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Llywodraeth Cymru
Welsh Government

Draft Additional Learning Needs Code for Wales

December 2018

Draft Additional Learning Needs Code for Wales

Audience

The Additional Learning Needs (ALN) Code is statutory guidance for the following public authorities: local authorities in Wales or England; governing bodies of maintained schools in Wales or England (including community, foundation or voluntary schools; community or foundation special schools not established in hospitals; maintained nursery schools; and pupil referral units); governing bodies of further education institutions in Wales or England; proprietors of academies; youth offending teams for an area in Wales or England; persons in charge of relevant youth accommodation in Wales or England; local health boards; NHS trusts; national health service commissioning boards; clinical commissioning groups; NHS foundation trusts; and special health authorities.

The Special Educational Needs Tribunal for Wales (to be renamed the Education Tribunal for Wales) will be required to have regard to any relevant provisions of the Code in relation to appeals under the Additional Learning Needs and Education Tribunal (Wales) Act 2018 ('the Act').

Local authority funded, non-maintained providers of nursery education will also be required to have regard to relevant guidance in the ALN Code, in accordance with the local authority's funding arrangements.

The consultation is also aimed at: Her Majesty's Chief Inspector of Education and Training in Wales; the Children's Commissioner for Wales; the Welsh Language Commissioner; and the National Assembly for Wales' Children, Young People and Education Committee.

Overview

This Code is made under the Act, which, together with this Code and regulations to be made under the Act, provides a legal framework to ensure that learners' additional learning needs are identified early and addressed quickly to enable them to overcome barriers and achieve their full potential.

Action required

The Welsh Government seeks the views of stakeholders, listed in the target audience above, and those with an interest in the Welsh Government's draft of the ALN Code.

This draft ALN Code is to be read in conjunction with the Welsh Government consultation document entitled 'Draft Additional Learning Needs Code and proposed subordinate legislation under the Additional Learning Needs and Education Tribunal (Wales) Act 2018'.

Further information

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Related documents

Consultation document: 'Draft Additional Learning Needs Code and proposed subordinate legislation under the Additional Learning Needs and Education Tribunal (Wales) Act 2018'.

Contents

Ministerial foreword	1
Chapter 1: Introduction	2
<i>Guidance in the Code to which relevant persons must have regard</i>	2
<i>Requirements imposed by the Code on local authorities and governing bodies of maintained schools and FEIs in Wales</i>	3
<i>Interpretation of key terms used in the Code</i>	3
<i>Timescales</i>	7
<i>Giving notice or documents</i>	9
<i>Cross-references to other parts of the Code</i>	9
<i>Implementation arrangements 2020-23</i>	10
<i>Partners in delivery – role of individual organisations in the ALN system</i>	10
<i>Structure of the Code</i>	14
Glossary	19
Chapter 2: Principles of the Code	25
<i>Principles in practice</i>	25
Chapter 3: Involving and supporting children, their parents and young people	31
<i>Introduction</i>	31
<i>Participation of children and young people</i>	31
<i>The duties in practice</i>	32
<i>Involving and supporting parents of children with ALN</i>	35
Chapter 4: Duties on local authorities and NHS bodies to have regard to the United Nations Convention on the Rights of the Child and the United Nations Convention on the Rights of Persons with Disabilities	38
<i>Introduction</i>	38
<i>Duty to have regard to the United Nations Convention on the Rights of the Child (UNCRC)</i>	40
<i>Duty to have regard to the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)</i>	41
<i>Discharging the duties in practice</i>	42
Chapter 5 - Duty to keep additional learning provision under review	44
<i>Introduction</i>	44
<i>Conducting a review</i>	45
<i>Outcomes following a review of ALP</i>	48
Chapter 6: Advice and information	50
<i>Introduction</i>	50
<i>Arrangements for providing advice and information</i>	50
<i>Aims and content of advice and information</i>	51
<i>Raising awareness of arrangements for providing advice and information</i>	52
<i>Accessibility of advice and information</i>	53
<i>Involving children, their parents and young people</i>	53
<i>Schools', FEIs' and non-maintained nurseries' role in promoting local authority arrangements for information and advice</i>	54

Chapter 7: The definition of ALN and ALP, identifying ALN and deciding upon the ALP required	55
<i>Introduction</i>	<i>55</i>
<i>The definition of ALN.....</i>	<i>55</i>
<i>Children of compulsory school age and older persons.....</i>	<i>56</i>
<i>Children under compulsory school age</i>	<i>58</i>
<i>Considering whether a child or young person has, or may have, ALN.....</i>	<i>58</i>
<i>Evidence identifying whether a child or young person may have ALN</i>	<i>62</i>
<i>Determining the ALN and the ALP required</i>	<i>65</i>
<i>Multi-agency working.....</i>	<i>66</i>
<i>Considerations relating to ALP.....</i>	<i>70</i>
Chapter 8: Duties on local authorities in relation to children under compulsory school age and not attending a maintained school in Wales.....	74
<i>Introduction</i>	<i>74</i>
<i>A local authority's duty to decide whether a child under compulsory school age not attending a maintained school in Wales has ALN</i>	<i>74</i>
<i>A local authority's decision that a child does not have ALN</i>	<i>77</i>
<i>A local authority's duty to prepare an IDP for a child under compulsory school age who is not attending a maintained school.....</i>	<i>78</i>
<i>A local authority's duty to maintain an IDP and secure the ALP.....</i>	<i>80</i>
<i>A local authority's duty to review an IDP</i>	<i>81</i>
<i>The Early Years ALN lead officer</i>	<i>81</i>
Chapter 9: Duties on maintained schools and local authorities in relation to children and young people at maintained schools in Wales.....	85
<i>Introduction</i>	<i>85</i>
<i>A maintained school's duty to decide if a pupil has ALN</i>	<i>85</i>
<i>A maintained school's decision that a child or young person does not have ALN....</i>	<i>88</i>
<i>A maintained school's duty to prepare an IDP for a pupil.....</i>	<i>89</i>
<i>A maintained school's duty to take all reasonable steps to secure ALP for a pupil with ALN but without an IDP.....</i>	<i>91</i>
<i>A maintained school's duty to maintain an IDP and secure the ALP</i>	<i>92</i>
<i>Review of the IDP.....</i>	<i>93</i>
<i>Referrals from a maintained school to a local authority.....</i>	<i>93</i>
<i>A local authority's duty to decide whether a pupil of a maintained school has ALN .</i>	<i>95</i>
<i>A local authority's decision that a pupil does not have ALN</i>	<i>99</i>
<i>A local authority's duty to prepare an IDP for a pupil with ALN at a maintained school</i>	<i>100</i>
<i>A local authority's duty to maintain an IDP for a pupil with ALN and secure the ALP</i>	<i>103</i>
<i>A local authority's duty to review an IDP for a pupil with ALN</i>	<i>104</i>
<i>A maintained school's duty to take all reasonable steps to help a local authority secure the ALP in an IDP maintained for a pupil by a local authority</i>	<i>104</i>
<i>A local authority's direction to a school to prepare or maintain an IDP.....</i>	<i>105</i>

<i>A maintained school's duty to prepare or maintain an IDP where directed to do so by a local authority</i>	107
<i>A maintained school's duty to admit a child where a local authority has named it for the purpose of securing the child's admission</i>	108
<i>Duty to secure that children with ALN in mainstream maintained schools engage in the activities of the school</i>	108
Chapter 10: Duties on FEIs and local authorities in relation to young people at an FEI	110
<i>Introduction</i>	110
<i>An FEI's duty to decide if a young person has ALN</i>	110
<i>An FEI's decision that a young person does not have ALN</i>	113
<i>An FEI's duty to prepare an IDP</i>	114
<i>An FEI's duty to take all reasonable steps to secure ALP for a student with ALN but without an IDP</i>	115
<i>An FEI's duty to maintain an IDP and secure the ALP</i>	117
<i>Review of the IDP</i>	117
<i>Referrals from an FEI to a local authority</i>	117
<i>A local authority's duty to decide whether a young person at an FEI has ALN</i>	119
<i>A local authority's decision that a young person at an FEI does not have ALN</i>	121
<i>A local authority's duty to prepare an IDP for a young person at an FEI who has ALN</i>	123
<i>A local authority's duty to maintain an IDP and secure the ALP for a young person at an FEI who has ALN</i>	125
<i>A local authority's duty to review an IDP for an FEI student with ALN</i>	125
<i>An FEI's duty to take all reasonable steps to help a local authority secure the ALP in an IDP maintained for a student by a local authority</i>	126
Chapter 11: Duties on local authorities in relation to children of compulsory school age not attending a maintained school	127
<i>Introduction</i>	127
<i>A local authority's duty to decide whether a child of compulsory school age who is not a pupil at a maintained school in Wales has ALN</i>	127
<i>A local authority's decision that a child of compulsory school age does not have ALN</i>	129
<i>A local authority's duty to prepare an IDP for a child not attending a maintained school, who has ALN</i>	130
<i>Other considerations when determining where ALP is to be delivered</i>	132
<i>A local authority's duty to maintain an IDP and secure the ALP</i>	140
<i>A local authority's duty to review an IDP</i>	141
Chapter 12: Duties on local authorities in relation to young people not at a maintained school or FEI	142
<i>Introduction</i>	142
<i>A local authority's duty to decide whether a young person not at a maintained school or FEI has ALN</i>	142
<i>A local authority's decision that a young person does not have ALN</i>	144

<i>A local authority’s duty to decide whether to prepare an IDP for a young person not at a maintained school or FEI in Wales who has ALN.....</i>	<i>145</i>
<i>A local authority’s duty to prepare an IDP for a young person who has ALN and is not at a maintained school or FEI in Wales.....</i>	<i>152</i>
<i>A local authority’s decision that it is not necessary to prepare and maintain an IDP for a young person who has ALN and is not at a maintained school or FEI in Wales.....</i>	<i>154</i>
<i>A local authority’s duty to maintain an IDP and secure the ALP included in it.....</i>	<i>155</i>
<i>A local authority’s duty to review an IDP.....</i>	<i>156</i>
Chapter 13: Content of an IDP.....	157
<i>Introduction.....</i>	<i>157</i>
<i>Mandatory IDP form.....</i>	<i>158</i>
<i>Mandatory IDP content.....</i>	<i>159</i>
<i>Part 1.....</i>	<i>159</i>
<i>Part 2.....</i>	<i>162</i>
<i>Part 3.....</i>	<i>167</i>
<i>Non-mandatory IDP content.....</i>	<i>170</i>
Chapter 14: Content of an IDP for a looked after child.....	172
<i>Introduction.....</i>	<i>172</i>
<i>Mandatory IDP form.....</i>	<i>173</i>
<i>Mandatory IDP content.....</i>	<i>173</i>
Chapter 15: Duties on health bodies and other relevant persons.....	175
<i>Introduction.....</i>	<i>175</i>
<i>Statutory requests by local authorities for information or other help from relevant persons.....</i>	<i>175</i>
<i>Identifying ALN in respect of children under compulsory school age – health bodies’ role and duty to notify.....</i>	<i>177</i>
<i>ALP to be secured by NHS bodies.....</i>	<i>179</i>
<i>Local Health Boards and the Designated Education Clinical Lead Officer (“DECLO”).....</i>	<i>182</i>
Chapter 16: Review and revision of IDPs.....	187
<i>Introduction.....</i>	<i>187</i>
<i>Review of an IDP.....</i>	<i>187</i>
<i>Conducting reviews.....</i>	<i>193</i>
<i>Actions following a review.....</i>	<i>195</i>
Chapter 17: Local authority reconsiderations and taking over responsibility for IDPs.....	199
<i>Introduction.....</i>	<i>199</i>
<i>A local authority’s reconsideration of a maintained school’s decisions about ALN.....</i>	<i>199</i>
<i>A local authority’s reconsideration of maintained school IDPs.....</i>	<i>201</i>
<i>A local authority taking over responsibility for an IDP.....</i>	<i>203</i>
Chapter 18: Meetings about ALN and IDPs.....	207
<i>Introduction.....</i>	<i>207</i>
<i>Good practice principles for all ALN meetings.....</i>	<i>207</i>
<i>The format of meetings.....</i>	<i>209</i>

<i>Meetings to decide whether a child or young person has ALN and, if required, prepare an IDP</i>	210
<i>Meetings to review and revise an IDP</i>	210
<i>Co-ordinating meetings for children and young people with multiple plans</i>	212
Chapter 19: Planning for and supporting transition	213
<i>Introduction</i>	213
<i>Planning for transition</i>	214
<i>Supporting transition</i>	217
Chapter 20: Transferring an IDP	225
<i>Introduction</i>	225
<i>Transferring the duty to maintain an IDP</i>	225
<i>Process by which the duty to maintain an IDP transfers</i>	228
<i>Transfer of an IDP in dual registration cases</i>	229
<i>Instances where there is not a transfer of a duty to maintain an IDP, but a child or young person recently had one</i>	229
Chapter 21: Ceasing to maintain an IDP	231
<i>Introduction</i>	231
<i>The circumstances in which a school's duty to maintain an IDP ceases</i>	231
<i>The circumstances in which an FEI's duty to maintain an IDP ceases</i>	232
<i>The circumstances in which a local authority's duty to maintain an IDP ceases</i>	233
<i>Deciding that a child or young person no longer has ALN</i>	235
<i>Deciding that it is no longer necessary to maintain an IDP for a young person</i>	236
<i>Notification of a decision that a child or young person no longer has ALN or that it is no longer necessary to maintain an IDP for a young person</i>	237
<i>Limitation on ceasing to maintain plans to allow reconsideration and/ or appeal</i> ...	238
<i>A local authority's reconsideration of a maintained school's decision to cease to maintain an IDP</i>	238
Chapter 22: Children and young people subject to detention orders	241
<i>Introduction</i>	241
<i>Detained children and young people</i>	242
<i>Children and young people subject to a detention order and detained in hospital under Part 3 of the 1983 Act</i>	249
Chapter 23: Children and young people in specific circumstances	256
<i>Introduction</i>	256
<i>Children and young people who are in the area of a local authority in England and registered as pupils at a maintained school in Wales or enrolled as students at an FEI in Wales</i>	256
<i>Children and young people receiving EOTAS</i>	257
<i>Children receiving education other than at a maintained school in Wales or EOTAS</i>	259
<i>Children and young people of Service Personnel</i>	259
Chapter 24: Role of the Additional Learning Needs Co-ordinator (ALNCo)	261
<i>The duty on schools and FEIs to designate an ALNCo</i>	261
<i>The role of the ALNCo</i>	262

<i>Prescribed qualifications and experience of ALNCos</i>	265
Chapter 25: Avoiding and resolving disagreements and independent advocacy services	266
<i>Introduction</i>	266
<i>A local authority’s duty to make arrangements for avoiding and resolving disagreements</i>	266
<i>The involvement of health bodies in avoiding and resolving disagreement arrangements</i>	272
<i>Other means of challenge</i>	274
<i>Independent advocacy services</i>	275
Chapter 26: Appeals and applications to the Education Tribunal for Wales ..	280
<i>Introduction</i>	280
<i>Matters about which appeals can be made</i>	280
<i>Decisions the Tribunal can make</i>	282
<i>Timescales relating to the appeals process and compliance with orders</i>	283
<i>Appeal application and case statement period</i>	284
<i>Timescales relating to compliance with an order</i>	284
<i>NHS bodies: evidence and tribunal recommendations</i>	286
<i>Reviews of and appeals against decisions of the Tribunal</i>	286
Chapter 27: Case friends for children who lack capacity	289
<i>Introduction</i>	289
<i>Children who lack capacity</i>	289
<i>Case friends for children who lack capacity</i>	291
Annex A: Individual Development Plan (IDP): Mandatory form	295
Annex B: Individual Development Plan (IDP) for a looked after child: Mandatory form	302
Annex C: ALP to be secured by an NHS body: Non-mandatory form	306

Ministerial foreword

I am delighted to present this Additional Learning Needs Code which sets out how the Additional Learning Needs and Education Tribunal (Wales) Act 2018 and regulations will work in practice.

The Welsh Government is committed to creating a fully inclusive education system where all learners are inspired, motivated and supported to reach their potential. Every learner should have access to an education that meets their needs and enables them to participate in, benefit from, and enjoy learning. Our vision is of a unified, equitable and non-adversarial system which supports and promotes the rights of all children and young people.

The additional learning needs (ALN) system contributes to the well-being goals provided in the Well-being of Future Generations (Wales) Act 2015, in particular of a more equal, healthier, prosperous and resilient Wales, and promotes the sustainable development principles of long term, prevention, collaboration and involvement.

It promotes equality by providing the right to a statutory plan for all learners with ALN regardless of the severity of need, which follows them throughout their education – from pre-school to college – providing consistency, continuity and the assurance that provision and rights are protected. Services must fully inform and involve children and young people in decisions about their support. Learners' views, wishes and feelings are at the heart of the process of planning the support necessary to enable them to overcome barriers to learning.

Priority placed within the ALN system on early intervention, ensuring needs are identified early, the right provision is put in place promptly, and multi-agency working to support learners and deliver effective and prudent interventions supports the healthier goal.

The emphasis on learners being encouraged to have high aspirations, supported to achieve educationally, and to go on to live fulfilling lives and make a full contribution to society, including through employment, links to the goals of prosperity and resilience.

I am grateful to the input of the extensive range of stakeholders, including children, young people, parents, delivery partners, third sector representatives, unions, professional bodies and commissioners who have contributed to the development of the Code and the ALN system through collaboration and co-production.

I am confident this document will help those working with children and young people with ALN understand their roles and responsibilities under the Act, regulations and Code and assist them in delivering the system of support for children and young people with ALN in Wales.

Kirsty Williams AM
Cabinet Secretary for Education

Chapter 1: Introduction

1.1 The Additional Learning Needs Code (“the Code”) is made¹ under the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (“the Act”). The Act, together with this Code and regulations made under the Act, provides a legal framework to ensure that learners’ additional learning needs (ALN) are identified early and addressed quickly. It places the learners’ views, wishes and feelings at the heart of the process of planning the support required to enable them to overcome barriers to learning and achieve their full potential.

Guidance in the Code to which relevant persons must have regard

1.2 The Code includes statutory guidance² about the exercise of functions under Part 2 of the Act, which contains the main substantive provisions of the system and includes the main duties imposed on public authorities. It also includes statutory guidance on other matters connected with identifying ALN and meeting the needs of children and young people with ALN, and describes relevant statutory requirements, including ones in the Act.

1.3 The following public authorities (referred to in the Code as “relevant persons”) **must**³ have regard to relevant guidance in the Code when exercising functions under Part 2 of the Act:

- a local authority in Wales or England;
- the governing body of a maintained school in Wales or England;
- the governing body of a further education institution (FEI) in Wales or England;
- the proprietor of an Academy;
- a youth offending team for an area in Wales or England;
- a person in charge of relevant youth accommodation in Wales or England;
- a Local Health Board;
- an NHS Trust;
- the National Health Service Commissioning Board;
- a clinical commissioning group;
- an NHS Foundation Trust; and
- a Special Health Authority⁴.

1.4 The Education Tribunal for Wales (“the Tribunal”) **must**⁵ have regard to any provision of the Code that appears to it to be relevant to a question arising on an appeal under Part 2 of the Act.

¹ Section 4(1) of the Act.

² Section 4(2) of the Act.

³ Section 4(3) of the Act.

⁴ See section 99(1) of the Act for definitions related to these bodies. There are further relevant definitions in section 579(1) of the Education Act 1996.

- 1.5 The Code includes guidance relevant to local authority funded, non-maintained providers of nursery education⁶ to which such providers, in accordance with the local authority's funding arrangements, are required to have regard⁷.

Requirements imposed by the Code on local authorities and governing bodies of maintained schools and FEIs in Wales

- 1.6 The Code imposes requirements⁸ on local authorities in respect of their duties under the Act to make arrangements for the:
- provision of advice and information;
 - avoidance and resolution of disagreements; and
 - provision of independent advocacy services.
- 1.7 The Code imposes requirements⁹ on the governing bodies of maintained schools in Wales and FEIs in Wales, and on local authorities in Wales, in respect of:
- decisions about whether a child or young person has ALN;
 - the preparation, content, form, review and revision of individual development plans ("IDPs"); and
 - ceasing to maintain IDPs.
- 1.8 The Code imposes requirements¹⁰ on the governing bodies of maintained schools in Wales and those of FEIs in Wales in respect of the provision of information for the purposes of Part 2 of the Act.
- 1.9 The Code is addressed to those who must have regard to it. However others (e.g. other providers of education in Wales, parents, specialist advisers or advocates) might find it useful.

Interpretation of key terms used in the Code

The meaning of 'must', 'may' and 'should' in the Code

- 1.10 In this Code, where there is a requirement – as set out in the Act, regulations made under the Act, the Code or other legislation – for a person or body to do
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⁵ Section 4(10) of the Act.

⁶ Nursery education funded by a local authority to fulfil its duty under section 118 of the School Standards and Framework Act 1998.

⁷ Section 153 of the Education Act 2002.

⁸ Section 4(5)(a) of the Act.

⁹ Section 4(5)(b) of the Act.

¹⁰ Section 4(5)(c) of the Act.

something, it will be indicated by stating that the person or body **must** comply with the requirement, together with an accompanying footnote which sets out the source of the requirement, such as the relevant section of the Act.

- 1.11 Where a person or body is prohibited in law from doing something, this will be indicated in the Code by stating a person or body **must not** take the action. Where appropriate, the use of **must not** will be accompanied by a footnote explaining why the practice is prohibited.
- 1.12 Where a person or body is authorised or permitted to do something - as provided for in the Act or in regulations made under the Act - it will be indicated by stating that the person or body **may** do something, together with an accompanying footnote which sets out the source of the power, such as the relevant section of the Act.
- 1.13 The Code includes statutory guidance. A relevant person, when exercising functions under Part 2 of the Act, **must** have regard to relevant guidance in the Code. This means that when taking decisions, they must give consideration to what the Code says which is relevant to the decision. Where this Code says that a relevant person **should** do something, the person must consider this *and* follow it unless they can demonstrate that they are justified in not doing so. Similarly, where this Code says that a relevant person **should not** do something, unless there are exceptional circumstances, the person should not do it. A relevant person will be expected to explain any departure from the statutory guidance.
- 1.14 The Code does not aim to provide exhaustive guidance on all aspects of the ALN system.
- 1.15 Relevant persons will need to ensure that in carrying out their functions, they act in accordance with the law. Failure of a relevant person to comply with any of the requirements imposed by the Code or by the Act or regulations made under it or other legislation, could, depending upon the circumstances, result in a decision being overturned by the Tribunal, a complaint to the Welsh Ministers, the exercise of local authority or Welsh Ministers' intervention powers, a complaint to the Public Services Ombudsman or a successful judicial review claim.
- 1.16 Failure to adhere to guidance within this Code could lead to the same results if a relevant person is unable to justify departing from the guidance.

Children and young people

- 1.17 For the purposes of the Code and the Act¹¹, a "child" is anyone not over compulsory school age and a "young person" means a person over compulsory school age, but under the age of 25.

¹¹ Section 99(1) of the Act.

Children and young people for whom a local authority is responsible (those ‘in the area’ of the authority)

- 1.18 For the purposes of the Code and the Act, a local authority is responsible for a child or young person if the child or young person is “in its area”¹², which usually depends upon where the child or young person ordinarily resides. This means that a local authority could be responsible for a child or young person who attends a non-maintained setting in another local authority’s area or even a setting in England. For cases with a Wales/England cross-border element, the Education Act 1996 partially defines the term – a person is not in the area of a local authority in Wales if the person is wholly or mainly resident in England except where that residence in England is due to a placement under the Act and otherwise the person would be wholly or mainly resident in Wales and vice versa¹³.
- 1.19 Chapter 23 provides information about the restricted responsibilities that local authorities have for children and young people who are in the area of a local authority in England and registered as pupils at a maintained school in Wales or enrolled as students at an FEI in Wales,

Child

- 1.20 Where the Code refers to a requirement to provide a child with something, or includes the right of a child to do something, the term “child” should be read as “case friend” where the child has a case friend appointed by the Education Tribunal. Any exceptions to this are noted at the relevant place in the Code.

Looked after children

- 1.21 A local authority is responsible for making decisions about ALN and maintaining any IDPs for all children it looks after. However, for the purposes of the Code and the Act, the meaning of a “looked after child” is slightly different to its meaning in the Social Services and Well-being (Wales) Act 2014.
- 1.22 For the purposes of the Code and the Act, a child is looked after by a local authority if they are a child who is¹⁴:
- (a) looked after by a local authority in Wales for the purposes of Part 6 of the Social Services and Well-being (Wales) Act 2014 (Essentially this covers children who are in the care of the local authority and children who are accommodated by it in the exercise of its social services functions); and

¹² Section 99(4) of the Act

¹³ Sections 579(3A) and (3B) as amended by section 95 of the Act. This definition applies to the Act: section 99(6) of the Act.

¹⁴ Section 15(1) of the Act

(b) not a detained person.

1.23 But a child is not looked after for the purposes of the Code and the Act, if they are a child who¹⁵:

(a) has been placed for adoption under the Adoption and Children Act 2002¹⁶; or

(b) is looked after by the local authority for short breaks¹⁷.

1.24 This means that for the purposes of the Code and the Act, the meaning of a child being looked after is narrower than under the Social Services and Well-being (Wales) Act 2014. In particular, a young person (that is someone above compulsory school age) who is looked after for the purposes of Part 6 of that 2014 Act is not looked after for the purposes of the Code and the Act.

References to institutions and bodies

1.25 References to schools, FEIs, IPSIs - throughout the Code are to such institutions in Wales, unless otherwise indicated.

Governing bodies of maintained schools and FEIs

1.26 Requirements relating to maintained schools or FEIs (whether imposed by the Act, regulations or the Code) are, in most instances, placed on the governing body of the school or FEI and guidance in this Code is given to those governing bodies. Similarly, when requirements are placed on other persons that relate to maintained schools or FEI, those requirements will usually be imposed in relation to the governing body of a school or FEI. However, for the sake of brevity, in most of these cases, the Code just refers to “maintained school(s)” or “FEI(s)”, rather than referring to the governing body of the school or FEI on every occasion. This also reflects the practical operation of the system where, for the most part, the functions of governing bodies are undertaken by staff members acting for the governing body. Accordingly,

¹⁵ Regulations to be made under section 15(2) of the Act prescribing these categories as not looked after for the purposes of the Act.

¹⁶ Except where the child has (i) been remanded to local authority accommodation or, (ii) having been convicted of an offence, is residing in approved premises or other premises due to a bail condition in criminal proceedings, and immediately before the requirement to reside in such premises was imposed, the child was in the care of the local authority

¹⁷ The definition of this reflects that in the Care Planning, Placement and Case Review (Wales) Regulations 2015 S.I.2015/1818 (regulation 62(2)), namely that :

(a) the child is not in the care of the local authority

(b) the local authority has arranged to place C in a series of short-term placements with the same person or in the same accommodation, and

(c) the arrangement is such that—

(i) no single placement is intended to last for more than 4 weeks,

(ii) at the end of each placement C returns to the care of C’s parent or a person who is not C’s parent but who has parental responsibility for C, and

(iii) the short breaks do not exceed 120 days in total in any period of 12 months.

provisions of the Code which place requirements on a maintained school or an FEI are to be interpreted as requirements placed on the respective governing body.

Health bodies and NHS bodies

1.27 Throughout the Code, two different terms are applied to different types of health organisations due to the different duties that fall to them in relation to the Act.

1.28 The term “health body” covers:

- a Local Health Board;
- an NHS Trust;
- a clinical commissioning Group;
- an NHS Foundation Trust;
- a Special Health Authority.

1.29 The term “NHS body” covers:

- a Local Health Board;
- an NHS trust.

Other terms

1.30 A glossary of terms used throughout the Code is provided below.

Timescales

1.31 In this Code¹⁸, unless otherwise stated, where there is a reference to a period of time within which something **must** be done, the period starts on the day after the event referred to. This means that, for example, if a notice **must** be given within 7 weeks of a certain event, if that event takes place on a Monday, the 7 week period starts on the Tuesday and accordingly would end at the end of the Monday 7 weeks later.

1.32 Requirements imposed by the Code in relation to timescales for making a decision on ALN and for preparing and reviewing/ revising an IDP are described in the following terms:

*The [responsible body] **must** [complete the action] promptly and in any event within the period of [X weeks] from [trigger point for the start of the timescale]. But the requirement to [complete the action] does not apply if it is impractical for the [responsible body] to comply within the fixed period due to circumstances beyond its control.*

¹⁸ This applies to requirements imposed by the Code, and to those in regulations.

- 1.33 The action (e.g., the notification of a decision, or the giving of a copy of the IDP) is required to be done *'promptly'*. Although the requirements lay down a fixed period within which the action is required to be completed, in many cases acting promptly would enable this to be done much before the end of that period. For example, in some cases it may be possible to give a copy of an IDP at the end of a meeting to discuss a child or young person's needs, where the IDP is developed and written up as part of that meeting and there are no outstanding matters and the child, their parent or the young person does not wish to consider the draft IDP further. Also, in some cases, the duty to act *'promptly'* requires the responsible body to act much more quickly, due to the circumstances, for example a child nearing the end of their compulsory education, or a young person undertaking a short course.
- 1.34 The requirement also provides for an exception which involves it being *'impractical'* for the responsible body to comply. For the avoidance of doubt, when preparing an IDP, it will not be *'impractical'* to finalise and give a copy of the IDP within the fixed time period if the additional learning provision (ALP) can be described. Even if there might remain some outstanding evidence yet to be received which might provide a fuller picture of the extent of the ALN or the ALP, the IDP can and **must**¹⁹ be prepared. In such cases, as and when further information may become available, the responsible body would determine whether this further evidence requires the IDP to be reviewed and revised (see Chapter 16).
- 1.35 The exception only applies where it has not been possible within the fixed time period to complete the action due to *'circumstances beyond the responsible body's control'*. This is to allow for exceptional situations, such as where a child or young person is unavailable for a substantial period due to illness, absence from the country or some other reason, such that it is impossible to gather evidence (e.g. through observations or clinical or other assessments) at a time that would enable it to comply with the fixed time period.
- 1.36 Where the exception applies, that is, it is impractical for the body to comply due to circumstances beyond its control, the body remains subject to the duty to do the thing and subject to the duty to do it promptly. Whilst those circumstances might mean that it cannot take any effective action at a particular point, once it is no longer impractical for it to comply due to circumstances beyond its control, the duty to act promptly requires it to progress the matter without further delay.
- 1.37 Where there are any other exceptions to particular timescales within the Code, these are explained in footnotes.

¹⁹ Section 12, section 14, section 19 and section 40.

Giving notice or documents

- 1.38 Throughout the Code, reference is made to instances where a relevant person is required (expressed as a '**must**') or authorised to (expressed as a '**may**'):
- (a) notify a person of something, or
 - (b) give a document to a person (including a notice or a copy of a document).
- 1.39 The Code also refers to instances where a relevant person **should** do those same things.
- 1.40 In all such instances, the notification or document **may**²⁰ be given to the person in question—
- (a) by delivering it to the person,
 - (b) by sending it by post to the person's last known address,
 - (c) by leaving it at the person's last known address²¹, or
 - (d) by sending it to the person electronically, providing that person has indicated a willingness to receive the notification or document electronically, and has provided an address suitable for that purpose.
- 1.41 Generally children, as well as their parents, have rights to receive documents and notifications of decisions under the Act and to engage in meetings and dispute resolution and to take appeals in their own name. As such, throughout the Code there are requirements to provide information, advice and notifications of decisions to children as well as their parents. There is an exception to this where a child lacks capacity for the purposes of the Act. See Chapter 27 for an explanation of what lack of capacity means in relation to children for the purposes of the Act and ALN system, as well as information about the provision of case friends to represent, support and take decisions on behalf of children who lack capacity.
- 1.42 In relation to young people, the duties and requirements in the Act and Code do not extend to providing notifications to parents.

Cross-references to other parts of the Code

- 1.43 Throughout the Code there are cross-references to other parts of the Code. Some of these are intended simply to be of assistance to the reader by alerting his or her attention to another section of the Code of relevance or

²⁰ Section 88 of the Act covers notifications required or authorised by a provision of Part 2 of the Act of the Act. The Code extends this to notifications required or authorised by the Code.

²¹ A notification or document given to a person by leaving it at the person's last known address can be treated as having been given at the time at which it was left at that address.

which explains a term or concept. However, cross-references are not provided for every link between different parts of the Code, nor to every definition, since this would make the Code unworkably long. Therefore, where a cross-reference is not given, it should not be assumed that there is nothing else in the Code of relevance to the text in question.

Implementation arrangements 2020-23

- 1.44 A phased approach has been taken to introducing the ALN system, which is being implemented between September 2020 and July 2023. During this period, the ALN system will operate in parallel to the special educational needs (SEN) system, which will gradually be phased out during the implementation period.
- 1.45 Subordinate legislation under the Act, explained in implementation guides, deals with when specific provisions under the ALN system apply and how provisions of the SEN system continue to apply during the implementation period.
- 1.46 Until a child or young person has moved to the ALN system, provisions of the SEN system – as set out in the Education Act 1996, the Learning and Skills Act 2000, and associated subordinate legislation and guidance - will continue to apply.
- 1.47 In relation to the application of this Code in respect of individual children and young people during the implementation period, this Code applies where functions are being exercised under Part 2 of the Act.

Partners in delivery – role of individual organisations in the ALN system

- 1.48 There are a number of persons and bodies whose contribution will facilitate the development of IDPs and delivery of the associated additional learning provision (ALP) to meet the needs of children and young people with ALN. The main role in the ALN system of those persons and bodies is described below.

Welsh Government

- 1.49 The Welsh Government is responsible for setting the policy direction for education within Wales. The Welsh Government is responsible for enabling the delivery bodies listed below to meet the needs of all children and young people, including those with ALN.

- 1.50 The Welsh Government has a specific role in relation to further education (FE) provision: the Welsh Ministers have duties to secure the provision of proper facilities for 16–18 year olds (inclusive) and reasonable facilities for those aged 19 and over²².
- 1.51 The Welsh Ministers also have powers of intervention under the School Standards and Organisation (Wales) Act 2013 (anaw 1) in the conduct of maintained schools and in the exercise of education functions by local authorities.

Local authorities

- 1.52 The Act places a range of duties on local authorities in relation to ALN, which can be grouped as follows:
- Specific duties - in relation to individual learners (usually those in their area) such as duties to maintain IDPs for some learners (including learners who are dual registered and those with more complex needs) and the duty to reconsider decisions made by school governing bodies.
 - General duties - to support the functioning and effectiveness of the ALN system – including the duty to provide information and advice and the duty to keep additional learning provision under review.
- 1.53 In addition, local authorities have general education functions - related to maintaining schools and the provision of education, including intervention powers where schools fail to perform their duties.
- 1.54 Local authorities will be directly responsible for meeting the needs of children and young people with the most complex and/or severe needs, those who do not attend a maintained school or FEI in Wales (including those below school age).

Maintained schools in Wales

- 1.55 Maintained schools in Wales have a key role to play in identifying ALN and in delivering ALP to support learners with ALN. They are directly responsible for identifying and meeting the needs of the majority of their pupils who have ALN. In the case of children looked after by a Welsh local authority, however, it will generally be the duty of the local authority that looks after the child, to identify any ALN, prepare an IDP and secure the ALP. In cases, including but not limited to those of looked after children, where a local authority maintains an IDP for a pupil at a maintained school, the school **must**²³ take all reasonable steps to help the local authority secure the ALP specified in the IDP. Good relationships with the relevant local authority and other agencies will help schools fulfil their duties.

²² Sections 31 and 32 of the Learning and Skills Act 2000.

²³ Section 47(4) and (5) of the Act.

- 1.56 Chapters 7, 9, 13, 16, 18, 19, 21 and 24 provide guidance and impose requirements relevant to maintained schools.

Pupil referral units (PRUs)

- 1.57 For the purposes of the Act and the Code, PRUs have the same duties and responsibilities as maintained schools²⁴. Functions placed on the governing body of a maintained school, are, in the case of a PRU, for the management committee to exercise²⁵.
- 1.58 Chapters 7, 9, 13, 16, 18, 19, 21 and 24 provide guidance to, and impose requirements on, management committees of PRUs in relation to children or young people attending PRUs.

Non-maintained nursery education providers

- 1.59 Local authority funded non-maintained providers of nursery education have a role in supporting local authorities to identify ALN and in helping local authorities to fulfil their statutory obligations.
- 1.60 Chapters 7, 8, 13, 14, 15 and 19 provide guidance relevant to local authority funded non-maintained providers of nursery education.
- 1.61 Other non-maintained providers of pre-school education and childcare may also find these parts of the Code of relevance.

FEIs

- 1.62 FEIs in Wales have a key role to play in identifying ALN and in delivering ALP to support learners with ALN. Generally, they are directly responsible for identifying and meeting the needs of the majority of their students who have ALN. In cases where the local authority maintains an IDP for a student enrolled at an FEI, the FEI **must**²⁶ take all reasonable steps to help the authority secure the ALP specified in the plan. Good relationships with the relevant local authorities and other agencies will help FEIs fulfil their duties.
- 1.63 Chapters 7, 10, 16, 18, 19, 20, 21 and 24 provide guidance to, and impose requirements on, FEIs.
- 1.64 FEIs should note that, for the purposes of the Act, a higher education student at an FEI is not to be treated as enrolled as a student at the FEI and, therefore, the FEI's duties in the Act do not extend to such students insofar as

²⁴ See the definition of "maintained school" in section 99(1) of the Act and the glossary below.

²⁵ Regulations to be made under paragraph 15 of Schedule 1 to the Education Act 1996 providing for the delegation of a local authority's functions in connection with a PRU to the PRU's management committee.

²⁶ Section 47(4) and (5).

they are undertaking higher education²⁷.

Teaching practitioners

1.65 All teaching practitioners will be involved in teaching and supporting learners with ALN. All teaching practitioners ought to undertake regular professional learning in relation to ALN, regardless of previous experience, qualifications or the education setting in which they are based. Teaching practitioners have responsibility for their own professional learning and development; in addition, professional learning requirements ought to be identified as part of the education setting's planning process and practitioners' professional learning profiles. Teaching practitioners who need to improve their knowledge and/or skills in relation to different types of ALN will be able to access information, guidance, tools and professional learning opportunities, which have been developed by the Welsh Government working in partnership with the regional consortia and schools. A wide range of support will be available in digital form, as well as through professional learning events and programmes.

Health bodies

1.66 Health bodies have a critical role in identifying ALN and providing information or other help to LAs. Furthermore, NHS bodies have a direct role in providing ALP in instances where that ALP is a treatment or service normally provided by the NHS and likely to be of benefit in addressing a child or young person's ALN.

1.67 Chapters 4, 7, 13, 14 15, 16, 18, 19 and 25 provide guidance to NHS bodies.

Relevant persons in England

1.68 The National Health Service Commissioning Board, clinical commissioning groups, NHS foundation trusts, special health authorities and local authorities in England, as well as the governing bodies of maintained schools and FEIs in England and the proprietors of academies have functions under the Act, namely the duty to provide information or other help upon request²⁸ and to have regard to relevant guidance in the Code²⁹ and - in the case of clinical commissioning groups, NHS foundation trusts and special health authorities, the duty to inform parents and local authorities of their view that a particular child who is under compulsory school age has or probably has ALN³⁰.

1.69 Guidance to these bodies on the exercise of these functions can be found in chapter 15. See the next paragraph for duties on youth offending teams for an area in England and persons in charge of relevant youth accommodation in England.

²⁷ Section 86 of the Act.

²⁸ Section 65 of the Act.

²⁹ Section 4 of the Act.

³⁰ Section 64 of the Act.

Youth offending teams and persons in charge of relevant youth accommodation (whether in Wales or England)

- 1.70 The ALN system makes specific provision in relation to children and young people who are detained in relevant youth accommodation in Wales or England. Youth offending teams for an area in Wales or England, and persons in charge of relevant youth accommodation in Wales or England, have a particular role to play in relation to identifying ALN and delivering support for such children and young people. Their functions under the Act are the duty to provide information or other help upon request³¹ and to have regard to relevant guidance in the Code³². Further, in the case of a person in charge of relevant youth accommodation, the Act facilitates that person's involvement in decisions as to whether the detained child or young person has ALN and the preparation of any IDP³³.
- 1.71 Guidance of particular relevance to youth offending teams and persons in charge of relevant youth accommodation can be found in chapters 15 and 22.

Independent schools and independent special post-16 institutions

- 1.72 Many children and young people with ALN attend independent schools or independent special post-16 institutions ("ISPIs"). Independent schools and ISPIs are not required to have regard to the Code and no requirements are imposed on them by it. Nevertheless, the Code provides guidance and information which may be useful to independent schools and ISPIs to inform understanding of the ALN system and the part they might play in ensuring the best outcomes for learners with ALN.
- 1.73 Chapters 11 and 12 are of particular relevance to independent schools and chapter 12 to ISPIs.

Structure of the Code

- 1.74 The Act places duties on schools, FEIs and local authorities about decisions as to whether a child or young person has ALN and if so, preparing and maintaining an IDP for the child or young person. To assist schools, FEIs and local authorities in their consideration of this Code, these duties are described separately in chapters 8 to 12 and 21 according to the circumstances of the child or young person to whom a duty is owed. Although the duties are described in relation to the situation that the particular chapter is dealing with, in some cases, the duty referred applies in a broader range of circumstances (i.e. it may not be confined to the situation being discussed). Other related

³¹ Section 65 of the Act.

³² Section 4 of the Act.

³³ Section 40 of the Act.

matters, which are generally more common to all situations (for example to review an IDP, meetings about ALN) are dealt with in their own chapters and apply as set out in those chapters, whoever is maintaining the IDP and whatever the circumstances of the child or young person.

- 1.75 **Chapter 2: Principles of the Code** sets out the general principles which underpin the planning and provision of support for children and young people with ALN. These principles are reflected in the guidance and mandatory requirements contained in the Code, as well as in the Act.
- 1.76 **Chapter 3: involving and supporting children, their parents and young people** sets out duties about involving children, their parents and young people.
- 1.77 **Chapter 4: Duties on local authorities and NHS bodies to have regard to the United Nations Convention on the Rights of the Child and the United Nations Convention on the Rights of Persons with Disabilities** sets out the duties on local authorities and NHS bodies to have due regard to the United Nations Convention on the Rights of the Child (UNCRC) and United Nations Convention on the Rights of Persons with Disabilities (UNCRDP) when exercising functions under the Act in relation to a child or young person. It provides guidance on actions local authorities and NHS bodies might consider taking when discharging these duties.
- 1.78 **Chapter 5 - Duty to keep additional learning provision under review** sets out the duties on local authorities in relation to keeping ALP under review. It provides advice and guidance on what local authorities should or must consider when carrying out these duties.
- 1.79 **Chapter 6: Advice and information** sets out the local authorities' duties to make arrangements to provide advice and information about ALN and the ALN system and related duties on schools and FEIs. It includes guidance on the role of external service providers and on the content, accessibility and publication of the advice and information to be made available by local authorities.
- 1.80 **Chapter 7: The definition of ALN and ALP, identifying ALN and deciding upon the ALP required** - this chapter is relevant to all maintained schools, FEIs and local authorities when taking decisions about ALN. It sets out the meaning of ALN and ALP (there are flowcharts to help with this at the end of the chapter) and provides guidance in respect of identifying ALN and the ALP to meet ALN. It needs to be read alongside Chapters 8 to 12 which deal with the duties on different bodies for learners in particular circumstances related to identifying and meeting ALN, including when a body must decide whether a person has ALN, when it must prepare an IDP and associated requirements (such as notifications to be given and deadlines within which actions must be completed) and what it must do to maintain an IDP.
- 1.81 **Chapter 8: Duties on local authorities in relation to children under compulsory school age and not attending a maintained school in Wales**

sets out with the duties that apply to local authorities in relation to decisions about ALN, the preparation and maintaining of IDPs, and the securing of the ALP included in an IDP, for a child who is under compulsory school age and not attending a maintained school in Wales.

- 1.82 This chapter also deals with a local authority's duty to designate an Early Years ALN Lead Officer to co-ordinate the local authority's functions in relation to children under compulsory school age who are not attending maintained schools.
- 1.83 **Chapter 9: Duties on maintained schools and local authorities in relation to children and young people at maintained schools in Wales** sets out the duties that apply to maintained schools in Wales and local authorities in relation to decisions about ALN, the preparation and maintaining of IDPs, and the securing of ALP, for a child or young person who is a registered pupil at such a school.
- 1.84 **Chapter 10: Duties on FEIs and local authorities in relation to young people at an FEI** sets out the duties that apply to FEIs in Wales and local authorities in relation to decisions about ALN, the preparation and maintaining of IDPs, and the securing of ALP for a young person who is enrolled as a student at such an FEI.
- 1.85 **Chapter 11: Duties on local authorities in relation to children of compulsory school age not attending a maintained school** sets out the duties that apply to local authorities in relation to decisions about ALN, the preparation and maintaining of IDPs, and the securing of the ALP included in an IDP for a child of compulsory school age who is not attending a maintained school in Wales.
- 1.86 **Chapter 12: Duties on local authorities in relation to young people not at a maintained school or FEI** sets out the duties that apply to local authorities in relation to decisions about ALN, the preparation and maintaining of IDPs, and the securing of the ALP included in an IDP, for a young person who is not attending a maintained school or FEI in Wales.
- 1.87 **Chapter 13: Content of an IDP** sets out the mandatory content of IDPs, including the mandatory standard form for an IDP, and provides guidance on that content and the form.
- 1.88 **Chapter 14: Content of an IDP for a looked after child** sets out the mandatory content of IDPs for looked after children, including the mandatory standard form for an IDP for a looked after child. It should be read in conjunction with the guidance on the content of an IDP provided in Chapter 13, and the relevant guidance in the Social Services and Well-being (Wales) Act 2014 Part 6 Code of Practice (Looked After and Accommodated Children).
- 1.89 **Chapter 15: Duties on health bodies and other relevant persons** sets out the duties on health bodies and other relevant persons in or under the Act. It includes guidance on the role of the DECLO in Local Health Boards and how

health bodies can support the identification and treatment of children and young people with ALN.

- 1.90 **Chapter 16: Review and revision of IDPs** deals with the review and revision of IDPs, including when an IDP must and should be reviewed.
- 1.91 **Chapter 17: Local authority reconsiderations and taking over responsibility for IDPs** sets out the local authority's duties in relation to the reconsideration of a school's decision about whether a pupil has ALN, the reconsideration of an IDP maintained by a school for a pupil, and taking over responsibility for an IDP maintained by a school or FEI for a pupil or student.
- 1.92 **Chapter 18: Meetings about ALN and IDPs** sets out guidance and good practice principles for meetings about ALN and IDPs. There are general principles that should be followed for all meetings and some processes that relate specifically to IDP review meetings or meetings to decide whether a child or young person has ALN or not.
- 1.93 **Chapter 19: Planning for and supporting transition** focusses on transitions for children and young people with ALN who are moving into, between and out of educational settings.
- 1.94 **Chapter 20: Transferring an IDP** sets out the transfer of IDPs from one maintained school, FEI or local authority to another of those bodies, including the role of Welsh Ministers in determining whether IDPs should be transferred from a local authority to an FEI.
- 1.95 **Chapter 21: Ceasing to maintain an IDP** describes the various circumstances in which duties to maintain an IDP cease. It also sets out the steps to be taken before and after it is decided that a child or young person no longer has ALN or that it is no longer necessary to maintain an IDP for a young person and the ways in which such decisions may be challenged.
- 1.96 **Chapter 22: Children and young people subject to detention orders** sets out the position for children and young people who are subject to a detention order. The first part deals with those detained in relevant youth accommodation and the second part describes what happens to those subject to a detention order and detained in a hospital under the Mental Health Act 1983. The chapter deals with the child or young person's right to a decision on ALN, to ALP, their rights to appeal, and explains what happens to an IDP whilst they are detained.
- 1.97 **Chapter 23: Children and young people in specific circumstances** deals with children and young people in specific circumstances, namely: children and young people in the area of a local authority in England but attending a maintained school or FEI in Wales; children of compulsory school age receiving education otherwise than at school (EOTAS) including children who attend a PRU and those receiving it because of healthcare needs; children receiving education other than in a maintained school in Wales or EOTAS; and children of Service personnel.

- 1.98 **Chapter 24: Role of the Additional Learning Needs Co-ordinator (ALNCo)** sets out the role, responsibilities and requirements of the ALNCo.
- 1.99 **Chapter 25: Avoiding and resolving disagreements and independent advocacy services** sets out guidance and requirements relating to the duties on local authorities to make arrangements for avoiding and resolving disagreements and for the provision of independent advocacy services.
- 1.100 **Chapter 26: Appeals and applications to the Education Tribunal for Wales** deals with appeals made to the Education Tribunal for Wales ('the Tribunal'), including:
- matters about which appeals can be made;
 - decisions that can be taken by the Tribunal;
 - timescales relating to the appeals process and compliance with orders;
 - the Tribunal's powers in relation to NHS bodies; and
 - reviews of and appeals against decisions of the Tribunal.
- 1.101 **Chapter 27: Case friends for children who lack capacity** - this chapter explains how a child who lacks capacity as defined in the Act can use a case friend to act on their behalf when exercising certain rights. It also provides information on the role of a case friend, and how they are appointed and removed by the Tribunal.

Glossary

1.102 Section 99 of the Act provides definitions of terms used throughout the Act and they apply equally for the purposes of the Code except where otherwise indicated. Definitions of terms for the purposes of the Education Act 1996 also apply to the use of those terms in the Act (for example, the definition of “parent”), unless the term is given a different meaning in the Act³⁴ and unless the context otherwise requires. The most relevant definitions of terms used in the Act are incorporated within this glossary, which also contains a few further definitions which apply for the purposes of the Code and it also sets out abbreviations used in the Code.

1.103 Accordingly, the definitions of the following terms apply for the purposes of the Code, except where (only very occasionally) the context otherwise requires.

“The Act” refers to the Additional Learning Needs and Education Tribunal (Wales) Act 2018.

“Additional learning needs” (“ALN”) has the meaning given by section 2 of the Act, namely:

(1) 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.

(2) 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 (c. 15) 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.

(3) 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.

(4) 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.

“Additional learning needs co-ordinator” (“ALNCo”) means a person designated by a maintained mainstream school or FEI in Wales to have responsibility for co-ordinating additional learning provision for learners with ALN, in accordance with section 60 of the Act (see Chapter 24.)

³⁴ Section 99(6) and (7) of the Act.

“ALN system” means the system for which provision is made by Part 2 of the Act.

“Additional learning provision” (“ALP”) has the meaning given by section 3 of the Act, namely:

(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.

“Appropriate ALP” for a detained person means has the meaning given by section 42(9) of the Act, namely:

(a) the additional learning provision specified in the individual development plan,

(b) if it appears to the home authority that it is not practicable for the ALP specified in the plan to be provided, educational provision corresponding as closely as possible to that ALP, or

(c) if it appears to the home authority that the ALP specified in the plan is no longer appropriate for the detained person, ALP which the home authority considers appropriate.

“Beginning of detention” has the meaning given by section 39 of the Act, namely the meaning given by section 562J of the Education Act 1996 (c. 56).

“Case friend” means a person appointed by the Education Tribunal under section 85 of the Act for children who lack capacity.

“Child” means a person not over compulsory school age (within the meaning given by section 8 of the Education Act 1996 (c.56)).

“Clinical commissioning group” means a body established under section 14D of the National Health Service Act 2006 (c. 41).

“The Code” refers to this Code.

“Designated Education Clinical Lead Officer (“DECLO”) has the meaning given by section 61 of the Act, namely an officer to have responsibility for co-ordinating the Board’s functions in relation to children and young people with ALN.

“Detained person” has the meaning given by section 39 of the Act, namely a child or young person who is:

- (a) subject to a detention order (within the meaning given by section 562(1A)(a), (2) and (3) of the Education Act 1996), and
- (b) detained in relevant youth accommodation in Wales or England.

“Detention order” has the meaning given by section 562(1A)(a), (2) and (3) of the Education Act 1996.

“Dual registration” and “dual registered” refer to a child or young person who is registered as a pupil or enrolled as a student at more than one school or FEI, or at a school and an FEI, (where at least one of the institutions is a maintained school in Wales or an FEI in Wales) at the same time and the child or young person is to be provided with education or training at both institutions³⁵.

“Early Years Additional Learning Needs Lead Officer” (“the Early Years ALNLO”) means an officer designated by a local authority in Wales to have responsibility for co-ordinating the local authority’s functions under Part 2 of the Act in relation to children under compulsory school age who are not attending maintained schools, in accordance with section 62 of the Act.

“Education” includes full-time and part-time education, but does not include higher education; and **“educational”** and **“educate”** (and other related terms) are to be interpreted accordingly.

“Education, Health and Care Plan” (**“EHC Plan”**) means a plan within section 37(2) of the Children and Families Act 2014 (c. 6) (education, health and care plans).

“EHC needs assessment” is an assessment of the educational, health care and social care needs of a child or young person (section 36(2) of the Children and Families Act 2014).

“Further education institution” (**“FEI”**) means an institution in the further education sector which falls within section 91(3) of the Further and Higher Education Act 1992.

For the purposes of the Code and the Act, an FEI is:

- (a) in Wales if its activities are carried on wholly or mainly in Wales;
- (b) in England if its activities are carried on wholly or mainly in England.

“Governing body” in relation to an institution in the further education sector, has the meaning given by section 90 of the Further and Higher Education Act 1992 (c. 13).

³⁵ See section 30(1) and (3) of the Act.

“Health body” means:

- a Local Health Board;
- an NHS Trust;
- a clinical commissioning group;
- an NHS foundation trust;
- a Special Health Authority³⁶.

“Home authority” has the meaning given by section 39 of the Act, namely the meaning given by section 562J of the Education Act 1996 (c. 56), subject to regulations under section 39(2) of the Act.

“Independent reviewing officer” has the meaning given by section 15(3) of the Act, namely the officer appointed under section 99 of the Social Services and Well-being (Wales) Act 2014 (anaw 4) for a child’s case.

“Independent special post-16 institution” (“ISPI”) has the meaning given by section 56(6) of the Act, namely an institution which provides education or training for persons over compulsory school age and is specially organised to provide such education or training for persons with additional learning needs, and which is not—

- (a) an institution within the further education sector,
- (b) an independent school included in the register of independent schools in Wales (kept under section 158 of the Education Act 2002 (c. 32)),
- (c) an independent educational institution (within the meaning of Chapter 1 of Part 4 of the Education and Skills Act 2008 (c. 25)), which has been included in the register of independent educational institutions in England (kept under section 95 of that Act), or
- (d) a 16 to 19 Academy.

“Individual development plan” (“IDP”) has the meaning given by section 10 of the Act, namely a document that contains:

- (a) a description of a person’s ALN;
- (b) a description of the ALP which the person’s learning difficulty or disability calls for;
- (c) anything else required or authorised by or under Part 2 of the Act.

“Local authority” means the council of a county or county borough in Wales, except where specific reference is made to a local authority in England (for the meaning of which, see section 579(1) of the Education Act 1996 (c.56)).

For the purposes of the Act and the Code, a local authority is responsible for a child or young person if he or she is in the area of the authority (section 99(4) of the Act and see paragraphs 1.18 – 1.19 above).

“Local Health Board” means a Local Health Board established under section 11 of the National Health Service (Wales) Act 2006 (c.42).

³⁶ See section 64(2) of the Act.

“Looked after child” – a reference in the Act (however expressed) to a child who is looked after by a local authority has the meaning given by section 15 of the Act, namely a child who is-

- (a) not over compulsory school age and is looked after by a local authority for the purposes of Part 6 of the Social Services and Well-being (Wales) Act 2014 (anaw 4),
- (b) is not a detained person, and
- (c) is not within a category of looked after child prescribed in regulations as not to be treated as looked after by a local authority for the purposes of Part 2 of the Act.

This definition also applies for the purposes of the Code, except where the context otherwise requires.

“Looked after Children in Education co-ordinator” (“LACE co-ordinator”) has the meaning given by regulations made under section 83 of the Social Services and Well-being Act 2014.

“Mainstream institution in the further education sector” means an institution in the further education sector that is not specially organised to provide education or training for persons with ALN.

“Mainstream maintained school” means a maintained school that is not—

- (a) a special school, or
- (b) a pupil referral unit.

“Maintained school” means—

- (a) a community, foundation or voluntary school,
- (b) a community or foundation special school not established in a hospital,
- (c) a maintained nursery school, or
- (d) a pupil referral unit.

In the definition of “maintained school” a community, foundation or voluntary school, and a community or foundation special school, have the meaning given by the School Standards and Framework Act 1998 (c. 31).

“National Health Service Commissioning Board” means the body established under section 1H of the National Health Service Act 2006 (c. 41).

“NHS body” means—

- (a) a Local Health Board, or
- (b) an NHS trust.

“NHS foundation trust” has the meaning given by section 30 of the National Health Service Act 2006 (c. 41).

“NHS trust” means a National Health Service trust established under section 18 of the National Health Service (Wales) Act 2006 (c. 42).

<p>“Parent” has the meaning given in section 576 of the Education Act 1996 (c. 56). 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.³⁷</p>
<p>“Personal education plan” has the meaning given by section 15(4) of the Act, namely the plan included in the care and support plan maintained for a looked after child under section 83(2A) of the 2014 Act.</p>
<p>“Proprietor”, in relation to an institution that is not a school, means the person or body of persons responsible for the management of the institution.</p>
<p>“Pupil referral unit” has the meaning given by section 19(2) of the Education Act 1996 (c. 56).</p>
<p>“Relevant youth accommodation” has the meaning given by section 39 of the Act, namely the meaning given by section 562(1A) (b) of the Education Act 1996 and includes secure colleges, secure training centres and young offender institutions, but not a young offender institution (or part of one) used wholly or mainly for the detention of persons aged 18 and over.</p>
<p>“School day” means, in relation to a maintained school, any day on which at that school there is a school session except that in relation to a pupil referral unit, it means any day on which the unit meets.</p>
<p>“Term time day” means a day on which the further education institution is due to meet for the purpose of teaching students provided that day is within a time period in which the further education institution delivers the majority of its full-time courses.</p>
<p>“Training” includes— (a) full-time and part-time training; (b) vocational, social, physical and recreational training.</p>
<p>“Tribunal” means the Education Tribunal for Wales (see section 91 of the Act).</p>
<p>“Young person” means a person over compulsory school age, but under 25.</p>
<p>“Youth offending team” means a team established under section 39 of the Crime and Disorder Act 1998 (c. 37).</p>

³⁷ 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, which at the time of issue of the Code, is at <https://beta.gov.wales/sites/default/files/publications/2018-05/parent-and-parental-responsibility-guidance-for-schools-en.pdf>.

Chapter 2: Principles of the Code

- 2.1 The principles underpinning the ALN system aim to support the creation of a fully inclusive education system where all learners are given the opportunity to succeed and have access to an education that meets their needs and enables them to participate in, benefit from, and enjoy learning.
- 2.2 The principles underpinning the ALN system, as reflected in the Code and the Act, are:
- a) **A rights-based approach** where the views, wishes and feelings of the child, child's parent or young person are central to the planning and provision of support; and the child, child's parent or young person are enabled to participate as fully as possible in the decision making processes.
 - b) **Early identification, intervention and effective transition planning** where needs are identified and provision put in place at the earliest opportunity, and transitions are planned in advance.
 - c) **Collaboration** where all those involved in planning and providing support to children and young people with ALN should work together in the best interests of the child or young person.
 - d) **Inclusive education** where children and young people are supported to participate fully in mainstream education, wherever feasible, and a whole setting approach is taken to meeting the needs of learners with ALN.
 - e) **A bilingual system** where all reasonable steps are taken to deliver ALP in Welsh for children and young people who require support through the medium of Welsh, with scope for increasing the delivery of ALP in Welsh over time¹.

Principles in practice

A rights-based approach

Rights of Children Young People and Disabled People

- 2.3 As required by the Rights of Children and Young Persons (Wales) Measure 2011, the Code has been developed by the Welsh Ministers with due regard to the requirements of the United Nations Convention on the Rights of the Child (UNCRC) and its Optional Protocols. In addition, the development of the Code has also taken into account the requirements of the United Nations Convention on the Rights of Disabled People (UNCRDP). Local authorities, health boards and NHS trusts have specific duties under the Act to have due regard to the UNCRC and UNCRDP and these are set out in Chapter 4.

¹ Welsh Language Standards, which cover aspects of the system – such as local authority communication with parents. Further information can be found at: <https://beta.gov.wales/welsh-language-standards>.

Participation

- 2.4 Central to a rights-based approach and to the Act, is the principle of participation – listening to children and young people, and taking their views meaningfully into account. A number of benefits are associated with the participation of children and young people in decisions which affect them, which ultimately may contribute to better outcomes for them. These benefits include:
- Practitioners supporting children and young people with ALN having a better understanding of the child or young person, including who they are and what is important to them.
 - Increased expectations of children and young people based on an understanding of the child or young person’s strengths and potential.
 - The development of personalised learning based on the identification of targets that build on the strengths of children and young people with ALN.
 - More effective planning and delivery of ALP which supports children and young people to work towards achieving positive outcomes based on their ambitions and aspirations.
 - The empowerment of children and young people through celebrating their achievements and abilities and focusing upon the possibilities, rather than the problems they face.
- 2.5 To realise the benefits of participation, the Act places a duty on a person exercising functions under Part 2 of the Act; the person **must**² have regard to:
- the views, wishes and feelings of the child and the child’s parent or the young person;
 - the importance of the child and the child’s parent or the young person participating as fully as possible in decisions relating to the exercise of the function concerned; and
 - the importance of the child and the child’s parent or the young person being provided with the information and support required to enable participation in those decisions.
- 2.6 More information on these duties can be found in Chapter 3.
- 2.7 One way of ensuring the child’s and the child’s parent’s or the young person’s views, wishes and feelings are taken into account and that they are able to participate as fully as possible in decisions is to adopt person-centred practice (PCP). A range of resources to support practitioners in using person-centred practice approaches is available online³.

² Section 6 of the Act.

³ At the time of making the Code, these include: Person-centred Practice in Education: a guide for early years, schools and colleges in Wales, <http://learning.gov.wales/resources/browse-all/person-centred-practice-guide/?lang=en>;

Information and advice, advocacy and case friends

- 2.8 A person exercising functions under Part 2 of the Act **must**⁴ have regard to the importance of the child, child's parent or young person being provided with the information, advice and support required to enable them to participate as fully as possible in the decision making processes.
- 2.9 In addition, local authorities **must**⁵ make arrangements to provide people with information and advice about ALN and the ALN system. These arrangements are an important part of ensuring that children, their parents and young people have the information they need to participate fully and effectively in the process. Chapter 6 discusses in detail duties associated with information and advice.
- 2.10 In addition, local authorities **must**⁶ make arrangements for the provision of independent advocacy services – to support children and young people who may disagree with decisions or are considering, intending to make or are making an appeal to the Education Tribunal. Chapter 25 provides more information about advocacy services.
- 2.11 Where children are given rights by the Act to receive information or to make requests, but an individual child lacks sufficient capacity to understand the subject matter, a case friend may be appointed by the Education Tribunal to represent and support the child, and take decisions and act on the child's behalf. See Chapter 27 for information about case friends.
- 2.12 The above requirements - to provide information and advice, advocacy and case friends - aim to ensure the effective participation of children and young people in the ALN system. Central to this is a rights-based approach, giving children, their parents and young people rights to access, influence, challenge and appeal particular decisions related to their needs and the provision to meet those needs. More information on putting this right-based approach into practice can be found in Chapter 4 (*on the UNCRC and UNCRPD*).

Developing as a Person-centred Organisation: a self-assessment tool and practical steps for progress, <http://learning.gov.wales/resources/browse-all/developing-as-a-person-centred-organisation/?lang=en>;

Person-centred Reviews toolkit: a guide for early years, schools and colleges in Wales, <http://learning.gov.wales/resources/browse-all/person-centred-reviews-toolkit/?lang=en>

⁴ Section 6(c) of the Act.

⁵ Section 9 of the Act.

⁶ Section 69 of the Act.

Early identification, intervention and effective transition planning

- 2.13 Early identification of ALN, the timely delivery of interventions and effective transition planning are central to ensuring children and young people with ALN have the opportunity to succeed and have access to an education which meets their needs.
- 2.14 The importance of timely identification and of providing appropriate provision as soon as possible for a child or young person with ALN cannot be over-emphasised. The earlier action is taken, the more effective the action is likely to be. Identifying ALN at an early stage and delivering appropriate interventions can also prevent the need for future more costly and less effective interventions. The child or young person's ALN and the provision made for them **must**⁷ be reviewed at least annually, to ensure that interventions remain appropriate. Further information on identifying ALN and ALP and reviewing ALP can be found in Chapters 7 and 16.
- 2.15 The Code and regulations set various deadlines for performing duties under the Act in the interests of early identification and intervention. Generally, these are to comply promptly with the duty, but in any event within a set period. These set periods have been designed to take account of the wide range of circumstances to which they will apply and the various actions which might need to happen to comply with the duty, including effective participation by the child, the child's parents or young person. In many cases, a body should be able to comply earlier, which is why, in the first instance, the requirement is to comply promptly. On the other hand, occasionally, there could be good reasons why it is impractical for the body to comply within the set period, which is why the Code and regulations make provision for exceptions⁸.
- 2.16 To ensure smooth transitions and provide continuity of support when a child or young person is due to move into or between different phases of education, settings or services, bodies with responsibilities for preparing, reconsidering and maintaining IDPs **should** plan for these changes well in advance using a multi-agency approach. Such changes include where children and young people are approaching moves into, between and out of phases of education or education settings, such as pre-school settings, primary school, secondary school or post-16 education; or approaching moves into, between and out of types of settings or services - such as between special and mainstream education, being cared for by the local authority, relevant youth accommodation, or into adulthood and independent living. Further information on transition planning is set out in Chapter 19.

⁷ Sections 23 and 24 of the Act which deal with the review and revision of individual development plans.

⁸ See Chapter 1 for more information about how timescales in this Code must be interpreted.

Collaboration

- 2.17 The approach taken to develop the Act and the Code has been informed by the sustainable development principle set out in the Well-being of Future Generations (Wales) Act 2015. This requires Welsh public bodies, including the Welsh Government, local authorities and health boards, to think more about the long-term, to work better with people, communities and each other, to look to prevent problems and to take a more joined up approach.
- 2.18 Individuals and organisations with duties under the Act and those involved in providing support to children and young people with ALN are expected to work together in the best interests of the child or young person. The guidance throughout the Code aims to support local authorities, schools, FEIs and NHS bodies and other agencies to facilitate effective collaboration between services. This includes, adopting multi-agency working practices and approaches which:
- improve communication between the family, school and professionals;
 - streamline services to avoid duplication;
 - clearly identify which agency will be responsible for providing and funding each element of provision;
 - encourage creativity and flexibility;
 - take account of good practice;
 - focus on solutions in a holistic way;
 - use resources more effectively; and
 - ensure consultation with all relevant services.
- 2.19 Further information and guidance on the duties on health bodies and other relevant persons is set out in Chapter 15.

Inclusive education

- 2.20 The Welsh Government considers that an inclusive education, where individual learners receive a tailored education and additional support to reach their full potential, is of benefit to all.
- 2.21 In the first instance, local authorities **must**⁹ secure education in a mainstream maintained school for compulsory school age children with ALN who are to be educated in a school, in relation to whom the authority is exercising functions. The exceptions to this are limited¹⁰. Further discussion about the duty to favour mainstream education can be found in Chapter 11.
- 2.22 Those concerned with making ALP for a child with ALN at a mainstream maintained school **must**¹¹ secure that the child engages in the school's activities with other children who do not have ALN. The exceptions to this are

⁹ Section 51 of the Act.

¹⁰ See section 51 of the Act.

¹¹ Section 52 of the Act.

limited¹². This means that the starting point is that the school includes all pupils with ALN fully in all the activities of the school. Further discussion about the duty to include children with ALN in the activities of a mainstream maintained school can be found in Chapter 9.

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

A bilingual system

- 2.24 Local authorities, schools, FEIs and NHS bodies **must**¹³ consider whether ALP should be provided to the child or young person in Welsh and, where a child or young person has a need for ALP via the medium of Welsh, this **must** be specified in the IDP and the body **must** take all reasonable steps to secure that it is provided in Welsh.¹⁴
- 2.25 There are other elements of the Act aimed directly at advancing the availability of ALP in the medium of Welsh. Local authorities **must**¹⁵ consider the sufficiency of ALP in Welsh when reviewing arrangements for children and young people with ALN. Where a local authority considers that the availability of ALP in Welsh is not sufficient, it **must**¹⁶ take all reasonable steps to remedy the matter. The Welsh Ministers **must**¹⁷ arrange for reviews of the sufficiency of ALP in Welsh every five years and publish reports following these reviews.
- 2.26 Further information on Welsh language provisions in relation to arrangements for providing advice and information, avoiding and resolving disagreements and independent advocacy services can be found in Chapters 6 and 25.

¹² See section 52 of the Act.

¹³ See section 12(6)(a) (school and FEIs); section 20(5)(b) (NHS bodies); and sections 14(5)(a), 19(3)(a) and 40(6)(a) (local authorities).

¹⁴ See sections 12(6)(b) and (7)(b) (school and FEIs); section 20(5)(b) and (c) (NHS bodies); and sections 14(5)(b) and (10)(c), 19(3)(b) and (7)(c), 40(6)(b) and 42(8)(b) (local authorities)

¹⁵ Section 63(3)(a) of the Act.

¹⁶ Section 63(4) of the Act.

¹⁷ Section 89 of the Act.

Chapter 3: Involving and supporting children, their parents and young people

Introduction

- 3.1 This chapter explains the duties on persons exercising functions under Part 2 of the Act in relation to a child or young person to involve and support the child and their parent or the young person when exercising those functions, and sets out what these duties mean in practice.
- 3.2 These duties give effect to some of the rights in the United Nations Convention on the Rights of the Child (UNCRC) and United Nations Convention on the Rights of Persons with Disabilities (UNCRDP). Local authorities and NHS bodies have duties¹ to have due regard to those Conventions when planning the exercise of functions under the Act which relate to a child or young person. Chapter 4 provides specific guidance in relation to those duties. The duties covered by this chapter apply in respect of a person exercising functions under the Act in relation to a child or young person. Accordingly, this chapter will also be relevant to local authorities and NHS bodies when they are performing their duty to have due regard to those Conventions.

