Implementing the Additional Learning Needs and Education Tribunal (Wales) Act 2018

A technical guide to implementing the Act during the first year of implementation (2021 to 2022), as amended

1. Introduction

1.1 This guide is for local authorities, governing bodies of maintained schools, management committees of pupil referral units (PRUs), school and PRU teaching staff, additional learning needs coordinators (ALNCos) and early years additional learning needs lead officers (early years ALNLOs). This guide may also be of interest to independent nurseries, independent schools, further education institutions (FEIs), and designated education clinical lead officers (DECLOs).

1.2 The guide sets out the arrangements for the first year of implementing the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (the ALN Act). It sets out the actions local authorities, schools and PRUs must take in terms of deciding if children have ALN and, where required, preparing and maintaining individual development plans (IDPs).

1.3 The guide covers the move away from the existing statements of special educational needs (SEN) and associated processes set out in Part 4 of the Education Act 1996 and the arrangements set out in the 'Special Educational Needs Code of Practice for Wales' in relation to children who receive provision through school action/school action plus.

The guide shows amendments made to the guide since 18 November 2021.

- when text is omitted by amending the guide, ~~text is struck through and presented in red text~~
- when text is inserted by amending the guide, text is underlined and presented in blue text

Relevant legislation

1.4 The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (the ALN Act) aims to create:

- a unified legislative framework to support all children of compulsory school age or below with additional learning needs (ALN) and to support young people with ALN who are in school, a PRU or further education (FE)
- an integrated, collaborative process of assessment, planning and monitoring that facilitates early, timely and effective interventions
- a fair and transparent system for providing information and advice, and for resolving concerns and appeals

The Additional Learning Needs Code and regulations

1.5 The Additional Learning Needs Code (the ALN Code) places further requirements on schools, PRUs and local authorities and contains guidance on their functions under the ALN Act.

1.6 In addition to the ALN Act and the ALN Code, the following regulations apply:

- the Additional Learning Needs (Wales) Regulations 2021

- the Education Tribunal for Wales Regulations 2021
- the Equality Act 2010 (Capacity of parents and persons over compulsory school age) (Wales) Regulations 2021
- the Independent Schools (Provision of Information) (Wales) Regulations 2003
- the Education (Pupil Referral Units) (Management Committees etc.) (Wales) Regulations 2014

Commencement orders

The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 2) Order 2021

1.7 The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 2) Order 2021[1] (referred to as Commencement Order 2) brings into force the ALN Act for children up to, and including, Year 10 who from the 1 September 2021, are newly identified as having, or are newly thought to have, ALN (see paragraphs 6.42 to 6.43 for information about newly identified as having, or newly thought to have, ALN). In addition, Commencement Order 2 brings into force the ALN Act for children of compulsory school age who are detained on or after 1 September 2021 (see paragraph 6.33 for a definition of detained).

1.8 Commencement Order 2 also commences provisions relating to the Education Tribunal for Wales

The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 5 and Transitional and Saving Provisions) Order 2021

1.9 The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 5 and Transitional and Saving Provisions) Order 2021[2] (referred to as Commencement Order 5) brings into force the ALN Act for children who attend a maintained school or PRU up to and including Year 10, have special educational provision (SEP) via school action/school action plus and who fall into one of the following mandated years on 1 January 2022: Nursery Years 1 or 2, Year 1, Year 3, Year 5, Year 7 or Year 10[3].

1.10 Children who fall into one of the mandated years on 1 January 2022 will move to the ALN system during the spring and summer terms of the 2021 to 2022 school year. Following the making of an Amendment Order[4], this has been extended so that

[1] The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 2) Order 2021 as amended by The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Amendments to Commencement Orders No. 2, No. 3 and No. 4) Order 2021 and by The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Amendment of Commencement Order No. 2 and Revocation of Commencement Order No. 3 and Commencement Order No. 4) Order 2021.

[2] The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 5 and Transitional and Saving Provisions) Order 2021as amended by The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Amendment of Commencement Order No. 5 and Commencement Order No. 6) Order 2021.

[3] Commencement Order 5, article 9.

[4] The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Amendment of Commencement Order No. 5 and Commencement Order No. 6) Order 2022.

children in one of the mandated years on 1 January 2022 may also be moved during the 2022 to 2023 school year.

1.11 The order also deals with the mandated years, which will transfer to the new ALN system during the school year 2022 to 2023 and 2023 to 2024[5].

1.12 Commencement Order 5 does not include those who are in a pipeline (see paragraphs 6.52 to 6.56 for information about pipeline cases) on 1 January 2022, for example, those undergoing a statutory assessment or having requested one under the Education Act 1996[6].

1.13 Commencement Order 5 places requirements on schools, PRUs and local authorities.

The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 6 and Transitional and Saving Provisions) Order 2021

1.14 The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 6 and Transitional and Saving Provisions) Order 2021[7] (referred to as Commencement Order 6) brings into force the ALN Act for children up to, and including, Year 10 who, on 1 September 2021, have special education provision (SEP) via school action/school action plus and who:

- are registered at more than one setting where one of those settings is a maintained school or PRU in Wales; or
- are registered at a maintained school or PRU in Wales and are looked after in Wales by a local authority in Wales[8]

1.15 As with Commencement Order 5, order 6 provides for children described at paragraph 1.14 to move to the new ALN system via mandated years. Those who fall into one of the following mandated years on 1 January 2022 will move to the ALN system during the spring and summer terms of the 2021 to 22 school year: Nursery Years 1 or 2, Year 1, Year 3, Year 5, Year 7 or Year 10[9]. Following the making of an Amendment Order[10], this has been extended so that children in one of the mandated years on 1 January 2022 may also be moved during the 2022 to 2023 school year.

[5] Commencement Order 5, articles 10 and 11.
[6] Commencement Order 5, article 2.
[7] The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 6 and Transitional and Saving Provisions) Order 2021 as amended by The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Amendment of Commencement Order No. 5 and Commencement Order No. 6) Order 2021.
[8] Commencement Order 6, article 2.
[9] Commencement Order 6, article 9.
[10] The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Amendment of Commencement Order No. 5 and Commencement Order No. 6) Order 2022.

1.16 The order also deals with the remaining children described at paragraph 1.14 and the mandated years in which they will transfer to the new ALN system in the school years 2022 to 23 and 2023 to 24[11].

1.17 Commencement Order 6 does not include those who are in a pipeline on 1 January 2022, for example, those undergoing a statutory assessment or who have requested one under the Education Act 1996[12].

1.18 Commencement Order 6 places requirements on local authorities.

The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 7) Order 2021

1.19 The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 7) Order 2021[13] (referred to as Commencement Order 7) brings into force the ALN Act for children up to, and including, Year 10 who:

- on 1 September 2021, had identified SEN or who were in a pipeline case and who, on 1 January 2022 no longer had identified SEN or were no longer in a pipeline case. Commencement Order 7 treats these children as being newly identified as having, or newly thought to have, ALN (see paragraphs 6.42 to 6.43 for information about newly identified as having, or newly thought to have, ALN).

Implementation approach

1.20 The ALN system set out in the ALN Act will be fully implemented over school years 2021to 22, 2022 to 23 and 2023 to 24. The approach to implementation set out in this guide has been informed by the views of stakeholders responding to the public consultation on how the ALN Act should be implemented. The consultation found strong support for mandating a phased approach to implementing the ALN system. Most stakeholders agreed that national timeframes for transferring specific groups of children to the ALN system would be the most manageable and consistent approach. The implementation approach during the first year of implementation will also be sequenced.

Implementation from 1 September 2021

1.21 On 1 September 2021, the ALN system will commence for all children up to, and including, Year 10 who are newly thought to have, or are newly identified as having, ALN on or after 1 September 2021 (see paragraph 6.42 for a definition of newly identified as having, or newly thought to have, ALN), regardless of how their education is delivered. This includes, for example, children who attend a maintained school, a PRU, an independent nursery, an independent school, an FEI or children who are electively home educated.

[11] Commencement Order 6, articles 10 and 11.
[12] Commencement Order 6, article 2.
[13] The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 7) Order 2021

1.22 In addition, the ALN system will commence on 1 September 2021 for any child of compulsory school age who is detained on 1 September 2021 and will also commence for a child of compulsory school age who becomes detained after 1 September 2021 from the date on which the child becomes detained.

Implementation from 1 January 2021

1.23 On 1 January 2022, the ALN system will commence for children up to, and including, Year 10 who have SEP via school action/school action plus, attend a maintained school or a PRU and who are in Nursery Years 1 or 2, Year 1, Year 3, Year 5, Year 7 or Year 10. This includes children who are looked after and those who are registered at more than one setting.

1.24 It will also be possible for children captured by Commencement Orders 5 and 6, or their parents, to request they move to the ALN system outside of their year group (see paragraphs 6.64 to 6.67 for information about requesting an IDP notice and paragraphs 6.68 to 6.70 for information about requesting an ALN notice).

Children and young people not moving to the ALN system in the first year of implementation

1.25 Generally, the following groups of children and young people will not move to the ALN system during the first year of implementation but will move during the second or third year of implementation:

- children with SEP via school action/school action plus who are not in Nursery Years 1 or 2, Year 1, Year 3, Year 5, Year 7 or Year 10
- children with SEN who do not attend a maintained setting
- young people who are over compulsory school age
- children who are in Year 11, other than where they are detained
- children who have a statement of SEN
- children who have a pipeline case (see paragraphs 6.52 to 6.56 for information about pipeline cases)

Operation of the SEN system during implementation

1.26 During implementation, the ALN system will operate in parallel to the SEN system, which will gradually be phased out during the implementation period. Until a child moves to the ALN system, the SEN legislation[14] remains in force, which means schools, PRUs, and local authorities **must** continue to deliver the SEP set out in school action/school action plus plans or statements.

