Llywodraeth Cymru
Welsh Government

The Additional Learning Needs Code for Wales 2021

WG21–23

The Additional Learning Needs Code for Wales 2021

Audience

The Additional Learning Needs Code for Wales contains statutory guidance for the following public authorities: local authorities in Wales or England; governing bodies of maintained schools in Wales or England (including 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; the National Health Service Commissioning Boards; clinical commissioning groups; NHS foundation trusts; and Special Health Authorities.

It also imposes requirements on governing bodies of maintained schools in Wales, governing bodies of further education institutions in Wales, local authorities in Wales, Local Health Boards and NHS trust.

The Education Tribunal for Wales is required to 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 Additional Learning Needs and Education Tribunal (Wales) Act 2018 ('the Act'). Local authority funded, non-maintained providers of nursery education are required to have regard to relevant guidance in the Code, in accordance with the local authority's funding arrangements.

Overview

This Code is made under the Act, which, together with this Code and regulations made under the Act, provides the statutory system in Wales for meeting the additional learning needs of children and young people. It is aimed at ensuring that children and young people's additional learning needs are identified early and addressed quickly to enable them to achieve their full potential.

Action required

See above

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Additional copies This document can be accessed from the Welsh Government's website at https://gov.wales/additional-learning-needs-special-educational-needs

Related documents The Additional Learning Needs and Education Tribunal (Wales) Act 2018
The Additional Learning Needs (Wales) Regulations 2021
The Education Tribunal for Wales Regulations 2021

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.

This document is also available in Welsh.

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Chapter 1: Introduction

1.1. The Additional Learning Needs Code ("the" or "this Code") is issued[1] 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 the statutory system for meeting the additional learning needs (ALN) of children and young people. It places the learners' views, wishes and feelings at the heart of the process of planning the support required to enable them to learn effectively and achieve their full potential.

Guidance in the Code to which relevant persons must have regard

1.2. The Code includes statutory guidance[2] about the exercise of functions under Part 2 of the Act (which establishes the statutory system in Wales for meeting the ALN of children and young people). The Code 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;
- a Special Health Authority[4].

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. See also the Glossary in this Code.
[5] Section 4(10) of the Act.

1.5. The Code includes guidance relevant to local authority funded, non-maintained providers of nursery education[6] to which such providers, in accordance with the local authority's funding arrangements, are required to have regard[7].

1.6. The Code is addressed to those who are required to have regard to it. However others (e.g. other providers of education in Wales, parents, specialist advisers or advocates) might find it useful.

Requirements imposed by the Code on local authorities, governing bodies of maintained schools and FEIs and NHS bodies[8]

1.7. The Code imposes requirements[9] 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.

1.8. The Code imposes requirements[10] on the governing bodies of maintained schools, FEIs and on local authorities 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.

1.9. The Code also sets out what is required of local authorities and NHS bodies to discharge their duties[11] to have due regard to United Nations' Conventions.

[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] These requirements are only imposed on local authorities in Wales and governing bodies of maintained schools and FEIs in Wales – see below, where it is explained that references to maintained schools, FEIs and local authorities are to those in Wales unless otherwise indicated. Also see below for the definition of NHS body, which only covers bodies which are part of the NHS in Wales. See below also for how references to schools and FEIs in those requirements are to be interpreted.
[9] Section 4(5)(a) of the Act.
[10] Section 4(5)(b) of the Act.
[11] Under sections 7 and 8 of the Act.

Interpretation of key terms and expressions used in the Code

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

1.10. In this Code, where there is a requirement – whether in the Act, regulations made under the Act, imposed by the Code or in other legislation – for a person (including a body) to do something, it will be indicated by stating that the person **must** do the thing, 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 together with an accompanying footnote explaining the source of the prohibition.

1.12. Where a person or body is authorised or permitted to do something – for example, 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 the thing, and where there is a source for the specific power, it is set out in an accompanying footnote.

1.13. The Code includes statutory guidance and this is denoted in the Code by the word '**should**'. A relevant person, when exercising functions under Part 2 of the Act, **must**[12] have regard to relevant guidance in the Code. This means that when exercising a function under Part 2 of the Act (for example making a decision on whether a child has ALN), the person is required to give consideration to what the Code says which is relevant to the function. Where this Code says that a relevant person **should** or **should not** do something, the person is required to consider this *and* follow it unless they can demonstrate that they are justified in not doing so (although often this would only be in exceptional circumstances). 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. In particular relevant persons will need to be mindful of, and comply with, data protection law and their own organisation's data protection and processing policies when processing personal data including sharing it with others.[13]

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, 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

[12] Section 4(3) of the Act.
[13] The Information Commissioner's Office's website has guidance for organisations about compliance with data protection law https://ico.org.uk/

powers, a complaint to the Public Services Ombudsman or a successful judicial review claim. Chapter 32 provides more information on these matters.

1.16. Failure to adhere to statutory 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 Act[14], 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.

1.18. In Chapters 11 to 13, "child", "child at a school" and "child not at a school" refer to particular children (rather than all children), as set out at the start of those Chapters. Similarly, in chapters 15 to 17, references to "young person at a school", "young person at an FEI" and "young person" refer to particular young people (rather than all young people), as set out at the start of those Chapters.

Children and young people for whom a local authority is responsible

1.19. For the purposes of the Code and the Act, a local authority (that is, one in Wales) is responsible for a child or young person if the child or young person is "in the area of" the authority[15]. The meaning of this is explained further below. Under the ALN system, only a local authority in Wales can be responsible for a child or young person. Therefore if a child or young person is in the area of a local authority in England, for the purposes of the ALN system, there is no responsible local authority for that child or young person.

1.20. However, children and young people in the area of a local authority in England can be registered pupils at maintained schools and young people in the area of a local authority in England can be enrolled as students at FEIs. So that such children and young people have effective rights under the ALN system whilst they are such a pupil or student, on occasion, a local authority can be responsible for exercising particular functions in relation to them. Chapter 18 gives an overview of the position for children in the area of a local authority in England and those functions are explained in the relevant places in the Code.

1.21. In the case of a child or young person who is in the area of a local authority in England, references in the Code to a responsible local authority in relation to a local authority reconsidering a maintained school's decision on ALN[16] or reconsidering an IDP maintained by a maintained school,[17] are to the local

[14] Section 99(1) of the Act.
[15] Section 99(4) of the Act.
[16] Under section 26 of the Act.
[17] Under section 27 of the Act.

authority that maintains the school at which the child or young person is registered as a pupil.[18]

1.22. In the case of a child or young person in the area of a local authority in England, for the purposes of references in the Code to a responsible local authority's arrangements (under section 9 of the Act) for providing people with information and advice about ALN and the ALN system, the responsible local authority is the local authority (that is, the one in Wales)-

- that maintains the school at which the child or young person is registered as a pupil, or
- in whose area the FEI, at which the young person is enrolled as a student, is.

1.23. A local authority is also responsible for some children and young people who are not in its area[19] for the purposes of its duties to make arrangements for avoidance and resolution of disagreements and independent advocacy services – this is dealt with in Chapter 32.

When a child or young person is in the area of a local authority

1.24. Whether a child or young person is in the area of a local authority usually depends upon where the child or young person ordinarily resides. This means that a child or young person can be in the area of a local authority (and so the local authority is responsible for them) where the child or young person attends an educational setting in another local authority's area or even a setting in England. For a child who is looked after by a local authority and placed in another local authority's area, it can mean that the looking after local authority is different to the responsible local authority.

1.25. For cases with a Wales/England cross-border element, the Education Act 1996 partially defines the term. A person is <u>not</u> in the area of a local authority in Wales if the person is wholly or mainly resident in England unless:

- that residence in England is due to a placement under the Act, and
- otherwise the person would be wholly or mainly resident in Wales.

1.26. The reverse also holds, so a person is not in the area of a local authority in England if the person is wholly or mainly resident in Wales unless:

- that residence in Wales is due to a placement under the Children and Families Act 2014, and
- otherwise the person would be wholly or mainly resident in England.[20]

[18] This reflects section 87 of the Act.
[19] Whether they are in the area of another local authority or a local authority in England.
[20] 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.

Looked after children

1.27. A local authority is responsible for making decisions about ALN and maintaining any IDPs for all children it looks after who are in the area of a local authority (i.e. one in Wales, even if not the area of the looking after local authority). 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.

1.28. For the purposes of the Code and the Act, a child is looked after by a local authority if they are a child who is[21]-

(a) looked after by a local authority 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
(b) not a detained person.

1.29. Also, a child is not looked after for the purposes of the Code and the Act, if a personal education plan is not required to form part of the child's care and support plan under section 83 of the Social Services and Well-being (Wales) Act 2014.[22] Under that legislation, a personal education plan is not required for a child who:

(a) has been placed for adoption under the Adoption and Children Act 2002[23], or
(b) is looked after by the local authority for short breaks[24].

1.30. This means that for the purposes of the Code and the Act, the usual 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.

1.31. However in a few places in the Code, references to a looked after child or young person is to a wider definition. Where this is the case, it is indicated in the text.

[21] Section 15(1) of the Act.
[22] Regulation 5 of the Additional Learning Needs (Wales) Regulations 2021.
[23] 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.
[24] See the Care Planning, Placement and Case Review (Wales) Regulations 2015.

References to students enrolled at an FEI

1.32. References to a person being enrolled as a student at an FEI do not include a person who is a higher education student at the FEI. A person is a higher education student at the FEI if the person is undertaking a higher education course provided by the FEI and not also receiving education[25] or training from it. If a person enrolled as a student at the FEI is receiving both higher education and education or training provided by the FEI, the person is to be treated as enrolled as a student at the FEI in respect of the education or training but not in respect of the higher education.[26]

References to maintained schools, FEIs and local authorities

1.33. References to maintained schools, FEIs and local authorities throughout the Code are to such institutions or authorities in Wales (and so do not refer to any in England), unless otherwise indicated.

Governing bodies of maintained schools and FEIs

1.34. Requirements on, or which refer to a function of, a maintained school or FEI, including, in both cases, ones in England, (whether imposed by the Act or regulations) are, in most instances, placed on, or refer to a function of, the governing body of the school or FEI. However, for the sake of brevity, in most of these cases, the description in the Code of such a requirement just refers to a maintained school or FEI, rather than referring to the governing body of the school or FEI on every occasion[27]. 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. Those references are however to be interpreted as referring to the governing body.

1.35. Similarly, requirements imposed by the Code on a maintained school or FEI, and other references within them to a function of a maintained school or FEI, refer only to a maintained school or FEI rather than referring to the governing body of the school or FEI. Accordingly, provisions of the Code which impose requirements on, or refer to a function of, a maintained school or an FEI **must**[28] be interpreted as requirements placed on the respective governing body, or referring to a function of the respective governing body.

1.36. Similarly, guidance in this Code addressed to a maintained school or FEI (including in both cases, any in England) is addressed to the respective governing body and is to be interpreted in that way.

[25] The term “education” does not include higher education: see the glossary.
[26] Section 86 of the Act.
[27] A local authority’s functions as governing body of a Pupil Referral Unit are delegated to the Unit’s Management Committee: see the Education (Pupil Referral Units) (Management Committees etc.) (Wales) (Amendment) Regulations 2021.
[28] As this is part of the requirements imposed by the Code.

Health bodies and NHS bodies

1.37. Throughout the Code, two different terms are applied to different types of health organisations due to the different duties on them under the Act.

1.38. The term "health body" covers:

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

1.39. The term "NHS body" covers:

- a Local Health Board;
- an NHS trust.

Other terms

1.40. A glossary of terms and expressions used throughout the Code is provided below after paragraph 1.99. Words used in the Code in the singular include the plural and vice versa, unless the context otherwise requires. For example, a requirement to notify a child's parent is a requirement to notify all the parents where the child has more than one parent.

Timescale requirements

1.41. The Code sets out various timescale requirements – these are requirements that an action be taken according to a particular timescale, such as that it be done promptly or within or before the end of a particular period. Many of them are requirements imposed by the Code and some are in the Additional Learning Needs (Wales) Regulations 2021. However timescale requirements in the context of appeals to the Tribunal are different and this section does not apply to them.[29] For requirements imposed by the Code or descriptions in this Code of timescale requirements in those Regulations, typically, they are in the following terms:

> *The [responsible body] **must**[30] [take the action(s)] promptly and in any event before the end of [or "within"] the period of [specific period - x weeks / x school days / x term time days] from [trigger event for the start of the timescale]. The [responsible body] need not comply with the requirement to [do those things] before the end of that [specific period e.g. x week] period if it is impractical to do so due to circumstances beyond its control.*

[29] See Chapter 33 on appeals and the Education Tribunal for Wales Regulations 2021.
[30] Source of the requirement is given.

1.42. For timescale requirements like this which are imposed by this Code or in the Additional Learning Needs (Wales) Regulations 2021, the day on which the trigger event takes place **must not**[31] be counted towards the specific period. In other words, where the specified period starts "from" a particular event (the trigger event), the day of that event does not count and the period starts on the day after the day when that event occurred (the trigger events for each timescale requirement are identified within each requirement). This means that, for example, if a local authority must give a copy of an IDP before the end of 7 weeks from receiving a request for reconsideration of a school's decision on ALN, if the authority received that request on a Monday, the 7 week period starts at the beginning of the following day, the Tuesday, and ends at the end of the Monday which is 7 weeks later.

1.43. However, where the last day of a specified period is not a working day, the specified period **must**[32] be extended to include the next working day. For these purposes, a "working day" is any day which is not Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971.

1.44. In the case of most timescale requirements applicable to maintained schools and FEIs, the periods of time are expressed in school days and term time days respectively. The meaning of these terms is set out in the glossary. In all other cases, the periods of time are expressed in weeks, which means a calendar week, irrespective of any bank or other holidays or closures which might occur during the time period, apart from where the last day of the period is not a working day (see previous paragraph).

1.45. The timescale requirements will apply to a wide range of circumstances: relatively straight-forward cases of low level needs and also very complex cases, where input from a range of professionals may be required. The specified periods have been designed to take account of the wide range of circumstances in which they will apply and the various things which might need to happen for the responsible body to take the action concerned, including involving the child, their parent or young person in the decisions. Where it is realistically possible for the action to be taken in advance of the end of the specified period, this is desirable in light of the principle of early identification and intervention (see Chapter 3). Accordingly, timescale requirements, involve a requirement in the first instance that the action (e.g. making a decision and giving a notification of it) be done promptly.

1.46. What 'promptly' requires in any particular case, will depend upon the individual circumstances (particularly those affecting the child, their parent or

[31] Requirement imposed by the Code in relation to timescale requirements that are imposed by the Code. In relation to timescale requirements that are imposed by the Additional Learning Needs (Wales) Regulations 2021, it is the effect of those Regulations.
[32] Requirement imposed by the Code in relation to timescale requirements that are imposed by the Code. Regulation 2(4) of the Additional Learning Needs (Wales) Regulations 2021 in relation to timescale requirements in those Regulations.

the young person concerned), what needs to be done to complete the action and how soon it can reasonably be done in light of the individual circumstances. Generally it is likely to require the person subject to the requirement to proceed to take the action without delay, though there may be occasions where some delay is unavoidable for reasons beyond that person's control.

1.47. In many cases acting promptly would enable the action to be done before the end of the specified 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 has been developed and written up as part of that meeting and the child, their parent or the young person does not wish to consider the draft IDP further (providing they have been informed that they have the opportunity to do so and of the implications of not doing so). Also, in some cases, the duty to act 'promptly' may require the person subject to the duty to take the action much earlier than by the end of the specific period due to the circumstances, for example a child nearing the end of their compulsory education, or a young person undertaking a short course.

1.48. Most of the timescale requirements also provide for an exception which involves it being 'impractical' for the responsible body to comply within the specified period. 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 specified time period if the ALN and ALP can be described in a meaningful way – that is, ALP that will be of benefit in meeting the child or young person's known ALN. 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 – including, for example, where a diagnosis of a particular condition might have been sought but not received - if the IDP can be prepared, then it needs to be prepared.[33] 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 25).

1.49. The exception only applies where it is impractical to take the action before the end of the specified time period 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, school or FEI holiday periods, absence from the country or some other reason, such that it is impractical to gather evidence (e.g. through observations or clinical or other assessments) at a time that would enable the body to comply within the specified time period.

1.50. 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 complete the action and subject to the duty to do so promptly. Whilst

[33] To comply with the timescale requirement and sections 12, 14 and 19 of the Act.

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.

1.51. Where it is apparent to a maintained school, FEI or local authority that there are circumstances that will prevent, or are likely to prevent a required action being completed within the specified period of time provided for by a requirement, and the school, FEI or local authority decides that the exception applies, it **should** explain this in writing to the child or young person, and in the case of a child, the child's parent, to whom the duty relates, at the earliest opportunity. For example, a local authority under a duty to decide whether a child has ALN (under section 11 of the Act), should inform the child and their parent that the decision and the preparation of any IDP (should the decision be that the child has ALN) will be delayed due to circumstances beyond its control. For guidance on relevant persons and NHS bodies relying on the exception in respect of requests under section 65 and referrals under section 20 of the Act respectively, see Chapter 21.

Exercise of rights by children and Case Friends and the interpretation of requirements imposed by the Code

1.52. 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 Act, Code and the Additional Learning Needs (Wales) Regulations 2021, there are requirements to:

- notify a child of something;
- inform a child of something;
- give particular information to a child;
- give a copy of an IDP or revised IDP to a child.

1.53. There are also duties in the Act on local authorities and, in the case of a review, also on maintained schools, to do the following things following a request from a child:

- review an IDP;
- reconsider a matter;
- decide whether to take over responsibility for an IDP from a maintained school.

1.54. Also, a local authority can only make a referral[34] to an NHS body for it to consider whether there is any relevant treatment or service likely to be of benefit in addressing a child's ALN, if the local authority has informed the

[34] Under section 20 of the Act. See Chapter 21.

child of the intended referral and given the child an opportunity to discuss whether it should be made.

1.55. There are however exceptions to these duties. In the case of a duty in the Act, if the school or local authority considers that the child lacks capacity, the duty (e.g. to notify the child or reconsider a matter) does not apply[35] and the description in the Code of the duty is to be interpreted accordingly. This and the exceptions to it, is dealt with in Chapter 30 (see in particular paragraphs 30.6 to 30.9). If the child has a case friend, those rights are to be exercised by the case friend[36] (see Chapter 30 for more about case friends) and the description of the duty in the Code is to be interpreted accordingly.

1.56. Similarly, a requirement in the Code which requires a local authority or maintained school to (however expressed)-

- notify a child of something,
- give a copy of an IDP to a child, or
- give particular information to a child, or a pupil who is a child, when notifying them of something or giving them a copy of an IDP or a revised IDP,

does not apply if the maintained school or local authority (as the case may be) is not required by the Act to notify, give a copy of an IDP (including a revised one) to, or take other action relating to, the child when exercising the function to which the requirement relates.[37] The requirements in the Code **must**[38] be interpreted in this way. However, if the child has a case friend, then the child's rights under those requirements are to be exercised by the case friend and accordingly, the maintained school or local authority **must**[39] notify, or give the copy of the IDP or information to the case friend and the requirements **must**[40] be interpreted in this way.

1.57. For example, a maintained school required to decide whether a child registered at the school has ALN, is subject to requirements set out in Chapter 12 to notify the child that it is deciding the matter, to give the child certain information with that notification and to give certain information when either notifying the child of its decision that the child does not have ALN or giving the child a copy of the IDP it has prepared. If the duties in the Act to notify the child of a decision that the child does not have ALN or to give a copy of the IDP following a decision that the child has ALN do not apply, then nor do the related requirements imposed by the Code (to notify the child or give information to the child). Chapter 30 deals with when those duties in the Act do not apply.[41] However, if the child has a case friend, the

[35] Section 84 of the Act.
[36] Section 85 of the Act.
[37] This is an interpretation provision which is part of the requirements imposed by the Code.
[38] As this is part of the requirements imposed by the Code.
[39] Requirement imposed by the Code.
[40] As it is part of the requirement imposed by the Code.
[41] See also section 84 of the Act.

maintained school is required to notify and give information to the case friend instead.