Participation of children and young people

- 3.3 A person exercising functions under Part 2 of the Act which relate to an individual child or young person **must**² have regard to:
- the views, wishes and feelings of the child and the child's parent or the young person;
 - the importance of the child and the child's parent or the young person participating as fully as possible in decisions relating to the exercise of the function concerned; and
 - the importance of the child and the child's parent or young person being provided with the information and support required to enable participation in those decisions.
- 3.4 In order to satisfy these duties, local authorities, schools, FEIs and NHS bodies **should**, when making decisions about a child or young person's ALN, ALP or IDP:
- seek the child or young person's views on how they wish to participate in the decisions to be made ahead of those decisions being made;

¹ Sections 7 and 8 of the Act.

² Section 6 of the Act.

- provide information to the child or young person in a way which enables that child or young person to understand it;
 - encourage the child or young person to participate fully in the process;
 - use the child or young person's views to inform the decisions being made.
- 3.5 Ensuring children and young people are at the centre of all decisions that affect them is likely to lead to better outcomes because needs are more likely to be accurately identified and the provision decided upon is more likely to be effective.

The duties in practice

Identifying how a child or young person would like to communicate and participate

- 3.6 The starting point for involving children and young people is to understand how the child or young person wants to communicate their views and to understand any support which may be required to facilitate the child or young person to do so. In addition, it is essential to understand how the child or young person wishes to participate. This includes the language of communication, the means of communication and engagement, and in the case of a young person, whether and how they wish to involve others in those communications.
- 3.7 These duties apply irrespective of the capacity of the child or young person concerned. Even if, for example, a child lacks capacity to understand what it means to exercise their rights under the Act, their contribution to the process may be nonetheless important to ensuring that their needs are correctly identified and that the right provision is put in place, which is effective at meeting their needs.
- 3.8 Understanding the communication requirements and preferences of the child, child's parent, or young person is especially important where these requirements and preferences will facilitate the child or young person's attendance at, or participation in, any meetings or decision-making. Local authorities, schools, FEIs and NHS bodies **should** use the information to ensure appropriate arrangements are put in place to support children and young people to fully participate in decisions which relate to them and to express their views, wishes and feelings. In addition, local authorities, schools, FEIs and NHS bodies **should** use the above information to ensure inappropriate arrangements are avoided.
- 3.9 Where it is determined that an IDP is required for a child or young person, information about communication will need to be recorded in the IDP. See Chapter 13 for further guidance on this.

Which means of engagement is suitable?

- 3.10 One of the fundamental principles underpinning the Act and the Code is that children and young people should be supported to participate as fully as possible in decision making processes which relate to them. Some children and young people with ALN can become anxious, overwhelmed or be intimidated in new or unfamiliar situations and, as such, may struggle to fully participate or express their views. This can be particularly the case in meetings attended by large numbers of adults. Consideration **should** be given as to what may be done to support a particular child or young person to participate. For instance, a school or local authority **should** consider whether it is appropriate for an individual child or young person to attend a proposed meeting and if it is not, how the person can otherwise be involved in the process and their views represented at the meeting.
- 3.11 For example, where a child or young person does not wish to be involved in a meeting, or it might not be appropriate for them to attend the whole of a meeting, consideration **should** be given to the person attending part of a meeting, or meeting with one or some of the attendees prior to the meeting.
- 3.12 Where it would not be appropriate for a child or young person to be present where a decision is being made, their views, wishes and feelings **should** still be ascertained in advance of the decision being taken, and **must**³ be taken into consideration when the decision is being made. In advance of the decision being made, an appropriate person **should** explain the process to the child or young person in a way that is appropriate to their age and understanding and seek their views. If an IDP is prepared or maintained for the child or young person, their views, wishes and feelings **must**⁴ be recorded in section 1C of the IDP (see Chapter 13).

Supporting children and young people to participate

- 3.13 Supporting children and young people to participate meaningfully will help them to:
- feel confident that their views, wishes and feelings are listened to and valued, even if they find it difficult to get these across;
 - have an awareness of their rights and the support and services available to them; and
 - develop a sense of responsibility and control over their learning.
- 3.14 Local authorities, schools, FEIs and NHS bodies **should** consider how they can encourage children and young people to participate in all aspects of the ALN system in a meaningful way. This could include:

³ Section 6 of the Act.

⁴ Requirement imposed by the Code

- providing children and young people with information and help with preparation for, and attendance at meetings and discussions;
- encouraging children and young people to raise any concerns with any member of staff;
- ensuring that any relevant policies about raising concerns provide for concerns to be passed on to the appropriate person (for example, the ALNCo, Early Years ALN Lead Officer or DECLO).

Providing information

- 3.15 Local authorities, schools and FEIs are subject to duties⁵ in the Act and requirements under the Code about providing information about the ALN system. See Chapter 6 for guidance on these duties. These bodies can use this information to explain the ALN system when undertaking their duties⁶ to involve and support individual children, their parents and young people when exercising functions under Part 2 of the Act.
- 3.16 The school, FEI or local authority, in providing information to, and having discussions with, the child or young person to facilitate their participation, **should** communicate using the communication preferences of the child or young person and in a way the child or young person can understand.
- 3.17 Where a school, FEI or local authority is deciding whether a person has ALN, it **should**, at the outset, explain the process to the child and their parent⁷ or the young person. This might be done by the designated co-ordinator⁸. The school, FEI or local authority **should** agree, with the child and their parent or with the young person, on how best to involve the child or young person. Where the child or young person is to attend a meeting, the school, FEI or local authority **should** prepare the child or young person for the meeting.
- 3.18 Young people have the right not to consent to a decision being made about whether they have ALN or to an IDP being prepared or maintained or, in respect of a detained young person, kept.⁹ The duty¹⁰ set out above about involving and supporting young people applies when a school, FEI or local authority is exercising a function under the Act in relation to a young person, including seeking their consent to decisions or in respect of IDPs. The young person **should** be provided with appropriate support, including information that enables them to make informed decisions. This includes information which explains their rights, the consequences of having an IDP or not having one and that they can change their minds at any time.

⁵ Under Section 9 of the Act.

⁶ Under Section 6 of the Act.

⁷ See paragraphs 3.22 to 3.32 for discussion on involving and supporting parents of children with ALN.

⁸ Chapters 8 – 12 deal with the role of the designated co-ordinator.

⁹ Where a young person is detained, the duties under the Act to maintain an IDP do not apply (see chapter 22 for further discussion).

¹⁰ Under section 6 of the Act.

Preparation for meetings

- 3.19 Where a child or young person is to attend a meeting, or part of a meeting, about ALN (see Chapter 18 for more information about meetings), the body responsible for making the decision about ALN, or for preparing or maintaining the IDP, **should** work with the child and their parent or the young person to help them prepare for the meeting.
- 3.20 Preparation **should** include discussion about any arrangements which will be put in place to support the child or young person. This could include conducting the meeting through the medium of Welsh, providing an interpreter for children and young people whose first language is not Welsh or English, ensuring access is suitable and that any specialist equipment the child or young person requires will be available on the day. Preparation could also include a visit to the room where the meeting will be held and discussion about who will be attending, where they will be sitting, and what their role is, using photos of the individual attendees as appropriate.

Using person-centred practice

- 3.21 One way of supporting children, their parents and young people to participate and to ensure that their views, wishes and feelings are the focus of decisions about ALN, is to use person-centred practice. Person-centred practice puts the child, child's parent or young person at the centre of decisions. A range of resources to support practitioners in using person-centred practice approaches is available online¹¹.

Involving and supporting parents of children with ALN

- 3.22 Parents have a fundamental role in helping their child to achieve their potential. The child is far more likely to achieve their outcomes and potential when parents are actively involved and their views, wishes and feelings are taken into account. Parents therefore, also need to be provided with support and advice on how they can support their child to reach their potential.
- 3.23 The duty to involve and support children and young people, also applies in the same way to the parents of children.

¹¹ At the time of making the Code, these include: Person-centred Practice in Education: a guide for early years, schools and colleges in Wales, <http://learning.gov.wales/resources/browse-all/person-centred-practice-guide/?lang=en>; Developing as a Person-centred Organisation: a self-assessment tool and practical steps for progress, <http://learning.gov.wales/resources/browse-all/developing-as-a-person-centred-organisation/?lang=en>; Person-centred Reviews toolkit: a guide for early years, schools and colleges in Wales, <http://learning.gov.wales/resources/browse-all/person-centred-reviews-toolkit/?lang=en>

- 3.24 So, a person exercising functions in relation to a child (for example, a school reviewing an IDP) **must**¹² have regard to the views, wishes and feelings of the parent (as well as those of the child). Parents hold key information and play a critical role in their child's development and education. They have unique knowledge about their child which will contribute to the shared view of the child's needs and the best way of supporting them. There are various ways in which parents can support the child's learning. Parents have a right to participate in decisions about their child's education and a positive attitude towards including parents can contribute towards better decision making and outcomes for the child.
- 3.25 The person exercising a function that relates to a child **must**¹³ also have regard to the importance of the parent participating as fully as possible in the decision relating to the exercise of the function and to the importance of the parent being provided with the information and support required to enable participation in such decisions. The lead up to a decision on whether a child has ALN may be an anxious time for the parents and family and other decisions on a child's ALN may also cause anxiety. It is important that those exercising the functions appreciate this.
- 3.26 Schools, FEIs and local authorities, when they have a duty to make a decision about whether a child has ALN or to prepare or review an IDP, **should** support parents to understand the process and decisions which are made in the following ways:
- by explaining at the outset in a way that the particular parents can understand the decision that the body is making, the process for making it and how the parent can contribute to that process;
 - at meetings to determine the ALN and prepare the IDP, or at review meetings, by explaining what is being proposed (the ALN, the proposed ALP, the outcomes for their child to aim for, the purpose of the interventions) in a way that the parents can understand.
- 3.27 There are also specific requirements¹⁴ to give notifications¹⁵ or information at particular points or discuss particular matters with parents. These are dealt with in the relevant chapters dealing with the decision or process to which they attach.
- 3.28 For parents to be supported and empowered to be able to provide their views, wishes and feelings and to take an active part in the process, they need to be supplied with information and advice that they can understand.

¹² Section 6 of the Act.

¹³ Section 6 of the Act.

¹⁴ Some are provided for by the Act, others in regulations and some are requirements imposed by the Code.

¹⁵ Further guidance on giving notice or documents is provided in Chapter 1.

- 3.29 Parents will require differing levels of support. They need to feel confident that they will be listened to and their input valued. Local authorities, schools and FEIs should provide support to parents to enable them to participate as fully as possible in appropriate meetings, especially those relating to preparing or reviewing an IDP for their child.
- 3.30 Some parents may require support that goes further than signposting to information and advice; for example, they may experience difficulties with accessibility and understanding.
- 3.31 Some parents might need support in seeing their children as partners in decisions relating to their education. They may be concerned, for example, that their child is ill-equipped to consider all the relevant factors. Support and encouragement for the parents in this situation could help overcome difficulties and ensure the full participation of their child.
- 3.32 In addition, parents may need support in coming to terms with their child becoming a young person. This may particularly be the case where a young person chooses not to have their parents' support in respect of their ALN and chooses to have assistance from a support worker, social worker, careers advisor or someone else. With support, parents may come to understand that their child choosing to engage directly with professionals is an important step on their journey to increased independence and will help them to take control of their learning.

Chapter 4: Duties on local authorities and NHS bodies to have regard to the United Nations Convention on the Rights of the Child and the United Nations Convention on the Rights of Persons with Disabilities

Introduction

- 4.1 This chapter deals with the duties on local authorities and NHS bodies to have due regard to the United Nations Convention on the Rights of the Child (UNCRC)¹ and United Nations Convention on the Rights of Persons with Disabilities (UNCRDP)² when exercising functions under the Act in relation to a child or young person. It provides guidance on actions local authorities and NHS bodies might consider taking when discharging these duties.
- 4.2 The principles of the Conventions are given effect in the Act and Code, and therefore in exercising their functions under the Act and in compliance with the Act, local authorities and NHS bodies are likely to be giving effect to relevant articles under the Conventions.
- 4.3 For example, article 12 of the UNCRC provides:
1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
 2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.
- 4.4 This is given effect in the Act by (amongst other things):
- the duty under section 6 of the Act about involving and supporting children, their parents and young people (see Chapter 3 of the Code);
 - duties under section 9 of the Act about providing children and young people (as well as others) with information and advice about ALN and the system provided for by Part 2 of the Act (see Chapter 6 of the Code), to facilitate their participation in it; and
 - children and young people's rights to make an appeal to the Tribunal under sections 70 and 72 of the Act (see Chapter 26 of the Code)

¹ This Convention was adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989.

² This Convention and optional protocol was adopted on 13 December 2006 by General Assembly resolution A/RES/61/106 and opened for signature on 30 March 2007.

including, in the case of a child lacking capacity, through a case friend under section 85 of the Act (Chapter 27 of the Code).

- 4.5 With a view to embedding the rights under those Conventions further, there are specific duties on local authorities and NHS bodies. Local authorities and NHS bodies **must**³ have due regard to:
- Part 1 of the UNCRC when exercising functions under the Act in relation to a child or young person; and
 - the UNCRPD and its optional protocol, when exercising functions under the Act in relation to a disabled child or young person.
- 4.6 The duties to have regard to the UNCRC and UNCRPD do not⁴ require local authorities and NHS bodies to give specific consideration to the Conventions on each occasion that a function is exercised.
- 4.7 To discharge these duties, local authorities and NHS bodies are required to (that is they **must**⁵) have due regard to the Conventions when planning the exercise of functions under the Act relating to a child or young person. This would be when undertaking activities such as:
- general planning for the delivery of ALP for children and young people with ALN in relation to whom it exercises functions (rather than in relation to a particular individual);
 - setting up systems within which duties under the Act owed to children and young people will be performed; and/or
 - preparing, monitoring or evaluating arrangements within the authority or body related to the exercise of functions in relation to children and young people.
- 4.8 Having ‘due regard’ requires taking into account the rights in the Conventions and then considering what action to take in light of those rights to give further effect to them. Where a right is not relevant in a particular context, it need not be considered further. Where a right is relevant, then due regard **should** be had to it when the local authority or NHS body is deciding what action to take. There is no requirement to achieve a particular result. However, by having due regard, the rights under the Conventions are likely to be embedded further within the local authority’s or NHS body’s exercise of functions for children and young people with ALN.
- 4.9 The local authority or NHS body **should** consider the substance of a right and consider it in the context of planning what needs to be done to exercise its functions under the Act and the Code, such as the duty⁶ to involve children,

³ Sections 7 and 8 of the Act.

⁴ Section 7(3) of the Act.

⁵ This is provision under sections 7(4) and 8(4) of the Act setting out what is required to discharge the duty.

⁶ In section 6 of the Act.

their parents and young people in the exercise of functions. A local authority or NHS body might conclude that there is nothing more that can or needs to be done in relation to a particular matter beyond complying with particular requirements of the Act or the Code (which might be very precise). In other contexts, the authority or body might decide to take further action, or it might influence its arrangements for carrying out functions, with a view to giving better effect to the rights under one or both of the Conventions.

Duty to have regard to the United Nations Convention on the Rights of the Child (UNCRC)

4.10 The relevance of the rights under the UNCRC will depend upon the precise context in which the Convention is being considered. Generally, those which are most likely to be relevant to a local authority or NHS body's consideration are:⁷

- Article 2 – Non- discrimination;
- Article 3 – Best interests of the child;
- Article 5 – Parental guidance and a child's evolving capacities;
- Article 6 - Survival and development;
- Article 12 – Respect for the views of the child;
- Article 13 – Freedom of expression;
- Article 16 – Right to privacy;
- Article 18 - Parental responsibility;
- Article 23 – Disabled children;
- Article 24 – Health;
- Article 25 – Review of treatment in care;
- Article 28 – Education;
- Article 29 – Goals of education;
- Article 30 - Minority and first language rights;
- Article 31 – Leisure, play and culture.

4.11 Under the Convention, a child is a person under the age of 18 unless under the law applicable to the child, majority is attained earlier. Many of the principles may, in the context, be applicable to young people as well.

4.12 The Children's Commissioner has developed the following five principles based upon the Convention rights. When having regard to the Convention, local authorities and NHS bodies might find it useful to consider these principles:

⁷ The descriptions given below of the articles are a very brief summary intended merely to signpost the general area covered by the articles; the articles themselves are much fuller and cover more details of potential relevance than is indicated in the description.

- **embedding children's rights** – putting children's rights at the core of planning and service delivery;
- **equality and non-discrimination** – ensuring that every child has an equal opportunity to be the best they can be;
- **empowering children and young people** – enhancing children's capabilities as individuals so they are better able to take advantage of rights, and engage with and hold accountable the institutions and individuals that affect their lives;
- **participation** – listening to children and young people, and taking their views meaningfully into account; and
- **accountability** – local authorities and NHS bodies should be accountable to children and young people for the decisions and actions they take that affect their lives.

4.13 Local authorities and NHS bodies might also find the Children's Commissioner's guidance on these principles useful: *The Right Way: A Children's Rights Approach in Wales*, and *The Right Way: Children's Rights Approach to Education in Wales*⁸.

Duty to have regard to the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)

4.14 The relevance of the rights under the UNCRPD will depend upon the precise context in which the Convention is being considered. Generally, those which are most likely to be relevant to a local authority or NHS body's consideration are⁹:

- Article 5 – Equality and non-discrimination;
- Article 7 – Children with disabilities;
- Article 8 – Awareness-raising;
- Article 9 – Accessibility;
- Article 12 – Equal recognition before the law;
- Article 13 – Access to justice;
- Article 17 – Protecting the integrity of the person;
- Article 19 – Living independently and being included in the community;
- Article 20 – Personal mobility;
- Article 21 – Freedom of expression and opinion, and access to information;
- Article 23 – Respect for home and the family;
- Article 24 – Education;

⁸ This is guidance from the Children's Commissioner on the subject which is available at the time of making of this Code. It might be replaced subsequently. At that time it is available at: <https://www.childcomwales.org.uk/publications/right-way-childrens-rights-approach-wales/> and <https://www.childcomwales.org.uk/publications/childrens-rights-approach-education-wales/>.

⁹ The descriptions given below of the articles are a very brief summary intended merely to signpost the general area covered by the articles; the articles themselves are much fuller and cover more details of potential relevance than is indicated in the description.

- Article 25 – Health;
- Article 26 – Habilitation and rehabilitation;
- Article 30 – Participation in cultural life, recreation, leisure and sport.

4.15 When discharging the duty, local authorities and NHS bodies might find the Social Model of Disability¹⁰ useful. This model advocates that it is society that creates attitudinal and physical barriers which disable people, rather their physical or mental impairments. The Social Model is a positive approach to disability, which focuses on removing barriers to equality.

Discharging the duties in practice

4.16 As described above, the duty to have due regard to relevant rights in the Conventions involves considering what action to take when planning the exercise of functions under the Act. It is for the local authority or NHS body to decide how to exercise its functions and how it does so will depend upon the context.

4.17 Possible actions that it might consider it useful to take could include:

- actions to ensure that leaders and staff involved in the delivery of services relating to ALN are aware of relevant rights under the Conventions of children and young people, including those with disabilities, for instance through staff training;
- involving children and young people in strategic planning and delivery of services to meet the needs of those with ALN. This may help better embed the rights in the delivery of those services, for example, by giving children an opportunity to explain how their views might best be sought in processes for making decisions about them;
- undertaking impact assessments in some circumstances, where considered appropriate. These can be useful means of assessing and recording considerations of the impact of any proposed policies concerning children and young people who have or may have ALN;
- reviewing ALN services and resources to identify any barriers to children's and young people's access to these services, and taking actions which would remove or reduce the impact of those barriers. For local authorities, this might form part of their strategic planning and review considerations about the ALP made available to children and young people in their area (see Chapter 5 of the Code on local authorities' duty to keep ALP under review);
- providing opportunities for children and young people with ALN to engage with and influence policies and services relating to ALN. This might include opportunities for children and young people with ALN to work together to develop ideas and test proposals.

¹⁰ At the time of the making of the Code, more information on the Social Model of Disability is available on the Welsh Government's website: <https://gov.wales/topics/people-and-communities/equality-diversity/rightsequality/disability/socialmodel/?lang=en>.

Chapter 5 - Duty to keep additional learning provision under review

Introduction

- 5.1 A local authority **must**¹ keep under review the arrangements made both by the authority, and by the governing bodies of the maintained schools in its area, for children and young people who have ALN.
- 5.2 As part of their review, local authorities **must**² consider the extent to which these arrangements are sufficient to meet the ALN of the children and young people for whom it is responsible. In doing so, it **must**³ also have regard to the ALP that may reasonably be arranged by others (such as FEIs and NHS bodies).
- 5.3 In exercising its functions in this respect, the local authority **must**⁴ consider the sufficiency of ALP in Welsh.
- 5.4 Consideration **must**⁵ also include the size and capability of the workforce available. This **should** include consideration of the Welsh medium workforce.
- 5.5 If a local authority considers local arrangements are insufficient it **must**⁶ take all reasonable steps to remedy this.
- 5.6 Local authorities **should** record the findings of their reviews. This **should** include where demand for provision is, or is at risk of, not being met, as well as where a particular resource is in excess. Recording such information will enable the Welsh Ministers to assess the suitability of the 'all reasonable steps' clause to securing ALP, particularly in relation to provision through the medium of Welsh, as well as ensuring that local authority reviews are fully aligned with their Welsh in Education Strategic Plans. See Chapter 2 of the Code for further information about the duties⁷ on Welsh Ministers to review the sufficiency of ALP in Welsh.

¹ Section 63(1) of the Act.

² Section 63(2) of the Act.

³ Section 63(2) of the Act.

⁴ Section 63(3)(a) of the Act.

⁵ Section 63(3)(b) of the Act.

⁶ Section 63(4) of the Act.

⁷ Section 89 of the Act.

Conducting a review

- 5.7 The review is not intended as a method for measuring or monitoring the quality of ALP provided to individual children and young people with ALN; this would be considered as part of each learner's IDP review (see Chapter 16 of the Code) and by ALNCoS in delivering their functions in relation to monitoring the effectiveness of ALP for learners in their setting (see Chapter 24 of the Code). Instead, the purpose of the local authority's review of ALP is to enable it to establish whether or not the overall ALP delivered in its area is sufficient to meet the overall needs of its population of learners with ALN.
- 5.8 Keeping ALP under review is a key part of local strategic planning and decision making, enabling local authorities to assess likely future needs and secure provision and services to meet those needs.
- 5.9 Reviews **should** support strategic decision making within the local authority on whether or not the authority has the correct types, quantity and quality of provision to meet the current and future needs of their population with ALN, and establish the steps that should be taken to remedy any insufficiencies.
- 5.10 Reviews **should** be conducted in a way that will enable local authorities to assess likely future need, plan for future provision requirements, consider commissioning plans in advance and provide schools with an opportunity to have a say in how provision is planned.
- 5.11 A review might equip a local authority with information about, for example, the take-up of a particular specialist services in their area and how well the current arrangements work, allowing the authority to consider whether there is a more efficient way of meeting those needs in the future.
- 5.12 The local authority's review **should** also aim to provide evidence of the extent to which the following are available in schools:
- high quality, differentiated teaching for individual children and young people;
 - appropriate reasonable adjustments to enable access to the school environment, curriculum and facilities for children and young people who are disabled;
 - targeted intervention and support for children and young people with ALN;
 - effective systems for monitoring the progress and achievement of children and young people with ALN and their inclusion in the everyday life of the school;
 - arrangements for involving specialists where needed;
 - arrangements for reviewing the effectiveness of interventions used to support children and young people with ALN and the skills and expertise of staff; and,
 - arrangements for involving children, young people and parents at every stage.

- 5.13 Local authorities may consider providing guidance to schools on these matters and on what provision schools would ordinarily be expected to make available for children and young people with ALN. They could consider publishing details of the support schools can expect from the local authority and its partners, including partners within NHS bodies, for children and young people who require ALP. They may also wish to set up moderating groups to support transparency and consistency of decision making in respect of referrals from schools for determination.
- 5.14 In undertaking this review, the local authority **must**⁸ consult the persons and/or bodies it considers appropriate, and at times in which it considers appropriate. Bodies and persons the local authority might consult with include, but are not limited to:
- Children, young people and their families
 - Maintained schools
 - FEIs
 - ALNCOs
 - Independent schools
 - Specialist post 16 education providers
 - Providers of non-maintained nursery education
 - The local authority's Early Years ALN Lead Officer
 - Educational psychologists
 - Specialist services provided by the local authority (such as specialist teachers of learners with hearing, visual or multi-sensory impairment)
 - Social services
 - Disagreement and dispute resolution services
 - Youth offending teams
 - NHS bodies
 - DECLOs
 - Regional education consortia
 - Third sector organisations
 - Unions and professional bodies
- 5.15 The involvement of the bodies and persons above in these reviews are critical in helping the local authority to establish a clear picture of the capacity and effectiveness of current ALP. They can offer views on emerging needs and patterns of need and the suitability of skills and expertise available in the workforce and contribute to decisions about the reasonable steps local authorities and their partners take to remedy any insufficiencies.
- 5.16 Keeping ALP under review is a continuous process and local authorities **should** link their activity to action taken in pursuit of wider strategic duties including:

⁸ Section 63(5) of the Act.

1. The Schools Standards and Organisation (Wales) Act 2013 – which requires local authorities to draft, consult on and publish Welsh in Education Strategic Plans (WESPs) demonstrating how they will aim to achieve the outcomes and targets for Welsh-medium education in their area. This includes an outcome relating to Welsh-medium provision for learners with ALN, and another in relation to workforce planning. The finding of local authority reviews of ALP **should** be used to inform local authority planning in both outcomes within the Welsh in Education Strategic Plans.
 2. The Social Services and Well-being (Wales) Act 2014 – which requires local authorities and health boards to jointly carry out an assessment of the population to find out the care and support needs in an area^{9,10};
 3. The Well-being of Future Generations (Wales) Act 2015 – which establishes statutory Public Services Boards to improve the economic, social, environmental and cultural well-being in an area by strengthening joint working across all public services. Public Service Boards include members from local authorities and local health boards.
- 5.17 Action to keep ALP under review **should** include reviewing data and evidence on the effectiveness of current provision in meeting children and young people's needs and improving the outcomes they achieve. When reviewing the sufficiency of its arrangements, local authorities might consider:
- the findings and outcomes from any recent appeals or claims to the Tribunal and any disagreements about ALP dealt with at a local level;
 - the number of learners with ALN in the local authority's area who are due to transition from pre-school to school, from school to further education and those transferring from one nursery education setting/school/FEI/local authority area to another;
 - out of area placements for those with low-incidence and/or high level needs;
 - relevant outcomes of developmental assessments undertaken by health visitors and relevant information from the Healthy Child Wales Programme;
 - relevant data on disabled children and young people in their area from the register of disabled people, which the local authority is required to keep^{11,12};
 - relevant information from the population needs assessment conducted by local authorities and local health boards under the Social Services and Wellbeing (Wales) Act 2014;
 - relevant information from the local authority's Welsh in Education Strategic Plan, specifically in relation to the outcomes on Welsh-medium provision for learners with ALN, and workforce planning;

⁹ Section 14 of the Social Services and Wellbeing (Wales) Act 2014.

¹⁰ Social Services and Wellbeing (Wales) Act 2014: Part 2 Code of Practice (General Functions).

¹¹ Section 18 of the Social Services and Wellbeing (Wales) Act 2014.

¹² Social Services and Wellbeing (Wales) Act 2014: Part 2 Code of Practice (General Functions).

- any barriers that have been identified which prevent children and young people from accessing ALN services;
- the guidance set out in Chapter 4 of the Code, which gives effect to the duties on local authorities to have due regard to the UNCRC and UNCRPD; and
- the particular needs of any Service communities within their boundaries when providing or planning ALP for Service children and young people with ALN (see Chapter 23 of the Code for further guidance on children and young people of Service personnel).

5.18 Considering such data and information may help local authorities to identify:

- the range and level of provision required to meet the needs of such learners;
- the range and level of provision required to prevent needs arising or escalating; and
- the range and level of Welsh language provision needed.

5.19 Wider engagement of services and stronger multi-agency working through these and other activities contributes to better planning and commissioning of provision for children and young people with ALN, including education and training and support for young people with ALN to make the transition to adult life through access to employment, leisure and social opportunities, and the opportunity to live as independently as possible.

Outcomes following a review of ALP

5.20 If a local authority considers that the arrangements made for learners with ALN (including the availability of ALP in Welsh) are not sufficient, it **must**¹³ take all reasonable steps to remedy the matter.

5.21 For example, a local authority might identify that there is a higher number of learners with a particular ALN approaching compulsory school age. If the local authority considers that these learners may require a particular provision when they start school and the local authority requires additional specialists to meet the needs of these learners, they **must**¹⁴ take action to resolve this.

5.22 When considering how to remedy insufficiencies in their arrangements for learners with ALN, local authorities **should** consider whether the insufficiency could be addressed by providing services in partnership with the other local authorities, NHS bodies or other agencies on a regional basis. For example, it may be that needs of learners with ALN in one local authority area could be met with the provision of a service which would serve the needs of learners with ALN in the areas of two or more local authorities. Similarly, the third

¹³ Section 63(4) of the Act.

¹⁴ Section 63(4) of the Act.

sector and other providers could help in meeting need through the services they provide. Potentially, services could be provided in collaboration with local authorities on a regional basis.

- 5.23 In accordance with the principle of collaboration (see Chapter 2 of the Code), local authorities **should** be proactive about identifying opportunities to share resources with other local authorities. This approach is particularly relevant for meeting the demand for Welsh language provision, and ensuring the sufficiency of the specialist workforce.
- 5.24 Strategic decisions taken as a result of keeping ALP under review might include:
- securing greater involvement of children and young people and their families with ALN in strategic planning and decision making;
 - supporting clusters of schools to enhance training and development, and provide peer to peer support;
 - improving access to specialist advice and support – for example educational psychology advice, therapies, sensory support, specialist support for children and young people with autism, or for those with social, emotional and mental health needs;
 - securing delivery of appropriate provision in Welsh;
 - developing specially resourced provision in a number of schools;
 - building stronger links between special and mainstream schools to improve sharing of expertise and approaches;
 - building the capacity of all mainstream schools to support children and young people with a wider range of needs; and
 - developing capacity to offer packages of education, health and social care support which can enable more children to be taught locally rather than in out of area placements.
- 5.25 The duty to keep ALP under review falls on individual local authorities but action taken to address issues identified will often be more effective if taken in conjunction with others. Local authorities and their partners within NHS bodies **should** consider working with other areas to develop regional arrangements for supporting children and young people with ALN. Regional arrangements could relate to any or all of the above strategic activities.
- 5.26 Local authorities and their partners **should** consider at strategic level whether changes to funding arrangements for supporting children and young people with ALN are required as a result of activity undertaken to review ALP

Chapter 6: Advice and information

Introduction

- 6.1 Local authorities **must**¹ make arrangements to provide people with information and advice about ALN and the ALN system. In doing so, they **must**² have regard to the principle that information and advice provided under the arrangements must be provided in an impartial manner.
- 6.2 Local authorities **must**³ take reasonable steps to make such arrangements known to the list of persons and bodies set out in paragraph 6.12.
- 6.3 If a school or FEI is informed of these arrangements, it **must**⁴ take reasonable steps to make the arrangements known to its pupils and their parents and case friends or its students respectively.
- 6.4 The advice and information provided by local authorities, schools and FEIs to children, their parents and young people **must**⁵ be provided free of charge.

Arrangements for providing advice and information

- 6.5 A local authority may choose to provide advice and information itself. Alternatively, the local authority could work with external service providers, including the third sector, to provide information and advice about ALN. However local authorities decide to provide the information and advice, in making their arrangements to do so, they **must**⁶ have regard to the principle that the information and advice must be provided in an impartial manner.
- 6.6 Advice and information, is of its nature, objective and impartial. It is important that it is provided impartially because the purpose of providing it is to facilitate children, their parents and young people understanding the system and exercising their rights under it, including to challenge decisions.

Information and advice provided by local authorities directly

- 6.7 There are lots of ways in which local authorities can provide information and advice about its ALN services, including leaflets, posters, websites, face-to-face contact centres, and telephone helplines. A local authority may wish to consider establishing a directory, which would set out in one place information

¹ Section 9(1) of the Act.

² Section 9(2) of the Act.

³ Section 9(3) of the Act.

⁴ Sections 9(4) and 9(5) of the Act.

⁵ Section 49 of the Act.

⁶ Section 9(2) of the Act.

on the different help and support available in the area. The directory could include:

- information and advice arrangements;
- avoidance and resolution of disagreement arrangements; and
- information about independent advocacy services and how to access them.

6.8 Information made available by local authorities **should** be factual and use language that children, their parents and young people can easily understand. It **should** be well publicised by the local authority, be easily accessible, and kept up to date. See the section below on accessibility of advice and information for further guidance (paragraphs 6.18-6.21).

Information and advice provided by an external provider

6.9 Where a local authority decides to discharge its duties in respect of advice and information by contracting an external service provider to undertake these responsibilities, it **should**:

- inform children, their parents and young people that another organisation is providing advice and information on the local authority's behalf – this **should** be made clear on the local authority's website and during discussions with learners (and their families where appropriate) about their ALN;
- ensure the information and advice provided is accessible and easy to find;
- determine and monitor the overall standard of the service;
- ensure appropriate governance arrangements are in place for the service.

Aims and content of advice and information

6.10 The information under the arrangements **should** be clear and accurate and be about the ALN system. The information and advice provided **should** make children, their parents and young people aware of and help them to understand:

- what ALN is;
- their rights under the ALN system;
- the different agencies involved and their respective roles (see Chapter 15 of the Code);
- transitions and transition planning;
- the different complaints procedures (see Chapter 25 of the Code);
- the local authority's services for avoiding and resolving disagreements and independent advocacy (see Chapter 25 of the Code); and
- how to appeal against a decision of the local authority or FEI, including in the case of decisions of, or IDPs maintained by, a maintained school, how to request a local authority to reconsider the matter.

- 6.11 When making information and advice arrangements, local authorities **should**, as they consider appropriate, make provision for signposting children, their parents and young people to relevant alternative and additional sources of information, advice and support that may be available locally or nationally.

Raising awareness of arrangements for providing advice and information

- 6.12 A local authority **must**⁷ take reasonable steps to make its arrangements for advice and information known to:
- (a) children and young people in its area;
 - (b) parents of children in its area;
 - (c) case friends of children in its area;
 - (d) children it looks after who are outside its area;
 - (e) maintained schools and FEIs in its area; and
 - (f) any other persons it considers appropriate.
- 6.13 Other persons that a local authority may consider it appropriate to make the arrangements known to could include:
- providers of childcare and non-maintained nursery education in its area;
 - Independent Reviewing Officers within the local authority;
 - schools, FEIs and non-maintained nursery providers that are outside its area, but attended or likely to be attended by children or young people in its area.
- 6.14 Local authorities **should** consider the most appropriate mechanisms for making their arrangements known to the persons listed above.
- 6.15 Local authorities could consider sharing information about their arrangements via regular newsletters or bulletins (including those published or distributed by, for example, education settings, regional education consortia, third sector groups or community groups) and through shared websites, electronic platforms or portals.
- 6.16 To make their arrangements known to children, their parents and case friends and young people, local authorities **should** consider arranging for written information, such as leaflets and posters, to be displayed in areas where learners and their families are likely to see them. This might include communal areas in nurseries, schools and FEIs, and in health settings, such as GP surgeries. Local authorities **should** consider distributing leaflets to bodies and persons that have contact with children and young people with ALN and their families, so that they can be disseminated accordingly. Such bodies would include schools, FEIs, health visitors, providers of childcare and

⁷ Section 9(3) of the Act.

non-maintained nursery education, GP surgeries, and others that the local authority considers appropriate.

- 6.17 To ensure advice and information is easy to find electronically, a local authority **should** publish on its website a dedicated webpage from which all the information is accessible. Advice and information needs to be easy for learners, their families and others to find.

Accessibility of advice and information

- 6.18 When carrying out their duties under the Act to make arrangements for the provision of advice and information and to take reasonable steps to make people aware of those arrangements, local authorities **should** have regard to the principle that the information and advice provided **should** be easily accessible.

- 6.19 For example, local authorities **should**:

- use plain Welsh and plain English and avoid using unnecessary jargon; and
- make alternative versions (for example, easy read, Braille or in languages other than English or Welsh) available for those who require such.

- 6.20 Local authorities **should** provide advice and information in various formats to ensure accessibility to all relevant audiences. This might include, for example, producing leaflets or posters targeted at the different audiences and developing apps targeted at older children and young people.

- 6.21 Some children may lack sufficient capacity to request and understand the advice and information (they may be too young, for example), although their parents or case friends may access the information and advice (see Chapter 27 for details on the role of case friends). Other children may want to access information and advice independently from their parents. Local authorities **should**, therefore, ensure the arrangements cover information and advice in formats specifically accessible to children and to young people, and **must**⁸ take reasonable steps to make those arrangements known to children in its area in addition to making them known to their parents.

Involving children, their parents and young people

- 6.22 Local authorities **should** involve children, their parents and young people (for example through participation workshops or focus groups) in the design or commissioning of arrangements for providing information and advice. This will help to ensure the advice and information is easily accessible and that the arrangements meet local needs. For example, if local authorities make their

⁸ Section 9(3) of the Act.

own arrangements to provide advice and information and decide to develop a local authority directory (paragraph 6.7 refers), they may wish to involve learners and their families in the development and review of the directory. If a local authority delegates the arrangements to an external provider, it **should** require that provider to test their materials in a similar way with learners and their families. Chapter 3 provides further guidance in relation to involving children, their parents and young people.

Schools', FEIs' and non-maintained nurseries' role in promoting local authority arrangements for information and advice

- 6.23 Where a local authority makes its arrangements known to a maintained school or FEI, that school or FEI **must**⁹ take reasonable steps to make the arrangements known to (in the case of schools) its pupils and their parents and case friends of its pupils and (in the case of FEIs) its students.
- 6.24 Where providers of non-maintained nursery education in receipt of local authority funding are informed of a local authority's arrangements for providing information and advice¹⁰, they **should** also take reasonable steps to make the arrangements known to parents of children that attend their setting.
- 6.25 This might include, for example:
- including links to the local authority's arrangements on the nursery's, school's or FEI's website;
 - including links to the local authority's arrangements on the nursery's, school's or FEI's prospectus;
 - displaying posters or leaflets in prominent areas where learners and their families are likely to see them.
- 6.26 The Code imposes requirements to provide information about how to access a local authority's advice and information arrangements in particular circumstances, such as when a school, FEI or local authority is subject to the duty to decide whether a child or young person has ALN.

⁹ Sections 9(4) and (5) of the Act.

¹⁰ Under section 9 of the Act.

Chapter 7: The definition of ALN and ALP, identifying ALN and deciding upon the ALP required

Introduction

- 7.1 Whenever it comes to the attention of a maintained school or FEI that one of its registered pupils or enrolled students (who is a young person) may have ALN, that education setting **must**¹ decide whether the child or young person has ALN unless specific circumstances apply. Local authorities **must**² also decide whether an individual has ALN in some circumstances. Where it is decided that a child or young person has ALN, it will usually be necessary to prepare an IDP for them.
- 7.2 Chapters 8 to 12 deal with these and other duties on schools, FEIs and local authorities in relation to children and young people in different education settings. Chapter 13 deals with the contents of an IDP (and chapter 14 deals with the contents of an IDP for a looked after child). The focus of this chapter is on the meaning of ALN and ALP and the considerations when identifying ALN and deciding upon the ALP required.

The definition of ALN

- 7.3 Section 2 of the Act defines the term ‘additional learning needs’ (ALN), as set out in figure 1 below.

Figure 1: definition of additional learning needs

2 Additional learning needs

- (1) 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.
- (2) 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 (c. 15) which prevents or hinders him or her from making use of facilities for education or

¹ Section 11 of the Act.

² Sections 13, 18 and 40 of the Act.

training of a kind generally provided for others of the same age in mainstream maintained schools or mainstream institutions in the further education sector.

- (3) 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.
- (4) 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.
- (5) This section applies for the purposes of this Act.

Children of compulsory school age and older persons

7.4 To establish whether a child of compulsory school age or young person has ALN, the following questions **must**³ be addressed.

(i) Does the individual have a learning difficulty or disability?

7.5 Firstly, does the individual have a learning difficulty or disability (which may or may not arise from a medical condition)? The test for this varies slightly according to the age of the person. Subsection (2) (set out in figure 1 above) deals with the position for a child of compulsory school age or a person over that age.

7.6 The key questions to ask are, therefore:

- Does the person have a significantly greater difficulty in learning than the majority of others of the same age?
- Does the person have a disability (within the meaning of the Equality Act 2010) which prevents or hinders the person from making use of facilities for education or training of a kind generally provided for others of the same age in mainstream maintained schools⁴ or mainstream FEIs⁵?

7.7 If the answer to either question is 'yes', the individual has a learning difficulty or disability for the purposes of the Act. If the answer is 'no' to both questions, the individual does not have ALN.

³ As they come from the definition in section 2(1) of the Act.

⁴ These are maintained schools (including maintained nursery schools) that are not a special school or pupil referral unit: section 99(1) of the Act.

⁵ A mainstream FEI is an FEI that is not specially organised to provide education or training for persons with ALN: section 99(1) of the Act.

ii) Does the learning difficulty or disability call for ALP?

- 7.8 If the individual does have a learning difficulty or disability, the next step is to determine whether that learning difficulty or disability calls for ALP.
- 7.9 Section 3 of the Act defines the term ‘additional learning provision’ (ALP), as set out in figure 2 below.

Figure 2: definition of additional learning provision**3 Additional learning provision**

- (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.
- (4) Regulations⁶ may amend this section to replace the references to the age of three with references to a different age.
- (5) This section applies for the purposes of this Act.

- 7.10 Teaching which recognises and responds to the needs of individual learners is a key component of all high quality education, and is something which is generally made available in schools and FEIs in Wales; most children and young people will require a differentiated approach in some aspect of their education at some point. Such differentiated teaching does not, itself, constitute ALP. ALP will encompass additional or different educational or training provision, which goes beyond that generally made available.
- 7.11 ALP can take many forms; it might include any support that takes place inside or outside the mainstream classroom, where it is additional to, or different from, that made generally for others of the same age. ALP might also be delivered in settings outside of the school or FEI in some circumstances and/or by external professionals.
- 7.12 If a person has a learning difficulty or disability which calls for ALP, the individual has ALN for the purposes of the Act.

⁶ No such regulations have been made at the time the Code is issued.

Children under compulsory school age

- 7.13 There is a slightly different test for children under compulsory school age. The first criterion is still to decide whether the child has a learning difficulty or disability, but the meaning of that is slightly different. It is whether the individual, when of compulsory school age, is, or would be if no ALP were made, likely to have:
- a significantly greater difficulty in learning than the majority of others of the same age, or
 - a disability (within the meaning of the Equality Act 2010) which prevents or hinders them from making use of facilities for education or training of a kind generally provided for others of the same age in mainstream maintained schools⁷.
- 7.14 The second criterion is also the same as that for older children, namely whether the learning difficulty or disability calls for ALP. However, for children aged under three, ALP means educational provision *of any kind*⁸. For those aged 3 and over, ALP has the same meaning as for children of compulsory school age and young people (as set out above).
- 7.15 The definition of ALP for children aged under three is slightly different to that of the definition of ALP for children aged three and above to reflect the fact that children under three are not at an age where maintained education is routinely available.
- 7.16 ALP for those aged under three can take many forms; for instance, group work or individual support - where it is educational provision of any kind. This might include educational provision in the form of mother and baby groups, educational provision in Flying Start or specialist health, physical, communication or sensory support. This can take place in an education setting or elsewhere.

Considering whether a child or young person has, or may have, ALN

- 7.17 Whether a learner has ALN which calls for ALP is determined by the definitions set out in sections 2 and 3 of the Act, irrespective of the cause, if any (for example a medical condition, or particular events, such as bereavement or bullying).

⁷ See section 2(3) of the Act which is set out in figure 1 above.

⁸ See section 3(2) of the Act which is set out in figure 2 above.

Learning Difficulties

- 7.18 Where a child or young person appears to have some sort of difficulty in learning, even if only temporarily, understanding any reasons for it can be helpful in identifying the person's needs, how they can be met and whether those needs amount to ALN (which includes consideration of how significant the difficulty is and whether it calls for ALP). Many learners are likely at some point to experience short term difficulties in learning whether due to an illness, bereavement or other causes which might lead to short term issues with learning (perhaps because of a period of absence from an education setting or difficulty in concentrating during such a period), but which do not, or not yet, amount to ALN. In these circumstances, schools and FEIs may need to take action to help the learner catch up and/ or to prevent the difficulties escalating, but as is the case with differentiated teaching, this catch-up provision should be made generally for learners in schools and FEIs and therefore would not constitute ALP.
- 7.19 When considering whether a possible difficulty in learning might be ALN schools, FEIs and local authorities **should** set appropriate timescales for monitoring the learner's progress, bearing in mind the importance of early intervention. More information on early intervention is set out in Chapter 2 on the principles of the Code. In some cases, it may be apparent from the outset that it is quite likely that the difficulty amounts to ALN, in which case the duty to decide whether the person has ALN will apply.
- 7.20 Where difficulties which could be, or appear to be, significant, persist for a longer period notwithstanding the usual interventions to seek to address them or other action to resolve the apparent cause (for example, some catch-up provision for a learner who has been absent for a few weeks, or bullying has been dealt with), this is likely to indicate ALN.
- 7.21 In considering what amounts to a '*significantly greater difficulty in learning than the majority of others of the same age*', it should be borne in mind that learning is about acquiring knowledge or skills, which may be done in many different ways and how it is done can vary according to the age of the learner. For example for young children learning takes place through play and experience, rather than through more formal methods which are more common for older children such as instruction by a teacher or study by a learner.

Disabilities

- 7.22 Not all children and young people who have a disability (as defined by the Equality Act 2010), will have ALN. However, if their disability prevents or hinders them from making use of educational or training facilities of a kind generally provided for others of the same age in mainstream maintained

schools or mainstream FEIs, and this calls for ALP, then they have ALN⁹. Whether or not the person has ALN on that basis, if the person has a significantly greater difficulty in learning than the majority of others of the same age, they will have ALN¹⁰.

- 7.23 There are some forms of disability where the nature of the disability means it is likely the learner will have ALN. For instance, local authorities have to establish and maintain a register of those in their area who are sight or hearing impaired, or have a combination of both such that it has a significant effect on their day-to-day lives¹¹. Children or young people on this register are more likely to have ALN by virtue of the fact the impairment is likely to mean that they meet the second part of the definition of learning difficulty or disability.

Welsh or English as an additional language

- 7.24 A person does not have a learning difficulty or disability – and, therefore, does not have ALN – solely because the language (or form of language) in which they are or will be taught is different from a language (or form of language) which is, or has been, spoken at home¹².
- 7.25 Those with Welsh or English as an additional language might need extra support to achieve their potential, but do not necessarily have ALN. That said, when a child or young person has English or Welsh as an additional language and makes slow progress (despite differentiated teaching to support them), consideration should be given to whether there is a wider issue.
- 7.26 Identifying ALN for those whose first language is not Welsh or English requires particular care. All aspects of a child or young person's learning and development need to be considered to assess whether their difficulty is the result of the challenge of learning Welsh or English as an additional language or if it arises from ALN. The school, FEI or local authority should look carefully at all aspects of a child or young person's performance in different subjects to establish whether any difficulties they have are due to limitations in their command of the language that is used, or if it arises from ALN.
- 7.27 An assessment should be made of the exposure the child or young person has had in the past to each of the languages they speak, the use they make of the languages currently and their proficiency in them. Information about language skills obtained in this way will form the basis of all further work with them, both in assisting to understand their needs and in planning any additional language support required. Where this analysis has taken place

⁹ Section 2(1) and (2)(b) of the Act.

¹⁰ Section 2(1) and (2)(a) of the Act.

¹¹ Section 18 of the Social Services and Well-being Act 2014.

¹² Section 2(4) of the Act, which is set out above in figure 1.

and it is determined that external support is required, this information should be shared with them.

More able and talented

- 7.28 The term 'more able and talented' encompasses learners who are more able across the curriculum, as well as those who show talent in one or more specific areas. Those children and young people who are considered more able and talented do not have ALN on the basis of their enhanced ability or talent. These children and young people require enhanced opportunities and challenge in order to reach their full potential, which should be provided as part of differentiated learning.
- 7.29 A child or young person could, however, be more able and talented and have ALN. For example, a child or young person may be very proficient in one part of their education but have '*a significantly greater difficulty in learning*' than the majority of others of the same age because of difficulties in other parts of their education, or they may be performing well across the curriculum, but still have a disability which prevents or hinders the person 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 FEIs.

Healthcare needs

- 7.30 The Welsh Government's statutory guidance on *Supporting Learners with Healthcare Needs*¹³ addresses the arrangements to be made by maintained schools and local authorities to support learners under the age of 18 with healthcare needs. In addition, some children and young people will have Continuing NHS Healthcare, which is a package of care provided by the NHS for those individuals with complex and primarily health-based needs.
- 7.31 In some cases, healthcare needs (for example, as a result of a medical condition) may have a significant impact on the child or young person's experiences and on the way they function in school or further education. The impact may be a direct one, in that their cognitive abilities, physical abilities, behaviour or their emotional state may be affected. The impact could also, or alternatively, be indirect, for example by disrupting their access to education through unwanted effects of treatment or through the psychological effects that serious or chronic illness or disability can have on a child or young person and their family.
- 7.32 However, not all children and young people with a healthcare need will have ALN. As with other learners, the question is always whether the child or young person has a learning difficulty or disability which calls for ALP. There will be many instances where a child or young person with healthcare needs does not have a learning difficulty or disability, or if the person does, the

¹³ <http://learning.gov.wales/resources/browse-all/supporting-learners-with-healthcare-needs/?lang=en>

learning difficulty or disability does not call for ALP. In these cases, the child or young person's needs should be met through other means.

Evidence identifying whether a child or young person may have ALN

- 7.33 Duties to decide whether a child or young person has ALN apply where it is brought to the attention of, or otherwise appears to, a maintained school, FEI or local authority in Wales that the person may have ALN (there is more on these duties in Chapters 8 – 12). This section provides guidance on when it would appear that a child or young person may have ALN.
- 7.34 It may become apparent to a school, FEI or local authority that there are particular difficulties or problem areas which may affect the child's or young person's ability to learn or access education such as:
- impaired co-ordination;
 - significant difficulties of sequencing or visual perception;
 - deficiencies in working memory;
 - significant delays in language functioning;
 - impaired social interaction or communication or a significantly restricted repertoire of activities, interests and imaginative development;
 - evidence of significant emotional or behavioural difficulties, as indicated by clear recorded examples of withdrawn or disruptive behaviour;
 - a marked and persistent inability to concentrate;
 - signs that the child or young person experiences considerable frustration or distress in relation to his or her learning;
 - a sensory impairment, such as hearing or visual impairment;
 - difficulties in establishing and maintaining balanced relationships with his or her fellow pupils or with adults; and,
 - any other evidence of a significant delay in the development of life and social skills.
- 7.35 Concerns may arise, for example, where a child or young person, despite receiving appropriate educational experiences:
- makes little or no progress towards meeting their potential, even when teaching approaches are particularly targeted to improve the child's or young person's identified area of difficulty;
 - continues working at levels significantly below those expected for children or young people of a similar age, or those expected of the individual themselves, which result in poor attainment;
 - presents persistent emotional or behavioural difficulties, which are not improved by the behaviour management techniques usually employed;
 - has delayed personal and social development, which are not improved by strategies and techniques usually employed;

- has delayed physical development or delayed creative development, which are not improved by strategies and techniques usually employed;
 - has sensory or physical problems, and continues to make little or no progress against that which is expected of the individual, despite the provision of specialist equipment; or,
 - has communication and/or interaction difficulties, and continues to make little or no progress despite the provision of differentiated teaching or techniques and strategies employed.
- 7.36 Identifying whether a person may have ALN and the subsequent decision as to whether the person has ALN and if so, what those ALN are, needs to be based on evidence; this evidence might come from staff within the school or FEI, other services which have been involved with the child or young person, it might also come from the child, their parents or the young person themselves.
- 7.37 An early years setting, school or FEI's system for observing and assessing the progress of individual children and young people will provide information about areas where a child or young person is not progressing satisfactorily. A number of different sources of evidence may be used to measure children and young people's progress (in terms of attainment, and other areas for instance where a learner needs to develop wider social or emotional behaviours), including:
- standardised screening or assessment tools and frameworks;
 - observational data;
 - the quality of their work;
 - developmental checklists;
 - scaling questionnaires;
 - assessments from other agencies, such as health bodies, and
 - behaviour and social emotional questionnaires and standardised tests.
- 7.38 For example, some children under compulsory school age will be receiving a foundation phase based education outside of a maintained school setting. Tracking rates of progress of such children using the Foundation Phase Profile can aid identification of ALN and help in understanding the developmental progress that the child is making. For other children the key information may come from health visitors, or early years screening, or from that gained by the child being included in a Flying Start area.
- 7.39 Similarly, schools will regularly assess and report progress to parents on literacy and numeracy skills, including – but not exclusively – through national reading and numeracy tests and against the Foundation Phase Profile. Assessment against the National Curriculum level descriptions for each subject will enable a school to consider the individual pupil's attainment and progress against the expected levels for pupils of their age.
- 7.40 FEIs will also use regular monitoring data to track progress of learners. All applicants and enrolled learners at FEIs should be given the opportunity at

application stage, at enrolment and during the course to raise any concerns about their learning needs.

- 7.41 On the basis of the evidence, including the data collected it should be possible to identify learners making less than expected progress. This can be characterised as progress which:
- is significantly slower than that of their peers starting from the same baseline;
 - fails to match or better the child's or young person's previous rate of progress; or,
 - fails to close, or widens, the attainment gap between the child or young person and their peers, despite the provision of support aimed at closing that gap (such as differentiated teaching).
- 7.42 A judgement has to be made in each case as to what it is reasonable to expect a particular child or young person to achieve.
- 7.43 Slow progress and low attainment do not necessarily mean that a child has ALN and should not automatically lead to a decision that the learner has ALN. Equally, it should not be assumed that attainment in line with chronological age means that there is no ALN.
- 7.44 Children and young people in a class or school will inevitably progress at different rates so the fact that child is apparently underperforming by comparison with others of the same age is not, on its own, proof of ALN. When considering the child's or young person's needs, it might be revealed that the child or young person is actually making good progress from a low base.
- 7.45 There will always be some learners who have lower levels of attainment and ability who will progress at a slower but steady rate. They will require support to access a differentiated curriculum to make suitable progress, but that support may not necessarily amount to ALP.
- 7.46 Where progress is not adequate, it will be necessary to take some additional or different action to enable the learner to learn more effectively. The first response to inadequate progress would often be teaching targeted specifically at learners' areas of weakness. All education settings are expected to put in place differentiated teaching or other targeted interventions designed to secure better progress where appropriate, for all learners. This is a fundamental element of high quality – but routine – teaching. Consideration should be given to whether suitable teaching strategies have been employed but which have nevertheless failed to address the attainment gap between the child or young person and their peers.
- 7.47 Consideration will need to be given to whether there are reasons for under performance other than ALN and if so whether there are alternative and more appropriate ways to support the child's access to learning, such as referral to

an educational psychologist, education welfare services, social services or health bodies.

- 7.48 It is important to remember that other factors contribute to poor academic performance, such as external factors and circumstances. These can include poor attendance records, not having adequate learning opportunities, frequent moves or changes to teaching staff/learning environment or wider social and family challenges. Such factors may be the cause of inadequate progress rather than the learner having ALN, although of course even where such factors are present, the learner may have ALN. Those considering the evidence will need to consider whether the evidence points to other underlying needs and not ALN and if so, whether there are other ways to support the young person's needs and other services which need to be involved in the young person's life.
- 7.49 For example, problems in the learner's home or family circumstances, can contribute towards under achievement. To establish the cause of underachievement, it might be useful to consider if the child is showing different behaviour or demonstrating different learning ability in different settings and environments. Examining whether there is a marked disparity of evidence provided by different individuals/agencies and where the child or young person is in different settings, will give a more accurate understanding of the child's needs. Where there is marked disparity it might suggest a need to consult with professionals with the relevant expertise in order to consider the child's needs in a holistic manner.
- 7.50 However, where progress continues to be less than expected, or it is obvious that the extent of the concern is such that it is clear that differentiated teaching or standard targeted interventions will not be sufficient then this would usually indicate to the school, FEI or local authority that the person may have ALN. Whenever teaching staff have such concerns, they **should** involve the school or FEI's ALNCo (if not already involved). There **should** be clear processes in schools and FEIs for staff to highlight their concerns and seek further advice and assistance. Depending on the circumstances, external advice might also need to be sought.
- 7.51 Once a school, FEI or local authority is aware that a child or young person may have ALN, the duty to decide applies. Chapters 8 - 12 deal with these duties. If the school, FEI or local authority decides that the child or young person has ALN, they will usually have to prepare an IDP, in which the ALN and ALP are described. See Chapter 13 for further information about the content of IDPs (and Chapter 14 in relation to IDPs for looked after children).

Determining the ALN and the ALP required

- 7.52 Once it has been established that a child or young person may have ALN, the school, FEI or local authority needs to determine whether the person does have ALN (that is, does the person have a learning difficulty or disability which

calls for ALP), and if so, the extent or nature of the ALN, and the ALP that will be required.

- 7.53 These decisions need to be based upon evidence. This will include any evidence already collected as part of the initial consideration that the child or young person may have ALN, but may also require further evidence to be gathered as necessary during the process. This should include evidence from the child, their parents, or the young person and others as may be appropriate (more information on the different types of specialists and other agencies that may be involved is provided later in this section.) What is appropriate will depend upon the circumstances of the case. For example, in some cases it might be necessary to get medical advice from a health body about the effect of a disability or medical condition to help identify exactly what the learning difficulty or disability is (or whether there is one at all) and what provision is called for by it, which might be ALP (detailed guidance in relation to the role and duties on health bodies is provided in Chapter 15.)
- 7.54 As described in Chapter 3 there is a general duty about involving children, their parents and young people in decisions that relate to any ALN they might have and the preparation of IDPs. Putting the child or young person at the heart of the process that identifies their ALN and determines their ALP is a fundamental objective of the ALN system (see principles in Chapter 2). Therefore, a meeting or meetings **should** normally be arranged with the child and the child's parent, or the young person, to discuss and decide upon the person's needs and where it is decided that the person has ALN, to discuss the contents of the IDP (guidance on meetings about ALN and IDPs can be found in Chapter 18).
- 7.55 In many cases, the education setting should be able to provide or arrange the necessary ALP. When this is the case, there may be no need to include other professionals or the local authority in the development of the IDP, its day-to-day operation or subsequent review, although their advice may be helpful to inform the preparation of the IDP.
- 7.56 For other children and young people the support of, and provision of ALP by, different agencies may be needed to various degrees. For those with more complex needs, ensuring the needs of a child or young person are met might require the input and support of different agencies coming together to provide a comprehensive package of ALP.

Multi-agency working

- 7.57 After deciding that a child or young person may have ALN, the body responsible for deciding whether the person has ALN **should** consider whether input from external agencies or other suitably qualified professionals is required.

- 7.58 The body responsible for deciding whether the person has ALN **should** check with the child, child's parents or young person to find out if there are any professionals already working with the child or young person, or whether there are any other professionals or persons that they believe should be consulted. This consultation **should** be undertaken as soon as possible to allow sufficient notice and time for their input. Any agency that deals with the child or young person (or that forms the opinion that they may have ALN) **should** be invited to contribute to the decision on ALN and developing and updating any IDP.
- 7.59 If there is an identified lack of expertise amongst the staff in a mainstream school or FEI, then the school or FEI **should** consider seeking external advice to support the process of deciding whether the person has ALN. This might include, for example, where the child or young person has a low incidence need, such as being vision or hearing impaired, or both, and staff do not have the knowledge and expertise to appropriately support the child or young person. A person who is qualified to teach pupils or students with these impairments should be involved in such cases. For children or young people with such needs they will be on a register maintained by the local authority¹⁴.
- 7.60 External agencies can support the process of deciding whether a person has ALN and determining the ALP required in a number of ways. They can offer advice and support staff with strategies or obtaining more information, undertake assessments and/or observations to provide more information about the child or young person's needs, and suggest interventions and alternative forms of provision. External agencies might also be the appropriate body to directly provide the ALP required. Lots of different agencies, professionals and individuals have a role to play in identifying and supporting children and young people who may have ALN, including:
- parents/carers;
 - family members;
 - foster carers;
 - health visitors;
 - paediatricians;
 - Newborn Hearing Screening Programme Wales;
 - GPs;
 - Flying Start staff;
 - Families First staff;
 - Portage;
 - Voluntary sector;
 - childcare providers;
 - providers of non-maintained nursery education and their umbrella organisations;
 - pre-school settings staff;

¹⁴ Section 18 of the Social Services and Well-being (Wales) Act 2014.

- independent schools;
- teaching staff;
- learning and support assistants;
- specialist teachers/advisory teachers;
- ALNCoS;
- Early Years ALN Lead Officers;
- DECLOs;
- members of governing bodies;
- school nurses;
- occupational therapists;
- speech and language therapists;
- physiotherapists;
- social workers;
- consultants;
- educational psychologists;
- counselling services;
- Education welfare officers
- CAMHS;
- youth offending teams;
- mentors and careers advisors; and,
- tutors.

7.61 The level of engagement and advice needed from different agencies and professionals will vary, depending on the nature of the child or young person's needs and circumstances. It might include, for example:

- educational advice and information from the head teacher or principal of an early years, school or post-16 setting or other institution attended by the child or young person;
- advice from local authority officers;
- consultation with a person who is qualified to teach children or young people with specific impairments, for example, with a vision and/or hearing impairment;
- medical advice and information from health care professionals with a role in relation to the child or young person's health;
- psychological advice and information from an educational psychologist, who should normally be provided by the responsible local authority where a child attends a maintained school, and who **should** consult any other psychologists known to be involved with the child or young person where this is appropriate;
- social care advice and information from, or on behalf of, a local authority if they are involved with the child or young person and/or the child has a care and support plan with a lead co-ordinator;
- specialist careers advice to assist the child or young person in preparation for further learning, adulthood and independent living;

- advice and information from specialist autism practitioners in the National Integrated Autism Service¹⁵;
- in the case of children formerly looked after by a local authority, advice from the National Adoption Service for Wales,
- advice from a youth offending team, where the child or young person is detained in relevant youth accommodation, where the young person is serving their sentence in the community or where the child or young person is known to the youth offending team and there is a risk of reoffending (see Chapter 22 for information on detained persons); and
- in the case of children of members of the Armed Forces, advice **should** be sought from the Children's Education Advisory Service where appropriate (see Chapter 23 for information on children of Service families).

- 7.62 Staff from schools and FEIs **should** work with, and alongside, specialist professionals, where appropriate. ALNCos will provide a great deal of expertise, they may however determine that further advice and input from specialist professionals is required. (See Chapter 24 for more information on the ALNCos role.)
- 7.63 In some instances, agencies may refer the child or young person onto more specialist advice and/or assessments. This might be where the child or young person has particularly complex, severe and/or low incidence needs, where it is unclear what difficulties the child or young person is facing and where more information is needed surrounding the precise nature of the child's or young person's ALN and what ALP they need to meet those needs.
- 7.64 Specialist services may be required in the initial determination of the child's or young person's needs and how to meet those needs or where it is determined that further expertise is required having tried other interventions. It may be appropriate to refer to a specialist service when the needs of the child or young person requires input or advice which is beyond the ability of schools, FEIs or local authorities to provide, or additional advice/consultation/assessment/intervention is thought to be needed because the child or young person is not making progress as expected despite appropriate school or FEI based intervention. Specialist services can:
- support education settings to identify and meet the needs of all children and young people, such as providing advice and support on differentiating the curriculum and strategies;
 - provide whole school/FEI training on meeting the needs of different children and young people, for example, meeting communication needs

¹⁵ The Integrated Autism Service is an all age support service for children, providing additional support for children, young people and adults with autism and their parents. This national service is available on a regional basis and provides a range of advice and support. Information on the services in each region can be accessed on the ASDinfo Wales website. www.asdinfo.wales.co.uk.

by supporting a whole school/FEI approach to early language acquisition, differentiating the curriculum and implementing strategies;

- provide advice on IDPs and targets;
- support schools, FEIs and local authorities in identifying needs and providing advice on ALP to be delivered, or currently being delivered;
- provide more specialist assessments of need to determine support options;
- provide advice for those with sensory impairment issues;
- provide advice on the use of new or specialist strategies and materials and be a source of the most up to date practice;
- provide advice on specialist equipment, including training for schools and FEI staff on how to use it, maintain it, and how to support the child or young person to use it;
- support parents to help them understand their child's needs and how best to support them;
- build capacity to improve what schools and FEIs can deliver;
- provide a link with specialist third sector organisations;
- provide specific support during any transition a child or young person is undertaking, to help them make a successful transition and to advise the new settings and help ensure that relevant provisions are in place and are working effectively; and
- facilitate joint working by bringing together relevant professionals to ensure integrated planning and delivery.

7.65 Professionals will need to comply with data protection law when processing personal data (including sharing information with external agencies).

Considerations relating to ALP

7.66 Chapters 8 to 12 set out the duties on local authorities, schools and FEIs in relation to preparing IDPs, including duties about whether the ALP should be provided in Welsh, and ALP to be provided by health bodies (further information about duties on health bodies is in Chapter 15). Requirements and guidance on the content of IDPs can be found in Chapter 13 (and chapter 14 deals with the content of IDPs for looked after children).

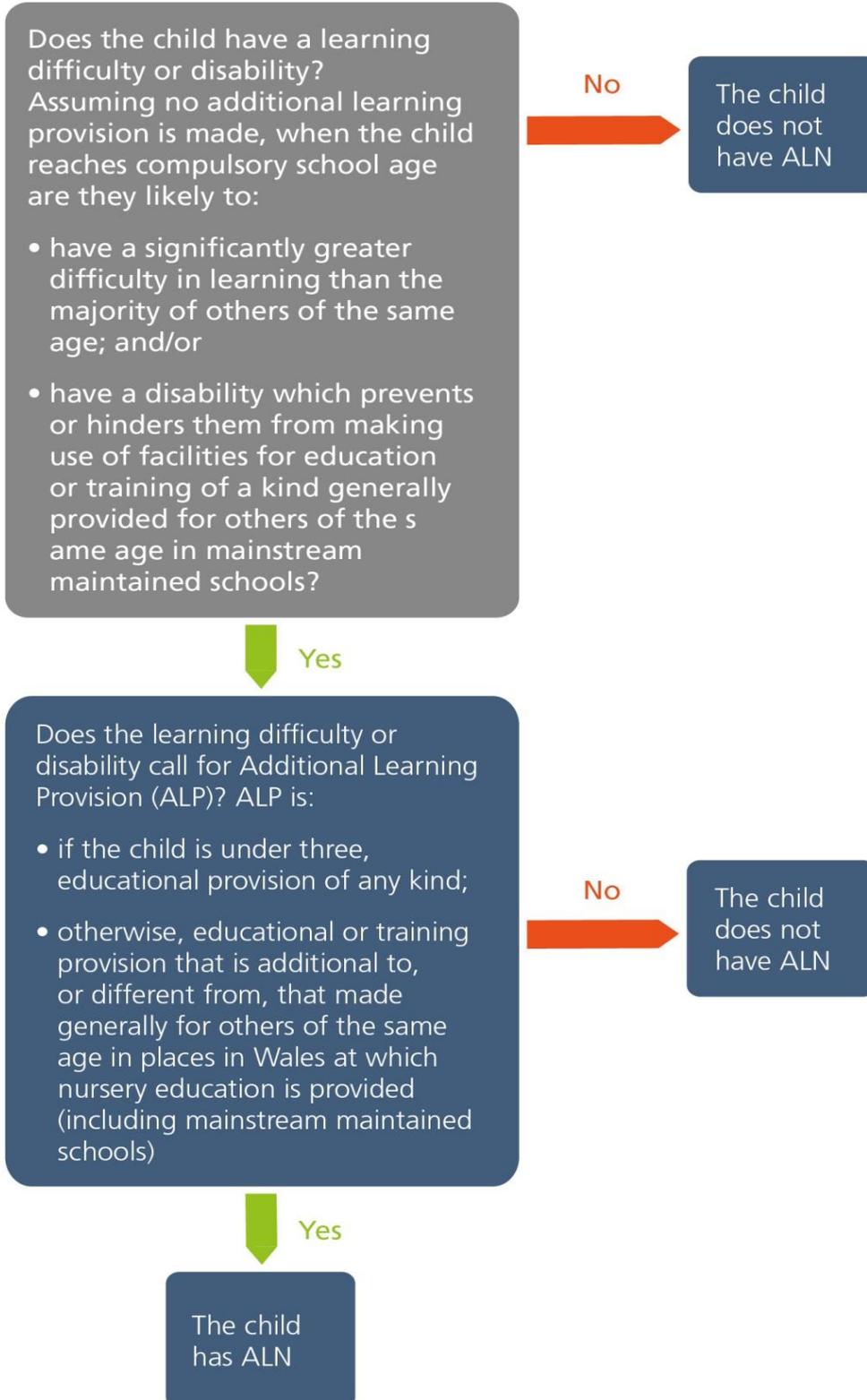
7.67 When determining what ALP is called for by the child or young person's needs, consideration **should** be given to the child or young person's learning style, how their ALN is impacting on the way they function, and whether any previous/ current ALP is having or has had a positive impact on improving their rate of progress.

7.68 In the case of young children, learning should provide the opportunity to develop their knowledge, skills and understanding of the world through exploratory play and experiences. Children with ALN might require ALP in the form of exploratory play, or other ALP to enable them to access appropriate play opportunities/activities.

- 7.69 If a child or young person has ALN and an IDP is necessary, then the ALP called for by the learning difficulty or disability needs to be identified, described in the IDP and secured by the body maintaining the IDP (except where an NHS body is to secure it instead). However, the Act does not give an entitlement to provision which goes beyond that which is called for by the child or young person's ALN. The body responsible for preparing and maintaining the IDP could take into account the efficient use of resources when deciding between different options for the ALP or different ways of delivering it, where each of those options or ways of delivery would meet the person's ALN and accord with any other restrictions under the Act which apply in the particular circumstances.