1.27 Children who are captured by the commencement orders cannot be given a statement[15]. This is to prevent children getting into a pipeline case during the implementation period. However, children, or their parents, can request they move to the ALN system earlier than they are otherwise due to move to the ALN system (see paragraphs 6.64 to 6.67 for information about requesting an IDP notice and paragraphs 6.68 to 6.70 for information about requesting an ALN notice).

1.28 Local authorities, schools and PRUs **must** continue to comply with the Education Act 1996 and regulations made under it, while the Act and the regulations still apply to the child, and with the arrangements set out in the 'Special Educational Needs Code of Practice for Wales'.

Transition arrangements and the ALN Code

1.29 The transitional arrangements put in place to implement the ALN system are not identical to the arrangements set out in the ALN Act and ALN Code. The differences include, for example, the timescales for deciding a child has ALN and the timescales for preparing an IDP.

[14] Part 4 of the Education Act 1996

[15] Children who are not captured by the commencement orders will remain on the SEN system and will, therefore, be able to request an assessment under the Education Act 1996 or a section 140 assessment under the Learning and Skills Act 2000.

2. Children not moving to the ALN system in the first year of implementation

2.1 Some groups of children and young people are not included in the commencement orders. These include children or young people who, on 1 January 2022:

- are over compulsory school age
- are in Year 11, other than where they are detained
- have a statement (other than where a child is detained) or are in a pipeline case[16], have SEP via school action/school action plus, and are not registered at a maintained school or a PRU. This includes children in receipt of EOTAS and children who are registered at independent schools or non-maintained nurseries or who are electively home educated.

2.2 The SEN system continues to apply in full to children who are not captured by Commencement Orders 2, 5, 6 and 7. This means that, unlike children captured by these commencement orders, children and young people who are not captured by these commencement orders can request an SEN assessment. In addition, the Learning and Skills Act 2000 continues to apply in full to children in Year 11 (who are not detained) and to young people.

2.3 Children who are not captured by Commencement Orders 2, 5, 6, and 7 will move to the ALN system in either the second year or third year of implementation. Arrangements for moving pupils not included in the first year of implementation will be set out in subsequent commencement orders and in future implementation guides.

[16] See paragraphs 6.52 to 6.56 for further information about pipeline cases. .

3. Children newly identified as having, or newly thought to have, ALN

3.1 The ALN system will apply to children up to, and including, Year 10 who are newly identified as having, or newly thought to have, ALN from 1 September 2021 (see paragraphs 6.42 to 6.43 for a definition of newly identified as having, or newly thought to have, ALN).

3.2 Where a child, up to and including Year 10, has SEN on 1 September 2021, and subsequently is no longer considered to have SEN on 1 January 2022, and later presents as having ALN, the child is included in the definition of being newly identified as having, or newly thought to have, ALN.

3.3 Children up to, and including, Year 10 who are newly identified as having, or newly thought to have, ALN includes all children, regardless of how their education is delivered. This includes children who are:

- registered at maintained settings, including maintained nurseries
- registered at independent schools, including independent nurseries
- enrolled at an FEI
- electively home educated
- in receipt of EOTAS

3.4 From September 2021, where it is brought to the attention of, or otherwise appears to, a school, a PRU or a local authority that a child (who did not have identified SEN on 1 September 2021, or who had SEN on 1 September but who no longer had SEN on 1 January 2022), may have ALN, the ALN Act and Code will apply. Thus, schools, PRUs and local authorities should refer to the ALN Code for guidance on the duties relating to children who are newly identified as having ALN.

3.5 The following sections of this guide set out the implementation arrangements that have been put in place for children moving from the SEN system to the ALN system in the first year of implementation. The sections do not provide comprehensive guidance on the ALN system. Rather, the guide sets out the transition arrangements to support implementation. Thus, this guide should be read alongside the ALN Code. Where appropriate, the reader is signposted to the relevant sections in the ALN Code.

4. Children who are detained

4.1 Commencement Order 2 brings into force sections 40 to 44 of the ALN Act for all detained children[17] who are of compulsory school age.

4.2 Commencement Order 2 includes all detained children, including those who have a statement. Detained children with statements are included because once a child has become detained the local authority is no longer responsible for the child and is under no duty to maintain the statement[18].

4.3 If it is brought to the attention of the home local authority that a detained child may have ALN, they must decide whether the child has ALN. If they have, they may need to prepare an IDP. Further guidance for local authorities in relation to detained children can be found in chapter 19 of the ALN Code. Because of section 312A of the Education Act 1996, a child detained in relevant youth accommodation and whose detention includes 1 September 2021 or 1 January 2022 is to be treated as not engaged with the SEN system. Therefore the new ALN system will apply to them from 1 September 2021 or 1 January 2022 (as the case may be).

4.4 When a child in relation to whom the ALN law applies[19] is released from detention the ALN legislation, including the ALN Code, continues to apply to the child.

4.5 If, before detention, a child who was engaged with the SEN statutory framework becomes detained then, at the point of detention, nothing in Part IV of the Education Act 1996 applies to the child (see section 312A). The ALN legislation on detention will apply to that child. As the child had SEN it is very likely that the child will have ALN. In such a case, an IDP may be prepared under section 40 of the ALN Act or will be kept under section 42 of the ALN Act. On release from detention, if they have an IDP or one is being prepared for them, the ALN system will continue to apply to the child and the SEN system will cease to apply. When a child who is in Year 11 leaves detention with an IDP being prepared under section 40 of the ALN Act or is being kept under section 42 of the ALN Act, the child will remain on the ALN system. When a child who is in Year 11 leaves detention without an IDP, or one is not being prepared, the old law (the SEN system and the Learning and Skills Act 2000 provisions) will continue to apply to the child.

4.6 If they don't have an IDP, or one is not being prepared for them, their move to the new law will depend on their circumstances before their detention. For example, if they had SEP via school action/school action plus they will move to the new law pursuant to Commencement Orders 5 and 6 described in this guide. If they had a statement, they will be treated in same way as other children of the same age with statements.

4.7 The Additional Learning Needs (Wales) Regulations 2021 bring into force the ALN Act for children detained in hospital on, or after, 1 September 2021 under Part 3 of

[17] Children who are detained has the meaning given by section 39 of the ALN Act. That is, children who are subject to a detention order and are detained in relevant youth accommodation in Wales or England.
[18] Education Act 1996, section 562.
[19] This means those captured by Commencement Order 2. That is, those not engaged with the SEN statutory framework.

the Mental Health Act 1983 (in the course of criminal proceedings or for sentencing)[20] (see chapter 19 of the ALN Code, in particular page 215 onwards).

4.8 When a child is released from detention under Part 3 of the Mental Health Act 1983, ALN legislation, including the ALN Code, continues to apply to the child in relation to whom an IDP is being prepared or maintained under section 14 of the Act as a result of regulation 23 of the Additional Learning Needs (Wales) Regulations 2021[21].

[20] Regulation 23 of the Additional Learning Needs (Wales) Regulations 2021.
[21] Commencement Order 2, article 7 as substituted by S.I. 2021/938 (W. 214) (C. 49) article 2(5).

5. Arrangements for children who are registered at a school or PRU and have SEP via school action/school action plus

5.1 From January 2022, IDPs will begin to replace plans that currently support children with SEN. During the first year of implementation (2021 to 2022) or the second year of implementation (2022 to 2023) as a result of an Amendment Order, children up to, and including, Year 10 who are registered at a school or PRU and have SEP via school action/school action plus and who are in: Nursery Years 1 or 2, and Year 1, Year 3, Year 5, Year 7 or Year 10, will move to the ALN system.

5.2 Children who have a pipeline case are not included in the first year of implementation (see paragraphs 6.52 to 6.56 for information about pipeline cases).

5.3 In addition, children in Year 11 are not included in the first year of implementation, other than where they are detained.

5.4 During implementation, the ALN system will operate in parallel to the existing SEN system, which will gradually be phased out during the implementation period. Until a child moves to the ALN system, the SEN legislation[22] remains in force, which means schools, PRUs, and local authorities **must** continue to deliver the SEP set out in school action/school action plus plans where a child attends a maintained school or PRU.

5.5 Children who are captured by the commencement orders cannot be given a statement. This is to prevent children getting into a pipeline case (see paragraphs 6.52 to 6.56 for information about pipeline cases) during the implementation period. However, children, or their parents, can request they move to the ALN system earlier than they are due to move to the ALN system (see paragraphs 6.64 to 6.67 for information about requesting an IDP notice and paragraphs 6.68 to 6.70 for information about requesting an ALN notice).

5.6 This section consists of 2 subsections. Subsection A provides guidance to schools and PRUs on moving children from the SEN system to the ALN system, as set out in Commencement Order 5. Subsection B provides guidance local authorities on moving children who are registered at more than one setting or who are looked after, from the SEN system to the ALN system, as set out in Commencement Order 6.

A. Children who are registered at a school or a PRU and who are not a looked after child or registered at more than one setting

Introduction

5.7 Commencement Order 5 brings into force the ALN Act for children up to and including Year 10 who on 1 January 2022 have SEP via school action/school action plus, are registered at a maintained school or PRU: Nursery Years 1 or 2, Year 1, Year 3, Year 5, Year 7 or Year 10.

