is to attend. This Chapter sets out further information on some of these issues.

### Duty to favour the education of children at mainstream maintained schools

362. Section 29 of the Act sets out a duty on local authorities to favour educating children at mainstream maintained schools, that is, maintained schools that are not special schools or pupil referral units<sup>75</sup>.

363. This duty underpins the inclusive approach to education that local authorities should adopt at all times and is based on evidence that the presence and participation of all learners in the school/classroom community enhances the quality of the educational experience, both for the individual and for the school/classroom community as a whole. In taking this approach, local authorities should be mindful that inclusivity goes beyond the mere physical presence of the child in the mainstream classroom or school. The emphasis should be on ensuring that the child is as fully engaged as possible in all the usual, everyday lessons and activities.

364. Section 29, therefore, requires that, when exercising functions under the Act in relation to a child of compulsory school age with ALN who should be educated in a school, a local authority **must** ensure that the child is educated in a mainstream maintained school.

365. There are two exceptions to this:

- where such mainstream education is incompatible with the wishes of the parent<sup>76</sup>, or;
- where such mainstream education would be incompatible with the provision of efficient education for other children<sup>77</sup>.

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<sup>75</sup> As defined at section 68 of the Act.

<sup>76</sup> Section 29(1)(a) of the Act.

<sup>77</sup> Section 29(1)(b) of the Act.

366. In order to strengthen the duty further, the second exception referred to above may only be relied on by a local authority where there are no reasonable steps it could take to prevent the incompatibility<sup>78</sup>. Therefore, if there are reasonable steps which a local authority could take to ensure that a placement in a mainstream school was not incompatible with the efficient education of other children, the local authority will be required to take those steps, rather than place a child at a non-mainstream school.
367. What constitutes a reasonable step will depend on all the circumstances in the individual case, but the following are some of the factors that may be taken into account:
- whether taking the step would be effective in removing the incompatibility;
  - the extent to which it is practical for the local authority to take the step;
  - the extent to which steps have already been taken in relation to a particular child or young person and their effectiveness;
  - the financial and other resource implications of taking the step, in particular whether the step would result in a disproportionate shift in resources towards meeting the needs of one learner such that the education of other children is potentially compromised;
  - the extent of any disruption that taking the step would cause; and
  - the extent to which the step is compatible with the needs of the child – for example, in the case of some children with ALN, the provision of full time one to one support may facilitate their presence in a mainstream school or classroom, but would reinforce dependency and hinder the acquisition of independence.
368. There will inevitably be circumstances in which there are no reasonable steps available that could prevent placement at a mainstream setting being incompatible with the provision of efficient education for other children (for example, where the child or young person's behaviour systematically, persistently or significantly threatens the safety and/or impedes the learning of others).
369. However, a decision not to educate a child or young person in a mainstream setting should not be taken lightly in any circumstances, especially if the child or their parent would prefer mainstream schooling. It is important that all decisions are taken on the basis of the circumstances of each case and taking into account the views of the child or child's parents. The views of educational psychologists and other specialist professionals may also be relevant to the particular case.
370. It is important to note that section 29 does not prevent a child being educated in an independent school, or a school approved under section 342 of the Education Act 1996 (i.e., a non-maintained special school), where the cost is met other than by a local authority<sup>79</sup>.

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<sup>78</sup> Section 29(2) of the Act.

<sup>79</sup> Section 29(3) of the Act.

## Naming a maintained school for the purpose of securing admission

371. In most cases, children with ALN will be able to receive the ALP they need in any maintained school. However, the needs of some children will be such that a place at a specific maintained school should be secured for them. In recognition of this, local authorities may name a maintained school in Wales in an IDP for the purposes of securing admission of a child to that school. This is referred to below as 'naming a school'. Of course, schools or other educational institutions at which the child or young person will receive their ALP will be referenced in the IDP for a variety of other purposes, so it is essential that, where a local authority names a school *for the purposes of securing admission*, this fact is made clear in the IDP.

### The Test to Consider

372. Section 26 of the Act sets out the circumstances in which a local authority may name a maintained school for the purposes of admission. There are two tests which **must** be met:

- Firstly, the local authority **must** be satisfied that the child's interest requires the ALP identified in their IDP to be made at that school (section 26(4)(a)). Local authorities should consider what the benefits are of delivering the specific ALP required at that particular institution.
- Secondly, it **must** be appropriate for the child to be provided with education or training at that school (section 26(4)(b)). This goes beyond just the ALP available – the more general education and training provided by the school **must** also be appropriate for the child.

373. When considering the issue, local authorities might consider whether:

- the school specialises in low incidence provision, such as visual or hearing impairment;
- the school has members of staff with specialist expertise or training;
- it would be unreasonable for a more local school to provide the child's ALP; and
- specific characteristics of the school make it especially good at making the required ALP – this might include a variety of different matters including the school's physical characteristics.

374. If the tests set out at section 26(4) are not met, the local authority **must not** name the school.

375. Where a local authority names a school, it **must** set out its reasons for doing so in the IDP (see Chapters 10 and 11).

376. Where a child or their parent has requested that a school be named but the local authority decides not to do so, it **must** set out its reasons for not doing so in the IDP (see Chapters 10 and 11).



## Consultation with and Duties of the School and Local Authorities

377. If the local authority proposes to name a maintained school, it **must** consult the school (and the local authority for the area in which the school is located, if that is the admission authority) before doing so<sup>80</sup>. Where the school is located in another local authority's area, but the governing body is the admission authority for the school, the other local authority should be notified by the home local authority preparing the IDP that it is considering naming the school in any event.
378. The local authority should carefully consider any representations from the governing body and other local authority. In particular, it should carefully assess whether the admission of the child would take the year group at the school above the school's admission number and any prejudice to the provision of efficient education or the efficient use of resources that this might cause<sup>81</sup>.
379. Where a maintained school in Wales is named, the governing body of the school **must** admit the child<sup>82</sup> regardless of the governing body's duty in relation to the statutory infant class size limits<sup>83</sup>. However, this does not affect any power of the governing body to exclude a learner from a school<sup>84</sup>.

## Placements at independent schools

380. Occasionally, a child or young person's needs may be such that it would not be possible for them to be met in a maintained school. The local authority might then consider it appropriate for the individual to attend an independent school.
381. Section 32 of the Act sets out the circumstances in which a local authority may fund a placement at an independent school or independent educational institution for a child with ALN.
382. There are two key questions local authorities should ask themselves:
- Firstly, is the school included in the register of independent schools in Wales? (section 32(1)(a))<sup>85</sup>.
  - Secondly, can the school make additional learning provision which corresponds to the ALN of the child or young person in question, as identified in their IDP? (section 32(1)(b)).

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<sup>80</sup> Section 26(3) of the Act.

<sup>81</sup> Section 86(5) of the School Standards and Framework Act 1998 and Chapter 3 of the School Admissions Code (Statutory Code document no: 005/2013) provides more detail on 'admission numbers'.

<sup>82</sup> Section 26(2) of the Act.

<sup>83</sup> Section 26(5) of the Act.

<sup>84</sup> Section 26(6) of the Act.

<sup>85</sup> The Act makes amendments to the Education Act 2002 to require Welsh Ministers to publish a list of the schools included in the register of independent schools in Wales – this is the document to which local authorities should refer. The list will specify the type or types of ALP made by a school for learners with ALN (if any) where this information has been provided by the proprietor of the school.

383. If the tests in Section 32(1) are met, the local authority may decide that the placement is appropriate – the placement details will then form part of the additional learning provision described in the IDP. The local authority **must** secure the ALP described in the IDP, along with any related board and lodging<sup>86</sup> and **must not** charge the individual or parents for it<sup>87</sup>.
384. A similar test applies in relation to placements at independent educational institutions in England – see section 32(2) of the Act.
385. Where a parent or child would prefer an independent school but the local authority is satisfied that the child's needs can be met within a maintained education setting, the local authority is not required to fund the learner's place at the independent school. However, where this situation arises, the local authority should ensure that they give the parent and child a full outline of the how the learner's needs could be met without recourse to an independent placement, for example by funding transport to and from the maintained education setting.