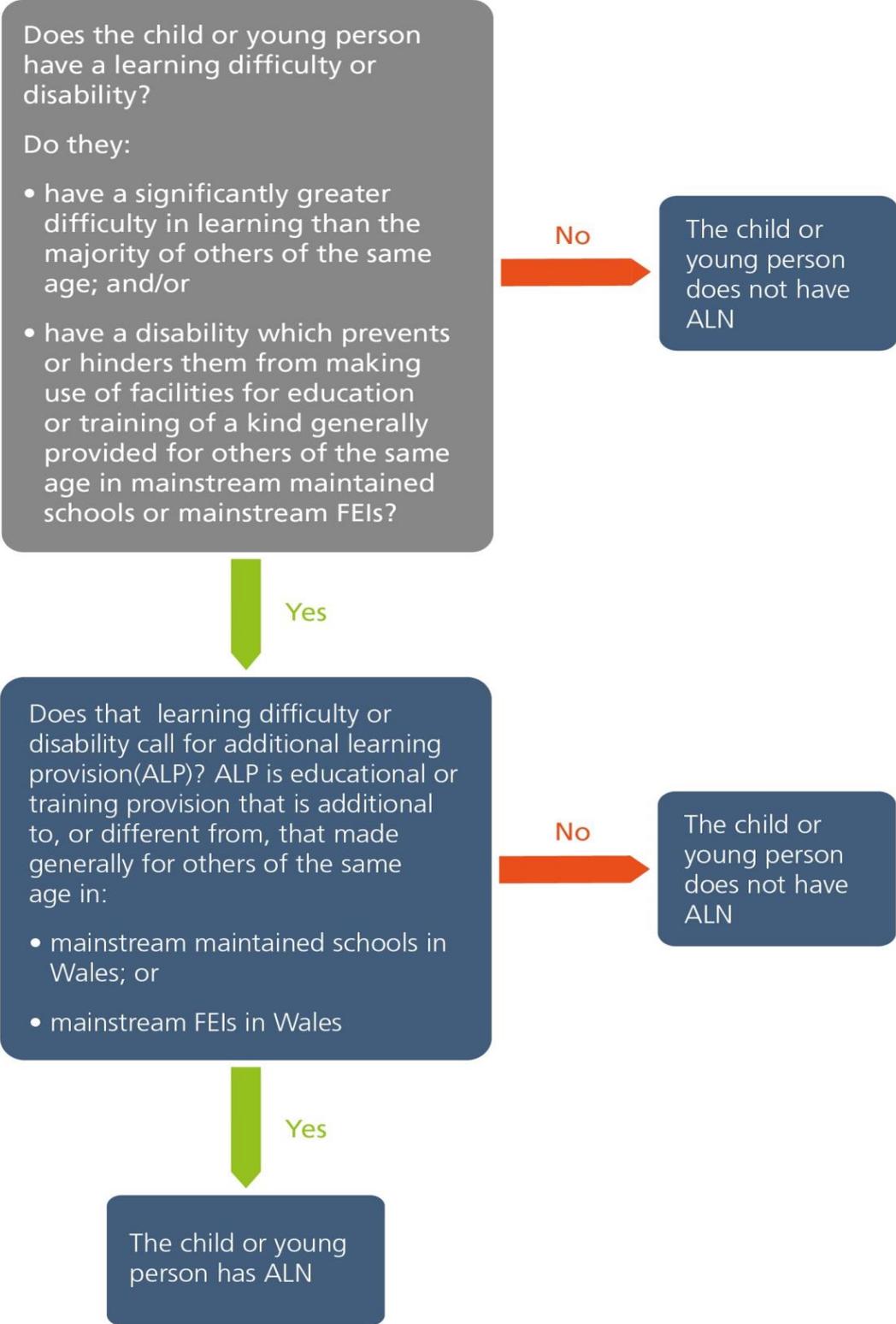
Does a child below compulsory school age have additional Learning needs?

This flowchart sets out the questions to be addressed when deciding whether a child under compulsory school age has ALN:



Does a child or young person have additional learning needs?

This flowchart sets out the questions to be addressed when deciding whether a child or young person has ALN (unless child is under compulsory school age)



Chapter 8: Duties on local authorities in relation to children under compulsory school age and not attending a maintained school in Wales

Introduction

- 8.1 This chapter describes the duties that apply to local authorities in relation to decisions about ALN, the preparation and maintaining of IDPs, and the securing of the ALP included in an IDP, for a child who is under compulsory school age and not attending a maintained school in Wales. .
- 8.2 IDPs for children under compulsory school age and not attending a maintained school will always be prepared and maintained by a local authority.
- 8.3 Where a child receives nursery education funded by the local authority at a non-maintained provider, the provider **should** help the local authority in the exercise of its functions.
- 8.4 This chapter includes guidance on various duties to notify and give documents. Generally, such duties would include notifying and giving documents to children, but only where they have the mental capacity to understand them. In the case of children under compulsory school age, this will never be the case, therefore this chapter does not refer to children in these instances. However, where there are references to notifying or giving documents to a child's parent, this is to include a case friend where a child has one.

A local authority's duty to decide whether a child under compulsory school age not attending a maintained school in Wales has ALN

- 8.5 Where it is brought to its attention, or otherwise appears to a local authority, that a child for whom it is responsible, or who it looks after, and who is:
- a) under compulsory school age, and
 - b) not attending a maintained school in Wales,
- may have ALN, the local authority **must**¹ decide whether the child has ALN unless any of the following circumstances apply:
- i. an IDP is already being maintained for that child;

¹ Section 13(1), 13(2), 13(4) 18(1) and 18(2) of the Act (although these duties and others referenced in this chapter apply in wider circumstances).

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- ii. the local authority has previously decided the issue and is satisfied that the child's needs have not changed materially since that decision and there is no new information which materially affects that decision;
 - iii. the child is looked after by another local authority² (in which case, they **must**³ refer the matter to the local authority that looks after the child);
 - iv. the child is looked after by the local authority but is in the area of a local authority in England.
- 8.6 The possibility that a child under compulsory school age has ALN might be "brought to the attention of" a local authority in a number of ways. It may start with a referral from one of a wide range of different agencies and professionals. For example, a provider of childcare or non-maintained nursery education might inform the local authority where it suspects a child has ALN. Alternatively, a health body might have formed the opinion that the child has or may have ALN, and brought this to the attention of the local authority in compliance with its duty in section 64 of the Act (see Chapter 15). Concerns might also be expressed by the child's parents. These concerns might be raised via the relevant non-maintained provider of nursery education or directly with the local authority, especially in the case of children not yet attending an education setting. Parents' observations of their child are often crucial to early identification. Local authorities and non-maintained nursery providers **should** be open and responsive to such expressions of concern and take account of any information provided.
- 8.7 It does not matter how the possibility that a child under compulsory school age may have ALN has been brought to the local authority's attention or how it otherwise appears to it that this is the case; if the local authority is aware of that possibility, then the duty to decide applies (subject to the exceptions listed in i-iv of paragraph 8.5). This might occur, for example, during the exercise of the local authority's other functions, such as its social services functions. (Guidance on the definition of ALN and identifying when a child may have ALN is set out in Chapter 7.)
- 8.8 The local authority **must**⁴ record the date on which it is brought to its attention or otherwise appears to it that the child has ALN. The local authority **must**⁵ also record a summary of how the possibility that the child has ALN has been brought to its attention or why it otherwise appears to it that the child may have ALN.

² See section 15 of the Act and Chapter 1 of the Code for the definition of a looked after child for the purposes of the Act.

³ Section 17 of the Act

⁴ Requirement imposed by the Code

⁵ Requirement imposed by the Code.

- 8.9 As part of the process of deciding whether the child has ALN, a local authority **must**⁶ seek advice from an educational psychologist. This advice **should** relate to:
- the educational, psychological or other features of the case which appear to be relevant to the child's educational needs (including their likely future needs);
 - how those features could affect the child's educational needs; and
 - the provision which may be appropriate for the child in light of those features of their case, whether by way of ALP or other provision.
- 8.10 Consideration **should** also be given as to whether the child already has any engagement with or support from other agencies and involve them as appropriate in the process of deciding whether the child has ALN and in preparing any IDP.
- 8.11 Where a local authority has a duty to decide whether a child has ALN, it **must**⁷ designate an officer as responsible for co-ordinating the actions required to make that decision and, if an IDP is subsequently required, to be responsible for preparing it. In the case of child who is looked after by the local authority, the officer designated **should** be the local authority's LACE co-ordinator.
- 8.12 The local authority **must**⁸ notify promptly the child's parent and in the case of looked after child, the independent reviewing officer, that it is deciding whether the child has ALN. This **should** be done or arranged by the co-ordinator. The notification given to the parent **must**⁹ contain:
- (a) the name and contact details of the co-ordinator;
 - (b) information about how to access the local authority's arrangements for providing people with information and advice about ALN and the ALN system¹⁰. This could be done by providing a local authority leaflet about the ALN system or the address of the local authority's relevant web pages and drawing attention to how to get further information and advice.
- 8.13 The notification **should** also provide an indication of the likely timescales for the process (taking account of the relevant deadline below.)
- 8.14 Where it is brought to the attention of a local authority by a parent that a child may have ALN but it has previously decided the issue and is satisfied that the child's needs have not changed materially since that decision and there is no new information which materially affects that decision, it **should** communicate

⁶ Requirement imposed by the Code. Educational Psychologists must be registered with the Health and Care Professional Council.

⁷ Requirement imposed by the Code

⁸ Requirement imposed by the Code

⁹ Requirement imposed by the Code

¹⁰ These are the arrangements that the local authority must make under section 9 of the Act.

this to the parent and **should** provide them with information and advice about ALN and the ALN system if it has not previously or recently done so.

- 8.15 As described in Chapter 3 there is a general duty to involve children and their parents in decisions that relate to any ALN they might have and the preparation of IDPs. Furthermore, putting the child at the heart of the process that identifies their ALN and determines their ALP is a fundamental objective of the ALN system. To fulfil this duty and objective, the co-ordinator **should** normally arrange a meeting or meetings, as appropriate, with the child's parent and, if appropriate, the child, to discuss and decide the child's needs and if required, prepare an IDP for them. Guidance on these meetings is provided in Chapter 18.

A local authority's decision that a child does not have ALN

- 8.16 Where the local authority decides that the child does not have ALN it **must**¹¹ notify the parent and in the case of a child looked by the local authority, the independent reviewing officer, of the decision and the reasons for that decision. The local authority **must**¹²:

- (a) make the decision, and
- (b) give the notification

promptly, and in any event within the period of 12 weeks from it being brought to the attention of, or otherwise appearing to, the local authority that the child may have ALN. The requirement to give the notification within the 12 week period does not apply if it is impractical for the local authority to do so due to circumstances beyond its control¹³.

- 8.17 As well as setting out the decision and the reasons for it, the notification given to the parent **must**¹⁴ contain:

- (a) the contact details of the local authority;
- (b) information about how to access the local authority's arrangements for providing people with information and advice about ALN and the ALN system¹⁵. This could be done by providing a local authority leaflet about the ALN system or the address of the local authority's relevant web pages and drawing attention to how to get further information and advice; details of the local authority's arrangements for the avoidance and resolution of disagreements¹⁶ and its independent advocacy services¹⁷; and

¹¹ Sections 13(3) and 18(3) of the Act.

¹² Requirement is imposed by the Code.

¹³ See Chapter 1 for more information how timescales in this Code must be interpreted.

¹⁴ Requirement imposed by the Code

¹⁵ These are the arrangements that the local authority must make under section 9 of the Act.

¹⁶ Under section 68 of the Act.

¹⁷ Under section 69 of the Act.

- (c) information about the right to appeal to the Education Tribunal against the decision.
- 8.18 The notification should also contain an outline of any action the local authority will undertake in light of its consideration to ensure the child's needs (which are not ALN) are met.
- 8.19 It might be helpful to offer an opportunity to the child's parent to discuss further.
- 8.20 A local authority decision that a child does not have ALN is appealable to the Education Tribunal – see Chapter 26.

A local authority's duty to prepare an IDP for a child under compulsory school age who is not attending a maintained school

- 8.21 If a local authority has decided that the child has ALN, it **must**¹⁸ prepare an IDP for the child unless the child is looked after and is not in the area of a local authority in Wales (for example, if the child has been placed on a long-term basis in England). (See Chapter 7 for information on the meaning of ALN, ALP and how ALN is identified; and Chapter 13 in relation to the content of IDPs.)
- 8.22 The local authority **must**¹⁹ consider whether ALP should be provided to the child in Welsh. If it decides that a particular kind of ALP should be provided in Welsh, the authority **must**²⁰ specify in the plan that it should be provided in Welsh.
- 8.23 Where, following a referral to an NHS body, the body identifies a relevant treatment or service likely to be of benefit in addressing the child's ALN, the local authority **must**²¹ describe the treatment or service in the IDP, specifying that it is ALP to be secured by the NHS body. The local authority **must**²² also specify in the IDP that the ALP to be secured by the NHS body should be provided in Welsh where the NHS body has so decided (see Chapter 15 for more information about this).
- 8.24 If the child's reasonable needs for ALP cannot be met unless the local authority also secures one or both of the following:
- (a) a place at a particular school or other institution;

¹⁸ Sections 14(1) – (2) and 19(1) – (2) of the Act

¹⁹ Sections 14(5) and 19(3) of the Act.

²⁰ Section 14(5) and 19(3) of the Act

²¹ Section 21(3) of the Act.

²² Section 21(4) of the Act.

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- (b) board and lodging, the local authority **must**²³ include a description in the IDP of the place or board and lodging (as the case may be). Also, a local authority preparing or maintaining an IDP for a child can also name a maintained school in Wales for the purposes of securing admission of the child to the school²⁴. Further information on this is covered in Chapter 11²⁵.
- 8.25 A local authority preparing a plan for a child has a power, in certain circumstances, to name a maintained school for the purpose of getting the child admitted to it. Local authorities are subject to a duty to favour mainstream maintained education for a child of compulsory school age. The sections of Chapter 11 dealing with these matters are also relevant where a local authority is preparing a plan for a child under compulsory school age who is not in a maintained school.
- 8.26 Local authorities **may**²⁶ arrange for the ALP, or any part of the ALP, described in a child's IDP to be made otherwise than in a school. Such arrangements are unlikely to be commonplace generally, but in relation to children under compulsory school age not attending a maintained school, this would be more common. However, a local authority **must not**²⁷ arrange for ALP for a child to be made otherwise than in a school unless it is satisfied that it would be inappropriate for the ALP to be made in a school.
- 8.27 The local authority **must**²⁸ prepare the IDP. Before it is finalised, the local authority **should** give the parent an opportunity to comment on a draft of it and **should** encourage them to raise any concerns as soon as possible. The local authority **should** consider any concerns and act upon them as required, which may be to update the draft IDP, or explain decisions or other matters further.
- 8.28 Once prepared, the local authority **must**²⁹ give a copy of the IDP to the child's parent and if the child is looked after by the local authority, the independent reviewing officer. The local authority **must**³⁰ make the decision on ALN, prepare the plan and give the copy of the plan promptly and in any event within the period of 12 weeks from it being brought to the attention of, or otherwise appearing to, the local authority that the child may have ALN.

²³ Sections 14(6) – (8) and 19(4) – (6) of the Act.

²⁴ Section 48 of the Act.

²⁵ Although Chapter 11 covers local authority duties in respect of children of compulsory school age not attending a maintained school, the sections of that chapter dealing with these matters are also relevant where the local authority is preparing a plan for a child below compulsory school age.

²⁶ Section 53(1) of the Act

²⁷ Section 53(2) of the Act.

²⁸ Sections 14(1) - (2) and 19(1) – (2) of the Act.

²⁹ Section 22(1) of the Act.

³⁰ Requirement imposed by the Code.

- 8.29 The requirement to give the copy of the IDP within the 12 week period does not apply if it is impractical for the local authority to do so due to circumstances beyond its control³¹.
- 8.30 The local authority **must**³² also give the child's parent:
- (a) the contact details of the local authority;
 - (b) information about how to access the local authority's arrangements for providing people with information and advice about ALN and the ALN system.³³ This could be done by providing a local authority leaflet about the ALN system or the address of the local authority's relevant web pages and drawing attention to how to get further information and advice;
 - (c) details of the local authority's arrangements for the avoidance and resolution of disagreements³⁴ and its independent advocacy services³⁵; and
 - (d) information about the right to appeal to the Education Tribunal about particular aspects of the IDP.

A local authority's duty to maintain an IDP and secure the ALP

- 8.31 Where a local authority has prepared an IDP for the child, it **must**³⁶ maintain that IDP.
- 8.32 The local authority's duty to maintain an IDP may cease in particular circumstances, which are covered in Chapter 21.
- 8.33 Where a local authority maintains an IDP, it **must**³⁷ secure the ALP and any other provision (i.e. a place at a particular school or other institution or board and lodging to meet the reasonable needs of the child for ALP) described in it. This does not apply to any ALP which is a relevant treatment or service identified by an NHS body, in which case the NHS body **must**³⁸ secure the ALP. If the IDP specifies that a particular kind of ALP should be provided in Welsh, the local authority (or NHS body where applicable) **must**³⁹ take all reasonable steps to secure that it is provided in Welsh.

³¹ See Chapter 1 for more information how timescales in this Code must be interpreted.

³² Requirement imposed by the Code.

³³ These are the arrangements that the local authority must make under section 9 of the Act.

³⁴ Under section 68 of the Act.

³⁵ Under section 69 of the Act.

³⁶ Sections 14 and 19 of the Act.

³⁷ Section 14(10) and 19(7) of the Act.

³⁸ Sections 20(5) and 21(5) of the Act.

³⁹ Sections 14(10)(c), 19(7)(c), 20(5)(c) and 21(5)(b) of the Act.

- 8.34 The local authority **must not**⁴⁰ charge the child or their parents for the ALP described in the IDP, nor for anything else it secures for the child under Part 2 of the Act.
- 8.35 Where a child receives nursery education funded by the local authority at a non-maintained provider, the provider **should** help the local authority to secure the ALP described in the IDP.
- 8.36 If the child later becomes a registered pupil at a maintained school in Wales, the local authority **may**⁴¹ direct the school to maintain the IDP. However, the local authority **must not**⁴² direct a school to maintain an IDP where it includes other provision which the local authority is required to secure (i.e. a place at a particular school or institution or board and lodging) or if the child is dual registered or if the child is looked after.

A local authority's duty to review an IDP

- 8.37 A local authority is subject to duties to review an IDP⁴³ (see Chapter 16 for more information.)

The Early Years ALN lead officer

- 8.38 Every local authority **must**⁴⁴ designate an officer to have responsibility for co-ordinating the local authority's functions under Part 2 of the Act in relation to children under compulsory school age who are not attending maintained schools. This is the Early Years ALN Lead Officer⁴⁵ ('the Early Years ALNLO').
- 8.39 The local authority functions include:
- deciding whether children have ALN⁴⁶, the preparation and maintenance of IDPs⁴⁷ (including securing the ALP specified in the IDP), and the provision of information about IDPs⁴⁸ (these functions, in their application to children below compulsory school age who are not attending a maintained setting, are dealt with above in this chapter);
 - the review and revision of IDPs⁴⁹ (see Chapter 16);

⁴⁰ Section 49 of the Act. For these purposes, "parent" does not include a parent who is not an individual.

⁴¹ Section 14(4) of the Act.

⁴² Sections 14(9), 19 and 30(7) of the Act.

⁴³ Sections 23 and 24 of the Act.

⁴⁴ Section 62(1) of the Act.

⁴⁵ Section 62(2) of the Act.

⁴⁶ Sections 13(1) and 18(1) of the Act.

⁴⁷ Sections 14 and 19 of the Act.

⁴⁸ Section 22 of the Act.

⁴⁹ Sections 23 and 24 of the Act.

- the review of ALP arrangements⁵⁰ (see Chapter 5); and
- making arrangements to provide advice and information and the duty to take reasonable steps to make the arrangements known to (amongst others) parents and case friends of children in its area⁵¹ (see Chapter 6).

Experience and expertise of the Early Years ALNLO

8.40 The Early Years ALNLO **should** have experience of and expertise in:

- working closely with children in the early years who have ALN and their families; and
- dealing with the provision of services for meeting the ALN of these children, across a range of settings.

8.41 The local authority **should**, therefore, only designate an Early Years ALNLO if it considers to be suitably qualified and experienced to deliver the expectations of the role as set out in paragraphs 8.42 to 8.47 of this chapter. Specifically, the Early Years ALNLO **should**:

- be capable of providing overall strategic direction to ensure the local authority is able to meet its statutory duties in relation to children under compulsory school age who are not yet in a maintained school; and
- be able to act as a source of expertise for providers of childcare and non-maintained nursery education and their umbrella organisations on matters relating to ALN.

Role of the Early Years ALNLO

8.42 The role of the Early Years ALNLO is a strategic one and a local authority **should** include the following responsibilities within the role :

- (a) collaboration with relevant persons and other agencies;
- (b) raising awareness of the ALN system;
- (c) promoting early identification and prevention; and
- (d) a range of other strategic responsibilities.

8.43 Guidance on these matters is set out below.

a) *Collaboration*

8.44 The Early Years ALNLO **should** be expected to establish effective collaborative working practices and arrangements with others who work with children below compulsory school age who are not attending a maintained school within the local authority area. This could include providers of nursery education, childcare providers, relevant umbrella organisations and any other

⁵⁰ Section 63 of the Act.

⁵¹ Section 9 of the Act.

agencies or services that work closely with such children and their families (for example, health bodies and practitioners including health visitors, GPs, and DECLOs; Flying Start; Families First; social services; and school ALNCOs). The Early Years ALNLO **should** be expected to promote collaboration between these persons and the local authority, including to support successful transitions for children into school.

b) Raising awareness of the ALN system

8.45 The purpose of the collaborative working encouraged by the Early Years ALNLO between the agencies and persons in paragraph 8.44 is to raise awareness of the ALN system and how it applies to children under compulsory school age who are not yet in a maintained school. Responsibilities **should** include:

- raising awareness about the ALN system in relation to children under compulsory school age who are not yet attending a maintained nursery or school;
- providing support, advice and guidance in relation to ALN matters for such children;
- promoting the local authority's arrangements for providing advice and information about ALN to parents, case friends of children and others as appropriate (see Chapter 6 for detailed guidance on local authorities arrangements for providing advice and information);
- promoting awareness of the duty on health bodies to notify the responsible local authority or local authority that looks after a child where it forms the opinion that a child under compulsory school age has, or probably has, ALN (see Chapter 15 for more information);
- making arrangements for training about the ALN system and how it applies to children under compulsory school age who are not yet attending a maintained school;
- providing guidance, advice, support and expertise directly to providers of childcare and non-maintained nursery education to assist their staff in identifying children who may have ALN and meeting the needs of children attending their settings – this includes in relation to ALN and developmental delay (advice and guidance could be provided verbally within settings or over the telephone, via written guidance); and
- providing guidance and advice directly to providers of childcare and non-maintained nursery education on how they can help the local authority in the exercise of its functions, including in relation to the delivery of the ALP set out in a child's IDP.

c) Promoting early identification and prevention

8.46 The Early Years ALNLO **should** have a pro-active role in working with and supporting providers of childcare and non-maintained nursery education, health bodies, social services within the local authority (and any others that work closely with children) to develop their awareness, skills and knowledge of ALN. The purpose of this is to enable them to identify potential ALN early, with a view to appropriate early intervention being put in place quickly to

address ALN or other developmental needs and prevent the development or escalation of ALN. Responsibilities **should** include disseminating information and promoting knowledge and skills amongst the early years workforce to:

- identify developmental delay and ALN, particularly lower level ALN;
- encourage appropriate referrals to the local authority and discourage inappropriate ones, for example developmental delay which does not amount to ALN but which might become so if not addressed early; and
- meet the needs of children with ALN and other developmental needs.

d) Strategic responsibilities

8.47 The Early Years ALNLO **should**:

- have a role in the strategic planning for and allocation of any budgets and/or funding the authority has for children under compulsory school age who are not yet in a maintained school;
- be directly involved with the development of the authority's policy on ALN provision for children under compulsory school age who are not yet in a maintained school;
- develop and deliver training to settings on matters related to ALN, engaging other professionals where appropriate for specialist input; and
- maintain their own continuing professional development in the field of ALN to remain an authoritative and expert source of knowledge.

Chapter 9: Duties on maintained schools and local authorities in relation to children and young people at maintained schools in Wales

Introduction

- 9.1 IDPs for pupils attending a maintained school in Wales may be prepared and maintained by the school, or by the local authority depending on the circumstances. In most instances, the maintained school will be responsible for deciding whether a pupil has ALN and for preparing and maintaining an IDP.
- 9.2 A local authority will normally only decide whether a pupil at a maintained school has ALN and prepare and maintain an IDP in instances where the child or young person's needs are more severe or complex or are of low incidence. The main exceptions are when a child is looked after by a local authority in Wales or the child or young person attends more than one school or other institution ("dual registration/enrolment") - in these cases, the local authority is usually responsible for decisions and maintaining an IDP irrespective of the needs).

A maintained school's duty to decide if a pupil has ALN

- 9.3 Where it is brought to its attention, or otherwise appears to a maintained school that a pupil at the school may have ALN, the school **must**¹ decide whether the pupil has ALN, unless any of the following circumstances apply:
- (a) an IDP is already being maintained for that pupil;
 - (b) the school has previously decided the issue and is satisfied that the pupil's needs have not changed materially since that decision and there is no new information which materially affects that decision;
 - (c) the pupil is a young person who does not consent to the decision being made;
 - (d) the child or young person is a registered pupil at another school in Wales or England (including independent schools), or is an enrolled student at an FEI in Wales or England ("dual-registration"), and a local authority in Wales is responsible for the child or young person². Where they are dual-registered the governing body **must**³ refer the case to the responsible local authority, (see paragraphs 9.39 – 9.48 below on referrals to the local authority);

¹ Sections 11(1), 11(3) and 11(5) of the Act.

² See Chapter 1 for more details on children and young people for whom a local authority is responsible.

³ Section 30(2) of the Act.

- (e) the pupil is a child who is looked after by a local authority in Wales and the pupil is not in the area of a local authority in England. The school **must**⁴ refer the matter to the local authority that looks after the child (see paragraphs 9.39 – 9.48 below on referrals to the local authority);
 - (f) the pupil is subject to a detention order (see Chapter 22);
 - (g) a local authority in England maintains an Education, Health and Care (EHC) Plan for the pupil. (This would only be relevant if the pupil is in the area of a local authority in England⁵.)
- 9.4 Where a school has a duty to decide whether a pupil has ALN, it **must**⁶:
- (a) designate a person to be responsible for co-ordinating the actions required to make that decision and, if an IDP is subsequently required, to be responsible for preparing it. This could be, but need not be, the ALNCo;
 - (b) record the date on which it is brought to its attention, or otherwise appears to it that a pupil may have ALN;
 - (c) record the date on which the pupil, if a young person, consented to the decision being made;
 - (d) record a summary of how the possibility that the pupil has ALN has been brought to its attention or why it otherwise appears to the school that the pupil may have ALN.
 - (e) give the relevant notification referred to in paragraphs 9.6 and 9.7 below.
- 9.5 The possibility that a pupil has ALN might be “brought to the attention of” the school by the pupil themselves, by a parent or other family member, or by an external body or professional, such as the local authority. It does not matter how the possibility that a pupil may have ALN has been brought to the school’s attention or how it otherwise appears to it that this is the case; if the school is aware of that possibility, then the duty to decide applies (subject to the exceptions listed above). (Guidance on the definition of ALN and identifying when a child or young person may have ALN is set out in Chapter 7.)
- 9.6 If the pupil is a child, the school **must**⁷ notify the child and the child’s parent that it is required to decide whether the pupil has ALN.
- 9.7 If the pupil is a young person, the school **must**⁸ do the following promptly (from when the possibility of the young person having ALN has been brought to its attention or otherwise appeared to it):

⁴ Section 17 of the Act. It must also do this if the child is looked after and in the area of a local authority in England.

⁵ See Chapter 1 for more details about when a child is in the area of a local authority in Wales or England.

⁶ Requirement imposed by the Code

⁷ Requirement imposed by the Code

⁸ Requirement imposed by the Code.

- (a) notify the young person that it has been brought to its attention or otherwise appears to it that the young person may have ALN;
- (b) seek the young person's consent to the decision being made and, should the decision be that the young person has ALN, to an IDP being prepared and maintained; and
- (c) inform the young person of the consequences of consenting and not consenting to the decision being made.

9.8 In either case, the notification **must**⁹ contain:

- the name and contact details of the co-ordinator;
- information about how to access the responsible local authority's arrangements for providing people with information and advice about ALN and the ALN system¹⁰. This could be done by providing a local authority leaflet about the ALN system or the address of the local authority's relevant web pages and drawing attention to how to get further information and advice.

9.9 The notification **should** also provide an indication of the likely timescales for the process (taking account of the relevant deadline below.)

9.10 Where a young person does not consent to the decision being taken, this **must**¹¹ be recorded. Schools **should** have appropriate procedures in place to facilitate this, which might include the young person signing to confirm that they are withholding consent.

9.11 Where it is brought to the attention of a school by a child, a child's parent or a young person, that a child or young person may have ALN but it has previously decided the issue and is satisfied that the child or young person's needs have not changed materially since that decision and there is no new information which materially affects that decision, it **should** communicate this to the child, child's parent or young person and **should** provide them with information and advice about ALN and the ALN system if it has not previously or recently done so.

9.12 Consideration **should** be given as to whether the pupil already has any engagement with or support from other agencies and involve them as appropriate in the process of deciding whether the pupil has ALN and in preparing any IDP. (Further guidance on the role of different agencies and professionals is provided in Chapter 7.)

⁹ Requirement imposed by the Code

¹⁰ These are the arrangements that a local authority must make under section 9 of the Act. For the purposes of the provisions of this Code on information and advice arrangements under section 9, if the pupil is in the area of a local authority in England, the responsible local authority is the local authority that maintains the school.

¹¹ Requirement imposed by the Code

- 9.13 As described in Chapter 3 there is a general duty to involve children, their parents and young people in decisions that relate to any ALN they might have and the preparation of IDPs. Furthermore, putting the child or young person at the heart of the process that identifies their ALN and determines their ALP is a fundamental objective of the ALN system. To fulfil this duty and objective, the co-ordinator **should** normally arrange a meeting or meetings, as appropriate, with the child and the child's parent, or the young person, to discuss and decide the pupil's needs and if required, prepare an IDP for them. (Guidance on these meetings is provided in Chapter 18).

A maintained school's decision that a child or young person does not have ALN

- 9.14 Where the school decides that the pupil does not have ALN it **must**¹² notify the child and their parent, or the young person, of the decision and the reasons for that decision. That decision **must**¹³ be taken and the notification given promptly and in any event within the period of 35 school days from:
- (a) in the case of a child, it being brought to the attention of, or otherwise appearing to, the school that the pupil may have ALN;
 - (b) in the case of a young person, the young person consenting to the decision being made.
- 9.15 The requirement to make the decision and give the notification within 35 school days does not apply if it is impractical for the school to do so due to circumstances beyond its control¹⁴.
- 9.16 As well as setting out the decision and the reasons for it, the notification **must**¹⁵ contain:
- (a) the contact details of the school;
 - (b) information about how to access the responsible local authority's arrangements for providing people with information and advice about ALN and the ALN system.¹⁶ This could be done by providing a local authority leaflet about the ALN system or the address of the local authority's relevant web pages and drawing attention to how to get further information and advice;
 - (c) details of the responsible local authority's arrangements for the avoidance and resolution of disagreements¹⁷ and its independent advocacy services¹⁸; and

¹² Section 11(4) of the Act.

¹³ Requirement imposed by the Code.

¹⁴ See Chapter 1 for more information how timescales in this Code must be interpreted.

¹⁵ Requirement imposed by the Code

¹⁶ These are the arrangements that the local authority must make under section 9 of the Act.

¹⁷ Under section 68 of the Act.

¹⁸ Under section 69 of the Act.

(d) information about the right to request the responsible local authority to reconsider the matter¹⁹ and the contact details for the responsible local authority.

9.17 The notification **should** also outline what action the school will undertake in light of its consideration to ensure the pupil's needs (which are not ALN) are met. This might include differentiated classroom teaching strategies.

9.18 It might be helpful to offer an opportunity to the child, their parent, or the young person, to discuss further.

A maintained school's duty to prepare an IDP for a pupil

9.19 If a school decides that the pupil has ALN, it **must**²⁰ prepare an IDP for that pupil unless any of the following circumstances apply:

- (a) the school considers that the pupil has ALN that may call for ALP it would not be reasonable for it to secure, or that it cannot adequately determine the extent or nature of the ALN, or that it cannot adequately determine the ALP; and the school refers the pupil's case to the responsible local authority to decide;
- (b) the IDP is about a young person who does not consent to the decision being made (see Chapter 3 for information on the consent of young people);
- (c) the pupil is in the area of a local authority in England and the school requests that local authority to secure an EHC needs assessment for the child or young person²¹;
- (d) a local authority in England maintains an EHC plan for the pupil.

9.20 If following a school's request that a local authority in England secures an EHC needs assessment for a pupil, the school is notified by the local authority in England that it is not required to secure an EHC plan for the pupil, the school **must**²² prepare an IDP for the pupil unless the IDP is for a young person who does not consent to the decision being made.

9.21 The school **must**²³ consider whether ALP should be provided to the pupil in Welsh and if it decides that a particular ALP should be provided in Welsh, the body **must**²⁴ specify in the plan that it should be provided in Welsh.

9.22 Where, following a local authority referral to an NHS body, the body identifies a relevant treatment or service likely to be of benefit in addressing the pupil's

¹⁹ This is the right under section 26 of the Act.

²⁰ Section 12(1) and 12(2) of the Act

²¹ Under section 36(1) of the Children and Families Act 2014

²² Section 12(5) of the Act.

²³ Section 12(6) of the Act

²⁴ Section 12(6) of the Act

ALN, the school **must**²⁵ describe the treatment or service in the IDP, specifying that it is ALP to be secured by the NHS body. The school **must**²⁶ also specify in the IDP that the ALP to be secured by the NHS body should be provided in Welsh where the NHS body has so decided (see Chapter 15 for more information about this).

- 9.23 The school **must**²⁷ prepare the IDP. Before it is finalised, the school **should** give the child, child's parent or young person an opportunity to comment on a draft of the IDP before it is finalised and **should** encourage them to raise any concerns as soon as possible. The school **should** consider any concerns and act upon them as required, which may be to update the IDP, or explain decisions or other matters further.
- 9.24 Once prepared, the school **must**²⁸ give a copy of the IDP to the child, their parent or the young person. The school **must**²⁹ make the decision on ALN, prepare the plan and give a copy of it promptly and in any event within the period of 35 school days³⁰ from:
- (a) in the case of a pupil who is a child, it being brought to the attention of, or otherwise appearing to, the school that the pupil may have ALN or,
 - (b) in the case of a pupil who is a young person, the pupil consenting to the decision being made.
- 9.25 The requirement to make the decision and give a copy of the IDP within the period of 35 school days does not apply if it is impractical for the school to do so due to circumstances beyond its control³¹.
- 9.26 The school **must**³² also give the child, child's parent or young person:
- (a) the contact details of the school;
 - (b) information about how to access the responsible local authority's arrangements for providing people with information and advice about ALN and the ALN system³³. This could be done by providing a local authority leaflet about the ALN system or the address of the local authority's relevant web pages and drawing attention to how to get further information and advice;

²⁵ Section 21(3) of the Act.

²⁶ Section 21(4) of the Act.

²⁷ Sections 12(1) of the Act is the duty to prepare the IDP.

²⁸ Section 22(1) of the Act.

²⁹ Requirement imposed by the Code.

³⁰ This timescale requirement is imposed by the Code. The duty to give a copy of the IDP is in section 22(1) of the Act.

³¹ See Chapter 1 for more information how timescales in this Code must be interpreted.

³² Requirement imposed by the Code

³³ These are the arrangements that the local authority must make under section 9 of the Act.

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- (c) details of the responsible local authority's arrangements for the avoidance and resolution of disagreement arrangements³⁴ and its independent advocacy services³⁵; and
- (d) information about the right to request that the responsible local authority reconsiders or takes over responsibility for maintaining the IDP and the contact details for the responsible local authority³⁶.

A maintained school's duty to take all reasonable steps to secure ALP for a pupil with ALN but without an IDP

- 9.27 If a pupil at a maintained school in Wales has ALN but an IDP is not being maintained for them, the school **must**³⁷, in exercising its functions in relation to the school, take all reasonable steps to secure that the ALP called for by the pupil's ALN is made.
- 9.28 This pupil might not have an IDP, for example, because:
- the school is preparing an IDP for the pupil;
 - the school has made a referral to a local authority and the authority is preparing an IDP;
 - the pupil is a young person who does not consent to a decision about ALN being made or a plan being prepared or maintained;
 - an English local authority is carrying out an EHC needs assessment or preparing an EHC plan for the pupil (following a request from the school or the local authority that maintains it); or
 - the child or young person has an EHC plan.
- 9.29 The school will need to determine what it must do to meet this duty for each pupil who has ALN in light of the particular circumstances.
- 9.30 Where the pupil has an EHC Plan maintained by a local authority in England, the EHC Plan will set out their assessed needs and specify special educational provision to meet them. In these circumstances, it might be that the school can fulfil its duty, by taking all reasonable steps to help that local authority secure the special educational provision specified in the EHC Plan.
- 9.31 In cases where it is being decided whether the learner has ALN or an IDP is being prepared (or, in respect of pupils in the area of a local authority in England, if an EHC assessment is being considered or conducted or an EHC plan is being prepared), an initial assessment ought to have been made of the pupil's needs. The school ought to have information from the child, their

³⁴ Under section 68 of the Act.

³⁵ Under section 69 of the Act.

³⁶ These are the rights under sections 27 and 28 of the Act.

³⁷ Section 47(1) – (2) of the Act

parents or young person and possibly advice from agencies or professionals, such as an educational psychologist (whether specifically in relation to the pupil, or more generally about the needs the pupil appears to have) and the views of, and evidence from, teaching staff at the school in relation to the pupil. That evidence could include how the pupil has responded to particular interventions (including differentiated teaching) in the past. In some cases, the person may even have a plan which was recently maintained, for example, where the person has moved from England to Wales and the local authority in England had maintained an EHC plan.

9.32 From this range of information and advice, the school ought to have a broad understanding of the type of ALN the child or young person has and **should**:

- make arrangements for letting all staff who are involved with the pupil know about those needs;
- involve the ALNCo in advising teaching staff on appropriate teaching approaches to use in relation to the pupil with a view to meeting the apparent needs;
- make appropriate adjustments to the school environment to improve the child or young person's access to education;
- provide appropriate additional and/or different support for the child or young person from the resources available to it, including access to input from external specialists; and,
- monitor the impact of support provided for the child or young person and alter it if it becomes apparent that this would be appropriate.

9.33 When an IDP is being prepared, the ALP called for by the needs will be identified during that process. The ALP, or particular types of ALP, might be identified early in the process and some time before the IDP is complete. Where that is the case, schools **should not** wait until the IDP is finalised before taking steps towards securing the ALP that has been identified for a child.

A maintained school's duty to maintain an IDP and secure the ALP

9.34 Where a school has prepared an IDP for a pupil, it **must**³⁸ maintain that IDP unless either of the following circumstances apply:

- (a) the IDP is for a young person and the young person does not consent to the IDP being maintained;
- (b) a local authority in England maintains an EHC Plan for the pupil.

9.35 The school's duty to maintain an IDP may cease for other reasons, including where the duty to maintain an IDP transfers to another body (for example, when a pupil becomes looked after by a local authority, or becomes dual

³⁸ Section 12(1) and 12(2) of the Act

registered). Information on transfers of IDPs is covered in Chapter 20 and information on ceasing to maintain an IDP is covered in Chapter 21.

- 9.36 Where a school maintains a plan, it **must**³⁹ secure the ALP described in it, except any ALP which is a relevant treatment or service identified by an NHS body, in which case the NHS body **must**⁴⁰ secure the ALP. If the IDP specifies that a particular kind of ALP should be provided in Welsh, the school (or NHS body where applicable) **must**⁴¹ take all reasonable steps to secure that it is provided in Welsh.
- 9.37 The school **must not**⁴² charge the child, their parents or the young person for the ALP described in the IDP, nor for anything else it secures for the child or young person under Part 2 of the Act.

Review of the IDP

- 9.38 A school is subject to duties⁴³ to review an IDP (see Chapter 16 for more information.)

Referrals from a maintained school to a local authority

- 9.39 Where a school is subject to the duty to decide whether one of its registered pupils has ALN, it **may** refer a pupil's case to the responsible local authority⁴⁴ on the grounds that it considers that the pupil has ALN and that⁴⁵:
- the ALN may call for ALP that it would not be reasonable for it to secure,
 - it cannot adequately determine the extent or nature of the pupil's ALN, or
 - it cannot adequately determine the ALP that the pupil's ALN may call for.
- 9.40 Where it is brought to the attention of, or otherwise appears to, a maintained school in Wales that one of its registered pupils may have ALN, but does not have an IDP, the school **must**⁴⁶ refer the pupil's case to the responsible local authority where the pupil is:

³⁹ Section 12(7)(a) of the Act

⁴⁰ Sections 20(5) and 21(5) of the Act

⁴¹ Sections 12(7)(b), 20(5) and 21(5) of the Act

⁴² Section 49 of the Act. For these purposes, "parent" does not include a parent who is not an individual.

⁴³ Section 23 of the Act.

⁴⁴ This can only be done where the pupil is in the area of a local authority. If the pupil is in the area of a local authority in England, the school may request the local authority in England to secure an EHC assessment: section 12(2)(c) of the Act.

⁴⁵ Section 12(2)(a) of the Act.

⁴⁶ Sections 30(1) – (2) and 17 of the Act respectively.

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- (a) a child or young person who is a registered pupil at another school in Wales or England (including independent schools), or is an enrolled student at an FEI in Wales or England, and is to be provided with education or training at both institutions (“dual-registration”), in which case, the referral is to the responsible local authority; or
 - (b) a child looked after by a local authority in Wales, in which case the referral is to the local authority that looks after the child.

9.41 Where the school becomes aware that there is a ground for referral to the local authority of a pupil’s case, it **should** act promptly to refer the case. It ought to be able to do so immediately in cases of dual registration or a looked after child. In the other cases (where the school is subject to the duty to decide until it makes the referral), the school ought to be able to make the referral within 20 school days from:

- in the case of a pupil who is a child, the date on which it is brought to its attention, or otherwise appears to it that the pupil has ALN, or,
- in the case of a pupil who is a young person, the date on which it obtains the pupil’s consent to the decision being made.

9.42 When making such a referral under paragraph 9.40, the school **should** notify the child and child’s parent or the young person, that it is doing so. At the same time, in the case of a young person, the school **should** also seek the consent of the young person to a decision being made about whether they have ALN and then inform the local authority whether consent has been received.

9.43 Occasionally, the grounds for a referral under paragraph 9.39 may only emerge later in the process of deciding whether the pupil has ALN or preparing an IDP. For example, it might only be when some advice is received from a specialist service that the school realises that the nature of the pupil’s ALN is more extensive than they had thought, or that the pupil requires ALP which it would not be reasonable for it to secure. Where the grounds for referral emerge much later in the process, the school **may** still refer the matter to the local authority, but if it does so, the school **should** act promptly to do so to minimise the delay to an IDP being put in place.

9.44 The circumstances of the school (i.e. its location, size, budget, experience etc.) could affect the school’s view on whether it would be reasonable for it to secure the ALP. For example, where the pupil:

- has a low incidence condition / rare condition which requires specialism that the school cannot provide;
- requires regular advice and support from external agencies which is over and above that which can be reasonably arranged and accessed by the school;
- requires equipment which can only be used by one pupil or cannot be reused or is beyond the reasonable resources of the school; or
- requires very intensive daily support which cannot be reasonably funded or secured by the school’s budget.

- 9.45 Local authorities **should** establish, in consultation with maintained schools and any other persons they deem appropriate, and publish a set of principles they will apply when determining whether it is reasonable for a school to secure the ALP required by a child or young person or whether the authority ought to do so. Principles **should** relate to:
- the extent and duration of advice from external specialists that is likely to be unreasonable for a school to secure;
 - the equipment that is likely to be unreasonable for a school to provide; and
 - the intensity and duration of support and scale of internal engagement of staff (including the ALNCo) at the school that is likely to be unreasonable for a school to provide.
- 9.46 Before referring a case to the local authority under paragraph 9.39, the school **should** consider consulting an educational psychologist to see whether this is appropriate.
- 9.47 Where a case is referred to a local authority under paragraph 9.39 or paragraph 9.40 the local authority's duty to decide⁴⁷ (dealt with below) applies.
- 9.48 Where a school refers an ALN decision to the local authority, it **should** provide the local authority with any information it holds which is relevant to the local authority's decision as to whether or not the pupil has ALN. This includes any action already taken to meet the needs of the pupil, such as any resources or special arrangements put in place. It would also include any existing reports or written advice received from external agencies as well as whether a young person has consented to a decision being made.

A local authority's duty to decide whether a pupil of a maintained school has ALN

- 9.49 Where it is brought to its attention or otherwise appears to a local authority that a child or young person registered as a pupil at a maintained school in Wales for whom it is responsible or a child looked after by it, may have ALN, the local authority **must**⁴⁸ decide whether or not the pupil has ALN, unless any of the following circumstances apply:
- (a) an IDP is already being maintained for the pupil;
 - (b) the local authority has previously decided the issue and is satisfied that the pupil's needs have not changed materially since that decision and there is no new information which materially affects that decision;

⁴⁷ Section 13 (by virtue of section 30(2) in respect of a dual registered child or young person) and section 18 of the Act in respect of a looked after child.

⁴⁸ Sections 13(1), 13(2), 13(4), 18(1) and 18(2) of the Act

- (c) the local authority is satisfied that the question of whether or not the pupil has ALN is being decided by the school (under section 11 of the Act);
 - (d) the pupil is a young person who does not consent to the decision being made;
 - (e) the pupil is a child who is looked after by another local authority, in which case the local authority **must**⁴⁹ refer the matter to the local authority that looks after the child;
 - (f) the child is looked after by the local authority but is in the area of a local authority in England;
 - (g) the pupil is subject to a detention order (although the local authority may have a duty to decide under different provisions – see Chapter 22).
- 9.50 Furthermore, where a child or young person, or in the case of a child, the child's parent, requests that the local authority reconsiders a decision made by a maintained school in Wales about whether a child or young person has ALN (or has refused to make a decision about that matter) the local authority **must**⁵⁰ decide whether or not the pupil has ALN (see Chapter 17 on reconsiderations, including exceptions to this duty).
- 9.51 Where a local authority has a duty to decide whether a pupil has ALN, it **must**⁵¹:
- (a) designate an officer to be responsible for co-ordinating the actions required to make that decision and, if an IDP is subsequently required, to be responsible for preparing it. In the case of child who is looked after by the local authority, the officer designated **should** be the local authority's LACE co-ordinator;
 - (b) record the date on which it is brought to its attention, or otherwise appears to it that a pupil may have ALN;
 - (c) record the date on which the pupil, if a young person, consented to the decision being made;
 - (d) record a summary of how the possibility that the pupil has ALN has been brought to its attention or why it otherwise appears to the authority that the pupil may have ALN.
 - (e) give the relevant notification referred to in paragraphs 9.57 and 9.58 below.
- 9.52 As is the case with a school's duty to decide, it does not matter how the possibility that a pupil at a maintained school has ALN is brought to the attention of a local authority or how it otherwise appears to it that the pupil may have ALN; if the local authority is aware of that possibility, then, subject to the exceptions, the duty to decide applies. The most likely way is that the school refers the pupil's case.

⁴⁹ Section 17 of the Act.

⁵⁰ Section 26 of the Act

⁵¹ Requirement imposed by the Code

- 9.53 Alternatively, there might be a direct approach from the pupil, a parent or other family member, or a referral from an external body or professional. Where this is the case, the local authority might consider that the matter is better decided, at least in the first instance, by the school (perhaps because it is apparent that any ALN that the pupil might have is unlikely to require a local authority maintained IDP) and bring the matter to the school's attention. In so doing, the school's duty to decide would be triggered and if the local authority is satisfied that the school is deciding the matter, its duty would not apply (see exception in paragraph 9.49 above).
- 9.54 The possibility that a pupil at a maintained school has ALN might "otherwise appear" to a local authority during the course of the exercise of its other functions, such as its social services functions. Again, the local authority might consider referring the issue to the relevant school in the first instance. (Guidance on the definition of ALN and identifying when a child or young person may have ALN is set out in Chapter 7.)
- 9.55 As part of the process of deciding whether a pupil has ALN, a local authority **must**⁵² seek advice from an educational psychologist. This advice **should** relate to:
- (a) the educational, psychological or other features of the case which appear to be relevant to the child or young person's educational needs (including their likely future needs);
 - (b) how those features could affect the child or young person's educational needs; and
 - (c) the provision which may be appropriate for the child or young person in light of those features of their case, whether by way of ALP or other provision.
- 9.56 Consideration **should** also be given as to whether the pupil has any engagement with or support from other agencies and involve them as appropriate in the process of deciding whether the pupil has ALN and in preparing any IDP. (Further guidance on the role of different agencies and professionals is provided in Chapter 7.)
- 9.57 If the pupil is a child, or a young person who has already given consent to the decision being made, the local authority **must**⁵³ notify promptly the child and the child's parent, or the young person and in the case of looked after child, the independent reviewing officer, that it is deciding whether the pupil has ALN.
- 9.58 If the pupil is a young person whose consent to the decision on whether the pupil has ALN being made has not been obtained, the local authority **must**⁵⁴, do the following promptly (from when the possibility of the young person

⁵² Requirement imposed by the Code.

⁵³ Requirement imposed by the Code

⁵⁴ Requirement imposed by the Code.

having ALN has been brought to its attention or otherwise appeared to it):

- (a) notify the young person that it has been brought to its attention or otherwise appears to it that the young person may have ALN;
- (b) seek the young person's consent to the decision being made and, should the decision be that the young person has ALN, to an IDP being prepared and maintained or, in the case of a detained young person, prepared and kept; and
- (c) inform the young person of the consequences of consenting and not consenting to the decision being made.

9.59 In either case, the notification given to the child and the child's parent, or the young person **must**⁵⁵ contain:

- (a) the name and contact details of the co-ordinator;
- (b) information about how to access the local authority's arrangements for providing people with information and advice about ALN and the ALN system⁵⁶. This could be done by providing a local authority leaflet about the ALN system or the address of the local authority's relevant web pages and drawing attention to how to get further information and advice.

9.60 The notification **should** also provide an indication of the likely timescales for the process (taking account of the relevant deadline below.)

9.61 Where the young person does not consent to the decision being taken, this **must**⁵⁷ be recorded. Local authorities **should** have appropriate procedures in place to facilitate this, which might include the young person signing to confirm that they are withholding consent.

9.62 Where it is brought to the attention of a local authority by a child, a child's parent or a young person, that a child or young person may have ALN but it has previously decided the issue and is satisfied that the child or young person's needs have not changed materially since that decision and there is no new information which materially affects that decision, it **should** communicate this to the child, child's parent or young person and **should** provide them with information and advice about ALN and the ALN system if it has not previously or recently done so.

9.63 As described in Chapter 3 there is a general duty to involve children, their parents and young people in decisions that relate to any ALN they might have and the preparation of IDPs. Furthermore, putting the child or young person at the heart of the process that identifies their ALN and determines their ALP is a fundamental objective of the ALN system. To fulfil this duty and objective, the co-ordinator **should** normally arrange a meeting or meetings, as appropriate,

⁵⁵ Requirement imposed by the Code.

⁵⁶ These are the arrangements that the local authority must make under section 9 of the Act.

⁵⁷ Requirement imposed by the Code

with the child and the child's parent, or the young person, to discuss and decide the pupil's needs and if required, prepare an IDP for them. Guidance on these meetings is provided in Chapter 18.

A local authority's decision that a pupil does not have ALN

- 9.64 Where the local authority decides that the pupil does not have ALN it **must**⁵⁸ notify the child and their parent, or the young person, and in the case of a looked after child, the independent reviewing officer, of the decision and the reasons for that decision. The local authority **must**⁵⁹ make the decision and give the notification promptly and in any event within the relevant period (see paragraph 9.66 below) from:
- (a) in the case of a referral under section 12(2)(a) of the Act (described in paragraph 9.39 above), the local authority receiving the referral;
 - (b) in the case of a local authority reconsidering a school's decision under section 26 of the Act, the local authority receiving the request for reconsideration;
 - (c) otherwise -
 - (i) in the case of a pupil who is a child, when it is brought to the attention of or, otherwise appears to, the local authority that the pupil may have ALN;
 - (ii) in the case of a pupil who is a young person, the later of the following:
 - (aa) when it is brought to the attention of, or otherwise appears to the local authority that the young person may have ALN;
 - (bb) when the young person consents to the decision being made.
- 9.65 The requirement to make the decision and give the notification within the relevant period does not apply if it is impractical for the local authority to do so due to circumstances beyond its control⁶⁰.
- 9.66 The relevant period for the purposes of paragraphs 9.64 and 9.65 is:
- (a) 7 weeks in the case of a local authority reconsidering a school's decision under section 26 of the Act; and
 - (b) 12 weeks in all others cases.
- 9.67 As well as setting out the decision and the reasons for it, the notification given to the child and the child's parent, or the young person **must**⁶¹ contain:
- (a) the contact details for the local authority;
 - (b) information about how to access the local authority's arrangements for providing people with information and advice about ALN and the ALN

⁵⁸ Sections 13(3) and 18(3) of the Act.

⁵⁹ Requirement imposed by the Code

⁶⁰ See Chapter 1 for more information how timescales in this Code must be interpreted.

⁶¹ Requirement imposed by the Code

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- system⁶². This could be done by providing a local authority leaflet about the ALN system or the address of the local authority's relevant web pages and drawing attention to how to get further information and advice;
- (c) details of the local authority's arrangements for the avoidance and resolution of disagreements⁶³ and its independent advocacy services⁶⁴; and
 - (d) information about the right to appeal to the Education Tribunal against the decision.

- 9.68 The notification **should** also outline what action the school and/or local authority will undertake in light of its consideration to ensure the pupil's needs (which are not ALN) are met. This might include differentiated classroom teaching strategies.
- 9.69 It might be helpful to offer an opportunity to the child, their parent or young person to discuss further.
- 9.70 A local authority decision that a pupil does not have ALN is appealable to the Education Tribunal – see Chapter 26.

A local authority's duty to prepare an IDP for a pupil with ALN at a maintained school

- 9.71 If a local authority has decided that a pupil at a maintained school in Wales has ALN it **must**⁶⁵ prepare an IDP, unless any of the following circumstances apply:
- (a) the local authority directs the school to prepare and maintain an IDP⁶⁶;
 - (b) the pupil is a young person who does not consent to an IDP being prepared or maintained;
 - (c) the pupil is looked after by the local authority but is not in the area of a local authority in Wales (unless the local authority decision was a reconsideration of a school decision on ALN, in which case, the local authority **must**⁶⁷ prepare an IDP subject to the other exceptions listed here);
 - (d) in the case of a pupil who is in the area of a local authority in England, the local authority requests the local authority in England to secure an EHC needs assessment for the child or young person⁶⁸;

⁶² These are the arrangements that the local authority must make under section 9 of the Act.

⁶³ Under section 68 of the Act.

⁶⁴ Under section 69 of the Act.

⁶⁵ Sections 14(1) to (4) and 19(1) to (2) of the Act.

⁶⁶ It cannot do this in respect of child the local authority looks after, unless the child is in the area of a local authority in England and the local authority in Wales is reconsidering a school decision, in which case, see sub-paragraph (c).

⁶⁷ Section 87 of the Act.

⁶⁸ Section 87(3)(d)(i) of the Act. This exception will only be applicable where the decision follows a reconsideration under section 26 of the Act.

- (e) a local authority in England maintains an EHC plan for the pupil⁶⁹.
- 9.72 See paragraphs 9.92 – 9.105 for more information about a local authority's power to direct a school.
- 9.73 If following a local authority's request that a local authority in England secures an EHC needs assessment for a pupil, the local authority is notified by the local authority in England that it is not required to secure an EHC plan for the pupil, the local authority's duty under paragraph 9.71 applies again⁷⁰.
- 9.74 The local authority **must**⁷¹ consider whether ALP should be provided to the pupil in Welsh and if it decides that a particular kind of ALP should be provided in Welsh, the body **must**⁷² specify in the plan that it should be provided in Welsh.
- 9.75 Where, following a referral to an NHS body, the body identifies a relevant treatment or service likely to be of benefit in addressing the pupil's ALN, the local authority **must**⁷³ describe the treatment or service in the IDP, specifying that it is ALP to be secured by the NHS body. The local authority **must**⁷⁴ also specify in the IDP that the ALP to be secured by the NHS body should be provided in Welsh where the NHS body has so decided (see Chapter 15 for more information about this).
- 9.76 A local authority preparing an IDP has functions which relate to where the child or young person is to be educated or trained and receive ALP. In the case of some referrals of the pupil's case from a maintained school, the local authority might need to consider whether the pupil should be educated or trained elsewhere.
- 9.77 If the pupil's reasonable needs for ALP cannot be met unless the local authority also secures one or both of the following:
- (a) a place at a particular school or other institution;
 - (b) board and lodging,

the local authority **must**⁷⁵ include a description in the IDP of the place or board and lodging (as the case may be). Also, a local authority preparing or maintaining an IDP for a child can also name a maintained school in Wales for the purposes of securing admission of the child to the school⁷⁶. Further information on considering whether a place at a particular school or other

⁶⁹ Section 87(3)(d)(ii) of the Act. This exception will only be applicable where the decision follows a reconsideration under section 26 of the Act.

⁷⁰ Section 97(3)(e) of the Act

⁷¹ Sections 14(5) and 19(3) of the Act

⁷² Sections 14(5) and 19(3) of the Act

⁷³ Section 21(3) of the Act.

⁷⁴ Section 21(4) of the Act.

⁷⁵ Sections 14(6) – (8) and 19(4) – (6) of the Act.

⁷⁶ Section 48 of the Act.

institution, or board and lodging, is required in order to meet a child's or young person's reasonable needs for ALP is covered in Chapter 11 (in the case of children) and Chapter 12 (in the case of young people) and further information on naming a school for admission purposes is covered in Chapter 11. Those chapters deal respectively with local authority duties in respect of children of compulsory school age not attending a maintained school in Wales and young people not at a maintained school or FEI in Wales. However the sections of those chapters that deal with powers and limitations in respect of placements are also relevant where a local authority is preparing a plan for a child or young person who is a pupil at a maintained school in Wales.

- 9.78 The local authority **must**⁷⁷ prepare the IDP. Before it is finalised, the local authority **should** give the child, child's parent or young person an opportunity to comment on a draft of it and **should** encourage them to raise any concerns as soon as possible. The local authority **should** consider any concerns and act upon them as required, which may be to update the draft IDP, or explain decisions or other matters further.
- 9.79 Once prepared, the local authority **must**⁷⁸ give a copy of the IDP to the child, their parent or the young person and if the child is looked after by the local authority, the independent reviewing officer. The local authority **must**⁷⁹ make the decision on ALN, prepare the plan and give a copy of the plan promptly and in any event within the relevant period (see paragraph 9.81 below) from:
- (a) in the case of a referral under section 12(2)(a) of the Act (described in paragraph 9.39 above), the local authority receiving the referral;
 - (b) in the case of a local authority reconsidering a school's decision under section 26 of the Act, the local authority receiving the request for reconsideration;
 - (c) otherwise, -
 - (i) in the case of a pupil who is a child, when it is brought to the attention of or, otherwise appears to, the local authority that the pupil may have ALN;
 - (ii) in the case of a pupil who is a young person, the later of the following-
 - (aa) when it is brought to the attention of, or otherwise appears to the local authority that the young person may have ALN;
 - (bb) when the young person consents to the decision being made.
- 9.80 The requirement to make the decision and give a copy of the IDP within the relevant period does not apply if it is impractical for the local authority to do so due to circumstances beyond its control⁸⁰.

⁷⁷ Sections 14(1) - (2) and 19(1) – (2) of the Act.

⁷⁸ Section 22 of the Act.

⁷⁹ Timescale requirement imposed by the Code.

⁸⁰ See Chapter 1 for more information how timescales in this Code must be interpreted.

- 9.81 The relevant period in paragraphs 9.79 and 9.80 is:
- (a) 7 weeks in the case of a local authority reconsidering a school's decision under section 26 of the Act; and
 - (b) 12 weeks in all other cases.
- 9.82 The local authority **must**⁸¹ also give the child, child's parent or young person:
- (a) the contact details for the local authority;
 - (b) information about how to access the local authority's arrangements for providing people with information and advice about ALN and the ALN system⁸². This could be done by providing a local authority leaflet about the ALN system or the address of the local authority's relevant web pages and drawing attention to how to get further information and advice;
 - (c) details of the local authority's arrangements for the avoidance and resolution of disagreements⁸³ and its independent advocacy services⁸⁴; and
 - (d) information about the right to appeal to the Education Tribunal about particular aspects of the IDP .

A local authority's duty to maintain an IDP for a pupil with ALN and secure the ALP

- 9.83 Where a local authority has prepared an IDP for a pupil at a maintained school, it **must**⁸⁵ maintain that IDP unless either of the following circumstances apply:
- (a) it directs the school to maintain the IDP;
 - (b) the pupil is a young person who does not consent to an IDP being maintained.
- 9.84 See paragraphs 9.92 – 9.104 for more information about a local authority's power to direct a school.
- 9.85 The local authority's duty to maintain an IDP may cease for other reasons, which are covered in Chapter 21.
- 9.86 Where a local authority maintains an IDP, it **must**⁸⁶ secure the ALP and any other provision (i.e. a place at a particular school or other institution or board and lodging to meet the reasonable needs of the child or young person for ALP) described in it. This does not apply to any ALP which is a relevant

⁸¹ Requirement imposed by the Code

⁸² These are the arrangements that the local authority must make under section 9 of the Act.

⁸³ Under section 68 of the Act.

⁸⁴ Under section 69 of the Act.

⁸⁵ Sections 14(1) to 14(4) and 19(1) to (2) of the Act

⁸⁶ Sections 14(10)(a) and (b) and 19(7)(a) and (b) of the Act

treatment or service identified by an NHS body, in which case the NHS body **must**⁸⁷ secure the ALP. If the IDP specifies that a particular kind of ALP should be provided in Welsh, the local authority (or NHS body where applicable) **must**⁸⁸ take all reasonable steps to secure that it is provided in Welsh.

- 9.87 Where a local authority is maintaining an IDP for a pupil of a maintained school in Wales, the school **must**⁸⁹ take all reasonable steps to help the local authority secure the ALP specified in it. See paragraphs 9.90 – 9.91 for more on this.
- 9.88 The local authority **must not**⁹⁰ charge the child their parent or the young person for the ALP described in the IDP, nor for anything else it secures under Part 2 of the Act.

A local authority's duty to review an IDP for a pupil with ALN

- 9.89 A local authority is subject to duties⁹¹ to review an IDP (see Chapter 16 for more information.)

A maintained school's duty to take all reasonable steps to help a local authority secure the ALP in an IDP maintained for a pupil by a local authority

- 9.90 Where a local authority maintains an IDP for a pupil at a maintained school in Wales, the school **must**⁹² take all reasonable steps to help the local authority secure the ALP specified in it. This includes taking all reasonable steps to help the local authority secure that any ALP the IDP specifies should be provided in Welsh is provided in Welsh.
- 9.91 Reasonable steps **should** include arrangements for ensuring effective communication between the school and the local authority and/or health body about the practical action to be taken to deliver the ALP specified in the IDP. This would include arrangements made within the school to help the local authority to secure the ALP by delivering the ALP which it is reasonable for the school to deliver, and by facilitating the delivery of the ALP for which the local authority is responsible. This might include, for example:

- involving the parent of a child in the delivery of ALP;

⁸⁷ Sections 20(5) and 21(5) of the Act

⁸⁸ Sections 14(10)(c), 19(7)(c), 20(5)(c) and 21(5)(b) of the Act

⁸⁹ Section 47 of the Act.

⁹⁰ Section 49 of the Act. For these purposes, "parent" does not include a parent who is not an individual.

⁹¹ Sections 23 and 24 of the Act.

⁹² Section 47(4) and (5) of the Act.

- ensuring all those teaching the pupil are aware of their ALN and the ALP to be provided;
- securing training and development of staff to have the required expertise and skills to deliver the ALP which is for the school to deliver;
- the use of appropriate equipment specified in the child or young person's IDP, where required;
- integrating external advice and specialist support for the child or young person into their teaching and learning programmes in a non-disruptive way;
- monitoring the effectiveness of ALP in meeting the child or young person's ALN and supporting them to make progress and achieve the outcomes specified in their IDP;
- contributing to the review of the IDP and planning transitions to other institutions and to adult life.

A local authority's direction to a school to prepare or maintain an IDP

- 9.92 A local authority that has decided that a child or young person has ALN or that has prepared an IDP for a child or young person, **may**⁹³ direct a maintained school in Wales at which the child or young person is, or is to be, a pupil to prepare and maintain an IDP or, if the authority has prepared an IDP for such a person, to maintain it. Also, a local authority that maintains an IDP for a pupil at a maintained school in Wales, **may**⁹⁴ direct the school to maintain it (except where the pupil is looked after by the local authority).
- 9.93 The local authority **must not**⁹⁵ direct the school to prepare the IDP, if:
- (a) the pupil is dual registered;
 - (b) the pupil is a child looked after by the local authority in Wales (except where the child is in the area of a local authority in England – see paragraph 9.95 below); or
 - (c) the reasonable needs of the pupil for ALP cannot be met unless the local authority secures either a place at a particular school or other institution or board and lodging (or both).
- 9.94 Where a local authority has decided⁹⁶ that a child or young person who is or is to be a pupil of a maintained school in Wales has ALN and directs the school to prepare an IDP, the local authority **should** do so promptly within the period within which it would otherwise have been required to give a copy of the IDP (see paragraphs 9.81 above).

⁹³ Section 14(2)(b) of the Act.

⁹⁴ Section 14(4) of the Act.

⁹⁵ Sections 30(7), 19(2) and 14(9) of the Act respectively.

⁹⁶ Under section 13 of the Act.

- 9.95 Where a local authority has decided that a pupil, who is in the area of a local authority in England has ALN (this would only be where the local authority exercises its reconsideration duty - see Chapter 17), the local authority **must**⁹⁷ either prepare an IDP and direct the school to maintain it, or direct the school to prepare and maintain an IDP.
- 9.96 Where the local authority directs a school to prepare and maintain an IDP, the school **must**⁹⁸ prepare and give a copy of the IDP to the child, the child's parent or the young person promptly and in any event within the relevant period from:
- (a) in the case of a referral under section 12(2)(a) of the Act (described in paragraph 9.39 above), the local authority receiving the referral;
 - (b) in the case of a local authority reconsidering a school's decision under section 26 of the Act, the local authority receiving the request for reconsideration;
 - (c) otherwise-,
 - (i) in the case of a pupil who is a child, when it is brought to the attention of or, otherwise appears to, the local authority that the pupil may have ALN;
 - (ii) in the case of a pupil who is a young person, the later of the following-
 - (aa) when it is brought to the attention of, or otherwise appears to the local authority that the young person may have ALN;
 - (bb) when the young person consents to the decision being made;
- 9.97 The requirement to make the decision and give a copy of the IDP within the relevant period does not apply if it is impractical for the school to do so due to circumstances beyond its control⁹⁹.
- 9.98 The relevant period in paragraphs 9.96 and 9.97 is:
- (a) 7 weeks in the case of a local authority reconsidering a school's decision under section 26 of the Act; and
 - (b) 12 weeks in all other cases.
- 9.99 This is the same period within which the local authority would have had to give a copy of the IDP, had it prepared it instead of directing the school to do so.
- 9.100 The local authority **must**¹⁰⁰, when directing the school, inform it of the date on which the event referred to in paragraph 9.96(a), (b) or (c) (as the case may be) occurred. This is so that the school can ascertain the date by which it is required to give a copy of the IDP.

⁹⁷ Sections 14(2) and 87(3)(c) of the Act.

⁹⁸ Section 12(3) of the Act is the duty to prepare and maintain an IDP, section 22(1) is the duty to give a copy of it and the requirement to do so within the specified period is imposed by the Code.

⁹⁹ See Chapter 1 for more information how timescales in this Code must be interpreted.

¹⁰⁰ Requirement imposed by the Code.

- 9.101 Where a local authority directs a school to maintain an IDP it has prepared it **must**¹⁰¹ send a copy of the IDP to the school at the same time as it directs the school.
- 9.102 A local authority **should not** direct a school to prepare and maintain an IDP where it would not be reasonable for the school to prepare and give a copy of the plan to the child, the child's parent or the young person within the time limit set out in paragraphs 9.98. In such a case, the local authority **should** prepare the plan itself (in consultation with the school to the extent possible and appropriate) and **may**¹⁰², if appropriate, subsequently direct it to maintain the plan if the child is already a registered pupil at the school.
- 9.103 Also, a local authority **should not** direct a school to prepare an IDP unless it considers that:
- the pupil has ALN that calls for ALP it would be reasonable for the school to secure;
 - the school could adequately determine the extent and nature of the ALN; and
 - the school could adequately determine the ALP.
- 9.104 If the maintained school is maintained by another local authority, the local authority **must**¹⁰³ first consult that other local authority about its proposal to direct the school.

A maintained school's duty to prepare or maintain an IDP where directed to do so by a local authority

- 9.105 Where directed to prepare and maintain, or to maintain, an IDP by a local authority, the maintained school **must**¹⁰⁴ do so unless:
- (a) the pupil is a young person who does not consent to an IDP being prepared or maintained; or
 - (b) a local authority in England maintains an EHC Plan for the pupil.
- (See paragraph 9.96 above for the requirements to give a copy of the plan within a certain period in cases where the direction is to prepare and maintain a plan.)
- 9.106 The school's duty to maintain an IDP may cease for other reasons, which are covered in Chapter 21.

¹⁰¹ Requirement to be imposed by regulations made under section 82.

¹⁰² Under section 14(4) of the Act.

¹⁰³ Section 38 of the Act.

¹⁰⁴ Section 12(3) of the Act.

A maintained school's duty to admit a child where a local authority has named it for the purpose of securing the child's admission

9.107 A local authority **may**¹⁰⁵ name a maintained school in Wales in an IDP it prepares or maintains for the purpose of securing admission of the child to that school (for more information on this, see Chapter 11). Where a maintained school in Wales is so named, it **must**¹⁰⁶ admit the child regardless of its duty in relation to the statutory limit on class sizes for infant classes¹⁰⁷. However, this does not affect any power to exclude a pupil from a school¹⁰⁸.

Duty to secure that children with ALN in mainstream maintained schools engage in the activities of the school

9.108 All those concerned with making ALP for a child with ALN in a mainstream maintained school in Wales **must**¹⁰⁹ secure that the child engages in the activities of the school together with children who do not have ALN. This only applies so far as is reasonably practicable and compatible with:

- (a) the child receiving the ALP called for by their ALN;
- (b) the provision of efficient education for the children with whom he or she will be educated; and
- (c) the efficient use of resources.