[22] Education Act 1996, part 4.

5.8 Commencement Order 5 also deals with the mandated years that will transfer to the ALN system during the school years 2022 to -2023 and 2023 to 2024[23]. These are:

- **during school year 2022 to 2023**: Year 10 (and any children who were in Nursery~~ Years 1 and 2~~, Year 1, Year 3, Year 5, Year 7 and Year ~~9~~ 10 in the 2021 to 2022 school year who were not moved to the ALN system during 2021 to 2022 school year) ~~and Year 10~~
- **during school year 2023 to 2024**: Nursery, year 2, Year~~s~~ 4, Year 6, ~~and~~ Year 8 and Year 10 and any other pupils with SEN on 1 January 2022 who did not move to the ALN system during the second and third years of implementation.

5.9 Commencement Order 5 does not include children who are in a pipeline on 1 January 2022. For example, children undergoing a statutory assessment or children awaiting an assessment following a request being made for one under the Education Act 1996 (see paragraphs 6.52 to 6.56 for a definition of pipeline cases). It also excludes looked after children and those who are registered at more than one setting where a local authority in Wales is responsible for the child.

5.10 In addition, Commencement Order 5 does not capture children who are in Year 11.

Providing children and parents with information

5.11 Communication with parents during the implementation period is important. During the autumn term of the 2021 to 2022 school year, schools and PRUs should send information to children with SEP via school action/school action plus, and their parents, that:

1. explains the ALN system
2. sets out the school year in which the mandated years will move from the SEN to the ALN system
3. sets out the process for moving from the SEN system to the ALN system
4. explains the child or parent's right to request that a notice is given
5. provides information about how to access the responsible local authority arrangements for providing people with information and advice about ALN and the ALN system[24].

5.12 A separate document that schools and PRUs can send to parents has been published which provides information for parents covering points 1 to 4 above.

5.13 In addition, specific information should be sent both to children who receive SEP via school action/school action plus and who are in a mandated year during the 2021-22 school year, and their parents, that:

- states the term in which the child is expected to move to the ALN system - that is, the term in which the school expects or intends to give the IDP notice or the no IDP notice and what the notices mean

[23] Commencement Order 5, articles 10 and 11.
[24] See the ALN Code, chapter 1, page 4 for information about children and young people for whom a local authority is responsible.

- explains the child or parent's right to request that an IDP notice is given
- sets out what happens after an IDP notice or a no IDP notice has been given
- provides information about what parents can do where they disagree with the decision made by the school or PRU set out in the IDP notice or no IDP notice

5.14 The children described in paragraph 5.7 will move from the SEN to the ALN system during the spring and summer terms of the 2021 to 2022 school year or during the 2022-2023 school year. To enable this to happen, schools and PRUs **must** give an IDP notice or a no IDP notice to these children, and their parents, at some point during the spring and summer terms of the 2021 to 2022 school year[25] or during the 2022-2023 school year. The following paragraphs set out the process for moving children from the SEN to the ALN system.

Process for moving children from the SEN system to the ALN system

Deciding if a child has ALN and giving a notice

5.15 Before giving an IDP notice or a no IDP notice, schools and PRUs **must** decide if children who fall within the mandated years, and who receive SEP via school action/school action plus, have ALN (see chapter 20 of the ALN Code - Identifying ALN and deciding upon the ALP required).

5.16 It is likely that children who have SEP via school action/school action plus on 1 January 2022 will have ALN.

5.17 Where a child who had SEP via school action/school action plus on 1 January 2022 subsequently ceases to have SEP, that child is still captured by Commencement Order 5 (because the child had SEN on 1 January 2022). As a result, the school or PRU **must** decide if the child has ALN.

5.18 Having decided whether or not a child has ALN, the school or PRU **must** give an IDP notice or a no IDP notice to the child and their parents.

5.19 Where a school or PRU has not given an IDP notice, or a no IDP notice, to a child in a mandated year (who has not already moved to the ALN system), and their parent, during the spring and summer terms of the school year 2021 to 2022 or during the school year 2022 to 2023, the child will automatically move to the ALN system on 31 August 2023~~2~~. At this point, the ALN legislation, including the ALN Code, applies to the child.

IDP notices

5.20 An IDP notice is given where the school or PRU has decided a child has ALN. The notice means the decision is treated as if it were made on the date of the notice. The date of the notice is the date the new law applies and the old law ceases to apply for the child. The school or PRU **must** give an IDP within 35 school days of the date of the notice[26], other than where:

[25] Commencement Order 5, article 9. The position on giving notices to children and/or parents who lack capacity in the ALN Code do not apply to the notices given under Commencement Order 5.
[26] Commencement Order 5, article 13.

- there are exceptional circumstances,
- the school or PRU considers the child has ALN:
    - that may call for additional learning provision (ALP) it would not be reasonable for the school or PRU to secure,
    - the extent or nature of which it cannot adequately determine, or
    - for which it cannot adequately determine ALP[27].
- the school or PRU requests a local authority in England to secure an assessment under section 36(1) of the Children and Families Act 2014[28]
- a local authority in England maintains an education and healthcare (EHC) plan for the child or young person[29]

5.21 Additional learning needs co-ordinators (ALNCos) have responsibility for ensuring that a pupil's ALN are identified and records are kept of decisions about ALN. ALNCos should be involved in ensuring that all pupils captured by Commencement Order 5 are given a notice during the relevant school year. ALNCos may choose to undertake this task themselves or arrange for the task to be undertaken by others.

5.22 Where schools or PRUs have given IDPs prior to 1 January 2022, for example as part of a pilot, those IDPs have no effect in law. When a child, who has an IDP which was prepared prior to January 2022, is moved from the SEN system to the ALN system, an IDP notice or a no IDP notice (as appropriate) will need to be given to the child and their parent.

5.23 Once the ALN system applies to a child, and that child subsequently becomes a child who is looked after by a local authority in Wales or becomes registered or enrolled at another setting, the school or PRU **must** refer the child's case to the local authority[30].

5.24 A school or PRU can refer a child's case to the local authority where an IDP notice has been given and the needs of the child means the school considers the child now has ALN:

- that may call for ALP it would not be reasonable for the school to secure
- the extent or nature of which it cannot adequately determine, or
- for which it cannot adequately determine ALP[31].

[27] ALN Act, section 12(2)(a).
[28] ALN Act, section 12(2)(c).
[29] ALN Act, section 12(2)(d).
[30] Further information about referrals from a maintained school to a local authority, where the child is registered at more than one setting, can be found in the ALN Code chapter 12, page 101; and in chapter 14, pages 122 to 123, where a child is looked after.
[31] ALN Act, section 12(2)(a).

No IDP notices

5.25 A no IDP notice is given where the school or PRU does not consider the child has ALN. The notice is given to a child and a child's parent. The notice confirms the school or PRU has decided the child does not have ALN for the purposes of chapter 2 of Part 2 of the ALN Act. The ALN system applies from the date of the notice and the old law ceases to apply.

5.26 Where a child, or their parent, is dissatisfied with the decision made by the school or PRU about whether the child has ALN, it is expected this dissatisfaction would normally be resolved directly with the school or PRU or by recourse to the local authority disagreement arrangements. Alternatively, or additionally, where the disagreement is not resolved, children and their parents may request the responsible local authority reconsiders the decision made by the school or PRU (further information about local authority reconsiderations can be found in the ALN Code, chapter 26, page 287).

ALN notices

5.27 Commencement Orders 5 and 6 provide for the appropriate local authority to give an ALN notice. Unlike an IDP notice or a no IDP notice, the ALN notice does not involve the local authority making a decision about whether the child has ALN.

5.28 The effect of the ALN notice is that the ALN system applies on the date of the notice and the SEN system ceases to apply on that date. As a result, the duties provided for in the ALN Act and subordinate legislation, including the ALN Code, apply from that date.

5.29 The ALN notice has 2 functions:

(1) **The ALN notice enables local authorities to move children from the SEN to the ALN system at any time.** The provision gives local authorities the power to move any child captured by the order[32] (whether or not they continue to be registered at a maintained school or PRU) to the ALN system at any time.

(2) It is not expected local authorities will use this power on a frequent basis. It can only be exercised in exceptional circumstances (unless the parent requests the ALN notice is given). Rather, the power could be used where, for example, a child's needs have increased beyond the SEP that can be delivered in a mainstream school and the school, PRU or local authority cannot infer the child, or the child's parent, has requested an IDP notice is given. Without the power to give an ALN notice, the local authority would not be able to make a decision about whether the child had ALN and, where required, prepare an IDP. In addition, it is not possible for a school or a PRU to request that a local authority undertake a statutory assessment or issue a statement for a child captured by Commencement Orders 5 or 6. Thus, it would not be possible for the local authority to place the child in a special

[32] That is children who on 1 January 2022 have SEN via school action/school action plus (not a statement or engaged with the SEN statement process - in a pipeline) and are registered at a maintained school or a PRU.

school as the old law requires that a child attending a special school should have a statement.

Commencement Orders 5 and 6 prevent a child from getting into a pipeline. Thus, the local authority would not be able to undertake an assessment under the Education Act 1996. Providing local authorities with the power to move a child onto the ALN system means that a local authority would be able to make a decision about whether the child has ALN and, where required, prepare an IDP

A maintained school can ask the appropriate local authority to give an ALN notice.