### **Placements at independent special post-16 institutions**

386. Whilst the ALP necessary to meet the reasonable needs for education and training of most young people with ALN can be met within a mainstream FEI, some young people will require a place at an independent special post-16 institution to ensure their reasonable needs are met.
387. Section 33(6) of the Act defines an 'independent special post-16 institution'.
388. These are institutions which provide education or training for persons over compulsory school age, and which are specially organised to provide education and/or training for individuals with ALN.
389. The following are *not* independent special post-16 institutions:
- an institution in the FE sector ;
  - an independent school entered on the registered of independent schools in Wales;
  - an independent educational institution entered on the register of independent educational institutions in England; and
  - a 16-19 Academy.
390. Local authorities **must not** secure education or training for a young person at an independent special post-16 institution in Wales or England unless it is entered on the list of such institutions published by the Welsh Ministers<sup>88</sup>.

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<sup>86</sup> Section 12(9) of the Act.

<sup>87</sup> Section 27 of the Act.

<sup>88</sup> Section 33(3) of the Act.

391. Where a local authority decides that a placement at an independent post-16 institution is appropriate, the placement details will then form part of the additional learning provision described in the IDP. The local authority **must** secure the ALP described in the IDP, along with any related board and lodging<sup>89</sup> and **must not** charge the individual or parents for it<sup>90</sup>. Such placements may particularly benefit those young people with more severe and complex needs.
392. The local authority will need to consider the suitability and sustainability of a funded placement at an independent special post-16 institution over the duration of the programme of study, prior to its commencement. Consideration should be given to the benefits of the programme of study to the young person from an educational perspective. Once a programme of learning has commenced, the local authority should continue to fund the placement for the duration of the programme. Failure to do so can lead to wasted resources and distress and confusion for the young person.
393. In many instances, placements at independent special post-16 institutions will be residential. In these cases, the requirements and guidance set out on residential placements below will apply.

## Residential placements

394. The needs of some children and young people are such that they might require a residential placement at a school or other institution. A decision that this is appropriate will involve consideration of all of the circumstances, and, bearing in mind that it may require the child or young person to be resident away from their family, the duty to involve and support children, their parents and young people explained at Chapter 4 will have particular importance.
395. Where the local authority is satisfied that, having considered all relevant circumstances of the particular case, the reasonable needs of a child or young person for ALP can only be met if it also secures the provision of board and lodging, it **must** include a description of this in the IDP<sup>91</sup>.
396. In determining whether board and lodging is required, local authorities should take account of the following factors:
- whether the child or young person's reasonable needs for ALP cannot be met in local day provision; and
  - whether the child or young person requires a consistent programme both during and after school hours that cannot be provided by parents and mainstream schooling when combined with support from other agencies.

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<sup>89</sup> Section 12(9) of the Act.

<sup>90</sup> Section 27 of the Act.

<sup>91</sup> Section 12(5) and (6) of the Act. Where this duty applies, the local authority **must not** direct a school to prepare and/or maintain an IDP – see section 12(7).

397. Where a residential placement is to be secured, support arrangements should also be put in place, such as in relation to the child or young person's contact with their family.
398. Any additional services required alongside education, ALP, board and lodging should also be co-ordinated from the outset. This might include:
- health care;
  - personal care;
  - social care; and
  - transport (see Chapter 14).
399. This is an area in which multi-agency and cross-departmental working will be extremely important. In particular, local authorities and Health Boards should consider appropriate joint funding arrangements, and local authorities should ensure that they apply a co-ordinated approach internally to the funding of the education and social care elements of the placement<sup>92</sup>.
400. Where a child or young person's residential placement is at a school or institution outside of the local authority's area, the local authority should consider what information local service providers operating in that other area might need to be provided with.

### **Additional learning provision otherwise than in schools**

401. Local authorities may arrange for the ALP, or any part of the ALP, identified in a child's IDP to be made otherwise than at school<sup>93</sup>. However, the emphasis should always be on inclusive education and such arrangements should not be commonplace (except in relation to those children who have not yet started school). Local authorities **must not** arrange for ALP to be made otherwise than in a school unless they are satisfied that it would be inappropriate for the ALP to be made in a school<sup>94</sup>.

### **Additional learning provision outside Wales and England**

402. Very rarely, it may be appropriate for a child or young person requiring specialist ALP to be placed at an institution outside of Wales and England. However, a local authority **must not** make arrangements for a child or young person to attend such an institution unless it is organised to make ALP that corresponds to the ALN described in the child or young person's IDP<sup>95</sup>.

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<sup>92</sup> The Social Services and Well-being Act (Wales) 2014 and developing subordinate legislation under the Act provide the basis on which social care provision is to be made.

<sup>93</sup> Section 30(1) of the Act.

<sup>94</sup> Section 30(2) of the Act.

<sup>95</sup> Section 36 of the Act.

## Chapter 16: Review and revision of IDPs

### Summary

403. This Chapter sets out mandatory requirements and guidance about the review and revision of IDPs, including when an IDP **must** and should be reviewed.

### Review of an IDP

#### Circumstances when the IDP must be reviewed

404. Section 15 of the Act sets out the circumstances in which an IDP **must** be reviewed. These are set out below<sup>96</sup>. The provisions of the Act ensure that, in most cases, an IDP is reviewed every year; however, practitioners should refer to the detailed review provisions in section 15 of the Act.

405. A school, FEI or local authority required to maintain an IDP **must** review it within:

- the 12 month period starting with the date on which the IDP was first given to the child, child's parent or young person; and
- each subsequent period of 12 months.

or, if the IDP has been reconsidered by the local authority (see Chapter 9), within:

- the 12 month period starting with the date on which a decision not to revise the IDP was notified to the child, their parent, or the young person by the local authority, or a revised plan was given to them; and
- each subsequent period of 12 months starting with the date on which the decision is notified or the revised plan is given.

406. A school, FEI or local authority **must** review an IDP it is required to maintain if the plan includes ALP that a Health Board or NHS Trust has agreed to secure and the Health Board or NHS Trust requests it to review the IDP<sup>97</sup>.

407. A school, FEI or local authority required to maintain an IDP for a child or young person **must** also review the IDP if a request is made to it by the child, the child's parent or young person, unless it considers a review to be unnecessary<sup>98</sup>.

408. The circumstances in which a review would be considered unnecessary might include where:

- a recent review has taken place; and

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<sup>96</sup> Section 15 of the Act should be referred to in full for the detailed legislative obligations.

<sup>97</sup> Section 15(4) of the Act.

<sup>98</sup> Section 15(6) of the Act.

- there is no evidence of a material change in the child or young person's circumstances or no new, significant information has come to light.

### **Guidance on other situations when the IDP should be reviewed**

409. In order to be responsive to the needs of the child or young person it will often be appropriate to review the IDP, or part of the IDP, within a shorter time period than the mandatory requirements. To facilitate this, the Act gives schools, FEIs and local authorities the power to review the plan at any time; and revise the plan following a review.

410. A review should be carried out within a time period that reflects:

- the intended outcomes, or any particular outcome, set out in the IDP and the target date for the achievement of these, or milestones towards their achievement;
- the timescales for the delivery of any activities or provision in the IDP;
- anticipated significant changes that are likely to impact on the child or young person's ALN;
- whether there are proposed assessments or tests whose results would impact on the intended outcomes, planned activity or provision within a shorter time period; and
- the child or young person's age and likely rate of development - for example, for very young children, three to six months should be considered the maximum amount of time, to ensure the ALP continues to be appropriate.

411. The timing of a review should also take account of the circumstances of the child or young person and any action that might flow from the review. Schools and FEIs will want to consider the impact on staff resources when planning review and may want to arrange them so they do not all take place at the same time or in close proximity to one another.

412. A proposed review date may be changed to an earlier or later date (providing this later date falls within the 12 month mandatory timeframe).

413. An earlier, unscheduled review will often be appropriate where there has been a significant change in circumstances or new information has come to light. An earlier review may also be warranted where an intended outcome has been achieved, it becomes obvious that an intended outcome will not be achieved or because it is no longer felt that a child or young person has ALN and, therefore, no longer requires an IDP. Continual tracking and monitoring of learner progress will be critical to identifying sudden changes. Changing a review to a later date (still within the 12 month period) might be appropriate, for example, when additional time is considered necessary to examine the impact of a particular intervention or when the results of a medical test or examination relevant to the review are pending.