1.58. None of this affects requirements to inform, notify or otherwise involve the child's parent. Nor does it affect other requirements about involving a child in the exercise of functions under the ALN system.

Exercise of rights by representatives for parents and young people who lack capacity and the interpretation of requirements imposed by the Code

1.59. Young people and parents of children can use a representative to act on their behalf when exercising rights under the Act if they lack capacity at the time the rights fall to be exercised. This is explained further in Chapter 31. In cases where a child's parent or young person lacks capacity at the time when a requirement in the Act falls to be complied with or a right in the Act may be exercised, Chapter 31 needs to be considered alongside the relevant Chapter dealing with the right or requirement (see in particular paragraph 31.8[42]). The following paragraphs deal with how requirements imposed by the Code are to be interpreted.

1.60. If a child's parent lacks capacity when a requirement imposed by the Code to do any of the following (however expressed) falls to be complied with, the relevant reference in the requirement to the child's parent is to be read as a reference to a parent's representative-

- notify a child's parent (including a parent of a detained person who is a child) of something;
- give a copy of an IDP to a child's parent;
- give particular information to a child's parent (including a parent of a detained person or a pupil who, in either case, is a child) when notifying the parent of something or giving the parent a copy of an IDP or revised IDP.

1.61. The requirements in the Code **must**[43] be interpreted in this way.

1.62. Similarly, if a young person lacks capacity when a requirement imposed by the Code to do anything listed in the left hand column of the following table (however expressed) falls to be complied with, the requirement is to be read as indicated in the corresponding entry in the right hand column:

[42] See also Part 4 of the Additional Learning Needs (Wales) Regulations 2021.
[43] As this is part of the requirements imposed by the Code.

Requirement is to (however expressed)-	***Interpretation of requirement***
notify a young person, or a detained person who is a young person, of something	the reference to the young person or the detained young person is to be read as a reference to the young person's representative;
explain to a young person (including one who is a detained person) the consequences of consenting to a decision on ALN being made and not doing so	the reference to the young person is to be read as a reference to the young person's representative;
seek a young person's consent (including the consent of a young person who is a detained person) to a matter	a reference to the young person's consent is to be read as a reference to the consent of the young person's representative;
give a copy of an IDP to a young person	the reference to the young person is to be read as a reference to the young person's representative;
give particular information to a young person or to a detained person or pupil who, in either case, is a young person, when notifying the young person, detained person or pupil of something or giving them a copy of an IDP or revised IDP	the reference to the young person, detained person or pupil is to be read as a reference to the young person's representative.

1.63. This does not affect any other references in those requirements to the young person. The requirements in the Code **must**[44] be interpreted in this way.

1.64. The effect of this can be illustrated by the following example. There are various requirements imposed by the Code to:

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

1.65. If the young person lacks capacity, the effect is that the reference to the young person's consent is a reference to the consent of the young person's representative but the second reference to the young person ("…the decision be that the *young person* has ALN …") is unaffected.

1.66. Also, the following paragraph applies in respect of any requirement imposed by the Code (including in provision dealing with the meaning of when a

[44] As this is part of the requirements imposed by the Code.

school, FEI or local authority is required to decide whether a young person has ALN) which refers to any of the following (however expressed)-

(a) a young person's consent (including a young person who is a detained person);
(b) a young person (including a young person who is a detained person) consenting to a matter;
(c) whether a young person (including a young person who is a detained person) consents, does not consent or objects to a matter;
(d) in any other way refers to the consent of a young person or a young person consenting (including where the young person is a detained person).

1.67. If a young person lacks capacity when the requirement falls to be complied with in respect of the young person, a reference to the young person which relates to the reference to consent or lack of it (but only those references to the young person), is to be read as a reference to a young person's representative. Those requirements in the Code **must**[45] be interpreted in this way.

1.68. The effect of this can be illustrated by the following example. There are various requirements imposed by the Code to record the following:

(a) where the young person consents to the decision being made or an IDP being prepared and maintained, when and how consent was given;
(b) where the young person objects to any of those matters, when and how the young person objected;
(c) where the young person has neither consented nor objected to any of those matters, the steps taken by the authority to seek the young person's consent and explain the consequences of the authority deciding whether the young person has ALN.

1.69. If the young person lacks capacity, then the references in these requirements to the "young person", except for the final one, are to be read as "the young person's representative".

Giving notifications or copies of documents

1.70. Throughout the Code, reference is made to instances where a maintained school, FEI or local authority is required (expressed as a '**must**') to:

(a) notify a person of something, or
(b) give a document to a person (including a notice or a copy of a document).

[45] As this is part of the requirements imposed by the Code.

1.71. The Code also refers to instances where a maintained school, FEI or local authority **should** do those things.

1.72. In all such instances, the notification or document **may**[46] 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 address[47], or
(d) by sending it to the person electronically, but this **must not**[48] be done unless that person has indicated a willingness to receive the notification or document electronically, and has provided the maintained school, FEI or local authority with an address suitable for that purpose.

1.73. When a notification or document is given to the person by sending it by post, provided the letter containing it is properly addressed, pre-paid and posted, then it is treated as having been given, unless the contrary is proved, at the time when at which the letter would be delivered in the ordinary course of post.[49] Where a notification or document is given electronically (in compliance with the conditions set out above), it is treated as having been given, unless the contrary is proved, on the day on which the electronic communication was sent.[50]

1.74. When documents or notifications of decisions are given to children, their parents or young people, regard should be given to the principle of providing information in plain language and in preferred formats taking into account any communication needs or preferences of persons receiving the information.

1.75. 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

1.76. Throughout the Code there are cross-references to other parts of the Code. Many of these are intended simply to be of assistance to the reader by

[46] Section 88 of the Act covers notifications etc. required by the Act, regulation 3 of the Additional Learning Needs (Wales) Regulations 2021 covers those required by those Regulations and this guidance covers requirements and guidance in the Code. Regulation 3 also applies this to notifications etc. by the Welsh Ministers.
[47] 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: section 88(5) of the Act and regulation 3 of the Additional Learning Needs (Wales) Regulations 2021.
[48] Section 88 of the Act, regulation 3 of the Additional Learning Needs (Wales) Regulations 2021 in respect of requirements in the Act and those regulations.
[49] Section 7 of the Interpretation Act 1978 and section 14 of the Legislation (Wales) Act 2019.
[50] Section 88 of the Act and regulations 3 and 4 of the Additional Learning Needs (Wales) Regulations 2021.

alerting their attention to another section of the Code, which is likely to be of particular relevance or to alert the reader to the fact that a term or concept has a particular meaning. 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 situation described in the text in question.

Implementation arrangements

1.77. A phased approach is being taken to introducing the ALN system, which is being implemented from September 2021 (although duties in the Act to designate ALNCos, DECLOs and Early Years ALNLOs came into force on 4 January 2021). During the implementation period, the ALN system will operate in parallel to the special educational needs system, which will gradually be phased out during that period. The Welsh Ministers intend to publish guides on the implementation arrangements.

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

1.78. There are a number of persons and bodies whose contribution will facilitate the development of IDPs and delivery of 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

1.79. 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. The Welsh Ministers have various functions in relation to the provision of education, including further education, and powers of intervention in relation to education matters.

Local authorities

1.80. 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, the duty

to keep additional learning provision under review and the duties to have due regard to United Nations' Conventions.

1.81. 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.

1.82. Local authorities are directly responsible for meeting the needs of children and young people with the most complex or severe needs and those who do not attend a maintained school or FEI (including those below school age).

Maintained schools in Wales

1.83. Maintained schools 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 has a duty[51] to take all reasonable steps to help the local authority secure the ALP specified in the IDP. Good relationships with the local authority concerned and other agencies will help schools fulfil their duties.

Pupil referral units (PRUs)

1.84. For the purposes of the ALN system, a PRU is a maintained school[52]. Functions placed on the governing body of a maintained school, are, in the case of a PRU, for the management committee to exercise[53].

Non-maintained nursery education providers

1.85. 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.

1.86. Chapters 6, 10 and 11 provide specific guidance for local authority funded non-maintained providers of nursery education. Other Chapters may also be of relevance or interest to such providers, for example, Chapter 2 on the definition of ALN and ALP.

[51] Section 47(4) and (5) of the Act. See Chapters 12 and 15.
[52] See the definition of "maintained school" in section 99(1) of the Act and the glossary below.
[53] A local authority's functions under the Act as governing body of a Pupil Referral Unit are delegated to the Unit's Management Committee: see the Education (Pupil Referral Units) (Management Committees etc.) (Wales) (Amendment) Regulations 2021.

1.87. Other non-maintained providers of pre-school education and childcare may also find these parts of the Code of relevance.

FEIs

1.88. FEIs 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 a local authority maintains an IDP for a student enrolled at an FEI, the FEI has a duty[54] to take all reasonable steps to help the authority secure the ALP specified in the IDP. Good relationships with local authorities and other agencies will help FEIs fulfil their duties.

1.89. FEI's duties under the ALN system do not extend to higher education students (see above).

Teaching practitioners

1.90. 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 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.

NHS bodies

1.91. NHS bodies have a critical role in identifying ALN and providing information or other help to local authorities. Furthermore, NHS bodies have a direct role in providing ALP in instances where that ALP is a relevant treatment or service that is likely to be of benefit in addressing a child or young person's ALN. A relevant treatment or service is one that an NHS body would normally provide as part of the comprehensive health service in Wales. Chapter 21 deals with these matters, though many other Chapters are also relevant to NHS bodies.

1.92. The Code also sets out what is required of NHS bodies to discharge their duties to have due regard to the United Nations' Conventions on the Rights of the Child and the Rights of Disabled People: see Chapter 5.

[54] Section 47(4) and (5). See Chapter 16.

Relevant persons in England

1.93. 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 request[55] and to have regard to relevant guidance in the Code[56] 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 ALN[57].

1.94. Guidance to these bodies on the exercise of these functions can be found in Chapter 21. 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.

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

1.95. 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 request[58] and to have regard to relevant guidance in the Code[59]. 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 IDP[60].

1.96. Guidance of particular relevance to youth offending teams and persons in charge of relevant youth accommodation can be found in Chapter 19.

Independent schools and independent special post-16 institutions (ISPIs)

1.97. Many children and young people with ALN attend independent schools or ISPIs. Independent schools and ISPIs are not required to have regard to the Code and no requirements are imposed on them by it. Nevertheless, guidance and information in the Code may be useful to independent schools

[55] Section 65 of the Act.
[56] Section 4 of the Act.
[57] Section 64 of the Act.
[58] Section 65 of the Act.
[59] Section 4 of the Act.
[60] Section 40 of the Act.

and ISPIs to inform their understanding of the ALN system and the part they might play in ensuring the best outcomes for learners with ALN.

Glossary

1.98. The glossary below gives the meaning of words and expressions, including abbreviations, used in this Code. Many of the terms in the glossary are used in the Act and bear the same meaning in the Code as they do in the Act. Other parts of speech, grammatical forms or modifications of terms defined in the glossary are to be interpreted in the same way (for example, "dual registration" is to be interpreted in the same way as "dual registered" and "educational" in the same way as "education").

1.99. If a term or expression in this Code is not defined in the glossary but is also used in the Act, it bears the same meaning as it bears in the Act unless a contrary intention appears. Section 99 of the Act provides definitions of terms used in the Act (though most of these are repeated in the glossary). If a term or expression used in the Act but not defined in it, is defined in the Education Act 1996 (see sections 579 and 580), it bears the meaning in the Education Act 1996 (for example, the meaning of "compulsory school age", which is dealt with in section 8 of the Education Act 1996).[61]

"The Act" ("*y Ddeddf*") refers to the Additional Learning Needs and Education Tribunal (Wales) Act 2018.
"Additional learning needs" ("*anghenion dysgu ychwanegol*") or **"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 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.

[61] Section 99(6) and (7) of the Act.

(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. Chapter 2 deals with the definition of ALN.
"Additional learning needs co-ordinator" ("*cydlynydd anghenion dysgu ychwanegol*") or **"ALNCo"** ("*CADY*") means a person designated, in accordance with section 60 of the Act, by a maintained school (other than a special school) or FEI to have responsibility for co-ordinating ALP for pupils or students (as the case may be) with ALN.
"ALN system" ("*system ADY*") means the system for which provision is made by Part 2 of the Act.
"Additional learning provision" ("*darpariaeth ddysgu ychwanegol*") or **"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. Chapter 2 deals with the definition of ALP.
"Appropriate ALP" ("*DDdY briodol*") 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 additional learning provision, or (c) if it appears to the home authority that the additional learning provision specified in the plan is no longer appropriate for the detained person, additional learning provision which the home authority considers appropriate.
"Beginning of the detention" ("*dechrau'r cyfnod o gadw person yn gaeth*") has the meaning given by section 39 of the Act, namely the meaning given by section 562J of the Education Act 1996.
"Case friend" ("*cyfaill achos*") means a person appointed by the Tribunal under section 85 of the Act.
"Child" ("*plentyn*") means a person not over compulsory school age (the meaning of which is given by section 8 of the Education Act 1996).

In some chapters, references to a child refer only to particular children rather than all children: see paragraph 1.18.
"Clinical commissioning group" means a body established under section 14D of the National Health Service Act 2006.
"The Code" ("*y Cod*") and **"this Code"** ("*y Cod hwn*") refer to this Code.
"Designated education clinical lead officer" ("*swyddog arweiniol clinigol addysg dynodedig*") or "**DECLO**" ("*SACDA*") means an officer designated, in accordance with section 61 of the Act, by a Local Health Board to have responsibility for co-ordinating the Board's functions in relation to children and young people with ALN.
A reference to a person being **"subject to a detention order"** ("*ddarostyngedig i orchymyn cadw*") (however expressed) has the meaning given to that expression by section 562(1A)(a), (2) and (3) of the Education Act 1996. Paragraph 19.3 explains this further.
"Detained person" ("*person sy'n cael ei gadw'n gaeth*") has the meaning given by section 39 of the Act, namely a child or young person who is- (a) subject to a detention order, and (b) detained in relevant youth accommodation in Wales or England.
"Dual registered" ("*cofrestriad deuol*")in relation to a child or young person means that the child or young person 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 or an FEI), at the same time and the child or young person is to be provided with education or training at each of the institutions at which the child or young person is a registered pupil or enrolled student[62].
"**early years additional learning needs lead officer"** ("*swyddog arweiniol anghenion dysgu ychwanegol y blynyddoedd cynnar*") or **"an early years ALNLO"** means an officer designated, in accordance with section 62 of the Act, by a local authority 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.
"Education" ("*addysg*") includes full-time and part-time education, but does not include higher education.
"Educational psychologist" ("*seicolegydd addysg*")**,** for the purposes of requirements imposed by the Code on local authorities about seeking advice from an educational psychologist, means a person regularly employed by the local authority as an educational psychologist or engaged by the authority as an educational psychologist in the individual case.
"EHC plan" ("*cynllun AIG*") means a plan within section 37(2) of the Children and Families Act 2014 (education, health and care plans).
"EHC needs assessment" ("*asesiad o anghenion addysg, iechyd a gofal")*has the meaning given by section 36(2) of the Children and Families Act 2014, namely an assessment of the educational, health care and social care needs of a child or young person.

[62] See section 30(1) and (3) of the Act.

"Further education institution" ("*sefydliad addysg bellach*") or **"FEI"** means an institution falling 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. See also paragraphs 1.33 (FEI references are only to those in Wales unless otherwise indicated) and 1.34 (interpretation of requirements on FEIs).
"Governing body" ("*corff llywodraethu*") in relation to an FEI, has the meaning given by section 90 of the Further and Higher Education Act 1992. For the meaning of **"Governing body"** in relation to a maintained school (including one in England) that is not a PRU, see section 19 of the Education Act 2002 and for a PRU, see section 19 of, and Schedule 1 to (including regulations made under that Schedule), the Education Act 1996.
"Health body" ("*corff iechyd*") means: • a Local Health Board; • an NHS trust; • a clinical commissioning group; • an NHS foundation trust; • a Special Health Authority.
"Higher education" ("*addysg uwch*") means education provided by means of a course of any description mentioned in Schedule 6 to the Education Reform Act 1988 and "higher education course" means any such course.
"Home authority" ("*awdurdod cartref*") is defined in section 39 of the Act to have the meaning given by section 562J of the Education Act 1996, subject to any regulations under section 39(2) of the Act. Paragraph 19.12 explains this further.
"Independent reviewing officer" ("*swyddog adolygu annibynnol*") 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 for a child's case.
"Independent special post-16 institution" ("*sefydliad ôl-16 arbennig annibynnol*") or **"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) an independent educational institution (within the meaning of Chapter 1 of Part 4 of the Education and Skills Act 2008), 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" ("*cynllun datblygu unigol*") or **"IDP"** (and occasionally referred to as the "plan") 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" ("*awdurdod lleol*") 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). See also paragraph 1.33 (local authority references are only to those in Wales unless otherwise indicated).
"Local Health Board" ("*Bwrdd Iechyd Lleol*") means a Local Health Board established under section 11 of the National Health Service (Wales) Act 2006.
"Looked after child" *("plentyn sy'n derbyn gofal*") means a reference (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, (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. Occasionally in the Code it has a wider meaning and where this is the case, it is indicated. See also paragraphs 1.27 to 1.31.
"Mainstream institution in the further education sector" ("*sefydliad prif ffrwd yn y sector addysg bellach*") means an FEI that is not specially organised to provide education or training for persons with ALN.
"Mainstream maintained school" ("*ysgol brif ffrwd a gynhelir*") means a maintained school (whether in Wales or England) that is not— (a) a special school, or (b) a pupil referral unit.
"Maintained school" ("*ysgol a gynhelir*") 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 and the definition includes maintained schools in England.

See also paragraphs 1.33 (maintained school references are only to those in Wales unless otherwise indicated) and 1.34 (interpretation of requirements on maintained schools).
"National Health Service Commissioning Board" ("*Bwrdd Comisiynu'r Gwasanaeth Iechyd Gwladol*") means the body established under section 1H of the National Health Service Act 2006.
"NHS body" ("*corff GIG*") means— (a) a Local Health Board, or (b) an NHS trust.
"NHS foundation trust" ("*ymddiriedolaeth sefydledig GIG*") has the meaning given by section 30 of the National Health Service Act 2006.
"NHS trust" ("*ymddiriedolaeth GIG*") means a National Health Service trust established under section 18 of the National Health Service (Wales) Act 2006.
"Parent" has the meaning given in section 576 of the Education Act 1996. That definition includes any person who is not a parent but who has parental responsibility for the child and any person who has care of the child.[63]
"Personal education plan" ("*cynllun addysg personol*") 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(a2A) of the Social Services and Well-being (Wales) Act 2014.
"Proprietor" ("*perchennog*"), in relation to an Academy or an institution that is not a school, means the person or body of persons responsible for the management of the Academy or institution.
"Pupil referral unit" ("*uned cyfeirio disgyblion*") has the meaning given by section 19(2) of the Education Act 1996.
"Relevant local authority" ("*awdurdod lleol perthnasol*") has the meaning given by regulation 21 of the Additional Learning Needs (Wales) Regulations 2021, which is explained in paragraph 19.80. The term is only relevant in the context of children or young people who are subject to a detention order and detained in hospital under Part 3 of the Mental Health Act 1983.
"Relevant persons" ("*personau perthnasol")* refers to the public authorities listed in paragraph 1.3.
"Relevant youth accommodation" ("*llety ieuenctid perthnasol*") has the meaning given by section 39 of the Act, namely the meaning given by section 562(1A)(b) of the Education Act 1996. Paragraph 19.4 sets out the institutions that are relevant youth accommodation.
"School day" ("*diwrnod ysgol*") 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.
"Term time day" ("*diwrnod tymor*") means, in relation to an FEI, a day on which the FEI is due to meet for the purpose of teaching students provided that day is within a time period in which the FEI delivers the majority of its full-time courses.
"Training" ("*hyfforddiant*") includes—

[63] 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.