(3) **The ALN notice enables a child who on 1 January 2022 had SEN and who is no longer a registered pupil at a maintained school and who has not already moved to the ALN system, or that child's parent, to request the appropriate local authority gives an ALN notice.** Where a child or their parent requests the local authority gives an ALN notice, the appropriate local authority **must** give an ALN notice within 10 working days of the request.

This provision could be used where, for example, a child ceases to be a registered pupil of a maintained school at the end of Year 6 and does not join another maintained school at the start of Year 7 due to, for example, becoming electively home educated or attending an independent school.

Where the child ceases to be a registered pupil of a maintained school at the end of Year 6 and joins a maintained school or PRU at the start of Year 7, the child or their parent can request the school or PRU gives an IDP notice.

Preparing an IDP

5.30 As stated above, the date of the IDP notice, or the no IDP notice, is the date the new law applies and the old law ceases to apply to the child. Since the school or PRU has up to 35 school days to give the IDP from the date of the IDP notice, there will be a period of time where provision delivered by school action/school action plus does not apply and the provision under the ALN system has not yet been agreed via an IDP. During this time, schools and PRUs **must** take reasonable steps to deliver provision to support the child[33] (for guidance on this duty, see the ALN Code, chapter 12, pages 98 to 100).

5.31 When preparing the IDP the school or PRU **must** have regard to the SEP provided to the child to facilitate continuity of provision during the transition from the SEN system to the ALN system (for information about preparing an IDP see the ALN Code, chapter 12, pages 97 to 98).

[33] Section 47 of the ALN Act places a duty on schools to take all reasonable steps to secure ALP where a child has ALN but an IDP is not being maintained.

Automatically moving to the ALN system at the end of a mandated year

5.32 Where a school or PRU has not provided a child in a mandated year (who has not already moved to the ALN system), and their parent, with an IDP notice, or a no IDP notice, by 30 August 2023~~2~~), Commencement Order 5 provides for a safeguard to ensure all pupils within a mandated year move to the ALN system within the school year (referred to in this guide as the 'automatic end of year transfer provision')[34].

5.33 Where a child described in paragraph 5.7 has not moved to the ALN system by 30 August 2023~~2~~, the child will automatically move to the ALN system on 31 August 2023~~2~~. This means the old law will cease to apply on the 31 August 2023~~2~~ and the new law will apply on that date. The duties provided for in the ALN Act and subordinate legislation, including the ALN Code, apply from 31 August 2023~~2~~.

5.34 This means, from the date it is brought to the attention of, or otherwise appears to the school or PRU that a child may have ALN, the school or PRU will have 35 school days to make a decision and, where the decision is that the child has ALN, to prepare and give an IDP (see ALN Code, chapter 12 pages 94 to 96 for guidance about a school's duty to decide whether a child has ALN).

5.35 If the child was in receipt of school action/school action plus before automatically moving to the ALN system, then it would appear to the school or PRU that the child has ALN and the school or PRU **must** make a decision under section 11 of the ALN Act.

5.36 If the child is no longer in receipt of SEP via school action/school action plus before automatically moving to the ALN system, the duty to decide under section 11 applies once it is brought to the attention of, or otherwise appears to, the school or PRU that the child may have ALN.

The right to request an IDP notice (or a no IDP notice)

5.37 Children captured by Commencement Order 5, or their parents, have a right to make a request at any time, to the school or PRU that an IDP notice is given[35].

5.38 The request can be made either verbally or in writing.

5.39 The school or PRU **must** give an IDP notice or a no IDP notice within 15 school days of the request. As above, where the school or PRU considers the child has ALN and gives an IDP notice, the school or PRU **must** prepare an IDP within 35 school days of the date of the notice[36], other than where exceptions or exceptional circumstances apply.

5.40 The ALNCo has responsibility for ensuring that a child's ALN are identified and records are kept of decisions about ALN and IDPs[37]. This includes the date upon

[34] Commencement Order 5, article 15
[35] Commencement Order 5, article 12.
[36] Commencement Order 5, article 12.
[37] Additional Learning Needs (Wales) Regulations 2021, regulation 29 and the ALN code, chapter 8, page 72 onwards.

which a request is made and the date upon which the decision about whether to give an IDP notice or a no IDP notice is made. ALNCos may choose to undertake this task themselves or arrange for the task to be undertaken by others.

5.41 The right to request an IDP notice enables those children who are dissatisfied with the SEP delivered via school action/school action plus to move to the ALN system earlier than they are due to move and to benefit from the rights provided by the ALN Act.

Avoiding pipeline cases

5.42 From the 1 January 2022, children who are captured by Commencement Order 5 will not be able to get themselves into a pipeline. Until the child is moved to the new law, the SEN legislation (Part 4 of the Education Act 1996) remains in force in relation to the child and SEP will continue to be provided.

5.43 Children who are captured by Commencement Order 5 cannot be given a statement[38]. This is to prevent children getting into a pipeline case during the implementation period. However, children, or their parents, can request they move to the ALN system earlier than they are due to move to the ALN system (see paragraphs 6.64 to 6.67 for information about requesting an IDP notice and paragraphs 6.68 to 6.70 for information about requesting an ALN notice).

Change of circumstances

5.44 Children captured by the Commencement Order 5 who have not already been moved to the ALN system, will automatically move from the SEN system to the ALN system where they have one of the following changes of circumstance:

- was registered at a maintained school or PRU on 1 January 2022 and, at some point after 1 January 2022, also became a registered pupil or an enrolled student at another institution (that is, registered at more than one setting) and for whom a local authority in Wales is responsible;
- was registered at a maintained school or PRU on 1 January 2022 and, at some point after 1 January 2022, became looked after by a local authority in Wales; or
- ceased to be a registered pupil at the maintained school or PRU at which the child was a registered pupil on 1 January 2022, other than where the child ceases to be a registered pupil due to making an ordinary transition or due to a school/PRU closure .

5.45 Where a child ceases to be a registered pupil at the maintained school or PRU at which the child was a registered pupil on 1 January 2022, for the purposes of making the ordinary transition from one school or PRU to another – that is, from Year 2 to Year 3 or from Year 6 to Year 7, they are excluded from automatically moving from the SEN to the ALN system.

[38] Children who are not captured by the commencement orders will remain on the SEN system and will, therefore, be able to request an assessment under the Education Act 1996 or a section 140 assessment under the Learning and Skills Act 2000.

5.46 In addition, where a child ceases to be a registered pupil at the maintained school or PRU at which the child was a registered pupil on 1 January 2022 due to their school or PRU closing, the child will be excluded from automatically moving from the SEN to the ALN system.

5.47 This means that children who are removed from the register of their school or PRU due to an ordinary transition or a school/PRU closure, and move to another maintained school or PRU will move to the ALN system during their mandated year.

5.48 An ordinary transition happens when a child, who is in the final year that the school generally provides education, leaves that school at the end of that year (for example, Year 6 in a primary school, Year 2 in an infant school).

5.49 **Example**: a child who is in Year 6 in 2021 to 2022 is due to move to the ALN system in 2023 to 2024 when the child is in Year 8. The point at which the child moves to the ALN system is dependent on whether the child still has SEP on 1 September 2023:

- Where a child who is in Year 6 in the 2021 to 2022 school year moves to another maintained school or PRU to start Year 7 in 2022 to 2023 and still has SEP on 1 September 2023 (when they start Year 8), the maintained school or PRU **must** either give an IDP notice or a no IDP notice to the child and the child's parent during the 2023 to 2024 school year[39]. The ALN system applies from the date of the notice and the SEN system ceases to apply.
- Where a child who is in Year 6 in the 2021 to 2022 school year moves to another maintained school or PRU to start Year 7 in 2022 to 2023 and no longer has SEP on 1 September 2023 (when they start Year 8), they will automatically move from the SEN system to the ALN system on 31 August 2024.

5.50 Where a child in Year 6 in the 2021 to 2022 school year leaves primary school and does not join a maintained secondary school or PRU at the start of Year 7, the child will automatically move to the ALN system on 31 August 2024[40].

5.51 A child described at paragraph 5.49 can, however, request to move to the ALN system earlier than planned (see paragraphs 6.64 to 6.67 for information about requesting an IDP notice and paragraphs 6.68 to 6.70 for information about requesting an ALN notice).

5.52 Schools and PRUs should be aware, the change of circumstance provision in Commencement Order 6 differs from Commencement Order 5. The change of circumstance provision in Commencement Order 6 is not affected by ordinary transitions or school/PRU closures. This means that where a child was, for example, registered at more than one setting and, at the end of Year 6, becomes sole registered at a maintained school or PRU, the child will automatically move to the ALN system[41]. Where this arises, the local authority should inform the school or PRU the child has ceased to be registered at more than one setting and, therefore, the

[39] Commencement Order 5, article 11.
[40] Commencement Order 5, article 17, unless the child requests an ALN notice.
[41] This will only apply at the end of the first year of implementation because in the second and third year of implementation, children in Year 6 will have moved to the ALN system prior to starting Year 6.

child has automatically moved to the new law and that the duties placed on the school or PRU apply.

5.53 The different approaches to the change of circumstance means that if there has been a change of school or PRU from Year 2 and Year 3 or from Year 6 to Year 7, schools will need to identify whether their Year 3 and Year 7 pupils during the 2022 to 2023 school year were, on 1 January 2022:

a. in receipt of school action/school action plus and were registered at more than one setting or looked after; or

b. in receipt of school action/school action plus and were sole registered at a maintained school or a PRU.