¹⁰⁵ Section 48 of the Act.

¹⁰⁶ Section 48(2) of the Act.

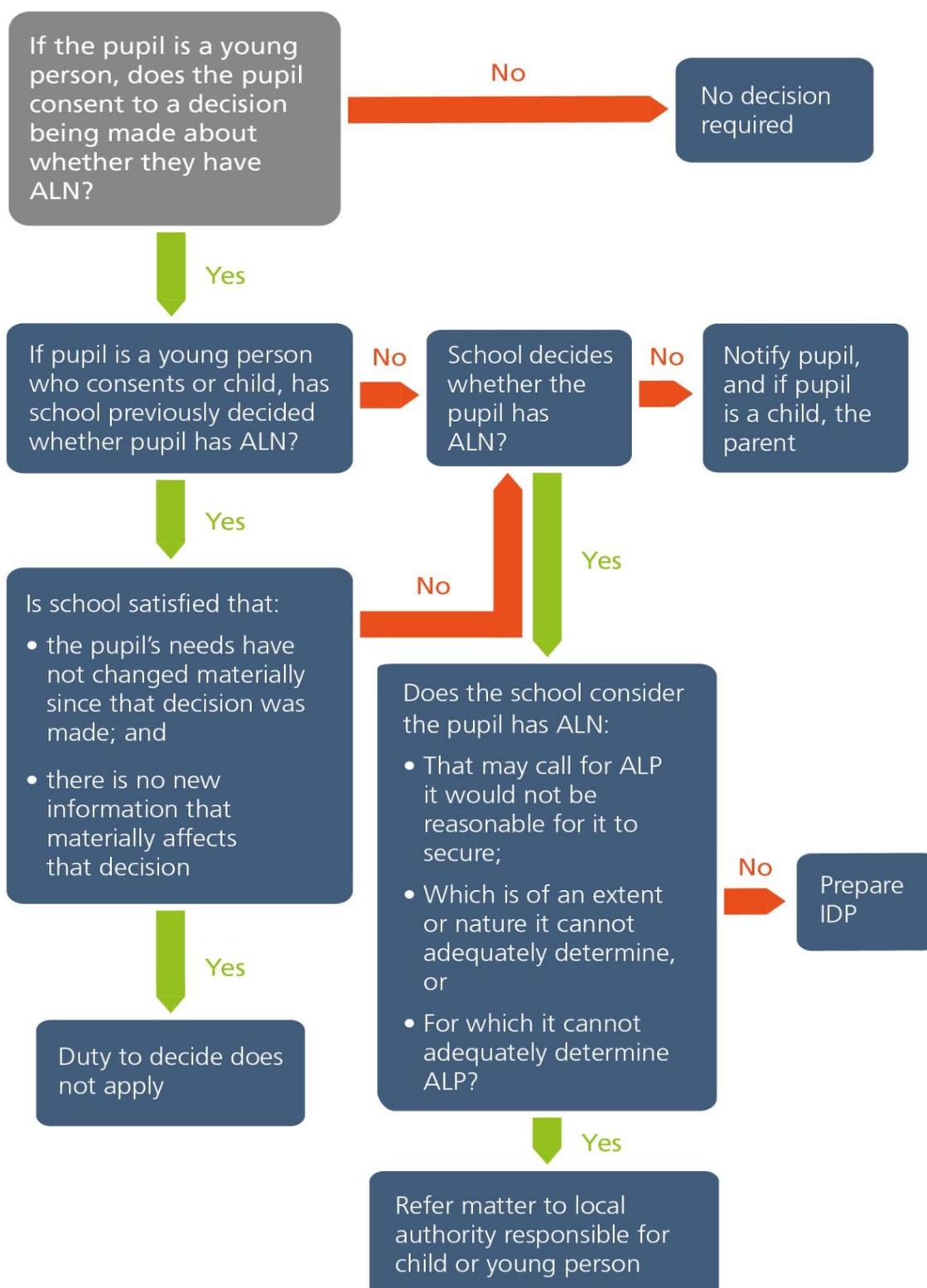
¹⁰⁷ Section 48(5) of the Act.

¹⁰⁸ Section 48(6) of the Act.

¹⁰⁹ Section 52 of the Act

Decision on additional learning needs

When it is brought to the attention of, or otherwise appears to, a maintained school in Wales, that one of its pupils (who does not have an IDP nor EHC plan) may have ALN, the following process **must** be followed (different arrangements apply if student is dual registered, looked after, detained, an English resident without an EHC plan):



Chapter 10: Duties on FEIs and local authorities in relation to young people at an FEI

Introduction

- 10.1 IDPs for young people with ALN enrolled as students at an FEI in Wales may be prepared and maintained by the FEI or by the local authority, depending on the circumstances. In most instances, the FEI will be responsible for preparing and maintaining an IDP.
- 10.2 Local authorities will normally only prepare and maintain an IDP in instances where the young person's needs are more severe or complex or where the young person is also a pupil or student at another school or FEI.
- 10.3 This chapter does not apply in respect of a student undertaking a higher education course provided by the FEI, unless the student is also receiving education and training provided by the FEI, in which case, the student is covered in respect of that education or training but not the higher education course¹.

An FEI's duty to decide if a young person has ALN

- 10.4 Where it is brought to its attention, or otherwise appears to, an FEI in Wales that a young person enrolled as a student at the FEI may have ALN, the FEI **must**² decide whether or not the student has ALN, unless any of the following circumstances apply:
- (a) an IDP is already being maintained for that young person;
 - (b) the FEI has previously decided the issue and is satisfied that the young person's needs have not changed materially since that decision and there is no new information which materially affects that decision;
 - (c) the young person does not consent to the decision being made;
 - (d) the young person is a registered pupil at a school in Wales or England (including independent schools) or an enrolled student at another FEI in Wales or England ("dual registration"), and a local authority in Wales is responsible for the young person³. Where they are dual-registered the governing body **must**⁴ refer the case to the responsible local authority (see paragraphs 10.37 – 10.45 below on referrals to the local authority);
 - (e) the young person is subject to a detention order (see Chapter 22); and
 - (f) a local authority in England maintains an EHC plan for the young person.

¹ Section 86 of the Act.

² Section 11(2) and (3) of the Act.

³ This is the local authority responsibility for the child or young person (i.e. the local authority in whose area the person is) (section 99(4) of the Act). See Chapter 1 for more information about the meaning of 'in the area'

⁴ Section 30(2) of the Act.

10.5 Where an FEI has a duty to decide whether a young person has ALN, it **must**⁵:

- (a) designate a person to be responsible for co-ordinating the actions required to make that decision and, if an IDP is subsequently required, to be responsible for preparing it. This could be, but need not be, the ALNCo;
- (b) record the date on which it is brought to its attention, or otherwise appears to it that the young person may have ALN;
- (c) record the date on which the young person consented to the decision being made;
- (d) record a summary of how the possibility that the young person has ALN has been brought to its attention or why it otherwise appears to the FEI that the young person may have ALN;
- (e) give the notification referred to in paragraph 10.6 below.

The possibility that a young person has ALN might be “brought to the attention of” the FEI by the young person themselves or by someone else. It does not matter how the possibility that a young person may have ALN has been brought to the FEI’s attention or how it otherwise appears to it that this is the case; if the FEI is aware of that possibility, the duty to decide applies (subject to the exceptions listed above). (Guidance on the definition of ALN and identifying when a young person may have ALN is set out in Chapter 7.)

10.6 The FEI **must**⁶ do the following promptly (from when the possibility of the young person having ALN has been brought to the FEI’s attention or otherwise appeared to it):

- (a) notify the young person that it has been brought to its attention or otherwise appears to it that the young person may have ALN;
- (b) seek the young person’s consent to the decision being made and, should the decision be that the young person has ALN, to an IDP being prepared and maintained or, in the case of a detained young person, prepared and kept; and
- (c) inform the young person of the consequences of consenting and not consenting to the decision being made.

10.7 The notification **must**⁷ contain:

- (a) the name and contact details of the co-ordinator;

⁵ Requirement imposed by the Code

⁶ Requirement imposed by the Code.

⁷ Requirement imposed by the Code

- (b) information about how to access the responsible local authority's arrangements for providing people with information and advice about ALN and the ALN system⁸. This could be done by providing a local authority leaflet about the ALN system or the address of the local authority's relevant web pages and drawing attention to how to get further information and advice.
- 10.8 The notification **should** also provide an indication of the likely timescales for the process (taking account of the relevant deadline below.)
- 10.9 Where the young person does not consent to the decision being taken, this **must**⁹ be recorded. FEIs **should** have appropriate procedures in place to facilitate this, which might include the young person signing to confirm that they are withholding consent.
- 10.10 Where it is brought to the attention of an FEI by a young person, that they may have ALN but the FEI has previously decided the issue and is satisfied that the young person's needs have not changed materially since that decision and there is no new information which materially affects that decision, it **should** communicate this to the young person and **should** provide them with information and advice about ALN and the ALN system if it has not previously or recently done so.
- 10.11 Consideration **should** be given as to whether the young person already has any engagement with or support from other agencies and involve them as appropriate in the process of deciding whether the young person has ALN and in preparing any IDP. (Further guidance on the role of different agencies and professionals is provided in Chapter 7.)
- 10.12 As described in Chapter 3 there is a general duty to involve young people in decisions that relate to any ALN they might have and the preparation of IDPs. Furthermore, putting the young person at the heart of the process that identifies their ALN and determines their ALP is a fundamental objective of the ALN system. To fulfil this duty and objective, the co-ordinator **should** normally arrange a meeting or meetings, as appropriate, with the young person to discuss and decide the young person's needs and if required, prepare an IDP for them. (Guidance on these meetings is provided in Chapter 18.)

⁸ These are the arrangements that the local authority must make under section 9 of the Act. For the purposes of the provisions of this Code on information and advice arrangements under section 9, if the student is in the area of a local authority in England, the responsible local authority is the local authority in whose area the FEI is.

⁹ Requirement imposed by the Code

An FEI's decision that a young person does not have ALN

- 10.13 Where the FEI decides that the young person does not have ALN it **must**¹⁰ notify the young person, of the decision and the reasons for that decision. The decision **must**¹¹ be taken and the notification given promptly and in any event within the period of 35 term time days¹² from the young person consenting to the decision being made.
- 10.14 The requirement to make the decision and give the notification within 35 term time days does not apply if it is impractical for the FEI to do so due to circumstances beyond its control¹³.
- 10.15 As well as setting out the decision and the reason/s for it, the notification **must**¹⁴ contain:
- (a) the contact details for the FEI;
 - (b) information about how to access the responsible local authority's arrangements for providing people with information and advice about ALN and the ALN system¹⁵. This could be done by providing a local authority leaflet about the ALN system or the address of the local authority's relevant web pages and drawing attention to how to get further information and advice;
 - (c) details of the responsible local authority's avoidance and resolution of disagreement arrangements¹⁶ and its independent advocacy services¹⁷; and
 - (d) information about the right to appeal to the Education Tribunal against the decision.
- 10.16 The notification **should** also outline what action the FEI will undertake in light of its consideration to ensure the young person's needs (which are not ALN) are met. This might include differentiated classroom teaching strategies.
- 10.17 It might be helpful to offer an opportunity to the young person to discuss further.
- 10.18 If an FEI decides that a young person does not have ALN, the young persons can appeal to the Education Tribunal – see Chapter 26.

¹⁰ Section 11(4) of the Act.

¹¹ Requirement imposed by the Code.

¹² Timescale requirement imposed by the Code.

¹³ See Chapter 1 for more information how timescales in this Code must be interpreted.

¹⁴ Requirement imposed by the Code.

¹⁵ These are the arrangements that a local authority must make under section 9 of the Act.

¹⁶ Under section 68 of the Act.

¹⁷ Under section 69 of the Act.

An FEI's duty to prepare an IDP

10.19 If an FEI decides that the young person has ALN, it **must**¹⁸ prepare and maintain an IDP for the young person unless any of the following circumstances apply:

- (a) the FEI considers that the young person has ALN that may call for ALP it would not be reasonable for it to secure, or that it cannot adequately determine the extent or nature of the ALN, or that it cannot adequately determine the ALP; and the FEI refers the young person's case to the responsible local authority to decide;
- (b) the young person does not consent to the decision being made;
- (c) the young person is in the area of a local authority in England and the FEI requests that local authority to secure an EHC needs assessment for the young person¹⁹;
- (d) a local authority in England maintains an EHC plan for the young person.

10.20 The FEI **must**²⁰ consider whether ALP should be provided to the young person in Welsh and if it decides that a particular ALP should be provided in Welsh, the body **must**²¹ specify in the plan that it should be provided in Welsh.

10.21 Where, following a referral to an NHS body by the FEI, the NHS body identifies a relevant treatment or service likely to be of benefit in addressing the young person's ALN, the FEI **must**²² describe the treatment or service in the IDP, specifying that it is ALP to be secured by the NHS body. The FEI **must**²³ also specify that the ALP to be secured by the NHS body should be provided in Welsh where the NHS body has so decided (see Chapter 15 for more information about this).

10.22 The FEI **must**²⁴ prepare the IDP. Before it is finalised, the FEI **should** give the young person an opportunity to comment on a draft of it and **should** encourage them to raise any concerns as soon as possible. The FEI **should** consider any concerns and act upon them as required, which may be to update the draft, or explain decisions or other matters further.

10.23 Once prepared, the FEI **must**²⁵ give a copy of the IDP to the young person. The FEI **must**²⁶ make the decision on ALN, prepare the plan and give a copy

¹⁸ Section 12(1) (2) of the Act

¹⁹ Under section 36(1) of the Children and Families Act 2014

²⁰ Section 12(6) of the Act.

²¹ Sections 12(6) of the Act.

²² Section 21(3) of the Act.

²³ Section 21(4) of the Act.

²⁴ Section 12(1) of the Act.

²⁵ Section 22(1) of the Act.

²⁶ Requirement imposed by the Code.

of it promptly and in any event within the period of 35 term time days from the young person consenting to the decision being made.

10.24 The requirement to make the decision and give a copy of the IDP within the period of 35 term time days does not apply if it is impractical for the FEI to do so due to circumstances beyond its control²⁷.

10.25 The FEI **must**²⁸ also give the young person:

- (a) the contact details of the FEI;
- (b) information about how to access the responsible local authority's arrangements for providing people with information and advice about ALN and the ALN system²⁹. This could be done by providing a local authority leaflet about the ALN system or the local authority's relevant web pages and drawing attention to how to get further information and advice;
- (c) details of the local authority's arrangements for the avoidance and resolution of disagreement arrangements³⁰ and its independent advocacy services³¹;
- (d) information about the right to request that the responsible local authority takes over responsibility for maintaining the IDP and the contact details for the responsible local authority³²; and
- (e) information about the right to appeal to the Education Tribunal about particular aspects of the IDP.

An FEI's duty to take all reasonable steps to secure ALP for a student with ALN but without an IDP

10.26 If a young person enrolled as a student at an FEI in Wales has ALN but an IDP is not being maintained for them, the FEI **must**³³, in exercising its functions in relation to the FEI, take all reasonable steps to secure that the ALP called for by the young person's ALN is made.

10.27 The young person might not have an IDP, for example, because:

- the FEI is preparing an IDP for the young person;
- the FEI has made a referral to a local authority and the authority is preparing an IDP;
- an English local authority is carrying out an EHC needs assessment or preparing an EHC plan; or

²⁷ See Chapter 1 for more information how timescales in this Code must be interpreted.

²⁸ Requirement imposed by the Code

²⁹ These are the arrangements that the local authority must make under section 9 of the Act.

³⁰ Under section 68.

³¹ Under section 69.

³² This is the right under section 28 of the Act.

³³ Section 47(1) - (2) of the Act.

- the young person has an EHC plan.
- 10.28 Where the young person has an EHC Plan maintained by an English local authority, the EHC Plan will set out their assessed needs and specify special educational provision to meet them. In these circumstances, it might be that the FEI can fulfil its duty by taking all reasonable steps to help the local authority in England secure the special educational provision specified in the EHC Plan.
- 10.29 In cases where it is being decided whether the person has ALN or an IDP is being prepared (or, in respect of pupils in the area of a local authority in England, if an EHC assessment is being considered or conducted or an EHC plan is being prepared), an initial assessment ought to have been made of the young person's needs. The FEI would have information from the young person and possibly advice from agencies or professionals, such as an educational psychologist (whether specifically in relation to the young person or more generally about the needs the young person appears to have) and the views of, and evidence from, teaching staff at the FEI in relation to the student. That evidence could include how the student has responded to particular interventions (including differentiated teaching) in the past. In some cases, the young person may even share a plan with relevant information, for example, a recently maintained EHC plan where the person has just moved from England to Wales.
- 10.30 From this range of information and advice, including that gained from the involvement of the young person, the FEI ought to have a broad understanding of the type of ALN the young person has. In light of that understanding, the FEI **should**:
- make arrangements for letting all staff who are involved with the person know about those needs;
 - involve the ALNCo in advising teaching staff on appropriate teaching approaches to use in relation to the person with a view to meeting the apparent needs and where to get further information and advice if required;
 - make appropriate adjustments to the environment of the FEI to improve the person's access to education;
 - provide appropriate additional and/or different support for the person from the resources available to it, including access to input from external specialists; and,
 - monitor the impact of support provided for the person and alter it if it becomes apparent that this would be appropriate.
- 10.31 When an IDP is being prepared, the ALP called for by the needs will be identified during that process. The ALP, or particular types of ALP, might be identified earlier in the process and some time before the IDP is complete. Where that is the case, FEIs **should not** wait until the IDP is finalised before taking steps towards securing the ALP that has been identified for young person.

An FEI's duty to maintain an IDP and secure the ALP

10.32 Where an FEI has prepared an IDP for a young person, it **must**³⁴ maintain that IDP unless either of the following circumstances apply:

- (a) the young person does not consent to the IDP being maintained;
- (b) a local authority in England maintains an EHC Plan for the young person.

10.33 The FEI's duty to maintain an IDP may cease for other reasons, which are covered in Chapter 21.

10.34 Where an FEI maintains a plan, it **must**³⁵ secure the ALP described in it, except any ALP which is a relevant treatment or service identified by an NHS body, in which case the NHS body **must**³⁶ secure the ALP. If the IDP specifies that a particular kind of ALP should be provided in Welsh, the FEI (or NHS body where applicable) **must**³⁷ take all reasonable steps to secure that it is provided in Welsh.

10.35 An FEI **must not**³⁸ charge a young person for the ALP described in the IDP, nor for anything else it secures for the person under Part 2 of the Act.

Review of the IDP

10.36 An FEI is subject to duties³⁹ to review an IDP (see Chapter 16 for more information.)

Referrals from an FEI to a local authority

10.37 Where an FEI is subject to the duty to decide whether a young person has ALN, it **may**⁴⁰ refer the young person's case to the responsible local authority on the grounds that it considers that the young person has ALN and that:

- the ALN may call for ALP that it would not be reasonable for it to secure,
- it cannot adequately determine the extent or nature of the pupil's ALN, or
- it cannot adequately determine the ALP that the pupil's ALN may call for.

³⁴ Section 12(1) and (2) of the Act

³⁵ Section 12(7)(a) of the Act.

³⁶ Sections 20(5) and 21(5) of the Act.

³⁷ Sections 12(7)(b), 20(5)(c) and 21(5)(b) of the Act.

³⁸ Section 49 of the Act. For these purposes, "parent" does not include a parent who is not an individual.

³⁹ Section 23 of the Act.

⁴⁰ Section 12(2)(a) of the Act.

- 10.38 Where it is brought to the attention of, or otherwise appears to, an FEI in Wales that one of its students may have ALN but does not have an IDP, the FEI **must**⁴¹ refer the young person's case to the local authority where the young person is an enrolled student at another FEI in Wales or England, or a registered pupil at a school in Wales or England, (including an independent school) and is to be provided with education or training at both institutions ("dual-registration").
- 10.39 Where the FEI becomes aware that there is a ground for referral⁴² to the local authority of a young person's case, it **should** act promptly to refer the case. It ought to be able to do so immediately in cases of dual registration. In the other cases (where the FEI is subject to the duty to decide until it makes the referral), the FEI ought to be able to make the referral within 20 term time days from obtaining the student's consent to the decision being made.
- 10.40 When making such a referral under paragraph 10.38, the FEI **should** notify the young person, that it is doing so. At the same time, in the case of a young person, the FEI **should** also seek the consent of the young person to a decision being made about whether they have ALN and then inform the local authority whether consent has been received.
- 10.41 Occasionally, the grounds for a referral under paragraph 10.37 may only emerge later in the process of deciding whether the young person has ALN or preparing an IDP. For example, it might only be when some advice is received from a specialist service that the FEI realises that the nature of the young person's ALN is more extensive than they had thought, or that the young person requires ALP which it would not be reasonable for it to secure. Where the grounds for referral emerge much later in the process, the FEI may still refer the matter to the local authority, but if it does so, the FEI **should** act promptly to do so to minimise the delay to an IDP being put in place.
- 10.42 The circumstances of the FEI (i.e. its location, size, budget, experience etc.) could affect the FEI's view on whether it would be reasonable for it to secure the ALP. For example, where the young person:
- has a low incidence condition / rare condition which requires specialism that the FEI cannot provide;
 - requires regular advice and support from external agencies which is over and above that which can be reasonably arranged and accessed by the FEI;
 - requires equipment which can only be used by one student or cannot be reused or is beyond the reasonable resources of the FEI; or,
 - requires very intensive daily support which cannot be reasonably funded or secured by the FEI's budget.

⁴¹ Sections 30(1) – (2) of the Act.

⁴² In the rest of this Chapter, references to a referral by an FEI are to a referral under section 12(2)(a) of the Act, that is where the FEI is subject to a duty to decide and refers the case to the responsible local authority under that section for the local authority to decide under section 13.

- 10.43 Before referring a case to the local authority under paragraph 10.37, the FEI **should** consider consulting an educational psychologist to see whether this is appropriate.
- 10.44 Where a case is referred to a local authority under paragraph 10.37 or 10.38, the local authority's duty to decide⁴³ (dealt with below) applies.
- 10.45 Where an FEI refers an ALN decision to the local authority, it **should** provide the local authority with any information it holds which is relevant to the local authority's decision as to whether or not the young person has ALN. This includes any action already taken to meet the needs of the young person, such as any resources or special arrangements put in place. It would also include any existing reports or written advice received from external agencies as well as whether a young person has consented to a decision being made.

A local authority's duty to decide whether a young person at an FEI has ALN

- 10.46 Where it is brought to its attention or otherwise appears to a local authority that a young person enrolled as a student at an FEI in Wales and for whom it is responsible, may have ALN, the local authority **must**⁴⁴ decide whether or not the young person has ALN, unless any of the following circumstances apply:
- (a) an IDP is already being maintained for the young person (although this ought not to be the case where the FEI has made a referral);
 - (b) the local authority has previously decided the issue and is satisfied that the young person's needs have not changed materially since that decision and there is no new information which materially affects that decision;
 - (c) the young person does not consent to the decision being made;
 - (d) the young person is not dual registered (i.e. also a registered pupil at a school or enrolled as a student at another FEI) and the FEI has not referred the young person's case to the local authority under paragraph 10.37 above;
 - (e) the young person is subject to a detention order (although the local authority may have a duty to decide under different provisions – see Chapter 22).
- 10.47 Where a local authority has a duty to decide whether a young person has ALN, it **must**⁴⁵:

⁴³ Section 13 of the Act (by virtue of section 30(2) in respect of a dual registered child or young person).

⁴⁴ Section 13(1) and (2) of the Act.

⁴⁵ Requirement imposed by the Code

- (a) designate a person to be responsible for co-ordinating the actions required to make that decision and, if an IDP is subsequently required, to be responsible for preparing it;
- (b) record the date on which it receives the referral;
- (c) record a summary of how the possibility that the young person has ALN has been brought to its attention or why it otherwise appears to the authority that the young person may have ALN;
- (d) give the notification referred to in paragraphs 10.48 or 10.49 below.

10.48 If the young person has previously consented to the decision on whether they have ALN being made, the local authority **must**⁴⁶ notify them that it is deciding whether they have ALN.

10.49 If the young person has not previously consented to the decision being made, the local authority **must**⁴⁷, do the following promptly (from when the possibility of the young person having ALN has been brought to its attention or otherwise appeared to it):

- (a) notify the young person that it has been brought to its attention or otherwise appears to it that the young person may have ALN;
- (b) seek the young person's consent to the decision being made and, should the decision be that the young person has ALN, to an IDP being prepared and maintained or, in the case of a detained young person, prepared and kept, and
- (c) inform the young person of the consequences of consenting and not consenting to the decision being made.

10.50 In either case, the notification **must**⁴⁸ contain:

- (a) the name and contact details of the co-ordinator;
- (b) information about how to access the local authority's arrangements for providing people with information and advice about ALN and the ALN system⁴⁹. This could be done by providing a local authority leaflet about the ALN system or the address of the local authority's relevant web pages and drawing attention to how to get further information and advice.

10.51 The notification **should** also provide an indication of the likely timescales for the process (taking account of the relevant deadline below.)

10.52 Where the young person does not consent to the decision being taken, this **must**⁵⁰ be recorded. Local authorities **should** have appropriate procedures in place to facilitate this, which might include the young person signing to

⁴⁶ Requirement imposed by the Code

⁴⁷ Requirement imposed by the Code.

⁴⁸ Requirement imposed by the Code

⁴⁹ These are the arrangements that the local authority must make under section 9 of the Act.

⁵⁰ Requirement imposed by the Code

confirm that they are withholding consent.

- 10.53 Where it is brought to the attention of an local authority by a young person that the young person may have ALN but the local authority has previously decided the issue and is satisfied that the young person's needs have not changed materially since that decision and there is no new information which materially affects that decision, it **should** communicate this to the young person and **should** provide them with information and advice about ALN and the ALN system if it has not previously or recently done so.
- 10.54 As part of the process of deciding whether the young person has ALN, a local authority **must**⁵¹ seek advice from an educational psychologist. This advice **should** relate to:
- (a) the educational, psychological or other features of the case which appear to be relevant to the young person's educational needs (including their likely future needs);
 - (b) how those features could affect the young person's educational needs; and
 - (c) the provision which may be appropriate for the young person in light of those features of their case, whether by way of ALP or other provision.
- 10.55 Consideration **should** also be given as to whether the young person already has any engagement with or support from other agencies and involve them as appropriate in the process of deciding whether the young person has ALN and in preparing any IDP. (Further guidance on the role of different agencies and professionals is provided in Chapter 7).
- 10.56 As described in Chapter 3 there is a general duty to involve young people in decisions that relate to any ALN they might have and the preparation of IDPs. Furthermore, putting the young person at the heart of the process that identifies their ALN and determines their ALP is a fundamental objective of the ALN system. To fulfil this duty and objective, the co-ordinator **should** normally arrange a meeting or meetings, as appropriate, with the young person, to discuss and decide the young person's needs and if required prepare an IDP for them. (Guidance on these meetings is provided in Chapter 18).

A local authority's decision that a young person at an FEI does not have ALN

- 10.57 Where the local authority decides that the young person does not have ALN it **must**⁵² notify the young person of the decision and the reasons for that

⁵¹ Requirement imposed by the Code. Educational Psychologists must be registered with the Health and Care Professional Council.

⁵² Section 13(3) of the Act

decision. The local authority **must**⁵³ make the decision and give the notification promptly and in any event within the period of 12 weeks from:

- (a) in the case of a referral under section 12(2)(a) of the Act (described in paragraph 10.37), the local authority receiving the referral;
- (b) in the case of a referral under section 30(2) of the Act (described in paragraph 10.38), the later of the local authority receiving the referral or the young person consenting to the decision being made.

10.58 The requirement to make the decision and give the notification within the 12 week period does not apply if it is impractical for the local authority to do so due to circumstances beyond its control⁵⁴.

10.59 As well as setting out the decision and the reason/s for it, the notification **must**⁵⁵ contain:

- (a) the contact details for the local authority;
- (b) information about how to access the local authority's arrangements for providing people with information and advice about ALN and the ALN system⁵⁶. This could be done by providing a local authority leaflet about the ALN system or the local authority's relevant web pages and drawing attention to how to get further information and advice;
- (c) details of the local authority's arrangements for the avoidance and resolution of disagreements⁵⁷ and its independent advocacy services⁵⁸; and,
- (d) information about the right to appeal to the Education Tribunal against the decision.

10.60 The notification **should** also outline any action the local authority will undertake in light of its consideration to ensure the young person's other needs (which are not ALN) are met.

10.61 It might be helpful to offer an opportunity to the young person to discuss further.

10.62 A local authority decision that a young person does not have ALN is appealable to the Education Tribunal – see Chapter 26.

⁵³ Requirement imposed by the Code.

⁵⁴ See Chapter 1 for more information how timescales in this Code must be interpreted.

⁵⁵ Requirement imposed by the Code

⁵⁶ These are the arrangements that the local authority must make under section 9 of the Act.

⁵⁷ Under section 68 of the Act.

⁵⁸ Under section 69 of the Act.

A local authority's duty to prepare an IDP for a young person at an FEI who has ALN

- 10.63 If a local authority has decided that a young person enrolled as a student at an FEI in Wales has ALN, it **must**⁵⁹ prepare an IDP for that person unless the person does not consent to the plan being prepared or maintained.
- 10.64 The local authority **must**⁶⁰ consider whether ALP should be provided to the young person in Welsh and if it decides that a particular kind of ALP should be provided in Welsh, the body **must**⁶¹ specify in the plan that it should be provided in Welsh.
- 10.65 Where, following a referral to an NHS body, the body identifies a relevant treatment or service likely to be of benefit in addressing the young person's ALN, the local authority **must**⁶² describe the treatment or service in the IDP, specifying that it is ALP to be secured by the NHS body. The local authority **must**⁶³ also specify in the IDP that the ALP to be secured by the NHS body should be provided in Welsh where the NHS body has so decided (see Chapter 15 for more information about this).
- 10.66 A local authority preparing an IDP for a young person has functions which relate to where the young person is to be educated or trained and receive ALP. In the case of a referral of a student's case from an FEI, the local authority might need to consider whether the student should be educated or trained elsewhere.
- 10.67 If the young person's reasonable needs for ALP cannot be met unless the local authority also secures one or both of the following:
- (a) a place at a particular school or other institution;
 - (b) board and lodging

the local authority **must**⁶⁴ include in the IDP a description of the place or board and lodging (as the case may be). Further information on considering whether a place at a particular school or other institution, or board and lodging, is required in order to meet a young person's reasonable needs for ALP, is covered in Chapter 12. That chapter deals with local authority duties in respect young people not at a maintained school or FEI in Wales. However the sections of that chapter that deal with powers and limitations in respect of placements are also relevant where a local authority is preparing a plan young person who is a student at FEI in Wales.

⁵⁹ Section 14(1)(c), (2) and (3).

⁶⁰ Section 14(5) of the Act

⁶¹ Section 14(5) of the Act

⁶² Section 21(3).

⁶³ Section 21(4)

⁶⁴ Section 14(6) – (8) of the Act.

- 10.68 The local authority **must**⁶⁵ prepare the IDP. Before it is finalised, the local authority **should** give the young person an opportunity to comment on a draft of it and **should** encourage them to raise any concerns as soon as possible. The local authority **should** consider any concerns and act upon them as required, which may be to update the draft IDP, or explain decisions or other matters further.
- 10.69 Once prepared, the local authority **must**⁶⁶ give a copy of the IDP to the young person. The local authority **must**⁶⁷ make the decision on ALN, prepare the plan and give a copy of it promptly and in any event within the period of 12 weeks from:
- (a) in the case of a referral under section 12(2)(a) of the Act (described in paragraph 10.37 above), the local authority receiving the referral;
 - (b) in the case of a referral under section 30(2) of the Act (described in paragraph 10.38), the later of the local authority receiving the referral or the young person consenting to the decision being made.
- 10.70 The requirement to make the decision and give a copy of the IDP within the 12 week period does not apply if it is impractical for the local authority to do so due to circumstances beyond its control⁶⁸.
- 10.71 The local authority **must**⁶⁹ also give the young person:
- (a) the contact details of the relevant local authority;
 - (b) information about how to access the local authority's arrangements for providing people with information and advice about ALN and the ALN system⁷⁰. This could be done by providing a local authority leaflet about the ALN system or the local authority's relevant web pages and drawing attention to how to get further information and advice;
 - (c) details of the local authority's arrangements for the avoidance and resolution of disagreements⁷¹ and its independent advocacy services⁷²; and
 - (d) information about the right to appeal to the Education Tribunal about particular aspects of the IDP.

⁶⁵ Section 14(1) and (2).

⁶⁶ Section 22(1) of the Act.

⁶⁷ Requirement imposed by the Code.

⁶⁸ See Chapter 1 for more information how timescales in this Code must be interpreted.

⁶⁹ Requirement imposed by the Code

⁷⁰ These are the arrangements that the local authority must make under section 9 of the Act.

⁷¹ Under section 68 of the Act.

⁷² Under section 69 of the Act.

A local authority's duty to maintain an IDP and secure the ALP for a young person at an FEI who has ALN

- 10.72 Where a local authority has prepared an IDP for a young person enrolled as a student at a FEI, it **must**⁷³ maintain that IDP unless the young person does not consent to the IDP being maintained.
- 10.73 The local authority's duty to maintain an IDP may cease for other reasons, which are covered in Chapter 21 (on ceasing to maintain an IDP). Also, the local authority may request the FEI to become responsible for maintaining a plan, or may transfer the IDP to another local authority, where the young person moves into the area of another local authority (see Chapter 20 on transferring an IDP).
- 10.74 Where a local authority maintains an IDP, it **must**⁷⁴ secure the ALP and any other provision (i.e. a place at a particular school or other institution or board and lodging to meet the reasonable needs of the young person for ALP) described in it. This does not apply to any ALP which is a relevant treatment or service identified by an NHS body, in which case the NHS body **must**⁷⁵ secure the ALP. If the IDP specifies that a particular kind of ALP should be provided in Welsh, the local authority (or NHS body where applicable) **must**⁷⁶ take all reasonable steps to secure that it is provided in Welsh.
- 10.75 Where a local authority is maintaining an IDP for a young person enrolled as a student at an FEI in Wales, the FEI **must**⁷⁷ take all reasonable steps to help the local authority secure the ALP specified in it. See paragraphs 10.78 to 10.79 for more on this.
- 10.76 The local authority **must not**⁷⁸ charge a young person for the ALP described in the IDP, nor for anything else it secures for the person under Part 2 of the Act.

A local authority's duty to review an IDP for an FEI student with ALN

- 10.77 A local authority is subject to duties⁷⁹ to review an IDP (see Chapter 16 for more information.)

⁷³ Section 14(2) and (3) and of the Act.

⁷⁴ Section 14(10)(a) and (b) of the Act.

⁷⁵ Sections 20(5) and 21(5) of the Act.

⁷⁶ Sections 14(10)(c), 20(5)(c) and 21(5)(b) of the Act.

⁷⁷ Section 47 of the Act.

⁷⁸ Section 49 of the Act.

⁷⁹ Section 23 of the Act.

An FEI's duty to take all reasonable steps to help a local authority secure the ALP in an IDP maintained for a student by a local authority

10.78 Where a local authority maintains an IDP for a young person at an FEI in Wales, the FEI **must**⁸⁰ take all reasonable steps to help the local authority secure the ALP specified in it. This includes taking all reasonable steps to help the local authority secure that any ALP the IDP specifies should be provided in Welsh is provided in Welsh.

10.79 Reasonable steps **should** include arrangements for ensuring effective communication between the FEI and the local authority and/or health body about the practical action to be taken to deliver the ALP specified in the IDP. This would include arrangements made within the FEI to help the local authority to secure the ALP by delivering the ALP which it is reasonable for the FEI to deliver, and by facilitating the delivery of the ALP for which the local authority is responsible. This might include, for example:

- ensuring all those teaching the student are aware of their ALN and the ALP to be provided;
- securing training and development of staff to have the necessary expertise and skills to deliver the ALP which is for the FEI to deliver;
- the use of appropriate equipment specified in the young person's IDP, where required;
- integrating external advice and specialist support for the young person into their teaching and learning programmes in a non-disruptive way;
- monitoring the effectiveness of ALP in meeting the young person's ALN and supporting them to make progress and achieve the outcomes specified in their IDP; and
- contributing to the review of the IDP and planning any transitions to other institutions and to adult life.

⁸⁰ Section 47(4) and (5) of the Act

Chapter 11: Duties on local authorities in relation to children of compulsory school age not attending a maintained school

Introduction

11.1 IDPs for children of compulsory school age who are not attending a maintained school in Wales will nearly always be prepared and maintained by the local authority responsible for them. This would include, for example, children who are attending independent schools or who are educated at home. The exceptions are where a child is looked after by another local authority in Wales, in which case that other local authority will be responsible for maintaining an IDP and where a child is subject to a detention order (in which case, the home authority may owe slightly different duties – see Chapter 22).

A local authority's duty to decide whether a child of compulsory school age who is not a pupil at a maintained school in Wales has ALN

- 11.2 Where it is brought to its attention or otherwise appears to a local authority that a child of compulsory school age who is not registered as a pupil at a maintained school but for whom it is responsible or whom it looks after, may have ALN, the local authority **must**¹ decide whether or not the child has ALN, unless any of the following circumstances apply:
- (a) an IDP is already being maintained for that child;
 - (b) the local authority has previously decided the issue and is satisfied that the child's needs have not changed materially since that decision and there is no new information which materially affects that decision;
 - (c) the child is looked after by another local authority, in which case the local authority **must**² refer the matter to the local authority that looks after the child.;
 - (d) the child is looked after by the local authority but is in the area of a local authority in England;
 - (e) the child is subject to a detention order (although the local authority may have a duty to decide under different provisions – see Chapter 22).
- 11.3 The possibility that a child may have ALN might be “brought to the attention of” a local authority in a number of ways. There might be a direct approach

¹ Section 13(1), (2) and (4) and 18(1) and (2) of the Act.

² Section 17 of the Act.

from the child, their parent or other family member. Alternatively, there might be a referral from an external body or professional or from another of the local authority's services, such as its social services. It does not matter how the possibility that a child may have ALN comes to the local authority's attention or how it otherwise appears to it that this is the case; if the local authority is aware of that possibility, then the duty to decide applies (subject to the exceptions above). (Guidance on the definition of ALN and identifying when a child or young person may have ALN is set out in Chapter 7.)

- 11.4 Where a local authority has a duty to decide whether the child has ALN, it **must**³:
- (a) designate an officer to be responsible for co-ordinating the actions required to make that decision and, if an IDP is subsequently required, to be responsible for preparing it. In the case of child who is looked after by the local authority, the officer designated **should** be the local authority's LACE co-ordinator;
 - (b) record the date on which it is brought to its attention, or otherwise appears to it that the child may have ALN;
 - (c) record a summary of how the possibility that the child has ALN has been brought to its attention or why it otherwise appears to the authority that the child may have ALN;
 - (d) notify the child and the child's parent and in the case of a looked after child, the independent reviewing officer that it is deciding whether the child has ALN (see paragraph 11.7 below for more on this).
- 11.5 As part of the process of deciding whether a child has ALN, a local authority **must**⁴ seek advice from an educational psychologist. This advice **should** relate to:
- the educational, psychological or other features of the case which appear to be relevant to the child's educational needs (including their likely future needs);
 - how those features could affect the child's educational needs; and
 - the provision which may be appropriate for the child in light of those features of their case, whether by way of ALP or other provision.
- 11.6 Consideration **should** also be given as to whether the child already has any engagement with or support from other agencies and involve them as appropriate in the process of deciding whether the child has ALN and in preparing any IDP. (Further guidance on the role of different agencies and professionals is provided in Chapter 7.)

³ Requirement imposed by the Code

⁴ Requirement imposed by the Code. Educational Psychologists must be registered with the Health and Care Professional Council.

- 11.7 The local authority's notification to the child and the child's parent, **must**⁵ contain:
- (a) the name and contact details of the co-ordinator;
 - (b) information about how to access the local authority's arrangements for providing people with information and advice about ALN and the ALN system⁶. This could be done by providing a local authority leaflet about the ALN system or the address of the local authority's relevant web pages and drawing attention to how to get further information and advice.
- 11.8 The notification **should** also provide an indication of the likely timescales for the process (taking account of the relevant deadline below.)
- 11.9 Where it is brought to the attention of a local authority by child or a child's parent that the child may have ALN but it has previously decided the issue and is satisfied that the child's needs have not changed materially since that decision and there is no new information which materially affects that decision, it **should** communicate this to the child and child's parent and **should** provide them with information and advice about ALN and the ALN system if it has not previously or recently done so.
- 11.10 As described in Chapter 3 there is a general duty to involve children, their parents and young people in decisions that relate to any ALN they might have and the preparation of IDPs. Furthermore, putting the child or young person at the heart of the process that identifies their ALN and determines their ALP is a fundamental objective of the ALN system. To fulfil this duty and objective, the co-ordinator **should** normally arrange a meeting or meetings, as appropriate, with the child and the child's parent, to discuss and decide the child's needs and if required, prepare an IDP for them. Guidance on these meetings is provided in Chapter 18 on deciding ALN and preparing an IDP

A local authority's decision that a child of compulsory school age does not have ALN

- 11.11 Where the local authority decides that the child does not have ALN it **must**⁷ notify the child and their parent and in the case of a child looked after by the local authority, the independent reviewing officer, of the decision and the reasons for that decision. The local authority **must**⁸ make the decision, and give the notification promptly and in any event within the period of 12 weeks from it

⁵ Requirement imposed by the Code.

⁶ These are the arrangements that the local authority must make under section 9 of the Act.

⁷ Sections 13(3) and 18(3) of the Act.

⁸ Timescale requirement imposed by the Code.

being brought to the attention of, or otherwise appearing to, the local authority that the child may have ALN.

- 11.12 The requirement to make the decision and give the notification within the 12 week period does not apply if it is impractical for the local authority to do so due to circumstances beyond its control⁹.
- 11.13 As well as setting out the decision and the reason/s for it, the notification given to the child and their parent **must**¹⁰ contain:
- (a) the contact details for the local authority;
information about how to access the local authority's arrangements for providing people with information and advice about ALN and the ALN system¹¹. This could be done by providing a local authority leaflet about the ALN system or the address of the local authority's relevant web pages and drawing attention to how to get further information and advice;
 - (b) details of the local authority's arrangements for the avoidance and resolution of disagreements¹² and its independent advocacy services¹³; and
 - (c) information about the right to appeal to the Education Tribunal against the decision.
- 11.14 The notification **should** also contain an outline of what action the local authority will undertake in light of their consideration to ensure the child's other needs (which are not ALN) are met.
- 11.15 It might be helpful to offer an opportunity to the child and child's parent to discuss further.
- 11.16 A local authority decision that a child does not have ALN is appealable to the Education Tribunal – see Chapter 26.

A local authority's duty to prepare an IDP for a child not attending a maintained school, who has ALN

- 11.17 If a local authority decides that the child has ALN, it **must**¹⁴ prepare an IDP for the child. The exception to this is it is a looked after child who is not in the area of a local authority in Wales.

⁹ See Chapter 1 for more information how timescales in this Code must be interpreted.

¹⁰ Requirement imposed by the Code

¹¹ These are the arrangements that the local authority must make under section 9 of the Act.

¹² Under section 68 of the Act.

¹³ Under section 69 of the Act.

¹⁴ Sections 14(1) - (2) and 19(1) – (2) of the Act..

- 11.18 The local authority **must**¹⁵ consider whether ALP should be provided to the child in Welsh and if it decides that a particular kind of ALP should be provided in Welsh, the body **must**¹⁶ specify in the plan that it should be provided in Welsh.
- 11.19 Where, following a referral to an NHS body, the body identifies a relevant treatment or service likely to be of benefit in addressing the child's ALN, the local authority **must**¹⁷ describe the treatment or service in the IDP, specifying that it is ALP to be secured by the NHS body. The local authority **must**¹⁸ also specify in the IDP that the ALP to be secured by the NHS body should be provided in Welsh where the NHS body has so decided (see Chapter 15 for more information about this).
- 11.20 The local authority **must**¹⁹ prepare the IDP. Before it is finalised, the local authority **should** give the child and their parent an opportunity to comment on a draft of it and **should** encourage them to raise any concerns as soon as possible. The local authority **should** consider any concerns and act upon them as required, which may be to update the draft IDP, or explain decisions or other matters further.
- 11.21 Once prepared, the local authority **must**²⁰ give a copy of the IDP to the child and their parent and if the local authority looks after the child, the independent reviewing officer. The local authority **must**²¹ make the decision on ALN, prepare the plan and give a copy of it promptly and in any event within the period of 12 weeks from it being brought to the attention of, or otherwise appearing to, the local authority that the child may have ALN.
- 11.22 The requirement to make the decision and give a copy of the IDP within the 12 week period does not apply if it is impractical for the local authority to do so due to circumstances beyond its control²².
- 11.23 The local authority **must**²³ also give the child and their parent:
- (a) the contact details of the local authority;
 - (b) information about how to access the local authority's arrangements for providing people with information and advice about ALN and the ALN system²⁴. This could be done by providing a local authority leaflet about

¹⁵ Sections 14(5) and 19(3) of the Act

¹⁶ Section 14(5) and 19(3) of the Act

¹⁷ Section 21(3) of the Act.

¹⁸ Section 21(4) of the Act.

¹⁹ Sections 14(1) - (2) and 19(1) – (2) of the Act.

²⁰ Section 22 of the Act.

²¹ Timescale requirement imposed by the Code.

²² See Chapter 1 for more information how timescales in this Code must be interpreted.

²³ Requirement imposed by the Code.

²⁴ These are the arrangements that the local authority must make under section 9 of the Act.

- the ALN system or the address of the local authority's relevant web pages and drawing attention to how to get further information and advice;
- (c) details of the local authority's arrangements for the avoidance and resolution of disagreements²⁵ and its independent advocacy services²⁶; and
 - (d) information about the right to appeal to the Education Tribunal about particular aspects of the IDP.

Other considerations when determining where ALP is to be delivered

11.24 When preparing an IDP, a local authority will need to do so by reference to the child's individual needs and circumstances. General information on the preparation of an IDP can be found in Chapter 7. The local authority will need to consider where the child is to receive ALP and there are limitations in the Act as to where a child (and a young person) may be educated and receive ALP. These are dealt with in the following paragraphs.

Duty to favour education for children at mainstream maintained schools

11.25 Local authorities, in exercising their functions under Part 2 in relation to a child of compulsory school age who is to be educated in a school, **must**²⁷ secure that the child is educated in a mainstream maintained school (namely, a maintained school which is not a special school or a pupil referral unit (PRU)). This reflects the principle that mainstream schooling will be in the best interests of the child in most cases.

11.26 There are three exceptions to this duty²⁸:

- (a) where educating the child in a mainstream maintained school is incompatible with the provision of efficient education for other children;
- (b) where educating the child otherwise than in a mainstream maintained school is appropriate in the child's best interests and compatible with the provision of efficient education for other children; or
- (c) where the child's parent wishes the child to be educated otherwise than in a mainstream maintained school.

11.27 Unless one of these exceptions applies, the local authority **must**²⁹ secure that a child of compulsory school age who should be educated in a school is educated in a mainstream maintained school and the local authority would not

²⁵ Under section 68 of the Act.

²⁶ Under section 69 of the Act.

²⁷ Section 51 of the Act.

²⁸ Section 51(2) of the Act.

²⁹ Section 51(1) of the Act

be able to name (for admission purposes) a maintained special school or PRU in the IDP.

11.28 The first exception referred to above may only be relied on by a local authority where there are no reasonable steps it could take to prevent the incompatibility³⁰. Therefore, if there are reasonable steps which a local authority could take to ensure that a placement in a mainstream maintained school was not incompatible with the efficient education of other children, the local authority will be required to take those steps, rather than place a child at a non-mainstream or non-maintained school.

11.29 What constitutes a reasonable step to prevent the incompatibility will depend on all the circumstances in the individual case, but the following are some of the factors that may inform the matter:

- whether taking the step would be effective in removing the incompatibility with the provision of efficient education for other children;
- the extent to which it is practical for the local authority to take the step;
- the extent to which steps have already been taken in relation to a particular child and their effectiveness;
- the financial and other resource implications of taking the step, in particular whether the step would result in a disproportionate shift in resources towards meeting the needs of one learner such that the education of other children is potentially compromised;
- the extent of any disruption that taking the step would cause; and
- the extent to which the step is compatible with the needs of the child – for example, in the case of some children with ALN, the provision of full time one to one support may facilitate their presence in a mainstream school or classroom, but would reinforce dependency and hinder the acquisition of independence.

11.30 There will inevitably be circumstances in which there are no reasonable steps available that could prevent placement at a mainstream maintained school being incompatible with the provision of efficient education for other children (for example, where the child's behaviour persistently or significantly threatens the safety and/or impedes the learning of others and the costs of providing any safety measures to address those risks would be disproportionate or safety measures would not satisfactorily address the risks).

11.31 However, a decision not to educate a child in a mainstream setting ought not to be taken lightly in any circumstances, especially if the parent would prefer mainstream schooling. The local authority **must**³¹ have regard to the views,

³⁰ Section 51(3) of the Act.

³¹ Section 6 of the Act

wishes and feelings of the child and the child's parents and will need to consider other relevant factors, including the ability of the setting to offer appropriate ALP and the views of educational psychologists and other specialist professionals in order to ascertain whether one of the exceptions applies. It is important that all decisions are taken on the basis of the circumstances of each case.

11.32 Where a child with ALN is being educated in a mainstream maintained school in Wales, those concerned with making ALP for the child **must**³² secure that the child engages in the activities of the school together with children who do not have ALN. This duty applies only so far as it is reasonably practicable and is compatible with:

- (a) the child receiving the ALP called for by their ALN;
- (b) the provision of efficient education for the children with whom they will be educated; and
- (c) the efficient use of resources³³.

11.33 The local authority's duty does not apply if the parent wishes their child to be educated otherwise than in a mainstream maintained school. However, where this is the case, the local authority is not necessarily required to secure that the child is so educated³⁴; it **must**³⁵ have regard to those wishes, will need to consider the circumstances of the case and comply with its education duties³⁶.

11.34 Children are not prevented by the duty to favour mainstream, maintained schools from being educated in an independent school, or a school approved under section 342 of the Education Act 1996 (i.e. a non-maintained special school), where the cost is met other than by a local authority³⁷).

Naming a maintained school for the purpose of securing a child's admission

11.35 In some cases, the needs and circumstances of a child with ALN may be such that they ought to attend a particular maintained school. A local authority can name a maintained school in Wales in an IDP it prepares or maintains for a child for the purposes of securing admission of the child to that school. This is referred to below as 'naming a school'.

³² Section 52(1) of the Act.

³³ Section 52(2) of the Act.

³⁴ Section 51(4) of the Act.

³⁵ Section 6 of the Act.

³⁶ In particular, section 9 of the Education Act 1996, which requires local authorities, in exercising their functions under the Education Acts, to have regard to the general principle that pupils are to be educated in accordance with the wishes of their parents, so far as that is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure.

³⁷ Section 51(5) of the Act.

11.36 Of course, schools or other educational institutions at which the child will receive their ALP will be referenced in the IDP for a variety of other purposes, so it is essential that, where a local authority intends to name a school *for the purposes of securing admission*, this is done in section 2D of the IDP as required by requirements in Chapter 13.

11.37 A local authority **must not**³⁸ name a maintained school for the purpose of securing admission, unless:

- (a) the local authority is satisfied that the child's interest requires the ALP identified in their IDP to be made at that school; and
- (b) it is appropriate for the child to be provided with education or training at that school.

11.38 The following considerations are likely to be relevant when considering whether to name a school (there may be other relevant considerations, depending upon the circumstances):

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

11.39 If the conditions set out at paragraph 11.37 are not met, the local authority **must not**³⁹ name the school in section 2D of the IDP (see Chapter 13).

11.40 Before naming a school, the local authority **must**⁴⁰ consult the school's governing body and, if the school's admissions authority is neither the local authority nor the school itself, the local authority for the area in which the school is located. Where the school is located in another local authority's area, but the governing body is the admissions authority for the school, the other local authority **should** be notified by the home local authority preparing the IDP that it is considering naming the school.

11.41 The local authority will need to consider carefully any representations from the governing body and, where applicable, the other local authority.

³⁸ Section 48(4) of the Act.

³⁹ Section 48(4) of the Act

⁴⁰ Section 48(3) of the Act

11.42 Where a maintained school in Wales is named, the school **must**⁴¹ admit the child regardless of its duty in relation to the statutory limit on class sizes for infant classes⁴². However, this does not affect any power to exclude a pupil from a school⁴³.

Other provision to meet a child's reasonable needs for ALP

11.43 In most cases, children with ALN will be able to receive the ALP they need in any maintained school. However, the needs and circumstances of some children may be such that they ought to attend a particular school or other institution, or they may require a residential placement (referred to here as 'board or lodging').

11.44 If the child's reasonable needs for ALP cannot be met unless the local authority also secures one or both of the following:

- (a) a place at a particular school or other institution;
- (b) board and lodging,

the local authority **must**⁴⁴ include a description in the IDP of the place or board and lodging (as the case may be)⁴⁵.

A place at a particular school or other institution

11.45 The following considerations are likely to be relevant when considering whether a place at a particular school or other institution is required in order to meet a child's reasonable needs for ALP (there may be other relevant considerations, depending upon the circumstances):

- whether specific characteristics of the school or other institution make it especially good at making the required ALP compared to other schools or institutions the child could attend – this might include a variety of different matters, including the school or institution's physical characteristics;
- whether the school or institution has members of staff with specialist expertise or training;
- whether the school or institution has the required specialism in a low incidence provision, such as visual or hearing impairment; or
- it would be unreasonable for another school or institution to provide the child's ALP.

⁴¹ Section 48(2) of the Act.

⁴² Section 48(5) of the Act.

⁴³ Section 48(6) of the Act.

⁴⁴ Sections 14(6) – (8) and 19(4) – (6) of the Act.

⁴⁵ Although this chapter is about children, the position described in this section is also relevant where a local authority is preparing a plan for a young person.

11.46 This is subject to the restrictions on placing a child or young person at an independent school in Wales or independent educational institution in England, or at an institution outside England and Wales, or at an ISPI⁴⁶. These matters are addressed further below. Also, if the institution is not a maintained school in Wales, the duty to describe it in the IDP does not apply if the person or body responsible for admissions to the institution does not consent⁴⁷.

11.47 Section G of the IDP is for placements, including naming a school or other institution (see Chapter 13 on the content of an IDP.)

Board and lodging

11.48 The needs and circumstances of some children for ALP may be such that they might require a residential placement. Bearing in mind that it may require the child to be resident away from their family, the duty to involve and support children and their parents explained at Chapter 3 will have particular importance.

11.49 The local authority will need to consider all relevant circumstances of the particular case. If the reasonable needs of a child for ALP can only be met if it also secures the provision of board and lodging, it **must**⁴⁸ include a description of this in section 2D of the IDP (see Chapter 13).

11.50 In determining whether board and lodging is required, local authorities will need to take account of whether:

- the person's reasonable needs for ALP cannot be met in day provision;
- evidence demonstrates that an essential element of the person's education or training can only be provided in a residential setting (for example, the child requires a consistent programme during and after school hours that cannot be provided by parents and non-residential schooling when combined with support from other agencies);
- if the person's reasonable needs for ALP could be met in another way, the provision of the proposed board and lodging is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure.

11.51 Where a residential placement is to be secured, the local authority will want to ensure that appropriate support arrangements are in place, such as those which enable the child's continuing contact with their family.

⁴⁶ Sections 14(8)(b) and 19(6)(b) and the restrictions in sections 55, 59 and 56 (respectively) of the Act.

⁴⁷ Sections 14(8)(a) and 19(6)(a) of the Act.

⁴⁸ Sections 14(6) - (7) and 19(4) – (5) of the Act.

11.52 The local authority will want to ensure that any additional services required alongside education, ALP, and board and lodging are available from the outset. These might include:

- health care;
- personal care;
- social care; and
- transport (see Chapter 13).

11.53 This is an area in which multi-agency and cross-departmental working will be extremely important. In particular, local authorities and LHBs might consider appropriate joint funding arrangements, and local authorities would want to ensure that they apply a co-ordinated approach internally to the funding of the education and social care elements of the placement⁴⁹.

11.54 Where a residential placement is at a school or institution outside the local authority's area, the local authority would want to consider what information local service providers operating in that other area might need to be provided with.

Placements at independent schools⁵⁰

11.55 Occasionally, a child (or young person's) needs and circumstances may be such that the local authority considers whether it should secure education for the individual at an independent school⁵¹.

11.56 If the independent school is in Wales, there are two conditions that **must**⁵² be met before a local authority can exercise its functions under Part 2 of the Act to secure education for a child (or young person) at the school:

- (a) that the school is included in the register of independent schools in Wales⁵³; and
- (b) that the local authority is satisfied that the school can make the ALP described in the child's (or young person's) IDP⁵⁴.

11.57 Similar conditions **must**⁵⁵ be met in relation to placements at independent educational institutions in England:

⁴⁹ The Social Services and Well-being Act (Wales) 2014 and subordinate legislation under the Act provide the basis on which social care provision is to be made.

⁵⁰ Although this chapter is about children, the position described in this section is also relevant where a local authority is preparing a plan for a young person.

⁵¹ In the case of a child, this would only be where the duty to favour education at a mainstream maintained school did not apply – see above.

⁵² Section 55(1)(a) of the Act

⁵³ Under section 158 of the Education Act 2002

⁵⁴ Section 55(1)(b)).

- (a) that the institution is included in the register of independent educational institutions in England⁵⁶; and
- (b) that the local authority is satisfied that the institution can make the ALP described in the child's (or young person's) IDP.

11.58 Where a parent (or young person) would prefer an independent school but the local authority is satisfied that the child's needs can be met within a maintained education setting, the local authority is not necessarily required to fund the learner's place at the independent school. However, where this situation arises, the local authority **should** explain to the parent and child (or young person) how the learner's needs could be met without recourse to an independent placement.

11.59 When a local authority is considering whether they should place the child at an independent school they will need to consider whether:

- evidence demonstrates that the ALP required to meet the child's ALN is only available in that independent school;
- the child has medical and/or social care needs that cannot be met by, or in conjunction with, local providers in a maintained school setting and which would prevent him/her from accessing education or training suitable to meet their identified needs;
- if provision to meet the person's needs could also be secured elsewhere, placement at that independent school would be compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure⁵⁷.

11.60 The expectation is that independent schools will work with the local authority to deliver the ALP which the child or young person needs. Independent schools may have their own ALN policy and where they do, local authorities may wish to consider it when considering placing a learner at the school.

ALP for a child otherwise than in a school

11.61 Local authorities **may**⁵⁸ arrange for the ALP, or any part of the ALP, described in a child's IDP to be made otherwise than in a school. Such arrangements are unlikely to be commonplace (except in relation to those children who have not yet started school, where they might be more common). Local authorities

⁵⁵ Section 55(2) of the Act.

⁵⁶ Kept under section 95 of the Education and Skills Act 2008. In this context, "independent educational institution" has the meaning given by Chapter 1 of Part 4 of that Act.

⁵⁷ See the duty in section 9 of the Education Act 1996 about the wishes of parents, which is referred to footnote 36 above.

⁵⁸ Section 53(1) of the Act.

must not⁵⁹ arrange for ALP for a child to be made otherwise than in a school unless they are satisfied that it would be inappropriate for the ALP to be made in a school.

ALP outside England and Wales⁶⁰

11.62 Very rarely, it may be appropriate for a child (or young person) requiring specialist ALP to be placed at an institution outside England and Wales. However, a local authority **must not**⁶¹ make arrangements for a child (or young person) to attend such an institution unless the institution is organised to make the ALP described in the person's IDP.

A local authority's duty to maintain an IDP and secure the ALP

11.63 Where a local authority has prepared an IDP for a child who is not a registered pupil at a maintained school in Wales it **must**⁶² maintain that IDP.

11.64 If once the child has become a young person, the person at some point does not consent to the plan being maintained, the local authority's duty to maintain it would cease⁶³. The local authority's duty to maintain an IDP may cease for other reasons, which are covered in Chapter 21.

11.65 Where a local authority maintains an IDP, it **must**⁶⁴ secure the ALP and any other provision (i.e. a place at a particular school or institution or board and lodging to meet the reasonable needs of the child for ALP) described in it. This does not apply to any ALP which is a relevant treatment or service identified by an NHS body, in which case the NHS body **must**⁶⁵ secure the ALP. If the IDP specifies that a particular kind of ALP should be provided in Welsh, the local authority (or NHS body where applicable) **must**⁶⁶ take all reasonable steps to secure that it is provided in Welsh.

11.66 The local authority **must not**⁶⁷ charge the child or their parent for the ALP described in the IDP, nor for anything else it secures under Part 2 of the Act.

⁵⁹ Section 53(2) of the Act.

⁶⁰ Although this chapter is about children, the position described in this section is also relevant where a local authority is preparing a plan for a young person.

⁶¹ Section 59 of the Act.

⁶² Sections 14(1) - (2) and 19(1) – (2) of the Act.

⁶³ Section 14(1) – (3) of the Act.

⁶⁴ Sections 14(10) and 19(7) of the Act

⁶⁵ Sections 20(5) and 21(5) of the Act

⁶⁶ Sections 14(10)(c), 19(7)(c), 20(5)(c) and 21(5)(b) of the Act

⁶⁷ Section 49 of the Act. For these purposes, "parent" does not include a parent who is not an individual.

11.67 If the child later becomes a registered pupil at a maintained school in Wales, the local authority **may**⁶⁸ direct the school to maintain the IDP. However, the local authority **must not**⁶⁹ direct a school to maintain an IDP where it includes other provision which the local authority is required to secure (i.e. a place at a particular school or institution or board and lodging), or if the person is a child it looks after or is dual registered.

A local authority's duty to review an IDP

11.68 A local authority is subject to duties⁷⁰ to review an IDP (see Chapter 16 for more information.)

⁶⁸ Section 14(4) of the Act.

⁶⁹ Sections 14(9), 19(2) and 30(7) of the Act.

⁷⁰ Sections 23 and 24 of the Act.

Chapter 12: Duties on local authorities in relation to young people not at a maintained school or FEI

Introduction

12.1 IDPs for young people with ALN who are not attending a maintained school or FEI in Wales will always be prepared and maintained by the local authority responsible for the young person. Where the local authority has decided that the young person has ALN, it **must**¹ decide in accordance with regulations whether it is necessary for it to prepare and maintain an IDP to meet the young person's reasonable needs for education or training.

A local authority's duty to decide whether a young person not at a maintained school or FEI has ALN

- 12.2 Where it is brought to its attention or otherwise appears to a local authority that a young person who is not a registered pupil at a maintained school in Wales nor an enrolled student at an FEI in Wales but for whom it is responsible, may have ALN, the local authority **must**² decide whether or not the young person has ALN, unless any of the following circumstances apply:
- (a) an IDP is already being maintained for that young person;
 - (b) the local authority has previously decided the issue and is satisfied that the young person's needs have not changed materially since that decision and there is no new information which materially affects that decision;
 - (c) the young person does not consent to the decision being made; or
 - (d) the young person is subject to a detention order (although the local authority may have a duty to decide under different provisions - see Chapter 22).
- 12.3 Where a local authority has a duty to decide whether a young person has ALN, it **must**³:
- (a) designate a person to be responsible for coordinating the actions required to make that decision and, if an IDP is subsequently required, to be responsible for preparing it;
 - (b) record the date on which it is brought to its attention, or otherwise appears to it that the young person may have ALN;
 - (c) record a summary of how the possibility that the young person has ALN has been brought to its attention or why it otherwise appears to the authority that the young person may have ALN; and
 - (d) give the notification referred to in paragraph 12.4.

¹ Section 14(1)(c)(ii) of the Act.

² Section 13(1) and 13(2) of the Act

³ Requirement imposed by the Code

- 12.4 The local authority **must**⁴, promptly after the possibility of the young person having ALN has been brought to its attention or otherwise appeared to it:
- (a) notify the young person that it has been brought to its attention or otherwise appears to it that the young person may have ALN;
 - (b) seek the young person's consent to the decision being made and, should the decision be that the young person has ALN, to an IDP being prepared and maintained; and
 - (c) inform the young person of the consequences of consenting and not consenting to the decision being made.
- 12.5 The notification **must**⁵ contain:
- (a) the name and contact details of the co-ordinator;
 - (b) information about how to access the local authority's arrangements for providing people with information and advice about ALN and the ALN system⁶. This could be done by providing a local authority leaflet about the ALN system or the address of the local authority's relevant web pages and drawing attention to how to get further information and advice.
- 12.6 The notification **should** also provide an indication of the likely timescales for the process (taking account of the relevant deadline below.)
- 12.7 Where the young person does not consent to the decision being taken, this **must**⁷ be recorded. Local authorities **should** have appropriate procedures in place to facilitate this, which might include the young person signing to confirm that they are withholding consent.
- 12.8 The possibility that a young person may have ALN might be "brought to the attention of" a local authority in a number of ways. There might be a direct approach from the young person themselves, their parent or other family member. Alternatively, there might be a referral from an external body or professional, such as a health body, or from another of the local authority's services, such as its social services. It does not matter how the possibility that a young person may have ALN comes to the local authority's attention or how it otherwise appears to it that this is the case; if the local authority is aware of that possibility, then the duty to decide applies. (Guidance on the definition of ALN and identifying when a young person may have ALN is set out in Chapter 7.)

⁴ Requirement imposed by the Code.

⁵ Requirement imposed by the Code.

⁶ These are the arrangements that the local authority must make under section 9 of the Act.

⁷ Requirement imposed by the Code.

- 12.9 As part of the process of deciding whether a young person has ALN, a local authority **must**⁸ consider seeking advice from an educational psychologist. This advice **should** relate to:
- a) the educational, psychological or other features of the case which appear to be relevant to the young person's educational needs (including their likely future needs);
 - b) how those features could affect the young person's educational needs; and
 - c) the provision which may be appropriate for the young person in light of those features of their case, whether by way of ALP or other provision.
- 12.10 Consideration **should** also be given to whether the young person already has any engagement with or support from other agencies and involve them as appropriate in the process of deciding whether the young person has ALN, whether it is necessary for the local authority to prepare an IDP and if so, in preparing it. (Further guidance on the role of different agencies and professionals is provided in Chapter 7.)
- 12.11 As described in Chapter 3 there is a general duty to involve young people in decisions that relate to any ALN they might have and the preparation of IDPs. Furthermore, putting the young person at the heart of the process that identifies their ALN and determines their ALP is a fundamental objective of the ALN system. To fulfil this duty and objective, the co-ordinator **should** normally arrange a meeting or meetings with the young person, to discuss and decide the young person's needs, whether it is necessary for the local authority to prepare and maintain an IDP and if so, to prepare the IDP. (Guidance on these meetings is provided in Chapter 18.)

A local authority's decision that a young person does not have ALN

- 12.12 Where the local authority decides that the young person does not have ALN, it **must**⁹ notify the young person of the decision and the reasons for that decision. The local authority **must**¹⁰ make the decision and give the notification promptly and in any event within the period of 12 weeks from the young person consenting to the decision being made.
- 12.13 The requirement to make the decision and give the notification within the 12 week period does not apply if it is impractical for the local authority to do so due to circumstances beyond its control¹¹.

⁸ Requirement imposed by the Code. Educational Psychologists must be registered with the Health and Care Professional Council.

⁹ Section 13(3) of the Act

¹⁰ Requirement imposed by the Code.

¹¹ See Chapter 1 for more information how timescales in this Code must be interpreted.

12.14 As well as setting out the decision and the reason/s for it, the notification **must**¹² contain:

- (a) the contact details for the local authority;
- (b) information about how to access the local authority's arrangements for providing people with information and advice about ALN and the ALN system¹³. This could be done by providing a local authority leaflet about the ALN system or the address of the local authority's relevant web pages and drawing attention to how to get further information and advice;
- (c) details of the local authority's arrangements for the avoidance and resolution of disagreements¹⁴, and its independent advocacy services¹⁵; and,
- (d) information about the right to appeal to the Education Tribunal against the decision.

12.15 It might be helpful to offer an opportunity to the young person to discuss this further.

12.16 A local authority's decision that an individual does not have ALN is appealable to the Education Tribunal¹⁶ – see Chapter 26.

A local authority's duty to decide whether to prepare an IDP for a young person not at a maintained school or FEI in Wales who has ALN

12.17 In order to achieve their potential, young people with ALN may need ALP to access education or training which is made generally for others of the same age, or they may have need of education or training which is specifically designed for people with ALN.

12.18 If a local authority decides that a young person who is neither registered as a pupil at a maintained school in Wales nor enrolled as a student at an FEI in Wales but for whom it is responsible, has ALN, it **must**¹⁷ prepare and maintain an IDP for that person if:

- it decides in accordance with regulations (see paragraphs 12.22- 12.51 below) that it is necessary for it to prepare and maintain an IDP to meet the young person's reasonable needs for education or training; and
- the young person consents to the plan being prepared and maintained.

¹² Requirement imposed by the Code.

¹³ These are the arrangements that the local authority must make under section 9 of the Act.

¹⁴ Under section 68 of the Act.

¹⁵ Under section 69 of the Act.

¹⁶ Section 70 of the Act.

¹⁷ Section 14(1) to (3) of the Act.

12.19 The questions for the local authority are what are the person's *reasonable* needs for education or training and what is *necessary* to meet them. There is no entitlement to continuous education or training from when a person ceases to be of compulsory school age up to the age of 25 and nor is there an entitlement to the provision of the young person's choice (although the young person's views, wishes and feelings **must**¹⁸ be taken into account). The intention underlying this is to give young people with ALN equitable access to education or training, compared to young people who do not have ALN.

12.20 To determine whether it is necessary to prepare an IDP, the local authority will need to address the following:

- does the young person have reasonable needs for education or training and if so, what are they;
- what provision may be available to meet those needs; and
- is it necessary for the local authority to prepare and maintain an IDP in order to meet those needs.

12.21 These matters are discussed below.

Determining whether the young person has reasonable needs for education or training and if so, what are they

12.22 The local authority **must**¹⁹ consider whether there is a realistic prospect of the young person achieving a desired objective within a reasonable period of time by undertaking a course of education or training.

12.23 Objectives **should** relate to enabling the young person to move towards long-term aspirations, be they developing independent living skills and/or community participation; preparing for work; or progressing to other education (including higher education) or training opportunities. They may also have a wider focus, such as positive social relationships and emotional resilience and stability. Examples of objectives could be to complete a particular vocational qualification or to develop some independent living skills.