(a) full-time and part-time training; (b) vocational, social, physical and recreational training.
"Tribunal" ("*Tribiwnlys*") means the Education Tribunal for Wales (see section 91 of the Act).
"UNCRC" ("*Confensiwn y Cenhedloedd Unedig ar Hawliau'r Plentyn*") and **"UNCRPD"** ("*Confensiwn y Cenhedloedd Unedig ar Hawliau Pobl ag Anableddau*") means the United Nations Convention on the Rights of the Child and the United Nations Convention on the Rights of Persons with Disabilities respectively. See paragraph 5.1 for further details about them.
"Young person" ("*person ifanc*") means a person over compulsory school age, but under 25. In some chapters, references to a young person refer only to particular young people rather than all young people: see paragraph 1.18
"Youth offending team" ("*tîm troseddwyr ifanc*") means a team established under section 39 of the Crime and Disorder Act 1998.

Chapter 2: The definition of ALN and ALP

Introduction

2.1. The focus of this chapter is on the meaning of ALN and ALP and matters relevant to identifying ALN and deciding upon the ALP required.

2.2. Under the definitions of ALN and ALP, a person of any age could have ALN, but as the purpose of the ALN system is to meet the ALN of children and young people, this chapter explains the meaning of ALN and ALP by referring to children and young people only.

The definition of ALN

2.3. Section 2 of the Act defines the term 'additional learning needs' (ALN), as set out in figure 1.

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 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.

The definition of ALP

2.4. Section 3 of the Act defines the term 'additional learning provision' (ALP), as set out in figure 2.

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.

Applying the definitions to children of compulsory school age and young people

2.5. To establish whether a child of compulsory school age or young person has ALN, the following tests **must**[1] be applied.

(a) Does the child or young person have a learning difficulty or disability?

2.6. Firstly, does the child or young person have a learning difficulty or disability (which may or may not arise from a medical condition)? Section 2(2) (set out in figure 1 above) deals with the meaning of this for a child of compulsory school age or a young person.

2.7. The key questions to ask are, therefore:

i. Does the child or young person have a greater difficulty in learning[2] than the majority of others of the same age?

[1] As they come from the definition in section 2(1) of the Act.
[2] Section 2(2)(a) uses the term "*significantly* greater difficulty in learning", but whether a difficulty in learning is *significantly* greater will depend on the application of the second test (whether the learning difficulty or disability calls for ALP) so it is not necessary to consider this point at this stage. See below for more information about this.

ii. Does the child or young person have a disability (within the meaning of the Equality Act 2010[3]) which prevents or hinders the child or young 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[4] or mainstream FEIs[5]?

2.8. If the answer to either (or both) question is 'yes', it is necessary to proceed to apply the second test. If the answer is 'no' to both questions, the child or young person does not have ALN.

(b) Does the learning difficulty or disability call for ALP?

2.9. The second test is whether the child or young person's learning difficulty or disability calls for ALP. Section 3(1) (set out in figure 2 above) deals with the meaning of ALP for a child of compulsory school age or a young person.

2.10. 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.

2.11. If the child or young person has a learning difficulty or disability which calls for ALP, the child or young person has ALN for the purposes of the Act.

Applying the definitions to children under compulsory school age

2.12. The application of the tests is slightly different for establishing whether a child under compulsory school age has ALN.

(a) Does the child have a learning difficulty or disability?

2.13. The first test is still whether the child has a learning difficulty or disability, but the meaning of that is slightly different. It is whether the child, when of compulsory school age, is, or would be if no ALP were made, likely to have:[6]

i. a significantly[7] greater difficulty in learning than the majority of others of the same age, or

[3] The meaning of 'disability' for the purposes of the Equality Act 2010 is provided for in section 6(1), (5) and (6) of, and Schedule 1 to, that Act, together with regulations made under Schedule 1 and Minister of the Crown guidance on matters to be taken into account in determining whether a person has a disability.
[4] These are maintained schools (which includes 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.
[6] See section 2(3) of the Act which is set out in figure 1 above.
[7] See below for more information about this.

ii. a disability (within the meaning of the Equality Act 2010) which prevents or hinders the child from making use of facilities for education or training of a kind generally provided for others of the same age in mainstream maintained schools.

(b) Does the learning difficulty or disability call for ALP?

2.14. The second test is also the same as that for older children and young people, 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). The definition of ALP for children aged under three is slightly different to reflect the fact that these children are not at an age where maintained education is routinely available.

2.15. 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, for example, educational provision in Flying Start or specialist health, physical, communication or sensory support. This can take place in an education setting or elsewhere.

Guidance on matters relating to the definition of ALN and its application

2.16. The rest of this chapter provides further guidance on the following aspects of the definitions or matters related to ALN:

(a) Difficulty in learning;
(b) Significantly greater difficulty in learning;
(c) Disability;
(d) Language (or form of language);
(e) Medical conditions;
(f) Areas of need;
(g) ALP.

Difficulty in learning

2.17. Many children and young people are likely at some point to experience short term issues with their learning, for example because of a period of absence from an education setting caused by a temporary illness, or because they have suffered a bereavement or some other trauma. In these circumstances, schools and FEIs may need to take action to help the child or young person catch up and/ or to prevent the issue from escalating. These situations would not ordinarily amount to ALN on their own; but it is possible that in some cases, such events could result in a difficulty in learning which calls for ALP (e.g. where a temporary illness has a lasting detrimental effect).

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

2.18. Those children and young people who are considered 'more able and talented' do not have a difficulty in learning on the basis of their enhanced ability or talent. These children and young people may require enhanced opportunities and challenge in order to reach their full potential, but this ought to be provided as part of differentiated teaching.

Significantly greater difficulty in learning

2.19. One aspect of the definition of ALN involves the child or young person having (or in the case of a child under compulsory school age, being likely to have when of compulsory school age[9]) a "significantly greater difficulty in learning than the majority of others of the same age" (section 2(2) (a) and (3) of the Act, set out in figure 1 above). If a child or young person has (or is likely to have) a greater difficulty in learning than the majority of others of the same age, whether it is (or is likely to be) a significantly greater difficulty in learning compared to those others depends upon the extent of the educational or training provision called for by it (or that will be called for by the likely difficulty). If it calls for (or the likely difficulty will call for) educational or training provision generally made available in mainstream maintained schools or FEIs (for example, measures such as catch-up provision or differentiated teaching strategies more generally), it would not amount to a significantly greater difficulty in learning. But if the educational or training provision the difficulty calls for (or likely difficulty will call for) is ALP, it is (or will be) a significantly greater difficulty in learning.

2.20. Accordingly, when applying the first test (described above) for a child of compulsory school age or a young person, it is not necessary to consider whether a difficulty in learning is significant at that stage, because if it is, the second test (whether it calls for ALP) will be met.

2.21. For a child under compulsory school age, as part of the first test, it is necessary to consider whether a learning difficulty the child is likely to have when of compulsory school age is a significantly greater difficulty in learning than the majority of their peers at that age (i.e. compulsory school age). Whether it is a significantly greater difficulty in learning still depends on be whether, when the child is of compulsory school age, the learning difficulty would call for ALP (i.e. provision which is additional to, or different from, that made generally for others of the same age in mainstream maintained schools).

2.22. In some cases, it will be apparent from the outset that it is likely that a difficulty in learning is sufficiently significant to call for ALP, in which case the duty to decide whether the person has ALN applies. In other cases, it may only be after a difficulty in learning has persisted for a longer period of time, despite the usual interventions, that it appears that the difficulty may be sufficiently significant to call for ALP and therefore the duty to decide whether the person has ALN applies.

[9] For these purposes, it is to be assumed that no ALP is made in the meantime.

2.23. It is important to note that 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.

2.24. In considering whether a person has a greater difficulty *in learning* than the majority of others of the same age, it is also important to note 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 or study.

Disability

2.25. Not all children and young people who have a disability (as defined by the Equality Act 2010), will have ALN. It is only where the child or young person's 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, that they have ALN[10] (unless they have ALN because they have a *learning difficulty* that calls for ALP).

2.26. To amount to ALN, a disability need not affect access to educational or training facilities in all areas of learning but might be, for example, a physical impairment that only affects access to physical education facilities and calls for ALP in relation to physical education only. A child or young person may even be performing well across all areas of the curriculum but still have ALN because they have a disability that is preventing or hindering them from making full use of educational or training facilities unless ALP is made for them.

2.27. 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 lives[11]. Children or young people on this register are more likely to have ALN by virtue of the fact the impairment is likely to prevent or hinder them from making use of educational or training facilities and is likely to call for ALP. In all cases, it is the application of the tests set out in paragraphs 2.5 to 2.15 that will determine whether a child or young person has ALN (rather than, for example, whether or not they are on the register).

[10] Section 2(1) and 2(2)(b) of the Act. In the case of a child under compulsory school age, the child will only have ALN if, when of compulsory school age, the child is (or would be if no ALP were made) likely to have a disability which would prevent or hinder the child from making use of educational or training facilities of a kind generally provided for others of the same age (i.e. compulsory school age) in mainstream maintained schools and this calls for ALP now: section 2(1) to (3) of the Act.
[11] Section 18 of the Social Services and Well-being Act 2014.

Language (or form of language)

2.28. 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 home[12].

2.29. 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 Welsh or English as an additional language and makes slow progress (despite differentiated teaching to support them), consideration ought to be given to whether there is a wider issue.

2.30. 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 ought to look carefully at all aspects of a child or young person's performance across the curriculum 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.

Medical conditions

2.31. In some cases, medical conditions may have a significant impact on a child or young person's experiences and on the way they function in school or further education, such that they result in a learning difficulty or disability within the meaning of that term (set out in Figure 1 above). 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.

2.32. However, not all children and young people with a medical condition 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 instances where a child or young person with a medical condition does not have a learning difficulty or disability, or if the person does, the learning difficulty or disability does not call for ALP. In these cases, the child or young person's needs ought to be met through other means.

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

2.33. The Welsh Government's statutory guidance on Supporting Learners with Healthcare Needs addresses the arrangements to be made by maintained schools and local authorities to support learners under the age of 18 with healthcare needs including those that arise from a medical condition.

Areas of need

2.34. There is a wide range of learning difficulties or disabilities, but they can be broadly classified into the following four areas:

(a) Communication and interaction;
(b) Cognition and learning;
(c) Behaviour, emotional and social development;
(d) Sensory and/ or physical.

Communication and interaction

2.35. Some children and young people might experience difficulty in one, some or all aspects of speech, language and communication. This area of need may encompass children and young people with speech and language delay, impairments or disorders, specific learning difficulties, such as dyslexia and dyspraxia, hearing impairment and those who demonstrate features within the autistic spectrum; it may also encompass some children and young people with moderate, severe or profound learning difficulties. The range of need will include those for whom language and communication difficulties are the result of permanent sensory or physical impairment.

Cognition and learning

2.36. Some children and young people who demonstrate features of moderate, severe or profound learning difficulties or specific learning difficulties, such as dyslexia or dyspraxia, may require specific programmes to aid progress in cognition and learning. Some of these children and young people may have associated sensory, physical and behavioural difficulties.

Behaviour, emotional and social development

2.37. Some children and young people will demonstrate features of emotional and behavioural difficulties. They may be withdrawn or isolated, disruptive and disturbing, hyperactive or lacking concentration; they may have under-developed social skills; or present challenging behaviours.

Sensory and / or physical needs

2.38. This area of need includes the wide spectrum of sensory, multi-sensory and physical difficulties. The sensory range extends from profound and permanent deafness or visual impairment through to lesser levels of loss, which may only be temporary. Physical impairments may arise from physical, neurological or metabolic causes that only require appropriate

access to educational facilities and equipment; others may lead to more complex learning and social needs; some children and young people will have multi-sensory difficulties some with associated physical difficulties.

ALP

2.39. Chapters 11 to 17 set out the duties on local authorities, schools and FEIs to prepare an IDP; Chapter 20 deals with identifying ALN and deciding upon the ALP required; Chapter 23 deals with the preparation and contents of IDPs, including duties about whether the ALP should be provided in Welsh, and ALP to be provided by NHS bodies (further information about duties on health bodies is in Chapter 21); and Chapter 24 deals with the content of IDPs for looked after children.

2.40. If a child or young person has ALN and an IDP must be prepared, 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.

2.41. 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 or current ALP is having or has had a positive impact on improving their rate of progress.

2.42. In the case of young children, learning ought to 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.

2.43. In many cases, the education setting ought to 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 preparation of the IDP, its day-to-day operation or subsequent review, although their advice may be helpful to inform its preparation.

2.44. 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.

Chapter 3: Principles of the Code

3.1. 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.

3.2. The principles underpinning the ALN system 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 is enabled to participate as fully as possible in the decision making processes and has effective rights to challenge decisions about ALN, ALP and related matters.
(b) **Early identification, intervention and prevention** where needs are identified and provision put in place at the earliest opportunity and where possible interventions are put in place to prevent the development or escalation of ALN.
(c) **Collaboration and integration** where services work together to ensure ALN are identified early and appropriate co-ordinated support is put in place to enable children and young people to achieve positive expectations, experiences and outcomes.
(d) **Inclusive education** where the majority of children and young people with ALN are supported to participate fully in mainstream education 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 time.

Principles in practice

A rights-based approach

<u>Rights of Children, Young People and Disabled People</u>

3.3. 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 Persons with Disabilities (UNCRPD).

3.4. The Act provides for children, their parents and young people to challenge decisions about ALN, ALP and related matters by way of appeal to the Tribunal. They may wish to do this if they disagree with decisions that have been made. The decisions of the Tribunal, which is independent, are

binding on local authorities and FEIs. There is also provision within the ALN system to allow appeal and other rights to be exercised where a child, a child's parent or young person lacks capacity to exercise their rights. This is through the appointment by the Tribunal of a case friend for a child and through representatives for young people and children's parents who lack capacity (see Chapter 30 on case friends and Chapter 31 on representatives for the details).

Participation

3.5. Central to a rights-based approach and to the Act, is the principle of participation – listening to children, their parents and young people, and taking their views meaningfully into account. A number of benefits are associated with the participation of children, their parents and young people in decisions affecting the children or young people, 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.

3.6. To realise the benefits of participation, the Act places a duty on a person exercising functions under Part 2 in relation to a child or young person to 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 necessary to enable participation in those decisions.

3.7. This duty reflects the ethos of person-centred practice. Person-centred practice puts the child, child's parent or young person at the centre of decisions. More information on this duty and person-centred practice can be found in Chapter 4.

Information, advice and advocacy

3.8. The third aspect to the duty above is about the importance of the children, parents and young person having the information and support necessary to enable participation in decisions.

3.9. This is supported by further duties[1] on local authorities to make arrangements to provide people with information and advice about ALN and the ALN system and on local authorities, schools and FEIs to make the arrangements known. 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.

3.10. Local authorities are also under duties[2] about the provision of independent advocacy services. This is to support children and young people who are considering or intending to make, or are making an appeal to the Tribunal or taking part in, or intending to take part in, arrangements for avoidance and resolution of disagreements (local authorities are under duties to make such arrangements[3]). Chapter 32 provides more information about avoiding and resolving disagreements and independent advocacy services.

Having regard to the UNCRC and the UNCRPD

3.11. The rights-based approach is strengthened further by the duties on local authorities and NHS bodies to have regard to the UNCRC and the UNCRPD when planning generally for the exercise of functions (see Chapter 5 for more details on these duties).

Early identification, intervention and prevention

3.12. Early identification of ALN and the timely delivery of interventions 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.

3.13. 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. It is expected that schools, FEIs and local authorities adopt a graduated response to children and young people with ALN, making use of a wide range of strategies that allows for movement along a continuum of support to reflect needs and progress made.

[1] Section 9 of the Act.
[2] Section 69 of the Act.
[3] Section 68 of the Act.

3.14. Further information on identifying ALN and ALP can be found in Chapter 20, and information about the review and revision of IDPs can be found in Chapter 25. Further information about the interpretation of timescales can be found in Chapter 1. The guidance and requirements on these matters, in particular, is informed by the principle of early identification and intervention.

Collaboration and integration

3.15. 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.

3.16. Those with duties under the Act and others 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, maintained 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;
- ensure appropriate consultation with all relevant services.

3.17. Further information and guidance on the duties on health bodies and other relevant persons is set out in Chapter 21.

Inclusive education

3.18. The Welsh Government considers that an inclusive education[4], where all pupils access common opportunities in ways relevant to their needs, and which ensures that they fully belong to the school community, is of benefit to all.

3.19. The ALN system relies on the knowledge and experience of teaching staff to identify ways of providing appropriate access to the curriculum for every child and young person. Meeting the needs of learners with ALN ought to be

[4] Welsh Government has produced a guidance document (see link) to provide advice and guidance on educational inclusion - https://gov.wales/sites/default/files/publications/2018-05/guidance-inclusion-and-pupil-support_0.pdf.

part of a whole school or institution approach to school or institution improvement. The key to this lies in the teaching staff's knowledge of each child and young person's skills and abilities. 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.

A bilingual system

3.20. In some cases, ALP may need to be provided in Welsh for it to be effective, or as effective as possible. There are various duties in the Act at both the individual level and the planning level, with a view to ensuring provision of ALP in Welsh wherever possible.

3.21. At the individual level, local authorities, schools, FEIs and NHS bodies are subject to duties to consider whether ALP should be provided to the child or young person in Welsh and, where they decide that it should be provided in Welsh, to specify this in the IDP. Where this occurs, there are duties to take all reasonable steps to secure that it is provided in Welsh. These duties[5] are dealt with in Chapters 11 to 17, 19, 21, 23 and 24.

3.22. At the planning level, considering the sufficiency of arrangements for the provision of ALP in Welsh is part of a local authority's duty to keep ALP under review.[6] In addition, the Welsh Ministers are also under a duty to arrange for reviews of the sufficiency of ALP in Welsh every five years and publish reports following these reviews. The Welsh Ministers' have the power[7] to change duties in the Act to secure the provision of ALP in Welsh from being duties to take all reasonable steps to do that, to being absolute duties (that is, to secure the ALP in Welsh).

3.23. Besides complying with duties imposed by the Act about the provision of ALP in Welsh, relevant persons will also need to comply with any applicable Welsh language obligations when exercising functions under the ALN system.[8]

[5] See sections 12, 14, 19, 20, 21, 40 and 42 of the Act.
[6] Under section 63. See Chapter 7.
[7] Section 90 of the Act.
[8] For example, 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 given by the Welsh Language Commissioner to local authorities for the individual standards which are applicable to each local authority, e.g. in respect of correspondence and meetings.

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

Introduction

4.1. This chapter explains the duty[1] on persons exercising functions under the Act to involve and support children, their parents and young people.

4.2. The duty gives effect to rights in the United Nations Convention on the Rights of the Child (UNCRC) and United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). Chapter 5 gives guidance about the duties[2] on local authorities and NHS bodies to have regard to the UNCRC and UNCRPD when planning the exercise of their functions, including the functions set out in this chapter.

4.3. The focus of this chapter is about how to involve and support individual children, their parents and young people (including guidance on young people consenting to ALN decisions and IDPs). However, local authorities, maintained schools, FEIs and NHS bodies **should** consider from time to time whether any arrangements (such as policies on particular matters) they have are suitable for encouraging children and young people to participate in all aspects of the ALN system in a meaningful way. Actions they might take as a result of such consideration could include:

- measures to encourage children and young people to raise any concerns with any member of staff;
- in any relevant policies about raising concerns or making complaints, providing for the involvement of a person with responsibility for ALN matters within the organisation (for example, the ALNCo, Early Years ALNLO or DECLO) when the complaint or concern comes from a child, their parent or young person with ALN or otherwise relates to ALN matters.