5.54 Schools and PRUs will need to identify whether children fall into group (a) or (b) so that they know whether children have automatically moved to the ALN system. Children who fall into (a) will automatically move to the ALN system when they make the transition from Year 2 to Year 3 and from Year 6 to Year 7. Thus, there is no need for the receiving school or PRU to give a notice to move the child to the ALN system.

5.55 Children who fall into (b) will not automatically move to the system when they make the transition from Year 2 to Year 3 and from Year 6 to Year 7. Thus, the receiving school or PRU will need to give a notice during the third year of implementation to move these children from the SEN system to the ALN system.

Children who move into a mandated year after the start of the school year

5.56 Commencement Order 5 brings into force the ALN Act for children described at paragraph 5.7 who are in a mandated year on 1 January 2022. That is, in the first year of implementation, a child is registered at a maintained school or a PRU, and is in one of the mandated years on the first day of the spring term in the 2021 to 2022 school year.

5.57 In the first year of implementation, where a child captured by Commencement Order 5 moves into a mandated year after 1 January 2022 (see example at paragraph 5.58 below), the school or PRU **must** either give an IDP notice or a no IDP notice to the child, and the child's parent, during the 2023 to 2024 school year[42]. The ALN system applies from the date of the notice and the SEN system ceases to apply. This is the position unless the child, or their parent, requests the school or PRU gives an IDP notice or that the appropriate local authority gives an ALN notice.

5.58 An example of a child moving into a mandated year after the start of the school year would be where a child moved forward a year from Year 9 into Year 10 or moved back a year from Year 8 to Year 7 during the first year of implementation.

[42] During the second and third years of implementation, this action must be taken where a child moves into a mandated year after 1 September.

B. Children who are looked after or who are registered at more than one setting

5.59 Commencement Order 6 brings into force the ALN Act for children up to and including Year 10 who, on 1 January 2022, have SEP via school action/school action plus, who fall into: Nursery Years 1 or 2, Year 1, Year 3, Year 5, Year 7 or Year 10 and who are:

- registered at a maintained school or PRU in Wales and registered or enrolled at another setting and a local authority in Wales is responsible for the child; or
- registered at a maintained school or PRU in Wales and looked after in Wales by a local authority in Wales.

5.60 Commencement Order 6 does not include children who are in a pipeline on 1 January 2022, for example, children undergoing a statutory assessment or children awaiting an assessment following a request being made for one under the Education Act 1996 (see paragraphs 6.52 to 6.56 for information about pipeline cases).

5.61 Commencement Order 6 does not capture children who are in Year 11.

5.62 Commencement Order 6 also deals with the mandated years that will transfer to the ALN system during the school year 2022 to 2023 and 2023 to 2024. These are:

- **In school year 2022 to 2023**: Year 10 (and any children who were in Nursery ~~Years 1 and 2~~, Year 1, Year 3, Year 5, Year 7 and Year ~~9~~ 10~~and Year 10~~ in the 2021 to 2022 school year who were not moved to the ALN system during 2021 to 2022 school year)
- **In school year 2023 to 2024**: Nursery, Year 2, Year 4, Year 6,~~and~~ Year 8, Year 10 and any other pupils who did not move to the ALN during the first and second years of implementation.

5.63 The children described in paragraph 0 above will move from the SEN to the ALN system during the spring and summer terms of the 2021 to 2022 school year or the second year of implementation (2022 to 2023) as a result of an Amendment Order. To enable this to happen, local authorities **must** give an IDP notice or a no IDP notice to these children and their parents, at some point during the spring and summer terms of the school year 2021 to 2022[43] or during the 2022 to 2023 school year.

Providing children and parents with information

5.64 Communication with parents during the implementation period is important. During the autumn term of the school year 2021 to 2022, schools and PRUs should send information to children with SEP via school action/school action plus, and their parents, that:

1. explains the ALN system

[43] Commencement Order 6, article 9. The position on giving notices to children and/or parents who lack capacity in the ALN Code do not apply to the notices given under Commencement Order 6.

2. sets out the school year in which the mandated years will move from the SEN to the ALN system
3. sets out the process for moving from the SEN system to the ALN system
4. explains the child or parent's right to request that a notice is given
5. provides information about how to access the local authority arrangements for providing people with information and advice about ALN and the ALN system[44].

5.65 A separate document that local authorities can send to parents has been published which provides information for parents covering points 1 to 4 above.

5.66 In addition, local authorities should send specific information to children who receive SEP via school action/school action plus and who are in a mandated year during the 2021 to 2022 school year, and their parents, that:

- states the term in which the child is expected to move to the ALN system - that is, the term in which the appropriate local authority expects or intends to give the IDP notice or a no IDP notice and what the notices mean
- explains the child or parent's right to request that an IDP notice is given
- sets out what happens after an IDP notice or a no IDP notice has been given
- provides information about what parents can do where they disagree with the decision made by the appropriate local authority set out in the IDP notice or the no IDP notice

5.67 The following paragraphs set out the process for moving children from the SEN to the ALN system.

Process for moving children from the SEN system to the ALN system

Deciding if a child has ALN and giving a notice

5.68 Before giving an IDP notice or a no IDP notice, local authorities **must** decide if children who fall within the mandated years, and who receive SEP via school action/school action plus, have ALN (see chapter 20 of the ALN Code - Identifying ALN and deciding upon the ALP required).

5.69 It is likely that children who have SEP via school action/school action plus on 1 January 2022 will have ALN.

5.70 Where a child who had SEP via school action/school action plus on 1 January 2022, subsequently ceases to have SEP, the child is still captured by Commencement Order 6 (because the child had SEN on 1 January 2022). As a result, the local authority **must** decide if the child has ALN.

5.71 Having decided whether or not a child has ALN, the appropriate local authority **must** give an IDP notice or a no IDP notice to the child and their parents.

5.72 Where the local authority has not given an IDP notice, or a no IDP notice, to a child in a mandated year (who has not already moved to the ALN system), and their

[44] See the ALN Code, chapter 1, page 4 for information about children and young people for whom a local authority is responsible.

parent, during the spring and summer terms of the school year 2021 to 2022 or during the school year 2022 to 2023, the child will automatically move to the ALN system on 31 August 2023~~2~~. At this point, the ALN legislation, including the ALN code, applies to the child.

IDP notices

5.73 An IDP notice is given where the appropriate local authority has decided a child has ALN. The notice means that the decision is treated as if it were made on the date of the notice. The date of the notice is the date the new law applies and the old law ceases to apply for the child.

5.74 Where a local authority has given IDPs prior to 1 September 2021, for example as part of a pilot, those IDPs have no effect in law. When moving a child who has an IDP that was prepared prior to January 2022 from the SEN system to the ALN system, an IDP notice or a no IDP notice (as appropriate) will need to be given to the child and their parent.

No IDP notices

5.75 A no IDP notice is issued where the appropriate local authority does not consider the child has ALN. The notice is given to a child and a child's parents, confirming the local authority has decided the child does not have ALN for the purposes of chapter 2 of Part 2 of the ALN Act. The ALN system applies from the date of the notice and the old law ceases to apply.

5.76 Where a child or parent disagrees with the decision made by a local authority, they may appeal to the Educational Tribunal for Wales against the decision.

ALN notices

5.77 Commencement Order 6 provides for the appropriate local authority to give an ALN notice. The appropriate local authority may **only** give an ALN notice in exceptional circumstances.

5.78 The appropriate local authority may, of its own volition and at any time, give an ALN notice to a child and the child's parents.

5.79 The effect of the ALN notice is that the ALN system applies on the date of the notice and the SEN system ceases to apply on that date. As a result, the duties provided for in the ALN Act and subordinate legislation, including the ALN Code, apply from that date.

5.80 The purpose of allowing the appropriate local authority to give an ALN notice is to enable a local authority to move a child to the ALN system outside of their mandated year.

5.81 The power could be used where, for example, a child's needs have increased beyond the SEP that can be delivered in a mainstream school and the local authority cannot infer that the child or the child's parent have requested an IDP notice is given. Without the power to give an ALN notice, the local authority would not be able to

make a decision about whether the child has ALN and, where required, prepare an IDP. In addition, it is not possible for a school or a PRU to request that a local authority undertake a statutory assessment or issue a statement for a child captured by Commencement Orders 5 and 6. Thus, it would not be possible for the local authority to place the child in a special school as the old law requires that a child attending a special school should have a statement.

5.82 Commencement Order 6 prevents a child from getting into a pipeline. Thus, the local authority would not be able to undertake an assessment under the Education Act 1996. Providing local authorities with the power to move a child onto the ALN system means that a local authority would be able to make a decision about whether the child has ALN and, where required, prepare an IDP

Preparing an IDP

5.83 As stated above, the date of the IDP notice or the no IDP notice is the date the new law applies and the old law ceases to apply to the child. Since the local authority has up to 12 weeks to give the IDP from the date of the notice, there will be a period of time where provision delivered by school action/school action plus does not apply and the provision under the ALN system has not yet been agreed via an IDP. During this time, schools and PRUs **must** take reasonable steps to deliver provision to support the child[45] (for guidance on this duty, see the ALN Code, chapter 12, pages 98 to 100).

5.84 When preparing the IDP the local authority **must** have regard to any SEP provided to the child to facilitate continuity of provision during the transition from the SEN system to the ALN system (for information about preparing an IDP see the ALN Code, chapter 12, pages 97 to 98).