414. Where a child or young person has ALN, the school or FEI will need to talk to the child, child's parent or young person regularly, monitor progress with them,

and discuss the activities that will support the child or young person to achieve their potential. These discussions can act as a form of on-going monitoring; the evidence gathered from these discussions could be used to inform the review. They can also build confidence in the actions being taken by the education institution and can strengthen the impact of any ALP by increasing the child, child's parent or young person's engagement in the approaches and strategies that are being used. The child, child's parent or young person can also provide essential information on the impact of ALP outside the education setting and any changes in the child or young person's ALN. This ongoing dialogue will form an important element in determining when an early review might be appropriate.

## **IDP review meetings**

### **Before the meeting**

415. Where a local authority is responsible for maintaining an IDP, they **must** provide a list of all the children and young people who will require a review of their IDP in the forthcoming term to head teachers and principals of any relevant educational institutions attended by a child or young person with an IDP, at least two weeks before the start of each term.
416. The school, FEI or local authority responsible for maintaining the IDP **must** invite to the review meeting all those agencies and professionals they consider necessary to conduct an effective review. This will always include the child, child's parent or young person. It may not always include all those who were involved in the original preparation of the IDP. Agencies or professionals need only be invited if their continued involvement is likely to be useful in identifying or delivering future ALP for the child or young person, or if their advice is likely to change over time. Normally, this will have already been determined in the IDP. Agencies or professionals already engaged in the delivery of provision within the IDP **must** be invited to the meeting.
417. The school, FEI or local authority responsible for maintaining the IDP should inform other agencies and professionals who will be invited to be involved in the IDP review at least two weeks before the start of each term. For meetings at the start of a new term, notification should be provided earlier than two weeks before where possible. They should also indicate if the review will have a focus on transition and/or preparation for adulthood (see Chapter 19). Where it is decided, at any time, that additional professionals should be invited to the review, they should inform the professionals of the details as soon as possible.
418. Those agencies and professionals invited to the meetings should make every effort to attend. However, it might be that not all relevant professionals will be able to attend every review meeting. It may, therefore, be helpful when inviting them, to indicate the priority attached to their attendance. Liaison between the respective parties, over time and well in advance of the meeting, will help professionals decide whether it is appropriate to attend and also give them adequate prior notice. Where agencies or professionals cannot attend they

should provide in writing, in advance of the meeting, any necessary advice and evidence required to inform the meeting.

419. Any contribution to a review meeting, whether in person or in writing, should consider:

- the child or young person's progress towards achieving the intended outcomes;
- whether the child or young person still has ALN and, if so, whether their needs have changed;
- the continued appropriateness of the IDP;
- the continued appropriateness of the ALP; and
- the continued suitability of the intended outcomes and, if appropriate, new or revised outcomes that ought to be discussed at the meeting.

420. Written contributions might be usefully provided using the Person-Centred Practice headings (Chapter 11).

421. Before a review meeting, the school, FEI or local authority responsible for maintaining an IDP should provide a report to the child, child's parent or young person on their progress, possibly through the use of Impact Monitoring information. They should also invite feedback and views from the child, child's parent or young person two weeks before the meeting. However, the child, child's parent or young person may wish to wait and make their feelings known at the meeting.

422. Where professionals have supplied advice in advance of the meeting, this should also be sent to the child, child's parent or young person. The school, FEI or local authority responsible for maintaining an IDP should explain to the child, child's parent or young person that professionals may not always be able to attend all review meetings and that, if beyond the review meeting, the child, child's parent or young person wish to discuss matters of concern in the professionals' reports, they should first approach the school, FEI or local authority responsible for maintaining the IDP.

423. When a child has been excluded from school, the views of the most appropriate former teacher and any other professionals who know the child should be sought. Children that have been excluded from school, and their parents, may need sensitive and positive encouragement to contribute to all stages of the review.

### **The location of review meetings**

424. In most cases, the most suitable setting for the review meeting will be at the school, FEI or early years setting which the child or young person attends. Sometimes, it will be more appropriate for the meetings to take place in a hospital, the parent's home or the local authority's offices. It is usually appropriate that someone who works with the child or young person regularly, in most cases a person from the school or FEI, leads the review. This would ideally be the ALNCo, but may also be the learner's head of year, form tutor or



teacher or lecturer who is closely involved in supporting the child or young person. They will know the child or young person well, will have the closest contact with them and will have the clearest information about progress and next steps.

425. Reviews led by the school or FEI will engender the greatest confidence amongst the child, child's parent and young person. The discussion being led by a member of staff with good knowledge and understanding of the child or young person, who is aware of their ALN, will further strengthen this confidence.

### **The format of reviews**

426. The format for the IDP review meeting will be the same as that for developing an IDP. This includes having regard to the views, wishes and feelings of the child, child's parent or young person. Although the professionals invited to attend the meeting will depend on the child or young person's needs, the conduct of the meeting should always follow a similar format.

427. The principal difference of a review meeting compared with the original IDP preparation meeting is that it will require those contributing to the review to consider whether the additional learning provision has been delivered and the outcomes achieved. There should be no need to repeat or reconsider background information or evidence unless a change has occurred, in which case it can simply be annotated on the IDP. Children, their parents or young people are likely to become disengaged if reviews are repetitious.

428. The review meetings **must**:

- gather and analyse any new information or evidence that has come to light in relation to the child or young person's ALN;
- consider if the description of ALN set out in the IDP is still correct in the light of any new information or evidence;
- explore whether the outcomes set out in the IDP are still suitable and whether new outcomes and/or interim targets would be appropriate, and update the IDP to reflect this;
- consider the continuing suitability of the ALP in the IDP in the light of the child or young person's progress towards the outcomes and any interim targets set around those outcomes;
- assess whether any additional ALP is required; and
- seek advice from all relevant professionals.

429. To aid in the evaluation and assessment of the child or young person's ALP, impact monitoring is a useful tool. The shorter term targets can indicate which ALP is meeting the needs of the child or young person, that which is no longer required and/or not having its desired effect.

430. At the end of the review meeting a date should be agreed, at least in principle, of when the next review will take place. This **must** be within 12 months of the review.

431. Also at the end of the meeting, any action that will be taken to help meet the needs of the child or young person should be clearly explained to the child, their parent, or young person and any one else involved in the review.
432. If the conclusion of the review is that a child or young person no longer has ALN and no longer requires an IDP, this should be explained. See Chapter 17 for ceasing an IDP.
433. If a school, FEI or a local authority revises an IDP, it **must** give a copy of the revised plan to<sup>99</sup>:
- the child or young person; and
  - if the plan applies to a child, the child's parent.

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<sup>99</sup> Section 15(7) of the Act.

## Chapter 17: Ceasing to maintain an IDP

### Summary

434. This Chapter sets out further detail on the circumstances in which it may be appropriate to 'cease to maintain' an IDP. That is, the circumstances in which an education setting or local authority may decide that an individual no longer requires an IDP. It also sets out the practical steps to be taken before and after such a decision is made, and the individual's options for appealing the issue. It should be read alongside sections 20 – 24 of the Act.

### The circumstances in which an IDP might cease to be maintained

435. Section 20 of the Act confirms that a school, FEI or local authority may cease to maintain an IDP for a child or young person only if it is no longer necessary to maintain it. There are a few scenarios in which this might occur.

436. The Act places duties on schools and FEIs to prepare and maintain IDPs in relation to *registered pupils / enrolled students* at those settings – see sections 9 and 10 of the Act. Once a child or young person ceases to be a pupil or student (i.e., leaves the school or FEI, either to move to another education setting or with the intention of leaving education more generally), the duties of the school or FEI will cease and it will no longer be necessary for them to maintain an IDP.

437. In some cases, a local authority will maintain an IDP. The Act gives duties to local authorities to prepare and maintain IDPs in relation to children and young people *for whom that local authority is responsible* – see section 12 of the Act. Local authority responsibility is defined by section 55 of the Act, and broadly equates to the geographical residence of the child or young person. Where a local authority ceases to be responsible for an individual within the meaning of the Act, the duties of the local authority will cease and it will no longer be necessary for it to maintain an IDP.

438. In some situations, the school, FEI or local authority may determine, usually as an outcome of a review, that the child or young person no longer has ALN and, therefore, no longer requires an IDP. There should be no presumption that because a child or young person has been given an IDP they will continue to need one until they leave education or training. In considering this issue, practitioners should refer back to the basic definition of ALN at section 2 of the Act (and the further guidance in Chapter 6 of this Code) and consider whether that test is still met.