Participation of children, their parents and young people

4.4. A person exercising functions under the Act which relate to an individual child or young person **must**[3] have regard to-

(a) the views, wishes and feelings of the child and the child's parent or the young person,
(b) 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

[1] Under section 6 of the Act.
[2] Sections 7 and 8 of the Act.
[3] Section 6 of the Act.

(c) the importance of the child and the child's parent or young person being provided with the information and support necessary to enable participation in those decisions.

4.5. This duty reflects the ethos of 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 online[4].

4.6. Supporting children, their parents 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 for, and control over, their learning.

4.7. As a result of this, a child or young person's needs are more likely to be accurately identified and the provision decided upon to meet them is more likely to be effective, which in turn should lead to better outcomes for the child or young person.

4.8. The duty applies 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 is important for ensuring that their needs are correctly identified and that the right provision is put in place, which is effective at meeting their needs. (Information on children who lack capacity is found in Chapter 30 and on parents and young people who lack capacity in Chapter 31.)

The duty in practice

4.9. In order to satisfy the duty, local authorities, maintained schools and FEIs **should**, when making decisions about a child or young person's ALN, ALP or other matters related to an IDP (including whether one is necessary):

(a) seek the child, their parent or young person's views on how they wish to participate in the decisions ahead of those decisions being made;

[4] At the time of making the Code, these include: Person-centred Practice in Education: a guide for early years, schools and colleges in Wales, https://gov.wales/sites/default/files/publications/2019-01/person-centred-practice-in-education-a-guide-for-early-years-schools-and-colleges-in-wales.pdf;
Developing as a Person-centred Organisation: a self-assessment tool and practical steps for progress, https://gov.wales/sites/default/files/publications/2019-01/developing-as-a-person-centred-organisation.pdf;
Person-centred Reviews toolkit: a guide for early years, schools and colleges in Wales, https://gov.wales/sites/default/files/publications/2018-12/person-centred-reviews-toolkit.pdf

(b) provide information relevant to the decision to the child, their parent or young person in a way which enables that child, their parent or young person to understand it;
(c) encourage the child, their parent or young person to participate fully in the process;
(d) use the child, their parent or young person's views to inform the decisions;
(e) ensure the child, their parent or young person has access to information and advice about ALN and the ALN system[5].

4.10. When and how this is done will depend upon what is appropriate in the particular circumstances. A school, FEI or local authority **should** do these things at an early stage in the process for making such decisions and continue to do them during that process as may be necessary to enable the child, their parent or the young person to be fully involved in the process.

4.11. To involve children and young people in the decision making process all bodies exercising functions under the Act **should** consider how a child or young person would like to communicate and participate, the suitable means of engagement for them and how to support them to participate.

4.12. Local authorities, schools, FEIs and NHS bodies might find it useful to consider the Children and Young People's National Participation Standards[6] which provide a guide to listening and responding to the voices of children and young people.

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

4.13. 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.

4.14. Understanding the communication requirements and preferences of the child or young person is important to facilitate their attendance at, and participation in, meetings held as part of the decision-making process[7]. In cases where it might not be appropriate for them to attend such meetings, understanding their communication requirements and preferences is necessary in order to ascertain their views in other ways.

[5] Further guidance on advice and information is provided in Chapter 6.
[6] https://gov.wales/children-and-young-peoples-national-participation-standards
[7] More information on meetings about ALN and IDPs can be found in Chapter 22.

4.15. See Chapter 23 for information on recording communication preferences in an IDP (where one is required).

Providing information and support

4.16. Local authorities, maintained schools and FEIs are subject to duties[8] in the Act and requirements in 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 duty[9] to involve and support individual children, their parents and young people.

4.17. Local authorities, maintained schools, FEIs and NHS bodies **should** use the information about communication requirements and preferences 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, maintained schools, FEIs and NHS bodies **should** use that information to ensure inappropriate arrangements are avoided.

4.18. Similarly in providing information to, and having discussions with, the child or young person to facilitate their participation, the maintained school, FEI or local authority, **should** communicate using the communication requirements and preferences of the child or young person and in a way the child or young person can understand.

4.19. Where a maintained school, FEI or local authority is making a decision as to whether a child or young person has ALN, there are requirements on it to do various things.[10] These include notifying a child and their parent that it is deciding whether the child has ALN and considering whether to offer a meeting to the child and their parent or the young person to discuss the process. The maintained school, FEI or local authority **should**, at the outset, explain the process to the child and their parent[11] or the young person and a meeting can be a helpful way of doing that in many cases.[12] This might be done by the designated co-ordinator[13].

Which means of engagement is suitable?

4.20. A maintained school, FEI or local authority **should** seek to agree, with the child and their parent or with the young person, on how best to involve the child or young person.

[8] Under Section 9 of the Act.
[9] Under Section 6 of the Act.
[10] These are requirements imposed by the Code in Chapters 11 – 17 and 19.
[11] See below for further considerations when involving and supporting parents of children.
[12] Further guidance on meetings is provided in Chapter 22.
[13] See requirements in Chapters 11 – 17 and 19.

4.21. Some children and young people with ALN may become anxious in the face of new or unfamiliar situations, or feel overwhelmed or uncomfortable. They may then find it difficult to participate fully or express their views, especially in meetings with large numbers of adults. In these circumstances, consideration **should** be given as to what may be done to support an individual child or young person to participate.

4.22. For instance, a maintained school, FEI 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. 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. There is further guidance in Chapter 22 on measures which might better facilitate the participation of a child or young person in a meeting.

4.23. 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 **must**[14] be taken into consideration when the decision is being made and therefore it is important that these are ascertained in advance. 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 **should** be recorded in the relevant section of the IDP, depending on the matter to which the views relate (see Chapters 23 and 24).

Preparing a child and their parent or a young person for a meeting

4.24. Where a child or young person is to attend a meeting, or part of a meeting, to make decisions about the person's ALN or related to an IDP (see Chapter 22 for more information about meetings), the maintained school, FEI or local authority responsible for making the decision about ALN, or for preparing or reviewing or reconsidering the IDP, **should** work with the child and their parent or the young person to help them prepare for the meeting.

4.25. Preparation **should** include discussion about any arrangements which will be put in place to support the child or young person at the meeting. This could include providing an interpreter for children and young people whose first language is not Welsh or English, providing documents in an appropriate format for example enlarged print or braille and that any specialist equipment the child or young person requires to participate effectively 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.

[14] Section 6 of the Act.

Young people's consent

4.26. 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. If a young person does not consent to a decision on ALN, or an IDP being prepared, maintained or (in the case of a detained person who is a young person) kept, the duties to decide upon ALN, prepare and maintain or keep the IDP do not apply (see Chapters 15 to 17 and 19 for the precise details). The Code includes various requirements to seek the consent of young people, to explain the consequences of consenting or not doing so and to record matters relating to consent (see Chapters 15 to 17 and 19). It is important to note however, in cases where a young person does not give their consent to a decision on ALN or an IDP, this does not mean that their ALN should not be met, where possible, by a maintained school at which they may be registered as a pupil, or an FEI in which they may be enrolled as a student. See Chapter 15 for information on the duties on schools and local authority in relation to young people attending maintained schools, and Chapter 16 for the duties on FEIs and local authority in relation to young people at an FEI.

4.27. The duty 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 on consent. This includes information which explains their rights, the consequences of having an IDP or not having one, the steps likely to be involved in making decisions, preparing an IDP or maintaining one and how they will be carried out. This would include, for example, explanation of the professionals and external agencies that could be involved in making the ALN decision or in preparing or maintaining an IDP, how they would be involved and who would see the IDP. It is important to afford young people the opportunity to discuss any concerns they might have and clarify anything they might be uncertain about.

4.28. A decision to withhold consent is not irreversible; the young person is entitled to change their mind at any time. Maintained schools, FEIs and local authorities **should** ensure that young people who withhold consent to an ALN decision or an IDP are aware that they can change their mind in the future. Where a young person who is a registered pupil at a maintained school or enrolled as a student at an FEI withholds consent, the school or FEIs **should** raise the matter with the young person at appropriate times (for example when reviewing the young person's progress) to give the young person the opportunity to revisit their decision.

4.29. The guidance above applies equally to the case of a child with an IDP who, upon finishing compulsory schooling, will become a young person. The focus of the information and support that is provided to such a person may

be slightly different compared to a young person who has not had an IDP before, in that the person with the IDP will have experience of the ALN system and processes involved in it, at least as a child. It is important that the child is supported to understand the rights under the ALN system they will acquire as a young person and any other changes in how they are supported which may occur when they become a young person.

4.30. When a child with an IDP is approaching the end of compulsory schooling, a maintained school or local authority that maintains an IDP for the child **should** explain to the child what may happen to their IDP when the child becomes a young person. This includes who will maintain it (in cases where the IDP might transfer, e.g. from a school to an FEI at which the child is expecting to enrol) and explaining the rights of young people to consent or object to ALN decisions and IDPs. The maintained school or local authority **should** seek the child's view on consenting to the IDP continuing to be maintained once the child becomes a young person (which is when the child ceases to be of compulsory school age). It could be useful to do this during a review in year 11 and could form part of transition planning (see Chapter 25 on reviews of an IDP and Chapter 27 on transitions; it may even be appropriate in some cases to start discussing these matters earlier). Where the child wishes to consent to the IDP being maintained, the child **should** be given an appropriate opportunity to confirm that decision after the child has become a young person. Where the child objects or does not indicate consent, then the maintained school or local authority will need to check the matter further when the child becomes a young person. Where a young person lacks capacity, the person's representative can consent and exercise other rights on the young person's behalf: see Chapter 1 and Chapter 31 for more information.

Further considerations when involving and supporting parents of children with ALN

4.31. The duty on persons exercising functions under the Act to involve and support children and young people, also applies in the same way to involve and support the parents of children[15].

4.32. 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.

[15] Section 6 of the Act, described above. Guidance on parents who lack capacity is provided in Chapter 31.

4.33. 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.

4.34. 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.

4.35. Maintained schools, FEIs and local authorities, when they have a duty to make a decision about whether a child has ALN or to prepare, review or reconsider an IDP, **should** support parents to understand the process and decisions which are made in the following ways:

(a) by explaining at the outset in a way that the individual parents can understand the decision that the body is making, the process for making it and how the parent can contribute to that process;
(b) at meetings to determine the ALN and prepare any IDP or at review or reconsideration meetings, by explaining what is being proposed (for example, the ALN, the proposed ALP, the outcomes for their child to aim for, the purpose of the interventions) in a way that the individual parents can understand.[16]

4.36. There are also specific requirements[17] to give notifications or information to parents at particular points or to discuss particular matters with parents. These are dealt with in the relevant chapters dealing with the decision or process to which they attach.

4.37. Some parents may require support that goes further than signposting to information and advice; for example, they may experience difficulties with accessibility and understanding.

4.38. Therefore bodies that are required to notify or inform parents of something **should** do so in a format which is accessible to them and in a manner appropriate to them.

4.39. Different parents will require differing levels of support. They need to feel confident that they will be listened to and their input valued. Local authorities, maintained schools and FEIs **should** provide support to parents to enable them to participate as fully as possible in meetings.

4.40. 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

[16] Further guidance on meetings about ALN and IDPs is provided in Chapter 22.
[17] Some are provided for by the Act, others in regulations and some are requirements imposed by the Code (see also Chapter 1 which deals with their interpretation).

and encouragement for the parents in this situation could help overcome difficulties and ensure the full participation of their child. The person exercising the function **must**[18] have regard to both the child and the parent's views, wishes and feelings, including where their views differ.

4.41. Parents may need support in appreciating that their child may, over time, begin to form their own views about their education, support and how they wish to participate in decisions about their ALN. These views may differ from those of their parents. With support, parents may come to understand that this is an important step on their child's journey to increased independence and will help them to take control of their learning.

[18] Section 6 of the Act.

Chapter 5: 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

5.1. 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 (UNCRPD)[2]. It sets out what is required to discharge those duties and gives further guidance about them.

5.2. 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 rights under the Conventions.

5.3. For example, article 12 of the UNCRC provides that:

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.

5.4. This is given effect in the Act by (amongst other things):

- the duty about involving and supporting children, their parents and young people (see Chapter 4);
- duties about providing children and young people (as well as others) with information and advice about ALN and the ALN system (see Chapter 6), to facilitate their participation in it;
- children and young people's rights to make an appeal to the Tribunal (see Chapter 33) including, in the case of a child lacking capacity, through a case friend (Chapter 30).

5.5. With a view to embedding the rights under those Conventions further, there are specific duties on local authorities and NHS bodies exercising functions

[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.

under the Act relating to a child or young person or disabled child or young person. They **must**[3] have due regard to:

(a) Part 1 of the UNCRC in respect of functions under the Act relating to a child or young person, and
(b) the UNCRPD and its optional protocol, in respect of functions under the Act relating to a disabled child or young person.

5.6. These duties to have due regard to the UNCRC and UNCRPD do not[4] require local authorities and NHS bodies to give specific consideration to the Conventions on each occasion that a function under the Act is exercised. Rather, local authorities and NHS bodies **must**[5] have due regard to the Conventions when planning generally for the exercise of functions under the Act. This only applies if the functions, when exercised, will relate to a child or young person (for the UNCRC duty) or a disabled child or young person (for the UNCRPD duty). This duty would apply to activities such as:

- general planning for the delivery of ALP for children and young people with ALN in the authority or body's area (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, for example, systems for involving and supporting children, their parents and young people so as to enable an authority or body to discharge its duty under section 6 of the Act;
- preparing, monitoring, evaluating or revising arrangements within the authority or body for the exercise of functions under the Act in relation to children and young people.

5.7. Having 'due regard' to the Conventions requires consideration of the rights in them and then taking into account relevant rights in making decisions about what action to take when planning generally for the exercise of functions. Where a right is not relevant in a particular context to a decision, it need not be considered further. Where a right is relevant to such a decision, then due regard **must**[6] be had to it before and at the time of making the decision. This means that the person or group of persons, when making the decision for the local authority or NHS body, needs to consider the substance of the relevant rights in the context of planning what needs to be done to exercise the particular function concerned, giving the rights the weight that is appropriate in all the circumstances and balancing them against any other relevant countervailing factors. There is no requirement to achieve a particular result (although of course the authority or body does have to comply with its duties under the ALN system). However, by having due regard in this way, the rights under the Conventions are likely to be

[3] Sections 7 and 8 of the Act.
[4] Sections 7(3) and 8(3) of the Act.
[5] Requirement imposed by the Code.
[6] Requirement imposed by the Code.

embedded further within the delivery of the local authority or NHS body's ALN services.

5.8. As a result of having due regard to the rights in the Conventions in this way, a local authority or NHS body, might conclude that there is nothing more to be done other than complying with particular requirements of the Act or Code (which might be very precise). On some occasions, an authority or body might decide to take further action or make arrangements to carry out its functions in a particular way, with a view to giving better effect to rights under one or both of the Conventions.

5.9. The local authority or NHS body **should** keep a record to demonstrate how it has complied with the applicable duty.

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

5.10. The rights in the Convention to which due regard **must**[7] be had are those set out for the time being in Part 1 of the Schedule to the Rights of Children and Young Persons (Wales) Measure 2011, which can be found at: https://www.legislation.gov.uk/mwa/2011/2/schedule

5.11. 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:[8]

- 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;

[7] Section 7(1) and (2) of the Act. The rights set out in the Schedule to the Measure are subject to any declaration or reservation set out for the time being in Part 3 of that Schedule (which can also be found in the link above). At the time of making the Code, there are two declarations set out in Part 3. They are about the United Kingdom interpreting (a) the Convention as only being applicable following a live birth and (b) references to "parents" being to those treated as parents under national law.
[8] The descriptions given here 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 29 – Goals of education;
- Article 30 – Minority and first language rights;
- Article 31 – Leisure, play and culture.

5.12. For the purposes of having regard to the Convention, references in it to a child are to a person under the age of 18. Many of the principles may, in the context, be relevant to young people as well.

5.13. 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:

- **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;
- **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.

5.14. These principles are reflected in the ALN system and overlap with the principles of the Code. 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*.[9]

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

5.15. The Convention (including its optional protocol) can be found online at: https://www.un.org/disabilities/documents/convention/convoptprot-e.pdf.

[9] 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.

5.16. 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 are:[10]

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

5.17. The meaning of the rights in the UNCRPD, to which a local authority and NHS body **must**[11] have due regard, is subject to any declaration or reservation made by the United Kingdom Government on ratification (unless it was subsequently withdrawn).[12] One of the United Kingdom's reservations and its declaration are directly relevant to education matters. Accordingly, a local authority and NHS body, when taking into account article 24 (on education) to fulfil the duty to have due regard to the UNCRPD, **must**[13] take it into account in light of the reservation and declaration. The reservation and declaration (set out here for ease of reference) are:

Reservations:

…

Education – Convention Article 24 Clause 2 (a) and 2 (b)

The United Kingdom reserves the right for disabled children to be educated outside their local community where more appropriate education provision is available elsewhere. Nevertheless, parents of disabled children have the same

[10] The descriptions given here 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.
[11] Section 8 of the Act.
[12] Section 8(2) of the Act. The United Kingdom's reservations and declaration can be found at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=_en#EndDec.
[13] Section 8(1) and (2) of the Act.

opportunity as other parents to state a preference for the school at which they wish their child to be educated.
…

Declaration:
"Education – Convention Article 24 Clause 2 (a) and (b)
The United Kingdom Government is committed to continuing to develop an inclusive system where parents of disabled children have increasing access to mainstream schools and staff, which have the capacity to meet the needs of disabled children.

The General Education System in the United Kingdom includes mainstream, and special schools, which the UK Government understands is allowed under the Convention."

5.18. When discharging the duty, local authorities and NHS bodies might find the Social Model of Disability[14] useful. This model advocates that it is society that creates attitudinal and physical barriers which disable people, rather than 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

5.19. As described above, the duty to have due regard to the Conventions involves taking into account relevant rights in decision-making when planning generally for 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.

5.20. 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 and ALN system of children and young people, including those with disabilities, for instance through staff training;
- 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. Involving children and young people may help better embed the rights in the delivery of services to meet the needs of those with ALN, for example, by giving them an opportunity to explain how their views might best be sought in processes for making decisions about them;

[14] 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.

- undertaking relevant impact assessments, which can be a useful means of:

    i. assessing the likely impact of proposals for ALN policies, services and resources, or changes to existing policies, services or resources;
    ii. reviewing the impact of existing ALN policies, services or resources;
    iii. recording those assessments;
    iv. identifying strengths and weaknesses in proposals or existing arrangements, which can then inform what if any action to take to make improvements and maximise effectiveness of ALN policies, services or resources;
    v. recording how the duties to have due regard to the Conventions have been complied with;

- reviewing ALN services and resources to identify any barriers to a child or young person's access to these services, and taking actions which would remove or reduce the impact of those barriers.

Chapter 6: Advice and information about ALN and the ALN system

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 6.15.

6.3. If a maintained school or FEI is informed of these arrangements, it **must**[4] take reasonable steps to make the arrangements known to its pupils, their parents and their case friends (in the case of a school) or its students (in the case of an FEI).

6.4. The advice and information provided by local authorities, maintained 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 about ALN and the ALN system itself. Alternatively, the local authority could work with external service providers, including the third sector, to provide information and advice about ALN and the ALN system. 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 about ALN and the ALN system must be provided in an impartial manner.

6.6. 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 ALN system and exercising their rights under it, including to challenge decisions of, amongst others, the local authority.

6.7. To help aid the provision of information and advice about ALN and the ALN system to children, their parents and young people, a local authority may wish to consider establishing a directory, which would set out in one place

[1] Section 9(1) of the Act.
[2] Section 9(2) of the Act.
[3] Section 9(3) of the Act.
[4] Section 9(4) and (5) of the Act.
[5] Section 49 of the Act.
[6] Section 9(2) of the Act.

information on the different help and support available in the area. The directory could include the details of its:

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

6.8. 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.