12.24 In identifying a desired objective, it is essential to consider the young person's views, wishes and feelings about what is important to them and what they want to achieve. If the person has previously had an IDP, it might also inform what objectives are desirable for the person.

12.25 In considering this matter, the local authority **must**²⁰ assume that the ALP called for by the young person's needs would be made for that young person whilst on a course of education or training.

¹⁸ Section 6 of the Act.

¹⁹ Regulations to be made under section 46 of the Act.

²⁰ Regulations to be made under section 46 of the Act.

- 12.26 The person's previous progress in education, and any IDP they have previously are likely to be relevant to informing whether the person has the capability to progress and achieve the desired objective. Advice from an educational psychologist or other professionals may also be useful to consider in order to inform this matter.
- 12.27 Determining what is a reasonable period within which the young person might be expected to achieve the objective is likely to depend upon the nature of the objective. Where the desired objective is quite general (such as acquiring independent living skills) a reasonable period of time for a course would not normally exceed two academic years. This reflects the general position that provision at mainstream FEIs usually spans no more than two academic years. Where the objective relates to acquiring a vocational qualification, courses for which are provided in mainstream further education, the period of the mainstream course leading to that qualification is likely to be relevant to what is a reasonable period. In considering what is a reasonable period, the local authority **must**²¹ consider whether the young person requires additional time to complete post-16 education or training in comparison to the majority of others of the same age who do not have ALN.
- 12.28 Where the young person has previously undertaken a course of post-16 education or training, the local authority **must**²² consider whether the previous post-16 education or training cannot be said to have afforded the young person effective access to post-16 education or due to very exceptional circumstances, the young person has in effect been deprived of the value of that education or training.
- 12.29 This might be the case where, for example, the young person has recently acquired ALN (perhaps following an accident) or has suffered a deterioration in their ALN and as a result cannot utilise what was learnt in the previous education or training or may require a course of education or training to learn skills to be able to overcome or minimise the barriers presented by the person's new ALN. It might also be the case where the education or training previously provided fell so far below the expected standard for the young person that it cannot objectively be said to have delivered the provision that was required to meet the person's needs.
- 12.30 Where this is the case, the local authority, in determining the person's reasonable needs for education or training may be, **must**²³ take account of:
- (a) the period of the previous post-16 education or training, and

²² Regulations to be made under section 46 of the Act.

²³ Regulations to be made under section 46 of the Act.

- (b) whether the young person requires additional time in comparison to the majority of others of the same age who do not have additional learning needs to complete their education or training.

Determining what provision may be available to meet a young person's reasonable needs for education or training

- 12.31 Where a local authority has identified an apparent reasonable need for education or training, it will need to consider what courses may be available which would be expected to equip the young person to meet the desired objective within a reasonable period.
- 12.32 The local authority **should** consider the suitability of potential available courses, both locally and anything further afield. This could entail discussing with an FEI whether the young person could undertake a course with it and what ALP might be needed to enable the person to do a course. It could entail considering a placement, including a residential one, at an independent school, an independent educational institution in England, an ISPI or even occasionally, at an institution outside England and Wales.
- 12.33 An ISPI is an institution which provides education or training for persons over compulsory school age and is specially organised to provide such education or training for individuals with ALN. ISPIs do not include: FEIs; independent schools in Wales; independent educational institutions in England; or 16-19 Academies²⁴.
- 12.34 The local authority will need to understand how any potential course is expected to equip the young person to achieve their desired objectives within a reasonable period.
- 12.35 The local authority will also need to consider whether any potential placement is suitable for the young person. This would include getting the young person's consent to a proposed placement or any authorisations which might be needed. It will need to consider whether the placement is expected to remain suitable for the young person to undertake for its expected duration. Where a potential placement is residential, this can include consideration of its compliance with regulatory standards for residential establishments.
- 12.36 The local authority, when considering the young person's reasonable needs for education and training and for ALP, may take into account the compatibility of alternative options with the avoidance of unreasonable public expenditure.

²⁴ Section 56(6) of the Act.

Determining whether it is necessary for the local authority to prepare and maintain an IDP in order to meet a young person's reasonable needs for education or training

12.37 Identifying the potential placements for the young person can help inform the question of whether it is necessary for the local authority to prepare and maintain an IDP. Just because a young person with ALN has reasonable needs for education or training, it does not automatically follow that it is necessary for the local authority to prepare and maintain an IDP for that young person. It is only necessary where without the local authority maintaining an IDP, the person's reasonable needs for ALP would not be met, specifically, if²⁵:

- (i) the young person is to be a registered pupil at a maintained school in Wales or an enrolled student at an FEI in Wales to undertake a course of education or training, and it would not be reasonable for the school or FEI to secure all of the ALP called for by the young person's ALN;
- (ii) the reasonable needs of the young person for ALP cannot be met unless the local authority also secures a place at a particular school or other institution or board and lodging²⁶ (and the local authority can secure that provision in accordance with the limitations on its functions in the Act²⁷; or
- (iii) where the young person is or is to be a registered pupil at a maintained school in England, an Academy or is or is to be an enrolled student at an FEI in England to undertake a course of education or training, the ALP called for by the young person's ALN would not be made unless the local authority were to maintain an IDP for the young person.

12.38 These matters are discussed below.

- (i) Education or training provided at a maintained school in Wales or an FEI in Wales

12.39 A local authority might establish that a young person's reasonable needs for education or training could be met at an FEI in Wales or a maintained school in Wales. The question will then be whether it would be reasonable for the FEI or maintained school to secure all of the ALP called for by the young person's ALN. If so, the FEI or maintained school would be subject to the duties²⁸ to decide, prepare and maintain an IDP once the young person became registered at the school or enrolled at the FEI (see Chapters 9 and 10). However, if it was determined that it would not be reasonable for the FEI or maintained school to secure all of the ALP called for by the young person's

²⁵ Regulations to be made under section 46 of the Act.

²⁶ In line with its duty under section 14(6) and (7) of the Act.

²⁷ Namely, those in sections 55 (placements at independent schools), 56(3) (placements at ISPIs) and 59 (placements outside England and Wales) of the Act and, if not a maintained school, that the person or body responsible for admissions to the institution, consents (section 14(8)(a) of the Act).

²⁸ Under sections 11 and 12 of the Act.

ALN, the duty to prepare and maintain the plan would lie with the local authority.

12.40 Where a young person would prefer an independent school or ISPI but the local authority is satisfied that their needs can be met within a maintained school or FEI the local authority is not required to secure a place at an independent school or ISPI. However, where this situation arises, the local authority **should** ensure that they explain to the young person how their needs could be met without recourse to an independent school or ISPI placement.

(ii) Securing a place at a particular school or other institution or board and lodging

12.41 The following will be relevant when a local authority is considering whether a young person's reasonable needs for ALP can only be met by it securing a place at a particular institution (there may be other relevant considerations, depending upon the circumstances):

- the ALP reasonably required to meet the YP's ALN is only available in an independent school or educational institution or in an ISPI, or is ALP which is not made generally for others in FEIs or mainstream maintained schools in Wales and could not reasonably be made in those schools or FEIs;
- an essential element of the YP's education or training can only be provided in a residential setting;
- the YP has medical and/or social care needs that cannot be met by, or in conjunction with, local providers in a mainstream education setting and which would prevent the YP from accessing education or training suitable to meet their needs.

12.42 Placements at particular schools and institutions are subject to restrictions²⁹. A local authority is restricted from placing a child or young person at:

- an independent school in Wales or independent educational institution in England unless it is included in the register of independent schools in Wales or independent educational institutions in England, respectively; and (in either case) the local authority is satisfied that the school or institution can make the ALP described in the young person's IDP;
- an ISPI unless it is included on the list of such institutions published by the Welsh Ministers³⁰ or there is an applicable exemption prescribed in regulations;
- an institution outside England and Wales unless it is organised to make the ALP described in the young person's IDP.

²⁹ Section 14(8)(b) and the restrictions in sections 55, 56 and 59 (respectively) of the Act.

³⁰ This list is established and maintained under section 56(1) of the Act and published under section 56(2).

12.43 If the institution is not a maintained school in Wales, the duty to describe it in the IDP does not apply if the person or body responsible for admissions to the institution does not consent³¹.

12.44 In determining whether the young person's reasonable needs for ALP can only be met by securing board and lodging, a local authority will need to consider whether:

- the young person's reasonable needs for ALP cannot be met in local day provision; and
- evidence demonstrates that an essential element of the young person's education and training can only be provided in a residential setting (for example, the young person requires a consistent programme during and after school/FEI hours that cannot be provided by a non-residential education setting and those caring for a young person, when combined with support from other agencies).

12.45 A decision that a residential placement is appropriate will involve consideration of all of the circumstances, and, bearing in mind that it may require young person to be resident away from their family, the duty to involve and support young people explained at Chapter 3 will have particular importance.

12.46 Where a residential placement is to be secured, the local authority will want to ensure that appropriate support arrangements will be in place, such as those which enable the young person's continuing contact with their family.

12.47 The local authority will want to ensure that any additional services required alongside education, ALP and board and lodging will be available from the outset. These might include:

- health care;
- personal care;
- social care; and
- transport.

12.48 This is an area in which multi-agency and cross-departmental working will be extremely important. In particular, local authorities and LHBs might consider appropriate joint funding arrangements, and local authorities would want to ensure that they apply a co-ordinated approach internally to the funding of the education and social care elements of the placement³².

³¹ Section 14(8)(a) of the Act.

³² The Social Services and Well-being Act (Wales) 2014 and subordinate legislation under the Act provide the basis on which social care provision is to be made.

12.49 Where a young person's residential placement is at a school or institution outside the local authority's area, the local authority would want to consider what information local service providers operating in that other area might need to be provided with.

12.50 Very rarely, it may be appropriate for a young person requiring specialist ALP to be placed at an institution outside England and Wales. However, a local authority **must not**³³ make arrangements for a young person with ALN to attend such an institution unless the institution is organised to make the ALP described in the young person's IDP.

(iii) Education or training provided at a maintained school in England, an Academy or an FEI in England

12.51 In the case of a young person with a reasonable need for education or training who was currently or was going to be a registered pupil at a maintained school in England, an Academy or an enrolled student at an FEI in England, it would only be necessary for the local authority in Wales to prepare and maintain an IDP where that institution would not provide all the ALP called for by the young person's ALN. The appropriate authorities of these institutions are required under the Children and Families Act³⁴ to use their best endeavours to secure that the special educational provision called for by their pupils' or students' special educational needs is made.

A local authority's duty to prepare an IDP for a young person who has ALN and is not at a maintained school or FEI in Wales

12.52 If a local authority decides that it is necessary for it to prepare and maintain an IDP to meet the young person's reasonable needs for education or training it **must**³⁵ prepare an IDP for that person unless the person does not consent to the plan being prepared. Where the reasonable needs of a young person for ALP can only be met if it also secures a place at a particular institution and/or board and lodging, it **must**³⁶ include a description of this in Section G of the IDP (see Chapter 13).

12.53 The local authority **must**³⁷ consider whether ALP should be provided to the young person in Welsh and if it decides that a particular kind of ALP should be provided in Welsh, it **must**³⁸ specify in the plan that it should be provided in Welsh.

³³ Section 59 of the Act.

³⁴ Section 66 of the Children and Families Act 2014.

³⁵ Section 14(1) to (3) of the Act.

³⁶ Sections 14(6) and (7) of the Act. Where this duty applies, the local authority must not direct a school to prepare and/or maintain an IDP – see section 14(9) of the Act.

³⁷ Section 14(5) of the Act.

³⁸ Section 14(5) of the Act.

- 12.54 Where, following a referral to an NHS body, the body identifies a relevant treatment or service likely to be of benefit in addressing the young person's ALN, the local authority **must**³⁹ describe the treatment or service in the IDP, specifying that it is ALP to be secured by the NHS body. The local authority **must**⁴⁰ also specify in the IDP that the ALP to be secured by the NHS body should be provided in Welsh where the NHS body has so decided (see Chapter 15 for more information about this).
- 12.55 A local authority preparing an IDP for a young person has functions which relate to where the young person is to be educated or trained and receive ALP. This will already have been considered when the local authority considered whether it was necessary to prepare and maintain an IDP to meet the young person's reasonable needs for education or training. Where it is necessary for the local authority to prepare the plan because the condition in paragraph 12.37(ii) applied, the local authority will need to describe the place at the particular school or other institution and/or the board and lodging in the IDP. Powers and limitations in respect of placements are dealt with in paragraphs 12.42 – 12.51.
- 12.56 Before it is finalised, the local authority **should** give the young person an opportunity to comment on a draft of the IDP and **should** encourage them to raise any concerns as soon as possible. The local authority **should** consider any concerns and act upon them as required, which may be to update the draft IDP, or explain decisions or other matters further.
- 12.57 The local authority **must**⁴¹ do the following promptly and in any event within the period of 12 weeks from the young person consenting to the decision on whether or not the person has ALN being made:
- (a) make the decision on ALN;
 - (b) make the decision on whether it is necessary for it to prepare and maintain an IDP;
 - (c) prepare the IDP; and
 - (d) give a copy of the IDP to the young person.
- 12.58 The requirement to do those things within the 12 week period does not apply if it is impractical for the local authority to do so due to circumstances beyond its control⁴².

³⁹ Section 21(3).

⁴⁰ Section 21(4).

⁴¹ The requirements to take those decisions, prepare the IDP and give a copy of it are in sections 13, 14 and 22 of the Act. The timescale requirement is imposed by the Code.

⁴² See Chapter 1 for more information how timescales in this Code must be interpreted.

12.59 The local authority **must**⁴³ also give the young person:

- (a) the contact details of the relevant local authority;
- (b) information about how to access the local authority's arrangements for providing people with information and advice about ALN and the ALN system⁴⁴. This could be done by providing a local authority leaflet about the ALN system or the local authority's relevant web pages and drawing attention to how to get further information and advice;
- (c) details of the local authority's arrangements for the avoidance and resolution of disagreements⁴⁵ and its independent advocacy services⁴⁶; and
- (d) information about the right to appeal to the Education Tribunal about particular aspects of the IDP.

A local authority's decision that it is not necessary to prepare and maintain an IDP for a young person who has ALN and is not at a maintained school or FEI in Wales

12.60 Where the local authority decides that it is not necessary for it to prepare and maintain an IDP to meet a young person's reasonable needs for education and training, it **must**⁴⁷ notify the young person of the decision and the reasons for that decision. The local authority **must**⁴⁸ make that decision (including the prior decision that the young person has ALN) and give the notification promptly and in any event within the period of 12 weeks from the young person consenting to the decision on whether or not the young person has ALN.

12.61 The requirement to make the decision and give the notification within the 12 week period does not apply if it is impractical for the local authority to do so due to circumstances beyond its control⁴⁹.

12.62 As well as setting out the decision and the reason/s for it, the notification **must**⁵⁰ contain:

- (a) the contact details for the local authority;

⁴³ Requirement imposed by the Code

⁴⁴ These are the arrangements that the local authority must make under section 9 of the Act.

⁴⁵ Under section 68 of the Act.

⁴⁶ Under section 69 of the Act.

⁴⁷ Regulations to be made under section 46 of the Act.

⁴⁸ Regulations to be made under section 46 of the Act

⁴⁹ Regulations to be made under section 46 of the Act. See Chapter 1 for more information how timescales in this Code must be interpreted.

⁵⁰ Regulations to be made under section 46 of the Act.

- (b) information about how to access the local authority's arrangements for providing people with information and advice about ALN and the ALN system⁵¹. This could be done by providing a local authority leaflet about the ALN system or the local authority's relevant web pages and drawing attention to how to get further information and advice;
- (c) details of the local authority's arrangements for the avoidance and resolution of disagreements⁵², and its independent advocacy services⁵³; and,
- (d) information about the right to appeal to the Education Tribunal against the decision.

12.63 It might be helpful to offer an opportunity to the young person to discuss this further. It might also be helpful to signpost them to other sources of information and advice about further education courses or careers advice.

12.64 A local authority's decision that it is not necessary to prepare and maintain an IDP for a young person with ALN is appealable to the Education Tribunal⁵⁴ – see Chapter 26.

A local authority's duty to maintain an IDP and secure the ALP included in it

12.65 Where a local authority has prepared an IDP for a young person who is not a registered pupil at a maintained school or an enrolled student at an FEI it **must**⁵⁵ maintain that IDP unless the young person does not consent to the IDP being maintained.

12.66 The local authority's duty to maintain an IDP may cease for other reasons, which are covered in Chapter 21 (on ceasing to maintain an IDP) or transfer to another body (see Chapter 20 on transferring an IDP).

12.67 Where a local authority maintains an IDP, it **must**⁵⁶ secure the ALP and any other provision (i.e. a place at a particular school or other institution or board and lodging to meet the reasonable needs of the young person for ALP) described in it. This does not apply to any ALP which is a relevant treatment or service identified by an NHS body, in which case the NHS body **must**⁵⁷ secure the ALP. If the IDP specifies that a particular kind of ALP should be provided in Welsh, the local authority (or NHS body where applicable) **must**⁵⁸ take all reasonable steps to secure that it is provided in Welsh.

⁵¹ These are the arrangements that the local authority must make under section 9 of the Act.

⁵² Under section 68 of the Act.

⁵³ Under section 69 of the Act.

⁵⁴ Section 70 of the Act.

⁵⁵ Section 14(2) and (3) of the Act

⁵⁶ Section 14(10)(a) and (b) of the Act.

⁵⁷ Sections 20(5) and 21(5) of the Act.

⁵⁸ Sections 14(10)(c), 20(5)(c) and 21(5)(b) of the Act.

- 12.68 The local authority **must not**⁵⁹ charge the young person for any ALP described in the IDP, nor for anything else it secures for the young person under Part 2 of the Act.
- 12.69 If a young person for whom the local authority maintains an IDP subsequently becomes a registered pupil at a maintained school in Wales, the local authority **may**⁶⁰ direct the school's governing body to maintain the IDP. However, the local authority **must not**⁶¹ direct a school to maintain an IDP where it includes other provision which the local authority is required to secure (i.e. a place at a particular school or institution or board and lodging).
- 12.70 If the young person subsequently becomes an enrolled student at an FEI, the local authority **may**⁶² request the FEI to become responsible for maintaining the IDP (see Chapter 20 on transfers).

A local authority's duty to review an IDP

- 12.71 A local authority is subject to duties⁶³ to review an IDP (see Chapter 16 for more information.)

⁵⁹ Section 49(1) of the Act.

⁶⁰ Section 14(4) of the Act

⁶¹ Section 14(9) of the Act

⁶² Section 36(2) of the Act

⁶³ Section 23 of the Act.

Chapter 13: Content of an IDP

Introduction

- 13.1 An IDP is¹ a document that contains a description of the ALN that acts as a barrier to a child or young person achieving their educational potential, the ALP that is necessary to overcome or mitigate that barrier, and anything else required or authorised by or under Part 2 of the Act. It is a “plan” – in the sense that it plans the action that must be taken, namely the ALP which must be secured for the child or young person. It also provides a record against which a child or young person’s progress can be monitored and reviewed. Those responsible for maintaining an IDP should be mindful that the IDP only has any value if it results in the successful implementation of provision that meets the needs of the child or young person.
- 13.2 An IDP is intended to be a flexible document. For example, a child or young person with less severe or complex needs is likely to have a simpler (and therefore shorter) IDP than a child or young person with more severe or complex needs, or low incidence needs. A child or young person with severe, complex or low incidence needs will likely require specialist input and advice and their IDP is likely to contain contributions from a wide range of agencies and detail a much wider range of interventions. Nevertheless the information included in the IDP **should** be written in plain language and without jargon with a view to all who are likely to read the IDP, including, wherever possible, the child or young person, being able to understand it.
- 13.3 This content **should** be:
- created by agencies and professionals working together to identify the child or young person’s ALN and the provision to meet those ALN;
 - created through collaboration with the child, child’s parents or young person;
 - developed on a flexible, person-centred basis that reflects the needs of the child or young person;
 - written in a style that reflects that it is the child or young person’s plan and not simply part of an administrative process. The style and, whenever possible, the language should reflect the age of the child or young person, but clearly distinguish between what has been said by the child or young person and what has not;
 - written in plain language (whether that is Welsh or English or both), avoiding the use of jargon and explaining the relevance of any technical terminology that needs to be included; and
 - kept under consideration in order to inform whether a review should be conducted ahead of when it otherwise would be (see Chapter 16 on reviews).

¹ Section 10 of the Act contains the definition.

- 13.4 However, it is important that all IDPs contain certain key elements and have the same basic structure. This will ensure broad consistency and equality in terms of the way that learners are treated and will underpin the cohesion of the ALN system as a whole and the portability of individual plans. This chapter describes those elements and provides for the standard form – this is the order and structure in which those elements are required to be presented.
- 13.5 Where appropriate, the IDP can be included within other plans and other plans can be included within it, as outlined in Chapter 16.

Mandatory IDP form

- 13.6 A local authority, school or FEI preparing or revising an IDP **must**² use the standard form at Annex A for the IDP – except where the IDP is for a looked after child (in which case, a local authority **must**³ use the template at Annex B - see Chapter 14). To comply with this requirement, the IDP **must**⁴ include the part headings, section headings and sub-section headings set out on the standard form and these **must**⁵ be used in the same order as they appear on the standard form.
- 13.7 The form's style **may** be adapted to suit local preferences (such as by including the logo of the local authority, school or FEI) or those of the child or young person (such as by using a larger or different font, avoiding the use of certain colours etc.) as can the presentation of the information inserted into those sections and sub-sections (for example, if using a one-page profile for section 1C – see paragraphs 13.19 to 13.26 below).
- 13.8 The body preparing or revising an IDP **may** include further sections after section 3C or annexes, should it consider it appropriate to do so (for example, if information is to be included about transport arrangements or other non-mandatory content of the IDP – see paragraphs 13.71- 13.76 at the end of this chapter).
- 13.9 For ease of reference, the form at Annex A differentiates those elements of the IDP in relation to which appeals to the Education Tribunal for Wales can be made by marking them as underlined, bold and red. It is not necessary to mark them in this particular way, but these sections **should** be marked in some way in order to make it clear to the child, their parents or the young person the sections to which appeal rights are attached.

² Requirement imposed by the Code.

³ Requirement imposed by the Code.

⁴ Requirement imposed by the Code.

⁵ Requirement imposed by the Code.

Mandatory IDP content

- 13.10 A school, FEI or local authority preparing or revising an IDP **must**⁶ set out, where relevant, the information indicated by the headings of the sections and sub-sections (numbered 1A to 3C) within the corresponding section or sub-section of the IDP.
- 13.11 Those section and sub-section headings are set out below (underlined) in the order in which they appear in the IDP.

Part 1.

- 13.12 The details in section 1A and 1B **should** be kept up to date. Changes to these sections can be made without a review and where they are made, it is not necessary to give another copy of the whole IDP to the child, their parent or the young person (but a copy of the updated information can be provided, as appropriate).

Section 1A: Basic biographical information about the child or young person and contact details

- 13.13 The purpose of including biographical information is to ensure that accurate and consistent information is available across all agencies involved in supporting the child or young person.
- 13.14 Section 1A of the IDP contains the following sub-sections:
- 1A.1) Full name. This is of the child or young person whose IDP it is.
 - 1A.2) Likes to be known as. This is the name by which the child or young person likes to be known.
 - 1A.3) Date of birth. This is the child or young person's date of birth.
 - 1A.4) Gender. This is that of the child or young person.
 - 1A.5) Current education setting(s). This is to record the name of any school or other educational institution (together with address or any other details necessary to identify it) currently attended by the child or young person. If the child or young person is not currently attending an education setting, this sub-section **should** be marked "not applicable".
 - 1A.6) Home address and telephone number. These are those of the child or young person.
 - 1A.7) Name of parents. For a child, their parents names should be inserted here. For a young person, their parents' details should only be inserted here and in 1A.8 and 1A.9 if the young person consents to the body maintaining the IDP sharing information about their IDP and their ALN

⁶ Requirement imposed by the Code.

with them. If that is the case, information about what the young person consents to being shared with their parents should be set out in 1A.10.

1A.8) Email addresses (only where child/ parent/ young person is willing to receive notifications and documents electronically). Where this is the case, the child/ parent/ young person's email address which they have provided for that purpose is to be set out in 1A.8.

1A.9) Parents' address(es) and telephone number(s) (if different). This should be given for a child where it is different to that of the child. See the notes on sub-section 1A.7 where the IDP is for a young person.

1A.10) Communication requirements and preferences. These are those of the child, their parents or the young person.

13.15 Section 1A.10 **should** include the following, where relevant:

- language of communication – including, for example, Welsh language and British sign language. Where the child or young person is not a first language Welsh or English speaker, consideration **should** be given to whether the child or young person needs an interpreter to support participation in the IDP process.
- means of communication – communication which is verbal, written, signed, visual, and/or electronic **should** be considered together with any specific requirements such as use of visual aids, font size or use of Braille and whether any specialist equipment is required, such as specialist IT equipment. Some children or young people may require less formal means of communication to support participation. This could include, for example, the use of play or art.
- means of engagement – including, for example, whether the child or young person would like to meet on a one-to-one basis, in small groups and/or with large multi-agency groups. Consideration **should** also be given to practical requirements such as the time and location of meetings, any access requirements such as easy access, hearing loops and/or specific forms of lighting.

1A.11) For a young person, details of consent to IDP being prepared/ maintained

13.16 If the IDP is for a young person, Section 1A.11 is to note the details of the person's consent to the IDP being prepared or maintained (including when it was given).

1A.12) Capacity issues

13.17 Section 1A.12 is to cover the following, where relevant:

- the capacity of the child (whose IDP it is) to understand information or documents that must be given to them and what it means to exercise the rights conferred on the child by the Act ; and details of any case friend appointed for the child;
- any lack of capacity of parents of children;
- any lack of capacity of the young person whose IDP it is.

Section 1B: Responsibility for the IDP

13.18 Section 1B of the IDP contains the following sub-sections:

1B.1) Organisation responsible for maintaining the IDP. This is to record the school, FEI or local authority that maintains the IDP. This section could include relevant contact details, for example for the person who was responsible for coordinating the preparation of the IDP, the ALNCo at the school or FEI, or any other person as appropriate.

1B.2) Date before which the IDP must be reviewed. This is the date on which the 'review period' ends See Chapter 16 for more information on reviews.

1B.3) Proposed review date. This is the proposed date from which the next review of the IDP would take place, although the next review may not necessarily start then. See Chapter 16 for more information on reviews.

Section 1C: One-page profile

13.19 Section 1C of the IDP is primarily aimed at setting out a summary of the child, child's parent or young person's views, wishes and feelings in relation to their ALN, ALP and education and training.

13.20 This could include details about play, health, independence, communication, the people that the child or young person considers important to them (family, friends or paid staff), friendships, aspirations about, for example, education and career, independent living and community participation, or anything else the child, child's parent or young person considers important.

13.21 The IDP **should** make clear where the child, child's parent or young person is being quoted directly, either from something they have said or written.

13.22 Such profiles provide key information about a child or young person in a format that can be quickly shared and understood. They describe a child or young person's character, their gifts and talents, what is important to them, and the best way to support them.

13.23 One-page profiles are developed and revised with the active involvement of the child or young person to ensure that their voice is heard. They provide a positive rounded picture of their interests and outline what is important both to and for the child or young person. For children of compulsory school age, parents might be involved in developing one-page profiles and, for very young children, parents will provide the information about the child's interests and support needs.

13.24 A good one-page profile would include recording:

- what others value, admire and appreciate about the child or young person;
- what is important to the child or young person from their own point of view; and
- what is objectively important for the child or young person.

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

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

13.26 There is no one way to develop and present a one-page profile; it is helpful if the style and language used reflects the individuality of the child or young person. However, for a profile to operate effectively, it is important that everything included within it is accurate, clear and easy to read. It should focus on the positives and be short and specific, yet include enough detail so that anyone can use the information straight away.

Part 2.

Section 2A: Description of the child or young person's additional learning needs (ALN)

13.27 The description of the child or young person's ALN **should** be as clear and comprehensive as possible and include the impact of the need on the child or young person's learning in as much detail as possible. Where there is a relevant diagnosis this **should** be included as part of the description. Although the definition of ALN is that the learning difficulty or disability calls for ALP, it is the learning difficulty or disability which is to be captured in this section, as the ALP will be detailed in the next section. Those responsible for drafting the IDP ought to ensure that they do not confuse the description of ALN with the ALP necessary to meet those needs. The description of ALN might develop as referrals and advice/assessments are made.

13.28 This section could include the reasons for deciding that the child or young person has ALN, and **should** do so where there are particular reasons for a decision that might not be obvious to someone considering the case in future, or where there was a difference of opinion as to the ALN. This might be a difference of opinion between professionals, or a difference of opinion between the child, child's parent or young person and professionals, or any other difference of opinion. It could explain how different opinions have been taken into consideration before a particular decision was reached.

Section 2B: Description and delivery of the child or young person's additional learning provision (ALP)

13.29 Section 2B contains the following sub-sections in respect of each element of the child or young person's ALP. Where there are different elements to the ALP, the information for each of the following sub-sections **must**⁷ be given for each element of ALP:

2B.1) Intended outcome. This is the outcome intended to result from the provision of that ALP.

13.30 The intended outcomes **should** have a strong focus on enabling children and young people to move towards long-term aspirations, be that employment or further or higher education, independent living and/or community participation. To this end, it is essential to consider what is important to the child or young person and what they want to achieve. IDPs can also include outcomes with a wider focus, such as positive social relationships and emotional resilience and stability. For some children and young people, an intended outcome can be about minimising the impact of an impairment on their learning.

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

13.32 Guidance on how to develop outcomes, as well as examples, is provided in the Welsh Government's *Person-centred Reviews toolkit: a guide for early years, schools and colleges in Wales*⁸.

13.33 In order to determine the progress towards achieving the intended outcome(s), it may be necessary to set interim targets or milestones, and to monitor the impact of the ALP on the child or young person's progress. This could include a continuing process of tracking or any assessments that might take place in the educational setting on a regular basis. Any concerns raised as a result of this monitoring might lead to a review of the IDP as a whole (see Chapter 16).

2B.2) ALP to be provided. This is a description of the ALP to be provided with a view to meeting the intended outcome.

13.34 This section **should**, where relevant, include details of how regularly the ALP is to be provided (for example, whether it will be provided daily, at weekends, school days only or once each term, etc.)

⁷ Requirement imposed by the Code.

⁸ <http://learning.gov.wales/docs/learningwales/publications/150909-reviews-toolkit-en.pdf>

- 13.35 Where relevant, section 2B.2 of the IDP **must**⁹ include details of any disapplications or modifications of the National Curriculum¹⁰ which are considered necessary to meet the child or young person's ALN. This **should** include details as to how the ALP to be provided while the National Curriculum is being disappplied or modified will contribute to maintaining a broad and balanced curriculum.
- 13.36 The ALP recorded could include a range of activities or types of support, for instance:
- a professional providing a strategy or training which other professionals with a day-to-day role with the child or young person will deliver; or
 - guidance or support provided by the education setting or others, for the child or young person.
- 13.37 The ALP that best meets the ALN of the child or young person may be different depending on the type of institution they attend. For instance, the provision that a special school provides might be different to that which a mainstream school provides because of the different way that a special school is organised.
- 13.38 The information recorded in relation to ALP will be more useful the clearer it is. It should be detailed, specific and quantifiable. This clarity might result from describing the specific tasks or actions that will be undertaken; it could also detail the training or qualifications any staff will require. Simply stating that support will be provided will not meet the need for clarity; describing the tasks any staff will undertake or facilitate, what they will be responsible for, and, if necessary, what qualifications or training they will require is important.
- 13.39 The body maintaining the IDP has duties about securing the ALP set out in it¹¹. To be able to describe the ALP in sufficient detail and secure it, where others will be delivering and/or funding the ALP, the body maintaining the IDP may need to check these matters with those others. The detail of the ALP can then reflect this.

2B.3) Should the ALP be provided in Welsh

- 13.40 A body preparing, maintaining or reconsidering an IDP has a duty to consider whether ALP should be provided in Welsh and if it decides that it should, this **must**¹² be specified in the IDP and the body maintaining the IDP then has a

⁹ Requirement imposed by the Code

¹⁰ Under or by virtue of the Education Act 2002.

¹¹ See Chapters 8 – 12 of the Code.

¹² Sections 12(6), 14(5), 19(3) and 40(6) of the Act. An NHS body that has identified a relevant treatment or service likely to be of benefit in addressing a child or young person's ALN, must also decide whether the treatment or service should be provided in Welsh and if it decides that it should, it must take all reasonable steps to secure that it is provided in Welsh: section 20(5) of the Act.

duty to take all reasonable steps to secure that the ALP is provided in Welsh (see Chapters 8 – 12).

2B.4) Organisation/service to provide the ALP, and contact details (where different to body maintaining the plan).

2B.5) Start date. This is the date from which that ALP will be provided

2B.6) End/review date. This is the date until which the ALP will be provided or reviewed (where an end date or review date is set).

13.41 The start and the end date (where there is one) for the ALP, although set out separately in these subsections of section 2B, is part of the description of ALP.

2B.7) Rationale for the ALP listed above.

13.42 This section **should** provide an explanation as to why certain decisions have been taken, especially when there has been a difference of opinion about the ALP to be made. This might be a difference of opinion between professionals, or a difference of opinion between the child, child's parent or young person and professionals, or any other difference of opinion. The section could explain how different opinions have been taken into consideration before a particular decision was reached.

13.43 Where there is no difference of opinion, nor other need to explain a decision, this section of the IDP might just refer to the record of information used to develop the IDP.

Section 2C: Description and delivery of ALP to be secured by an NHS body

13.44 This section is for recording the description of any ALP that **must**¹³ be secured by an NHS Body, having been identified by that body as a relevant treatment or service that is likely to be of benefit in addressing the child or young person's ALN. (See Chapter 15 for guidance on this.) The body responsible for preparing the IDP **must**¹⁴ ensure that the health body is content with the description of any ALP to be secured by that health body before finalising the IDP.

13.45 Section 2C contains the following sub-sections in respect of each element of the ALP that is a relevant treatment or service. Where there are different elements to this ALP, the information for each of the following sub-sections **must**¹⁵ be given for each element of that ALP:

- 2C.1) Intended outcome
- 2C.2) ALP to be provided

¹³ Section 20(5) of the Act contains the requirement on the NHS body to secure it.

¹⁴ Requirement imposed by the Code

¹⁵ Requirement imposed by the Code.

- 2C.3) Should the ALP be provided in Welsh (see paragraph 15.28 of Chapter 15)
- 2C.4) Organisation/service to provide the ALP, and contact details (where relevant)
- 2C.5) Start date
- 2C.6) End date. This is the date until which that ALP will be provided or reviewed (where an end date or review date is set)
- 2C.7) Rationale for the ALP listed above

13.46 In completing this section, the guidance above in relation to the completion of Section 2B is relevant.

13.47 Where no ALP is to be secured by an NHS body this section **should** be marked “*not applicable*”.

Section 2D: Place at named school/ other institution or board and lodging

13.48 If it is the case that a local authority (which is preparing or maintaining the IDP for a child) is naming a maintained school in Wales for the purpose of securing the child’s admission to it, Section 2D.1 of the IDP **must**¹⁶ include the following:

- 2D.1) Name of a maintained school in Wales that is being named for the purpose of securing the admission of the child to the school.

13.49 Where a school is named in this sub-section, the local authority **should** set out why it is satisfied that the child’s interest requires the ALP identified in the IDP to be made at that school and why it is appropriate for the child to be provided with education or training there. See Chapter 11 for more information about naming a maintained school for the purpose of securing admission to it.

13.50 In the case of an IDP prepared or maintained by a local authority, sub-section 2D.2 and 2D.3 are for, respectively:

- 2D.2) The name of any particular school or other institution at which a place must be secured
- 2D.3) A description of any board and lodging provision which must be secured

13.51 In both these instances, these matters **must**¹⁷ be included only if the child or young person’s reasonable needs for ALP cannot be met unless the local

¹⁶ Section 48 of the Act gives the local authority the function of naming a school for the purposes of securing admission of a child to it and the requirement to name it in Section 2D is imposed by the Code.

¹⁷ Sections 14(6) – (8), 19 (5) – (7) and for a detained person, 40(7) – (9) of the Act. In the case of a detained person, the duty to describe these matters in the IDP applies if *it will not be possible* to meet the person’s reasonable needs for ALP *when the person is released from detention* unless the

authority also secures the place for the person at that school or other institution or the board and lodging and is subject to other conditions. See Chapters 11 and 12 for more information about naming a particular school or other institution, residential placements and the provision of board and lodging.

- 13.52 Section 2D of the IDP might also include the reasons for any specific placement or board and lodging, especially when there has been a difference of opinion. This might be a difference of opinion between professionals, or a difference of opinion between the child, child's parent or young person and professionals, or any other difference of opinion. It could explain how different opinions have been taken into consideration before a particular decision was reached.
- 13.53 In cases where none of the provision set out in 2D.1 – 2D.3 is required, or some of it is not required, this section, or the particular sub-section, **should** be marked "not applicable". In cases where such provision has been considered, but it is determined that it is not required, the reasons for the decision could be recorded in this section.

Part 3.

Section 3A: Record of information used to develop the IDP

- 13.54 Section 3A of the IDP **must**¹⁸ include a summary record of discussions at meetings held in relation to the preparation or revision of the IDP, any advice and evidence which the body preparing or maintaining the IDP considers relevant and the details of those that have contributed to preparing or revising, or provided information or evidence in relation to, the IDP.
- 13.55 The record of discussions held in relation to the preparation or revision of the IDP need not be a verbatim record; rather a summary of what was discussed and by whom.
- 13.56 The advice or evidence would include any recent reports and assessments undertaken by the school, FEI or local authority responsible for the IDP and by other agencies or professionals, such as relevant health and social care reports. It might also include any data which supports the identification of ALN, such as attainment data. The full report(s) can be provided in an annex.
- 13.57 For those IDPs which have been in existence for some time, it would also include information arising from the recent monitoring of the ALP and the tracking of data and targets where this has led to a revision to the IDP.

authority secures those kinds of provision. See Chapter 22 for more information about preparing an IDP for a detained person.

¹⁸ Requirement imposed by the Code.

13.58 Where professionals, children, children's parents or young people have different opinions, these **should** be recorded. This **should** be recorded using generic terms such as parents, teachers or senior leadership team. Specific names or titles **should** be used only if the individual that holds that view wishes it to be recorded as such.

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

Section 3B: Timeline of key events

13.60 Section 3B of the IDP **must**¹⁹ include a summary of key events in the child or young person's life relevant to their ALN (and if necessary, further or more detailed information can be provided in an annex), including:

- 3B.1) Significant events or information relevant to understanding the child or young person's ALN and planning the necessary ALP

13.61 The information provided in section 3B.1 **should** include all events that are significant and relevant to understanding the child or young person's ALN, planning the necessary ALP and informing when reviews should be conducted. Examples of such events include:

- the name of the school, FEI or local authority which prepared the IDP (if different to the body currently maintaining it);
- any school, FEI or local authority which has previously maintained it (if different to the body currently maintaining it);
- significant decisions previously taken in relation to the child or young person's IDP, including instances where a review has taken place following a request from a child, child's parent or young person, or where a local authority has reconsidered an IDP maintained by a school, and a decision has been taken not to revise the IDP;
- a referral for assessment/examination by a professional;
- any assessment with results and/or advice;
- a test or observation by a professional and/or outside agency or advisor;
- a diagnosis of a condition;
- an illness;
- starting to use new equipment or implants to help access education; or
- an event that has had an emotional, behavioural or attainment impact.

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

- an indicator of what happened or the nature of the event;

¹⁹ Requirement imposed by the Code.

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

13.63 Events that occurred prior to the development of the first IDP **should** also be included, where they relate to the child or young person's ALN and required ALP.

13.64 Events that are expected to take place within the next year which could inform when the next review should take place **should** also be included. The information should include what is expected to happen, and why it might be necessary to review the IDP in light of it.

- 3B.2) Education settings previously attended (and dates). This should record education settings attended since they were first identified as having ALN.

Section 3C: Transition

13.65 Section 3C of the IDP provides space to set out information or arrangements which might be considered necessary or appropriate for when the child or young person moves on to other stages of education (e.g. from secondary school to FEI).

13.66 This section is intended to be a helpful tool for forward planning for the child or young person's transition. It can be used to record:

- any information which might be relevant to the child or young person's transition and which would be helpful to those involved in delivering the child or young person's education or training to know, and
- any arrangements considered desirable for facilitating the child or young person's transition.

13.67 This could include possible future ALP for when the child or young person is in a new setting. Doing so may assist a body that becomes responsible for maintaining the IDP following the move to a new setting to perform its functions under the Act, for example, to review the IDP. However, where ALP can be determined prior to a transition even if it is to continue after the move, it **must**²⁰ be included in section 2B of the IDP rather than this section. This section **must not**²¹ be used to set out any ALP – that is for section 2B. The contents of this section cannot be appealed to the Tribunal.

13.68 Where any information or arrangements to support a child or young person's transition arrangements have been considered, the body responsible for

²⁰ Section 10 of the Act: it is the ALP called for by the person's learning difficulty or disability.

²¹ Requirement imposed by the Code.

preparing the IDP **should** set out them out in this section. This could include information about:

- The transition(s) expected to be made
- Any individual responsible for co-ordinating the transition arrangements
- The agreed actions of all the professionals and/or the agencies involved in supporting the transition(s)
- The objectives and outcomes the transition is intended to support.

13.69 Where the child or young person is not expected to undertake a transition in the near future, this section **should** be marked “not applicable”.

13.70 Further information on planning for and supporting transitions can be found in Chapter 19.

Non-mandatory IDP content

13.71 As set out in paragraph 13.8 above, in addition to the mandatory content that must be included, there may be other issues that could be included in a further section or as an annex or an attachment to an IDP.

13.72 For example, as part of the discussion around determining ALP, the body responsible for preparing the IDP **should** consider any other relevant factors, such as maintenance and insurance of any specialist equipment including who is responsible for these matters.

Access arrangements

13.73 In cases where a child or young person with ALN is likely to be starting a course leading to assessments and qualifications soon or is already doing them, in setting the objectives and determining the ALP, thought should be given to what possible access arrangements should be applied for in light of ALP or the ALN. These are arrangements that are applied for (to the awarding body) before an assessment or examination, ideally at the start of the course, as they can cover the whole course. This could be included in the non-mandatory content of the IDP.

Transport

13.74 Those preparing or maintaining IDPs for children or young people might find it helpful to record in an additional section of the IDP any arrangements for the child’s or young person’s travel between their home and the education institution. This may be particularly helpful in some cases, for example, if it informs the delivery of ALP.

13.75 Arrangements for transport provision for learners, including those with ALN, are set out in the Learner Travel (Wales) Measure 2008 and guidance relating to this provision issued under section 15 of the Measure.

13.76 Where a local authority is preparing or reviewing an IDP for a child or young person and considering where a child or young person is to be educated, or as part of planning for transition, the travel arrangements for the child or young person to get to any proposed school or other institution might need to be considered. If the question arises as to whether a local authority will make travel arrangements under the Learner Travel (Wales) Measure 2008 for the child or young person to get to a place of education, the local authority preparing or reviewing the IDP **should** raise the matter with the relevant transport officers from the local authority concerned and invite them to discuss the options available.

Chapter 14: Content of an IDP for a looked after child

Introduction

- 14.1 Chapter 13 provides guidance on IDPs, including the mandatory standard form for IDPs for children and young people with ALN who are not looked after, and the content of that form. This chapter deals with the mandatory content of IDPs for looked after children, including the mandatory standard form for an IDP for a looked after child.
- 14.2 An IDP for a looked after child **must**¹ be incorporated into the child's personal education plan². For guidance on personal education plans, see the Social Services and Well-being (Wales) Act 2014 Part 6 Code of Practice (Looked After and Accommodated Children).
- 14.3 An IDP is intended to be a flexible document. For example, a child with less severe or complex needs is likely to have a simpler (and therefore shorter) IDP than a child with more severe or complex needs, or low incidence needs. A child with severe, complex or low incidence needs will likely require specialist input and advice and their IDP is likely to contain contributions from a wide range of agencies and detail a much wider range of interventions. Nevertheless the information included in the IDP **should** be written in plain language and without jargon with a view to all who are likely to read the IDP, including, wherever possible, the child, being able to understand it.
- 14.4 This content **should** be:
- created by agencies and professionals working together to identify the child's ALN and the provision to meet those ALN;
 - created through collaboration with the child and child's parents;
 - developed on a flexible, person-centred basis that reflects the needs of the child;
 - written in a style that reflects that it is the child's plan and not simply part of an administrative process. The style and, whenever possible, the language should reflect the age of the child, but clearly distinguish between what has been said by the child and what has not;
 - written in plain language (whether that is Welsh or English or both), avoiding the use of jargon and explaining the relevance of any technical terminology that needs to be included; and
 - kept under consideration in order to inform whether a review should be conducted ahead of when it otherwise would be (see Chapter 16 on reviews).
- 14.5 However, it is important that all IDPs contain certain key elements and have the same basic structure. This will ensure broad consistency and equality in

¹ Section 83 of the Social Services and Well-being (Wales) Act 2018.

² Required under the Care Planning, Placement and Case Review (Wales) Regulations 2015

terms of the way that learners are treated and will underpin the cohesion of the ALN system as a whole and the portability of individual plans. This chapter describes those elements and provides for the standard form – this is the order and structure in which those elements are required to be presented.

- 14.6 Where appropriate, the IDP can be included within other plans and other plans can be included within it, as outlined in Chapter 16.

Mandatory IDP form

- 14.7 A local authority preparing or revising an IDP for a looked after child **must**³ use the standard form at Annex B for the IDP. To comply with this requirement, the IDP **must**⁴ include the part headings, section headings and sub-section headings set out on the standard form and these **must**⁵ be used in the same order as they appear on the standard form.
- 14.8 The form's style **may** be adapted to suit local preferences (such as by including the logo of the local authority) or those of the child (such as by using a larger or different font, avoiding the use of certain colours etc.) as can the presentation of the information inserted into those sections and sub-sections.
- 14.9 The local authority **may** include further sections after section F or annexes, should it consider it appropriate to do so (for example, if information is to be included about non-mandatory content of the IDP – see paragraphs 13.71 - 13.76 of Chapter 13).
- 14.10 For ease of reference, the form at Annex B differentiates those elements of the IDP in relation to which appeals to the Education Tribunal for Wales can be made by marking them as underlined, bold and red. It is not necessary to mark them in this particular way, but these sections **should** be marked in some way in order to make it clear to the child and their parents the sections to which appeal rights are attached.

Mandatory IDP content

- 14.11 A local authority preparing or revising an IDP for a looked after child **must**⁶ set out, where relevant, the information indicated by the headings of the sections and sub-sections (numbered 2A to 3B.1) within the corresponding section or sub-section (sub-section headings are underlined) of the IDP, as set out below in the order in which they appear in the IDP:

³ Requirement imposed by the Code.

⁴ Requirement imposed by the Code.

⁵ Requirement imposed by the Code.

⁶ Requirement imposed by the Code.

- **Section 2A: Description of the child's additional learning needs (ALN)**
- **Section 2B: Description and delivery of the child's additional learning provision (ALP)**
 - 2B.1) Intended outcome.
 - 2B.2) ALP to be provided.
 - 2B.3) Should the ALP be provided in Welsh.
 - 2B.4) Organisation/service to provide the ALP, and contact details (where different to body maintaining the plan).
 - 2B.5) Start date.
 - 2B.6) End date.
 - 2B.7) Rationale for the ALP listed above.
- **Section 2C: Description and delivery of ALP to be secured by an NHS body**
 - 2C.1) Intended outcome.
 - 2C.2) ALP to be provided.
 - 2C.3) Should the ALP be provided in Welsh (see paragraph 15.28 of Chapter 15).
 - 2C.4) Organisation/service to provide the ALP, and contact details (where relevant).
 - 2C.5) Start date.
 - 2C.6) End date. This is the date until which that ALP will be provided or reviewed (where an end date or review date is set).
 - 2C.7) Rationale for the ALP listed above.
- **Section 2D: Places at a named school/ institution or board/ lodging**
 - 2D.1) Name of a maintained school in Wales that is being named for the purpose of securing the admission of the child to the school.
 - 2D.2) The name of any particular school or other institution at which a place must be secured.
 - 2D.3) A description of any board and lodging provision which must be secured.
- **Section 3A: Record of information used to develop the IDP**
- **Section 3B: Timeline of key events**
 - 3B.1) Significant events or information relevant to understanding the child or young person's ALN and planning the necessary ALP

14.12 The sections and sub-sections above correspond exactly to Sections 2A – 2D, and 3A to 3B of the IDP standard form for children who are not looked after and young persons (at Annex A of the Code). The guidance on completing each of these sections is in Chapter 13.

14.13 The other sections of the standard form at Annex A are not included in the one for looked after children, because the information which would go into them is expected to be contained in the rest of the child's personal education plan (into which the child's IDP must be incorporated).

Chapter 15: Duties on health bodies and other relevant persons

Introduction

- 15.1 A key principle underpinning the ALN system is the collaboration between all those involved in identifying needs and planning and providing support to children and young people with ALN (see Chapter 2 for more information on the principles of the Code).
- 15.2 Paragraphs 15.6 – 15.15 deal with the duty on relevant persons to comply with request for information or other help. They are relevant to all relevant persons.
- 15.3 Paragraphs 15.16 – 15.21 deal with the duties on health bodies¹ related to identifying children under compulsory school age who may have ALN.
- 15.4 Paragraphs 15.22 – 15.36 are relevant to NHS bodies and deal with referrals to them to identify whether there is ALP that they can provide.
- 15.5 Paragraphs 15.37 – 15.53 are relevant to Local Health Boards and deal with the role of the designated education clinical lead officer (“DECLO”).

Statutory requests by local authorities for information or other help from relevant persons

- 15.6 A local authority **may**² request information or other help from relevant persons, which it requires for the purpose of exercising its functions under the Act. These relevant persons are³:
- another local authority;
 - a local authority in England;
 - the governing body of a maintained school in Wales or England;
 - the governing body of an FEI in Wales or England;
 - the proprietor of an Academy;
 - a youth offending team for an area in Wales or England;
 - a person in charge of relevant youth accommodation in Wales or England;
 - a Local Health Board;

¹ See paragraph 1.26 for the bodies covered by this term (which includes some bodies in England) for the purposes of the Code and those covered by “NHS body” (the latter is just Local Health Boards and NHS trusts).

² Section 65 of the Act.

³ These bodies are referred to as “relevant persons” throughout the Code and they must all have regard to relevant guidance in the Code when exercising functions under Part 2 of the Act: see paragraph 1.3

- an NHS Trust;
 - the National Health Service Commissioning Board;
 - a clinical commissioning group;
 - an NHS Foundation trust;
 - a Special Health Authority.
- 15.7 A relevant person **must**⁴ comply with such a request unless it considers that doing so would be incompatible with their own duties or would otherwise have an adverse effect on the exercise of their functions.
- 15.8 If the relevant body decides not to comply with the request from the local authority they **must**⁵ give the authority written reasons for their decision.
- 15.9 This duty to respond only applies when a local authority makes the request for help or information. Nevertheless, schools and FEIs may still make requests for information or other help to relevant persons for the purpose of exercising their functions relating to ALN. If the relevant person responds, this may mean the matter can be dealt with more quickly and without having to involve a local authority.
- 15.10 Where a school or FEI is preparing the IDP, but is not able to obtain the help or information they require from a relevant person, they **should** raise the matter with the responsible local authority. The local authority may need to take over responsibility for the preparation⁶ or maintenance⁷ of the IDP and then seek the information or other help from the relevant person by requesting it.
- 15.11 A local authority's request for information or other help from relevant persons may relate to a particular child or young person, or may refer to a more general matter to support the local authority to exercise their functions.
- 15.12 Where the local authority's request is for the purpose of exercising a function which relates to a particular child or young person and the relevant person is under the duty to comply with the request, the relevant person **must**⁸ comply promptly and in any event within the period of six weeks from receiving the request. But the requirement to comply within that 6 week period does not apply if it is impractical for the relevant person to do so due to circumstances beyond its control.
- 15.13 Where the local authority's request for information or other help does not relate to a particular child or young person, the relevant person under a duty
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⁴ Section 65(2) of the Act.

⁵ Section 65(3) of the Act.

⁶ If the school or FEI cannot adequately determine the extent or nature of the ALN or cannot adequately determine the ALP, it may refer the child or young person's case to the local authority for it to decide upon ALN and prepare an IDP: section 12(2) of the Act.

⁷ The school or FEI would need to request the local authority to take over responsibility under section 28 of the Act.

⁸ Regulations to be made under section 65(5).

to comply **must**⁹ do so promptly. Such a request may, for example, relate to a local authority's review of arrangements for children and young people who have ALN¹⁰ or putting in place a mechanism for effective communication relating to the exercise of functions under the Act generally.

- 15.14 When making a request for information or other help, a local authority **should** inform the relevant person that it is a request under section 65 of the Act and, unless it is obvious, state whether or not the request is made in respect of a particular child or young person. The local authority **should** also inform the relevant person of the requirement to respond promptly and, where the request relates to a particular child or young person, within the 6 week period unless the exception applies. The local authority **may** also inform the relevant person of any earlier time by when it might be helpful for the local authority to receive the response, and **may** wish to draw the relevant person's attention to the Code. This is to alert the relevant person to their duties under the Act, and to better inform them of the nature of the request to support an appropriate response, for example by responding earlier than 6 week deadline if the request is urgent. This might be particularly important when requesting information or other help from relevant persons who may not receive many requests under the ALN system. For example, when preparing or reviewing an IDP, a local authority in Wales may request information from a relevant person outside Wales, such as a request for information about a child or young person from a youth offending team in England.
- 15.15 When a relevant person is under a duty to comply with a local authority's request for information or other help, they **should** answer the request in full with an appropriate level of detail.

Identifying ALN in respect of children under compulsory school age – health bodies' role and duty to notify

- 15.16 Health bodies can support early identification of young children who may have ALN through a range of services. Children with more complex developmental and sensory needs may be identified at birth. Health professionals, such as paediatricians and health visitors, often come into contact with the child before education professionals. They are therefore often in a position to identify ALN before anyone else. Standard health assessments, such as the hearing screening test, which is used to check the hearing of all new-born babies, enable very early identification of a range of medical and physical difficulties.
- 15.17 Where a health body, in the course of exercising its functions in relation to a child who is under compulsory school age and for whom a local authority is responsible, forms the opinion that the child has (or probably has) ALN, it

⁹ Regulations to be made under section 65(5).

¹⁰ Under section 63 of the Act.

must¹¹ inform the child's parent of its opinion and of its duty (described in the next paragraph) to bring this to the attention of the relevant local authority. It **must**¹² give the parent an opportunity to discuss the issue with one of its officers.

15.18 Having had that discussion, if the health body remains of the opinion that the child has or probably has ALN and is satisfied that bringing this to the attention of the relevant local authority would be in the child's best interests, it **must**¹³ then do so. For these purposes, the relevant local authority is the local authority responsible for the child¹⁴, or for a looked after child, the local authority that looks after the child.

15.19 Whether notifying¹⁵ the local authority is in the best interests of the child is for the health body to determine. Relevant factors could include whether:

- informing the local authority will help the authority plan for provision that the child will require when he/she attends an early years setting or primary school;
- informing the local authority may enable it to put provision in place before the child reaches compulsory school age – this early intervention may reduce the likely impact of ALN on the child or prevent the impact of ALN on the child from becoming more severe; or
- the local authority might be able to implement early intervention which would support parents to support their child – such support might be emotional or help to establish trust and positive relationships between the local authority and the parent.

15.20 If the health body is of the opinion that a particular voluntary organisation is likely to be able to give the parent advice or other assistance in connection with any ALN the child may have, it **must**¹⁶ inform the parent of that.

15.21 Whenever a health body contacts a local authority in this way, it will have been brought to the attention of the local authority that the child has, or may have, ALN. Local authorities **must**¹⁷ then decide whether the child has ALN, subject to any exceptions to that duty.

¹¹ Section 64 of the Act.

¹² Section 64(4) of the Act.

¹³ Section 64(4) of the Act.

¹⁴ This is the local authority responsible for the child or young person (i.e. the local authority in whose area the person is) (section 99(4) of the Act). See Chapter 1 for more information about the meaning of 'in the area'.

¹⁵ Further guidance on giving notice or documents is provided in Chapter 1

¹⁶ Section 64(5) of the Act.

¹⁷ Sections 13(1) and 18(1) of the Act.

ALP to be secured by NHS bodies

15.22 Some children and young people will require the support of NHS bodies to help meet their needs. NHS bodies can help meet the needs of children and young people in a range of ways. For instance, they can:

- provide advice on the ALP to be secured
- provide advice to improve effective and timely identification for a child or young person with ALN;
- provide advice to staff on the modification of the environment within which the child or young person receives their education;
- provide training for staff in a school or FEI to meet particular needs for a child or young person with ALN;
- support the monitoring of the child's progress and provide reports as required.

15.23 A local authority may seek this sort of input from an NHS body by making a statutory request for such information or other help (see paragraphs 15.6 to 15.15 above).

15.24 In addition, under the ALN system, NHS bodies have a role to play in delivering ALP, where the ALP is something they would normally provide as part of the health service in Wales (see Chapter 13 for more information on ALP and its intended outcomes). The delivery of certain ALP could be delegated to other staff at a child or young person's school or FEI, to enable a child or young person's individual needs to be met within their education setting.

15.25 A local authority or FEI **may**¹⁸ refer a matter to an NHS body, asking it to consider whether there is any relevant treatment or service that is likely to be of benefit in addressing the ALN of a child or young person. It would do this where it considers that an NHS body might be able to provide ALP to meet a child or young person's needs. A relevant treatment or service is a treatment or service that an NHS body would normally provide as part of the comprehensive health service in Wales¹⁹.

¹⁸ Section 20(1) of the Act.

¹⁹ That is, the comprehensive health service in Wales continued under section 1(1) of the National Health Service (Wales) Act 2006: section 20(6) of the Act.

Who can make a referral to an NHS body?

The referral relates to	The body that can refer ²⁰
A child	A local authority
A young person who is a registered pupil at a maintained school	A local authority
A young person who is not a registered pupil at a maintained school (e.g. is educated at an FEI or specialist placement)	The body preparing or maintaining an IDP for the young person, which would either be a local authority or an FEI

15.26 A local authority or FEI **must not**²¹ make a referral to a NHS body unless it:

- has informed the child or young person and, in the case of a child, their parent, that it intends to make the referral;
- has given the child or young person and, in the case of a child, their parent, an opportunity to discuss whether the referral should be made;
- is satisfied that making the referral is in the best interests of the child or young person.

15.27 When referring a matter to an NHS body, a local authority **should** inform the NHS body that the referral is made under section 20 of the Act.

15.28 Where a matter is referred, the NHS body **must**²² consider whether there is a relevant treatment or service that is likely to be of benefit in addressing the child or young person's ALN. If the NHS body identifies such a treatment or service it **must**²³:

- secure the treatment or service for the child or young person;
- decide whether the treatment or service should be provided to the child or young person in Welsh; and
- take all reasonable steps to secure that the treatment or service is provided in Welsh, if it decides that the treatment or service should be provided to the child or young person in Welsh.

15.29 It **must**²⁴ also:

- inform the FEI or local authority that made the referral of the treatment or service;
- if the referral was not made by a body that maintains the IDP, inform the body which does maintain the IDP of the treatment or service; and

²⁰ Section 20(2) of the Act.

²¹ Section 20(3) of the Act.

²² Section 20(4) of the Act.

²³ Section 20(5) of the Act.

²⁴ Section 21(1) of the Act.

- if the NHS body considers that the treatment or service should be provided in Welsh, inform those listed above (in the last two bullets) that it should be provided in Welsh.
- 15.30 Following a referral, if an NHS body does not identify a relevant treatment or service that is likely to be of benefit in addressing the child or young person's ALN, it **must**²⁵:
- inform the body that made the referral of that fact, and
 - if the referral was not made by a body that maintains an individual development plan for the child or young person, inform the body that maintains the individual development plan of that fact.
- 15.31 The NHS body **must**²⁶ comply with the duty to inform of the outcome of its consideration (described in paragraphs 15.29 – 15.30 above) promptly and in any event within the period of six weeks from receiving the referral. But the requirement to do so within that six week period does not apply if it is impractical for the NHS body to do so due to circumstances beyond its control.
- 15.32 If a relevant treatment or service is identified, the body maintaining the plan **must**²⁷ then describe the treatment or service in the IDP, specifying that it is ALP to be secured by the NHS body. If the NHS body considered that the treatment or service should be provided in Welsh, the body maintaining the plan **must**²⁸ then specify in the IDP that the treatment or service is ALP that should be provided in Welsh.
- 15.33 To support this process, the body responsible for maintaining the IDP **should** send the NHS body a template in which the NHS body can describe the ALP it has identified. The NHS body **should** send the completed template back to the body maintaining the IDP to ensure the description in the IDP is accurate. A non-mandatory template is provided in Annex C.
- 15.34 As noted above, the NHS body **must**²⁹ secure for the child or young person the ALP that is a treatment or service it has identified. This ALP **must not**³⁰ be removed from the IDP or revised except on review of the IDP³¹ and with the agreement, or at the request, of the NHS body. The NHS body **may** request a review at any time and if it does so, the body maintaining the IDP **must**³² review it. If, on a review, the NHS body requests the body maintaining an IDP

²⁵ Section 21(2) of the Act.

²⁶ Regulation to be made under section 21(10) of the Act.

²⁷ Section 21(3) of the Act.

²⁸ Section 21(4) of the Act.

²⁹ Section 20(5) of the Act.

³⁰ Section 21(6) of the Act.

³¹ Under section 23 or 24 of the Act.

³² Sections 23(7) and 24(6) of the Act.

to remove or change the description of the ALP that the NHS body must secure, the school, FEI or local authority that maintains the IDP **must**³³ do so.

15.35 All those concerned with making ALP for a child with ALN who is being educated in a mainstream maintained school **must**³⁴ secure that the child engages in the activities of the school together with children who do not have ALN. This only applies so far as is reasonably practicable and compatible with:

- the child receiving ALP called for by their ALN;
- the provision of efficient education for the children with whom he or she will be educated; and
- the efficient use of resources.

15.36 If the Tribunal orders the revision of an IDP in relation to ALP specified as ALP an NHS body must secure, an NHS body is not required to secure the revised ALP unless it agrees to do so³⁵. The body maintaining the IDP **should** work with the NHS body to reach agreement in such circumstances.

Local Health Boards and the Designated Education Clinical Lead Officer (“DECLO”)

Overview of the DECLO role

15.37 Local Health Boards **must**³⁶ designate an officer to have responsibility for co-ordinating the health board’s functions in relation to children and young people with ALN. That person is known as the “designated education clinical lead officer” (abbreviated to “DECLO” in the Code).

15.38 The DECLO **must**³⁷ either be a registered medical practitioner or a registered nurse or another health professional.

15.39 The Local Health Board **must**³⁸ only designate an officer as a DECLO it considers to be suitably qualified and experienced in the provision of health care for children and young people with ALN.

³³ Section 21(7) of the Act.

³⁴ Section 52 of the Act.

³⁵ Section 21(9) of the Act.

³⁶ Section 61(1) of the Act.

³⁷ Section 61(2) of the Act.

³⁸ Section 61(3) of the Act – the Local Health Board may only designate an officer it considers to be so suitably qualified and experienced.

15.40 To discharge this responsibility, the Local Health Board **should** consider including the following matters within the role of the DECLO:

- operating strategically to promote awareness of ALN at executive level within the Local Health Board and promote new ways of working;
- sharing best practice with the other DECLOs to help ensure standardised approaches across Wales;
- promoting a consistent strategic approach within the Local Health Board to the identification and assessment of ALN, the preparation and review of IDPs, the planning and delivery of ALP and the monitoring the effect of it on children and young persons;
- managing and monitoring compliance with Local Health Board's duties under the Act, and
- measuring the success of the Local Health Board's interventions.

15.41 The Local Health Board **should** ensure that the officer it designates as the DECLO:

- has experience of senior health service leadership;
- is capable of providing overall strategic direction to ensure the Local Health Board is able to meet its duties related to ALN;
- is able to identify and solve problems and conflict at the earliest level;
- is able to escalate issues to the Local Health Board's Executive Board, as appropriate;
- has experience at a senior level in an aspect of healthcare relevant to ALN, for example in a field such as Medical (primary or secondary care), Nursing, Midwifery, Allied Health Professional, or Public Health practitioner.

15.42 The Local Health Board **should** require the DECLO to report to an Executive Director within the Local Health Board and **should** provide for a clear route for the DECLO to escalate issues to the Local Health Board's Executive Board. The DECLO need not be responsible for carrying out the Board's functions, rather for co-ordinating them. Other officers may carry out those functions on a day to day basis, and this might be particularly appropriate for administrative or operational matters, or where subject specific technical knowledge is required, or a health professional is already involved in the child or young person's care. For example, the DECLO will not be expected to be involved in every IDP meeting, but **should** have responsibility for establishing and maintaining efficient structures and systems within the Local Health Board to enable the appropriate health professional to attend IDP meetings where possible. Where health professionals are unable to attend a meeting, they **should** provide in writing their advice and evidence in advance of the meeting (see Chapter 18 for more information on meetings about ALN and IDPs).

Partnership working

15.43 The Local Health Board **should** ensure the DECLO works in partnership and cooperates with other services to promote better outcomes for children and young people in education with ALN, by promoting effective multi-agency

working between health (primary and secondary care), public health, education and social care departments, service users and the third sector.

15.44 The Local health Board **should** ensure the DECLO works with both children's and adults' services to ensure successful arrangements are in place for the transition from children's to adults' services.

15.45 The Local Health Board **should** ensure the DECLO cooperates with counterparts across Wales to share best practice and establish clear and consistent care pathways for children with ALN throughout Wales, to reduce inequity across health board areas especially for individuals who move areas or are placed out of area.

Individual Development Plans

15.46 The Local Health Board **should** ensure the DECLO establishes and manages efficient and consistent systems with a view to enabling health professionals to input into the preparation of IDPs and the securing of ALP by:

- undertaking appropriate, timely assessments;
- making evidence-based recommendations on effective interventions;
- delivering agreed health services;
- monitoring outcomes; and
- quality assuring advice to minimise variation in practice and promote realistic expectations.

15.47 This **should** include:

- considering how best health professionals can be pro-actively involved in the development of IDPs (where the input, help and advice of health professionals is required);
- working across the Local Health Board and involving all relevant health professionals (including speech and language therapists, occupational therapists, physiotherapists, CAMHS, community paediatrics, learning disability services, and primary care teams including GPs, health visitors, school nurses and community children's nursing) to ensure the health interventions agreed in IDPs are holistic and prudent;
- taking responsibility for managing the Local Health Board's responses to requests for information or other help from local authorities³⁹, for example, by putting a referral management system in place to co-ordinate and manage cases and ensure that the Local Health Board complies with its duties in this regard;
- working with local authorities and FEIs in relation to the referrals to the Local Health Board to consider whether there is a relevant treatment or service likely to be of benefit in addressing the ALN of a child or young person, including, in particular:

³⁹ Under section 65 of the Act.

- considering whether there is a relevant treatment or service in the particular case;
- ensuring a consistent approach to such decisions;
- ensuring the relevant treatment or service to be described in the IDP as ALP the NHS body is to deliver is realistic, specific and outcome focussed; and
- ensuring that the Local Health Board's legal duty to secure the ALP (that is, the relevant treatment or and service) is met.

Managing complaints, disputes and appeals to the Tribunals

- 15.48 Strong problem solving and negotiating abilities and communication skills will be essential for the DECLO to identify and implement innovative and cooperative solutions across agencies and across services within the health board.
- 15.49 The Local Health Board **should** ensure the DECLO has oversight over any complaint or dispute that relates to the ALP it provides for a child or young person's IDP. This could include direct involvement to resolve the complaint or dispute, or ensure a robust system is in place to bring relevant parties together to attempt an early resolution.
- 15.50 The Local Health Board **should** ensure the DECLO promotes the use of the NHS complaints system (Putting Things Right) in relation to any complaints relating to a treatment or service provided by the NHS described in an IDP as provision to be delivered by the Local Health Board. Putting Things Right could also be promoted at appropriate times, such as an IDP review meeting where health provision is discussed.
- 15.51 When a local authority believes it would be beneficial for a NHS body to be involved in avoidance and disagreement resolution arrangements, they could contact the relevant DECLO to discuss.
- 15.52 The Local Health Board **should** expect the DECLO to co-ordinate the Local Health Board's involvement in appeals to the Tribunal, including ensuring that it provides evidence as required and overseeing the engagement of the Local Health Board generally in appeals.

Measuring success

- 15.53 The Local Health Board **should** expect the DECLO to have oversight over the development of processes to collect and analyse robust data to measure the compliance and quality assurance of Local Health Board activities in relation to children and young people with ALN. Monitoring the following could inform measures of success:
- feedback from children, young people and parents;
 - outcomes for children and young people;
 - measures of effectiveness of partnership working; and

- numbers of complaints, disputes and Tribunal appeals and the length of time it takes to resolve.

Chapter 16: Review and revision of IDPs

Introduction

- 16.1 To ensure that the IDP continues to accurately reflect the child or young person's needs and details the provision required to meet those needs, the Act requires IDPs to be reviewed at least annually and allows for them to be revised in the light of each review.
- 16.2 This minimum requirement to review is supplemented by powers allowing IDPs to be reviewed at any time and by further requirements relating to requests for a review made by a child, the child's parent or a young person or by an NHS body.
- 16.3 In practice, the efficacy of an IDP **should** be constantly monitored and assessed by the body responsible for maintaining it and it **should** conduct reviews as often as required by the circumstances.

Review of an IDP

- 16.4 This section sets out the guidance for the process and timescales to be followed for the three different circumstances in which an IDP review may take place:
- school, FEI and local authority initiated reviews;
 - requests for reviews from children, their parents and young people; and
 - requests for reviews from NHS bodies.

School, FEI and local authority initiated reviews (including mandatory annual reviews)

- 16.5 A school, FEI or local authority required to maintain an IDP may review it at any time¹ but in any event **must**² do so before the end of each "review period", as set out in paragraph 16.12 below. The school, FEI or local authority maintaining the IDP may revise the IDP following the review³.
- 16.6 A review **should** be carried out within a time period that reflects:
- the intended outcomes set out in the IDP and the target date for the achievement of these, or milestones towards their achievement;
 - the timescales for the delivery of any activities or provision in the IDP;
 - anticipated significant changes that are likely to impact on the child or young person's ALN or ALP – for example, where the child or young

¹ Sections 23(9) and 24(8) of the Act.

² Sections 23(1) and 24(1) of the Act.