### Notification of a decision

439. Children, their parents and young people may find a proposal to remove an IDP and ALP alarming. They should be reassured that appropriate, ongoing, support through differentiated teaching, and other relevant strategies and practice, can and will be delivered, and that if ALN re-emerges an IDP can be

reinstated at short notice. If it is decided at a review meeting that the child or young person no longer has ALN, these matters would normally be discussed at that time.

440. Before a school, FEI or local authority decides to cease to maintain a plan for a child or young person, section 20 of the Act states that they **must** notify the child, child's parent or young person that it proposes to make such a decision<sup>100</sup>. It should then allow sufficient time and opportunity for representations to be made in relation to the decision. In most cases, this process of notification and representation making can occur through the normal review process.
441. After the school, FEI or local authority has considered the representations and made its decision, it **must** notify the child or young person and, in the case of a child, the child's parent of the decision, and the reasons for the decision – even if the decision is ultimately to continue to maintain the IDP<sup>101</sup>.
442. A maintained school **must** also notify the child and their parent, or the young person, of their right to request a reconsideration of the matter from the local authority (see below)<sup>102</sup>.

### **Reconsideration of a maintained school's decision to cease to maintain an IDP**

443. Children and their parents, and young people, are able to request a reconsideration of a decision to maintain, or not to maintain, an IDP made by a maintained school under section 20 of the Act. The steps which **must** be taken in these cases are detailed at section 21 of the Act.

*[Section 21 of the Act includes a power to make regulations to prescribe a time period within which such a request must be made. Further guidance will be developed alongside the regulations and inserted into the Code in due course]*

### **Limitation on ceasing to maintain an IDP, to allow reconsideration or appeal**

444. Section 22 of the Act confirms the circumstances in which a maintained school, FEI and local authority may cease to maintain an IDP. The section ensures that, before a school, FEI or local authority is able to cease an IDP, a child, child's parent or young person is given the opportunity to challenge that decision, either through a reconsideration request to a local authority (where a decision to cease the IDP has been made by a maintained school – see above), and / or via an appeal to the Education Tribunal (where a decision has been made by an FEI or local authority).

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<sup>100</sup> Section 20(2) of the Act.

<sup>101</sup> Section 20(3) of the Act.

<sup>102</sup> Section 20(4) of the Act.

## **IDPs after a young person's 25<sup>th</sup> birthday**

445. There is no requirement to maintain an IDP following a person's 25<sup>th</sup> birthday<sup>103</sup>. However, section 24 of the Act confirms that an FEI or a local authority may continue to maintain an IDP for a young person until the end of the 'academic year' during which the young person reaches 25 years of age<sup>104</sup>. This might be appropriate in order to enable an individual to complete a course of study.

446. An "academic year" is defined by section 24(2) of the Act as:

- in relation to a young person who attends an FEI, a period of 12 months ending on 31 July; and
- in relation to any other young person, a period of 12 months ending on the day the young person's course of education or training ends or the day before the young person attains the age of 26 (whichever is earlier).

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<sup>103</sup> The duties in the Act apply in relation to children and young people. Section 68 of the Act Bill confirms that 'young people' are those over compulsory school age, but under 25.

<sup>104</sup> Section 24 of the Act.

## Chapter 18: Transferring an IDP

### Summary

447. This Chapter set out requirements and guidance in relation to the transfer of IDPs between one maintained school, FEI or local authority to another.

*[Section 23 of the draft Bill provides that regulations may be made in relation to the transfer of IDPs between institutions and local authorities.*

*Section 52 of the draft Bill provides that regulations may be made in relation to the disclosure and use of information in relation to Additional Learning Needs, and, in particular, in relation to the disclosure of IDPs between institutions and local authorities.*

*The content of this Chapter will be developed alongside these regulations in due course. Both the Chapter, and the regulations, will be informed by input from practitioners, who are well placed to advise on good practice in relation to effective transition.]*

## Chapter 19: Transition and preparing for adulthood

### Summary

*[Section 23 of the draft Bill provides that regulations may be made in relation to the transfer of IDPs between institutions and local authorities.*

*Section 52 of the draft Bill provides that regulations may be made in relation to the disclosure and use of information in relation to Additional Learning Needs, and, in particular, in relation to the disclosure of IDPs between institutions and local authorities.*

*The content of this Chapter will be developed alongside these regulations in due course. Both the Chapter, and the regulations, will be informed by input from practitioners, who are well placed to advise on good practice in relation to effective transition. The below paragraphs represent the Welsh Government's initial view on the sorts of issues which will ultimately be covered by this Chapter.]*

448. Children and young people with ALN need to be supported to make a smooth transition between different settings or schools. To ensure this happens, planning and preparation for transition will need to occur well in advance of any move taking place. Preparation for transition will be a key topic for IDP review meetings (see Chapter 16).
449. Furthermore, young people with ALN will need particular support when they are preparing to leave school or further education.
450. This Chapter sets out the arrangements that should be put in place to ensure smooth and effective transitions for children and young people with ALN between the various phases of education, including the use of IDP reviews to support a smooth transition.

### Transition types

451. Key transitions within a child or young person's education might include:

- home to a pre-school setting or school;
- pre-school setting to reception year;
- infant school to junior school;
- primary school to secondary school;
- secondary school to a FEI or independent special post-16 institutions; and
- from education to adult provision, for example to support the young person into employment.

## **General principles**

*[This section will be expected to provide general guidance on the principles that that should underpin effective planning and preparation for transitions.]*

## **Transitions between specific settings**

*[This section will provide guidance on the specific issues which might need to be addressed when a child or young person is due to transfer between different educational settings. This would include the means by which the IDP review process should be used to support different sorts of transition and the use of particular forms of expertise – for example, specialist careers advice for young people going on to further education.]*

## **Young people leaving school/further education**

*[This section will provide guidance on the transition support that young people with ALN will require when they prepare to leave school or further education and will no longer be entitled to an IDP. This will include those leaving to take up employment, enter higher education or take up work-based learning or some other form of training.]*



## Chapter 20: Avoiding and resolving disagreements

### Summary

452. This Chapter relates to the requirement on local authorities to make arrangements with a view to both avoiding and resolving disagreements under section 37 of the Act.

453. From time to time, disagreements may arise about ALN or ALP. As far as possible they should be avoided or resolved through dialogue at the earliest opportunity.

### Avoiding disagreements

454. The inclusive process of developing an IDP and the requirement to take into account the views, wishes and feelings of the child, child's parent or young person (see Chapter 4), is intended to help to overcome concerns and avoid disagreement. Local authorities' focus should be on providing the parties with the opportunity to raise concerns or questions at every stage of the process and prevent problems from escalating.

455. Local authorities should consider how they can avoid disagreements, for example, by:

- reassuring children, their parents and young people that discussions and decision-making will be centred on the best interests of the child or young person;
- improving communication and relationships between parties and the local authority to create an environment where the concerns of children, their parents and young people can be addressed through open and constructive dialogue;
- ensuring decisions are properly explained in a way that is understandable to the child, child's parent or young person; and
- providing reassurance that the child or young person will receive the level of support that they need.

### Putting in place arrangements to avoid disagreements

*[Further versions of the Code will provide examples of good practice for avoiding and resolving disagreements.]*

456. Section 37 of the Act provides that the local authority **must** make arrangements for avoiding disagreements between a maintained school, FEI, local authority and proprietor of a relevant institution<sup>105</sup>, for example an independent school, and a child, child's parent or young person<sup>106</sup>.

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<sup>105</sup> See section 37(8) of the Act for the definition of relevant institution.

<sup>106</sup> Section 37(1)(2) of the Act.

457. Section 37(4) of the Act provides that local authorities **must** take steps it considers appropriate for making the arrangements known to:

- children and young people for whom it is responsible;
- parents of children for whom it is responsible;
- head teachers and governing bodies of the schools it maintains; and
- other persons it considers appropriate, e.g. case friends, Local Health Boards, early years education settings, FEIs etc.

### **Promoting Arrangements**

458. The local authority **must** promote the use of such arrangements<sup>107</sup>, for example by providing details of the arrangements to children, their parents and young people when they receive a notice of a decision by the school, FEI or local authority. This should include contact details for accessing the arrangements. Chapter 8 outlines what the notification of the decision not to prepare a plan should contain. Local authorities should ensure that the information is in a suitable format to enable children, their parents and young people to understand what the arrangements are, for example, by using plain language.