6.9. The information and advice **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.

Information and advice provided by an external provider

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

- be transparent about who is providing the services on its 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,
- determine and monitor the overall standard of the service, and
- ensure appropriate governance arrangements are in place for the service.

Aims and content of advice and information

6.11. The information and advice made available under a local authority's arrangements **must**[7] be clear, accurate and factual. It **should** be accessible and easy to find and use language that children, their parents and young people can easily understand.

6.12. Both the information and advice made available under these arrangements **should** be about ALN and the ALN system with the aim of helping children, their parents and young people understand, the following matters:

(a) what ALN is;
(b) their rights under the ALN system;
(c) the duties of maintained schools, FEIs and local authorities;
(d) the different agencies involved and their respective roles;
(e) the role of the local authority's Early Years ALNLO and how they can be contacted;

[7] Requirement imposed by the Code.

(f) timescales for taking particular decisions and undertaking actions related to IDPs or ALN;
(g) where they can find additional support if needed;
(h) the different complaints procedures;
(i) the local authority's services for information and advice, avoiding and resolving disagreements and independent advocacy;
(j) the options available to them in the event of any concerns they might have;
(k) how to appeal to the Tribunal against a decision of the local authority or FEI (including a refusal to decide a matter where that refusal is appealable), and in the case of decisions of, or IDPs maintained by, a maintained school, how to request a local authority to reconsider the matter.

6.13. The advice made available **should not** relate to the appropriateness or otherwise of any decision about ALN or any additional learning provision that is made for the child or young person. Chapter 32 deals with the duties on local authorities to provide arrangements for avoiding and resolving disagreements and independent advocacy services and what these cover.

6.14. When making information and advice arrangements about ALN and the ALN system, 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 e.g. voluntary organisations, local support groups or disability groups, careers advisers, etc.

Raising awareness of arrangements for providing advice and information

6.15. A local authority **must**[8] take reasonable steps to make its arrangements for advice and information about ALN and the ALN system 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.

6.16. 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;

[8] Section 9(3) of the Act.

- maintained schools, FEIs and non-maintained nursery providers that are outside its area (including any that may be in England), but attended or likely to be attended by children or young people in its area.

6.17. Local authorities **should** consider the most appropriate mechanisms for making their arrangements known to the persons listed above.

6.18. 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.

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

6.20. To ensure advice and information about ALN and the ALN system 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 about ALN and the ALN system needs to be easy for learners, their families and others to find.

Accessibility of advice and information

6.21. When carrying out their duties under the Act to make arrangements for the provision of advice and information about ALN and the ALN system 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.

6.22. 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 then English or Welsh) available for those who require such.

6.23. Local authorities **should** provide advice and information in various formats to ensure accessibility to all those who could have an interest in it. This might

include, for example, producing leaflets or posters targeted at the different audiences and developing apps targeted at older children and young people.

6.24. 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 30 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**[9] 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

6.25. 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 about ALN and the ALN system. Local authorities **should** review the effectiveness of their arrangements by seeking regular feedback from users which **should** be considered with a view to improving the service. 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 own arrangements to provide advice and information about ALN and the ALN system 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 contracts with an external provider for it to provide advice and information about ALN and the ALN system, it **should** require that provider to test their materials in a similar way with learners and their families.

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

6.26. Where a local authority makes its arrangements known to a maintained school or FEI, that school or FEI **must**[10] 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.

6.27. Where providers of non-maintained nursery education in receipt of local authority funding are informed by a local authority of its arrangements for providing information and advice about ALN and the ALN system (see Chapter 10 for details of the role of the Early Years ALNLO), they **should** also take reasonable steps to make the arrangements known to parents of children that attend their setting.

[9] Section 9(3) of the Act.
[10] Sections 9(4) and (5) of the Act.

6.28. This might include, for example:

- including links to the local authority's arrangements on the non-maintained nursery's, the school's or FEI's website;
- displaying posters or leaflets in prominent areas where learners and their families are likely to see them.

6.29. The Code also imposes specific requirements on maintained schools, FEIs and local authorities to give information about how to access a local authority's arrangements for providing people with information and advice about ALN and the ALN system in particular circumstances, such as when a school, FEI or local authority is deciding whether a child or young person has ALN or has prepared or revised an IDP (see Chapter 1 for information about giving notifications or copies of documents). A local authority could comply with such a requirement, provided it is appropriate in the particular circumstances, 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.

Chapter 7: Reviewing arrangements for children and young people with ALN

Introduction

7.1. 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.

7.2. As part of its review, a local authority **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] have regard to the ALP that may reasonably be arranged by others (such as FEIs and NHS bodies).

7.3. In exercising its functions in this respect, the local authority **must**[4] consider the sufficiency of ALP in Welsh. Consideration **must**[5] also include the size and capability of the workforce available. This includes consideration of the Welsh medium workforce.

7.4. If a local authority considers that the arrangements are insufficient it **must**[6] take all reasonable steps to remedy this. In exercising these functions, the local authority **must**[7] also consult such persons and at such times as it considers appropriate.

7.5. The duty involves the local authority considering, at a strategic level, the overall provision for ALP and other arrangements to support the identification of needs and provision to meet them, for children and young people in the authority's area. It requires consideration of what provision there is to meet needs; whether that provision is sufficient and if insufficient in any respects, considering what to do to remedy the matter; and consulting as the authority considers appropriate during that process. There is no specific trigger for the duties to apply; rather they apply from time to time as the occasion arises.

Reviewing arrangements for children and young people with ALN

7.6. The arrangements to be reviewed are the ALP available in the local authority's area and other arrangements which support the identification of ALN and the ALP needed to meet those needs.

[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 63(5) of the Act.

7.7. The review is not intended as a method for measuring or monitoring the effectiveness 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 25 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 8 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 available in its area and supporting arrangements, are sufficient to meet the overall needs of its population of learners with ALN.

7.8. Keeping ALP and other arrangements under review, is a key part of local strategic planning and decision making. It will enable local authorities to assess current and likely future needs and secure sufficient provision and services to meet those needs.

7.9. The review **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 children and young people with ALN, and establish the steps that should be taken to remedy any insufficiencies.

7.10. The local authority **should** establish; taking into account the principles to be developed in consultation with schools they maintain, FEIs in their area, and any other persons they consider appropriate (see paragraphs 12.44 and 15.45); the extent to which the following are available in maintained schools in its area:

(a) high quality, differentiated teaching for individual children and young people;
(b) targeted intervention and support for children and young people with ALN;
(c) 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;
(d) arrangements for involving specialists in cases where it is appropriate to do so;
(e) arrangements for reviewing the effectiveness of interventions used to support children and young people with ALN and the skills and expertise of staff;
(f) arrangements for involving children, young people and parents at every stage.

7.11. Reviewing ALP and other arrangements might provide a local authority with information about, for example, the take-up of a particular specialist service 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.

7.12. Reviewing ALP and other arrangements **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.

7.13. In reviewing the ALP available in its area and other arrangements for children and young people with ALN, the local authority **must**[8] consult the persons it considers appropriate, and at times it considers appropriate. Persons the local authority might consult with include, but are not limited to:

- Children, young people and their families
- Other local authorities in its region
- Maintained schools
- FEIs
- ALNCos
- Independent schools
- ISPIs
- Providers of non-maintained nursery education
- The local authority's Early Years ALN Lead Officer
- Educational psychologists
- Specialist services provided by the local authority (including qualified teachers of the deaf or those with 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.

7.14. The involvement of these persons may help the local authority to establish a clear picture of the capacity and effectiveness of current ALP. They may also be able to offer views on emerging needs and patterns of need; the suitability of skills and expertise available in the workforce; and contribute to decisions on the sufficiency of arrangements and about the reasonable steps local authorities take to remedy any insufficiencies. For example, the regional education consortia, in partnership with other stakeholders listed in paragraph 7.13, undertake a key role in collating evidence relating to the size and capability of the workforce available and whether local arrangements are sufficient.

7.15. The review duty is not triggered by any particular event. It arises from time to time as occasion occurs. Local authorities could time reviews, where

[8] Section 63(5) of the Act.

possible, to link appropriately with the carrying out of wider strategic duties, including:

- those related to Welsh in Education Strategic Plans[9], which set out proposals and targets for improving the planning of the provision of Welsh-medium education in their area and the standards of that education and the teaching of Welsh in their area;
- assessments of care and support needs by local authorities and Local Health Boards[10];
- the work of Public Services Boards[11] to improve the economic, social, environmental and cultural well-being in an area. Public Service Boards' members include local authorities and Local Health Boards;
- a local authority's duty to secure that sufficient schools for providing primary and secondary education are available for their area[12].

7.16. The local authority **should** review data and evidence on the effectiveness of current provision in meeting children and young people's needs and improving the outcomes they achieve.

7.17. When reviewing the sufficiency of its arrangements (including whether they are effective), 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 at education settings made for those with low-incidence 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[13];
- relevant information from assessments of care and support needs conducted by local authorities and Local Health Boards under the Social Services and Wellbeing (Wales) Act 2014[14];
- the findings of Estyn inspection reports and relevant thematic reviews;

[9] Part 4 of the School Standards and Organisation (Wales) Act 2013.
[10] Section 14 of the Social Services and Wellbeing (Wales) Act 2014 and see also the Social Services and Wellbeing (Wales) Act 2014: Part 2 Code of Practice (General Functions).
[11] Under the Well-being of Future Generations (Wales) Act 2015.
[12] Section 14 of the Education Act 1996.
[13] Section 18 of the Social Services and Wellbeing (Wales) Act 2014 and the Social Services and Wellbeing (Wales) Act 2014: Part 2 Code of Practice (General Functions).
[14] Section 14 of that Act.

- relevant information from the local authority's Welsh in Education Strategic Plan;
- any barriers that have been identified which prevent children and young people from accessing ALN services;
- relevant information and evidence gathered by the local authority about the ALP provided to children and young people for whom the local authority maintains an IDP who are educated at home, at an independent school or otherwise than at school;
- relevant information gathered by the local authority about children and young people who are detained in relevant youth accommodation or in a hospital under Part 3 of the Mental Health Act 1983 (see Chapter 19);
- 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 18 of the Code for further guidance on such children and young people).

7.18. Considering such data and information, and consulting with persons it considers appropriate, may help the local authority to identify:

- the range and level of provision currently available and any gaps or excesses in the availability of provision;
- the range and level of provision required to meet the needs of children and young people;
- the range and level of provision required to prevent needs arising or escalating;
- the range and level of Welsh language provision needed.

Actions to remedy insufficiencies

7.19. 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**[15] take all reasonable steps to remedy the matter.

7.20. For example, a local authority might identify that there is a higher number of learners with a particular type of ALN approaching compulsory school age. If the local authority considers that these learners may require a particular provision when they start school and that the number of specialists available to deliver that provision is insufficient to meet the needs of these learners, it **must**[16] take all reasonable steps to remedy this.

7.21. 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 other local authorities, FEIs, NHS bodies or other agencies on a regional basis. For example, it may be that needs of learners with ALN in one local

[15] Section 63(4) of the Act.
[16] Section 63(4) of the Act.

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 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.

7.22. In accordance with the principle of collaboration (see Chapter 3), local authorities **should** be proactive about identifying opportunities to share resources with other local authorities. This approach may be particularly relevant for meeting the demand for Welsh language provision, and ensuring the sufficiency of the specialist workforce.

7.23. When addressing insufficiencies in the availability of ALP in schools and other ALN arrangements in schools, the local authority **should** consider, taking into account the principles referenced at paragraphs 5.10, 12.44 and 15.45, what actions to take to remedy those insufficiencies.

7.24. Local authorities **should** consider at strategic level whether changes to funding arrangements for supporting children and young people with ALN are appropriate in light of their review and taking into account the principles referenced above.

7.25. 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, in line with duties under section 6 of the Act;[17]
- supporting clusters of schools and non-maintained providers of nursery education 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;
- improving collaborative working practices between providers of childcare and nursery education and other agencies or services that work closely with children who are under compulsory school age and not attending a maintained school (e.g. health bodies and practitioners including health visitors, GPs and DECLOs; Flying Start; Families First; social services; school ALNCos; and relevant third sector organisations);
- building the capacity of all mainstream schools to support children and young people with a wider range of needs;

[17] Chapter 4 deals with the section 6 duties.

- 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.

7.26. The duty to keep arrangements 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 **should** consider working with others involved in the provision of services to children and young people (e.g. other local authorities, health bodies, FEIs, non-maintained providers of nursery education and the third sector) 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 or others.[18]

Recording conclusions

7.27. A local authority **should** record any conclusions it reaches as to the sufficiency of arrangements for meeting the ALN of children and young people for whom it is responsible and any actions it will take to remedy an insufficiency it has identified. 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.

7.28. A local authority **should** also publish on its website a summary of its conclusions as to the sufficiency of arrangements and any actions it will take to remedy any insufficiencies.

7.29. A published summary could also include:
- the evidence that has been considered;
- the persons and bodies consulted with.

[18] Consideration should be given to the Local Government and Elections (Wales) Act 2021 when establishing any regional arrangements.

Chapter 8: Role of the Additional Learning Needs Co-ordinator (ALNCo)

The duty on maintained schools and FEIs to designate an ALNCo

8.1. All mainstream maintained schools[1] and FEIs in Wales **must**[2] designate a person, or more than one person who will have responsibility for co-ordinating provision for learners with ALN. That person (or persons) will be known as an additional learning needs co-ordinator[3], or ALNCo.

8.2. It may be appropriate in certain circumstances for some education settings to share an ALNCo. This could apply, for example: in circumstances where there is a maintained nursery attached to a 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 (or bodies) **should** ensure that in undertaking its duty to appoint an ALNCo, the governing body continues to meet its responsibilities as set out within this Code. A governing body **should** ensure that the ALNCo will fulfil their duties in a way that suits the structure and the needs of the education setting and its learners.

8.3. Under their duty to designate a person to act as an ALNCo, maintained schools and FEIs **should** consider the skill set and experience of the individual to ensure they can deliver the functions prescribed in law. ALNCos **should** (in addition to the qualification and experience prescribed in law as a prerequisite – see "Prescribed experience and qualifications of ALNCos" in paragraphs 8.22 – 8.23) be highly qualified and **should** have expertise in person centred practice and dealing with a broad spectrum of ALN. ALNCos **should** actively undertake training to support their continuing professional development. They may choose to specialise in specific types of ALN and share this expertise beyond their particular education setting (see details about ALNCo qualifications from paragraph 8.22).

8.4. 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.

8.5. 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. When determining

[1] Meaning a community, foundation or voluntary school, a maintained nursery school, or a pupil referral unit— see section 60(1) of the Act.
[2] Section 60(2) of the Act.
[3] Section 60(3) of the Act.

sufficient time, consideration **should** be given to the numbers on role at the education setting who have ALN and the severity of ALN that cohort of learners has.

8.6. If an individual's ALNCo role is combined with other non-teaching responsibilities, it is important that these other responsibilities are compatible with the duties the individual is expected to perform as an ALNCo, and do not impinge on their ability to undertake the ALNCo role.

The role of the ALNCo

8.7. 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 team[4]. This will support the education setting to plan, manage and deliver its duties and responsibilities in identifying and meeting the needs of children and young people with ALN.

8.8. To support the ALNCo, the senior leadership team **should** advise, support and challenge the systems and processes of the education setting to identify and meet the needs of the learners. The local authority may support the role of the ALNCo, including providing guidance where appropriate.

8.9. 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 **should** be actively involved in decisions around budgets and resources to help plan appropriate provision.

8.10. 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.

Duties on ALNCos

8.11. In addition to their overarching responsibility for co-ordinating ALP for students or pupils with ALN, the ALNCo is responsible for ensuring that tasks set out under this heading of the chapter are carried out. ALNCos may choose to undertake these tasks themselves or arrange for tasks to be undertaken by others[5].

[4] 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.
[5] Regulations 29 and 30 of the Additional Learning Needs (Wales) Regulations 2021.

8.12. 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**[6] identify a pupil or student's ALN and co-ordinate the making of ALP that meets those needs.

8.13. To deliver this duty, ALNCos **should** ensure that whenever their setting has a duty to decide whether a pupil or 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 11-17 on the duty to designate co-ordinators).

8.14. ALNCos **must**[7] secure relevant services that will support a pupil or student'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 and when there is agreement to provide such services, ensure that these are secured. Further information on involving other services in identifying ALN and determining the ALP required is provided in Chapter 20.

8.15. ALNCos **must**[8] keep records of decisions about ALN and IDPs. For example, the Code requires that maintained schools and FEIs record the date on which it is first brought to their attention, or otherwise appears to them that a child or young person may have ALN. An ALNCo would be expected to ensure a record is kept of this decision.

8.16. ALNCos **must**[9] promote a pupil or student's inclusion in the school/FEI community and access to that school or FEI's curriculum, facilities and extra-curricular activities. In doing so, (as with the exercise of all their functions) the ALNCo **must**[10] have regard to the views, wishes and feelings of the child, the child's parent or the young person.

8.17. ALNCos **must**[11] 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 25.

8.18. ALNCos **must**[12] advise teachers at the school or FEI about differentiated teaching methods appropriate for individual pupils or students with ALN.

[6] Regulations 29(a) and 30(a) of the Additional Learning Needs (Wales) Regulations 2021.
[7] Regulations 29(b) and 30(b) of the Additional Learning Needs (Wales) Regulations 2021.
[8] Regulations 29(c) and 30(c) of the Additional Learning Needs (Wales) Regulations 2021.
[9] Regulations 29(d) and 30(d) of the Additional Learning Needs (Wales) Regulations 2021.
[10] Section 6 of the Act.
[11] Regulations 29(e) and 29(e) of the Additional Learning Needs (Wales) Regulations 2021.
[12] Regulations 29(f) and 30(f) of the Additional Learning Needs (Wales) Regulations 2021.

8.19. ALNCos **must**[13] supervise and arrange for the training of learning support workers who work with pupils or students 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. However, the use of learning support workers may not be appropriate in all cases. They are just one of a number of resources that ought to be available to support learners with ALN.

8.20. ALNCos **must**[14] contribute to in-service training for teachers at the school or FEI to assist the ALNCo in carrying out the tasks set out in paragraphs 8.11 to 8.17. 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.

Other ALNCo responsibilities

8.21. In addition to the mandatory tasks, the key responsibilities of the ALNCo **should** include:

- where certain requirements[15] stipulate that maintained schools or FEIs must provide documents, notifications, or information to a child, a child's parent or a young person[16], the ALNCo **should** oversee that provision;
- 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 25 of this Code);
- supporting learners with an IDP with their transition between education settings or into adulthood, further study or work (see Chapter 27);
- overseeing the appropriate transfer of information between education settings about the learner's ALN and ALP;
- liaise with exams officers and specialist teachers when seeking reasonable adjustments for examinations;
- contributing to the development and implementation of appropriate ALN procedures and systems within the education setting, including strategic

[13] Regulations 29(g) and 30(g) of the Additional Learning Needs (Wales) Regulations 2021.
[14] Regulations 29(h) and 30(h) of the Additional Learning Needs (Wales) Regulations 2021.
[15] Whether imposed by the Act, regulations under the Act, or the Code.
[16] This would include a representative of a young person or child's parent, or a case friend— see Chapter 1 for details regarding exercise of rights by children and case friends, and by representatives of parents and young people who lack capacity.

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 ALNCos (which local authorities **should** consider establishing and facilitating) and, where appropriate, special schools to develop and share experience and best practice;
- 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;
- 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

8.22. The ALNCo in a school **must**[17] (with the exception of the circumstances set out at 8.23) be a school teacher[18]. Likewise, an ALNCo working in an FEI **must**[19] be a further education teacher[20].