³ Sections 23(9) and 24(8) of the Act

person is due to move on to a new stage of education, especially where an early decision might be required in relation to the securing of a place at a particular school or other institution in order to meet their reasonable needs for ALP (see chapter 19 for more information on transition planning);

- whether there are proposed assessments or tests whose results would impact on the intended outcomes, planned activity or provision;
- the child or young person's age and likely rate of development - for example, for very young children, three to six months might be considered the maximum amount of time, to ensure the ALP continues to be appropriate; and
- in the light of the complexity of the case and other factors, the likely duration of a review, with a view to ensuring that it can be completed by the end of the review period.

- 16.7 Schools, FEIs and local authorities may want to consider the impact on their staff resources and that of others when planning reviews and may want to arrange them so they do not all take place at the same time or in close proximity to one another, providing that does not compromise the likely effectiveness of each individual review.
- 16.8 A proposed review date may be changed to an earlier or later date (providing a later date allows the review to be conducted within the review period).
- 16.9 An earlier, unscheduled review will often be appropriate where there has been a significant change in circumstances or new information has come to light. An earlier review may also be warranted where an intended outcome has been achieved, or it becomes obvious that an intended outcome will not be achieved or because it is no longer felt that a child or young person has ALN and, therefore, no longer requires an IDP. Continuous tracking and monitoring of a learner's progress will be critical to identifying sudden changes. Changing a review to a later date might be appropriate, for example, when additional time is considered necessary to examine the impact of a particular intervention, when the results of a medical test or examination relevant to the review are pending, or where a child or young person is currently too ill to contribute to the review.
- 16.10 So that they are able to make any necessary preparations to contribute to a review, it is important that local authorities maintaining IDPs liaise with any school or FEI attended by a child or young person in advance of a review taking place. This might include providing to the head teachers and principals of any school or FEI attended by them, before the start of each term, a list of all the children and young people with an IDP maintained by the local authority for whom it is intended to conduct an IDP review.
- 16.11 Where a child or young person with an IDP attends a maintained school or FEI in Wales, including those whose IDP is maintained by a local authority, the school or FEI **should** talk to the child, child's parent or young person regularly in order to discuss their progress with them. These discussions contribute to on-going monitoring and the evidence gathered from them can

be used to inform the review. They can also build confidence in the ALP being made and strengthen its impact by increasing the child, child's parent or young person's engagement in the approaches and strategies being used. The child, child's parent or young person can also provide essential information on the impact of ALP outside the education setting and any changes in the child or young person's ALN. This ongoing dialogue will form an important element in determining when an early review might be appropriate.

16.12 A body required to maintain an IDP **must**⁴ review it before the end of each review period. Review periods are defined as follows⁵:

- (a) The first review period is a period of 12 months starting with the date on which a copy of the IDP is first given to the child and others⁶;
 - (b) Each subsequent review period is a period of 12 months starting with—
 - (i) the date during the preceding review period on which a copy of a revised IDP is first given in relation to that review period⁷,
 - (ii) where the IDP has not been revised in the preceding review period—
 - (1) the date during that preceding review period on which notice of a decision is first given in relation to that review period that following a review, the IDP should not be revised⁸, or
 - (2) the date during that preceding review period on which notice of a decision is first given in relation to that review period that following a reconsideration by a local authority of an IDP maintained by a school, the IDP should not be revised⁹,
- or
- (c) where none of the documents referred to in sub-paragraph (a) and (b) has been given during the preceding review period, the subsequent review period is a period of 12 months starting with the first day after the end of that preceding review period.

⁴ Sections 23(1) and 24(1) of the Act.

⁵ Sections 23(2) – (5) and 24(2) – (4) of the Act

⁶ Section 22 of the Act requires a copy of the plan to be given to the child, the child's parent or the young person and, if the child is looked after, the independent reviewing officer.

⁷ Section 23(11) of the Act requires a school, FEI or local authority that revises an IDP (including in the case of a local authority, where it revises an IDP maintained by a school which it has reconsidered under section 27) to give a copy of the revised plan to the child, their parent or young person. Section 24(10) requires a local authority revising an IDP for a child it looks after, to give a copy of the revised IDP to the child, their parent and the independent reviewing officer.

⁸ This is the notice under section 23(10) or section 24(9) of the Act. Those sections require a school, FEI or local authority, where following a review it decides not to revise a plan, to notify this decision and the reasons for it to the child, their parent or young person and if the child is looked after by the local authority, the independent reviewing officer.

⁹ This is the notice under section 27(4) of the Act. Section 27(4) requires a local authority that has reconsidered a plan maintained by a school under section 27, to give a notice of its decision (and reasons for it) that the plan should not be revised to the child, their parent or young person.

- 16.13 The duty to review an IDP before the end of a review period is treated as met if, before the end of that period¹⁰—
- (a) the IDP is reconsidered by a local authority (this could only be in the case of an IDP maintained by a school)¹¹;
 - (b) the Education Tribunal for Wales orders a local authority or an FEI to revise the IDP; or
 - (c) in the case of an IDP maintained by a school, the Education Tribunal for Wales orders a local authority to review the IDP.
- 16.14 Essentially, these requirements are to ensure that an IDP is always reviewed within a year of the completion of its last review (or its preparation). For these purposes, a consideration of the IDP under the Act by a body other than that which maintains it, counts as the last review. Therefore, where a local authority reconsiders an IDP maintained by a school and where the Tribunal orders revisions to the IDP or orders a local authority review of an IDP maintained by a school, a fresh review period starts.
- 16.15 This can be illustrated with an example. If a school prepares an IDP and gives a copy of it on 5 January, the school would be subject to a duty to review it before the end of 4 January of the next year. If, in the meantime, the pupil requested the local authority to reconsider the IDP and the local authority either gave a copy of a revised IDP or a notice of its decision that it should not be revised on 5 April, the next review period would start on that 5 April and end at the end of the following 4 April. Accordingly, the school would no longer have a duty to review the IDP during the first review period (i.e. by the end of the following 4 January, because the duty to review it is treated as having been met by the local authority reconsidering it), but must instead review it by the end of the following 4 April (assuming that in the meantime, there is neither a further reconsideration of it by the local authority nor an Education Tribunal order to revise it or for the local authority to review it). If the school then does a review in the January to March, giving a copy of the revised IDP on 10 March, then the next review period will end at the end of the following 9 March.
- 16.16 The references above to notices or copies of IDPs being first given are to deal with the possibility that where a notice or IDP must be given to more than one person (i.e. a child and their parent and if the child is looked after, the independent reviewing officer) and it is given to each of them on different dates, it is the date on which it is first given that counts¹².

¹⁰ Sections 23(6) and 24(5) of the Act.

¹¹ Under section 27 of the Act.

¹² Sections 23(5) and 24(3) of the Act.

Requests for reviews from children, their parents and young people

16.17 A school, FEI or local authority who are required to maintain an IDP for a child or young person **must**¹³ review the IDP if a request is made to it by the child, the child's parent or young person, unless it considers a review to be unnecessary. In response to such requests, the school, FEI or local authority that maintains the IDP **must**¹⁴ consider the request and:

- a) if it decides that a review is unnecessary, notify the child or young person and, in the case of a child, their parent of that decision and the reasons for it (along with the other information set out in paragraph 16.20 below); or
- b) if it decides to undertake a review, undertake the review and:
 - i. if it decides to revise the IDP, give a copy of the revised IDP in accordance with paragraph 16.39;
 - ii. if it decides that the IDP should not be revised, give the notification of that decision in accordance with paragraph 16.38;
 - iii. if it decides that the child or young person no longer has ALN, give the notification of that decision in accordance with paragraph 16.36 (see chapter 21 for other requirements related to such a decision);
 - iv. if, in the case of a local authority maintaining an IDP for a young person who is neither a registered pupil at a maintained school nor enrolled as a student at an FEI, it decides that it is no longer necessary to maintain the IDP to meet the young person's reasonable needs for education or training, give the notification of that decision in accordance with paragraph 16.36 (see Chapter 12 for other requirements related to such a decision).

16.18 The school, FEI or local authority **must**¹⁵ - complete the review (including, as the case may be, giving the notification of its outcome or copy of the revised IDP) promptly and in any event, within the relevant period (see paragraph 16.19). But the requirement to complete the review within the relevant period does not apply if it is impractical for the school, FEI or local authority to do so due to circumstances beyond its control¹⁶.

16.19 For the purpose of paragraph 16.18 –and 16.25 the relevant period is-

- i. in the case of a school, 35 school days,
- ii. in the case of an FEI, 35 term time days,
- iii. in the case of a local authority, 7 weeks;

¹³ Sections 23(8) and 24(7) of the Act

¹⁴ Requirement to consider the request flows from sections 23(8) and 24(7) of the Act; requirement to give notification if it decides that a review is unnecessary (sub-paragraph (a)) is imposed by the Code; requirements in sub-paragraph (b) are in, respectively, sections 23(11) and 24(10), 23(10) and 24(9) and, for paragraph (iii) and (iv), 31(8) of the Act.

¹⁵ Timescale requirement imposed by the Code.

¹⁶ For more information about compliance with timescales in the Code, see paragraphs 1.30 – 1.36 of Chapter 1

from the school, FEI or local authority (as the case may be) receiving the request for a review;

16.20 Where notification is given that a review is unnecessary, the following information **must**¹⁷ also be included in the notification:

- (a) the contact details of the school, FEI or local authority, as may be the case;
- (b) information about how to access the responsible local authority's arrangements for providing people with information and advice about ALN and the ALN system¹⁸. This could be done by providing a local authority leaflet about the ALN system or the address of the local authority's relevant web pages and drawing attention to how to get further information and advice;
- (c) details of the responsible local authority's arrangements for the avoidance and resolution of disagreements¹⁹ and its independent advocacy services²⁰;
- (d) in the case of an IDP maintained by a school, information about the child, their parent or the young person's right to request that the responsible local authority reconsiders the IDP or takes over responsibility for maintaining it and the contact details for the responsible local authority; and
- (e) in the case of an IDP maintained by a FEI or a local authority, information about the right to appeal to the Education Tribunal about particular aspects of the IDP.

16.21 Whether a review is unnecessary will depend upon the circumstances. Factors which are likely to be relevant would include how long it has been since the plan was prepared or reviewed, whether there has been a change in circumstances which might affect the plan, or whether new evidence or information has come to light which might affect the plan.

Requests for reviews from NHS bodies

16.22 A school, FEI or local authority **must**²¹ review an IDP it is maintaining if the IDP includes ALP that a NHS Body is required to secure and the NHS Body requests it to review the IDP.

16.23 Furthermore, if, on review of an IDP, the NHS Body requests that the description of the ALP that it is required to secure is removed or changed, the school, FEI or local authority **must**²² comply with that request.

¹⁷ Requirement imposed by the Code.

¹⁸ These are the arrangements that the local authority must make under section 9 of the Act. In the case of a looked after child, these could be those of the local authority that maintains the plan or those of the local authority (if different) in whose area the child is.

¹⁹ Under section 68 of the Act.

²⁰ Under section 69 of the Act.

²¹ Sections 23(7) and 24(6) of the Act.

²² Section 21(7) of the Act.

- 16.24 Following the review, the school, FEI or local authority maintaining the IDP **must**²³:
- (a) if it decides to revise the IDP, give a copy of the revised IDP in accordance with paragraph 16.39 ;
 - (b) if it decides that the IDP should not be revised, give the notification of that decision in accordance with paragraph 16.38;
 - (c) if it decides that the child or young person no longer has ALN, give the notification of that decision in accordance with paragraph 16.36 (see chapter 21 for other requirements related to such a decision);
 - (d) if, in the case of a local authority maintaining an IDP for a young person who is neither a registered pupil at a maintained school nor enrolled as a student at an FEI, it decides that it is no longer necessary to maintain the IDP to meet the young person's reasonable needs for education or training, give the notification of that decision in accordance with paragraph 16.36 (see Chapter 12 for other requirements related to such a decision).
- 16.25 The school, FEI or local authority **must**²⁴ complete the review (including, as the case may be, giving the notification of its outcome or copy of the revised IDP) promptly and in any event, within the relevant period (see paragraph 16.19). But the requirement to complete the review within the relevant period does not apply if it is impractical for the school, FEI or local authority to do so due to circumstances beyond its control²⁵.

Conducting reviews

16.26 The purpose of a review is to consider:

- the child or young person's progress towards achieving the intended outcomes;
- whether the child or young person still has ALN and, if so, whether their needs have changed;
- whether the ALP and any other provision to meet the child or young person's reasonable needs for ALP is still appropriate;
- whether the child or young person might need to receive the ALP at a particular school or other institution; and
- the continued suitability of the intended outcomes and, if appropriate, decide new or revised outcomes;
- in the case of a young person not at a maintained school or FEI, whether it is necessary to maintain an IDP under section 14 of the Act to meet the

²³ These requirements are in, respectively, sections 23(11) and 24(10), 23(10) and 24(9), and for sub-paragraphs (c) and (d), 31(8) of the Act.

²⁴ Timescale requirement imposed by the Code. Paragraphs 16.36 – 16.41 are relevant to its meaning.

²⁵ For more information about compliance with timescales in the Code, see paragraphs 1.30 – 1.36 of Chapter 1.

young person's reasonable needs for education or training (see chapter 12).

- 16.27 It is important to remember that children and young people learn in different ways, and their needs may change over time. Different support or expertise will need to be made available as part of a continuous cycle of planning, action and review. The range and style of support ought, therefore, to be increased or reduced according to the child or young person's individual needs and progress.
- 16.28 In order to achieve that purpose, reviews **should** normally be conducted as part of a meeting using the approach set out in Chapter 18.
- 16.29 At the end of the review, a date **should** be agreed, at least in principle, from when the next review will take place. This should take into account the factors set out paragraph 16.6 above, and be sufficiently within the review period. Of course, it may need to be changed, if circumstances change in the meantime.
- 16.30 When reviewing the IDP for a young person not at a maintained school or FEI, the local authority **must**²⁶ make any decision on whether it continues to be necessary to maintain it to meet the young person's reasonable needs for education or training in accordance with regulations. Chapter 12 addresses when it will be necessary for a local authority to continue to maintain an IDP for a young person. Chapter 21 deals with the process for ceasing to maintain an IDP, where it has been decided that it is no longer necessary to maintain it.
- 16.31 A school, FEI or local authority **may**²⁷ review an IDP at the same time as it or another body is preparing, reviewing or revising another document for the child or young person and it may include that other document in the IDP and the IDP may be included in that other document.
- 16.32 Where a local authority is reviewing the IDP of a child it looks after, the IDP is incorporated into the child's personal education plan, which is itself part of the child's care and support plan. It will often be appropriate for the review of the IDP to be part of the wider review of the child's case under the Social Services and Well-being (Wales) Act 2014. The Social Services and Well-being (Wales) Act 2014: part 6 code of practice (looked after and accommodated children)²⁸ contains guidance on reviews for looked after children under that Act, including where the local authority is responsible for maintaining the child's IDP and incorporating it within the personal education plan.

²⁶ Section 31(6)(b).

²⁷ Section 25 of the Act. As well as review an IDP, the school, FEI, or local authority may also prepare or revise the IDP at the same time as it or another body does such things in relation to another document.

²⁸ <https://gov.wales/topics/health/socialcare/act/code-of-practice/?lang=en>

- 16.33 In other cases where a child or a young person also has a plan under the Social Services and Well-being (Wales) Act 2014 (such as a care and support plan under Part 4) and a local authority is responsible for both that plan and the IDP, the local authority **should** consider whether to hold the IDP review at the same time as a review in relation to the other plan (see Chapter 16). One meeting could be held for the purpose of both reviews. Considering care and support needs and ALN simultaneously may inform what support and ALP is most suitable to meet needs in a more holistic way.
- 16.34 In other cases where the child or young person has another document or plan, the school, FEI or local authority that maintains the IDP could seek to co-ordinate the review of the IDP with the preparation or review of the other document if that is appropriate (whether or not the school, FEI or local authority is responsible for the other document).
- 16.35 Where reviews or similar actions are conducted at the same time, they must follow the requirements of the relevant legislation. Despite the potential advantages of undertaking reviews of different plans at the same time, reviews of IDPs **should not** be delayed to the detriment of the child or young person in order to facilitate this and **must not**²⁹ be delayed where this would breach legal requirements. In some cases, it may be that the plans will need to be reviewed at different times to best meet the needs of the child or young person.

Actions following a review

- 16.36 If the conclusion of the review is that a child or young person no longer has ALN and so no longer requires an IDP or that it is no longer necessary to maintain an IDP for a young person, the specific provisions on ceasing to maintain an IDP on this basis will apply. See Chapter 21 for details about this³⁰.
- 16.37 Where a school or FEI is reviewing the IDP, it might become apparent that the child's or young person's needs are such that the local authority might need to take over responsibility for the IDP. See Chapter 17 for more information about this.
- 16.38 If the conclusion of the review is that the IDP should not be revised, the body maintaining the plan **must**³¹ notify the child, child's parent or young person and if the local authority looks after the child, the independent reviewing officer of the decision and the reasons for it.

²⁹ Because the legal requirement (for example, under section 23(1) of the Act to review an IDP before the end of the review period), if it applies, must be complied with.

³⁰ There are specific requirements relating to ceasing to maintain IDPs for this reason in sections 31 – 33 of the Act.

³¹ Sections 23(10) and 24(9) of the Act

- 16.39 If the conclusion of the review is that the IDP should be revised, a copy of the revised IDP **must**³² be given to the child, child's parent or young person and if the local authority looks after the child, the independent reviewing officer.
- 16.40 The school, FEI or local authority **should** also consider whether the IDP, or parts of it, should be given to anyone else.
- 16.41 Following a review, when a school, FEI or local authority notifies a child, their parent or a young person of its decision not to revise an IDP or gives a copy of a revised IDP to a child, their parent or a young person, it **must**³³ also give the child, their parent or the young person:
- (a) the proposed date from when the next review will take place;
 - (b) the contact details of the school, FEI or local authority, as may be the case;
 - (c) information about how to access the responsible local authority's arrangements for providing people with information and advice about ALN and the ALN system³⁴. This could be done by providing a local authority leaflet about the ALN system or the address of the local authority's relevant web pages and drawing attention to how to get further information and advice;
 - (d) details of the responsible local authority's arrangements for the avoidance and resolution of disagreements³⁵ and its independent advocacy services³⁶;
 - (e) in the case of an IDP maintained by a school, information about the child, their parent or the young person's right to request that the responsible local authority reconsiders the IDP or takes over responsibility for maintaining it and the contact details for the responsible local authority; and
 - (f) in the case of an IDP maintained by a FEI or local authority, information about the right to appeal to the Education Tribunal about particular aspects of the IDP.

³² Sections 23(11) and 24(10) of the Act

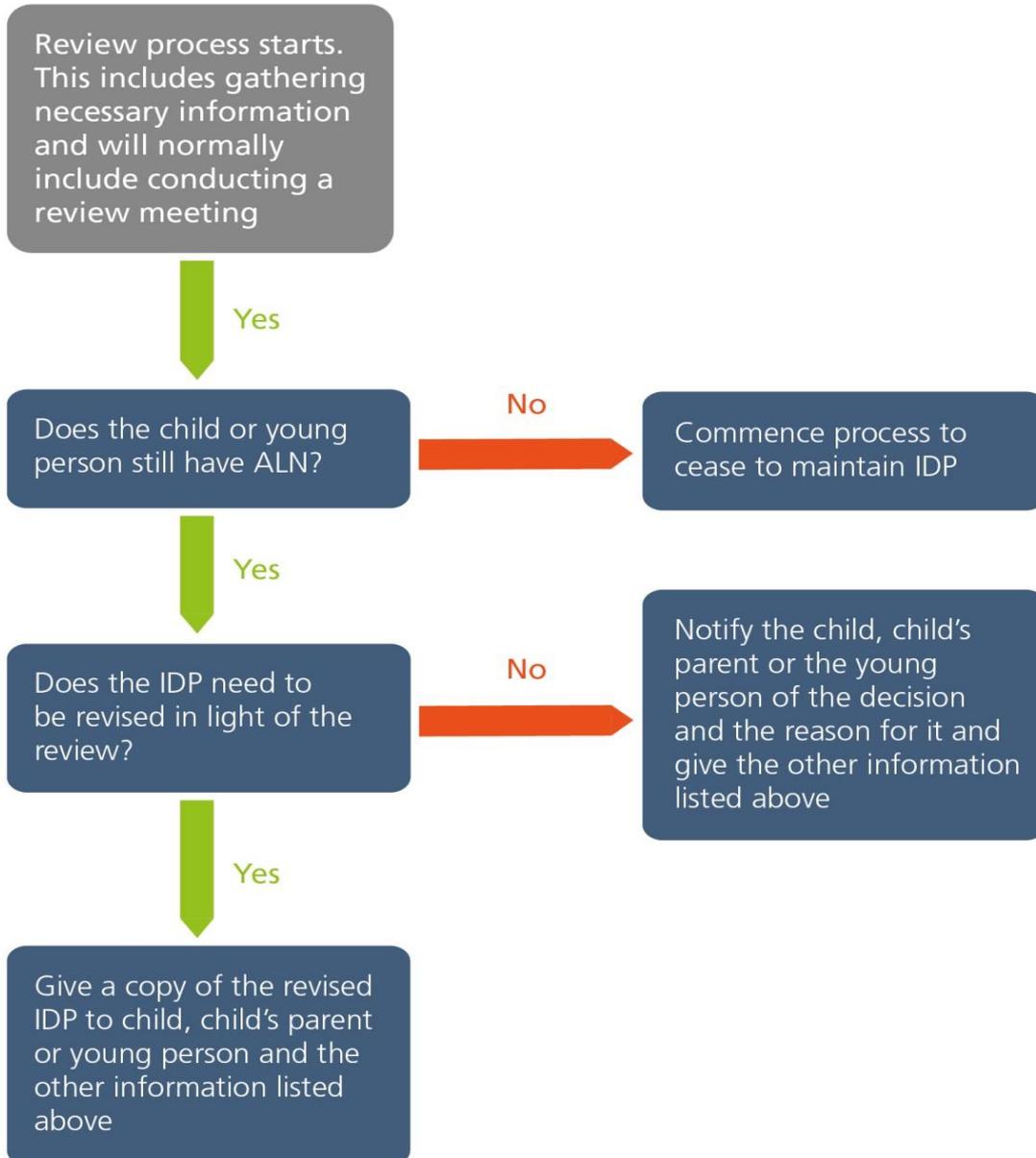
³³ Requirement imposed by the Code

³⁴ These are the arrangements that the local authority must make under section 9 of the Act. In the case of a looked after child, these could be those of the local authority that maintains the plan or those of the local authority (if different) in whose area the child is.

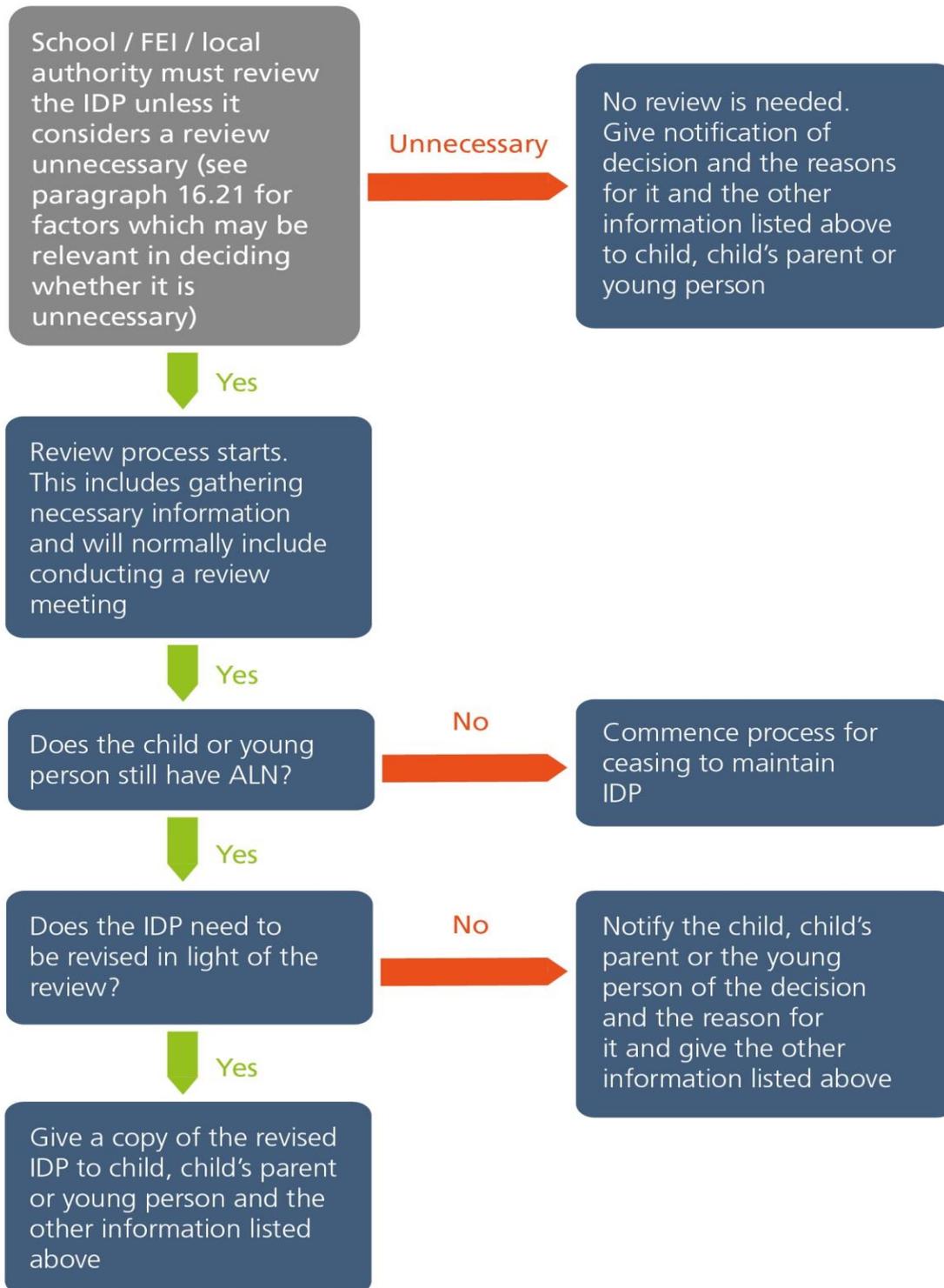
³⁵ Under section 68 of the Act.

³⁶ Under section 69 of the Act.

Process for reviewing an IDP – including mandatory review within 12 months of last review/revision (unless a request is made by the child, child’s parent or young person – see next flowchart)



Process for reviewing an IDP where a request is made by the child, child's parent or young person



Chapter 17: Local authority reconsiderations and taking over responsibility for IDPs

Introduction

- 17.1 Where a child, the child's parent or a young person is dissatisfied with the decision of a maintained school in Wales about whether the child or young person (who is a registered pupil at the school) has ALN or with an IDP maintained by such a school, it is expected that this dissatisfaction would normally be resolved directly with the school or by recourse to a local authority's disagreement arrangements. However, in these cases, the child, their parent or the young person **may**¹ also request that a local authority reconsiders the decision or IDP. While there are no rights of appeal to the Education Tribunal in respect of decisions about ALN made by a school or in relation to a school maintained IDP, a local authority's decision in relation to such reconsiderations can be appealed. These provisions apply with a few modifications where the pupil concerned is in the area of a local authority in England.
- 17.2 At the request of a school, FEI, child, child's parent or young person, a local authority can take over responsibility from the school or FEI for maintaining an IDP for the child or young person. A decision not to take over responsibility is also appealable. This only applies where the child or young person is in the area of a local authority in Wales.

A local authority's reconsideration of a maintained school's decisions about ALN

- 17.3 Where a maintained school in Wales has made a decision² about whether one of its registered pupil's has ALN, or has refused to make such a decision, the child, their parent or the young person **may**³ request that the local authority responsible for the child or young person, or in the case of a child or young person who is in the area of a local authority in England, the local authority in Wales that maintains the school, reconsiders the matter.
- 17.4 This provides children, their parents and young people with a means of challenging the school's decision.
- 17.5 If a local authority receives such a request for reconsideration, it **must**⁴ decide whether the child or young person has ALN unless the following

¹ Sections 26(1), 27(1) and 87(2)(a) of the Act

² This is a decision under section 11(1) of the Act.

³ Section 26(1) and 87(2)(a) of the Act

⁴ Sections 26(2), 29 and 44(1)-(2) of the Act and section 562 of the Education Act 1996.

circumstances apply:

- (a) the local authority has previously reconsidered the issue and is satisfied that the child or young person's needs have not changed materially since that decision and there is no new information which materially affects that decision; or
- (b) the request relates to a child who has become looked after by a local authority in Wales (except where that child is in the area of a local authority in England⁵) or to a child or young person who has become subject to a detention order⁶.

17.6 Where such a request for reconsideration is made, the local authority **must**⁷ inform the school and invite representations from it before reaching a decision. Once made, the local authority's decision replaces the school's decision and is appealable to the Education Tribunal⁸.

17.7 The decision is treated as a decision made under section 13(1) of the Act, that is, a decision by the local authority under that section that the pupil has or does not have ALN⁹. That decision is described in paragraphs 9.64 to 9.70.

17.8 The requirements imposed in chapter 9 relating to that decision apply equally to the reconsideration decision. However, as set out in that chapter, in reconsideration cases, the relevant period for giving a notification¹⁰ of a decision that the pupil does not have ALN, for giving a copy of an IDP, or for the school preparing an IDP (where directed to do so by the local authority) is 7 weeks from the date of the request for reconsideration.

17.9 Also, where the child or young person is in the area of a local authority in England and the local authority in Wales decides that the child or young person has ALN, the local authority in Wales **must**¹¹ either prepare an IDP for the child or young person and direct the school to maintain it or direct the school to prepare and maintain an IDP for the child or young person (it cannot maintain the IDP itself).

- (a) But the local authority in Wales does not have to do this if¹²; it requests the local authority in England to secure an EHC assessment and that local authority is then responsible for the child or young person under the Children and Families Act 2014, or
- (b) the local authority in England maintains an EHC plan for the child or

⁵ Section 87(2)(c) of the Act.

⁶ Chapter 22 deals with what happens to duties under the Act when a child or young person becomes subject to a detention order and the duties that apply where the person is a detained person.

⁷ Section 26(3) of the Act.

⁸ Sections 26(5) and 70 of the Act.

⁹ Section 26(4) of the Act

¹⁰ Further guidance on giving notice or documents is provided in Chapter 1.

¹¹ Section 87(3)(c) of the Act.

¹² Section 87(3)(d) of the Act.

young person.

17.10 If, having requested the local authority in England to do an EHC assessment, the authority in England notifies the one in Wales that it is not required to secure an EHC plan, the authority in Wales **must**¹³ then either prepare an IDP and direct the school to maintain it or direct the school to prepare and maintain one.

17.11 Where a local authority prepares an IDP for a child or young person in the area of a local authority in England, it cannot describe other provision (that is, a place at a particular school or other institution or board and lodging) in it¹⁴.

A local authority's reconsideration of maintained school IDPs

17.12 Where a school maintains an IDP for a pupil, the child, child's parent or young person **may**¹⁵ request that the local authority responsible for the child or young person, or in the case of a child or young person who is in the area of a local authority in England, the local authority in Wales that maintains the school, reconsiders the IDP, with a view to it being revised. The local authority **must**¹⁶ then reconsider the IDP and decide whether or not to revise the plan, unless the following circumstances apply:

- (a) the local authority has previously reconsidered the IDP and is satisfied that the child or young person's needs have not changed materially since that decision and there is no new information which materially affects that decision; or
- (b) the request relates to a child who has become looked after by a local authority in Wales¹⁷ (except where that child is in the area of a local authority in England¹⁸) or to a child or young person who has become subject to a detention order¹⁹.

17.13 This provides children, their parents and young people with a means of challenging the content of the IDP put in place for them by the school.

17.14 Where such a request is made, the local authority **must**²⁰ inform the school and invite representations from it before the local authority decides whether to revise the IDP.

¹³ Section 87(3)(e) of the Act.

¹⁴ Section 87(3)(f) of the Act.

¹⁵ Section 27(1) and 87(2) of the Act

¹⁶ Sections 27(2), 29, 44(1)-(2) and 87(2) of the Act and section 562 of the Education Act 1996.

¹⁷ Local authorities that look after children who are looked after for the purposes of the Act have a duty to maintain the IDP: section 35(9)-(10) of the Act.

¹⁸ Section 87(2)(c) of the Act.

¹⁹ Section 44(1) - (2) of the Act in the case of a detained person and otherwise, section 562 of the Education Act 1996. See Chapter 22 for the effect where a person with an IDP becomes subject to a detention order.

²⁰ Section 27(3) of the Act.

17.15 The local authority **must**²¹ also consider what further information is required from any other source, including from the child, their parents or the young person, to inform its reconsideration.

17.16 If the local authority decides not to revise the IDP, it **must**²² notify the pupil, and if the pupil is a child, their parent, of the decision and the reasons for it and give a copy of that notification²³ to the school.

17.17 If the local authority decides that the IDP should be revised, it **must**²⁴ prepare a revised plan and either:

- (a) direct the school to maintain it; or,
- (b) take over responsibility for maintaining it²⁵ (see paragraphs 17.24 to 17.35).

In this case, the local authority must also give a copy of the revised plan to the pupil, and if the pupil is a child their parent, and the school²⁶.

17.18 But where a pupil is in the area of a local authority in England the local authority in Wales cannot take over responsibility for maintaining the IDP and so **must**²⁷ prepare a revised IDP and direct the school to maintain it.

17.19 In all cases, when the local authority gives a notification²⁸ of its decision not to revise the IDP or gives a copy of the revised IDP to the pupil and if the pupil is a child, their parent, it **must**²⁹ also give them:

- (a) the contact details for the local authority;
- (b) information about how to access the local authority's arrangements for providing people with information and advice about ALN and the ALN system³⁰. This could be done by providing a local authority leaflet about the ALN system or the address of the local authority's relevant web pages and drawing attention to how to get further information and advice;
- (c) details of the local authority's arrangements for the avoidance and resolution of disagreements³¹ and its independent advocacy services³²;

²¹ Requirement imposed by the Code and in respect of the child, their parent or young person likely to be required to give effect to the local authority's duty under section 6 of the Act (involving and supporting children, their parents and young people).

²² Section 27(4) and (5) of the Act.

²³ Further guidance on giving notice or documents is provided in Chapter 1.

²⁴ Section 27(6) of the Act.

²⁵ It has the power to do so under section 28(6) of the Act.

²⁶ Sections 23(11) and 27(7) of the Act.

²⁷ Section 87(2)(e) of the Act

²⁸ Further guidance on giving notice or documents is provided in Chapter 1.

²⁹ Requirement imposed by the Code

³⁰ These are the arrangements that the local authority must make under section 9 of the Act.

³¹ Under section 68 of the Act.

³² Under section 69 of the Act.

and

(d) information about the right to appeal to the Education Tribunal about particular aspects of the IDP .

17.20 The local authority **must**³³ conduct the reconsideration and complete the actions in either paragraph 17.16 (if it decides not to revise the IDP) or paragraph 17.17 (if it decides to revise the IDP), promptly and in any event within the period of 7 weeks from receiving the request for reconsideration. But the requirement to give the notification³⁴ or a copy of the revised IDP within that 7 week period does not apply if it is impractical for the local authority to do so due to circumstances beyond its control.

17.21 When reconsidering the IDP, the local authority **must**³⁵ consider whether ALP should be provided to the pupil in Welsh and if it decides that a particular kind of ALP should be provided in Welsh, the body **must**³⁶ specify in the plan that it should be provided in Welsh (unless this is already provided for in the plan).

17.22 If the local authority does not maintain the school, it **must**³⁷ consult the local authority that maintains the school about its intention to direct the school before it can direct it. In the case of pupils in the area of a local authority in Wales, the local authority **should** direct a maintained school to maintain the IDP only where it considers that the child or young person has ALN that calls for ALP it would be reasonable for the school to secure³⁸. Where this would not be reasonable, the local authority **should** take over responsibility for maintaining the plan.

17.23 Where the local authority describes a place at a particular school or other institution and/or board and lodging in the IDP, the local authority will need to take over responsibility for maintaining the plan itself³⁹ (see paragraphs 17.24 to 17.35).

A local authority taking over responsibility for an IDP

17.24 A maintained school, an FEI, the child, their parents or the young person **may**⁴⁰ request that the local authority responsible for the child or young person take over responsibility for an IDP that is currently being maintained for the child or young person by the school or FEI. This request cannot be made in respect of a child or young person in the area of a local authority in

³³ Timescale requirement imposed by the Code.

³⁴ Further guidance on giving notice or documents is provided in Chapter 1.

³⁵ Section 14(5) of the Act

³⁶ Section 14(5) of the Act

³⁷ Section 38 of the Act.

³⁸ Guidance on when it might be reasonable for a school to secure ALP is provided in Chapter 9

³⁹ Under section 27(6)(b) and 28(6) of the Act.

⁴⁰ Section 28(1) of the Act

England⁴¹.

- 17.25 A school or FEI might request the local authority to take over responsibility for maintaining an IDP where, for example, the school or FEI believes that it would no longer be reasonable for them to secure the ALP called for by a child or young person's ALN. Before doing so, the school or FEI **should** consider consulting an educational psychologist to see whether this is appropriate.
- 17.26 A child, child's parent or young person might request the local authority to take over responsibility for an IDP where they do not believe the school or FEI is capable of fully meeting their needs, or they believe they require further or alternative ALP the school or FEI cannot provide (in which case the request is likely to be accompanied by a request for the local authority to reconsider the IDP).
- 17.27 Where a school or FEI has requested that the local authority take over responsibility for the IDP, it **must**⁴² send a copy of the IDP at the same time as it makes the request. In all other cases, the school or FEI **must**⁴³ send a copy of the IDP promptly when requested to do so by the local authority.
- 17.28 Following such a request, the local authority **must**⁴⁴ decide whether it should take over responsibility for maintaining the IDP unless either of the following circumstances apply:
- (a) the local authority has previously made such a decision in relation to the child or young person's plan and is satisfied that the child's or young person's needs have not changed materially since that previous decision and there is no new information that would materially affect that decision; or
 - (b) the request relates to a child who has become looked after by a local authority⁴⁵ or to a child or young person who has become subject to a detention order⁴⁶.

⁴¹ Under section 28(1) of the Act requests may only be made to the responsible local authority and this is not modified by section 87.

⁴² Requirement to be imposed by regulations made under section 82 of the Act

⁴³ Requirement to be imposed by regulations made under section 82 of the Act

⁴⁴ Sections 28(3) and 29.

⁴⁵ Local authorities that look after children who are looked after for the purposes of the Act have a duty to maintain the IDP: section 35(9)-(10) of the Act.

⁴⁶ Section 44(1) - (2) of the Act in the case of a detained person and otherwise, section 562 of the Education Act 1996. See Chapter 22 for the effect where a person with an IDP becomes subject to a detention order.

- 17.29 Before taking a decision, the local authority **must**⁴⁷:
- (a) inform the child and their parent, or the young person, of the request and invite representations (where the school or FEI has made the request);
 - (b) inform the school or FEI and invite representations (where the request is from a child, child's parent or young person)
- 17.30 The local authority **must**⁴⁸ also consult an educational psychologist before taking a decision. This advice **should** relate to:
- (a) the educational, psychological or other features of the case which appear to be relevant to the child or young person's educational needs (including their likely future needs);
 - (b) how those features could affect the child or young person's educational needs; and
 - (c) the provision which may be appropriate for the child or young person in light of those features of their case, whether by way of ALP or other provision.
- 17.31 A local authority **may**⁴⁹ also decide to take over responsibility for maintaining a school maintained IDP when it determines that a plan should be revised (see paragraphs 17.24 to 17.35)⁵⁰.
- 17.32 The local authority **must**⁵¹ notify the child or the young person, and in the case of a child, their parent and (as the case may be) the school or FEI of the decision (including a decision to take over responsibility following reconsideration of the IDP rather than a request to take it over) and the reasons for it.
- 17.33 The local authority **should** act promptly to decide whether it should take over responsibility for maintaining the IDP and give the notification⁵² referred to in paragraph 17.19. It **should** do this within the period of 7 weeks from the request to take over responsibility for the IDP unless it is unable to do so within that period due to circumstances beyond its control.
- 17.34 If the local authority decides to take over responsibility for maintaining the plan, from the date on which the notification⁵³ referred to in paragraph 17.32 is given, the school or FEI is no longer required to maintain it⁵⁴. When the local authority decides to take over responsibility, the school or FEI **should** provide all relevant information to the local authority.

⁴⁷ Section 28(4) and 28(5).

⁴⁸ Requirement imposed by the Code.

⁴⁹ Section 28(6) of the Act

⁵⁰ Section 28(6) of the Act.

⁵¹ Section 28(7) of the Act.

⁵² Further guidance on giving notice or documents is provided in Chapter 1.

⁵³ Further guidance on giving notice or documents is provided in Chapter 1.

⁵⁴ Section 28(8) of the Act.

17.35 Where a local authority decides not to take over responsibility following a request to do so, the child, their parent or the young person **may**⁵⁵ appeal this decision to the Education Tribunal.

⁵⁵ Section 70 of the Act

Chapter 18: Meetings about ALN and IDPs

Introduction

- 18.1 Throughout the time a child or young person has an IDP, there are likely to be numerous meetings to ensure the IDP remains relevant. Whether these meetings are formal annual review meetings or shorter conversations about the child or young person's ALP, it is important to follow certain principles. This will help standardise the meetings and their format to deliver reasonable expectations from all those attending, whilst allowing the flexibility for each meeting to be relevant to a child or young person and their ALN.
- 18.2 Meetings can therefore differ in their length and frequency with the co-ordinator, in consultation with the child, child's parent or young person, determining the timing and number of meetings required.

Good practice principles for all ALN meetings

- 18.3 As described in Chapter 3 there is a general duty to involve children, their parents and young people in decisions that relate to any ALN they might have and the preparation of IDPs. This is also true of IDP review meetings and other, less formal ALN meetings. Putting the child or young person at the heart of the process that identifies their ALN and determines their ALP is a fundamental principle of the ALN system (see Chapter 2).
- 18.4 To fulfil this duty, the co-ordinator **should** normally arrange a meeting or meetings with the child and the child's parent, or the young person, to discuss and decide upon the person's needs and where it is decided that the person has ALN, to discuss the rest of the contents of the IDP. Furthermore the co-ordinator **should**:
- run the meeting(s) using a person-centred approach; and
 - take a person-centred approach to the gathering and presentation of information.
- 18.5 It may be useful to use the following person-centred practice headings to structure the gathering and presenting of information, including for those submitting written contributions in advance of a meeting:
- What do you like most, admire or appreciate about the learner?
 - What has happened since the last review? (*Where applicable*)
 - What do you think, from your perspective, are the learner's aspirations for the future?
 - What do you think is most important in the learner's life at the moment?
 - What do you think is important for the learner to help them develop and progress?
 - What do other people need to know or do to help the learner?
 - What is going really well from your perspective at the moment?

- What is not going so well at the moment from your perspective?
 - Do you have any questions you would like to ask?
- 18.6 The Welsh Government has published a number of guidance documents on person-centred practice, which are available online¹.
- 18.7 For some children or young people the meeting(s) could be very small. For example, for a child under 16 whose needs are neither severe nor complex, it might only include the child, their parent(s) and someone from the school. A meeting for a young person might include just the young person, someone from the FEI and possibly another person, such as a parent, whom the young person has requested attends.
- 18.8 As set out in the multi-agency working section of Chapter 7, many different agencies, professionals and individuals have a role to play in identifying ALN and ALP and reviewing an IDP. Other agencies and professionals **should** be invited to attend meetings or provide advice where they are likely to make a relevant contribution to the decision being taken or IDP being prepared or reviewed. Such invitations **should** be in writing and be made as soon as possible to provide sufficient notice to enable attendance or the provision of written advice. When they are invited to contribute, other agencies and professionals **should** be informed of the proposed format of the meeting, or the desired format of any written contribution.
- 18.9 A school, FEI or local authority **should** consider what evidence or advice they need to seek in advance of the meeting and consider who else should attend the meeting.
- 18.10 Where a local authority², for the purposes of exercising its functions under the Act, requests information or help from certain bodies, they **must**³ comply with that request unless doing so would be incompatible with the bodies' own duties or would have an adverse effect on the exercise of their functions - see Chapter 15 for more information.
- 18.11 If they are requested to attend meetings or contribute relevant information to inform decisions regarding a child's or young person's ALN and subsequent preparation or review of an IDP, agencies and professionals **should** make every effort to do so. However, it might be that not all relevant professionals

¹ Person-centred Practice in Education: a guide for early years, schools and colleges in Wales, <http://learning.gov.wales/resources/browse-all/person-centred-practice-guide/?lang=en>
Developing as a Person-centred Organisation: a self-assessment tool & practical steps for progress, <http://learning.gov.wales/resources/browse-all/developing-as-a-person-centred-organisation/?lang=en>
Person-centred Reviews toolkit: a guide for early years, schools and colleges in Wales, <http://learning.gov.wales/resources/browse-all/person-centred-reviews-toolkit/?lang=en>

² This is the local authority responsible for the child or young person (i.e. the local authority in whose area the person is) (section 99(4) of the Act). See Chapter 1 for more information about the meaning of 'in the area'.

³ Section 65(2) of the Act.

will be able to attend every meeting; this **should** be explained to child, child's parent or young person by the co-ordinator at the responsible body. It may, therefore, be helpful when inviting relevant professionals, to indicate the priority attached to their attendance. Liaison between the respective parties, over time and well in advance of the meeting, will help professionals decide whether it is appropriate to attend and also give them adequate prior notice. Where agencies or professionals cannot attend they **should** provide in writing, in advance of the meeting, any advice and evidence required to inform the meeting.

- 18.12 Where professionals have supplied advice in advance of the meeting, this **should** also be sent to the child, child's parent or young person to allow them to fully engage in the discussion. Following a meeting, if the child, child's parent or young person wishes to discuss matters of concern in the professionals' reports, they **should** first approach the school, FEI or local authority responsible for maintaining the IDP.
- 18.13 The co-ordinator **should** also invite feedback and views from the child, child's parent or young person before the meeting; feedback and views can be sent back in writing before the meeting or discussed during the meeting.
- 18.14 Where a child, a child's parent or young person wishes to participate in the meeting through the medium of Welsh, the body preparing the IDP will have to comply with relevant Welsh language obligations⁴.
- 18.15 Any decision made **should** be explained to the child, child's parent or young person. This is especially the case when the child, child's parent or young person has a difference of opinion.

The format of meetings

- 18.16 The format for all ALN meetings should be similar to ensure consistency and adherence to the duty to involve and support children, their parents and young people⁵. This includes having regard to the views, wishes and feelings of the child, child's parent or young person, the importance of the child and the child's parent or the young person participating as fully as possible in decisions relating to the exercise of the function concerned and the importance of the child and the child's parent or the young person being provided with information and support required to enable participation in those

⁴ Under the Welsh Language (Wales) Measure 2011, and associated Welsh Language Standards and compliance notices. For example, see The Welsh Language Standards (No 1) Regulations 2015 and associated compliance notices served by the Welsh Language Commissioner on Local Authorities for the individual standards which are applicable for each local authority, e.g. in respect of correspondence and meetings).

⁵ In order to comply with the requirement of section 6 of the Act – see also Chapter 3.

decisions. More information about involving and supporting children, their parents and young people can be found in Chapter 3.

- 18.17 In most cases, the most suitable setting for a meeting will be at the school, FEI or early years setting which the child or young person attends. Sometimes, it will be more appropriate for the meetings to take place in another location, such as a children's centre, a hospital, the child or young person's home or the local authority's offices.
- 18.18 As the individual with the responsibility for preparing the IDP, it is usually appropriate for the co-ordinator to arrange meetings. This will support a consistent approach to the format of the meetings and help with the multi-agency arrangements required.
- 18.19 The co-ordinator would also be the appropriate person to lead most meetings given their experience of working closely with the child or young person and having good understanding or information about their progress and development. This approach will engender greater confidence amongst the child, child's parent and young person.

Meetings to decide whether a child or young person has ALN and, if required, prepare an IDP

- 18.20 When a meeting is arranged to decide whether the child or young person has ALN, and ALN is identified, in most circumstances it will be helpful to prepare the IDP immediately following that decision. This will enable those attending the meeting to contribute their views towards the content of the IDP without unnecessary delay. See Chapter 7 for more details on identifying ALN and deciding upon the ALP required; and Chapters 8-12 on the duties in relation to preparing and maintaining IDPs for children and young people.
- 18.21 The co-ordinator may wish to consider offering an initial meeting to discuss the IDP process and what the decision about the child or young person having ALN will mean. This may help the child, child's parent or young person's involvement in the process, particularly for cases where this process might need to be explained in person in conjunction with the formal notification⁶.

Meetings to review and revise an IDP

- 18.22 Where a meeting is held to review an IDP, the co-ordinator at the body responsible for maintaining the IDP **should** invite all those agencies and professionals they consider are required to conduct an effective review including those already engaged in the delivery of provision within the IDP.

⁶ Further guidance on giving notice or documents is provided in Chapter 1

However, to ensure the effective and efficient use of agencies and professionals, they need only be invited if their continued involvement is likely to be useful in identifying or delivering future ALP for the child or young person, or if their advice is likely to change over time. Therefore meetings may not always include all those who were involved in the preparation of the original IDP.

- 18.23 The school, FEI or local authority responsible for maintaining the IDP **should** indicate if the review will have a focus on transition and/or preparation for adulthood (see Chapter 16). Where the review does have a focus on next steps such as leaving school or preparing for adulthood, different professionals might be involved, such as career specialists.
- 18.24 Before a review meeting, the school, FEI or local authority responsible for maintaining an IDP **should** provide a report to the child, child's parent or young person on their progress.
- 18.25 The key difference of a review meeting compared with the original meeting to decide ALN and if so, to prepare an IDP, is that it will require those contributing to the review to consider whether the ALP which has been delivered during that review period has led to the outcomes set out in the IDP being achieved.
- 18.26 There should be no need to repeat or reconsider background information or evidence unless a change has occurred, in which case it can simply be annotated on the IDP.
- 18.27 The review meetings **should**:
- gather and analyse any new information or evidence that has come to light in relation to the child or young person's ALN;
 - consider if the description of ALN set out in the IDP is still correct in the light of any new information or evidence;
 - explore whether the outcomes set out in the IDP are still suitable and whether new outcomes and/or interim targets would be appropriate, and update the IDP to reflect this;
 - consider the continuing suitability of the ALP in the IDP in the light of the child or young person's progress towards the outcomes and any interim targets set around those outcomes;
 - assess whether any additional ALP is required; and
 - seek advice from all relevant professionals.
- 18.28 To aid in the evaluation and assessment of the child or young person's ALP, impact monitoring is a useful tool. Shorter term targets can indicate whether ALP is meeting the needs of the child or young person, or whether particular ALP is no longer required and/or not having its desired effect.

Co-ordinating meetings for children and young people with multiple plans

- 18.29 A school, FEI or local authority may prepare, review or revise an IDP at the same time as it, or another body is preparing, reviewing or revising another document in the case of the person concerned and may include the other document within the IDP⁷. The school, FEI or local authority is able to include the other document in the IDP and vice versa⁸.
- 18.30 This is a power and not a requirement and doing so may be subject to limits on what may be done in relation to the other document. Where it is relevant, the local authority or governing body **should** consider whether it is appropriate to co-ordinate the two matters.
- 18.31 Generally, to ensure efficiency and effectiveness, IDP processes **should** be synchronised as far as possible with any other planning or review processes that are required to take place in relation to a child or young person. This could mean having one meeting where the child or young person's ALN is discussed at the same time as any other needs or requirements. This will allow integrated planning and facilitate holistic solutions. This might be appropriate, for example, in the case of care and support plans made under Part 4 of the Social Services and Well-being (Wales) Act 2014. The bodies responsible for maintaining the different plans need not be the same.
- 18.32 This approach will also avoid the child, child's parent or young person attending unnecessarily a series of similar meetings and will reduce the need for the child, child's parent or young person to repeat the same information to different people. It should also assist professionals by reducing the number of meetings they are required to attend.
- 18.33 Where reviews are conducted at the same time, the legal requirements of the relevant legislation will need to be followed. Whilst it may be beneficial to undertake reviews of different plans at the same time, reviews and assessment of needs **should not** be delayed to the detriment of the child or young person. It may be that the plans will need to be reviewed separately to best meet the needs of the child or young person⁹.
- 18.34 Where possible, the IDP co-ordinator **should** attend every meeting connected to a child or young person's wider needs, so that they have a rounded and comprehensive understanding of the person's wider needs. For instance, it may be appropriate for the IDP co-ordinator to attend safeguarding meetings about a child with ALN as well as the child's IDP meeting.

⁷ Section 25 of the Act.

⁸ Section 25 of the Act.

⁹ See also Chapter 16 in relation to reviews of IDPs for looked after children.

Chapter 19: Planning for and supporting transition

Introduction

- 19.1 This chapter focusses on transitions for children and young people with ALN who are moving into, between and out of educational settings.
- 19.2 The chapter should be read in conjunction with the content of the IDP (Chapter 13), which contains a specific section on transitions; and with the guidance on the duties on local authorities in relation to young people not attending a maintained school or FEI (Chapter 12).
- 19.3 Information on making transitions from child and adolescent to adult mental health services can be found in guidance developed as part of the Together for Children and Young People Programme¹; information on making the transition from children's to adult health care services can be found in NICE guidance²; and information on supporting transitions for children and young people who are looked after by the local authority can be found in Welsh Government guidance³.
- 19.4 The most frequent transitions children and young people with ALN are likely to make relate to education. These include moves into, between and out of:
- pre-school settings
 - primary school
 - secondary school
 - post-16 education
 - post-19 education
 - Special and mainstream education settings.
- 19.5 Smooth transitions are important for all children and young people in terms of their well-being and their educational and social outcomes. There is a link between poor transitions and less successful outcomes, for example, less successful transitions from home to school may lead to subsequent poor attendance and disengagement; and less successful transitions between primary and secondary school are associated with lowered self-esteem and decline in academic progress, combined with increased anxiety and depression.

¹ Together for Children and Young People: good transition guidance. A seamless transition from transition from child and adolescent to adult mental health services. Available at:

<http://www.goodpractice.wales/SharedFiles/Download.aspx?pageid=185&mid=326&fileid=751>

² NICE (2016) Transition from Children's to Adults' Services for Young People using Health or Social Care Services. NICE guideline: full version. Available at:

<https://www.nice.org.uk/guidance/ng43/evidence/full-guideline-pdf-2360240173>

³ Welsh Government (2017) Making a Difference: a guide for the designated person for looked after children in schools. Available at: <http://learning.gov.wales/docs/learningwales/publications/171123-making-a-difference-looked-after-children-en.pdf>

- 19.6 Whilst times of transition can be exciting and positive, some children and young people, including those with ALN, may find transitions more challenging than their peers do and consequently, may need additional support during transitions.
- 19.7 Early and co-ordinated transition planning is required to support children and young people with ALN make positive transitions. Transition planning **should** be an ongoing process rather than a single event, and tailored to suit the child or young person's needs.
- 19.8 Whilst each child or young person will have specific support requirements, all transition plans **should** focus on meeting their individual hopes, aspirations and potential to maximise their life chances, choices and independence, with a view to achieving improved outcomes for them.

Planning for transition

- 19.9 As set out in the discussion about the principles of the Code (see Chapter 2), to ensure smooth transitions and provide continuity of support when a child or young person is due to move into, between or out of different phases of education, settings or services, relevant bodies with responsibilities for preparing, reconsidering and maintaining IDPs **should** plan for these changes well in advance.
- 19.10 Where multi-agency working is required to support children and young people making transitions, the agencies involved **should** work together to provide personalised, integrated support that delivers positive outcomes for children and young people, bringing together support across education, health, social care and other relevant agencies from early childhood through to adult life.
- 19.11 Children, young people and their families should not be expected to repeatedly provide duplicate information to numerous services, or to attend numerous reviews, or receive support that is not co-ordinated and joined up. A single person **should**, therefore, have responsibility for co-ordinating a specific transition including responsibility for sharing information across organisations and for ensuring the plan for the child or young person's transition is realised. This role is sometimes undertaken by a "transition key worker"⁴. It could be undertaken by the designated person responsible for co-ordinating the preparation of the IDP (see Chapters 8 to 12 for further information on the role of the designated co-ordinator for IDPs).

⁴ Research on the costs and benefits of transition key workers to support young people making the transition to adulthood can be found at: <https://gov.wales/docs/caecd/research/130125-costs-benefits-transition-key-working-en.pdf>

Information to support children and young people making transitions

19.12 Local authorities **must**⁵ make arrangements to provide people with information and advice about ALN and the ALN system. Schools, FEIs and providers of non-maintained nursery education in receipt of local authority funding **should** take reasonable steps to make the arrangements known to parents of the children that attend their setting. This **should** include information about the arrangements to support children and young people nearing a transition.

Timing

19.13 Planning for transition is an ongoing process, particularly when children and young people are making transitions within an education setting, such as when progressing to the next school year or year of further education.

19.14 Transition planning **should** be undertaken at least once a year. It is expected transition planning will coincide with the IDP review and, as such, consideration should be given to the arrangements for when the IDP will be reviewed.

19.15 Transition planning will need to be undertaken in good time to achieve smooth transitions. How far in advance of a transition planning should start will depend on the type of transition being made.

19.16 Transitions into and out of specific phases or education or settings are likely to require more planning than transitions within phases or settings. This includes children preparing to make the transition:

- into nursery education
- into compulsory education (Year 1)
- from foundation phase to key stage 2 (from Year 2 to Year 3)
- from key stage 3 to key stage 4 (Year 9 to 10)
- into post-16 education (Year 11 to 12)
- from compulsory education to independent living.

19.17 Key transitions for young people include preparing to make the transition from:

- post-16 to post-19 education
- education to independent living.

19.18 Planning for the transitions set out at paragraph 19.16 above will need to start well in advance of the transition. In some cases, such as the move to further education or independent living, planning will need to start at least two years in advance of the transition.

⁵ Section 9(1) of the Act.

- 19.19 Some transitions will be unexpected. As such, planning for transition may not be possible. In such cases, an IDP review **should** be arranged as soon as possible after the change in circumstance is known about to agree transition arrangements. At the same time the ongoing appropriateness of the ALP **should** be considered.
- 19.20 For cases where a child plans to make the transition from compulsory education to a non-maintained post-16 setting (either a non-maintained school or ISPI), the local authority **must**⁶ decide, based on the child's reasonable needs and in accordance with regulations, whether it is necessary for the local authority to maintain the plan to meet their needs once the child becomes a young person (see Chapter 12 for further information). This decision should be made early in the final year of compulsory education when reviewing the IDP and reviewed when circumstances change.

Who is involved in transition planning

- 19.21 Transition planning will generally take place when an IDP is being prepared or reviewed. Consequently, transition planning will involve those who would generally be involved in planning and delivering the child or young person's current ALP, together with those who are specific to the transition being planned for. This could include the setting or services the child or young person may be moving into.
- 19.22 As set out in Chapter 18, the school, FEI or local authority responsible for maintaining the IDP **should** involve in the review process all those agencies and professionals they consider necessary to conduct an effective review. This will always include the child, child's parent or young person. It may also involve a case friend, representative, or advocate where appropriate (see Chapter 27 for information about case friends for children who lack capacity and representatives for young people and parents who lack mental capacity, and Chapter 25 in relation to advocacy). Where a meeting is planned to review an IDP, any agencies or professionals already engaged in the delivery of provision within the IDP **should** be invited to the meeting (see Chapter 18 for further discussion about conducting IDP meetings).
- 19.23 Which agencies and organisations ought to be involved in transition planning arrangements will depend on the transition or transitions being made. In all cases, the organisation or service to which the individual is preparing to transition from or to **should** be involved.

Recording transition arrangements

- 19.24 The agreed transition arrangements **should** be recorded within the transition section of the IDP (see Chapter 13 on the content of an IDP and Annex A for the mandatory IDP form).

⁶ Section 14 of the Act.

Supporting transition

19.25 This section discusses supporting children and young people making transitions into, between and out of education settings.

Transition into an education setting for the first time

- 19.26 The transition into an education setting for the first time – such as nursery education or the first year of compulsory education - whether from home or from a childcare setting, can be an unsettling experience for all young children. This may be particularly the case for children with ALN and for their parents who may be concerned about the arrangements made for the child, how their child will settle and whether the nature of their child's needs are understood.
- 19.27 Planning for transition provides an opportunity for children and parents to raise any concerns they have; and for parents to engage with professionals to discuss how best their child can be supported to make a smooth transition into nursery education and to ensure the child is supported to fully take part in nursery activities.
- 19.28 Transition planning for children entering an education setting **should** take place with sufficient time to enable the ALP to be put in place prior to the child attending the setting.
- 19.29 Children with ALN may require more introductory visits and opportunities than their peer to get to know school staff. Transition planning should, therefore, take place with sufficient time to enable the child to become familiar with the setting prior to attending.
- 19.30 For many children with ALN, the general approach taken by the setting to support children making the transition into an education setting for the first time will be sufficient to reduce any concerns related to starting education. Some children with ALN may, however, require additional time and support to make the transition into education. The approach taken will depend on the individual child but could include inviting parents to visit the setting, visiting the child at home and undertaking an assessment of how the setting will meet the needs of the child, including staff skills.
- 19.31 Inviting parents to visit the setting provides an opportunity for parents to consider, with the coordinator for the child's IDP and/or the ALNCo, how the child may respond to the setting: to toys and activities; what they may enjoy, what they may find difficult and whether any reasonable adjustments may need to be made.
- 19.32 Visits to the child's home can provide an opportunity for the parent to share information in an environment where both they and the child feel comfortable. For the setting, home visits provide the opportunity to:
- see the child playing in their own home;

- learn from skills or techniques used by parents to support their child;
- gain an insight into the wishes, views and feelings of the child and of their parents;
- gain a fuller picture of the child's stage of learning and development; and
- gain insights into how the setting may need to adapt arrangements to match or mirror aspects of the home.

19.33 Home visits also provide the opportunity to gather the information needed for the preparation or review of the IDP.

19.34 Familiar objects such as books, pictures or comforters can help provide continuity of experience between home and the setting. Home visits provide an opportunity for the setting to identify things that are important to the child at home that might be available or be made available in the setting. Photos of family in the setting and of the setting at home can help to create familiarity and act as prompts for discussion with the child.

19.35 Where parents have concerns about the setting's ability to provide a suitable learning environment for their child, undertaking an assessment with the parent of how the setting will meet the needs of the child may be useful in reducing parents' concerns and can help the setting better understand any adjustments which may need to be made to include the child in the full range of school activities. Consideration **should** also be given to staff skills and whether training may be needed – such as in the use of particular sign or symbol systems of communication.

Transitions within settings

19.36 Children and young people will make a number of transitions within education settings. This includes:

- moving to the next school year – such as moving from Reception to Year 1 or from compulsory education to post-16 education;
- moving phases – such as moving from Foundation Phase to Key Stage 2.

19.37 Given the frequency of transitions made by children and young people, it is expected most IDP reviews will include transition planning.

19.38 Transition planning within settings might include consideration of changes associated with the transition and any impact these may have on the child or young person, including changes to:

- curriculum;
- school starting and finishing times;
- break times;
- buildings and facilities – such as classrooms, toilets, dining area and playground;
- being with older pupils or students.

19.39 It is expected that for most children and young people with ALN, the general arrangements made by the education setting will be sufficient to support within setting transitions. This could include taking part in 'moving up' sessions, where children spend time with their new class teacher in their new classroom.

19.40 For some children and young people with ALN, additional support may be required which could include:

- spending additional time in their new classroom;
- visiting their new classroom with their current teacher or support worker;
- beginning transition arrangements early in the school year; or
- providing photographs of the new classroom to take home.

Transition from primary school to secondary school

19.41 Moving from primary to secondary school is a big step for every child. For children with ALN, it can be an even greater challenge. Key issues for children with ALN may include:

- travelling independently to school;
- becoming familiar with the timetable and the appropriate books and materials required for specific classes;
- finding the way around the school;
- carrying equipment around all day increasing the chances of losing;
- learning teachers' names and understanding their expectations and styles of teaching;
- new subject areas;
- independently organising work and managing own timetable;
- less supervision at break at lunchtimes;
- understanding school rules;
- meeting children who may not understand their ALN; or
- coping with activities such as changing into and out of PE kit.

19.42 The issues set out above can place additional pressure on a child with ALN already coping with associated difficulties. This additional pressure can place strain on a child's coping mechanisms. In some instances, this can result in a breakdown in the ability to cope and the transition to secondary school could become a time of crisis for a child who had previously been coping in primary school.

19.43 Whilst schools already make general arrangements to support children making the transition from primary to secondary school, specific arrangements will need to be put in place to support some children with ALN to make effective transitions. This might include:

- opportunities for the child and their parent to meet and take photos of any key people involved in their transition;

- opportunities for the child and their parent to make several visits to the school prior to the child starting school – to meet staff and to become familiar with the layout of the school;
- making a book of photographs and information to help with preparing for the move. This could include photographs of teaching staff and school buildings, a map of layout of the school and the timetable;
- arranging a phased entry into the new school; or
- putting in place a buddy system.

19.44 Schools may also consider organising specific transition workshops for children with ALN during the school holidays. This could help children practice activities they may be unfamiliar with, such as choosing and paying for lunch, reading a timetable and getting from one class to another; and to practice using any specialist equipment they have within the new setting. Transitions workshops also provide the opportunity for the setting to assess how arrangements put in place for children with ALN work in practice.

Transition out of compulsory education

19.45 The transition out of secondary school can be one of the most life-changing events a young person faces and the decisions made as the young person prepares to leave school can have an impact on the rest of their life.

19.46 At the age of 16, young people with ALN have a number of education options including staying on at school or applying to attend a sixth form college or a further education institution.

19.47 Planning for the transition out of compulsory education will need to start well in advance of the end of compulsory education. It is expected that schools and local authorities will start planning for this transition as part of the IDP review from at least year 9 onwards.

19.48 A school or local authority maintaining an IDP for a child **must**⁷ inform the child of the right not to consent to the IDP being maintained once they become a young person (that is, they cease to be of compulsory school age). This **must**⁸ be done during the review which is expected to be the last review before the child becomes a young person. It **should** be done as part of the transition planning for the child. At the same time, they **must**⁹ be asked if they are, nevertheless, content that their IDP be maintained after that point and their response noted in the IDP.

19.49 If the child does not object to the IDP being maintained, the body responsible for maintaining it **must** continue to maintain it once the child becomes a young person, until the duty on that body to maintain it ceases (which may involve it transferring to another body) or the young person objects.

⁷ Requirement imposed by the Code.

⁸ Requirement imposed by the Code.

⁹ Requirement imposed by the Code.

- 19.50 Where the child objects to the IDP being maintained, the school or local authority maintaining the IDP **should**, when the child becomes a young person, check whether the person still objects and if so, the school or local authority **must**¹⁰ cease to maintain it.
- 19.51 Once a child with an IDP becomes a young person, but they have not previously indicated whether they are content for the IDP to be maintained, the body maintaining the IDP **must**¹¹ seek the young person's consent to it being maintained promptly. Where consent has been provided this **must**¹² be noted in the IDP (see Chapter 13 on IDP content).
- 19.52 As well as thinking about post-16 education and post-school support, IDP reviews provide an opportunity for those involved to raise aspirations and support pupils to achieve the best possible outcomes in education and independent living.
- 19.53 To support pupils to make decisions about their destination post compulsory education, it is important that they and their parents have access to information to enable them to understand and explore how the support they receive in school will change as they move into different settings, and what support they are likely to need to achieve their ambitions.
- 19.54 For most children or young people with ALN the careers advice they receive as part of their mainstream education will meet their needs. Those learners with ALN who are at risk of becoming NEET (Not in Education, Employment, or Training) should already be identified as a priority group requiring enhanced services. Careers Wales may need to be involved in supporting those children and young people with ALN who would benefit from enhanced services.
- 19.55 It may be useful to invite a careers advisor to an IDP review meeting with a focus on transitions and preparing for adulthood to discuss the child's or young person's careers options.

Transition to further education

- 19.56 Where a young person is planning on accessing FE and needs additional support to make a smooth transition and/or will require specialist provision, FEI staff should be invited to a Year 11 review. Where a child has particularly complex needs it may be beneficial for the FEI staff to attend year 10 or year 9 reviews. Where it is unclear whether an FEI placement would be suitable, the FEI should be invited to discuss whether the child or young person's needs can be met within the FEI. It may also be appropriate to invite a careers advisor (see above).

¹⁰ The duty to maintain it does not apply (see sections 12 and 14 of the Act).

¹¹ Requirement imposed by the Code.

¹² Requirement imposed by the Code.

- 19.57 Schools, local authorities, FEIs and independent special post-16 institutions should work together to support the young person to make a smooth transition.
- 19.58 Careers advisors can provide careers information, advice and guidance to the child, young person and the family of different career options, as well as sharing dates of open events, such as at the local FEI. They can also provide information on different courses and provide challenge and guidance to help an individual consider all available options, such as continuing education, different careers and occupational training, as well as information about disability employment rights.
- 19.59 It may be appropriate to involve career specialists where a learner's needs are such that they are only likely to be met in an FEI with significant support provided by the local authority and a local authority maintained IDP.
- 19.60 Where it is identified that a child or young person will need a placement at an independent special post-16 institution, the child, child's parent and young person will need to be supported to understand the implications of this and identify the appropriate placement. The child, child's parent and young person will need to be provided with detailed information on the potential placement.
- 19.61 The transition process will differ for each young person but might include one or more of the following:
- Attendance at open events
 - 'Show-arounds' at college either during the college day or at quieter times
 - Taster sessions
 - Link programmes
 - Opportunities to sit in on classes
 - Extended inductions
 - A bespoke visit arranged by the FEI.
- 19.62 Upon enrolling at an FEI, a review meeting of the IDP **should** usually be conducted as soon as possible, with a reconsideration of the young person's ALP. The ALP might need to change to reflect the circumstances of the specific setting, since the ALP delivered at school might not meet the needs of the young person in an FEI. For instance, FEIs could be helping the young person to work towards even greater independence.
- 19.63 There will be some circumstances when an FEI has not been involved in the transition process. When enrolling, applicants **should** be provided with an opportunity to disclose any ALN, or disability and state whether they have previously had an IDP or not. This provides an opportunity for discussion between the young person and the FEI about their needs and the support required. The FEI **should** support the young person to understand the environment and provide information as required, such as details of the ALNCo and a personal tutor. When the FEI is conducting a review of the IDP or are establishing a new IDP, where further clarity or more information is

needed the ALNCo or relevant member of staff from their previous school might be invited to attend. It may also be suitable to involve a careers advisor where they have been previously involved with the young person.