### **Resolving disagreements**

459. Where it has not proven possible to prevent disagreements arising, the focus will necessarily shift to resolving them as quickly and efficiently as possible. Early resolution of disagreements significantly benefits the child, child's parent or young person and can avoid unnecessary stress and expense.

460. In the first instance the child, child's parent or young person should raise their concerns at the most suitable local level. In many instances this will be with the education setting that the child or young person attends, e.g. the preschool setting, school or FEI.

461. Furthermore, as set out in Chapter 9, where a maintained school has made a decision that a child or young person has ALN, or has refused to make a decision, the child, child's parent or young person has an opportunity to request that the local authority reconsiders the matter.<sup>108</sup> Similarly, if a school maintains an IDP for a child or young person and the child, child's parent or young person considers the IDP does not meet the needs of the child or young person, then the local authority can be asked to reconsider and revise the plan.<sup>109</sup>

### **Disagreement Resolution Arrangements**

462. Section 37(1) and (2) of the Act provide that the local authority **must** make arrangements for resolving disagreements between a maintained school, FEI,

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<sup>107</sup> Section 37(5) of the Act.

<sup>108</sup> Section 17(1) of the Act.

<sup>109</sup> Section 18 of the Act.

local authority and proprietor of a relevant institution, and a child, child's parent or young person<sup>110</sup>.

463. Local authorities **must** take steps they consider appropriate for making the arrangements known to:

- children and young people for whom it is responsible;
- parents of children for whom it is responsible;
- head teachers and governing bodies of the schools it maintains; and
- other persons it considers appropriate.

464. The local authority **must** promote the use of such arrangements.<sup>111</sup> In particular, the local authority should inform parties about the arrangements at relevant points within the process so that they can receive help to deal with potential disagreements as and when they arise.

465. As set out above, one such example is providing details of the arrangements to children, their parents and young people when they receive a notice of a decision by the school, FEI or local authority.

466. The local authority's disagreement resolution arrangements should deal with any questions from the child, child's parent or young person. It should be explained that the arrangements are informal and accessible, and provide a simple process designed to bring two parties together to clarify the issues and reach a resolution.

467. If initial discussions with the school, local authority or FEI have not resulted in the resolution of disagreements, children, their parents and young people should be able to access the disagreement resolution arrangements at any reasonable time in respect of disagreements about the exercise by education bodies of their functions under the Act and the ALP made for children and/or young people.

468. Using the disagreement resolution arrangements will allow concerns and issues to be raised. The aim is that this will generally reduce the need to take a dispute to the tribunal. It should lead to a quicker resolution of any disagreements, save significant time and money, and minimise disruption to the child or young person's learning.

469. Disagreement resolution arrangements should be:

- practical;
- accessible;
- help to bring together the relevant parties;
- support the needs of the child and young person;
- help to achieve early and informal resolution of disagreements through discussion and agreement;

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<sup>110</sup> Section 37(1)(2) of the Act.

<sup>111</sup> Section 37(5) of the Act.

- discuss the full range of options;
- ensure the minimum disruption to the child or young person's education.

470. All participants, including the child, child's parent or young person, need to feel confident that their views, wishes and feelings will be listened to. The purpose of disagreement resolution is not to apportion blame, but to seek to resolve disagreements by achieving a solution to a difference of views in the best interests of the child or young person. The arrangements should be suited to the participants.

471. When a child, child's parent or young person decides to use the disagreement resolution arrangements, the parties should arrange to meet at a time suited to all and an open communication channel should be kept with prompt responses to any requests. This should be arranged at the earliest possible opportunity to enable a prompt resolution. The child, child's parent or young person should be supported to make their views known.

### **Interrelationship with the Tribunal**

472. Using disagreement resolution arrangements, or deciding not to use them, does not affect rights to appeal to the Tribunal. No inference will be drawn by the Tribunal if the child, child's parent or young person to the disagreement has not used the disagreement resolution arrangement.

473. Disagreement resolution meetings are confidential and without prejudice to the Tribunal process. The Tribunal may cover similar ground to that explored through the disagreement resolution arrangement but will reach its own independent findings and conclusions. Partial agreement achieved by using such arrangements can help to focus on the remaining areas of disagreement in any subsequent appeal to the Tribunal.

474. As part of the disagreement resolution arrangements, the local authority **must** include provision for parties to the disagreement to access help in resolving that disagreement from persons who are independent of the parties.<sup>112</sup>

### **Independence of persons helping to resolve disagreements**

475. Independent person(s) helping to resolve disagreements will need a range of experience, knowledge and qualifications, including for example:

- training and experience in disagreement resolution, e.g. mediation;
- counselling and negotiating skills;
- the ability to establish and maintain effective communications;
- knowledge of ALN legislation, associated regulations, this Code and other relevant educational issues; and
- the capacity to maintain confidentiality and have no vested interest.

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<sup>112</sup> Section 37(3) of the Act.

## Standards

476. The local authority is responsible for ensuring that the arrangements for disagreement resolution are appropriate and of suitable quality. For example, in arranging effective disagreement resolution, the local authority should:

- take responsibility for the overall standard of the disagreement resolution arrangements, including having a development plan with clear targets which are reviewed regularly;
- ensure there are appropriate management structures for the arrangements, including overseeing, regularly monitoring and reviewing the arrangements, taking account of local or national best practice;
- actively seek feedback about the arrangements from those using them to inform the development and continuous improvement of the arrangements;
- have clear funding and budgeting plans for the arrangements;
- ensure there is adequate resources and staffing to meet the needs of children, their parents and young people in their area; and
- ensure that staff providing the disagreement resolution arrangements receive appropriate training and development to undertake their role effectively.

477. This list is not exhaustive.

## Independent advocacy services

*[Future versions of the Code will be updated to reflect any changes to the way in which advocacy services are delivered generally across Wales].*

478. A child, or young person can access independent advocacy services to support the avoidance and resolution of disagreements, including in relation to matters that proceed to the Tribunal.

479. Advocacy services can help the child and young person to express and to represent their views, wishes and feelings.

480. Section 38 of the Act provides that a local authority **must**:

- make arrangements for the provision of independent advocacy services for the children and young people for whom it is responsible;
- refer any child or young person for whom it is responsible who requests independent advocacy services to an independent advocacy service provider; and
- refer any person who is a case friend for a child or young person for whom it is responsible and who requests independent advocacy services to an independent advocacy service provider.<sup>113</sup>

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<sup>113</sup> Section 38(1) of the Act.

481. Section 38(2) of the Act provides that independent advocacy services provide advice and assistance, by way of representation or otherwise, to a child, young person or case friend, should the child or young person:

- make, or intend to make, an appeal to the Tribunal;
- consider whether to appeal to the Tribunal; or
- take part, or intend to take part, in arrangements for avoiding or resolving disagreement<sup>114</sup>.

482. The local authority **must** have regard to the principle that any services provided under the arrangements **must** be independent of any person who is:

- the subject of an appeal to the Tribunal; or
- involved in investigating or adjudicating on such an appeal.<sup>115</sup>

483. Local authorities **must** take reasonable steps to make the services known to<sup>116</sup>:

- children and young people for whom it is responsible;
- parents of such children;
- head teachers and governing bodies of the schools it maintains;
- case friends for children and young people for whom it is responsible; and
- any other persons it considers appropriate.

484. When a child, child's parent or young person receives notification of a decision by the school, FEI or local authority on whether a child or young person has ALN, or when they receive the finalised IDP, the school, FEI or local authority **should** provide details of the local authority's arrangements for independent advocacy services. This should include contact details for accessing the service.

485. If a child or young person is considering using an independent advocacy service, the information the service provides should be factual and unbiased. It should clearly outline that engaging with the service is a voluntary process.

486. The advice provided to parties who choose to use independent advocacy services is confidential. Parties can use the services to help them to take cases to the Tribunal.

## Case friends

487. Section 39 of the Act allows regulations to provide for a child or young person to have a person support them, known as a "case friend"<sup>117</sup>.

488. The regulations may allow the case friend to do anything the child or young person may or must do, on behalf of the child or young person.

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<sup>114</sup> Section 38(2) of the Act.

<sup>115</sup> Section 38(3) of the Act.

<sup>116</sup> Section 38(5) of the Act.

<sup>117</sup> Section 39 of the Act.