Automatically moving to the ALN system at the end of a mandated year

5.85 Where a school, PRU or a local authority does not have the opportunity to provide a child in a mandated year (who has not already moved to the ALN system) and their parents with a notice, Commencement Orders 5 and 6 provide a safeguard to ensure all pupils within a mandated year move to the ALN system. Any child who has not moved to the ALN system by the end of the relevant school year will automatically move to the ALN system at the end of the school year (31 August). This is referred to as the automatic end of year transfer provision.

5.86 The provision means that at the end of the school year the ALN legislation, including the ALN Code, will apply to the child and Part 4 of the Education Act 1996 will cease to apply to the child at the end of the school year.

5.87 If the child was in receipt of school action/school action before automatically moving to the ALN system, an IDP notice is given[46].

[45] Section 47 of the ALN Act places a duty on schools to take all reasonable steps to secure ALP where a child has ALN but an IDP is not being maintained.
[46] Commencement Order 6, article 12.

Right to request an IDP notice

5.88 Commencement Order 6 provides a right for children captured by the commencement orders, or their parents, to request an IDP notice is given at any point during the implementation period[47].

5.89 The request can be made either verbally or in writing.

5.90 The local authority must give an IDP notice or a no IDP notice within 15 working days of the request. As above, where the local authority considers the child has ALN and gives an IDP notice, the local authority must prepare an IDP within 12 weeks of the date of the notice[48], other than where exceptional circumstances apply.

5.91 The right to request an IDP notice enables those children who are dissatisfied with the SEP delivered via school action/school action plus to move to the ALN system earlier than they are due to move and to benefit from the rights provided by the ALN Act.

Avoiding pipeline cases

5.92 From the 1 January 2022, children who are captured by Commencement Order 6 will not be able to get themselves into a pipeline. Until the child is moved to the new law, the SEN legislation (Part 4 of the Education Act 1996) remains in force in relation to the child and SEP will continue to be provided.

5.93 Children who are captured by Commencement Order 6 cannot be given a statement[49]. This is to prevent children getting into a pipeline case during the implementation period. However, children, or their parents, can request they move to the ALN system earlier than they are due to move to the ALN system (see paragraphs 6.64 to 6.67 for information about requesting an IDP notice).

Change of circumstances

5.94 Children captured by Commencement Order 6, who have not already been moved to the ALN system, will automatically move from the SEN system to the ALN system where they cease to be:

- looked after
- registered at more than one setting.

5.95 The change of circumstance provision in Commencement Order 6 is not affected by ordinary transitions or school closures. That is, where a child was, for example, registered at more than one setting and, at the end of Year 6, becomes sole

[47] Commencement Order 5, article 12; and Commencement Order 6, article 12.
[48] Commencement Order 6, article 13.
[49] Children who are not captured by the commencement orders will remain on the SEN system and will, therefore, be able to request an assessment under the Education Act 1996 or a section 140 assessment under the Learning and Skills Act 2000.

registered at a maintained school, the child will automatically move to the ALN system[50].

5.96 Where a child who was registered at more than one setting becomes sole registered at a maintained school or PRU, the local authority should inform the school or PRU that the child has ceased to be registered at more than one setting and, therefore, has automatically moved to the new law and that the duties placed on the school or PRU in the ALN Act and subordinate legislation, including the ALN Code apply.

Moving into a mandated year after the start of the school year

5.97 Commencement Order 6 brings into force the ALN Act for children described at paragraph 0 who are in a mandated year on 1 January 2022. That is, in the first year of implementation, a child is registered at a maintained school or a PRU, and is in one of the mandated years on the first day of the spring term in the 2021 to 2022 school year.

5.98 In the first year of implementation, where a child captured by Commencement Order 6 (see paragraph 0) moves into a mandated year after 1 January 2022, the local authority must either give an IDP notice or a no IDP notice to the child and the child's parents during the 2023 to 2024 school year[51]. The ALN system applies from the date of the notice, and the SEN system ceases to apply. This is the position unless the child or their parents request the school or PRU gives an IDP notice or that the appropriate local authority gives an ALN notice.

[50] This will only apply at the end of the first year of implementation because in the second and third year of implementation, children in Year 6 will have moved to the ALN system prior to starting Year 6.
[51] During the second and third years of implementation, this action must be taken where a child moves into a mandated year after 1 September.

6. Terms used

Additional learning needs (ALN)

6.1 Additional learning needs (ALN) has the meaning given by section 2 of the ALN Act. That is:

(4) A person has additional learning needs if he or she has a learning difficulty or disability (whether the learning difficulty or disability arises from a medical condition or otherwise) which calls for additional learning provision.

(5) A child of compulsory school age or person over that age has a learning difficulty or disability if he or she -

(a) has a significantly greater difficulty in learning than the majority of others of the same age, or
(b) has a disability for the purposes of the Equality Act 2010 which prevents or hinders him or her 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 mainstream institutions in the further education sector.

(6) A child under compulsory school age has a learning difficulty or disability if he or she is, or would be if no additional learning provision were made, likely to be within subsection (2) when of compulsory school age.

(7) A person does not have a learning difficulty or disability solely because the language (or form of language) in which he or she is or will be taught is different from a language (or form of language) which is or has been used at home.

(See the ALN Code, chapter 2 for further information about the definition of ALN).

ALN notice

6.2 The appropriate local authority can, of its own volition, give an ALN notice in exceptional circumstances. The ALN notice enables local authorities to move any child captured by Commencement Orders 5 and 6, whether they remain registered at a maintained school or not, to the ALN system at any time.

6.3 Children captured by Commencement Order 5, and their parents, can request the appropriate local authority move them to the ALN system earlier than planned by requesting an ALN notice, and following such a request the appropriate local authority must give an ALN notice (see paragraphs 6.68 to 6.70 for information about requesting an ALN notice).

6.4 The effect of the ALN notice is that the ALN system applies on the date of the notice and the SEN system ceases to apply on that date.

6.5 This means the duties in the ALN Act placed on schools, PRUs and local authorities to make a decision, and where required, to prepare an IDP for the child apply.

ALN system

6.6 The ALN system refers to the legal arrangements set out in the ALN Act and subordinate legislation, including the ALN Code. The ALN Code places requirements on schools, PRUs, FEIs, local authorities and NHS bodies and gives guidance to them and others on the ALN system.

Additional learning provision (ALP)

6.7 ALP has the meaning given by section 3 of the ALN Act. That is:

(1) Additional learning provision for a person aged three or over means educational or training provision that is additional to, or different from, that made generally for others of the same age in:

(a) mainstream maintained schools in Wales,
(b) mainstream institutions in the further education sector in Wales, or
(c) places in Wales at which nursery education is provided.

(2) Additional learning provision for a child aged under three means educational provision of any kind.

(3) In subsection (1), "nursery education" means education suitable for a child who has attained the age of three but is under compulsory school age.

6.8 Further information about the definition of ALP can be found in chapter 2 of the ALN Code.

Appropriate local authority

6.9 Reference is made to the appropriate local authority when discussing:

- the duty placed on a local authority to give an IDP notice or no IDP notice
- the right for children who are captured by Commencement Order 6, or their parents, to make a request to the appropriate local authority that an IDP notice be given
- the power for a local authority to give an ALN notice
- the right for children captured by Commencement Order 5, or their parents, to make a request to the appropriate local authority that an ALN notice be given.

6.10 The appropriate local authority is the local authority in Wales that looks after a child or, where a child is not looked after, is the local authority responsible for the child (see ALN Code, chapter 1, page 4 for a definition of children and young people for whom a local authority is responsible).

6.11 **For example** a child is registered at a PRU in Cardiff and lives most of the time in Cardiff. Cardiff Council is the responsible local authority and hence, the appropriate local authority. If, however, the child who is registered at the PRU in Cardiff, lives most of the time in Rhondda Cynon Taff, the responsible local authority would be Rhondda Cynon Taff County Borough Council and so the request for the new law to

apply to the child would be made to Rhondda Cynon Taff County Borough Council as the appropriate local authority.

6.12 In Commencement Order 5, if a local authority in Wales is not responsible for the child (for example because the child lives in England and is registered at a maintained school or PRU in Wales), then the appropriate local authority is the local authority in whose area the maintained school or PRU is located.

Automatic transfer due to a change of circumstance

6.13 Commencement Orders 5 and 6 provide for children captured by the commencement orders who have particular changes of circumstance – and who have not yet moved to the ALN system - to automatically move - on the date of the change of circumstance, from the SEN system to the ALN system[52].

6.14 Under Commencement Order 5, the arrangement applies to a child who:

- was registered at a maintained school or PRU on 1 January 2022 and, at some point after January 2022, also became a registered pupil or an enrolled student at another institution (that is, registered at more than one setting) and for whom a local authority in Wales is responsible;
- was registered at a maintained school or PRU on 1 January 2022 and, at some point after January 2022, became looked after by a local authority in Wales; or
- ceases to be a registered pupil at the maintained school or PRU at which the child was a registered pupil on 1 January 2022 - other than where the child ceases to be a registered pupil due to making an ordinary transition from one school to another (that is, from Year 2 to Year 3 or from Year 6 to Year 7) or, due to a school or PRU closure.

6.15 Where a child ceases to be a registered pupil at the maintained school or PRU at which the child was a registered pupil on 1 January 2022 for the purposes of making the ordinary transition from one school or PRU to another, they are excluded from automatically moving from the SEN to the ALN system.

6.16 In addition, where a child ceases to be a registered pupil at the maintained school or PRU at which the child was a registered pupil on 1 January 2022 due to their school or PRU closing, the child will be excluded from automatically moving from the SEN to the ALN system.