8.23. Individuals can be designated as an ALNCo by a maintained school without being a school teacher, but only if they were acting as a special educational needs co-ordinator (SENCo) at that school immediately prior to the 4 January 2021.[21]

[17] Regulation 27(a) of the Additional Learning Needs (Wales) Regulations 2021.
[18] "School teacher" means a person who is registered with the Education Workforce Council in the category of school teacher as described in table 1 of Schedule 2 to the Education (Wales) Act 2014 and does not include a person registered on a provisional basis under section 9(5) of that Act— see regulation 26 of the Additional Learning Needs (Wales) Regulations 2021.
[19] Regulation 28 of the Additional Learning Needs (Wales) Regulations 2021.
[20] "Further education teacher" means a person who is registered with the Education Workforce Council in the category of further education teacher as described in table 1 of Schedule 2 to the 2014 Act— see regulation 26 of the Additional Learning Needs (Wales) Regulations 2021.
[21] Regulation 27(b) of the Additional Learning Needs (Wales) Regulations 2021.

Chapter 9: Role of the Designated Education Clinical Lead Officer ("DECLO")

The duty on Local Health Boards to designate a Designated Education Clinical Lead Officer

9.1. Every Local Health Board **must**[1] 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).

9.2. The DECLO **must**[2] either be a registered medical practitioner or a registered nurse or another health professional.

9.3. The Local Health Board, in designating an officer as a DECLO, **must**[3] consider the officer to be suitably qualified and experienced in the provision of health care for children and young people with ALN.

9.4. The local health board functions that the DECLO is responsible for coordinating include:

(a) referrals[4] 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;
(b) securing the ALP (that is, the relevant treatment or service) described in an IDP as provision to be secured by the Local Health Board (including taking reasonable steps to secure its provision in Welsh where this is required);
(c) participation in reviews of IDPs[5] in which a relevant treatment or service is set out as ALP to be secured by the Local Health Board;
(d) requests[6] from local authorities to the Local Health Board for information or other help, which the former requires for the purpose of exercising its ALN functions;
(e) informing[7] parents and local authorities of the Local Health Board's view that a child under compulsory school age probably has ALN;
(f) giving[8] evidence to the Tribunal in an appeal in relation to ALN matters;
(g) dealing with recommendations[9] made to the Local Health Board by the Tribunal about the exercise of the Local Health Board's functions.

[1] Section 61 of the Act.
[2] Section 61(2) of the Act.
[3] Section 61(3) of the Act.
[4] Under section 20 of the Act. See Chapter 21.
[5] Under sections 23 and 24 of the Act. See Chapter 25.
[6] Under section 65 of the Act. See Chapter 21.
[7] Under section 64 of the Act. See Chapter 21.
[8] The Tribunal may require this: see section 76 of the Act and Chapter 33 on appeals.
[9] Section 76 of the Act. See Chapter 33 on appeals.

Experience and expertise of the DECLO

9.5. The Local Health Board **should** ensure that the officer it designates as the DECLO:

(a) has experience of senior health service leadership;
(b) is capable of providing overall strategic direction with a view to ensuring the Local Health Board meets its duties related to ALN;
(c) is able to identify and solve problems and conflict at the earliest opportunity;
(d) is able to escalate issues to the Local Health Board's Executive Board, as appropriate;
(e) 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.

9.6. 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.

9.7. 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 Local Health 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 this is not possible, the structures and systems established by the DECLO **should** ensure that health professionals provide in writing their advice and evidence in advance of the meeting (see Chapter 22 for more information on meetings about ALN and IDPs).

Role of the DECLO

9.8. The role of the DECLO is a strategic one and a Local Health Board **should** include the following responsibilities within the role:

(a) collaborating with others;
(b) raising awareness of the ALN system across the Local Health Board;
(c) managing efficient and consistent systems within the Local Health Board to enable it to exercise its functions under the Act;

(d) managing the Local Health Board's involvement in complaints, disputes and appeals to the Tribunal which are concerned with the exercise of its functions under the Act;
(e) measuring the compliance and quality assurance of Local Health Board activities.

9.9. Guidance on these responsibilities is set out below.

a) Collaborating with others

9.10. The Local Health Board **should** ensure the DECLO works in partnership and cooperates with others (such as Early Years ALNLOs and ALNCos as well as service users), to promote effective multi-agency working between the health service (primary and secondary care), public health, local authorities (education and social care departments), advocacy services, schools, FEIs and the third sector.

9.11. The Local Health Board **should** ensure the DECLO works with both children's and adults' services to ensure arrangements are in place for the successful transition of learners with ALN from children's to adults' services.

9.12. The Local Health Board **should** ensure the DECLO cooperates with other DECLOs across Wales with a view to:

(a) sharing best practice;
(b) establishing clear and consistent care pathways for children and young people with ALN;
(c) reducing inequity between health board areas, especially for individuals who move areas or are placed out of area.

b) Raising awareness of the ALN system

9.13. The Local Health Board **should** ensure the DECLO is operating to promote awareness of ALN at executive level across the Local Health Board and more widely, an awareness of the duties relevant to practitioners in relation to ALN, in particular:

(a) the duty[10] to inform parents and a local authority, where they form the opinion that a child under compulsory school age has, or probably has, ALN;
(b) the duty[11] to consider whether there is a relevant treatment or service that is likely to be of benefit in addressing a child or young person's ALN when asked to do so by a local authority or FEI.

[10] Under section 64 of the Act. See Chapter 21.
[11] Under section 20 of the Act. See Chapter 21.

c) Managing efficient and consistent systems in relation to ALN

9.14. The Local Health Board **should** ensure the DECLO establishes (where necessary) and manages efficient and consistent systems that enable health professionals to make appropriate referrals to a local authority of children under compulsory school age, and to input into the preparation and review of IDPs and to secure ALP by:

(a) undertaking appropriate, timely assessments;
(b) making evidence-based recommendations on effective interventions;
(c) delivering treatments or services identified in IDPs as ALP to be secured by the Health Board;
(d) monitoring the outcomes of such treatments or services;
(e) quality assuring advice to minimise variation in practice and promote realistic expectations.

9.15. This **should** include:

(a) considering how best health professionals can be actively involved in the preparation and review of IDPs (where the input, help and advice of health professionals is sought);
(b) working across the Local Health Board and involving all relevant health professionals (including speech and language therapists, habilitation and rehabilitation specialists, occupational therapists, physiotherapists, CAMHS, community paediatrics, learning disability services, neurodevelopmental services, and primary care teams including GPs, health visitors, school nurses and community children's nursing) to ensure that ALP to be secured by the Local Health Board and set out in IDPs, is holistic and prudent;
(c) taking responsibility for managing the Local Health Board's responses to requests for information or other help from local authorities[12], for example, by ensuring that an appropriate referral management system is in place to co-ordinate and manage cases and ensuring that the Local Health Board complies with its duties in this regard;
(d) 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 (and, as necessary, working in conjunction with local authorities and FEIs):

i. ensuring that such referrals are properly and consistently considered and responded to within the applicable timescales, including, where appropriate, by the DECLO undertaking the consideration themselves;
ii. ensuring that relevant treatment or services described in IDPs are realistic, specific and outcome focussed;
iii. ensuring that the Local Health Board's duty to secure the ALP (that is, the relevant treatment or service) is met, including, where applicable, taking all reasonable steps to secure the ALP in Welsh.

[12] Under section 65 of the Act. See Chapter 21.

9.16. The Local Health Board **should** ensure that the DECLO is aware of and takes action, as appropriate, with a view to ensuring that the Board complies with its duties to have due regard to the UNCRC and UNCRPD, when exercising functions under the Act (see Chapter 5 for more information about this).

d) Managing complaints, disputes and appeals to the Tribunals

9.17. The Local Health Board **should** ensure the DECLO has oversight over any complaint or dispute that relates to the exercise of the Local Health Board's functions under the Act. This could include direct involvement to resolve the complaint or dispute, or ensuring a robust system is in place to bring parties together to attempt an early resolution.

9.18. The Local Health Board **should** ensure the DECLO:

(a) promotes the use of the NHS complaints system ("Putting Things Right") in relation to any complaints relating to the exercise of the Local Health Board's functions under the Act, and
(b) seeks to ensure that "Putting Things Right" is promoted at appropriate times, such as an IDP review meeting where health provision is discussed.

9.19. The Local Health Board **should** ensure the DECLO is the first point of contact when a local authority believes it would be beneficial for a NHS body to be involved in avoidance and disagreement resolution arrangements.[13]

9.20. The Local Health Board **should** expect the DECLO to co-ordinate the Local Health Board's involvement in appeals to the Tribunal; including ensuring it provides evidence as required and oversees the engagement of the Local Health Board generally in appeals.

9.21. The Local Health Board **should** expect the DECLO to be responsible for leading on the Local Health Board's consideration of recommendations made to it by the Tribunal, deciding whether and what action to take in response to such recommendations, and reporting back to the Tribunal.

e) Measure the compliance and quality assurance of Local Health Board activities

9.22. The Local Health Board **should** expect the DECLO to have oversight of the development of processes to collect and analyse robust data to measure its compliance with duties under the Act, measure the effectiveness of arrangements for partnership working, and provide quality assurance of its activities in relation to children and young people with ALN. Monitoring the following could inform measures of success:

[13] These are the arrangements under section 68 of the Act.

(a) feedback from children, young people and parents;
(b) outcomes for children and young people;
(c) the time taken by the Local Health Board (including instances where the requisite timescale is not met or where exceptions are invoked) to respond to-
    i. requests from local authorities for information and other help;
    ii. referrals 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;
(d) numbers of complaints, disputes and Tribunal appeals which relate to the Health Board's functions under the Act, the length of time it takes to resolve them, and how they are resolved.

9.23. The Local Health Board **should** also expect the DECLO to identify the themes arising from disputes and seek to address the root causes.

Chapter 10: Role of the Early Years Additional Learning Needs Lead Officer

The duty on local authorities to designate an Early Years ALN Lead Officer

10.1. Every local authority **must**[1] designate an officer to have responsibility for co-ordinating the local authority's functions under the Act in relation to children under compulsory school age who are not attending maintained schools. The designated officer is to be known as the 'Early Years Additional Learning Needs Lead Officer' ('the Early Years ALNLO').

10.2. In this chapter, children under compulsory school age who are not attending a maintained school are referred to as the "ALNLO cohort", and references to a local authority's ALNLO cohort are to children in the ALNLO cohort in relation to whom the local authority has functions under the ALN system. This covers children in the ALNLO cohort who are:

- in the local authority's area (whether or not looked after by the authority);
- looked after by the local authority and in the area of another local authority.

10.3. The local authority functions that the Early Years ALNLO is responsible for coordinating insofar as they relate to the ALNLO cohort cover:

- deciding whether children have ALN[2], the preparation and maintenance of IDPs[3] (including securing the ALP specified in the IDP), and the provision of information about IDPs[4] (see Chapter 11);
- the review and revision of IDPs[5] (see Chapter 25);
- the review of ALP arrangements[6] (see Chapter 7);
- making arrangements to provide advice and information and taking reasonable steps to make the arrangements known to (amongst others) parents and case friends of children in its area[7] (see Chapter 6); making arrangements for the avoidance and resolution of disagreements and promoting the use of them[8] (see Chapter 32);
- making arrangements for the provision of independent advocacy services (see Chapter 32)[9].

[1] Section 62(1) of the Act.
[2] Sections 13(1) and 18(1) of the Act.
[3] Section 14 and 19 of the Act.
[4] Section 22 of the Act.
[5] Sections 23 and 24 of the Act.
[6] Section 63 of the Act.
[7] Section 9 of the Act.
[8] Section 68 of the Act.
[9] Section 69 of the Act.

Experience and expertise of the Early Years ALNLO

10.4. The Early Years ALNLO **should** have experience of and expertise in-

(a) working closely with children who are under compulsory school age who have ALN and their families,
(b) dealing with the provision of services for meeting the ALN of these children, across a range of settings, and
(c) nursery education or child development.

10.5. The local authority **should** only designate as an Early Years ALNLO an officer it considers capable of delivering the expectations of the role as set out in this chapter. In summary, the Early Years ALNLO **should**:

(a) be capable of providing overall strategic direction with a view to ensuring the local authority meets its statutory duties in relation to its ALNLO cohort, and
(b) be able to act as a source of expertise for providers of childcare for its ALNLO cohort and non-maintained nursery education for its ALNLO cohort and their umbrella organisations on ALN and the ALN system.

Role of the Early Years ALNLO

10.6. The Early Years ALNLO is a strategic role and **should** have two aspects to it: an inward facing role and an outward facing role. The purpose of the inward facing role is to be responsible for the local authority's arrangements for exercising its functions in relation to the ALNLO cohort. In order to support the effective exercise of those functions, the outward facing role is about developing and maintaining effective relationships with others who work with the local authority's ALNLO cohort.

Inward facing role

10.7. The Early Years ALNLO **should** have overall responsibility within the local authority for ensuring there are appropriate arrangements in place to enable the local authority to perform properly its functions under the Act (see paragraph 10.3 for the range of functions) in relation to the ALNLO cohort.

10.8. This **should** include establishing and maintaining efficient structures, systems or other arrangements within the local authority to:

(a) ensure there are sufficient resources in place to deal promptly with referrals of children in the ALNLO cohort who may have ALN;
(b) enable the local authority to make evidence-based decisions on effective interventions;
(c) ensure that the right people are involved in the preparation, maintenance and review of IDPs;
(d) secure the ALP specified in IDPs;
(e) ensure that advice and information about ALN and the ALN system in relation to the ALNLO cohort is made available and promoted to

parents, case friends and others as appropriate, (see Chapter 6 for local authorities' advice and information duties);

(f) ensure that the local authority's arrangements for avoiding and resolving disagreements are appropriate for its ALNLO cohort and promote those arrangements (see Chapter 32);

(g) ensure that the local authority's arrangements for the provision of independent advocacy services appropriately covers its ALNLO cohort (see Chapter 32).

10.9. The Early Years ALNLO is not required personally to perform the local authority's functions in relation to individual children (for example, to prepare the IDPs for all children in the ALNLO cohort). Although the Early Years ALNLO may do so themselves or may oversee others doing so, other officers may carry out those functions on a day to day basis.

10.10. Other activities that a local authority **should** expect its Early Years ALNLO to be involved in include the following:

- the strategic planning for and allocation of any resources, budgets and funding the authority has for the ALNLO cohort;
- direct involvement with the development of any local authority policies related to ALN which would affect its ALNLO cohort;
- training, as may be required, within the local authority on matters related to ALN.

10.11. Early Years ALNLOs **should** be responsible for maintaining their own continuing professional development in the field of ALN to remain an authoritative and expert source of knowledge.

Outward facing role

10.12. Early Years ALNLOs have a pivotal role in facilitating early identification of needs. By raising awareness of ALN, the ALN system and how it applies to the ALNLO cohort, and working collaboratively with others who work with this cohort, children with ALN are more likely to be referred to the local authority earlier. As a consequence, the right provision is more likely to be identified earlier and needs may be prevented from escalating. Raising awareness may also facilitate interventions to prevent ALN developing in cases where the child has developmental needs that do not amount to ALN, but may do if not addressed early.

10.13. Developing good relationships with maintained schools is important to help-

- ensure that the ALP a child receives before starting school is appropriate;
- facilitate successful transitions into maintained schooling;
- identify cases where a school should be named for admission purposes.

10.14. A local authority **should** therefore expect its Early Years ALNLO to establish collaborative working relationships with others who work with its ALNLO

cohort and raise awareness of ALN, the ALN system and how it applies to this cohort.

a) Establishing collaborative working relationships

10.15. The Early Years ALNLO **should** establish collaborative working relationships with the following:

(a) those that work with the authority's ALNLO cohort, including, as appropriate non-maintained providers of nursery education, childcare providers, relevant umbrella organisations and any other 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, relevant third sector organisations and relevant specialist professionals);
(b) the ALNCOs of maintained schools and relevant staff at special schools that children in the authority's ALNLO cohort might go on to attend.

10.16. The Early Years ALNLO **should** be expected to promote collaboration between these persons and the local authority, including to support successful transitions for children between settings that provide non-maintained nursery education or childcare and into school

10.17. The Early Years ALNLO **should** ensure systems or other arrangements are in place to support providers of non-maintained nursery education and childcare and others who work with the authority's ALNLO cohort (including, for example, those listed in paragraph 10.15) to develop their skills and knowledge of ALN. This may help them identify and refer cases of potential ALN to the local authority early, with a view to appropriate early intervention being put in place promptly, and support children with ALN who attend their settings. Responsibilities **should** include making arrangements for providing guidance to providers of childcare and non-maintained nursery education on meeting the needs of children attending their settings – this includes those with ALN (for example in relation to assisting with delivery of the ALP set out in a child's IDP) and developmental delay.

10.18. The Early Years ALNLO **should** establish a point of contact at the local authority for any queries about ALN or the ALN system relating to the authority's ALNLO cohort and referrals to the local authority of children within it. The point of contact could be the Early Years ALNLO or another officer at the local authority.

10.19. The Early Years ALNLO **should** raise awareness of the role of the Early Years ALNLO to those working with the authority's ALNLO cohort (such as those listed in paragraph 10.15).

b) Raising awareness of ALN the ALN system

10.20. The Early Years ALNLO **should** make arrangements with a view to raising awareness of ALN and the ALN system amongst those that work with the local authority's ALNLO cohort (including those listed in paragraph 10.15). The arrangements **should** include the following:

(a) ensuring that information about ALN and the ALN system is made available and disseminated to those working with the authority's ALNLO cohort in a range of settings;
(b) raising awareness of the duty on health bodies to notify the local authority where it forms the opinion that a child in the authority's ALNLO cohort has, or probably has, ALN[10] (see Chapter 21);
(c) raising awareness of the duty on non-maintained providers of nursery education who are in receipt of local authority funding to have regard to relevant guidance included in this Code[11];
(d) where the Early Years ALNLO considers it appropriate, training for those working with the authority's ALNLO cohort (for example those listed in paragraph 10.15) on ALN, the ALN system, how it applies to such children and meeting their needs. This includes engaging other professionals and relevant third sector organisations where appropriate for specialist input into that training.

10.21. A local authority **should**, therefore, expect its Early Years ALNLO to be a source of advice and expertise on ALN and the ALN system in its application to the ALNLO cohort.

[10] Section 64(4) of the Act.
[11] Section 153(2) of the Education Act 2002. See also Chapter 1.

Chapter 11: Duties on local authorities in relation to children under compulsory school age who are not at a maintained school in Wales

Introduction

11.1. This chapter deals with the duties on local authorities in relation to decisions about ALN, the preparation and maintaining of IDPs, and the securing of the ALP described in an IDP, for a child who is under compulsory school age and not a registered pupil at a maintained school. It does not deal with the position if the child is looked after (Chapter 14 deals with local authority duties in respect of looked after children).

11.2. Accordingly, except so far as a contrary intention appears, references in this chapter to a child are to a child who is -

(a) under compulsory school age,
(b) not registered as a pupil at a maintained school, and
(c) not looked after.

11.3. Where a child receives nursery education funded by a local authority at a non-maintained provider, the provider **should**, where requested, help the local authority in the exercise of its ALN functions in relation to that child, including in instances where a child receives nursery education from both maintained and non-maintained providers.

11.4. This chapter refers to various duties to notify or inform a child's parent of something or give a copy of a document to the parent. Where there is a reference to such a duty (whether it is imposed by the Act or is a requirement of the Code), it includes a duty to notify or inform of the same matters, or give a copy of the document to, any case friend for the child concerned. This means the local authority **must**[1] also notify or inform of the same matters, or give a copy of the document to, the case friend in the same circumstances and any further requirements or guidance relating specifically to the duty to notify or inform or give a copy of a document to the parent, apply equally to the requirement to notify, inform or give a copy to the case friend.[2]

[1] Section 84 in respect of duties in the Act and in respect of requirements imposed by the Code, this is part of the requirement as provided for in this paragraph.
[2] In the case of duties in the Act, those duties apply in wider circumstances than those dealt with in this chapter, including in respect of children of compulsory school age. Those duties include notifying, informing and giving a copy to the child concerned and this is stated in other references in the Code to those duties. However paragraph 1.55 applies to the interpretation of those references. As a child under compulsory school age would never have the capacity to understand these matters, in this chapter the Code simply refers to notifying, informing or giving a copy to the parent and not also to the child.