*[Further versions of the Code will provide guidance in the light of the regulations that are made.]*

489. The regulations may allow case friends to make representations on behalf of the child or young person, with a view to avoiding and resolving disagreements. Specifically, disagreements about the exercise of functions performed under the Act by maintained schools, FEIs, or local authorities in Wales.

490. The Act provides that a case friend **must**:

- act fairly and competently;
- have no interest adverse to that of the child or young person;
- ensure that all steps and decisions taken by the case friend are for the benefit of the child or young person; and
- take account of the child's or the young person's views.

## Chapter 21: Appeals to Tribunal

*[Sections 40-42 of the Act provide that regulations can be made in relation to appeals and tribunal procedures. Final guidance is subject to the content of the regulations.]*

### Introduction

491. The Education Tribunal for Wales (“the Tribunal”) hears and decides appeals about children and young people with ALN. Specifically, it hears and decides appeals about the decisions of the governing body of a FEI or a local authority in Wales. The Tribunal is independent of government and local authorities and its decisions are legally binding.

### Matters about which appeals can be made

492. Section 40 of the Act sets out the matters in relation to which a child, child’s parent or young person may appeal to the Tribunal:

- a decision by a FEI or local authority as to whether the child or young person has ALN;
- in the case of a young person, a decision by a local authority as to whether it is necessary to prepare and maintain an IDP;
- the description of a person’s ALN in an IDP;
- the ALP in an IDP, or the fact that ALP is not in an IDP;
- the school named in an IDP for the purpose of admitting a child to a named institution (section 26 of the Act – see Chapter 15;
- if no school is named in an IDP for the purpose of admission;
- a decision by the local authority not to take over responsibility for an IDP, which is maintained by a school, where it is requested to do so (see Chapter 9;
- a decision to not revise an IDP where the local authority has been asked to reconsider the IDP maintained by a maintained school; and
- a decision to cease to maintain an IDP.

### Decisions the Education Tribunal can make

493. Section 40(3) of the Act provides that the Tribunal may:

- dismiss the appeal;
- order that a person has, or does not have, ALN of a kind specified in the order;
- order a governing body, FEI or local authority to revise an IDP as specified in the order;
- order a governing body, FEI or local authority to maintain an IDP (with or without revisions);
- order a local authority to take over responsibility for maintaining an IDP; and



- remit the case to the governing body or local authority responsible for the matter for it to reconsider whether, having regard to any observations made by the Tribunal, it is necessary for a different decision to be made or different action to be taken.

## The appeal process

494. Section 41 of the Act provides that regulations may make provision about the initiation of an appeal and the proceedings of the Tribunal. *[Further guidance will be considered in the light of the regulations]*. The Tribunal provides advice and guidance on registering an appeal and on the procedure.
495. Appeals are heard throughout Wales. The Tribunal will notify the relevant parties when and where the hearing will take place. Appeals are heard by a group of Tribunal members, who constitute the Tribunal Panel. The Panel has specialist knowledge and experience in order to assess the case.<sup>118</sup>
496. Once an appeal has been lodged and the Tribunal has registered the appeal they will notify the relevant parties and request relevant information and evidence.
497. When an appeal has been heard by the Tribunal they will notify the parties to the case of their decision.

## Compliance with orders

498. Section 42 of the Act provides that if the Tribunal makes an order, the governing body or local authority concerned **must** comply with it before the end of the prescribed period beginning with the date it is made.<sup>119</sup>

## Appealing against the decision of the Tribunal

499. A party to any proceedings before the Tribunal may appeal to the Upper Tribunal on any point of law arising from a decision made by the Tribunal. An appeal to the Upper Tribunal may be brought forward only if the Tribunal or the Upper Tribunal has given its permission for the appeal to be brought.
500. This means that if a child, child's parent or young person considers the decision of the Tribunal is wrong in law they can appeal to the Administrative Appeals Chamber of the Upper Tribunal. The Upper Tribunal will only consider matters of law. They will not consider the merits of the case, nor will they hear any disagreements arising from the case, except for on points of law. An appeal can not be made if there is disagreement with the Tribunal's decision.

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<sup>118</sup> Section 41 of the Act.

<sup>119</sup> Section 42 of the Act.

## Chapter 22: Children and young people in specific circumstances

### Summary

501. This Chapter outlines the arrangements that should be made to support children and young people where their specific circumstances require additional consideration by those who work with them and support them.

502. These groups include:

- looked after children;
- persons formerly looked after;
- children and young people in alternative educational provision;
- children and young people educated at home;
- children of service personnel; and
- children and young people in the youth justice system.

### Looked after children

*[Section 56 of the Act provides that regulations may make provision for those children who are looked after<sup>120</sup> and persons formerly looked after<sup>121</sup>.*

*The current intention is to provide for a single educational plan for looked after children that integrates the existing Personal Educational Plan (“PEP”) with the IDP. It was not possible to place detailed provisions on the face of the draft Bill ahead of its publication that enable this to happen because linked elements of the Social Services and Well-being (Wales) Act 2014 have yet to be implemented. Once this legislation is complete it will be possible to finalise and include these details provisions on the face of the Bill. Further detail will, therefore, be inserted into the Code in due course.]*

### Other children and young people with care and support plans

503. It should be noted that the Social Services and Well-being (Wales) Act 2014 defines a child as a person who is aged under 18 and an adult as a person who is aged 18 or over.<sup>122</sup> Therefore, a person defined as a young person for the purpose of the Act could be a child or an adult in the Social Services and Well-being (Wales) Act 2014 depending on their age.

504. The Social Services and Well-being (Wales) Act 2014 sets out who is eligible for a care and support plan. This includes where a local authority **must** meet:

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<sup>120</sup> i.e. children looked after by the local authority for the purposes of Part 6 of the Social Services and Well-being (Wales) Act 2014.

<sup>121</sup> i.e. persons who were, but are no longer, children looked after by a local authority for the purposes of Part 3 of the Children Act 1989 before the coming into force of Part 6 of the Social Services and Well-being (Wales) Act 2014.

<sup>122</sup> Section 3 of the Social Services and Well-being (Wales) Act 2014.

- a child's needs for care and support<sup>123</sup>;
- an adult's needs for care and support<sup>124</sup>;
- the needs for support of a carer who is a child<sup>125</sup>; and
- the needs for support of a carer who is an adult<sup>126</sup>.

505. Where a child or young person has a care and support plan or a pathway plan and also has ALN, consideration should be given to holding the IDP review and the care and support plan / pathway plan meeting at the same time (see Chapter 13). Their care and support needs and ALN should be considered simultaneously, as they may inform what support and ALP is most suitable to meet their needs in a holistic way.

## Education otherwise than at schools (EOTAS)

506. Children and young people may receive education outside the school setting (EOTAS). This refers to any type of education outside the school, where local authorities have a duty to provide suitable education for learners of compulsory school age who might not otherwise receive any education. Children and young people are educated outside mainstream schools for a number of reasons. They may be ill or injured, have been excluded or have emotional and behavioural difficulties. The EOTAS provision can include Pupil Referral Units (PRUs), schools established in hospitals, FEIs, and individual tuition (but not elective home education).

507. A local authority may arrange for the ALP identified in an IDP it maintains for a child, or any part of that provision, to be made otherwise than in a school, but the local authority may only do so if it is satisfied that it would be inappropriate for the ALP to be made in a school<sup>127</sup>.

508. Where a child is educated otherwise than at school and it is brought to the attention of the local authority that the child may have ALN, and an IDP is not being maintained for that child, the local authority **must** decide whether the child has ALN, unless the exceptions apply (see Chapter 9).

509. Local authorities are required to ensure that a child of compulsory school age receives suitable education. Suitable education means efficient education, suitable to a child's ability and aptitude and to any ALN they may have. This education must be full-time, unless the local authority determines that, for reasons relating to the physical or mental health of the child, a reduced level of education would be in the child's best interests<sup>128</sup>.

510. Where a child has an IDP and it is arranged that the child will be educated otherwise than at school, it would often be appropriate for the local authority to

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<sup>123</sup> Section 37 of the Social Services and Well-being (Wales) Act 2014.

<sup>124</sup> Section 35 of the Social Services and Well-being (Wales) Act 2014.

<sup>125</sup> Section 42 of the Social Services and Well-being (Wales) Act 2014.

<sup>126</sup> Section 40 of the Social Services and Well-being (Wales) Act 2014.

<sup>127</sup> Section 30 of the Act.