6.17 This means children who are removed from the register of their school or PRU due to an ordinary transition or due to a school/PRU closure, and move to another maintained school or PRU, will move to the ALN system during their mandated year.

6.18 Where a child is removed from the register of their school due to an ordinary transition or school/PRU closure and does not join another maintained school or PRU, the child will automatically move from the SEN system to the ALN system at the end of their mandated year (unless a request for an ALN notice is made).

[52] Commencement Order 5, articles 18 to 20; and Commencement Order 6, articles 18 to 20.

6.19 **For example** a child in Year 6 in 2021 to 2022 is due to move to the ALN system in 2023 to 2024 when the child is in Year 8. Where a child in Year 6 in the 2021 to 2022 school year leaves primary school and does not join a maintained secondary school at the start of Year 7, the child will automatically move to the ALN system on 31 August 2024 (unless an ALN notice is given).

6.20 Under Commencement Order 6, the arrangement applies to a child who ceases to be:

- looked after
- registered at more than one setting.

6.21 The change of circumstance provision in Commencement Order 6 is not affected by ordinary transitions or school/PRU closures. That is, where a child was, for example, registered at more than one setting and, at the end of Year 6, becomes sole registered at a maintained school, the child will automatically move to the ALN system on the date the child ceased to be registered at more than one setting. Automatic end of year transfer provision

6.22 Children who are captured by Commencement Orders 5 and 6, and who are in a mandated year, are moved from the SEN system to the ALN system throughout the relevant school year. To enable this to happen, schools, PRUs and local authorities give children either an IDP notice or a no IDP notice (see paragraphs 6.44 to 6.49).

6.23 Where a school, PRU or a local authority does not have the opportunity to provide a child in a mandated year (who has not already moved to the ALN system) and their parent with a notice, Commencement Orders 5 and 6 provide a safeguard to ensure all pupils within a mandated year move to the ALN system. Any child who has not moved to the ALN system by the end of the relevant school year will automatically move to the ALN system at the end of the school year (31 August). This is referred to as the automatic end of year transfer provision. The provision means that at the end of the school year the ALN legislation, including the ALN Code, will apply to the child and Part 4 of the Education Act 1996 will cease to apply to the child at the end of the school year.

Avoiding pipelines cases

6.24 From the 1 January 2022, children who are captured by Commencement Orders 5 and 6 will not be able to get into a pipeline (see paragraphs 6.52 to 6.56 for a definition of pipeline cases). Although the SEN legislation remains in force, and SEP **must** continue to be provided until a child moves to the ALN system, the provisions of Part 4 of the Education Act 1996 that remain in force are limited.

6.25 This means that children captured by the Commencement Orders 5 and 6 cannot be given a statement of SEN or ask for an SEN assessment.

6.26 Children, or their parents, can however ask for a notice to be given (see paragraphs 6.64 to 6.67 for information about requesting an IDP notice and paragraphs 6.68 to 6.70 for information about requesting an ALN notice).

Children captured by an order

6.27 Children captured by an order refers to the groups of children who are included in a specific commencement order and who will move from the SEN system to the ALN system in 2 of the 3 implementation years (this guide deals with the arrangements for the first year of implementation). Children captured by the individual commencement orders are as follows:

- **Commencement Order 2**:

children up to, and including, Year 10 who:

  - from 1 September 2021 are newly identified as having, or are newly thought to have, ALN (see paragraphs 6.42 to 6.43for a definition of newly identified as having, or newly thought to have, ALN); or

children of compulsory school age who:

  - are detained on or after 1 September 2021 (see paragraph 6.33 for a definition of detained).

Commencement Order 7

Commencement Order 7 captures children up to, and including, Year 10 who, on 1 September 2021, had identified SEN or who were in a pipeline case and who, on 1 January 2022 no longer had identified SEN or were no longer in a pipeline case. The commencement order treats these children as being newly identified as having, or newly thought to have, ALN (see paragraphs 6.42 to 6.43 for a definition of newly identified as having, or newly thought to have, ALN).

Commencement Order 5

- Commencement Order 5 captures children up to, and including, Year 10 who, on 1 January 2022, have SEP via school action/school action plus, who are registered at a maintained school or a PRU in Wales (but not children who are looked after or who are dual registered).

Commencement Order 6

- Commencement Order 6 captures children up to, and including, Year 10 who, on 1 January 2022, have SEP via school action/school action plus, and who:

  - live in Wales, and are registered at more than one setting where one of those settings is a maintained school or PRU in Wales; or
  - are registered at a maintained school or PRU in Wales and are looked after in Wales by a local authority in Wales.

6.28 Children who are not captured by the commencement orders and who, consequently, will not move to the ALN system in the first year of implementation, are discussed in section 3 of this guide.

Deciding whether a child has ALN

6.29 Generally, where it is brought to the attention of, or otherwise appears to, a local authority, school, or PRU that a child may have ALN, the local authority, school or PRU **must** decide whether the child has ALN[53]. Where the local authority, school or PRU decides the child has ALN, the local authority, school or PRU will then usually be required to prepare and maintain an IDP for the child[54].

6.30 Schools and PRUs will generally be responsible for deciding whether a child has ALN and for preparing an IDP but there are a number of circumstances set out in the ALN Act where responsibility to decide generally lies with the local authority. These include where a child:

- is not registered at a maintained school or PRU
- is registered at more than one setting
- is looked after by a local authority in Wales
- is detained

6.31 Where a child is looked after by a local authority in England and is registered at a maintained school or PRU in Wales, the school or PRU will be responsible for deciding if the child has ALN, other than where a local authority in England maintains an EHC plan for the child[55].

6.32 Further information on deciding whether a child has ALN and on preparing and maintaining IDPs can be found in the ALN Code.

Detained children

6.33 Reference to detained children in this guide has the meaning given by section 39 of the ALN Act. That is, children who are:

- subject to a detention order, and
- detained in relevant youth accommodation in Wales or England (see chapter 19 or the ALN Code).

Education other than at school (EOTAS)

6.34 Local authorities have a duty[56] to make arrangements for the provision of suitable education for children of compulsory school age who, for whatever reason, may not receive suitable education in the absence of such arrangements. They also have a power[57] to do the same in relation to young people.

6.35 This provision is referred to EOTAS. Examples of EOTAS provision include PRUs, schools established in hospitals, FEIs, and individual tuition at home (this is different to elective home education). EOTAS pupils include children and young people who,

[53] ALN Act, sections 11, 13, 18 and 40. The definition of ALN is in section 2 of the ALN Act and that of ALP in section 3.
[54] ALN Act, sections 12, 14, 19 and 40.
[55] ALN Act, section 11(3)(e).
[56] Section 19 of the Education Act 1996.
[57] Section 19(4) of the Education Act 1996.

for example, may be ill or have been excluded from school (information about EOTAS can be found in chapter 18 of the ALN Code).

Exceptional circumstances

6.36 Reference is made to duties placed on local authorities, schools and PRUs to give a copy of an IDP within a specific timescale, unless exceptional circumstances apply. Exceptional circumstances refer to instances where it is impossible for the responsible body to comply within the specified period due to circumstances beyond the control of the responsible body.

6.37 During the implementation period, an example of an exceptional circumstance is likely to be where a significant number of children, or their parents, request the school, PRU or appropriate local authority give an IDP notice. Where the number of requests involved would mean it was impossible to prepare and give an IDP within the required timescale, such an instance is very likely to be an exceptional circumstance. However, where there are exceptional circumstances, the IDP **must** be given as soon as is reasonably practicable. Where it is apparent there are exceptional circumstances that will prevent, or are likely to prevent the IDP being given in the required timescale, this should be explained in writing to the child and their parents at the earliest opportunity.

6.38 Exceptional circumstances also apply in relation to the power, provided for in Commencement Orders 5 and 6, given to a local authority to give an ALN notice to move a child from the SEN to the ALN system.

6.39 The power has been given to local authorities to be used in an exceptional circumstance. Such a situation might be where a child's needs have increased beyond the SEP that can be delivered in a mainstream school. Without the power to give an ALN notice, the local authority would not be able to make a decision about whether the child has ALN and, where required, prepare an IDP. In addition, it is not possible for a school to request that a local authority undertake a statutory assessment or issue a statement for a child captured by Commencement Order 5 or 6. Thus, it would not be possible for the local authority to place the child in a special school as the old law requires that a child attending a special school should have a statement.

Looked after children

6.40 Reference to looked after children in this guide has the same meaning as a child looked after by a local authority in section 15 of the ALN Act (see paragraphs 1.27 to 1.30 of the ALN Code).

Mandated years

6.41 Mandated years refer to the groups of children who fall into specific year groups that will move from the SEN system to the ALN system in each of the 3 years of implementation. During the first year of implementation (school year 2021/22), the mandated years are: Nursery Years 1 and 2, and Year 1, Year 3, Year 5, Year 7 and Year 10.

Newly identified as having, or newly thought to have, ALN

6.42 Children who are newly identified as having, or newly thought to have, ALN from 1 September 2021 means children who were not engaged in any way with the SEN system on 1 September 2021. That is, they are children who do not have a statement of SEN, SEP via school action/school action plus nor are they involved in a pipeline case (see paragraphs 6.52 to 6.56 for a definition of pipeline cases).

6.43 The ALN system will apply to children who are newly identified as having, or newly thought to have, ALN from 1 September 2021, regardless of how their education is delivered. Notifying the parent/carer that a child will be moving to the ALN system

6.44 Commencement Orders 5 and 6 require schools, PRUs and appropriate local authorities to give an IDP notice or a no IDP notice to children described at paragraphs 1.9 and 1.14. The notice can be given at any point in the relevant school year that the child is moving to the ALN system.