Young people leaving education / training

- 19.64 Where a young person is leaving education or training, they **should** be supported to make a smooth transition. This would include supporting them to understand what support is available and what careers options are available to them. This may include passing on the relevant information along with the IDP (with the young person's consent) to relevant agencies.
- 19.65 In order to help the young person make a smooth transition into adulthood it may be appropriate to invite careers specialists (see above for further information on careers advisors).
- 19.66 Where it is known that a young person will soon be completing their time in education or training, the school/FEI/local authority **should** support the young person to engage with the services and provision they will be accessing once they have left education. The young person should know what will happen once the IDP ceases.

Moving to Higher Education

- 19.67 Where a young person is enrolling upon a HEI course, the school/FEI **should** support the young person to share relevant information, including the young person's IDP. This will allow the HEI to consider what support they can provide and help inform the DSA (Disabled Students' Allowances) Assessment.
- 19.68 Securing a place in higher education is a positive outcome for many young people with ALN. Where the young person has this ambition, the right level of support and provision should be offered to help them achieve that goal wherever possible. A smooth transition to higher education should be planned as early as possible.
- 19.69 Schools, FEIs and local authorities **should** plan a smooth transition to higher education (and, where applicable, to the new local authority area) before ceasing to maintain a young person's IDP. Once the young person's place has been confirmed at a higher education institution, and where asked to by the young person, the school, FEI or local authority **should** pass a copy of the IDP to the relevant person in that institution at the earliest opportunity.
- 19.70 Schools, FEIs and local authorities **should** support young people to access information about what support is available to them in higher education, including how they can claim it.

Preparing for adulthood

19.71 With the right support, the majority of children and young people with ALN, can find work, live independently and participate in their community. Schools, FEIs and local authorities **should** deliver this message to the child, child's parent or young person where appropriate. Planning for a smooth transition into adulthood needs to be considered well in advance of the child or young person reaching adulthood with a focus on their aspirations. This includes raising career aspirations and broadening the employment horizons of their pupils and students with ALN.

Chapter 20: Transferring an IDP

Introduction

- 20.1 Where a child or young person with an IDP maintained by a school transfers to another maintained school in Wales or to an FEI in Wales, responsibility for maintaining their IDP will usually transfer at the same time. Similarly, where a child or young person with an IDP maintained by a local authority moves to another local authority's area, responsibility for maintaining the IDP will normally transfer between the local authorities. This chapter sets out requirements and guidance in relation to such transfers.
- 20.2 This chapter deals with the process by which an IDP may transfer from a local authority to an FEI and the Welsh Ministers' role in that process.
- 20.3 This describes the requirements in relation to the transfer of an IDP maintained by a school or FEI to a local authority when a child or young person becomes dual registered.
- 20.4 This chapter also has guidance about preparing an IDP in situations where the child or young person previously had an IDP, although there has not been a transfer of it.

Transferring the duty to maintain an IDP

- 20.5 The IDP is a document that is designed to evolve over time and is intended to remain with a child or young person across the various stages of their education, provided they continue to have ALN and, in the case of a young person, they consent to it continuing to be maintained and it remains necessary to maintain an IDP for them. To ensure that the IDP moves with the child and young person as they progress between educational stages, the duty to maintain an IDP transfers in the following cases:

In-year transfers between maintained schools in Wales

- 20.6 Where a child or young person with ALN becomes a registered pupil at a maintained school in Wales, that school **must**¹ maintain the IDP if:
- (a) immediately before the child or young person became a registered pupil at the school, an IDP was being maintained² for the child or young person by another maintained school; and
 - (b) it is not intended that the child or young person will continue to be provided with education or training at that other school³.

¹ Section 35(1) and (3) of the Act. It is then maintained under section 12 of the Act.

² Under section 12 of the Act.

Start of academic year transfers between maintained schools in Wales

- 20.7 Where a child or young person with ALN becomes a registered pupil at a maintained school in Wales before the end of September in an academic year, that school **must**⁴ maintain the IDP if:
- (a) the child or young person was a registered pupil at another maintained school during the previous academic year; and
 - (b) an IDP was being maintained⁵ for the pupil by the other school on the last day of education or training provided for them at the school.

Start of academic year transfers from a school to an FEI

- 20.8 Where a young person with ALN becomes enrolled as a student at an FEI before the end of September in an academic year⁶, the FEI **must**⁷ maintain the IDP if:
- (a) the young person was a registered pupil at a maintained school during the previous academic year, and
 - (b) an IDP was being maintained for the young person by the school on the last day of education or training provided for them at the school.

Transfers between local authorities

- 20.9 Where a child or young person with ALN becomes the responsibility of a local authority, that local authority **must**⁸ maintain the IDP if immediately before the child or young person became its responsibility, an IDP was being maintained for the child or young person by another local authority.

Transfers where a child becomes looked after

- 20.10 Where:
- (a) a child becomes looked after by a local authority; and
 - (b) immediately before the child became looked after, an IDP was being maintained for the child,
- the local authority that looks after the child **must**⁹ maintain the IDP.

³ If this were intended, it would be a dual registration case: section 30 of the Act.

⁴ Section 35(2) and (3) of the Act. It is then maintained under section 12 of the Act.

⁵ Under section 12 of the Act.

⁶ "Academic year" means any period from 1 August to 31 July

⁷ Section 35(4) and (6) of the Act. It is then maintained under section 12 of the Act.

⁸ Section 35(7) and (8) of the Act. It is then maintained under section 14 of the Act.

⁹ Section 35(9) and (10) of the Act. It is then maintained under section 19 of the Act.

Transfers where a child ceases to be looked after

20.11 Where:

- (a) a person ceases to be a looked after child (whether because he or she is over compulsory school age or otherwise); and
- (b) a local authority is responsible for the child or young person; and
- (c) immediately before ceasing to be looked after, an IDP was being maintained for the child or young person,

the local authority that is responsible for the child or young person **must**¹⁰ maintain the IDP.

Transfers from a local authority to an FEI

20.12 Where a local authority maintains an IDP for a young person who is or becomes an enrolled student at an FEI, the local authority **may**¹¹ request that the FEI becomes responsible for maintaining the IDP. Such requests **should** only be made where the local authority believes that it would be reasonable for the FEI to secure the ALP set out in the IDP. The request **must**¹² be made in writing.

20.13 Where an FEI agrees to the request, it becomes responsible for maintaining the IDP on:

- (a) the day agreed between the FEI and the local authority for responsibility to transfer;
- (b) otherwise, on the day on which the FEI notifies the local authority in writing of its agreement to the request¹³.

20.14 If the FEI fails to agree to the request within a period of 20 term time days¹⁴ from receiving the request, the local authority may refer the matter to the Welsh Ministers¹⁵ - but only if the referral is made by the end of the period of four weeks beginning from the end of the period of 20 term time days. The local authority **must**¹⁶ make the referral in writing and give the Welsh Ministers a copy of the IDP.

20.15 Where a referral has been made to them by a local authority, the Welsh Ministers **must**¹⁷ determine whether the FEI should maintain the IDP. Before

¹⁰ Section 35(11) - (13) of the Act. It is treated as maintained under section 14 of the Act.

¹¹ Section 36(1) - (2) of the Act.

¹² Regulations to be made under section 37(1)(b) of the Act.

¹³ Regulations to be made under section 37(1)(b) of the Act. The duty to maintain it is section 12(4) of the Act.

¹⁴ Regulations to be made under section 36(3) of the Act.

¹⁵ Section 36(3) of the Act

¹⁶ Regulations to be made under section 37(1)(b) of the Act.

¹⁷ Section 36(4) of the Act

making their determination, the Welsh Ministers **must**¹⁸ inform the young person and the governing body of the referral and invite representations.

20.16 Once they have made their determination, the Welsh Ministers **must**¹⁹ notify the young person, the local authority and the FEI of their determination (as to whether the FEI should maintain the IDP) and reasons for it.

20.17 If the Welsh Ministers determine that the FEI should maintain the IDP, the FEI **must**²⁰ maintain the IDP from:

- (a) the day which may be specified in the notification of the determination;
- (b) otherwise, on the day on which that notification is given to the FEI.

Process by which the duty to maintain an IDP transfers

20.18 Where there is a transfer of the duty to maintain an IDP in the circumstances set out above from one body (“the old body”) to another body (“the new body”), the old body **must**²¹ send a copy of the IDP to the new body promptly upon becoming aware of the transfer.

20.19 Most transfers of the duty to maintain an IDP will occur as part of the normal transition of a child or young person between stages of education. Chapter 19 sets out guidance on dealing with transitions. The new body **should** consider whether to review the IDP once it has become responsible for maintaining it, in order to ensure that its contents, in particular the ALP that it contains, are appropriate in the context of the child or young person’s new circumstances (even if it was involved in the transition planning).

20.20 Where:

- (a) by virtue of the transfer, a local authority is under a duty to secure a place at a particular school or other institution described in a plan in order to meet the child or young person’s reasonable needs for ALP²², and
- (b) in light of the circumstances which have given rise to the transfer, it is no longer practicable for the child or young person to attend the institution,

the local authority’s duty to secure the place at the school or institution does not apply until such time as it is possible to revise the plan except where the local authority arranges board and lodging as described in paragraph 20.21 below²³.

¹⁸ Regulations to be made under section 37(1)(b) of the Act.

¹⁹ Regulations to be made under section 37(1)(b) of the Act.

²⁰ Regulations to be made under section 37(1)(b) of the Act. The duty to maintain it is in section 12(4) of the Act.

²¹ Regulations to be made under section 82 of the Act

²² In accordance with section 14(6) or 19(4) of the Act – see Chapter 11 for more detail on this.

²³ Regulations to be made under section 37(1) of the Act

20.21 Until such time as it is possible to revise the IDP, the local authority **may** arrange board and lodging to enable the child or young person to continue to attend the school or institution named in the IDP²⁴. Where board and lodging is arranged on this basis, the local authority **must not**²⁵ charge the child, child's parent or young person for that provision.

Transfer of an IDP in dual registration cases

20.22 Where a school or FEI is maintaining an IDP for a child or young person and they then become registered or enrolled at another school or FEI (i.e. they become dual-registered) then the school/FEI **must**²⁶ inform the local authority responsible for the child or young person that they are maintaining an IDP for that child or young person. The school/FEI **must**²⁷ also send a copy of the IDP to the local authority at the same time. The local authority **must**²⁸ maintain the IDP from the day on which it becomes aware that the child or young person is dual-registered (either by being notified by a school or FEI, or by any other means).

Instances where there is not a transfer of a duty to maintain an IDP, but a child or young person recently had one

20.23 Occasionally, there may be instances where the duty to maintain an IDP for a child or young person ceases without it being transferred to another body, but shortly afterwards a body is subject to the duty to decide whether the child or young person has ALN. This could occur in a range of circumstances. For example, it might arise where a child or young person moves from one educational setting to another following a gap in their education and the duty to maintain the IDP does not transfer. It could also occur if a young person in further education objects to the IDP being maintained for them, but later changes their mind. Another example would be where a person with an IDP has had a short spell in prison and upon release, returns to the FEI they attended previously. In such cases, a school, FEI or local authority may be under the duty to decide whether the person has ALN, and if so, the duty to prepare and maintain an IDP. That school, FEI or local authority may previously have maintained the IDP, or it might have been maintained by another school, FEI or local authority.

20.24 Where the school, FEI or local authority knows that the child or young person recently had an IDP, the school, FEI or local authority **should** take into

²⁴ Regulations to be made under section 37(1) of the Act

²⁵ Section 49 of the Act.

²⁶ Section 30(3) - (6) of the Act.

²⁷ Regulations to be made under section 82 of the Act

²⁸ Section 30(5) of the Act.

account that previous IDP (and any other related information) where it is available to it. Unless the child or young person's circumstances have changed significantly, the provision of the previous IDP ought to enable swifter decision making and a new IDP that is prepared more quickly.

Chapter 21: Ceasing to maintain an IDP

Introduction

- 21.1 This chapter describes the various circumstances in which duties to maintain an IDP cease. In some of these circumstances, the duties cease due to a change in circumstances, such as a child ceasing to be a registered pupil at a school. In these cases, another body might then have a duty to maintain the IDP – see Chapter 20 on transferring an IDP. In other cases, the duty to maintain an IDP ceases following a decision that the person no longer has ALN or (only in the case of a local authority maintaining an IDP for a young person), that it is no longer necessary to maintain it.
- 21.2 This chapter also sets out the steps to be taken before and after it is decided that a child or young person no longer has ALN or that it is no longer necessary to maintain an IDP for a young person and the ways in which such decisions may be challenged.

The circumstances in which a school's duty to maintain an IDP ceases

- 21.3 In the case of an IDP maintained by a school, the school's duty to maintain the IDP for a child or young person who is a registered pupil at the school¹ ceases to apply in the following circumstances:
- the school decides that the child or young person no longer has ALN and that decision is not successfully challenged² (see paragraphs 21.7 – 21.9 below for more detail on this);
 - the pupil is a young person who no longer consents to the IDP being maintained or, in the case of a child becoming a young person, does not consent to the IDP being maintained³ (see Chapter 3 for more detail on a young person's consent);
 - the child or young person ceases to be a registered pupil at the school⁴. In such cases, the duty to maintain a plan might transfer to another body, depending upon the circumstances (see Chapter 20 on transferring an IDP);
 - the child or young person becomes dual registered, that is the pupil becomes a registered pupil or an enrolled student at another institution (which is a school or an FEI), the pupil is to be provided with education or training at both institutions and a local authority is responsible for the

¹ The duty to maintain it is under section 12 of the Act.

² Sections 31(5), 32 and 33 of the Act

³ Section 12(2)(b) of the Act

⁴ Section 31(1)(a) of the Act

pupil. In such cases the duty to maintain the IDP transfers to the local authority⁵;

- the local authority decides to take over responsibility for the IDP⁶ (see Chapter 17 for more information on local authorities taking over responsibility for maintaining an IDP);
- the pupil is a child who becomes looked after by a local authority in Wales⁷. In such cases, the duty to maintain the IDP transfers to the authority looking after the child⁸ (see Chapter 20 on transferring an IDP)
- a local authority in England starts to maintain an EHC plan for the child or young person⁹. This would only be in cases where the child or young person is in the area of a local authority in England;
- the child or young person becomes subject to a detention order (see Chapter 22 on detained persons)¹⁰.

The circumstances in which an FEI's duty to maintain an IDP ceases

21.4 In the case of an IDP maintained by an FEI for a young person enrolled as a student at the FEI, the FEI's duty to maintain the IDP¹¹ ceases to apply in the following circumstances:

- the FEI decides that the young person no longer has ALN and that decision is not successfully challenged¹² (see paragraphs 21.7 – 21.9 below for more detail on this);
- the young person no longer consents to the IDP being maintained¹³ (see Chapter 3 for more detail on a young person's consent);
- the young person ceases to be an enrolled student at the FEI¹⁴;
- the young person becomes dual registered, that is the young person becomes a registered pupil or an enrolled student at another institution (which is a school or an FEI), the young person is to be provided with education or training at both institutions and a local authority is responsible for the young person. In such cases the duty to maintain the IDP transfers to the local authority¹⁵;

⁵ Section 30(3) and (4) of the Act.

⁶ Section 28(8) of the Act.

⁷ Section 31(1)(b) of the Act.

⁸ Section 35(9) and (10) of the Act.

⁹ Section 12 of the Act.

¹⁰ Section 44 of the Act.

¹¹ The duty to maintain it is under section 12 of the Act.

¹² Sections 31(5) and 33(4) of the Act.

¹³ Section 12(2)(b) of the Act.

¹⁴ Section 31(2) of the Act.

¹⁵ Section 30(3) and (4) of the Act.

- the local authority decides to take over responsibility for the IDP¹⁶ (see Chapter 17 for more information on local authorities taking over responsibility for maintaining an IDP);
- a local authority in England starts to maintain an EHC plan for the young person¹⁷. This would only be in cases where the young person is in the area of a local authority in England;
-
- the young person becomes subject to a detention order¹⁸ (see Chapter 22 on detained persons);
- the young person attains the age of 25¹⁹, in which case the duty to maintain the IDP will cease at the end of the academic year in which the person attains that age²⁰;

The circumstances in which a local authority's duty to maintain an IDP ceases

21.5 In the case of an IDP maintained by a local authority for a child or young person, the local authority's duty to maintain the IDP²¹ ceases to apply in the following circumstances:

- the local authority decides that the child or young person no longer has ALN and that decision has not been successfully challenged²² (see paragraphs 21.7 – 21.9 below for more detail on this);
- in the case of a young person, the young person no longer consents to the IDP being maintained or, in the case of a child becoming a young person, does not consent to the IDP being maintained²³ (see Chapter 3 for more detail on a young person's consent);
- the local authority ceases to be responsible for the child (provided the child is not looked after) or young person²⁴ - that is, if the child or young person ceases to be in the area of the local authority²⁵. This would be the case if, for example, a child moves to live in another local authority area, in which case, the child would become the responsibility of that other local authority. If the child or young person becomes the responsibility of

¹⁶ Section 28(8) of the Act.

¹⁷ Section 12 of the Act.

¹⁸ Section 44 of the Act.

¹⁹ Section 34(1) of the Act.

²⁰ Section 34(2)(a) defines an academic year in relation to a young person who attends an FEI, as a period of 12 months ending on 31 July.

²¹ The local authority's duty to maintain is under section 14 of the Act or, in the case of a looked after child, under section 19 of the Act.

²² Sections 31(6)(a) and 33(4) of the Act.

²³ Section 14(3) of the Act.

²⁴ Section 31(3)(a) of the Act.

²⁵ Section 99(4) of the Act.

- another local authority, the duty to maintain the IDP transfers to that other local authority²⁶ (see Chapter 20 on transferring an IDP);
- in the case of a child who is looked after by the local authority, the person ceases to be a looked after child (for whatever reason, including because the child has become a young person) and the local authority is not responsible for the person (i.e. the child is not in its area)²⁷. Where another local authority is responsible for the child or young person, the duty to maintain the IDP transfers to that local authority (see Chapter 20 on transferring an IDP);
 - in the case of a child who is looked after by the local authority, the child ceases to be in the area of a local authority in Wales²⁸, for example, this could be the case if the child were to be placed with foster parents in England;
 - in the case of a child or young person who is a registered pupil at a maintained school in Wales, the local authority directs the school to maintain the plan²⁹;
 - in the case of a young person who is enrolled as a student at an FEI in Wales, the FEI agrees to a request from the local authority to become responsible for maintaining the IDP or the Welsh Ministers have determined that the FEI should maintain the plan³⁰;
 - the child or young person becomes subject to a detention order³¹ (see Chapter 22 on detained persons);
 - in the case of a young person, the young person attains the age of 25³², in which case the duty to maintain the IDP will cease at the end of the academic year in which the person attains that age³³;
 - in the case of a young person who is neither a registered pupil at a maintained school in Wales nor enrolled as a student at an FEI in Wales, the local authority decides that it is no longer necessary to maintain the IDP to meet the young person's reasonable needs for education or training³⁴. (See paragraphs 21.10 – 21.13 below for more detail on this.)

²⁶ Section 35(7) and (8) of the Act.

²⁷ Sections 31(4)(a) (under which the duty to maintain the plan under section 19 ceases) and 35(11) – (12) (as a result of which the duty to maintain the plan transfers to the responsible local authority if there is one).

²⁸ Section 31(4)(b) of the Act.

²⁹ Sections 12(4) and 14(4) of the Act.

³⁰ Section 12(4) of the Act.

³¹ Section 44(1) and (2)(d) of the Act, section 562 of the Education Act 1996 and in respect of children who were looked after immediately prior to becoming a detained person, section 15(1)(b) of the Act.

³² Section 34(1) of the Act

³³ Section 34(2)(a) defines an academic year for these purposes as:

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

³⁴ Section 31(6)(b) of the Act.

- 21.6 In other cases involving looked after children, a local authority's duty to maintain an IDP on a particular basis may cease, but it may have a duty to maintain it on another basis. This is in the following circumstances:
- (a) the local authority maintains an IDP for a child³⁵ and the child becomes looked after by that local authority, in which case the local authority **must**³⁶ continue to maintain the plan, but on the basis that the child is looked after³⁷;
 - (b) the local authority maintains an IDP for a child it looks after³⁸ and the person ceases to be looked after for the purposes of the Act (for whatever reason, which could be that the child has become a young person) and the local authority is responsible for the person. In this case, the local authority **must**³⁹ continue to maintain the plan, but not on the basis that the person is looked after⁴⁰. Where it may be more appropriate for the maintained school or FEI in Wales that the young person attends to maintain the plan rather than the local authority, the responsible local authority might subsequently direct the school to maintain the IDP or request that an FEI becomes responsible for it.

Deciding that a child or young person no longer has ALN

21.7 A child or young person's needs and circumstances are likely to change over time. It is possible that they may change to the extent that a person who has ALN may, over time cease to have ALN. This could be due to a change in circumstances which might have given rise to the ALN or for some other reason. Whether a person has ALN at any time always depends upon whether the definition of ALN in section 2 and that of ALP in section 3 of the Act are met at that time, irrespective of whether an IDP is being maintained for the person or not. There is no presumption that because a child or young person has been given an IDP, they will continue to need one until they leave education or training (although for some children, the nature of their learning difficulty or disability might make this very likely). If a child or young person no longer has ALN, there is no need for an IDP to be maintained, and the Act provides for it ceasing to be maintained.

21.8 A decision by a governing body or local authority that a child or young person no longer has ALN **should** only be reached as an outcome of a review of the IDP (see Chapter 16 for information about reviews). Guidance on the

³⁵ Under section 14 of the Act.

³⁶ Section 35(9) and (10) of the Act and the duty to maintain it for a looked after child is under section 19.

³⁷ In the unlikely event that the local authority that is looking after the child is different to that which was maintaining an IDP for the child prior to the child becoming looked after, the looking after local authority has the duty to maintain the IDP under section 19 of the Act and the other local authority's duty under section 14 would cease: section 35(9) – (10).

³⁸ Under section 19 of the Act.

³⁹ Section 35(11) to (13) of the Act.

⁴⁰ That is, not under section 19, but under section 14 of the Act.

definition of ALN and identifying when a child or young person may have ALN is set out in Chapter 7.

- 21.9 Children, their parents and young people may find the prospect of an IDP ceasing alarming. Schools and FEIs **should** provide information about what they intend to provide for the learner (e.g. ongoing support through differentiated teaching, and other relevant strategies and practice are delivered as appropriate) in order to give reassurance.

Deciding that it is no longer necessary to maintain an IDP for a young person

- 21.10 Where a local authority maintains an IDP for a young person who is neither a registered pupil at a maintained school in Wales nor an enrolled student at an FEI in Wales, the local authority may cease to maintain the IDP if it decides that it is no longer necessary to maintain the IDP to meet the young person's reasonable needs for education and training⁴¹.
- 21.11 A decision that it is no longer necessary to maintain an IDP for a young person **should** only be reached as an outcome of a review (see Chapter 16 on reviews). The local authority **must**⁴² decide the matter in accordance with regulations⁴³ about when a young person has a reasonable need for education or training and when an IDP is necessary to meet them. See Chapter 12 for further guidance on these regulations in the context of when it is necessary to prepare and maintain an IDP for a young person who is neither a registered pupil at a maintained school in Wales nor an enrolled student at an FEI in Wales.
- 21.12 All the considerations set out in Chapter 12 about whether the young person has reasonable needs for education or training are relevant and would need to be considered in light of the individual circumstances (this would include for example, where a young person has already undertaken a course of post-16 education or training and it is proposed that they do a new and different course).
- 21.13 Where a young person is already on a course and a change to that course is proposed (for example, that its duration is extended), the local authority, in considering the matters set out in Chapter 12, **must**⁴⁴ also take account of the time already spent on the course, the young person's progress and the reasons for any progress being less than expected. Once a course of education or training has commenced, the young person is likely (unless there are exceptional circumstances) to have a reasonable need for that education or training for the duration of the course. Failure to fund placements for the

⁴¹ Section 31(6)(b).

⁴² Section 31(6)(b) of the Act.

⁴³ To be made under section 46 of the Act.

⁴⁴ Regulations to be made under section 46 of the Act.

duration of a course can lead to wasted resources and distress and confusion for the young person.

Notification of a decision that a child or young person no longer has ALN or that it is no longer necessary to maintain an IDP for a young person

21.14 Before a school, FEI or local authority can take a decision that a child or young person no longer has ALN or that it is no longer necessary to maintain an IDP for a young person, it **must**⁴⁵ notify the child, child's parent and in the case of a looked after child, the child's independent reviewing officer or the young person that it proposes to make such a decision. The body **should** then allow sufficient time for those people to consider the matter and give their views on it (the body's duty⁴⁶ to involve and support children, their parents and young people applies). This **should** occur through the normal review process.

21.15 If the school, FEI or local authority has gone on to decide that the person no longer has ALN or that it is no longer necessary to maintain an IDP, it **must**⁴⁷ notify the child, the child's parent and, if the child is looked after, the independent reviewing officer or the young person of the decision, and the reasons for it. In the case of a school, the school **must**⁴⁸ also notify the child, the child's parent or the young person of their right to request the local authority to reconsider the matter⁴⁹.

21.16 In addition, the notification **must**⁵⁰ contain:

- the contact details for the school, FEI or local authority (as the case may be);
- information about how to access the responsible local authority's arrangements for providing people with information and advice about ALN and the ALN system⁵¹. This could be done by providing a local authority leaflet about the ALN system or the address of the local authority's relevant web pages and drawing attention to how to get further information and advice;
- details of the responsible local authority's arrangements for the avoidance and resolution of disagreements⁵² and its independent advocacy services⁵³;

⁴⁵ Section 31(7) of the Act.

⁴⁶ Under section 6 of the Act.

⁴⁷ Section 31(8) of the Act.

⁴⁸ Section 31(9) of the Act.

⁴⁹ This is the right under section 32 of the Act.

⁵⁰ Requirement imposed by the Code

⁵¹ These are the arrangements that the local authority must make under section 9 of the Act. In the case of a looked after child, these could be those of the local authority that maintains the plan or those of the local authority (if different) in whose area the child is.

⁵² Under section 68 of the Act.

- in the case of FEI and local authority decisions, information about the right to appeal to the Education Tribunal against the decision.

21.17 The notification **should** also outline, where appropriate what action the school FEI or local authority will undertake in light of its decision to ensure the child or young person's needs (which are not ALN) are met.

Limitation on ceasing to maintain plans to allow reconsideration and/ or appeal

21.18 Following a school's decision that a pupil no longer has ALN, the school **must not**⁵⁴ cease to maintain the IDP unless:

- (a) the period of four weeks⁵⁵ for requesting the local authority to reconsider the matter has ended and no such request has been made; or
- (b) if the local authority has reconsidered the matter and decided that the plan should cease to be maintained, and-
 - the period of 8 weeks⁵⁶ for bringing an appeal against the decision to the Education Tribunal has ended without an appeal having been brought, or
 - an appeal has been brought in that period and it has been fully determined.

21.19 In the case of an IDP maintained by either an FEI or a local authority, following a decision that the child or young person no longer has ALN or a local authority's decision that it is no longer necessary to maintain the plan, the FEI or local authority **must not**⁵⁷ cease to maintain the IDP until the later of-

- (a) the period of a 8 weeks⁵⁸ for bringing an appeal against the decision to the Education Tribunal has ended without an appeal having been brought, or
- (b) an appeal has been brought in that period and has been fully determined.

A local authority's reconsideration of a maintained school's decision to cease to maintain an IDP

21.20 Where a child, their parent or a young person is dissatisfied with a school's decision that the pupil no longer has ALN, it is expected that this

⁵³ Under section 69 of the Act.

⁵⁴ Section 33(1) – (3) of the Act.

⁵⁵ Regulations to be made under section 32(1)(b) of the Act.

⁵⁶ Regulations to be made under section 75 of the Act.

⁵⁷ Section 33(4) of the Act

⁵⁸ Regulations to be made under section 75 of the Act.

dissatisfaction would normally be resolved directly with the school or by recourse to the responsible local authority's arrangements for resolving disagreements⁵⁹.

- 21.21 Alternatively or where the disagreement is not resolved, children, their parents, and young people, are able to request that the responsible⁶⁰ local authority reconsiders the school's decision⁶¹. This provides children, their parents and young people with a means of challenging the school's decision.
- 21.22 A child, their parent or a young person has 4 weeks⁶² from the giving of the notification of the school's decision to request a reconsideration by the responsible local authority. Where such a request is made, the local authority **must**⁶³ decide whether the school should cease to maintain the IDP and **must**⁶⁴ notify the child and the child's parent or the young person and (in all cases) the school of the decision and the reasons for it.
- 21.23 Before the local authority makes a decision, it **must**⁶⁵ inform the school of the request and invite representations from the school. The local authority will need to take into account all available relevant information, and obtain further information as may be appropriate in order to take the decision.
- 21.24 If the local authority decides that the IDP should be maintained, the school **must**⁶⁶ continue to maintain it. If the local authority decides that the IDP should not be maintained, the school **must**⁶⁷ cease to maintain the IDP, but this is subject to the limitation on ceasing to maintain a plan set out above.
- 21.25 Once made the local authority's decision replaces the school's decision and is appealable to the Education Tribunal⁶⁸.
- 21.26 Where the decision is that the school should cease to maintain the IDP, the notification of that decision (referred to in paragraph 21.15 – 21.17 above) **must**⁶⁹ also contain:
- the contact details of the local authority;

⁵⁹ Under section 68 of the Act.

⁶⁰ For the purposes of such requests, the responsible local authority in the case of a pupil in the area of a local authority in England, is the local authority that maintains the school (section 87(2)(a) of the Act). In all other cases, a local authority is responsible for a pupil if he or she is in the area of the local authority (section 99(4) of the Act).

⁶¹ Section 32 of the Act.

⁶² Regulations to be made under section 32(1)(b) of the Act.

⁶³ Section 32(2) of the Act

⁶⁴ Section 32(3) of the Act

⁶⁵ Requirement imposed by the Code.

⁶⁶ Section 32(4) of the Act

⁶⁷ Section 32(5) of the Act.

⁶⁸ Section 70 of the Act.

⁶⁹ Requirement imposed by the Code

- information about how to access the local authority's arrangements for providing people with information and advice about ALN and the ALN system⁷⁰. This could be done by providing a local authority leaflet about the ALN system or the address of the local authority's relevant web pages and drawing attention to how to get further information and advice;
- details of the local authority's arrangements for the avoidance and resolution of disagreements⁷¹ and its independent advocacy services⁷²; and
- information about the right to appeal to the Education Tribunal against the decision.

⁷⁰ These are the arrangements that the local authority must make under section 9 of the Act.

⁷¹ Under section 68 of the Act.

⁷² Under section 69 of the Act.

Chapter 22: Children and young people subject to detention orders

Introduction

- 22.1 This chapter deals with the position for children and young people who are subject to a detention order and detained in relevant youth accommodation, or in a hospital under Part 3 of the Mental Health Act 1983 ('the 1983 Act'). It includes their rights to a decision on ALN, to ALP and to appeal, and explains what happens to an IDP whilst they are detained. It applies equally to children who are looked after for the purposes of the Act immediately prior to being detained.
- 22.2 There are duties on local authorities in respect of children and young people in different types of detention situations:
- (a) a child or young person who is subject to a detention order and detained in relevant youth accommodation in Wales or England (defined in the Act and Code as a "detained person") – see paragraphs 22.4 to 22.39. The detained person's home authority has particular duties under the Act. Duties on schools, FEIs and local authorities (although the local authority, if the home authority, will be subject to those home authority duties) under the Act cease to apply whilst a child or young person is a detained person¹.
 - (b) a child or young person who is subject to a detention order and detained in hospital under Part 3 of the 1983 Act - see paragraphs 22.40 to 22.73. A local authority's duties under the Act generally apply in this scenario (for example, to decide upon ALN and prepare and maintain an IDP). Duties on schools and FEIs under the Act do not apply in this scenario².
- 22.3 Also, the duties on schools, FEIs and local authorities under the Act do not apply while a child or young person is subject to a detention order and detained otherwise than in:
- (a) relevant youth accommodation in Wales or England (for example, in prison), or
 - (b) hospital under Part 3 of the 1983 Act³.

¹ Section 44(1) – (2) of the Act.

² Section 44(3) – (4) of the Act.

³ Section 44(3) and (4) of the Act and section 562 of the Education Act 1996 (as it has effect for the purposes of Part 2 of the Act by virtue of section 44(5) – (7) of the Act).

Detained children and young people

A home authority's duty to decide whether a detained person has ALN

- 22.4 Where it is brought to the attention of, or otherwise appears to, a local authority, that a detained person for whom it is the 'home authority', may have ALN and an IDP is not being kept for them, the authority **must**⁴:
- (a) decide whether or not the detained person has ALN; and
 - (b) if it decides that the person has ALN, decide, in accordance with regulations, whether it will be necessary for an IDP to be maintained for that person when they are released from detention to meet their reasonable needs for education or training.
- 22.5 The possibility that a detained person may have ALN might be "brought to the attention of" a local authority in a number of ways. It does not matter how the possibility that a young person may have ALN comes to the local authority's attention or how it otherwise appears to it that this is the case; if the local authority is aware of that possibility, then the duty to decide applies. (Guidance on the definition of ALN and identifying when a person may have ALN is set out in Chapter 7).
- 22.6 A local authority is not required to make this decision where:
- the person is a young person who does not consent to the decision being made or a plan being prepared; or
 - the local authority has previously decided whether the child or young person has ALN and is satisfied that the person's needs have not changed materially since the decision was made, and there is no new information that materially affects that decision or a previous decision that it will not be necessary for an IDP to be maintained for the detained person on release⁵.
- 22.7 Where a home authority has a duty to decide whether the detained person has ALN, it **must**⁶:-
- (a) designate a person to be responsible for coordinating the actions required to make that decision, any decision on whether an IDP is necessary and, if an IDP is subsequently required, to be responsible for preparing it;
 - (b) record the date on which it is brought to its attention, or otherwise appears to it that the detained person may have ALN;
 - (c) record the date on which the detained person, if a young person, consented to the decision being made;

⁴ Section 40(2) of the Act.

⁵ Section 41 of the Act.

⁶ Requirement imposed by the Code

- (d) record a summary of how the possibility that the detained person has ALN has been brought to its attention or why it otherwise appears to the authority that the detained person may have ALN;
- (e) give the relevant notification referred to in paragraphs 22.8 – 22.9 below.
- 22.8 If the detained person is a child, the local authority **must**⁷ notify the child and the child's parent that it is required to decide whether the child has ALN.
- 22.9 If the detained person is a young person, the local authority **must**⁸ do the following promptly (from when the possibility of the young person having ALN has been brought to its attention or otherwise appeared to it):
- (a) notify the young person that it has been brought to its attention or otherwise appears to it that the young person may have ALN;
 - (b) seek the young person's consent to the decision being made and, should the decision be that the young person has ALN, to an IDP being prepared; and
 - (c) inform the young person of the consequences of consenting and not consenting to the decision being made.
- 22.10 The notification (whether under paragraph 22.8 or 22.9) **must**⁹ contain:
- (a) the name and contact details of the co-ordinator;
 - (b) information about how to access the local authority's arrangements for providing people with information and advice about ALN and the ALN system¹⁰.
- 22.11 The notification **should** also provide an indication of the likely timescales for the process.
- 22.12 Where the young person does not consent to the decision being taken, this **must**¹¹ be recorded. Local authorities **should** have appropriate procedures in place to facilitate this, which might include the young person signing to confirm that they are withholding consent.
- 22.13 Where a local authority is required to make the decision it **must**¹², before doing so, invite the person in charge of the relevant youth accommodation to participate in the decision, and, if needed, in the preparation of an IDP.
- 22.14 In coming to its decision on whether a detained person has ALN, the local authority **should** consider any relevant information, for instance from youth offending teams as well as from any schools and FEIs previously attended by

⁷ Requirement imposed by the Code

⁸ Requirement imposed by the Code.

⁹ Requirement imposed by the Code

¹⁰ These are the arrangements that the local authority must make under section 9 of the Act.

¹¹ Requirement imposed by the Code

¹² Section 40(3) of the Act.

the person. Carers, health and social care professionals and youth workers can also support the identification of ALN. The home authority may request information or other help from relevant persons, including the person in charge of relevant youth accommodation, which it might require to make its decision (Chapter 15 deals with local authority requests for information or other help and the corresponding duties on relevant persons).

A home authority's decision that a detained person has ALN – deciding whether an IDP will be necessary

22.15 Where a home authority decides that a detained person has ALN, it **must**¹³ decide in accordance with regulations¹⁴ whether it will be necessary for an IDP to be maintained for the person upon their release to meet their reasonable needs for education or training. To decide this, the authority will need to consider what are likely to be the circumstances when the person is released. An IDP will be necessary unless¹⁵:

- (a) it is likely that the person will have attained the age of 25 before the person is released from detention; or
- (b) in the case of a detained young person, it is unlikely that the person will have reasonable needs for education or training when released.

22.16 Therefore, in the case of a detained child, an IDP will almost always be necessary. In the case of a detained young person, the home authority will need to consider whether the person will be likely to have reasonable needs for education or training upon release. The same matters that are relevant to deciding whether a young person who is not at a maintained school or FEI in Wales has reasonable needs for education or training (as set out in chapter 12) are relevant here. However, in the detention situation, the home authority will need to be considering the likely circumstances at the time of the person's release.

22.17 If the home authority decides that it will be necessary for an IDP to be maintained for the person on release, it **must**¹⁶ prepare an IDP for that person unless the person is a young person who does not consent to the plan being prepared.

A home authority's decision that a detained person does not have ALN or that it is not necessary to prepare an IDP

22.18 Where the home authority decides that the detained person does not have ALN, or that it will not be necessary for an IDP to be maintained for the detained person when released, it **must**¹⁷ notify the detained person, the

¹³ Section 40(2) of the Act.

¹⁴ Regulations made under section 46 of the Act.

¹⁵ These regulations are to be made under section 46 of the Act.

¹⁶ Sections 40(5) and 41 of the Act.

¹⁷ Section 40(4) of the Act.

parent of a detained person who is a child, and the person in charge of the relevant youth accommodation of the decision and the reasons for the decision. The home authority **must**¹⁸ make the decision and give the notification promptly.

22.19 As well as setting out the decision and the reasons for the decision, the notification **must**¹⁹ contain:

- (a) the contact details for the home authority;
- (b) information about how to access the home authority's arrangements for providing people with information and advice about ALN and the ALN system²⁰;
- (c) details of the home authority's arrangements for the avoidance and resolution of disagreements²¹ and its independent advocacy services²²; and,
- (d) information about the right to appeal to the Education Tribunal against the decision.

A home authority's duty to prepare an IDP for a detained person

22.20 If a local authority decides that a detained person has ALN and that it will be necessary for an IDP to be maintained on their release, it **must**²³ prepare an IDP for that person (unless in the case of a young person, they do not consent to the plan being prepared).

22.21 The local authority **must**²⁴ decide whether ALP should be provided to the detained person in Welsh and if it decides that a particular kind of ALP should be provided in Welsh, it **must**²⁵ specify in the plan that it should be provided in Welsh.

22.22 Where the detained person will require a place at a particular school or institution, or board and lodging to meet their reasonable needs for ALP when released, the home authority **must**²⁶ describe it in the IDP. This is subject to the restrictions on describing placements in IDPs (see paragraphs 12.42).

22.23 The authority will also need to consider its other relevant functions in relation to preparing and maintaining IDPs, such as the duty to favour education for children at mainstream maintained schools (see paragraphs 11.25 – 11.34) and naming a maintained school for the purpose of securing a child's admission (see paragraphs 11.35 – 11.42). The home authority would need

¹⁸ Timescale requirement imposed by the Code

¹⁹ Requirement imposed by the Code.

²⁰ These are the arrangements that the authority must make under section 9 of the Act.

²¹ Under section 68 of the Act.

²² Under section 69 of the Act.

²³ Sections 40(5) and 41 of the Act.

²⁴ Section 40(6) of the Act.

²⁵ Section 40(6) of the Act.

²⁶ Section 40(7) of the Act.

to consider whether to exercise these functions, where relevant, in light of all the circumstances, which may include when the person is likely to be released.

22.24 Before it is finalised, the home authority **should** give the detained person and the parent of a detained person who is a child an opportunity to comment on a draft of the IDP and **should** encourage them to raise any concerns as soon as possible. The home authority **should** consider any concerns and act upon them as required, which may be to update the draft IDP, or explain decisions or other matters further.

22.25 Once prepared, the home authority **must**²⁷ give a copy of the IDP to the detained person and the parent of a detained person who is a child and the person in charge of the relevant youth accommodation. The home authority **must**²⁸ make the decision on ALN, the decision on whether an IDP will be necessary and prepare the plan and give a copy of the plan promptly.

A home authority's duty to keep an IDP for a detained person with ALN and arrange appropriate ALP

22.26 Where a detained person had an IDP maintained for them immediately before the beginning of their detention, or a home authority has prepared an IDP during the period of their detention²⁹, the home authority, if in Wales, **must**³⁰ keep the IDP whilst the person is detained.

22.27 Where the IDP was being maintained by a school or FEI or by another local authority prior to detention, the home authority's duty to keep the IDP only applies when this is brought to its attention³¹.

22.28 The home authority **must**³² inform the detained person and the parent of a detained person who is a child that it is keeping the IDP while the person is detained in relevant youth accommodation. The authority **must**³³ give a copy of the IDP to the person in charge of the relevant youth accommodation.

22.29 Where the home authority keeps an IDP, it **must**³⁴ arrange for "appropriate ALP" to be provided to the detained person.

22.30 "Appropriate ALP" is³⁵-

- the ALP specified in the IDP,

²⁷ Section 40(5) of the Act.

²⁸ Timescale requirement imposed by the Code.

²⁹ Under section 40 of the Act.

³⁰ Section 42(1) – (3) of the Act.

³¹ Section 42(5) of the Act.

³² Section 42(6) of the Act.

³³ Section 42(7) of the Act.

³⁴ Section 42(8) of the Act.

³⁵ Section 42(9) of the Act.

- if it appears to the home authority that it is not practicable for the ALP specified in the IDP to be provided, educational provision corresponding as closely as possible to that ALP, or
- if it appears to the home authority that the ALP specified in the IDP is no longer appropriate for the detained person, ALP which the home authority considers appropriate.

- 22.31 If the IDP specifies that ALP should be provided in Welsh, the home authority **must**³⁶ take all reasonable steps to secure that the appropriate ALP is provided in Welsh.
- 22.32 It might not always be practicable for a home authority to secure the ALP called for by a detained person's needs, or the ALP in the IDP might become out of date. This is why the duty is to arrange appropriate ALP rather than secure ALP. Where the ALP set out in the IDP is not currently available within the relevant youth accommodation, it does not necessarily mean that it is impracticable for it to be provided. In such circumstances, the home authority **should** work with the person in charge of the relevant youth accommodation and the education provider to identify whether it could be provided and if it is impractical to do so, the provision corresponding as closely as possible to that set out in the IDP.
- 22.33 Reviews in respect of IDPs being kept for a detained person are not required under the Act. Therefore, the ALN and ALP set out in them may become out of date. If it appears to the home authority that the ALP specified in the IDP is no longer appropriate, for example where the detained person's needs have changed since the IDP was prepared or the person was detained, the home authority **must**³⁷ arrange ALP that the home authority considers appropriate. It **should** work with the person in charge of the relevant youth accommodation and the education provider to determine what appropriate ALP would consist of.
- 22.34 To carry out these duties, home authorities **may**³⁸ request a relevant person (including the person in charge of the relevant youth accommodation or the youth offending team) to provide information or other help. Chapter 14 deals with such requests. Youth offending teams have duties³⁹ to notify local authorities about a child or young person's detention in, transfer to, or release from, relevant youth accommodation.
- 22.35 A home authority **should** work closely with the person in charge of the relevant youth accommodation and the education provider to arrange appropriate ALP for a detained person. The home authority **should** seek to do this as soon as they become aware of the detained person entering custody and that they have an IDP, or as it is preparing an IDP for the detained

³⁶ Section 42(8)(b) of the Act.

³⁷ Section 42(8) and (9) of the Act.

³⁸ Section 65 of the Act.

³⁹ Under Section 39A of the Crime and Disorder Act 1998

person, using the custodial establishment's and youth offending team's existing planning procedures wherever possible.

- 22.36 Custodial sentences for detained children and young persons are often short. As such, it is generally important for decisions to be made quickly to enable the appropriate ALP to be put in place without delay and so that any IDP prepared for a detained person is ready to be maintained upon the person's release.

A local authority's duty to maintain an IDP for detained children and young people on release

- 22.37 On the release of a detained person for whom an IDP was being kept, if a local authority is responsible for the person, it **must**⁴⁰ maintain the IDP unless;

- (a) the person is a child who, on release, is looked after by another local authority, in which case that other local authority **must**⁴¹ maintain the IDP;
- (b) the person is a young person and does not consent to the IDP being maintained.

- 22.38 When a local authority is aware that it will have to maintain an IDP for a detained person who is due to be or has been released from relevant youth accommodation, the authority **should** consider whether to review the IDP. In cases where the IDP was prepared or last reviewed a significant time ago or where the circumstances have changed considerably since the IDP was prepared or last reviewed, an immediate review is likely to be needed. In cases where the child or young person is to attend a maintained school or FEI in Wales, and the IDP has recently been prepared or reviewed, the local authority may consider that transferring the IDP to the school or FEI would be more appropriate, and allow the school or FEI to review the IDP once the child or young person has resumed their education or training (see Chapter 20 for information about transferring an IDP). The local authority **should** take into account any relevant evidence provided by the custodial establishment, education provider and youth offending teams when determining whether to review it and as part of any review and if considering whether to transfer responsibility for it to a school or FEI.

Rights of appeal for detained persons

- 22.39 A detained person has a right to appeal the Tribunal (see Chapter 26 for further guidance).

⁴⁰ Sections 43(1) - (2) and 14(2) – (3) of the Act.

⁴¹ Section 43(3) - (4) of the Act

Children and young people subject to a detention order and detained in hospital under Part 3 of the 1983 Act

- 22.40 Part 2 of the 1983 Act deals with compulsory admission to hospital⁴². The Act applies equally to those who are compulsorily admitted to hospital under Part 2 of the 1983 Act as it does to other children and young persons: no special provision is made for these circumstances. Chapters 9 – 12 are relevant to such cases, according to whether the learner is a child or young person, a pupil of a maintained school in Wales or a student enrolled at an FEI in Wales, or neither such a pupil nor such a student.
- 22.41 Part 3 of the 1983 Act deals with compulsory admission to hospital in the course of criminal proceedings or under sentence. In these instances, the person would be subject to a detention order (as defined for the purposes of the Act). The remainder of this chapter deals with the duties⁴³ owed to children and young people who are detained in hospital under Part 3 of the 1983 Act and references to a person being detained in hospital (however expressed) refer to detention in hospital under Part 3 of the 1983 Act.
- 22.42 A person may be detained in a place of safety between the making of a detention order under Part 3 of the 1983 Act and the person's detention in hospital. References in this chapter to a person's situation prior to their detention in hospital refer to their situation immediately prior to any detention in a place of safety under Part 3 of the 1983 Act which is immediately prior to their detention in hospital.
- 22.43 Prior to being detained in hospital, a child or young person might:
- (a) not have an IDP at all. This could be, for example, if the child or young person has not been identified as having ALN or was detained in accommodation other than relevant youth accommodation in Wales or England;
 - (b) have an IDP which is being kept. This would only be where the child or young person was a detained person; or
 - (c) have an IDP which is being maintained. This would be where the person was not subject to a detention order.
- 22.44 The duties that apply are slightly different depending upon whether there was no IDP at all, an IDP was being kept or an IDP was being maintained.

⁴² These admissions do not involve the patient being subject to a detention order as defined for the purposes of the Act.

⁴³ These duties apply by virtue of regulations to be made under section 45 of the Act.

A local authority's duty to decide whether a child or young person detained in hospital has ALN

22.45 If an IDP was not being maintained or kept for a child or young person immediately prior to their detention in hospital and it is brought to the attention of or otherwise appears to the relevant local authority, if in Wales, that the child or young person may have ALN, the local authority **must**⁴⁴ decide whether or not the child or young person has ALN. The relevant local authority is as follows:

(a) If the child or young person was a detained person before the detention in hospital	The home authority
(b) Where (a) does not apply, if the person is a looked after child	The local authority that looks after the child
(c) All other cases	The local authority responsible for the child or young person

22.46 The possibility that the child or young person may have ALN might be “brought to the attention of” a local authority in a number of ways. It does not matter how the possibility that a child or young person may have ALN comes to the local authority’s attention or how it otherwise appears to it that this is the case; if the local authority is aware of that possibility, then the duty to decide applies. (Guidance on the definition of ALN and identifying when a young person may have ALN is set out in Chapter 7.)

22.47 However, a relevant local authority is not required to make this decision where:

- In the case of a young person, they do not consent to the decision being made; or
- the local authority has previously decided whether the child or young person has ALN and is satisfied that their needs have not changed materially since the decision was made, and there is no new information that materially affects the decision⁴⁵.

22.48 Where a relevant local authority has to decide whether the child or young person has ALN, it **must**⁴⁶:

- (a) designate an officer to be responsible for coordinating the actions required to make that decision, any decision as to whether an IDP is necessary for

⁴⁴ Regulations to be made under section 45 of the Act.

⁴⁵ Regulations to be made under section 45 of the Act.

⁴⁶ Requirement imposed by the Code.

a young person and, if an IDP is subsequently required, to be responsible for preparing it;

- (b) record the date on which it is brought to its attention, or otherwise appears to it that the child or young person may have ALN;
- (c) in the case of a young person, record the date on they consented to the decision being made;
- (d) record a summary of how the possibility that the child or young person has ALN has been brought to its attention or why it otherwise appears to the authority that they may have ALN.
- (e) give the relevant notification referred to in paragraphs (22.49 – 22.50) below.

22.49 In the case of a child, the local authority **must**⁴⁷ notify the child and the child's parent that it is required to decide whether the child has ALN.

22.50 In the case of a young person, the local authority **must**⁴⁸ do the following promptly (from when the possibility of the young person having ALN has been brought to its attention or otherwise appeared to it):

- (a) notify the young person that it has been brought to its attention or otherwise appears to it that the young person may have ALN;
- (b) seek the young person's consent to the decision being made and, should the decision be that the young person has ALN, to an IDP being prepared and maintained; and
- (c) inform the young person of the consequences of consenting and not consenting to the decision being made.

22.51 The notification (whether under paragraph 22.49 or 22.50) **must**⁴⁹ contain:

- (a) the name and contact details of the co-ordinator;
- (b) information about how to access the local authority's arrangements for providing people with information and advice about ALN and the ALN system⁵⁰.

22.52 The notification **should** also provide an indication of the likely timescales for the process.

22.53 Where the young person does not consent to the decision being taken, this **must**⁵¹ be recorded. Local authorities **should** have appropriate procedures in place to facilitate this, which might include the young person signing to confirm that they are withholding consent.

⁴⁷ Requirement imposed by the Code

⁴⁸ Requirement imposed by the Code.

⁴⁹ Requirement imposed by the Code

⁵⁰ These are the arrangements that the local authority must make under section 9 of the Act.

⁵¹ Requirement imposed by the Code

22.54 Where a relevant local authority is required to make the decision it **should** consider inviting the child or young person's care co-ordinator⁵² to participate in the decision, and, if needed, in the preparation of the IDP.

A local authority's decision that a child or young person detained in hospital does not have ALN

22.55 Where the relevant local authority decides that the child or young person does not have ALN, it **must**⁵³ notify the child, the child's parent or the young person of the decision and the reasons for it. The authority **must**⁵⁴ make the decision and give the notification promptly.

22.56 As well as setting out the decision and the reasons for the decision, the notification **must**⁵⁵ contain:

- (a) the contact details for the local authority;
- (b) information about how to access the local authority's arrangements for providing people with information and advice about ALN and the ALN system⁵⁶;
- (c) details of the local authority's arrangements for the avoidance and resolution of disagreements⁵⁷ and its independent advocacy services⁵⁸; and,
- (d) information about the right to appeal to the Education Tribunal against the decision.

A local authority's decision that a child or young person detained in hospital has ALN

22.57 Where a relevant local authority decides that a child detained in hospital has ALN, it **must**⁵⁹ prepare an IDP for the child.

22.58 Where the relevant local authority decides that a young person detained in hospital has ALN, it **must**⁶⁰ decide in accordance with regulations⁶¹ whether the young person has reasonable needs for education or training (see Chapter 12 for further guidance on this matter). In considering this, the local authority will need to take account of all the circumstances, including the person's detention and whether any course is available and suitable. If a local authority decides that the young person has reasonable needs for education

⁵² Under section 14 of the Mental Health (Wales) Measure 2010, there is a duty on mental health service providers to appoint an individual as care coordinator for a relevant patient.

⁵³ Regulations to be made under section 46 of the Act.

⁵⁴ Timescale requirement imposed by the Code.

⁵⁵ Requirement imposed by the Code.

⁵⁶ These are the arrangements that the local authority must make under section 9 of the Act.

⁵⁷ Under section 68 of the Act.

⁵⁸ Under section 69 of the Act.

⁵⁹ Regulations to be made under section 45 of the Act.

⁶⁰ Regulations to be made under section 45 of the Act.

⁶¹ Regulations to be made under section 46 of the Act.

or training, it **must**⁶² prepare an IDP for that person unless the person does not consent to the plan being prepared.

22.59 Where the relevant local authority decides that it is not necessary to prepare an IDP for the young person, it **must**⁶³ promptly notify the young person of the decision and the reasons for it.

22.60 As well as setting out the decision and the reasons for the decision, the notification **must**⁶⁴ contain:

- (a) the contact details for the local authority;
- (b) information about how to access the local authority's arrangements for providing people with information and advice about ALN and the ALN system⁶⁵;
- (c) details of the local authority's arrangements for the avoidance and resolution of disagreements⁶⁶ and its independent advocacy services⁶⁷; and,
- (d) information about the right to appeal to the Education Tribunal against the decision.

A local authority's duty to prepare an IDP for a child or young person detained in hospital

22.61 Where a relevant local authority has decided that a child or young person detained in hospital has ALN, and in the case of a young person decided that it is necessary to prepare an IDP, it **must**⁶⁸ prepare and maintain an IDP for the child or young person. But the local authority does not have to do so if the person is a young person who does not consent to the IDP being prepared or maintained.

22.62 The local authority **must**⁶⁹ consider whether ALP should be provided to the child or young person in Welsh and if it decides that a particular kind of ALP should be provided in Welsh, it **must**⁷⁰ specify in the IDP that it should be provided in Welsh.

22.63 The local authority will also need to consider its other relevant functions in relation to preparing and maintaining IDPs, such as the duty to favour education for children at mainstream maintained schools (see paragraphs 11.25 – 11.34), naming a maintained school for the purpose of securing a child's admission (see paragraphs 11.35 – 11.42). The local authority would

⁶² Regulations to be made under section 45 of the Act.

⁶³ Regulations to be made under section 46 of the Act.

⁶⁴ Requirement imposed by the Code.

⁶⁵ These are the arrangements that the local authority must make under section 9 of the Act.

⁶⁶ Under section 68 of the Act.

⁶⁷ Under section 69 of the Act.

⁶⁸ Regulations to be made under section 45 of the Act.

⁶⁹ Regulations to be made under section 45 of the Act.

⁷⁰ Regulations to be made under section 45 of the Act.

need to consider whether to exercise these functions, where relevant, in light of all the circumstances, including when the person is likely to be released.

- 22.64 Once prepared, the local authority **must**⁷¹ give a copy of the IDP to the child and the child's parent or the young person. The responsible local authority **must**⁷² make the decision on ALN, any decision on whether an IDP is necessary, prepare the plan and give a copy of it promptly.
- 22.65 The local authority **must**⁷³ also give the child, the child's parent or young person:
- (a) the contact details for the local authority;
 - (b) information about how to access the local authority's arrangements for providing people with information and advice about ALN and the ALN system;
 - (c) details of the local authority's arrangements for the avoidance and resolution of disagreements⁷⁴ and its independent advocacy services⁷⁵; and
 - (d) information about the right to appeal to the Education Tribunal.

A local authority's duty to maintain an IDP for a child or young person detained in hospital

- 22.66 Where a relevant local authority has prepared an IDP for a child or young person detained in hospital, it **must**⁷⁶ maintain the IDP and secure the ALP described in it.
- 22.67 If a child or young person had an IDP maintained by a school or FEI prior to being detained in a hospital, the school or FEI has no duty to maintain it whilst the person is subject to a detention order⁷⁷. Instead, the relevant local authority **must**⁷⁸ maintain the IDP.
- 22.68 If a child or young person had an IDP maintained by a local authority prior to being detained in hospital, the relevant local authority **must**⁷⁹ maintain the IDP.
- 22.69 If a child or young person was detained in relevant youth accommodation in England or Wales prior to being detained in a hospital, the home authority's duty to keep the IDP does not apply whilst the person is detained in the

⁷¹ Regulations to be made under section 45 of the Act.

⁷² Timescale requirement imposed by the Code.

⁷³ Requirement imposed by the Code.

⁷⁴ Under section 68 of the Act.

⁷⁵ Under section 69 of the Act.

⁷⁶ Regulations to be made under section 45 of the Act.

⁷⁷ Section 44(1) – (4) of the Act.

⁷⁸ Regulations to be made under section 45 of the Act.

⁷⁹ Regulations to be made under section 45 of the Act.

hospital⁸⁰. Instead the home authority (as the relevant local authority) **must**⁸¹ maintain the IDP.

- 22.70 A relevant local authority maintaining an IDP for a child or young person detained in hospital **must**⁸² review the IDP in line with the duties on reviews of IDPs (set out in Chapter 16). In the case of a young person, a review **should** consider whether, in light of all the circumstances (including the young person's detention in hospital), it is necessary to continue to maintain the IDP to meet the young person's reasonable needs for education or training (see Chapters 12 and 16). If the local authority decides that it is not necessary to maintain the IDP it may cease to maintain the IDP (see Chapter 21).
- 22.71 The local authority **should** involve the professionals providing the healthcare services to the child or young person in any decisions and any review.
- 22.72 If the child or young person is being released back into the community following detention in hospital and is, immediately following release, in the area of a local authority in Wales, the responsible local authority **must**⁸³ maintain the IDP. But if the person is a child who, immediately on release, is looked after by a local authority, the local authority that looks after the child must maintain the IDP⁸⁴.
- 22.73 If the child or young person with an IDP moves from hospital detention to relevant youth accommodation, the home local authority **must**⁸⁵ keep the IDP (see paragraphs 22.26 – 22.36).

⁸⁰ Section 562 of the Education Act 1996.

⁸¹ Regulations to be made under section 45 of the Act.

⁸² Regulations to be made under section 45 of the Act.

⁸³ Regulations to be made under section 45 of the Act.

⁸⁴ Regulations to be made under section 45 of the Act.

⁸⁵ Regulations to be made under section 45 of the Act.

Chapter 23: Children and young people in specific circumstances

Introduction

23.1 This chapter deals with children and young people in specific circumstances.

23.2 These groups are:

- children and young people who are in the area of a local authority in England and registered as pupils at a maintained school in Wales or enrolled as students at an FEI in Wales;
- children receiving EOTAS other than at a PRU;
- children who attend a PRU;
- children and young people in EOTAS because of healthcare needs; children receiving education other than in a maintained school in Wales or EOTAS; and
- children of Service personnel.

Children and young people who are in the area of a local authority in England and registered as pupils at a maintained school in Wales or enrolled as students at an FEI in Wales

23.3 Where a child or young person is in the area of a local authority in England but is a registered pupil at a maintained school in Wales or is a young person enrolled as a student at an FEI Wales, the school or FEI's duties to decide whether the child has ALN and to prepare and maintain an IDP for them, are described in Chapters 9 and 10 respectively.

23.4 As a local authority in Wales is not responsible for such a child or young person, the duties of local authorities in relation to children and young people registered as pupils at maintained school in Wales or enrolled as students at an FEI in Wales (as described in Chapter 9 and 10) do not generally apply in relation to such pupils and students. However, the provisions on local authority reconsiderations described in Chapter 17, do apply with modifications in cases where a pupil at a maintained school in Wales is in the area of a local authority in England. The main modification is that the local authority responsible for reconsidering the decision as to whether the child or young person has ALN and reconsidering an IDP is the local authority that maintains the school. This, and the further modifications, are described in Chapter 17.

23.5 A local authority's duties in relation to the making of arrangements for the avoidance and resolution of disagreements, and the provision of independent advocacy services, as set out in Chapter 25, include making such

arrangements for children or young people in the area of a local authority in England who are registered at a maintained school in its area or enrolled at an FEI in its area¹.

Children and young people receiving EOTAS

- 23.6 Under the Education Act 1996, local authorities have functions in relation to the provision of EOTAS services. This includes a duty² 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. It also includes a power³ to do the same in relation to young people. They may be ill or injured or have been excluded. The EOTAS provision may be at PRUs, schools established in hospitals, FEIs, and individual tuition at home (but this is different to elective home education).
- 23.7 A local authority **may**⁴ arrange for the ALP described in an IDP it maintains for a child, or any part of that ALP, to be made otherwise than in a school, but the local authority may only do so if it is satisfied that it would be inappropriate for the ALP to be made in a school⁵.
- 23.8 Where a child is educated through EOTAS provision which is not at a PRU (children attending PRUs is dealt with below in this chapter), and it is brought to the attention of, or otherwise appears to, the responsible local authority that the child may have ALN, the local authority **must**⁶ decide whether the child has ALN, unless an exception applies. This duty, the exceptions to it and related duties (including the duty to prepare an IDP) are dealt with in Chapter 11.
- 23.9 If a child already has an IDP prior to EOTAS being arranged, if it is maintained by a school, its duty to maintain it will cease if the child ceases to be a registered pupil⁷. If so, the responsible local authority is likely to be subject to the duty to decide whether the child has ALN, and if it decides that the child does have ALN, to the duties to prepare and maintain an IDP (see Chapter 11). However, if the child remains a registered pupil, it might be more appropriate for the responsible local authority to take over responsibility for maintaining the IDP; if so, the school **should** request it to do so⁸. (See Chapter 17 for more information about local authorities taking over responsibility for an IDP.)

¹ Section 69(8) of the Act.

² Section 19 of the Education Act 1996.

³ Section 19(4) of the Education Act 1996.

⁴ Section 53 of the Act.

⁵ Section 53(2) of the Act.

⁶ Section 13 of the Act.

⁷ Section 31(1)(a) of the Act.

⁸ Under section 28 of the Act.

- 23.10 If the child already has an IDP maintained by the responsible local authority when the EOTAS is arranged, the local authority **must**⁹ continue to maintain the IDP (unless and until any of the circumstances occur which result in the duty to maintain it ceasing – see Chapter 21). It would often be appropriate for the local authority to review the plan in light of the changed circumstances.
- 23.11 In the case of a child educated through EOTAS not at a PRU, the range of professionals involved in the IDP process might be wider and, in some respects, different from those professionals involved where a child attends a school.

Children attending PRUs

- 23.12 PRUs are a form of EOTAS provision. A PRU is within the definition of a maintained school for the purposes of the Act¹⁰ and its management committee has responsibility¹¹ for the functions placed on governing bodies of maintained schools in Wales (Chapter 9).
- 23.13 In the case of a child who is registered with both a PRU and another maintained school, the local authority would be the responsible body (see Chapter 20 for information about the transfer of an IDP when a child becomes dual registered, and Chapter 9 for more information about local authority duties in respect of children who are attending maintained schools.)

Children and young people in EOTAS because of healthcare needs

- 23.14 Duties under the Act apply equally in respect of a child or young person who has healthcare needs, including if they suffer an interruption to their education as a result, for example because of admission to hospital for a sustained period. This includes admission to hospital under Part 2 of the Mental Health Act 1983¹². However, the circumstances may make it appropriate or necessary for a local authority or school or FEI to exercise their functions in a particular way, for example:
- if a child or young person with an IDP is admitted to hospital (or other EOTAS as a consequence of health needs) for a sustained period of time, it might be appropriate or even necessary to review the IDP. See Chapter 16 on reviews for guidance on the process to follow when considering whether to review an IDP;
 - if a school is maintaining an IDP for the child or young person, as set out above, it might be appropriate for the local authority to take over responsibility for maintaining the plan.

⁹ Section 14(2)(a) of the Act.

¹⁰ See the definition of “maintained school” in section 99(1) of the Act and the glossary in Chapter 1.

¹¹ Regulations to be made under paragraph 15 of Schedule 1 to the Education Act 1996 providing for the delegation of a local authority’s functions in connection with a PRU to the PRU’s management committee.

¹² For detention in a hospital under Part 3 of the Mental Health Act 1983 see Chapter 22.

23.15 Similarly, where a child or young person with healthcare needs is returning to mainstream education following a prolonged hospital stay, it might be appropriate for functions to be exercised in a particular way, for example, a local authority might direct the maintained school at which the person is a registered pupil to maintain the plan, or it might be appropriate for an IDP to be reviewed in light of the changed circumstances.

Children receiving education other than at a maintained school in Wales or EOTAS

23.16 A local authority's duties under the Act towards children of compulsory school age in its area apply wherever the child is being educated. Chapter 11 deals with the local authority's duties in cases where such a child is not being educated in a maintained school in Wales.

23.17 This covers children who are electively home educated, those that attend an independent school (non-maintained) and those that attend a school in England (where, in all these cases, a local authority is responsible for the child). Independent schools are not required by the Act to decide whether a pupil attending the school has ALN or maintain an IDP for pupils with ALN – the local authority is responsible for these duties.

23.18 On occasion, a local authority might exercise its functions under the Act to place a child at an independent school. The child's needs, the parents' wishes, the compatibility or otherwise of a proposed placement with the provision of efficient education and the avoidance of unreasonable public expenditure are relevant to such decisions¹³. See Chapter 11 for more detail about local authority placements.

Children and young people of Service Personnel

23.19 The Children's Education Advisory Service (CEAS) within the Ministry of Defence (MoD) provides advice and guidance to Service parents, education establishments and local authorities on education issues relating to Service children and young people, including in respect of ALN. Service Children's Education (SCE) provides mainstream education for Service children and young people in some overseas locations. As the resources available overseas are different from those in the UK, MoD services complete an MoD Assessment of Supportability Overseas (MASO) for all Service children with complex needs before an overseas posting is agreed.

¹³ See, in particular, section 51 of the Act and section 9 of the Education Act 1996.

23.20 Children and young people whose parent(s) are Service Personnel may face difficulties that are unique to the nature of their parent's employment. These needs may arise from:

- Service-induced mobility – Service Personnel may relocate more often than the rest of the population and, sometimes, at short notice. Such transitions need to be well managed to avoid Service children with ALN experiencing delays in having their needs identified and met;
- the deployment of serving parents to operational arenas, while not necessarily constituting ALN in itself, may result in a Service child or young person experiencing anxiety, dips in educational performance and/or emotional difficulties. Children and young people may also be affected similarly by siblings' deployment.

23.21 Local authorities **should** take account of the particular needs of any Service communities within their boundaries when providing or planning ALP for Service children and young people with ALN (see Chapter 5 for further guidance on keeping ALP under review).

23.22 In respect of Service children and young people, the school, FEI or local authority responsible for deciding upon ALN, preparing and/or maintaining an IDP **should**:

- take into account in any relevant Service-related issues (e.g. service induced mobility);
- consider seeking advice from the CEAS; and
- use all relevant evidence in respect of the child or young person – including any EHC plans (England), statements (Northern Ireland), Co-ordinated Support Plans (Scotland) and the Service Children's Assessment of Need (SCAN) completed for them by the SCE – when making decisions about ALN, preparing or maintaining an IDP and making ALP for the child or young person.

Chapter 24: Role of the Additional Learning Needs Co-ordinator (ALNCo)

The duty on schools and FEIs to designate an ALNCo

- 24.1 All maintained mainstream schools and FEIs in Wales **must**¹ designate a person, or more than one person – to be known as an ALNCo – who will have responsibility for co-ordinating provision for learners with ALN.
- 24.2 It may be appropriate in certain circumstances for some settings to share an ALNCo. This could apply, for example, in circumstances where there is a maintained nursery attached to a mainstream school; where there are a number of small settings in a local area; or where there is a federation of schools under the responsibility of a single governing body. It is not the expectation for large settings, such as FEIs, to share an ALNCo. Where a sharing arrangement is in place, the relevant governing body(ies) **should** ensure that in undertaking its duty to appoint an ALNCo, those education settings continue to meet their responsibilities as set out within this Code.
- 24.3 Under their duty to designate a person to act as an ALNCo, schools and FEIs **should** consider the skill set of the individual to ensure they can deliver the functions prescribed in law. ALNCos **should** be highly qualified and **should** have expertise in dealing with a broad spectrum of ALN. They may also choose to specialise in specific types of ALN and share this expertise beyond their particular education setting (see details about ALNCo qualifications from paragraph 24.24).
- 24.4 The designation of an ALNCo does not remove the responsibilities of the wider workforce; all staff who work with children and young people with ALN have a responsibility for ensuring that their learners' needs are identified and provided for.
- 24.5 It is vital that the ALNCo has sufficient time and resource to undertake their responsibilities effectively, including dedicated time away from teaching. The head of the education setting **should** ensure that the ALNCo is supported in this way. Clear and sufficient time allocation will ensure that the ALNCo is able to undertake their duties effectively.
- 24.6 If the ALNCo role is combined with other non-teaching responsibilities it is important that these other duties are compatible with the duties they are expected to perform as an ALNCo and do not impinge on their responsibilities in this respect.

¹ Section 60 of the Act

The role of the ALNCo

- 24.7 While all teachers and education staff are educators of children and young people with ALN, the ALNCo is the individual who at a strategic level ensures the needs of all learners with ALN within the education setting are met. The role is a strategic one within the education setting and **should** therefore, either form part of the senior leadership team **or** have a clear line of communication to the senior leadership team². This will support the setting to plan, manage and deliver its duties and responsibilities in identifying and meeting the needs of children and young people with ALN.
- 24.8 The senior leadership team will advise, support and challenge the systems and processes to identify and meet the needs of the learners. The local authority may support the role of the ALNCo, including providing guidance where appropriate.
- 24.9 The ALNCo will need to be involved in the strategic co-ordination of ALN resources, such as in deploying and supporting staff and working with colleagues on the senior leadership team to plan and decide on the appropriate resources required to support staff within the setting. ALNCoS need to be actively involved in decisions around budgets and resources to help plan appropriate provision.
- 24.10 ALNCoS are not expected to be directly involved with the day to day process of supporting every learner with ALN. This is the responsibility of the class teacher, however learning support staff can aid the ALNCo in ensuring that teachers are supported and the needs of all learners are met.
- 24.11 The ALNCo will provide professional guidance, advice and support to teachers and, where needed, information and support to parents and other agencies/institutions.