<sup>128</sup> Section 7 of the Education Act 1996.

become responsible for maintaining an IDP, where it was not previously, and reviewing the IDP in consideration of the new setting the child will be attending.

511. Where an alternative provider has concerns that the child's needs are not being met, or they have, or may have ALN, they should raise their concerns with the responsible local authority.
512. Where a child is educated otherwise than at school, the general timetable and arrangements for the local authority to put in place an IDP, where it determines that the child requires one, and reviews of IDPs remain the same (see Chapter 12-15).
513. In the case of a child educated otherwise than at school, the range of professionals involved in the IDP process may be wider and, in some respects, different from those professionals involved where a child does attend a school. The IDP meeting, or the review meeting, should take place in the most appropriate location, such as in the local authority's offices, a hospital or the parent's home.

#### **Children and young people in alternative provision because of health needs**

514. The DMO or DCO will have a strategic role in ensuring appropriate support is in place for children and young people with ALN being educated otherwise than at a school because of major difficulties relating to health. The DMO or DCO **must** work with staff within the relevant local authority to ensure support is in place to support this group of learners achieve their potential.
515. Children and young people who are in hospital or placed in other forms of alternative provision because of their health needs, should have access to education that is on a par with that of mainstream provision (where that is suitable), including appropriate support to meet the needs of those with ALN. The education they receive should be good quality and prevent them from slipping behind their peers. It should involve suitably qualified staff who can help learners progress and enable them to successfully reintegrate back into school as soon as possible.
516. Local authorities and health professionals should work together to minimise the disruption to a child or young person's education. Ideally, the local authority will be notified before any hospital placement in order to arrange education and provide any ALP.
517. Where a child or young person with an IDP is admitted to hospital for a sustained period of time, the IDP **must** be reviewed to ensure it remains relevant and that the child or young person's ALN continues to be met.
518. Where a child or young person with health needs is returning to mainstream education, the local authority should work with the child, child's parent or young person and the school or FEI to support a smooth reintegration.

## **Pupil Referral Units**

519. Pupil Referral Units (PRUs) are a form of EOTAS provision. There is a high correlation between those children and young people who attend a PRU and who have ALN.
520. Where it is brought to the attention, or otherwise appears that a child or young person attending a PRU may have ALN, and an IDP is not being maintained for them, the local authority is responsible for deciding whether they have ALN under section 12 of the Act (unless section 13 of the Act applies).
521. If the local authority decides that the child or young person does not have ALN it **must** notify the child or young person and in the case of a child the child's parent in accordance with section 12(2) of the Act.
522. If the local authority decides that the child or young person has ALN the local authority **must** prepare and maintain an IDP in accordance with section 12 of the Act

## **Children and young people with ALN receiving elective home education**

523. Section 7 of the Education Act 1996 (as amended) places a duty on the parents of every child of compulsory school age to ensure their child receives efficient, full-time education suitable to their age, ability, aptitude, and to any ALN that they may have, either by regular attendance at school or otherwise<sup>129</sup>.
524. Local authorities should work in partnership and support parents to help them meet the ALN of children receiving elective home education. Local authorities do not have a right of entry to the family home to check that the provision being made by parents is appropriate, and may only enter the home if the families consent to it. Parents should be encouraged to see this process as part of the local authority's overall approach to home education of learners with ALN, who can provide additional support and expertise rather than an attempt to undermine the parents' decision to home educate.
525. Local authorities should not assume that because the provision being made by parents is different from that which was being made or would have been made in school, that the provision is necessarily unsuitable. Local authorities should also consider helping parents make suitable provision.
526. Parents who choose to educate their child at home and believe the child or young person has ALN, have the right to ask the local authority to determine the matter<sup>130</sup>. Where the local authority decides not to put in place an IDP, the child and the child's parents have the same right to appeal as everyone else.

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<sup>129</sup> It is our intention that section 7 of the Education Act 1996 will be amended to replace the words 'special educational needs' in this section with 'additional learning needs'.

<sup>130</sup> Section 12 of the Act.

Equally, the child and the child's parents have the same right to appeal about the ALP in the IDP or the fact that ALP is not in a plan

527. Further information on the responsibilities of schools and parents where a registered pupil is receiving education otherwise than at school and the local authorities' responsibility for ensuring the child's needs are being met can be found within the Welsh Government's Inclusion and Pupil Support Guidance<sup>131</sup>.

## **Children of service personnel**

528. The Children's Education Advisory Service (CEAS) within the Ministry of Defence (MoD) provides advice and guidance to Service parents, educational establishments and local authorities on educational issues relating to Service children, including issues relating to ALN. Service Children's Education (SCE) provides mainstream education for service children in some overseas locations. As the resources available overseas are different from the UK, MoD services complete an MoD Assessment of Supportability Overseas (MASO) for all Service children with complex needs before an overseas posting is agreed.
529. Children whose parent(s) are Service Personnel may face difficulties that are unique to the nature of their parent's employment. These needs may arise from:
- service induced mobility – Service Personnel may relocate more often than the rest of the population and, sometimes, at short notice. Such transitions should be well managed to avoid Service children with ALN experiencing delays in having their needs assessed and met; or
  - the deployment of serving parents to operational arenas – while not constituting ALN in itself, may result in a Service child experiencing anxiety, dips in educational performance and/or emotional difficulties. Children may also be affected similarly by siblings' deployment.
530. Educational institutions should aspire to meet the aspirations of the Armed Forces Covenant, which attempts to eliminate or mitigate some of the potential disadvantages faced by Service families. All those with statutory responsibilities towards Service children with ALN should ensure that the impact of their policies, administrative processes and patterns of provision do not disadvantage such children because of their Service-related lifestyle.
531. Local authorities should take account of the particular needs of any Service communities within their boundaries when providing or planning ALP for Service children with ALN.
532. In respect of Service children, the school, FEI or local authority responsible for preparing and/or maintaining the IDP should:

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<sup>131</sup> <http://gov.wales/topics/educationandskills/publications/circulars/2463797/?lang=en>

- ensure that all reviews for Service children with ALN consider those Service-related issues (e.g. service induced mobility) relevant to the outcomes of those reviews;
- ensure that access to appropriate assessments, interventions and provision is determined solely on the nature, severity and complexity of the needs presented by Service children with ALN and is not related to the amount of time they have left in a particular school;
- consider the likely impact on the Service child's needs and the provision made to meet those needs of any relevant Service-related issue, and when determining whether or not a Service child has ALN it may be appropriate to seek advice from the CEAS; and
- use all relevant evidence – including EHC plans in England, statements in Northern Ireland, Co-ordinate Support Plans in Scotland and the Service Children's Assessment of Need (SCAN) completed for them by the SCE – when assessing appropriate provision for Service children with ALN.

### **Education Tribunal for Wales**

533. In reaching decisions about appeals from Service parents, the Tribunal should consider, on the basis of the evidence available to them, the extent to which Service-induced mobility has had, is having, and will have an impact on the appropriateness and effectiveness of the ALP in an IDP and that requested by a parent.

### **Children and young people with ALN in the youth justice system**

534. Section 57 – 62 of the Act outlines roles and responsibilities in relation to children and young people who are sentenced or remanded by the Courts to relevant youth accommodation in England and Wales.

535. This section does not apply to a detained person serving their sentence in the community or in detention accommodation for adults.

536. Relevant youth accommodation in this section refers to young offender institutions, secure training centres or secure children's homes. The term 'detained person' will be used in this section to refer to these children and young people.

537. 'The person in charge of relevant youth accommodation' includes the Governor, Director or Principal in charge of the accommodation.

538. 'Home authority' is the local authority where the young person is ordinarily resident (excluding any period when the person is subject to a detention order) or, in relation to a child who is or was looked after by an authority under the Children Act 1989, the local authority that is or was most recently looking after the person.

## Help and sharing of information

539. Section 39A of the Crime and Disorder Act 1998 provides that a youth offending team (“YOT”) **must** notify the home authority when a child or young person aged 18 and under is detained.
540. All children and young people entering the youth justice system are assessed by the YOT, using the approved Youth Justice Board (YJB) assessment tool. As part of the assessment process, YOTs will seek information from a number of sources, including local authorities, schools and/or FEIs and the education provider in the custodial establishment. If a local authority, school or FEI receives such a request they should respond to it as soon as possible.
541. Chapter 13 provides further information regarding instances where a home authority requires help and information from other bodies, including YOT’s and the person in charge of relevant youth accommodation.