A local authority's duty to decide whether a child has ALN

11.5. Where it is brought to its attention, or otherwise appears to a local authority, that a child for whom it is responsible may have ALN, the local authority **must**[3] decide whether the child has ALN unless one of the following circumstances applies:

(a) an IDP is already being maintained for the 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.[4]

11.6. The possibility that a child 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 21). Concerns might also be expressed by the child's parents. These concerns might be raised through a non-maintained education setting (if the child attends one) or directly with the local authority. 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.

11.7. It does not matter how the possibility that a child 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 set out above). 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 are set out in Chapters 2 and 20 respectively.)

11.8. Where a local authority is required to decide whether a child has ALN, it **must**[5]:

(a) designate an officer (the 'designated co-ordinator') to be responsible for co-ordinating the actions required to make that decision and, if an IDP is 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 child may have ALN;

[3] Section 13(1) and (2) of the Act.
[4] See paragraph 11.14.
[5] Requirement imposed by the Code.

(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 it that the child may have ALN;
(d) notify the child's parent that it is deciding whether the child has ALN;
(e) consider offering an initial meeting with the child and the child's parent, to discuss the process (see Chapter 22 for more details about meetings).

11.9. The notification to the child's parent referred to in paragraph 11.8(d) **must**[6] give:

(a) 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[7].

11.10. The notification **should** also provide an indication of the likely timescale for the process (taking account of the timescale requirement set out below).

11.11. When deciding whether the child has ALN, the local authority **must**[8] consider whether to seek advice from an educational psychologist.[9] The authority **must**[10] seek such advice if it considers that the advice is necessary to determine-

(a) the extent or nature of the ALN that the child may have, or
(b) the ALP called for by the child's ALN.

11.12. The advice sought **must**[11] relate to-

(a) the educational, psychological or other features of the case which appear to be relevant to the child's educational needs (including the child's likely future needs),
(b) how those features could affect the child's educational needs, and
(c) the provision which may be appropriate for the child in light of those features, whether by way of ALP or other types of provision, and any matters affecting the delivery of that provision.

11.13. Consideration **should** also be given as to whether the child already has any engagement with or support from other agencies or third sector organisations; and the local authority **should** involve them as appropriate in the process of deciding whether the child has ALN and in preparing any IDP.

[6] Requirement imposed by the Code.
[7] Under section 9 of the Act.
[8] Requirement imposed by the Code.
[9] Educational Psychologists must be registered with the Health and Care Professional Council.
[10] Requirement imposed by the Code.
[11] Requirement imposed by the Code.

11.14. As described in Chapter 4 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 designated 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 22.)

11.15. Where it is brought to the attention of a local authority 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 (see the exception in paragraph 11.5(b)), it **should** notify the parent of this; and **should** provide them with information and advice about ALN and the ALN system (including rights of appeal) if it has not previously or recently done so.

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

11.16. If the local authority decides that the child does not have ALN, it **must**[12] notify the parent of the decision and the reasons for that decision.

11.17. The local authority **must**[13] make the decision and give the notification promptly and in any event before the end of 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 local authority need not comply with the requirement to make the decision and give the notification before the end of that 12 week period if it is impractical to do so due to circumstances beyond its control[14].

11.18. As well as setting out the decision and the reasons for it, the notification to the parent **must**[15] also give:

(a) 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[16];
(c) details of the local authority's arrangements for the avoidance and resolution of disagreements[17] and its independent advocacy services[18];

[12] Section 13(3) of the Act.
[13] Requirement (which is subject to the specified exception) imposed by the Code.
[14] See Chapter 1 for more information on how timescales in this Code are to be interpreted.
[15] Requirement imposed by the Code.
[16] 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 appeal to the Tribunal against the decision.[19]

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

11.20. It might be helpful to offer an opportunity to the child's parent to discuss further.

Preparing an IDP

11.21. If the local authority decides that the child has ALN, it **must**[20] prepare an IDP for the child. (See Chapter 2 for information on the meaning of ALN and ALP; Chapter 20 for information on identifying ALN and deciding upon the ALP required; and Chapter 23 for information on preparing an IDP and its contents.) However, if the child is to be a registered pupil at a maintained school, in some circumstances the local authority **may**[21] instead direct the school to prepare and maintain an IDP for the child (see paragraphs 12.85 – 12.99 for information on a local authority directing a maintained school in this way).

11.22. Before the IDP is completed, 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 appropriately, which may be to update the draft IDP, or explain decisions or other matters further.

11.23. Once prepared, the local authority **must**[22] give a copy of the IDP to the child's parent.

11.24. The local authority **must**[23] make the decision on ALN, prepare the plan and give the copy of it promptly, and in any event before the end of 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 local authority need not comply with the requirement to do those things before the end of that 12 week period if it is impractical to do so due to circumstances beyond its control[24].

11.25. When giving a copy of the plan, the local authority **must**[25] also give the child's parent:

[19] The decision is appealable to the Tribunal – see Chapter 33.
[20] Section 14(1) and (2) of the Act.
[21] Section 14(2)(b) of the Act.
[22] Section 22(1) of the Act.
[23] Requirement (which is subject to the specified exception) imposed by the Code.
[24] See Chapter 1 for more information on how timescales in this Code are to be interpreted.
[25] Requirement imposed by the Code.

(a) 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[26];
(c) details of the local authority's arrangements for the avoidance and resolution of disagreements[27] and its independent advocacy services[28];
(d) information about the right to appeal to the Tribunal about particular aspects of the IDP.[29]

Maintaining an IDP

11.26. Where the local authority has prepared an IDP for the child, it **must**[30] maintain that IDP. However, if the child is to be a registered pupil at a maintained school (which would be if a place has been accepted for the child to start at the school), in some circumstances the local authority **may**[31] instead direct the school to maintain the IDP (see paragraphs 12.85 – 12.99).

11.27. The consequence of the local authority being required to maintain the IDP is that the local authority will need to keep a copy of it (in accordance with data protection law) and comply with the duties that attach to maintaining an IDP, which are referred to in the following paragraphs.

11.28. Where a local authority maintains an IDP, it **must**[32] 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**[33] 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**[34] take all reasonable steps to secure that it is provided in Welsh.

11.29. A local authority is also subject to duties to review an IDP it maintains[35] (see Chapter 25).

[26] Under section 9 of the Act.
[27] Under section 68 of the Act.
[28] Under section 69 of the Act.
[29] Chapter 33 deals with appeal rights.
[30] Section 14 of the Act.
[31] Section 14(2)(b) of the Act.
[32] Section 14(10) of the Act.
[33] Sections 20(5) and 21(5) of the Act.
[34] Sections 14(10)(c), 20(5)(c) and 21(5)(b) of the Act.
[35] Section 23 of the Act.

11.30. The local authority **must not**[36] 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.

11.31. If the child later becomes a registered pupil at a maintained school, the local authority **may**[37] direct the school to maintain the IDP. However, the local authority **must not**[38] direct a school to maintain an IDP where:

(a) 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),
(b) the child is dual registered, or
(c) the child has become looked after.

11.32. See Chapter 12 for more information about a local authority directing a maintained school about an IDP.

11.33. The local authority's duty to maintain an IDP may cease in particular circumstances, which are covered in Chapter 29. It may also transfer to another body, for example, where the local authority has directed the school to maintain the IDP, as mentioned above. Information on other transfers of IDPs is covered in Chapter 28.

[36] Section 49 of the Act.
[37] Section 14(4) of the Act.
[38] Sections 14(9), 30(7) and 35(10) of the Act.

Chapter 12: Duties on maintained schools and local authorities in relation to children at maintained schools in Wales

Introduction

12.1. This chapter deals with the duties on maintained schools and 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 registered as a pupil at a maintained school. It does not deal with the position if the child is looked after by a local authority (Chapter 14 deals with this situation), unless the child is in the area of a local authority in England. Nor does it deal with the position for a child who is or becomes subject to a detention order (Chapter 19 deals with this).

12.2. Accordingly, references in this chapter to a child at a school (however expressed) refer to a child who is registered as a pupil at a maintained school but do not include-

(a) a looked after child unless that child is in the area of a local authority in England;
(b) a child who is or becomes subject to a detention order.

A maintained school's duty to decide whether a child has ALN

12.3. Where it is brought to its attention, or otherwise appears to a maintained school, that a child at the school may have ALN, the school **must**[1] decide whether the child has ALN, unless any of the following circumstances apply:

(a) an IDP is already being maintained for the child;
(b) the school 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 dual registered and a local authority is responsible for the child[2]. In this case, the school **must**[3] refer the case to the responsible local authority (see paragraphs 12.36 – 12.46 on referrals to the local authority);
(d) a local authority in England maintains an EHC plan for the child (this would only be relevant if the child is in the area of a local authority in England[4]).

[1] Section 11 of the Act.
[2] See Chapter 1 for more details on dual registration and children and young people for whom a local authority is responsible.
[3] Section 30(2) of the Act.
[4] See Chapter 1 for more details about when a child is in the area of a local authority in Wales or England.

12.4. The possibility that a child has ALN might be brought to the attention of a maintained school by the child 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 child 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 is set out in Chapter 2 and identifying when a child may have ALN is set out in Chapter 20.)

12.5. Where a maintained school is required to decide whether a child at the school has ALN, it **must**[5]:

(a) designate a person (the 'designated co-ordinator') to be responsible for co-ordinating the actions required to make that decision and, if an IDP is 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 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 it that the child may have ALN;
(d) notify the child and the child's parent that it is deciding whether the child has ALN;
(e) consider offering an initial meeting with the child and the child's parent, to discuss the process (see Chapter 22 for more details about meetings).

12.6. The notification to the child and child's parent referred to in paragraph 12.5(d) **must**[6] give:

(a) contact details for 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[7].

12.7. The notification **should** also provide an indication of the likely timescale for the process (taking account of the timescale requirements set out below).

12.8. Consideration **should** be given as to whether the child already has any engagement with or support from other agencies or third sector organisations; and the school **should** involve them as appropriate in the process of deciding whether the child has ALN and in preparing any IDP.

12.9. As described in Chapter 4 there is a general duty to involve children and their parents in decisions that relate to any ALN they might have and the

[5] Requirement imposed by the Code.
[6] Requirement imposed by the Code.
[7] Under section 9 of the Act.

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 designated 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 22).

12.10. Where it is brought to the attention of a maintained school that a child at it 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 (see the exception in paragraph 12.3(b)), it **should** notify the child and the child's parent of this and **should** provide them with information and advice about ALN and the ALN system (including rights of appeal) if it has not previously or recently done so.

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

12.11. If the maintained school decides that the child does not have ALN, it **must**[8] notify the child and their parent of the decision and the reasons for that decision.

12.12. The school **must**[9] make the decision and give the notification promptly and in any event before the end of the period of 35 school days from it being brought to the attention of, or otherwise appearing to, the school that the child may have ALN. The school need not comply with the requirement to make the decision and give the notification before the end of that period of 35 school days if it is impractical to do so due to circumstances beyond its control[10].

12.13. As well as setting out the decision and the reasons for it, the notification to the child and the child's parent **must**[11] give:

(a) contact details for 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[12];
(c) details of the responsible local authority's arrangements for the avoidance and resolution of disagreements[13] and its independent advocacy services[14];

[8] Section 11(4) of the Act.
[9] Requirement (which is subject to the specified exception) imposed by the Code.
[10] See Chapter 1 for more information on how timescales in the Code are to be interpreted.
[11] Requirement imposed by the Code.
[12] Under section 9 of the Act.
[13] Under section 68 of the Act.
[14] Under section 69 of the Act.

(d) information about the right to request the responsible local authority to re-consider the matter[15] and contact details for the responsible local authority.

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

12.15. It might be helpful to offer an opportunity to the child and their parent to discuss further.

Preparing an IDP (Maintained schools)

12.16. If the maintained school decides that the child has ALN, it **must**[16] prepare an IDP for the child unless any of the following circumstances apply:

(a) the school considers that the child has ALN –

i. that may call for ALP it would not be reasonable for it to secure,
ii. that it cannot adequately determine the extent or nature of, or
iii. for which it cannot adequately determine ALP,

and the school refers the child's case to the responsible local authority to decide (see paragraphs 12.36 – 12.46 for more information on referrals);

(b) the child is in the area of a local authority in England and the school requests[17] that local authority to secure an EHC needs assessment for the child;
(c) a local authority in England maintains an EHC plan for the child.

12.17. If following a school's request that a local authority in England secure an EHC needs assessment for a child, the school is notified by the local authority in England that it is not required to secure an EHC plan for the child, the school **must**[18] prepare an IDP for the child.

12.18. See Chapter 2 for information on the meaning of ALN and ALP, Chapter 20 on identifying ALN and deciding upon the ALP required; and Chapter 23 in relation to the preparation and content of IDPs.

12.19. Before the IDP is completed, the school **should** give the child and the child's parent an opportunity to comment on a draft of it and **should** encourage them to raise any concerns as soon as possible. The school **should** consider any concerns and act upon them appropriately, which may be to

[15] This is the right under section 26 of the Act. See Chapter 26.
[16] Section 12(1) and (2) of the Act.
[17] Under section 36(1) of the Children and Families Act 2014.
[18] Section 12(5) of the Act.

update the draft IDP, or explain decisions or other matters further.

12.20. Once prepared, the school **must**[19] give a copy of the IDP to the child and their parent.

12.21. The school **must**[20] make the decision on ALN, prepare the IDP and give a copy of it promptly and in any event before the end of the period of 35 school days from it being brought to the attention of, or otherwise appearing to, the school that the child may have ALN.

12.22. The school need not comply with the requirement to do those things before the end of that period of 35 school days if it is impractical to do so due to circumstances beyond its control[21].

12.23. When giving a copy of the IDP, the school **must**[22] also give the child and the child's parent:

(a) contact details for 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[23];
(c) details of the responsible local authority's arrangements for the avoidance and resolution of disagreements[24] and its independent advocacy services[25];
(d) information about the rights to request that the responsible local authority reconsiders the plan and takes over responsibility for maintaining it[26] and contact details for the responsible local authority
(e) but if the child is in the area of a local authority in England, instead of the information referred to in sub-paragraph (d), information about the right to request the local authority that maintains the school to reconsider the IDP[27] and contact details for that local authority.

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

12.24. If a child at a school has ALN but an IDP is not being maintained for them, the maintained school **must**[28], in exercising its functions in relation to the school, take all reasonable steps to secure that the ALP called for by the

[19] Section 22(1) of the Act.
[20] Requirement (which is subject to the specified exception) imposed by the Code.
[21] See Chapter 1 for more information on how timescales in the Code are to be interpreted.
[22] Requirement imposed by the Code.
[23] Under section 9 of the Act.
[24] Under section 68 of the Act.
[25] Under section 69 of the Act.
[26] These are the rights under sections 27 and 28 of the Act respectively. See Chapter 26.
[27] Under sections 27 and 87 of the Act.
[28] Section 47(1) and (2) of the Act.

child's ALN is made.

12.25. The child might not have an IDP because -

(a) the school is preparing an IDP for the child,
(b) the school has made a referral to a local authority and the authority is preparing an IDP,
(c) an English local authority is carrying out an EHC needs assessment or preparing an EHC plan for the child (following a request from the school or the local authority that maintains the school), or
(d) the child has an EHC plan.

12.26. The school will need to determine what it needs to do to meet this duty for each child who has ALN but does not have an IDP in light of the particular circumstances.

12.27. Where the child 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, the school **should** take all reasonable steps to help that local authority secure the special educational provision specified in the EHC plan.

12.28. In cases where it is being decided whether the child has ALN or an IDP is being prepared (or, in respect of a child 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 child's needs. The school ought to have information from the child or their parents, may have advice from agencies or professionals, such as an educational psychologist (whether specifically in relation to the child, or more generally about the needs the child appears to have) and would have the views of, and evidence from, teaching staff at the school about the child. That evidence could include how the child has responded to particular interventions (including differentiated teaching) in the past. In some cases, the child may even have a plan which was recently maintained, for example, where they have moved from England to Wales and the local authority in England had maintained an EHC plan.

12.29. From this range of information and advice, the school ought to have a broad understanding of the type of ALN the child has and **should**:

(a) make arrangements for letting all staff who are involved with teaching or supporting the child know about those needs;
(b) involve the ALNCo in advising teaching staff on appropriate teaching approaches to use in relation to the child with a view to meeting the apparent needs and on where to get further information and advice if required;
(c) make any appropriate adjustments to the school environment to improve the child's access to education;

(d) provide appropriate additional or different support for the child from the resources available to it, including access to input from external specialists;
(e) monitor the impact of support provided for the child and alter it if it becomes apparent that this would be appropriate.

12.30. When an IDP is being prepared, the ALP called for by the child's 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, the school **should**, if it is reasonable to do so, begin to secure any ALP that has been identified at the earliest opportunity, whilst it is completing preparation of the IDP. Where it can reasonably provide the ALP itself, it **should** do so; and where it can reasonably arrange the provision of any element of the ALP by someone else, it **should** also do so.

Maintaining an IDP (Maintained schools)

12.31. Where a maintained school has prepared an IDP for a child at it, it **must**[29] maintain that IDP. Chapter 29 deals with the circumstances in which a duty to maintain an IDP ceases and Chapter 28 deals with the circumstances in which a duty to maintain an IDP transfers to another body (whether a local authority, maintained school or FEI).

12.32. The consequence of the school being required to maintain the IDP is that it will need to keep a copy of the IDP (complying with data protection law in how it does so) and comply with the duties that attach to a school maintaining an IDP, which are referred to in the following paragraphs.

12.33. Where a school maintains a plan, it **must**[30] 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**[31] secure that ALP. If the IDP specifies that a particular kind of ALP should be provided in Welsh, the school (or NHS body where applicable) **must**[32] take all reasonable steps to secure that it is provided in Welsh.

12.34. A school is subject to duties[33] to review an IDP it maintains (see Chapter 25).

12.35. The school **must not**[34] charge the child or their parent for the ALP described in the IDP (but this prohibition does not apply in respect of a parent who is not an individual), nor for anything else it secures for the child under Part 2 of the Act.

[29] Section 12(1) and (2) of the Act.
[30] Section 12(7)(a) of the Act.
[31] Sections 20(5) and 21(5) of the Act.
[32] Sections 12(7)(b), 20(5) and 21(5) of the Act.
[33] Section 23 of the Act.
[34] Section 49 of the Act.

Referrals from a maintained school to a local authority

12.36. There are two instances in which a maintained school is required to refer a child's case to a local authority rather than decide for itself whether the child has ALN: dual registration; and if the child is looked after. The duty to do so for a looked after child is explained in Chapter 14 and that for a dual registered child, in the next paragraph.

12.37. A maintained school **must**[35] refer the case of a child at the school to the local authority responsible for the child (if there is one) where –

(a) it is brought to its attention, or otherwise appears to it, that the child may have ALN,
(b) the child does not have an IDP, and
(c) the child is dual registered.

12.38. Otherwise, a maintained school can refer a child's case to a local authority on particular grounds related to the nature of the child's apparent ALN (see the following paragraphs).

12.39. Where a school has decided that a child at the school has ALN, rather than prepare the IDP it **may**[36] refer the child's case to the responsible local authority (if there is one).[37] But the school **must not**[38] do this unless it considers that the child has ALN:

(a) that may call for ALP it would not be reasonable for the school to secure,
(b) the extent or nature of which it cannot adequately determine, or
(c) for which it cannot adequately determine ALP.