6.45 An IDP notice means the child is deemed to have ALN for the purposes of chapter 2 of Part 2 of the ALN Act on the date of the notice and that an IDP will be prepared for the child[58]. The school or PRU **must** give a copy of the IDP to the child and their parent within 35 school days of the date of the notice and local authorities **must** give a copy of the IDP to the child and the child's parent within 12 weeks of the date of the notice, unless exceptions apply or there are exceptional circumstances (see paragraphs 6.36 to 6.37 for a definition of exceptional circumstances).

6.46 The date of the notice is the date the child moves to the ALN system. That is, the ALN Act and associated subordinate legislation, including the ALN Code, apply from that date.

6.47 A no IDP notice means the child is deemed not to have ALN for the purposes of chapter 2 of Part 2 of the ALN Act on the date of the notice[59]. The date of the notice is the date the child moves to the ALN system. That is, the ALN Act and associated subordinate legislation, including the ALN Code, apply from that date. This means children, and their parents, have rights to challenge decisions made by schools, PRUs and local authorities.

6.48 Where a child, or their parent, disagrees with the decision made by a school, they can request the local authority re-considers the decision[60]

6.49 Where a child, or their parent, disagrees with the decision made by a local authority, they may appeal to the Education Tribunal for Wales against the decision.

Nursery class – Nursery Years 1 and 2

6.50 The commencement orders make provision for children in a nursery class in a maintained school to move to the ALN system. Nursery class means the classes in a

[58] Other than where a local authority is required to secure an EHC plan following a request under section 12(2)(c) of the Act, Commencement Order 5, article 5.
[59] Commencement Order 5, article 8; and Commencement Order 6, article 8.
[60] ALN Act, section 26.

maintained school that provide foundation phase nursery education[61] for children who have attained the age of 3 but are under compulsory school age. Generally, schools organise nursery classes into 2 years and, thus, reference is made in this guide to Nursery Years 1 and 2 when referring to nursery classes.

Parent

6.51 Parent has the meaning given in section 576 of the Education Act 1996. That definition includes any person who is not a parent but who has parental responsibility for the child and any person who has care of the child[62].

Pipeline cases

6.52 This guide makes reference to pipeline cases. Children who have a pipeline case are not included in the commencement orders and, therefore, will not move from the SEN system to the ALN system in the first year of implementation.

6.53 A pipeline case refers to instances were a child or young person is either engaged with a process relating to the SEN statement system provided for in the Education Act 1996 or with a process relating to EHC plans provided for in the Children and Families Act 2014.

6.54 While there are a large number of diverse pipeline cases, they can be categorised into 2 types: those that are pre-statement pipelines and those that are statement pipelines. A pre-statement pipeline is where a child or young person does not have a statement but is seeking to get a statement. This pipeline could end by a statement being given or by no statement being given. A statement pipeline is where a statement has already been given but there is an ongoing appeal in relation to its content or the local authority is trying to cease to maintain the statement.

6.55 Therefore, in the first year of implementation, children on school action/school action plus who are involved in a process related to the SEN statement process on 1 September 2021, and who continue to be involved in that pipeline case on 1 January, will not move to the ALN system until the second or third year (dependant on when the pipeline is fully determined and on the mandated year they fall within).

6.56 Children captured by the commencement orders cannot get into a pipeline case and, consequently, no new statements will be given to children covered by the commencement orders (see avoiding pipeline cases at paragraph 6.24 above).

[61] See 'Nursery education for 3 and 4 year olds in Wales – Foundation Phase nursery: a guide for parents and carers'.
[62] National Assembly for Wales Circular No: 12/2007 contains guidance for schools on the meaning of parents and parental responsibility for the purposes of the Education Act 1996.

Preparing an IDP

6.57 Under the ALN Act, where it has been decided by a local authority, school or PRU that a child has ALN, an IDP **must** be prepared for the child[63].

6.58 During the implementation period, preparing an IDP will generally take place within the context of moving a child from the SEN system, and their existing plans and SEP delivered via school action/school action plus, to the ALN system.

6.59 Further information on deciding whether a child has ALN and on preparing and maintaining IDPs can be found in the ALN Code.

Pupil referral units (PRUs)

6.60 For brevity, the term PRU is used in this guide when describing a duty placed on the management committee of a PRU under the ALN Act, ALN Code or regulations under the ALN Act. This also reflects the practical operation of the system where, for the most part, the functions of a management committee are undertaken by staff members acting for the management committee.

Regard to previous provision

6.61 When preparing an IDP, the school, PRU or local authority **must** have regard to the SEP provided to the child to facilitate continuity of provision during the transition from the SEN system to the ALN system (for information about preparing an IDP see the ALN Code, chapter 12, pages 97 to 98).

Registered at more than one setting (dual registered)

6.62 When a child is described as being registered at more than one setting, it means the child is registered as a pupil or enrolled as a student at more than one setting, one of which is a maintained school or PRU in Wales **and** also that the child is to be provided with education or training at each of the settings at which the child is a registered pupil or an enrolled student[64].

Responsible local authority

6.63 The ALN Code, chapter 1, page 4 provides a definition of children and young people for whom a local authority is responsible.

Right for a child or their parent to request an IDP notice

6.64 Commencement Orders 5 and 6 provide a right for children captured by the commencement orders, or their parents, to request an IDP notice is given at any point during the implementation period[65].

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[63] Other than where a local authority in England maintains an EHC plan for the child or where a local authority in England is required to secure an EHC assessment following a request under section 12(2)(c) or section 87(3)(d)(i) of the ALN Act.
[64] ALN Act, sections 30(1) and (3).
[65] Commencement Order 5 article 12; and Commencement Order 6, article 12.

6.65 In addition, Commencement Order 5 provides a right for children captured by the order, or their patents, to request an ALN notice is given at any point during the implementation period.

6.66 Where an IDP notice is requested, the school, PRU or appropriate local authority **must** give either an IDP notice or a no IDP notice within 15 school days or 15 working days (as appropriate) of the request (see paragraphs 6.44 to 6.47 for information about notices). The date of the notice is the date the child moves to the ALN system. That is, the ALN Act and associated subordinate legislation, including the ALN Code, applies from that date and the school or PRU has 35 school days to prepare an IDP for the child where an IDP notice is given[66]. Local authorities have 12 weeks to prepare an IDP for the child where an IDP notice is given[67].

6.67 Where a child requests an ALN notice, the appropriate local authority has 10 working days to give the notice (see paragraphs 6.68 to 6.70 for information about the right for a child or their parent to request an ALN notice).

Right for a child or their parent to request an ALN notice

6.68 Children captured by Commencement Order 5 who are no longer registered at a maintained school or PRU (and who, thus, cannot request their school or PRU give an IDP notice), or their parent, can ask the appropriate local authority to give an ALN notice.

6.69 The appropriate local authority must give the notice within 10 working days. The timeframe for giving an ALN notice is shorter than the timeframe to give an IDP notice or a no IDP notice. This is because giving an ALN notice does not involve making a decision.

6.70 The ALN legislation, including the ALN Code, applies to the child on the date of the notice and the old law ceases to apply on that date.

Schools

6.71 Commencement Order 5 uses the definition of a maintained school provided in section 99(1) of the ALN Act. This definition includes PRUs.

6.72 Duties in the ALN Act relating to schools are placed on the governing bodies of maintained schools and those relating to PRUs are placed on the management committee of a PRU.

6.73 For brevity, when describing a duty placed on the governing body of a maintained school or on the management committee of a PRU (or which may be placed on either in subordinate legislation), school or PRU is used, rather than referring to the governing body or management committee each time. This also reflects the practical operation of the system where, for the most part, the functions of governing bodies

[66] The Code timescales relating to a governing body preparing an IDP do not apply when an IDP is prepared following the giving of an IDP notice. Commencement Order 5, article 13.
[67] The Code timescales relating to a local authority preparing an IDP do not apply when an IDP is prepared following the giving of an IDP notice. Commencement Order 6, article 13.

and management committees are undertaken by staff members acting on their behalf.

Securing ALP

6.74 The school, PRU or local authority that maintains an IDP **must** secure the ALP described within the IDP and, where an IDP specifies ALP should be provided in Welsh, the school, PRU or the LA **must** take all reasonable steps to secure that provision in Welsh[68].

6.75 Further information on deciding whether a child has ALN and on preparing and maintaining IDPs can be found in the ALN Code.

Special educational needs (SEN) system

6.76 The SEN system refers to the legal arrangements set out in Part 4 of the Education Act 1996 and subordinate legislation, and 'Special Educational Needs Code of Practice for Wales'.

Special educational provision (SEP) via school action/school action plus

6.77 Throughout this guide, reference is made to children who have SEP via school action/school action plus. School action/school action plus is used to signify any SEP that is provided to a child that is not delivered via a statement of SEN.

6.78 This guide covers children from birth up to, and including, Year 10 and, thus, reference to school action/school action plus includes SEP delivered to young children via early years action/early years action plus, as well as any SEP delivered to young children that is not delivered via a statement.

[68] The exception to this is where the IDP specifies that the ALP is to be secured by an NHS body, in which case it is the NHS body's duty to secure that ALP, and if it is specified that that ALP should be provided in Welsh, the NHS body **must** take all reasonable steps to secure that provision in Welsh (ALN Act, sections 20 and 21).