## Education within the youth justice system

542. Section 562B of the Education Act 1996 provides that the home authority **must** monitor the education or training of a detained person and take such steps as the home authority consider appropriate to promote the fulfilment of the detained person’s learning potential during custody and following their release, whether they have an IDP or not. It is, therefore, important that the home authority monitors the education and training of a detained person and continues to engage with them whilst they are in custody.
543. The detained person’s YOT will be the key point of contact between the person in charge of the relevant youth accommodation and the home authority. However, the home authority may also need to discuss the provision directly with the person in charge of the relevant youth accommodation and the education provider.

## Preparing an IDP for a detained person

544. Sections 57–59 of the Act relate to the preparation of an IDP for a detained person where they have entered relevant youth accommodation without an IDP.
545. Where it is brought to the attention of, or otherwise appears to, a home authority in Wales, for example by notification from the YOT, that a detained person may have ALN and an IDP is not being kept for them under section 60 of the Act, the home authority **must**:
- decide whether or not the detained person has ALN; and
  - if it decides that the detained person has ALN, it **must** decide, in accordance with regulations, whether it may be necessary for an IDP to be



maintained for the detained person when they are released from detention<sup>132</sup>.

546. A home authority is not required to make this decision where:

- the detained person is a young person who does not consent to the decision being made; or
- the home authority has previously decided whether the detained person has ALN and is satisfied that the detained person's needs have not changed substantially since the decision was made, and there is no new information that materially affects the decision<sup>133</sup>.

547. Where the home authority is required to make the decision it **must**, before doing so, invite the person in charge of the relevant youth accommodation to participate in the decision, and, if appropriate, in the preparation of the IDP<sup>134</sup>.

548. In coming to this decision, the home authority should consider any relevant information, for instance from YOTs, the YJB assessment tool and relevant youth accommodation as well as from schools and FEIs. Carers, health and social care professionals and youth workers can also support the identification of ALN.

549. If the home authority decides that a detained person has ALN and that it may be necessary for an IDP to be maintained for the detained person when they are released from detention, the home authority **must**<sup>135</sup>:

- prepare an IDP for the detained person; and
- give a copy of the plan to the detained person, the parent of a detained person who is a child, and the person in charge of the relevant youth accommodation.

550. Where the local authority decides that the detained person does not have ALN, or that it would not be necessary for an IDP to be maintained for the detained person when they are released from detention, it **must** notify the detained person, the parent of the detained person who is a child, and the person in charge of the relevant youth accommodation of the decision and the reason for the decision<sup>136</sup>.

551. A home authority **must** also provide notification of the home authority's information and advice services, the availability of independent advocacy, avoidance of disagreements and disagreement resolution services (see Chapter 20) and their rights of appeal to the Education Tribunal for Wales (Chapter 21).

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<sup>132</sup> Section 58 of the Act.

<sup>133</sup> Section 59 of the Act.

<sup>134</sup> Section 58(3) of the Act.

<sup>135</sup> Section 58(5) of the Act.

<sup>136</sup> Section 58(4) of the Act.

## **Duty to keep an IDP for detained persons and arrange appropriate learning provision**

552. Section 60 of the Act provides that where a detained person had an IDP maintained for them immediately before the beginning of their detention by a school, FEI, or local authority, or a home authority has prepared an IDP during detention under section 58 of the Act, the home local authority **must** keep the IDP whilst the person is detained.
553. Where an IDP was being maintained by a school or FEI prior to detention, the duty to keep an IDP only applies where it is brought to the attention of the home authority.
554. The home authority **must** inform the detained person, the parent of a detained person who is a child, and the person in charge of the relevant youth accommodation in writing that it is keeping an IDP while the person is being detained.
555. Where the home authority keeps an IDP, it **must** arrange for appropriate learning provision to be provided to the detained person while they are being detained.
556. Appropriate learning provision is defined in section 60(8) of the Act as:
- ALP specified in the IDP; or
  - if it appears to the local authority that it is not practical for the ALP specified in the IDP to be provided, then educational provision corresponding as closely as possible to that ALP, or if it appears to the local authority that the ALP specified in the IDP is no longer appropriate for the detained person, then ALP which the home authority considers appropriate.
557. It might not always be practicable to deliver the exact provision in the IDP. Where the provision is not currently available within the relevant youth accommodation it does not necessarily mean that it is impracticable for it to be arranged. Where it is not practicable to arrange specified provision in the IDP, the home authority **must** arrange educational provision corresponding as closely as possible to it and should work with the person in charge of the relevant youth accommodation and the education provider to identify how to do so.
558. If it appears to the home authority that the additional learning provision specified in the IDP is no longer appropriate, e.g. the detained person's needs have changed since their last review or they have previously unidentified needs, the home authority **must** arrange additional learning provision that the home authority considers appropriate.
559. Failure to meet the needs of the child or young person might lead to a higher chance of reoffending. Therefore, home authorities should work closely with the person in charge of relevant youth accommodation and the YOT who **must** co-

operate with the local authority in order to enable them to fulfil this duty<sup>137</sup>, unless they consider that doing so would be incompatible with their own duties or otherwise have an adverse effect on the exercise of their functions.

560. In practice, educational provision in relevant youth accommodation, including any additional support that a detained person may require as part of an IDP, will be delivered by an education provider under contractual arrangements with the YJB or the custodial operator and is commissioned and funded centrally.
561. A home authority should work closely with the providers to arrange provision. The home authority should seek to do this as soon as they become aware of the detained person entering custody, using the custodial establishment's and YOT's existing planning procedures wherever possible.
562. Whilst the detained person is in custody the home authority **must not** amend the IDP, carry out a review or cease to maintain the IDP.
563. Custodial sentences for detained persons are often short. As such, it is important for decisions to be made as soon as possible to enable the provision to be put in place without delay.

### **IDP's for children and young people on release from relevant youth accommodation**

564. Section 39A of the Crime and Disorder Act 1998 provides that where a YOT becomes aware that a detained person has been released from custody, the YOT **must**, as soon as practicable, notify the following of this fact: the home authority, the local authority where the detained person was in custody and any other local authority where it is expected that the detained person will live on release. This assists the resettlement process.
565. From the date the detained person is released, if a local authority in Wales becomes responsible for that person due to the detained person residing in their local authority area on release, the local authority **must** maintain the plan under section 12 of the Act.
566. The local authority **must** review the IDP as soon as it is reasonably practical. The authority should take into account any evidence provided by the custodial establishment, education provider and YOT to ensure the IDP is informed by any previous assessments undertaken.

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<sup>137</sup> See Chapter 13 regarding the provision of help and assistance to a local authority and also section 49 of the Act.

## **Cross-border issues**

567. In some instances a Welsh-resident child or young person will be detained in relevant youth accommodation in England and English-resident child or young person detained in Wales.
568. Where a Welsh-resident child or young person is detained in youth custody in England, the home Welsh local authority may have to prepare an IDP, or keep an IDP in accordance with sections 57–60 of the Act. Where it does so, it should work closely with the YOT, the person in charge of relevant youth accommodation and the education provider.
569. For those detained in Wales who are not Welsh-resident children or young people, it is the responsibility of the English home authority to abide by any duties they are under by virtue of the Children and Families Act 2014 and section 562 of the Education Act 1996. A Welsh home authority does not have any responsibility for an English resident detained person in relevant youth accommodation in Wales.

## **Appeal to the Education Tribunal for Wales**

570. Section 62(2) of the Act provides that a detained person, or the parent of a detained person who is a child, may appeal to the Tribunal against the following matters:
- a decision of the home local authority to prepare or not to prepare an IDP for a detained person when they are released from detention;
  - the ALP in an IDP, or the fact that ALP is not included in the plan (this will be the ALP applicable on release from detention);
  - the school named in an IDP for the purpose of admission on release from detention; or
  - if no school is named in an IDP for the purpose of admission on release from detention.
571. Section 62(3) of the Act provides that on appeal, the Tribunal may:
- dismiss the appeal;
  - order that a person has ALN of a kind specified in the order;
  - order the local authority to revise an IDP as specified in the order; or
  - remit the case to the home local authority responsible for the matter for it to reconsider whether, having regard to any observations made by the Tribunal, it is necessary for a different decision to be made or different action to be taken
572. Please refer to Chapter 21 for further guidance on appeals to the Education Tribunal for Wales