Duties on ALNCoS

- 24.12 The ALNCo will not be required to develop every IDP – but they have overall responsibility for ensuring that all learners who have ALN across the education setting have an IDP. ALNCoS **must**³ arrange for identifying the learners' ALN and co-ordinate the making of ALP that meets those needs.
- 24.13 To deliver this duty, ALNCoS **should** ensure that whenever their setting has a duty to decide whether a pupil/student has ALN, a person has been designated to coordinate the actions required to make this decision, and, if an IDP is subsequently required, to be responsible for preparing it (see Chapters 8-12 on the duty to designate co-ordinators).

² Senior leadership team refers to the head teacher and senior managers who share collective responsibility of all aspects of school leadership and management. Some education settings may use different terminology when referring to senior leadership team

³ Regulation 5(a) and 6(a) of the draft Additional learning Needs Co-ordinator (Wales) Regulations.

- 24.14 ALNCo **must**⁴ ensure that IDPs and any other associated records relating to learners' ALN and ALP are maintained and kept up to date. This includes maintaining the written records which **must**⁵ be made of the date on which it is first brought to the education settings' attention, or otherwise appears to a school or FEI that a child or young person may have ALN (see Chapter 7 for more information).
- 24.15 ALNCo **must**⁶ secure relevant services that will support the learner's ALP as required. Some learners with ALN will need the support of external agencies and professionals. It will be the responsibility of the ALNCo to liaise with these specialist services. Further information on involving other services in identifying ALN and determining the ALP required is provided in Chapter 7.
- 24.16 ALNCo **must**⁷ liaise with and provide information to a child, a young person or parent of a child with ALN on a regular basis about that learner's ALN, IDP and the ALP.
- 24.17 ALNCo **must**⁸ promote the learner's inclusion in the school/FEI community and access to the settings curriculum, facilities and extra-curricular activities. In doing so, the ALNCo **must**⁹ have regard to the views, wishes and feelings of the child, the child's parent or the young person.
- 24.18 ALNCo **must**¹⁰ prepare and review the information required to be published by the governing body pursuant to the ALN Code.
- 24.19 ALNCo **must**¹¹ advise teachers at the school/FEI about differentiated teaching methods appropriate for individual pupils with ALN.
- 24.20 ALNCo **must**¹² supervise and arrange for the training of learning support workers who work with learners with ALN. Learning support workers can be an important resource to the ALNCo when co-ordinating provision of support across the education setting. Learning support workers can provide specialist skills to support learners with ALN, and will offer both practical and administrative support to the ALNCo. That is not to say that the use of learning support workers is appropriate in all cases, they are just one of a number of resources that ought to be available to support learners with ALN.

⁴ Regulation 5(c) and 6(c) of the draft Additional learning Needs Co-ordinator (Wales) Regulations.

⁵ Requirement imposed by the Code

⁶ Regulation 5(b) and 6(b) of the draft Additional learning Needs Co-ordinator (Wales) Regulations.

⁷ Regulation 5(d) and 6(d) of the draft Additional learning Needs Co-ordinator (Wales) Regulations.

⁸ Regulation 5(e) and 6(e) of the draft Additional learning Needs Co-ordinator (Wales) Regulations.

⁹ Section 6 of the Act

¹⁰ Regulation 5(f) and 6(f) of the draft Additional learning Needs Co-ordinator (Wales) Regulations.

¹¹ Regulation 5(g) and 6(g) of the draft Additional learning Needs Co-ordinator (Wales) Regulations.

¹² Regulation 5(h) and 6(h) of the draft Additional learning Needs Co-ordinator (Wales) Regulations.

24.21 ALNCo **must**¹³ contribute to in-service training for teachers at the education setting to assist them to carry out the tasks referred to above. The ALNCo will play an important role in advising on and contributing to the broader support provided within the education setting, as well as the professional learning for other staff members. Therefore, it is essential that they keep up to date on the latest guidance, support and evidence of best practice available for ALN.

24.22 ALNCo **must**¹⁴ monitor the effectiveness of any ALP. To do so, the ALNCo may wish to make effective use of management information systems used by the education setting to monitor the impact of interventions and to assess progress achieved against planned outcomes for all learners with ALN. Where progress is not meeting expectations, interventions **should** be reviewed by the ALNCo and staff and adjusted accordingly. Further information on impact monitoring can be found in Chapter 16.

Other ALNCo responsibilities

24.23 In addition to the above mandatory tasks, the key responsibilities of the ALNCo **should** include:

- overseeing the day-to-day operation of the education setting's arrangements for ALN;
- overseeing the ALP across the education setting to meet the needs identified within IDPs. The ALNCo **should** ensure that regular reviews of the ALP made for learners in their setting are undertaken and, where appropriate, lead the review process to ensure provision continues to meet identified needs;
- ensuring IDPs are developed and reviewed appropriately (in accordance with Chapter 16 of this Code);
- supporting learners with an IDP with their transition between education settings or into adulthood, further study or work (see Chapter 19);
- overseeing the appropriate transfer of information between education settings about the learner's ALN and ALP;
- contributing to the development and implementation of appropriate ALN procedures and systems within the education setting, including strategic financial planning, effective deployment of resources and data collection and analysis, with a view to improved outcomes for learners with ALN;
- becoming a source of expertise on ALN by developing specialist skills and knowledge;
- keeping up-to-date on the latest guidance and support available for ALN;
- enhancing their own professional learning by liaising with the local network of ALNCo (which local authorities **should** consider establishing and facilitating) and, where appropriate, special schools to develop and share experience and best practice;

¹³ Regulation 5(i) and 6(i) of the draft Additional learning Needs Co-ordinator (Wales) Regulations.

¹⁴ Regulation 5(j) and 6(j) of the draft Additional learning Needs Co-ordinator (Wales) Regulations.

- ensuring the record of their roles and professional learning as part of their registration with the Education Workforce Council is up-to-date record in respect of ALN;
- providing professional support to all staff to enable the early identification, assessment and planning for learners with ALN, this might include supporting staff to undertake whole school/FEI tracking and supporting staff to manage good target setting;
- ensuring that the arrangements put in place by the local authority in relation to avoiding and resolving disagreements are fully utilised as appropriate;
- acting as the key point of contact with the relevant local authority's inclusion and support services, external agencies, independent/voluntary organisations, health and social care professionals, educational psychologists, etc.;
- liaising with careers specialists to ensure that learners with ALN receive appropriate careers advice; and
- working strategically with the senior leadership team and governors to ensure the education setting is meeting its responsibilities under the Act, this Code and the Equality Act 2010.

Prescribed qualifications and experience of ALNCoS

24.24 The ALNCo in a school **must**¹⁵ be registered as a school teacher with the Education Workforce Council (EWC). Likewise, an ALNCo working in an FEI will need to be registered as a further education teacher with the EWC.

24.25 The ALNCo in a school **must**¹⁶ have completed a period of statutory induction as set out in law¹⁷. In summary, this statutory induction period prescribed for an individual employed on a full time basis is 3 academic terms. For those employed on a part time basis, this is 380 sessions, the equivalent of 3 academic terms. Although FEI teachers are not obliged to complete a statutory induction, governing bodies of FEIs **should** consider whether the individual has the requisite experience to carry out the role of an ALNCo.

24.26 Individuals acting as a special educational needs co-ordinator (SENCo) at a particular school prior to the implementation of the Act can, subject to the governing body agreement, undertake the role of the ALNCo at that school¹⁸. Newly identified ALNCoS will however be required to meet the requirements prescribed in law.

¹⁵ Regulation 3(a) and 4 of the draft Additional learning Needs Co-ordinator (Wales) Regulations.

¹⁶ Regulation 3(a) of the draft Additional learning Needs Co-ordinator (Wales) Regulations.

¹⁷ Education Induction Arrangements for School Teachers) (Wales) Regulations 2015

¹⁸ Regulation 3(b) of the Additional learning Needs Co-ordinator (Wales) Regulations.

Chapter 25: Avoiding and resolving disagreements and independent advocacy services

Introduction

- 25.1 From time to time, disagreements may arise about ALN or ALP. As far as possible they **should** be avoided or resolved at the earliest opportunity.
- 25.2 This chapter sets out guidance and requirements relating to the duties on local authorities to make arrangements for avoiding and resolving disagreements and for the provision of independent advocacy services.

A local authority's duty to make arrangements for avoiding and resolving disagreements

- 25.3 Local authorities **must**¹ make arrangements for avoiding and resolving disagreements between:
- (a) education bodies (maintained schools, FEIs or local authorities) and
 - (b) children and young people for whom the authority is responsible, or in the case of such children, their parents
- about the exercise of the education body's functions under the ALN system.
- 25.4 Local authorities **must**² also make arrangements for avoiding and resolving disagreements between:
- (a) proprietors of 'relevant institutions' and
 - (b) children or young people who have ALN for whom the authority is responsible and in the case of such children, their parents
- about the ALP made from children or young people.
- 25.5 For the purposes of paragraph 25.4, 'relevant institutions' are:
- (a) a maintained school in Wales or England;
 - (b) an institution in the further education sector in Wales or England;
 - (c) an independent special post-16 institution on the list maintained under section 56 of the Act;
 - (d) an independent school in Wales or England;
 - (e) a non-maintained special school;
 - (f) an Academy.

¹ Section 68 of the Act.

² Section 68 of the Act.

- 25.6 For the purposes of the duties in paragraphs 25.3 and 25.4, the responsible local authority is:
- in the case of a child or young person who resides ‘in the area’ of a local authority in England but is a registered pupil at a maintained school in Wales or is enrolled at an FEI in Wales, the authority that maintains the school in Wales or in whose area the FEI is located³;
 - in the case of a looked after child, the authority that looks after the child⁴;
 - in the case of all other children and young people, the local authority in whose area the child or young person resides
- 25.7 Chapter 25 deals with the duties on local authorities to provide information and advice on the arrangements made for avoiding and resolving disagreements in relation to children and young people subject to a detention order.
- 25.8 Local authorities **must**⁵ promote the arrangements for avoiding and resolving disputes, for example by ensuring that children, their parents and young people receive details of the arrangements when they receive notice of a decision by the local authority. Chapters 8, 9, 10, 11, 12, 16 and 21 sets out the duties to provide information about the arrangements when a decision has been made not to prepare a plan, a revised IDP is being proposed, or a decision has been made to cease to maintain an IDP. Other similar opportunities to provide information will also arise.
- 25.9 Furthermore, local authorities **must**⁶ make information about their arrangements available on their websites. When providing this information it **should** be in a suitable format to assist children, their parents and young people to understand what the arrangements are, for example, by using plain language. The information **should** include how to access these arrangements, such as providing a name, telephone number, point of contact etc.
- 25.10 The local authority **must**⁷ ensure its arrangements for avoiding and resolving disagreements are provided free of charge at the point of delivery.
- 25.11 The local authority **must**⁸ ensure that the staff delivering these arrangements have a detailed understanding of the ALN system. To do so, the local authority **should** ensure that staff providing the arrangements receive appropriate training and development to undertake their role effectively and training is refreshed to improve standards.

³ Section 87(4) of the Act.

⁴ Section 68(8) of the Act.

⁵ Section 68(4) of the Act.

⁶ Requirement of the Code.

⁷ Section 49 of the Act.

⁸ Requirement of the Code.

- 25.12 The local authority **must**⁹ ensure that the staff delivering these arrangements are impartial to the outcome of any potential disagreements.
- 25.13 The local authority **must**¹⁰ ensure the arrangements made are accessible to children and young people and delivered in a way which meets their communication preferences and needs (see Chapter 3 on involving and supporting children, their parents and young people).
- 25.14 Some children will want to access these arrangements with their parents or, if they have one, their case friend. However some children, especially older children, may want to access the arrangements separately from their parents. Local authorities **must**¹¹ facilitate this.
- 25.15 Local authorities are responsible for ensuring that the arrangements for avoiding and resolving disagreements are appropriate and of suitable quality. For example, in delivering these arrangements, the local authority **should**:
- take responsibility for the overall standard of the arrangements, including having a development plan with clear targets which are reviewed regularly;
 - ensure there are appropriate management structures for the arrangements, which include overseeing, regularly monitoring and reviewing the arrangements;
 - ensure there is adequate resource and staffing to meet the needs of children, their parents and young people in their area;
 - ensure that the arrangements are well-publicised (for example, through leaflets, posters, websites, face-to-face contact centres, and telephone helplines) to children, their parents and young people;
 - actively seek feedback about the arrangements from those using them to inform the development and continuous improvement of the arrangements; and
 - have clear funding and budgeting plans for the arrangements.

Arrangements to avoid disagreements

- 25.16 The inclusive process of developing an IDP and the duty¹² to take into account the views, wishes and feelings of the child, child's parent or young person (see Chapter 3), is intended to help to overcome concerns at an early stage and avoid disagreements from arising. Schools, FEIs and local authorities' focus should be on providing children, their parents and young people with the opportunity to raise concerns or questions at every stage of the process. This will provide an opportunity for matters to be addressed and resolved promptly and prevent problems from escalating.

⁹ Requirement of the Code.

¹⁰ Requirement of the Code.

¹¹ Requirement of the Code.

¹² Section 6 of the Act.

25.17 Putting in place arrangements to avoid disagreements can help to build and maintain good relationships between all those involved in supporting the child or young person. This should help to foster the understanding that the child or young person is central, with everyone working together to support the child or young person.

25.18 The arrangements to avoid disagreements **should** provide the following:

- advice on the rights of a child, child's parent or young person needing support;
- support to unpick difficulties and plan a way forward with all other people involved;
- face to face meetings to work out what to do next;
- support to attend and contribute to meetings;
- ongoing support if problems are difficult to solve.

25.19 The arrangements **should** aim to build trust between parties and avoid disagreements by:

- supporting the child, child's parent or young person and professionals, as appropriate, to have the same information from the same trusted source;
- reassuring children, their parents and young people that discussions and decision-making will be centred on the needs of the child or young person and they will receive the level of support that they require;
- improving communication and building trust between parties to create an environment where the child, their parent and young person are treated as partners in the process and concerns can be addressed through open and constructive dialogue;
- reassuring parties that those involved in avoidance of disagreements are impartial to the outcome of any potential disagreements;
- ensuring decisions are explained in a way that is understandable to the child, child's parent or young person;
- explaining the legislation underpinning decisions that are taken and support the child, child's parents or young person to challenge these, signposting to independent advocacy services as required;
- providing an early opportunity to question decisions, which is key to avoiding disputes and ensuring that, issues are presented and dealt with promptly, rather than becoming entrenched;
- supporting the examination of the IDP to understand how the decisions made were reached and see if there is any evidence that has not been taken account of.

25.20 Independent advocates and, if they have been appointed, case friends, may have a critical role to play in the effective functioning of the arrangements for avoiding disagreements. See paragraphs 25.55 – 25.73 for more information about independent advocacy services, and Chapter 27 for guidance on case friends.

Arrangements to resolve disagreements

- 25.21 Where it has not been possible to prevent disagreements arising, the disagreements **should** be resolved as quickly and efficiently as possible. Early resolution of disagreements significantly benefits the child or young person and can avoid unnecessary stress for the individuals and their family, for example if a matter ultimately has to be resolved at the Tribunal.
- 25.22 Local authorities **must**¹³ make arrangements for resolving disagreements between a maintained school, FEI, local authority and proprietor of a relevant institution, and a child, child's parent or young person. These arrangements **must**¹⁴ cover the way that schools/FEIs/local authorities undertake their duties under the Act and the way that ALP is made and delivered, including if it is felt that the ALP is not being delivered in a suitable manner or to a suitable quality.
- 25.23 In the first instance the child, child's parent or young person **should** be supported to raise their concerns at the most suitable local level. In many instances this will be with the education setting that the child or young person attends, e.g. the pre-school setting, school or FEI.
- 25.24 Local authorities should consider how their arrangements can incorporate or complement existing complaint procedures which exist within schools and FEIs in order to ensure that disagreements can be resolved as soon as possible at the most local level possible.
- 25.25 The purpose of resolution disagreement services is to be a positive way of resolving disagreements quickly. The arrangements can help resolve the issues and provide the opportunity to restore or improve the relationship between the child, child's parent or the young person and the school, FEI or local authority and help foster the understanding that the child or young person is central, with everyone working together to support the child or young person.
- 25.26 Furthermore, where a maintained school has made a decision that a child or young person has ALN, or has refused to make a decision, the child, child's parent or young person has an opportunity to request that the local authority reconsiders the matter¹⁵. Similarly, if a school maintains an IDP for a child or young person and the child, child's parent or young person considers that the IDP does not meet the needs of the child or young person, then the local authority can be asked to reconsider and revise the plan¹⁶.
- 25.27 The local authority's disagreement resolution arrangements should deal with any questions from the child, child's parent or young person. It should be

¹³ Section 68(1) and (2) of the Act.

¹⁴ Requirement of the Code.

¹⁵ Section 26 of the Act.

¹⁶ Section 27 of the Act.

explained that the arrangements are informal and accessible, and provide a simple process designed to bring two parties together to clarify the issues and reach a resolution.

25.28 Using the disagreement resolution arrangements will generally reduce the need to take a dispute to the Tribunal, and lead to a quicker resolution of any disagreements saving significant time and money for the parties involved, and minimising disruption to the child or young person's learning.

25.29 The aims of disagreement resolution are to:

- help bring together the relevant parties;
- support the needs of the child and young person;
- help to achieve early and informal resolution of disagreements through discussion and agreement;
- discuss the full range of options;
- ensure the minimum disruption to the child or young person's education.

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

25.31 When a child, child's parent or young person decides to use the disagreement resolution arrangements, the parties **should** arrange to meet at a time suited to all and an open communication channel **should** be kept with prompt responses to any requests. This **should** be arranged at the earliest possible opportunity to enable a prompt resolution. The child, child's parent or young person **must**¹⁷ be supported to make their views known.

25.32 For example, good use of resolving disagreement arrangements should:

- narrow down the areas of disagreement in one or more component parts of a dispute;
- identify points of difference whilst maintaining or creating good working relationships between the parties;
- unlock provision of further information or assist parties to agree key facts;
- clarify the key questions which need to be answered in order to resolve the dispute; and
- try to reach agreements on particular points.

25.33 The arrangements can include aspects such as pre meeting conversations with both sides of the disagreement, a neutral venue within an agreed timescale (there may need to be more than one meeting) and an 'agreements reached' and/or 'agreement to disagree' statement following the process.

¹⁷ Under Section 6 of the Act.

Independence of persons helping to resolve disagreements

25.34 As part of the disagreement resolution arrangements, the local authority **must**¹⁸ include provision for parties to the disagreement to access help in resolving that disagreement from persons who are independent of the parties.

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

- training and experience in disagreement resolution, e.g. mediation;
- counselling and negotiating skills;
- the ability to establish and maintain effective communications;
- knowledge of ALN legislation, associated regulations, this Code and other relevant educational issues; and
- the capacity to maintain confidentiality and impartiality.

This list is not exhaustive.

25.36 The person should have no previous involvement with the child, family or young person and should have no vested interest in the outcome. The independent person can help parties discuss the disagreement and find a mutually acceptable solution.

The involvement of health bodies in avoiding and resolving disagreement arrangements

25.37 Whilst the child, child's parent or young person is engaging in the local authorities' avoiding disagreement arrangements, or resolving disagreement arrangements, the local authority **should** consider whether it would be beneficial to involve the relevant NHS body in these arrangements. This might be where the child, child's parent or young person raises concerns in relation to health, or ALP which a health body is responsible for.

25.38 When a local authority believes it would be beneficial for a NHS body to be involved in avoidance and disagreement resolution arrangements, they should contact the relevant DECLO to seek their advice. This should form part of the DECLO's role (see Chapter 15).

25.39 The DECLO should consider whether the involvement of NHS bodies in the arrangements can help to resolve disagreements and partake in the arrangements where they believe this to be the case.

25.40 As well as using the local authorities' avoidance of disagreement arrangements and disagreement resolution arrangements, where there is a

¹⁸ Section 68(3) of the Act.

concern surrounding the involvement of health or the provision provided by NHS bodies, then the child, child's parent or young person **should** be encouraged to discuss their concern with the health provider.

- 25.41 The Welsh Government has put in place arrangements for the management of concerns and complaints relating to the NHS in Wales: *Putting Things Right*¹⁹. Putting Things Right is based upon an integrated approach, bringing together the management of complaints, incidents and claims and is based upon the principle 'investigate once, investigate well.'
- 25.42 Where it becomes apparent to the local authority that the concern, disagreement or complaint relates to health, whether it relates to an assessment, treatment or service provided by the NHS, or any other concern, then the local authority **should** direct the child, child's parent or young person to use Putting Things Right.
- 25.43 In certain circumstances, both the arrangements made by the local authority to resolve disagreements and the Putting Things Right process may be followed for the same dispute. Although this is likely to be infrequent, the local authority and DECLO **should** make arrangements to allow a single point of contact to attempt resolution. Where advocacy or support for the child, young person or family member is required, this **should** also be undertaken by a single individual.

Interrelationship with the Tribunal

- 25.44 Using disagreement resolution arrangements, or deciding not to use them, do not affect the rights to appeal to the Tribunal. No inference may be drawn by the Tribunal if the child, child's parent or young person involved in the disagreement has not used the disagreement resolution arrangements. See Chapter 26 for information on appeals to the Tribunal.
- 25.45 Disagreement resolution meetings are confidential and without prejudice to the Tribunal process. The Tribunal may cover similar ground to that explored through the disagreement resolution arrangement but will reach its own independent findings and conclusions. Partial agreement achieved by using such arrangements can help to focus on the remaining areas of disagreement in any subsequent appeal to the Tribunal.
- 25.46 Following an appeal, the local authority's arrangements could also support the family and local authority to work together and prevent further disagreements.

¹⁹Information on Putting Things Right can be found at: www.wales.nhs.uk/sites3/home.cfm?orgid=932

Other means of challenge

- 25.47 In addition to appeals to the Education Tribunal for Wales (the grounds for which are set out in Chapter 26), there are several other means by which learners and their families can challenge a public body if they feel that that body has failed to carry out their public duties, including those duties made under the Act.
- 25.48 As set out in paragraph 25.42 above, in relation to NHS bodies, a child, their parent or a young person can make a complaint to the NHS Putting Things Right service.
- 25.49 The Public Services Ombudsman for Wales can consider complaints about any public service provider, including complaints relating to health and any public sector body in Wales, including local authorities and NHS bodies.
- 25.50 Parents and young people can make an application to the Administrative Court for judicial review in relation to the lawfulness of a decision or action made by a public body, including the procedures used to reach the decision. There are strict time limits for bringing such actions. The Administrative Court²⁰ can consider decisions of local authorities in the exercise of their duties, including decisions about additional learning needs for children and young people. For example, a judicial review in relation to an IDP may be a review of the way in which decisions that are reflected in the plan were made rather than the merits of these decisions. An application for judicial review will be considered only once all other options for remedy have been exhausted.
- 25.51 Complaints and issues relating to the ALN system can also be reported to Welsh Ministers, who have powers of intervention in relation to local authorities and schools in respect of education matters.
- 25.52 These are powers for the Welsh Ministers to intervene in local authorities where there are failures to properly discharge education functions, where they are acting unreasonably or where they are failing to perform education functions to an adequate standard. There are also powers to issue warning notices and issue directions which local authorities **must**²¹ comply with. Failures to comply with directions can be enforced at the High Court by order on the application of the Welsh Ministers.
- 25.53 The Welsh Ministers also have separate powers in respect of FEIs, for example where they have failed to discharge duties or have acted unreasonably²².

²⁰ Administrative Court: <https://www.judiciary.gov.uk/you-and-the-judiciary/going-to-court/high-court/queens-bench-division/courts-of-the-queens-bench-division/administrative-court/>

²¹ Under the School Standards and Organisation (Wales) Act 2013

²² Under section 57 of the Further and Higher Education Act 1992

25.54 The Public Services Ombudsman, Welsh Ministers and the Administrative Court have the power to make decisions about whether a local authority was behaving unlawfully or irrationally when reaching a decision.

Independent advocacy services

25.55 Local authorities **must**²³:

- (a) make arrangements for the provision of independent advocacy services for the children and young people for whom it is responsible;
- (b) refer any child or young person for whom it is responsible who requests independent advocacy services to an independent advocacy service provider; and
- (c) refer any person who is a case friend for a child or young person for whom it is responsible and who requests independent advocacy services to an independent advocacy service provider.

25.56 For the purposes of the duties in paragraph 25.55, the responsible local authority is:

- in the case of a child or young person who resides ‘in the area’ of a local authority in England but is a registered pupil at a maintained school in Wales or is enrolled at an FEI in Wales, the authority that maintains the school in Wales or in whose area the FEI is located²⁴;
- in the case of a looked after child, the authority that looks after the child²⁵;
- in the case of all other children and young people, the local authority in whose area the child or young person resides.

25.57 Independent advocacy services provide expert advice and assistance, by way of representation or otherwise, to a child, young person, a child’s case friend, where the child or young person is:

- making, or intending to make, an appeal to the Tribunal;
- considering whether to appeal to the Tribunal; or
- taking part, or intending to take part, in arrangements for avoiding or resolving disagreement.

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

- assist the child or young person to communicate their views, wishes and feelings and ensure that the child or young person is heard and listened to;

²³ Section 69 of the Act.

²⁴ Section 87(4) of the Act.

²⁵ Section 68(8) of the Act.

- speak on behalf of the child or young person where the child or young person is not able to communicate their views, wishes or feelings, or only partly able to express their views, wishes or feelings;
- work with the child or young person and support them by providing information, advice and support;
- support the child or young person to understand their needs, understand the relevant processes, understand their rights, take an active participation in decision making and understand the implications of any decisions made;
- give information to the child or young person, help them understand their options and make informed decisions, and support them to challenge the local authority or FEI where they feel their needs are not being met;
- assist the child or young person to seek resolution to any problems or concerns which have been identified by the child or young person, help the child or young person to clarify the complaint and help them to understand the outcomes they are seeking;
- provide children and young people with support from any emotional challenges which arise from the process, such as expressing a different view from their parents.

25.59 Local authorities **must**²⁶ ensure independent advocacy services are known to:

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

25.60 The local authority **must**²⁷ also promote the use of independent advocacy services, for example by ensuring that children, their parents and young people receive details of the arrangements when they receive notice of a decision by the local authority. Chapters 8, 9, 10, 11, 12, 16 and 21 sets out the duties to provide information about the arrangements when a decision has been made not to prepare a plan, a revised IDP is being proposed, or a decision has been made to cease to maintain an IDP. Other similar opportunities to provide information will also arise.

25.61 Local authorities are responsible for ensuring that the independent advocacy services for children and young people with ALN are appropriate and of suitable quality. In delivering these arrangements, the local authority **must**²⁸ ensure that the advocacy service:

- (a) is well-publicised (for example, through leaflets, posters, websites, face-to-face contact centres, and telephone helplines) and easy to access;

²⁶ Requirement of the Code.

²⁷ Requirement of the Code.

²⁸ Requirement of the Code.

- (b) has a clear and easy to use complaints procedure, encourages feedback and utilises feedback to drive improvement;
- (c) is responsive and provides help and advice quickly when contacted;
- (d) has clear funding and budgeting plans, has adequate resources and is well managed and provide value for money.

25.62 The local authority **must**²⁹ ensure its advocacy service is provided free of charge at the point of delivery.

25.63 The local authority **must**³⁰ ensure that all advocates:

- (a) understand the ALN system including the arrangements for avoiding and resolving disputes and Tribunal procedures;
- (b) are suitably trained, including in communicating with children and young people and those with communication difficulties, and continue to receive appropriate training and development to undertake their role effectively and to improve standards;
- (c) have relevant knowledge of the child's or young person's ALN;
- (d) maintain confidential records;
- (e) are not on the children's barred list (in the case of advocates for children) or the adults' barred list (in the case of advocates for young people who are considered to be "at risk"³¹). If this information is not held by the advocacy providers, the local authority **must**³² ensure the advocates apply for an enhanced level disclosure and barred list check from the Disclosure and Barring Service before they can proceed.

25.64 Whilst children and young people can choose to ask for advocacy, local authorities **should** actively offer the chance to use an advocate whenever necessary. If the offer is initially declined, it should still be offered at regular intervals or whenever necessary, such as during an IDP review meeting. Staff should be suitably skilled to identify those children and young people who would benefit from having an advocate.

25.65 The local authority, school and FEI **should** take reasonable steps to assist the advocate in carrying out their role, for example letting other agencies know that an advocate is supporting a child or young person, facilitating access to the child or young person, and if appropriate, to relevant information. Relevant persons **should** recognise the advocate's role in supporting and representing the child or young person.

Independence of advocacy services

25.66 The independence of the advocate is essential to enable them to effectively act on behalf of the individual.

²⁹ Section 49 of the Act.

³⁰ Requirement of the Code.

³¹ Under section 126 of the Social Services and Well-being (Wales) Act 2014.

³² Requirement of the Code.

25.67 The local authority **must**³³ have regard to the principle that any advocacy services provided for children and young people with ALN must be independent of any person who is:

- (a) the subject of an appeal to the Tribunal; or
- (b) involved in investigating or adjudicating on such an appeal.

25.68 Current practice in Wales is to achieve independence by commissioning advocacy services from an external provider. To preserve independence of advocacy, services providing advocacy **should** be funded and managed in a way that ensures independence from the commissioning organisation. Commissioners and service providers **should** ensure that any issues of challenge and conflict are transparent and robust, and identified and addressed in the service level agreement between the commissioner and service provider.

Advocacy provided under other legislation

25.69 The local authority **should** consider whether providing advocacy under the Act may be best provided in connection with the local authorities' duties to provide advocacy under other Acts.

25.70 In these circumstances, consideration **should** be given to maximise the opportunities to secure continuity in individuals' advocacy needs, this should include reducing the need for the individual to have to repeat their experiences and desired outcomes to different advocates. Wherever possible, the parties **should** seek to agree a single advocate to support the person.

25.71 For example, a looked after child may also have ALN, and would therefore be entitled to an advocate under the ALN system and under the Social Services and Well-being (Wales) Act 2014, which imposes duties on local authorities to provide advocacy services for a looked after child or a child in need. Where this happens, the local authority **should** ensure that the advocate is suitably qualified to provide advocacy and understand both systems they are providing advocacy on.

Local authorities providing independent advocates to act as case friends

25.72 In most cases, a child will use a close family member or an adult they know and trust to be their case friend. However, there may be circumstances when a child requires a case friend but not have someone they know to ask to act as their case friend. For instance, where the Tribunal decides that a child who brings a case or an appeal without a case friend is found to be lacking in capacity, the Tribunal **should** halt proceedings until the child has a case friend.

³³ Section 69(3) of the Act.

25.73 Independent advocates **may** also apply to the Tribunal to become a child's case friend. This may happen when a child requires a case friend but does not have a family member, or a close and trusted adult to ask.

Chapter 26: Appeals and applications to the Education Tribunal for Wales

Introduction

- 26.1 The Tribunal hears and decides appeals and applications in relation to children and young people who have or may have ALN. Specifically, it hears and decides appeals about the decisions of an FEI or a local authority in Wales. It also hears disability discrimination claims in relation to schools; however this chapter focuses solely on appeals relating to ALN. The Tribunal is independent of government, local authorities, schools and FEIs; and its decisions are legally binding.
- 26.2 The Education Tribunal for Wales Regulations, made under the Act¹, set out the procedures to be followed in proceedings before the Tribunal. This includes the initiation of an appeal and the proceedings that follow.
- 26.3 The Tribunal provides on its website advice and guidance on the appeals process and the procedures to be followed.
- 26.4 In addition to appeals to the Education Tribunal for Wales, there are several other means by which learners and their families can challenge a public body if they feel that that body has failed to carry out their public duties, including those duties made under the Act. These are set out in Chapter 25, paragraphs 25.47-25.54.

Matters about which appeals can be made

- 26.5 A child, child's parent or young person **may**² appeal to the Tribunal about:
- a decision by a FEI³ or local authority⁴ as to whether the child or young person has ALN;
 - in the case of a young person, a decision by a local authority⁵ as to whether it is necessary to prepare and maintain an IDP;
 - the description of a person's ALN in an IDP;
 - the ALP in an IDP, or the fact that ALP is not in an IDP, including whether the plan specifies that ALP should be provided in Welsh;

¹ Sections 74(1), 75(1), 75(2), 75(4), 76(3), 77, 91(6) and 92(2) of the 2018 Act.

² Section 70 of the Act.

³ Section 11 of the Act

⁴ Sections 13, 18 and 26 of the Act

⁵ Section 14(1)(c)(ii) of the Act

- the provision included in an individual development plan by a local authority under sections 14(6) or 19(4) or the fact that provision under those sections is not in a plan (this relates to where the reasonable needs of the child or young person cannot be met unless the local authority also secures board and lodging or a place at a particular school or other institution⁶);
- the school named in an IDP for the purpose of admitting a child to a named institution⁷, or if no school is named in an IDP for the purpose of admission;
- a decision by the local authority not to revise an IDP where the local authority has been asked by a child, child's parent or young person to reconsider an IDP maintained by a maintained school⁸;
- a decision by the local authority not to take over responsibility for an IDP, which is maintained by a school, where it is requested to do so by a child or their parent, a young person or the governing body of that school⁹;
- a decision to cease to maintain an IDP¹⁰; and
- a refusal to decide a matter on the basis that there is no material change in needs and no new information that materially affects the decision¹¹.

26.6 A detained person, or the parent of a detained person who is a child, **may**¹² appeal to the Tribunal against the following matters:

- a decision of the home authority as to whether a detained person has ALN;
- a decision of the home authority as to whether it will be necessary to maintain an IDP for a detained person when they are released from detention;
- the description of a person's ALN in an IDP;
- the ALP in an IDP, or the fact that ALP is not included in the plan, including whether the plan specifies that ALP should be in Welsh (this will be the ALP applicable on release from detention);
- the provision included in an IDP under section 40(7) of the Act, or the fact that provision under that section is not in the plan;
- the school named in an IDP for the purpose of securing admission to the school (which would be admission on release from detention);
- if no school is named in an IDP for that purpose; and
- a refusal to decide whether a detained person has ALN on the basis that the home authority has previously made such a decision,

⁶ Sections 14(6) or 19(4) of the Act

⁷ Section 48 of the Act

⁸ Section 27 of the Act

⁹ Section 28 of the Act

¹⁰ Sections 31(5) and 31(6) of the Act

¹¹ Where sections 11(3)(b), 13(2)(b), 18(2)(b) or 29(2)(a) apply

¹² Section 72 of the Act

the person's needs have not changed materially and there is no new information materially affecting either that decision or a decision as to whether a plan will be necessary on release.

- 26.7 A child or a child's parent **may**¹³ apply to the Tribunal for a declaration that the child either does or does not have the capacity to understand¹⁴:
- information or documents that are required to be given to a child under Part 2 of the Act; or
 - what it means to exercise the rights conferred on a child by Part 2.

Decisions the Tribunal can make

- 26.8 On appeal, the Tribunal **may**¹⁵:
- dismiss the appeal;
 - order that a person has, or does not have, ALN of a kind specified in the order;
 - order an FEI or local authority to prepare an IDP;
 - order an FEI or local authority to revise an IDP as specified in an order;
 - order a school, FEI or local authority to continue to maintain an IDP (with or without revisions);
 - order a local authority to take over responsibility for maintaining an IDP;
 - order an FEI or a local authority to review an IDP; and
 - remit the case to an FEI or local authority responsible for the matter for it to reconsider whether, having regard to any observations made by the Tribunal, it is necessary for a different decision to be made or different action to be taken.
- 26.9 On appeals in relation to detained persons, the Tribunal **may**¹⁶:
- dismiss the appeal;
 - order that the person has or does not have ALN of a kind specified in the order;
 - order the home authority to prepare an IDP;
 - order the home authority to revise an IDP as specified in the order;
 - remit the case to the home authority responsible for the matter for it to reconsider whether, having regard to any observations made by

¹³ Section 70(3) of the Act.

¹⁴ Section 84 of the Act.

¹⁵ Sections 71 and 73 of the Act.

¹⁶ Section 73 of the Act.

the Tribunal, it is necessary for a different decision to be made or different action to be taken.

26.10 Children can bring their own appeals to the Tribunal if they have sufficient understanding to do so. The Tribunal can therefore make decisions about a child's ability to understand matters relating to the ALN system, including what it means to bring an appeal to the Tribunal. The Tribunal **may**¹⁷:

- when asked to by a child or child's parent¹⁸, declare that the child either does or does not have the capacity to understand information or documents to be given to a child under Part 2 of the Act, or what it means to exercise the rights conferred on a child by Part¹⁹; and
- where it has declared that the child lacks such capacity to understand, appoint a case friend for the child who is bringing an appeal in their own name (and remove a person as the case friend for that child where appropriate)²⁰ (see Chapter 27 for information about case friends).

Timescales relating to the appeals process and compliance with orders

26.11 The Education Tribunal for Wales Regulations set out the timescales in relation to appeals and the appeals process to be adhered to by appellants, local authorities, FEIs, schools and NHS bodies, as appropriate. This includes the period within which:

- an appeal application and supporting case statement **must**^{21,22} be received by the Tribunal;
- a case statement **must**²³ be provided to the Tribunal by the FEI or local authority concerned;
- a Tribunal order **must**²⁴ be complied with;
- and
- an NHS body **must**²⁵ report back to the Tribunal in relation to a recommendation made by a Tribunal panel.

This list is not exhaustive.

¹⁷ Section 71(2) of the Act.

¹⁸ Section 70(3) of the Act.

¹⁹ Section 71 of the Act.

²⁰ Section 85 of the Act.

²¹ Regulation 12(1) of the draft Education Tribunal for Wales Regulations.

²² Regulation 19(1) of the draft Education Tribunal for Wales Regulations.

²³ Regulation 19(3) of the draft Education Tribunal for Wales Regulations.

²⁴ Regulation 60 of the draft Education Tribunal for Wales Regulations.

²⁵ Regulation 65 of the draft Education Tribunal for Wales Regulations.

- 26.12 At any point during Tribunal proceedings, any party to the proceedings **may**²⁶ apply for a stay in proceedings to consider alternative dispute resolution or settlement. All proceedings, including timescales, would be paused if the stay is approved and would recommence at the end of the stay period as specified by the Tribunal.
- 26.13 There are no exceptions to the timescales set out in the regulations. However a local authority or FEI concerned **may**²⁷ apply to the Tribunal for an extension to a timescale. The local authority or FEI **should** set out in its application the reasons for requesting an extension. The Tribunal **may**²⁸ extend a timescale at its discretion if it considers it fair and just to do so.

Appeal application and case statement period

- 26.14 An appeal application and the supporting case statement (evidence) **must**^{29,30} be received in writing by the Tribunal no later than the first working day after the expiry of 8 weeks beginning with the date when the notice³¹ of the decision of the local authority or the FEI was given.
- 26.15 The Secretary of the Tribunal **must**³² send the appeal application and any accompanying documents, including the full case statement (which may or may not have been submitted by the appellant at the same time that they submitted the initial appeal application), to the relevant FEI or local authority when the Tribunal receives the documents. The respondent FEI or local authority **must**³³ submit their case statement in response to the appeal within 4 weeks of being served a copy of the appellant's or claimant's case statement by the Tribunal.

Timescales relating to compliance with an order

- 26.16 If the Tribunal makes an order following a hearing, the local authority or FEI concerned **must**³⁴ comply with that order and provide copies of relevant documents (e.g. a revised IDP) to the child, child's parent or young person within the timescale specified in the Education Tribunal

²⁶ Regulation 8(2) of the draft Education Tribunal Regulations.

²⁷ Regulation 66(1) of the draft Education Tribunal for Wales Regulations.

²⁸ Regulation 66(2) of the draft Education Tribunal for Wales Regulations.

²⁹ Regulation 12(1) of the draft Education Tribunal for Wales Regulations.

³⁰ Regulation 19(1) of the draft Education Tribunal for Wales Regulations.

³¹ Further guidance on giving notice or documents is provided in Chapter 1.

³² Regulation 15(2)(a) of the draft Education Tribunal for Wales Regulations.

³³ Regulation 19(4) of the draft Education Tribunal for Wales Regulations.

³⁴ Section 77(1) of the Act.

for Wales Regulations; these timescales are set out as follows. In the case of an order:

- (a) against a local authority to prepare an IDP, it **must**³⁵ prepare and give a copy of the IDP to the child, child's parent or young person within 7 weeks;
- (b) against a FEI to prepare an IDP, it **must**³⁶ prepare and give a copy of the IDP to the young person within 35 term time days;
- (c) against a local authority to revise an IDP, it **must**³⁷ revise the IDP and give a copy of it to the child, child's parent or young person within 7 weeks;
- (d) against an FEI to revise an IDP, it **must**³⁸ revise the IDP and give a copy of it to the young person within 35 terms time days;
- (e) to continue to maintain an IDP (with or without revisions), it **must**³⁹ do so with immediate effect.
- (f) against a local authority to take over responsibility for maintaining an IDP, it **must**⁴⁰ do so from the date specified by the Tribunal.
- (g) against a local authority to review an IDP, it **must**⁴¹ undertake the review and notify⁴² the child, child's parent or young person of the outcome of the review, in writing, within 7 weeks,
- (h) against an FEI in Wales to review an IDP, it **must**⁴³ undertake the review and inform the young person of the outcome of the review, in writing within 35 term time days;
- (i) to remit the case to the local authority responsible for the matter for it to reconsider whether, having regard to any observations made by the Tribunal, it is necessary for a different decision to be made or a different action to be taken, the local authority **must**⁴⁴ do so, and notify⁴⁵ the child, child's parent or young person of the outcome of that reconsideration within 7 weeks:
- (j) to remit the case to the FEI responsible for the matter for it to reconsider whether, having regard to any observations made by the tribunal, it is necessary for a different decision to be made or a different action to be taken, the FEI **must**⁴⁶ do so, and notify the child, child's parent or young person of the outcome of that reconsideration within 35 term days.

³⁵ Regulation 60(2)(a) of the draft Education Tribunal for Wales Regulations.

³⁶ Regulation 60(2)(b) of the draft Education Tribunal for Wales Regulations.

³⁷ Regulation 60(2)(c) of the draft Education Tribunal for Wales Regulations.

³⁸ Regulation 60(2)(d) of the draft Education Tribunal for Wales Regulations.

³⁹ Regulation 60(2)(e) of the draft Education Tribunal for Wales Regulations.

⁴⁰ Regulation 60(2)(f) of the draft Education Tribunal for Wales Regulations.

⁴¹ Regulation 60(2)(g) of the draft Education Tribunal for Wales Regulations.

⁴² Further guidance on giving notice or documents is provided in Chapter 1.

⁴³ Regulation 60(2)(h) of the draft Education Tribunal for Wales Regulations.

⁴⁴ Regulation 60(2)(i) of the draft Education Tribunal for Wales Regulations.

⁴⁵ Further guidance on giving notice or documents is provided in Chapter 1.

⁴⁶ Regulation 60(2)(j) of the draft Education Tribunal for Wales Regulations.

- 26.17 The Tribunal, following a hearing about an appeal relating to a detained child or young person, **may**⁴⁷ make an order requiring the relevant home authority to perform the actions set out in a) c) or i) of the list set out under paragraph 26.16. If the Tribunal makes such an order, the home authority **must**⁴⁸ perform that action within 7 weeks.
- 26.18 The FEI or local authority concerned **must**⁴⁹ make a report to the Tribunal stating whether and how it has complied with the order before the end of a period of 14 days beginning with the first day after end of the period prescribed.
- 26.19 As set out in paragraph 26.13 above, these timescales **may**⁵⁰ only be extended at the discretion of the Tribunal following an application from a local authority or FEI.

NHS bodies: evidence and tribunal recommendations

- 26.20 In relation to an appeal made under Part 2 of the Act, the Tribunal **may**^{51,52} require an NHS body to provide evidence about the exercise of the body's functions and make recommendations to an NHS body about the exercise of the body's functions.
- 26.21 If the Tribunal makes a recommendation to an NHS body, that body **must**⁵³ report to the Tribunal, within 6 weeks beginning with the date on which the recommendation was made. The report **must**⁵⁴ state:
- the action the NHS body has taken or proposes to take in response to the Tribunal's recommendation; or
 - why the body has not taken and does not propose to take any action in response to the recommendation.

Reviews of and appeals against decisions of the Tribunal

Reviews

- 26.22 A party to proceedings **may**⁵⁵ apply to the Secretary of the Tribunal for a decision of the Tribunal panel to be reviewed on the grounds that:

⁴⁷ Section 73 of the Act

⁴⁸ Regulations 60(4)(a), (b) and (c) of the draft Education Tribunal for Wales Regulations.

⁴⁹ Section 77(2) of the Act

⁵⁰ Regulation 66 of the draft Education Tribunal for Wales Regulations.

⁵¹ Section 76(1)(a) of the Act

⁵² Section 76(1)(b) of the Act

⁵³ Regulation 65(1) of the draft Education Tribunal for Wales Regulations.

⁵⁴ Section 76(4) of the Act

⁵⁵ Regulation 55(1) of the draft Education Tribunal for Wales Regulations.

- (a) the decision was wrongly made as a result of a material error on the part of the Tribunal administration;
- (b) a party, who was entitled to be heard at the hearing but failed to appear or to be represented, had good and sufficient reason for failing to appear;
- (c) there was an obvious and material error in the decision; or
- (d) the interests of justice so require.

26.23 The President or Chair of the Tribunal panel that made the decision **may**⁵⁶ review and set aside or vary any decision accordingly, or refuse an application to review their decision if they consider that it would have no reasonable chance of success. The review of a decision **must**⁵⁷ only be determined after the parties concerned have had an opportunity to be heard.

Appeals

26.24 A party to any proceedings before the Tribunal **may**⁵⁸ appeal to the Upper Tribunal on any point of law arising from a decision made by the Tribunal. An appeal to the Upper Tribunal **may**⁵⁹ be brought forward only if the Tribunal or the Upper Tribunal has given its permission for the appeal to be brought.

26.25 This means that if a child, child's parent or young person considers the decision of the Tribunal is wrong in law they can appeal to the Administrative Appeals Chamber of the Upper Tribunal. The Upper Tribunal will not consider the merits of the case, or hear any disagreements arising from the case, except for on points of law.

⁵⁶ Regulations 55(3) and (4) of the draft Education Tribunal for Wales Regulations.

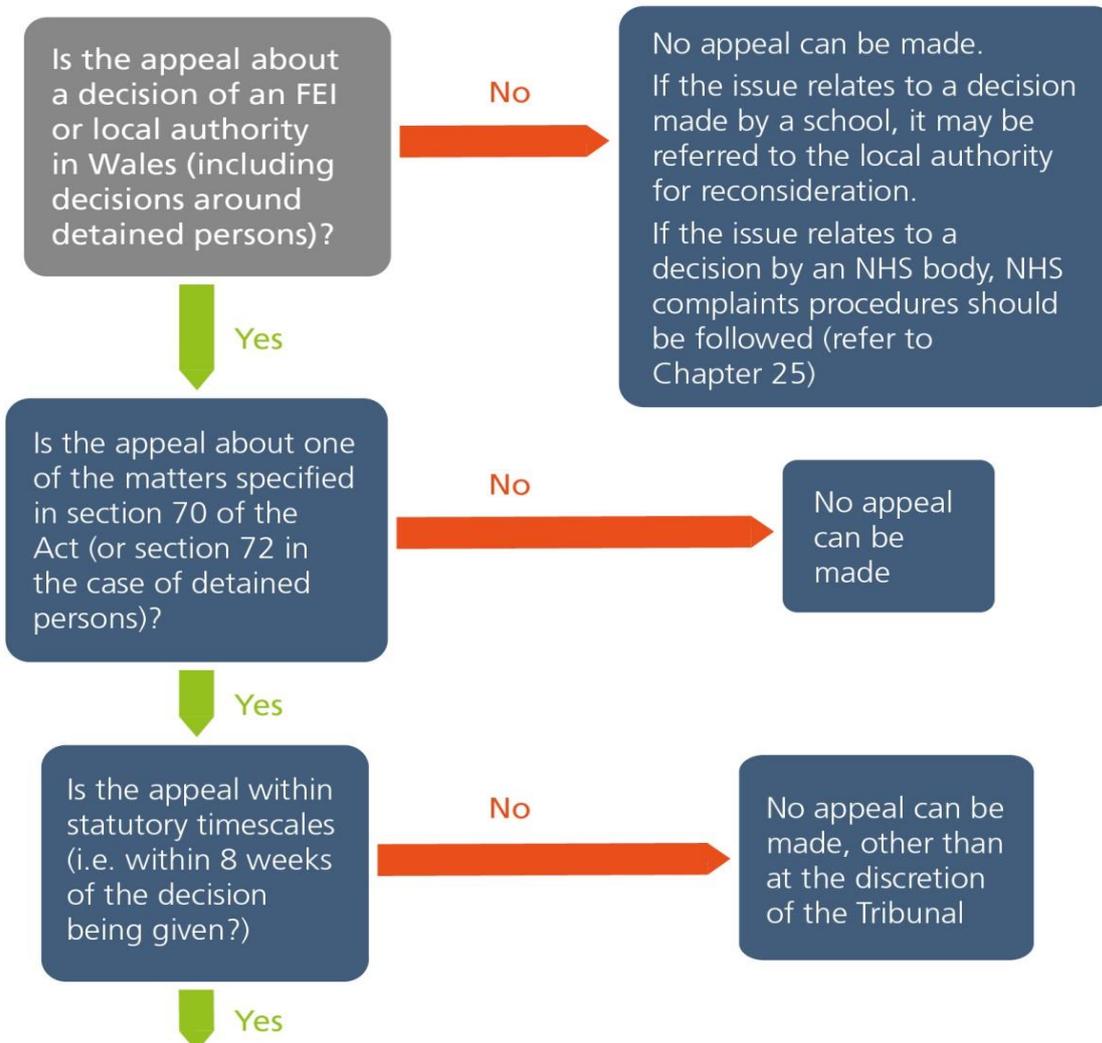
⁵⁷ Regulation 55(7) of the draft Education Tribunal for Wales Regulations.

⁵⁸ Section 81(1) of the Act.

⁵⁹ Section 81(2) of the Act

Appealing a decision to the education tribunal for Wales

Where the child, child's parents, young person or case friend on behalf of the child wishes to make an appeal to the Education Tribunal, the process is outlined below:



The Appeal Process



Compliance and Reporting

In relation to orders, the local authority or FEI concerned must comply with the order within the timescales specified (paragraph 26.16) and report on their compliance.

In relation to recommendations to NHS bodies, the body concerned must report to the Tribunal within 6 weeks explaining the action it has taken or plans to take in response to the recommendation, or why it has not taken and does not propose to take any action.

Please note that English resident children attending school in Wales have slightly varied appeal rights

Chapter 27: Case friends for children who lack capacity

Introduction

- 27.1 This chapter explains how a child who lacks capacity as defined in the Act can use a case friend to act on their behalf when exercising certain rights. It also provides information on the role of a case friend, and how they are appointed and removed by the Tribunal.
- 27.2 Whether a child has capacity or not, they can still make significant contributions when decisions are being made about their ALN and **must**¹ be provided with information and support to enable them to participate in those decisions (see Chapter 3). If a child is lacking capacity, the general duty² on those exercising functions under the Act to have regard to the following still applies:
- a child's views, wishes and feelings,
 - the importance of a child participating as fully as possible in decisions; and
 - the importance of a child being provided with the information and support necessary to enable participation in those decisions.
- 27.3 For children in the ALN system, capacity specifically relates to their ability to understand matters relating to the ALN system (see paragraph 27.5).
- 27.4 In order to ensure their voices are heard and respected, and to enable them to exercise their rights under the ALN system, children who lack capacity **can**³ access a case friend to represent, support and take decisions on their behalf. Case friends are particularly important when a child who lacks capacity wishes or needs to bring appeals in their own name, for example, when they do not have a parent who is willing or able to pursue dispute resolution or bring a case to the Tribunal for the child.

Children who lack capacity

- 27.5 The Act provides that children who lack the capacity to understand⁴:
- information or documents that must be given to them in relation to their ALN or

¹ Section 6 of the Act.

² Under section 6 of the Act.

³ Section 85 of the Act.

⁴ Section 83 of the Act.

- what it means to exercise the rights conferred on them under the ALN system

do not have capacity for the purposes of the Act. In some cases, the reason for the child's lack of capacity will be the child's young age. In other cases, the reason could be the child's ALN. A child's capacity to understand can change over time.

27.6 If a local authority, school, FEI or NHS body considers that a child lacks capacity, then the following specific duties or conditions, do not apply⁵:

- the duty to notify or inform a child⁶ (see Chapter 1);
- the duty to give a copy of a plan or a revised plan to a child⁷ (see Chapter 16);
- the duty to inform the child a body intends to refer a matter to an NHS body, and has given the child an opportunity to discuss whether the referral should be made⁸ (see Chapter 15);
- the duty to review a plan following a request by a child⁹ (see Chapter 16);
- the duty to reconsider following a request by a child¹⁰ (see Chapter 17);
- the duty to decide whether a local authority takes over a governing body maintained plan following a request by a child¹¹ (see Chapter 17).

27.7 The exceptions mentioned above (in paragraph 27.6) do not include the equivalent duties relating to a child's parent. Parents will continue to have these rights (and can use them alongside the rights of the child's case friend if one has been appointed).

Assessing the capacity of children

27.8 In most cases, the teachers in the school which the child attends will know whether or not a child has capacity because they work with the child on a daily basis. NHS bodies and local authorities can also assess capacity.

27.9 Where a child or the child's parent disagrees with a decision that a child does not have capacity, this can be challenged in the following ways:

- Decisions by schools that a child does or does not have capacity can be referred by a child or their parent, for local authority reconsideration. If the

⁵ These duties and conditions are those listed in section 84(1) of the Act.

⁶ Under sections 11(4), 13(3), 18(3), 22(2), 23(10), 24(9), 27(4), 28(4), 28(7), 31(7), 31(8), 31(9), 32(3), 40(4) or 42(6) of the Act. All these references cover the duties in the Act to notify or inform a child.

⁷ Under sections 22(1), 23(11), 24(10) or 40(5) of the Act.

⁸ As the conditions apply to a child under paragraphs (a) and (b) of section 20(3) of the Act.

⁹ Under section 23(8) or 24 (7)

¹⁰ Under section 26(1), 27(1) or 32(1)(b). These relate to the duties to reconsider whether the child or young person has ALN, to reconsider an IDP and decide whether to revise it or not and to reconsider the decision to cease maintaining an IDP.

¹¹ Under section 28(1) of the Act.

local authority decides that the child does have capacity, the specific rights conferred on the child are exercisable by the child¹²;

- A child or a child's parent may apply to the Tribunal for a declaration that a child does or does not have capacity¹³. Where the Tribunal declares that the child does have capacity, the specific rights conferred on the child are exercisable by the child; and;
- On the application of any person, or on its own initiative, the Tribunal may by order appoint a person to be a case friend for a child who does not have capacity. Where a case friend is appointed, the specific rights conferred on the child are to be exercised by the case friend on behalf of the child.

27.10 Where a child is found to have capacity, they will not be allowed a case friend, although alternative support will still be available to them¹⁴, for example they can access independent advocates.

27.11 The Tribunal may also make a determination of the child's capacity on its own initiative. For example, if a child is bringing an appeal on their own without a case friend, the Tribunal may make an assessment on the child's capacity and if the Tribunal believes the child does not understand what it means to exercise their rights, the Tribunal will halt proceedings until a case friend has been appointed.

27.12 In most cases, evidence from the child's teacher or other relevant professionals who know the child will be sufficient for the Tribunal to make their assessment on the child's capacity, but in some circumstances the Tribunal may require expert evidence to support their determination.

27.13 Whether the child does or does not have capacity will determine the type of representation and support made available to them, to enable them to exercise their rights under the Act. Case friends are only available to children who lack capacity. Other children wishing to bring their own claims can access independent advocacy services¹⁵.

Case friends for children who lack capacity

27.14 The Act provides that a child who lacks capacity can have a person support them known as a "case friend". A case friend may:

- represent and support the child; and
- take decisions and act on behalf of the child.

¹² Section 84(5) and (6) of the Act.

¹³ Section 70(3) of the Act.

¹⁴ Sections 6 and 69 of the Act.

¹⁵ See Chapter 25 - Avoiding and Resolving Disagreements.

27.15 Case friends **must**¹⁶:

- (a) act fairly and competently;
- (b) have no interest adverse to that of the child;
- (c) ensure that all steps and decisions taken by the case friend are for the benefit of the child; and
- (d) take account of the child's views, so far as possible.

Purpose and functions of a case friend

27.16 Children, as well as parents, have rights to bring appeals to the Tribunal. Case friends allow children lacking capacity who need to bring their own case to have representation and a voice where, for example, their parents may not be able to bring and to pursue dispute resolution and appeals at the Tribunal. Where required, case friends can be used by the child at earlier stages prior to a more formal dispute resolution procedure or an appeal.

27.17 Case friends differ from independent advocates because they exercise the rights of the child on their behalf under certain provisions in the Act¹⁷; whereas independent advocates offer advice and assistance and representation¹⁸. Case friends listen to the child and work with them to ensure the child's voice is always represented in decisions affecting them.

27.18 A child will usually have a parent or guardian with them when discussing their ALN with a teacher or ALNCo, or when attending an IDP meeting. However, if a case friend has been appointed, they can also attend these meetings to support and represent them, and make decisions relating to their ALN.

27.19 If the child has a disagreement relating to their ALN, a case friend can access the arrangements made by local authorities for the avoidance and resolution of disagreements¹⁹. When making these arrangements, local authorities will need to be aware that case friends may be used and ensure any arrangements and procedures also involve the case friend, where appropriate. Early dispute resolution involving case friends can be useful in resolving issues at the earliest stage, avoiding a more formal and burdensome route to the Tribunal. See Chapter 25 for more information on avoiding and resolving disagreements.

27.20 If a disagreement does escalate to the Tribunal, case friends can be used during the hearing itself and during the formal process before and after the hearing. Although a child does not need the consent of their parent to make an appeal or claim to the Tribunal, the child **must**²⁰ have a case friend when bringing an appeal or claim in their own name if they lack capacity.

¹⁶ Section 85(6) of the Act.

¹⁷ Section 85(4) of the Act.

¹⁸ Section 69(2) of the Act.

¹⁹ Section 68 of the Act.

²⁰ Regulations to be made under section 85(8) of the Act.

- 27.21 If a case friend is used when a child is pursuing a case or an appeal with the Tribunal, the secretary of the Tribunal **must**²¹ send all the relevant information and documents relating to the appeal or case to the case friend instead of the child. See Chapter 26 for more information on appeals.
- 27.22 Independent advocacy services are also available for a child's case friend. Local authorities **must**²² refer a case friend to an independent advocacy service provider if the case friend has requested this service. Case friends acting on behalf of children may need support from someone with a detailed understanding of the ALN system.

Appointing and removing a case friend

- 27.23 Case friends can only be appointed or removed by order of the Tribunal²³.
- 27.24 The Tribunal may appoint a case friend on their own initiative, or on application of any other person.
- 27.25 When appointing a case friend on application, the Tribunal will judge their eligibility by assessing an application form containing a declaration of suitability completed by the person applying to be a case friend. The form is produced by the Tribunal and can be found on their website or by requesting one in writing. The form will also be used if an existing independent advocate is applying to be a child's case friend.
- 27.26 An application can be made to the Tribunal at any time the child needs a case friend to assist in their engagement with the ALN system. There is no requirement to wait to participate in the arrangements made for avoiding or resolving disagreements, or until an appeal has been sent to the Tribunal.
- 27.27 The application **must**²⁴ reflect the eligibility criteria which are based on four conditions a case friends **must**²⁵ follow (see paragraph 27.15).
- 27.28 A case friend will usually be a relative or a close family friend of the child. However, a case friend could be anyone that fulfils the eligibility criterion and is not on the children's barred list. An enhanced DBS check with barred list information **must**²⁶ also accompany the declaration of suitability form, unless the person wishing to be a case friend is a close family member (parent, step-parent, brother, step-brother, sister, step-sister, half brother, half sister, grandparent, uncle, aunt, nephew or niece).

²¹ Regulations to be made under section 85(8) of the Act.

²² Section 69(1)(c) of the Act.

²³ Section 85(2) of the Act.

²⁴ Regulations to be made under section 85(8) of the Act.

²⁵ Section 85(6) of the Act.

²⁶ Regulations to be made under section 85(8) of the Act.

- 27.29 The application **must**²⁷ also include the contact details of the person wishing to be a case friend, and **must**²⁸ contain the views of the child and their parent in relation to the person applying to act as their case friend, or an explanation of why the person has not established the parent's view.
- 27.30 The application **must**²⁹ be signed by the person applying to act as the child's case friend.
- 27.31 Once received, the Secretary of the Tribunal **must**³⁰ record its receipt of the application, and if the Tribunal accepted the application, inform the case friend of the Tribunal's decision. The Secretary **must**³¹ also ensure all parties are informed that the child has a case friend.
- 27.32 When appointing a case friend on their own initiative, the Tribunal may enquire if the child has someone to act as their case friend, and await their application. In most cases, a child will use a close family member or another adult they know and trust to be their case friend.
- 27.33 There may be circumstances when a child requires a case friend but not have someone they know to ask to act as their case friend. In this situation, independent advocates provided by the local authority can apply to be a child's case friend. This will allow case friends to be assigned to a child who does not have someone to act as their case friend.
- 27.34 Where the Tribunal decides that a child bringing an appeal in their own name without a case friend is found to be lacking in capacity, the Tribunal will stay proceedings until the child has a case friend.
- 27.35 Where the Tribunal has decided on its own initiative that a case friend needs to be appointed for a child, the proposed case friend will be required to complete the relevant application form. This will enable the Tribunal to assess the suitability of the individual.
- 27.36 The Tribunal **may**³² remove a case friend either on its own initiative or an application supported by evidence from any other person.
- 27.37 If a case friend is removed, the secretary of the Tribunal **must**³³ inform all parties involved of the removal, and inform the case friend they can no longer act as the child's case friends.

²⁷ Regulations to be made under section 85(8) of the Act.

²⁸ Regulations to be made under section 85(8) of the Act.

²⁹ Regulations to be made under section 85(8) of the Act.

³⁰ Regulations to be made under section 85(8) of the Act.

³¹ Regulations to be made under section 85(8) of the Act.

³² Section 85(2)(b) of the Act.

³³ Regulations to be made under section 85(8) of the Act

Annex A: Individual Development Plan (IDP): Mandatory form

Part 1.

Section 1A: Basic biographical information about the child or young person¹ and contact details	
1A.1) Full name:	
1A.2) Likes to be known as:	
1A.3) Date of birth:	
1A.4) Gender:	
1A.5) Current education setting(s):	
1A.6) Home address and telephone number:	
1A.7) Name of parents ² :	
1A.8) Email address (only where child/ parent/ young person is willing to receive notifications and documents electronically):	
1A.9) Parents' address(es) and telephone number(s) (if different) ² :	
1A.10) Communication requirements and preferences:	
1A.11) For a young person, details of consent to IDP being prepared/ maintained:	
1A.12) Capacity issues:	

Section 1B: Responsibility for the IDP	
1B.1) Organisation responsible for maintaining the IDP:	
1B.2) Date before which the IDP must be reviewed:	
1B.3) Proposed review date:	

¹ A young person is someone over compulsory school age but under the age of 25

² For young people, only to be completed with their consent and if they agree to information being shared with their parents

Section 1C: One-page profile

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Part 2.

Part 2 includes those elements of the IDP in relation to which appeals to the Education Tribunal for Wales can be made. These elements are underlined, bold and red.

<u>Section 2A: Description of the child or young person's additional learning needs (ALN)</u>

Section 2B: Description and delivery of the child or young person's additional learning provision (ALP)				
2B.1) Intended outcome:				
<u>2B.2) ALP to be provided:</u>	<u>2B.3) Should the ALP be provided in Welsh?</u>	2B.4) Organisation/ service to provide the ALP, and contact details (where different to body maintaining the plan):	<u>2B.5) Start date:</u>	<u>2B.6) End/ review date:</u>
2B.7) Rationale for the ALP listed above				

2B.1) Intended outcome:				
<u>2B.2) ALP to be provided:</u>	<u>2B.3) Should the ALP be provided in Welsh?</u>	2B.4) Organisation/ service to provide the ALP, and contact details (where relevant):	<u>2B.5) Start date:</u>	<u>2B.6) End/ review date:</u>
2B.7) Rationale for the ALP listed above				

2B.1) Intended outcome:				
<u>2B.2) ALP to be provided:</u>	<u>2B.3) Should the ALP be provided in Welsh?</u>	2B.4) Organisation/ service to provide the ALP, and contact details (where relevant):	<u>2B.5) Start date:</u>	<u>2B.6) End/ review date:</u>
2B.7) Rationale for the ALP listed above				

Section 2C: Description and delivery of ALP to be secured by an NHS body				
2C.1) Intended outcome:				
<u>2C.2) ALP to be provided:</u>	<u>2C.3) Should the ALP be provided in Welsh?</u>	2C.4) Organisation/ service to provide the ALP, and contact details (where relevant):	<u>2C.5) Start date:</u>	<u>2C.6) End/ review date:</u>
2C.7) Rationale for ALP listed above				

2C.1) Intended outcome:				
<u>2C.2) ALP to be provided:</u>	<u>2C.3) Should the ALP be provided in Welsh?</u>	2C.4) Organisation/ service to provide the ALP, and contact details (where relevant):	<u>2C.5) Start date:</u>	<u>2C.6) End/ review date:</u>
2C.7) Rationale for ALP listed above				

Section 2D: Places at a named school/ institution or board/ lodging

2D.1) The name of a maintained school in Wales that is being named for the purpose of securing the admission of the child to the school.

2D.2) The name of any particular school or other institution which must be secured

2D.3) Board and lodging provision which must be secured

Part 3.

Section 3A: Record of information used to develop the IDP

If information is included as an annex to the IDP, please list it here.

Section 3B: Timeline of key events

3B.1) Significant events or information relevant to understanding the child or young person’s ALN and planning the necessary ALP:

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3B.2) Education settings previously attended (and dates):

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Section 3C: Transition

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Annex B: Individual Development Plan (IDP) for a looked after child: Mandatory form

The elements of the IDP for a looked after child in relation to which appeals to the Education Tribunal for Wales can be made are underlined, bold and red.

Section 2A: Description of the child or young person's additional learning needs (ALN)

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Section 2B: Description and delivery of the child or young person's additional learning provision (ALP)

2B.1) Intended outcome:				
<u>2B.2) ALP to be provided:</u>	<u>2B.3) Should the ALP be provided in English or Welsh?</u>	2B.4) Organisation/ service to provide the ALP, and contact details (where different to body maintaining the plan):	<u>2B.5) Start date:</u>	<u>2B.6) End date:</u>
2B.7) Rationale for the ALP listed above				

2B.1) Intended outcome:				
<u>2B.2) ALP to be provided:</u>	<u>2B.3) Should the ALP be provided in English or Welsh?</u>	2B.4) Organisation/ service to provide the ALP, and contact details (where different to body maintaining the plan):	<u>2B.5) Start date:</u>	<u>2B.6) End date:</u>
2B.7) Rationale for the ALP listed above				

2B.1) Intended outcome:				
<u>2B.2) ALP to be provided:</u>	<u>2B.3) Should the ALP be provided in English or Welsh?</u>	2B.4) Organisation/ service to provide the ALP, and contact details (where different to body maintaining the plan):	<u>2B.5) Start date:</u>	<u>2B.6) End date:</u>
2B.7) Rationale for the ALP listed above				

Section 2C: ALP to be secured by an NHS body				
2C.1) Intended outcome:				
<u>2C.2) ALP to be provided:</u>	<u>2C.3) Should the ALP be provided in English or Welsh?</u>	2C.4) Organisation/ service to provide the ALP, and contact details (where relevant):	<u>2C.5) Start date:</u>	<u>2C.6) End date:</u>
2C.7) Rationale for ALP listed above				

2C.1) Intended outcome:				
<u>2C.2) ALP to be provided:</u>	<u>2C.3) Should the ALP be provided in English or Welsh?</u>	2C.4) Organisation/ service to provide the ALP, and contact details (where relevant):	<u>2C.5) Start date:</u>	<u>2C.6) End date:</u>
2C.7) Rationale for ALP listed above				

Section 2D: Places at a named school/ institution or board/ lodging

2D.1) The name of a maintained school in Wales that is being named for the purpose of securing the admission of the child to the school.

2D.2) The name of any particular school or other institution which must be secured

2D.3) Board and lodging provision which must be secured

Section 3A: Record of information used to develop the IDP

If information is included as an annex to the IDP, please list it here.

Section 3B: Timeline of key events

3B.1) Significant events or information relevant to understanding the child or young person's ALN and planning the necessary ALP:

Basic information about the child or young person	
Full name:	
Date of birth:	
Home address and telephone number:	
Parental ¹ address(es) and telephone number (if different):	
School / FEI address (if applicable):	
Language(s) spoken at home:	

¹ "Parents" includes anyone with parental responsibility.

Annex C: ALP to be secured by an NHS body: Non-mandatory form

Details about the referral	
Date of referral:	
Date health input sent:	
Contact details of IDP coordinator (including name, phone number and email address):	

Details about the additional learning provision (ALP) to be secured by an NHS body				
Intended outcome, including short term / medium term (academic year) and long term (transition):				
Description of the ALP to be provided:	ALP to be provided in English, Welsh or both:	Indication for earlier review:	Start and end date / review date:	Contact details of relevant health professional (name, phone, email address):
Rationale for ALP listed above:				
Intended outcome, including short term / medium term (academic year) and long term (transition):				

Description of the ALP to be provided:	ALP to be provided in English, Welsh or both:	Indication for earlier review:	Start and end date / review date:	Contact details of relevant health professional (name, phone, email address):
Rationale for ALP listed above:				
Intended outcome, including short term / medium term (academic year) and long term (transition):				
Description of the ALP to be provided:	ALP to be provided in English, Welsh or both:	Indication for earlier review:	Start and end date / review date:	Contact details of relevant health professional (name, phone, email address):
Rationale for ALP listed above:				
Intended outcome, including short term / medium term (academic year) and long term (transition):				
Description of the ALP to be provided:	ALP to be provided in English, Welsh or both:	Indication for earlier review:	Start and end date / review date:	Contact details of relevant health professional (name, phone, email address):

	or both:			
Rationale for ALP listed above:				