12.40. The school **should** be mindful of the need to make any such referral as early as possible so as to minimise delay in the IDP being prepared. Therefore where the school becomes aware that there is a ground for referral to the local authority, it **should** act promptly to consider whether to refer the child's case and in making any referral. In most cases, the school ought to be able to make the referral within 20 school days (if not earlier) from the date on which it is brought to its attention, or otherwise appears to it, that the child has ALN.

12.41. Occasionally, the grounds for a referral may only emerge later in the process of deciding whether the child has ALN and preparing an IDP. For example, it might only be when some advice is received from a specialist service that

[35] Section 30(1) and (2) of the Act.
[36] Section 12(1) and (2)(a) of the Act.
[37] This can only be done where the child is in the area of a local authority. If the child is in the area of a local authority in England, the school **may** request the local authority in England to secure an EHC needs assessment: section 12(2)(c) of the Act.
[38] Section 12(1) and (2)(a) of the Act.

the school realises that the nature of the child's ALN is more extensive than it had thought, or that the child 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**[39] 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.

12.42. When making a referral to a local authority, the school **should** inform the child and child's parent that it is doing so.

12.43. 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, any of the following circumstances might affect that view:

(a) the child has a low incidence or rare condition which requires specialism that the school cannot provide;
(b) to meet the child's needs, the school requires regular advice and support from external agencies which is over and above that which can be reasonably arranged and accessed by the school;
(c) the child requires equipment which can only be used by one pupil or cannot be reused or is beyond the reasonable resources of the school;
(d) the child requires very intensive daily support which cannot be reasonably funded or secured by the school's budget.

12.44. Local authorities **should**, in consultation with schools they maintain and any other persons they consider appropriate, establish 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 pupil or whether the authority ought to do so. Principles **should** relate to:

(a) the extent and duration of advice from external specialists that is likely to be unreasonable for a school to secure;
(b) the equipment that is likely to be unreasonable for a school to provide;
(c) 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.

12.45. Where a case is referred to a local authority whether because the child is dual registered or on one of the grounds relating to the apparent ALN, the local authority's duty to decide[40] (dealt with below) is likely to apply.

12.46. Where a maintained school refers the case of a child at the school to the local authority, it **should** consider what information to give the local authority

[39] Section 12(1) and (2)(a) of the Act.
[40] Sections 12(2)(a), 13 and 30(2) of the Act.

which is relevant to the local authority's decision as to whether or not the child has ALN. The purpose of passing on this information is so that the local authority has all the information relevant for exercising its functions (of deciding upon ALN and preparing any IDP) and has that information in a timely manner so that it can make a prompt decision, which in turn facilitates early intervention. Where the school has information which is relevant to the local authority's decision, the school **should** provide that information to the local authority promptly, provided that doing so is compatible with data protection law and of course, the school will need to comply with data protection law in how it passes on that information. What information is necessary to the local authority's exercise of its functions will depend upon the circumstances, but could include information about any action already taken to meet the needs of the child such as any resources or special arrangements put in place. It would also be likely to include any existing reports or written advice received from external agencies. If a school does not pass on information a local authority requires to exercise its functions, the local authority could make a request under section 65 of the Act for the information (see Chapter 21).

A local authority's duty to decide whether a child at a maintained school has ALN

12.47. Where it is brought to its attention, or otherwise appears to, a local authority that a child, who is at a school and for whom it is responsible, may have ALN, the local authority **must**[41] decide whether or not the child has ALN, unless any of the following circumstances apply:

(a) an IDP is already being maintained for the 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 local authority is satisfied that the question of whether or not the child has ALN is being decided by the school (under section 11 of the Act – see above).

12.48. Furthermore, where a child or the child's parent requests that the local authority responsible for the child reconsiders a decision made by a maintained school about whether the child has ALN (or has refused to make a decision about that matter) the local authority **must**[42] decide whether or not the child has ALN. The paragraphs that follow, to the extent that they are relevant to reconsideration decisions, should be read together with the sections of Chapter 26 dealing with the duty to reconsider school decisions, which has more information about that duty, including exceptions to it.

[41] Section 13 of the Act.
[42] Section 26 of the Act. In the case of a child in the area of a local authority in England, for these purposes the local authority (i.e. the one in Wales) that maintains the school is responsible for the young person: section 87 of the Act.

References below in this chapter to a local authority's reconsideration[43] of a school's decision on ALN (however expressed) include a local authority's reconsideration where the school has refused to make a decision on ALN under section 11.

12.49. As is the case with a school's duty to decide, it does not matter how the possibility that the child has ALN is brought to the attention of the local authority or how it otherwise appears to it that the child 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 child's case.

12.50. Alternatively, there might be a direct approach from the child, 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 child might have is unlikely to require the local authority to maintain an 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 the exception in paragraph 12.47(c)).

12.51. The possibility that the child 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 is set out in Chapter 2 and identifying when a child may have ALN is set out in Chapter 20.)

12.52. Where a local authority is required to decide whether a child at a school has ALN, it **must**[44]:

(a) designate an officer (the 'designated co-ordinator') to be responsible for co-ordinating the actions required to make that decision and, if an IDP is required, to be responsible for preparing it;
(b) where the local authority is reconsidering a school's decision under section 26 of the Act, record the date on which the local authority received the request for reconsideration;
(c) in other cases, record-
  i. the date on which it is brought to its attention, or otherwise appears to it that the child may have ALN, and
  ii. 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;
(d) notify the child and the child's parent that it is deciding whether the child has ALN;

[43] Under section 26 of the Act.
[44] Requirement imposed by the Code.

(e) consider offering an initial meeting with the child and the child's parent, to discuss the process (see Chapter 22 for more details about meetings).

12.53. The notification to the child and the child's parent referred to in paragraph 12.52(d) **must**[45] give:

(a) 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[46].

12.54. The notification **should** also provide an indication of the likely timescale for the process (taking account of the applicable timescale requirement set out below).

12.55. When deciding whether the child has ALN, the local authority **must**[47] consider whether to seek advice from an educational psychologist. The authority **must**[48] seek such advice where it considers that the advice is necessary to determine-

(a) the extent or nature of the ALN that the child may have, or
(b) the ALP called for by the child's ALN.

12.56. The advice sought **must**[49] relate to-

(a) the educational, psychological or other features of the case which appear to be relevant to the child's educational needs (including the child's likely future needs),
(b) how those features could affect the child's educational needs, and
(c) the provision which may be appropriate for the child in light of those features, whether by way of ALP or other types of provision, and any matters affecting the delivery of that provision.

12.57. Consideration **should** also be given as to whether the child has any engagement with or support from other agencies or the third sector organisations; and the local authority **should** involve them as appropriate in the process of deciding whether the child has ALN and in preparing any IDP.

12.58. As described in Chapter 4 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 designated

[45] Requirement imposed by the Code.
[46] Under section 9 of the Act.
[47] Requirement imposed by the Code.
[48] Requirement imposed by the Code.
[49] Requirement imposed by the Code.

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 22.

12.59. Where a local authority relies upon the exception in paragraph 12.47(b) (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** notify the child and their parent of this and **should** provide them with information and advice about ALN and the ALN system (including rights of appeal) if it has not previously or recently done so.[50]

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

12.60. Where the local authority decides that the child (who is at a school) does not have ALN it **must**[51] notify the child and their parent of the decision and the reasons for that decision.

12.61. The local authority **must**[52] make the decision and give the notification promptly and in any event before the end of the relevant period (see below) from:

(a) in the case of a referral under section 12 of the Act (described in paragraph 12.39), 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) in all other cases, when it is brought to the attention of, or otherwise appears to, the local authority that the child may have ALN.

12.62. The local authority need not comply with the requirement to make the decision and give the notification before the end of that relevant period if it is impractical to do so due to circumstances beyond its control[53].

12.63. The relevant period for these purposes is:

(a) 7 weeks in the case of a local authority reconsidering a school's decision under section 26 of the Act;
(b) 12 weeks in all other cases.

[50] See Chapter 26 for similar guidance for the situation where the local authority relies on a similar exception for a reconsideration decision.
[51] Section 13(3) of the Act.
[52] Requirement (which is subject to the specified exception) imposed by the Code.
[53] See Chapter 1 for more information on how timescales in the Code are to be interpreted.

12.64. As well as setting out the decision and the reasons for it, the notification to the child and the child's parent **must**[54] give:

(a) 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[55];
(c) details of the local authority's arrangements for the avoidance and resolution of disagreements[56] and its independent advocacy services[57];
(d) information about the right to appeal to the Tribunal against the decision.[58]

12.65. The notification **should** also outline what action the school or local authority will undertake to ensure the child's needs (which are not ALN) are met. This might include differentiated classroom teaching strategies.

12.66. It might be helpful to offer an opportunity to the child and their parent for further discussion.

Preparing an IDP (Local authorities)

12.67. If a local authority has decided that a child at a school and for whom it is responsible has ALN it **must**[59] either prepare an IDP or direct the school to prepare and maintain an IDP. If the local authority prepares an IDP, it **must**[60] either maintain it or, if the authority considers it appropriate, direct the school to maintain it. (See Chapter 2 for information on the meaning of ALN and ALP; Chapter 20 for information on identifying ALN and deciding upon the ALP required; and Chapter 23 for information on preparing an IDP and its contents.)

12.68. See paragraphs 12.85 – 12.99 for more information about a local authority's power to direct a school.

12.69. The position is slightly different if the child is in the area of a local authority in England. In this case, a local authority's decision that the child has ALN would have been taken as a reconsideration of the school's decision on ALN. Where the local authority (the one in Wales) has made such a decision, it **must**[61] either-

[54] Requirement imposed by the Code.
[55] Under section 9 of the Act.
[56] Under section 68 of the Act.
[57] Under section 69 of the Act.
[58] Under section 70. The decision is appealable to the Tribunal – see Chapter 33.
[59] Section 14(1) and (2) of the Act.
[60] Section 14(2) of the Act.
[61] Section 14(2) of the Act as applied by section 87(3)(c).

(a) direct the school to prepare and maintain an IDP for the child, or
(b) prepare an IDP for the child and direct the school to maintain it.

But the local authority does not have to do this if it has requested the one in England to secure an EHC needs assessment or if the authority in England maintains an EHC plan for the child.[62]

12.70. If following a local authority's request that a local authority in England secures an EHC needs assessment for a child, the local authority is notified by the local authority in England that it is not required to secure an EHC plan for the child, the local authority **must**[63] direct the school in one of the two ways mentioned in the preceding paragraph (having first prepared an IDP in respect of the second way).

12.71. Before the IDP is completed, the local authority **should** give the child and the child's 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 appropriately, which may be to update the draft IDP, or explain decisions or other matters further.

12.72. Once prepared, the local authority **must**[64] give a copy of the IDP to the child and their parent.

12.73. The local authority **must**[65] make the decision on ALN, prepare the IDP and give a copy of it promptly and in any event before the end of the relevant period (see below) from:

(a) in the case of a referral under section 12 of the Act (described in paragraph 12.39), 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) in all other cases, when it is brought to the attention of, or otherwise appears to, the local authority that the child may have ALN.

12.74. The local authority need not comply with the requirement to make the decision, prepare the plan and give a copy of it before the end of that relevant period if it is impractical to do so due to circumstances beyond its control[66].

12.75. The relevant period for these purposes is:

[62] Section 87(3)(d) of the Act.
[63] Section 87(3)(e) of the Act.
[64] Section 22 of the Act.
[65] Requirement (which is subject to the specified exception) imposed by the Code.
[66] See Chapter 1 for more information on how timescales in the Code are to be interpreted.

(a) 7 weeks in the case of a local authority reconsidering a school's decision under section 26 of the Act;
(b) 12 weeks in all other cases.

12.76. When giving a copy of the IDP, the local authority **must**[67] also give the child and the child's parent:

(a) 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[68];
(c) details of the local authority's arrangements for the avoidance and resolution of disagreements[69] and its independent advocacy services[70];
(d) information about the right to appeal to the Tribunal about particular aspects of the IDP.[71]

Maintaining an IDP (Local authorities)

12.77. Where a local authority has prepared an IDP for a child at a school, it **must**[72] either maintain that IDP or direct the school to maintain the IDP. See paragraphs 12.85 - 12.99 for more information about a local authority's power to direct a school and paragraphs 12.69 - 12.70 for where the child is in the area of a local authority in England.

12.78. Where the local authority maintains an IDP for a child at a school, the consequence of this is that it will need to keep a copy of the IDP (complying with data protection law in how it does so) and comply with the duties that attach to maintaining an IDP, referred to in the following paragraphs.

12.79. Where a local authority maintains an IDP, it **must**[73] 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) 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**[74] 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**[75] take all reasonable steps to secure that it is provided in Welsh.

[67] Requirement imposed by the Code.
[68] Under section 9 of the Act.
[69] Under section 68 of the Act.
[70] Under section 69 of the Act.
[71] Under section 70 of the Act. Chapter 33 deals with appeals.
[72] Section 14(1) and (2) of the Act.
[73] Section 14(10)(a) and (b) of the Act.
[74] Sections 20(5) and 21(5) of the Act.
[75] Sections 14(10)(c), 20(5)(c) and 21(5)(b) of the Act.

12.80. A local authority is also subject to duties to review an IDP it maintains[76] (see Chapter 25).

12.81. The local authority **must not**[77] 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.

12.82. The local authority's duty to maintain an IDP may cease in particular circumstances, which are covered in Chapter 29. It may also transfer to another body, for example, where the local authority has directed the school to maintain the IDP. Information on other transfers of IDPs is covered in Chapter 28.

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

12.83. Where a local authority maintains an IDP for a child at a school, the school **must**[78] take all reasonable steps to help the local authority secure the ALP specified in it. This **should** include, but is not limited to, the following where relevant:

(a) helping the local authority to secure the ALP by delivering the ALP which it is reasonable for the school to deliver;
(b) secure training and development for staff so that they have the expertise and skills to deliver the ALP which is for the school to deliver;
(c) helping the local authority secure the provision of ALP in Welsh, if the IDP specifies that it should be provided in Welsh;
(d) facilitating the use of appropriate equipment specified in the child's IDP;
(e) involving the parent of a child in the delivery of ALP;
(f) ensuring that all those teaching the child are aware of the child's ALN and the ALP to be provided;
(g) facilitating the delivery of the ALP which is to be delivered by others;
(h) making arrangements for ensuring effective communication between the school and the local authority and an NHS body, about the practical action to be taken to deliver the ALP specified in the IDP.

12.84. In addition, more generally, a maintained school **should** take reasonable steps to help a local authority in the exercise of the authority's functions under the ALN system in relation to children at the school.[79] For example, in

[76] Section 23 of the Act.
[77] Section 49 of the Act. For these purposes, "parent" does not include a parent who is not an individual.
[78] Section 47(4) and (5) of the Act.
[79] A local authority, if it is not getting information or help that it needs from the school to exercise its functions, can request it formally, in which case the school must comply with the request subject to limited exceptions: see Chapter 21.

respect of a child at the school who has a local authority maintained IDP, the school **should**-

(a) monitor the effectiveness of ALP made for a child and support the child to make progress and achieve the outcomes specified in their IDP;
(b) contribute to the review of the IDP and planning transitions to any other institutions and to adult life;
(c) integrate external advice and specialist support for the child into their teaching and learning programmes in a non-disruptive way.

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

12.85. In the following circumstances, a local authority can direct a maintained school about an IDP:

(a) where the local authority has decided that a child at the school, or a child who is to be a registered pupil at the school, has ALN, it **may**,[80] if it considers it appropriate, direct the school to prepare and maintain an IDP for the child;
(b) where the authority has decided that a child at the school, or a child who is to be a registered pupil at the school, has ALN and has prepared an IDP for the child, it **may**,[81] if it considers it appropriate, direct the school to maintain the IDP;
(c) where the local authority has revised an IDP for a child at the school following its reconsideration of it (see Chapter 26) or an order of the Tribunal to revise it, the local authority **may**[82] direct the school to maintain it;
(d) where the local authority already maintains an IDP for a child at the school, it **may**[83] direct the school to maintain it.

In these circumstances, if the local authority does not direct the school, it **must**[84] maintain the IDP itself.

12.86. If the school is maintained by another local authority, before it can direct the school, the local authority **must**[85] consult the local authority that maintains the school about its proposal to direct the school.

12.87. A local authority **should not** direct a school to prepare an IDP unless it considers that-

[80] Section 14(2)(b) of the Act.
[81] Section 14(2)(b) of the Act.
[82] Section 27(6)(a) of the Act.
[83] Section 14(4) of the Act.
[84] Sections 14(2) and section 27(6) of the Act.
[85] Section 38 of the Act.

(a) the child has ALN that call for ALP it would be reasonable for the school to secure,
(b) the school could adequately determine the extent and nature of the ALN, and
(c) the school could adequately determine the ALP.

12.88. But the local authority **must not**[86] direct the school in any way, if-

(a) the child is dual registered, or
(b) the local authority is required to specify a place at a particular school or other institution or board and lodging in the IDP (this is where the reasonable needs of the child for ALP cannot be met unless the local authority secures either or both of those things for the child).

12.89. The position is slightly different if the child is in the area of a local authority in England. The local authority **must**[87] direct the maintained school in one of the ways set out in paragraph 12.85(a) to (c). The exceptions to this are if the local authority, having decided that the child has ALN, has requested the local authority in England to secure an EHC needs assessment or if that authority in England maintains an EHC plan for the child.

12.90. Where a local authority directs a school to maintain an IDP the authority has prepared, the local authority **must**[88] give a copy of the IDP to the child, the child's parent and the school. It **should** give the copy to the school at the same time as it directs the school. Where a local authority is already maintaining an IDP and directs the school to maintain it instead, the local authority **must**[89] send a copy of the IDP to the school, unless the school already has a copy of it. This **should** be done at the same time as it directs the school. The school **must**[90] inform the child and their parent that it has become responsible for maintaining the IDP.

12.91. The local authority **must**[91], when directing a maintained school to prepare and maintain an IDP for a child, inform the school of the date on which the event referred to in paragraph 12.95(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.

12.92. Where a local authority directs a maintained school to prepare and maintain an IDP for a child at the school or who is to be registered as a pupil at the school, the local authority **should** do so promptly and sufficiently early within the period within which it would otherwise have been required to prepare and

[86] Sections 30(7) and 14(9) of the Act.
[87] Sections 14(2), 27(6) and 87 of the Act.
[88] Section 22(1) of the Act and regulation 15 of the Additional Learning Needs (Wales) Regulations 2021.
[89] Regulation 15 of the Additional Learning Needs (Wales) Regulations 2021.
[90] Section 22(2) of the Act.
[91] Requirement imposed by the Code.

give a copy of the IDP (see paragraph 12.73). This is so that the school has adequate time to prepare the IDP.

12.93. 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 it to the child and the child's parent before the end of the relevant period (see paragraphs 12.73 and 12.95). 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**[92] subsequently direct it to maintain the IDP if the child is already a registered pupil at the school.

12.94. Where a maintained school is directed by a local authority to prepare and maintain, or to maintain, an IDP for a child at the school (or for a child who is to be a registered pupil at the school), the school **must**[93] do so. The only exception to this is if a local authority in England maintains an EHC plan for the child (which would only be if the child were in the area of that local authority in England). The following are relevant to preparing an IDP: Chapter 2 on the meaning of ALN and ALP; Chapter 20 on identifying ALN and deciding upon the ALP required; Chapter 23 in relation to the preparation and content of IDPs; and paragraph 12.19. Paragraphs 12.31 to 12.35 deal with a maintained school maintaining an IDP (including where the school did not prepare the IDP).

12.95. Where a maintained school is required to prepare and maintain an IDP for a child at the school following a local authority direction[94], the school **must**[95] prepare the IDP and give a copy of it to the child and the child's parent promptly and in any event before the end of the relevant period (see below) from:

(a) in the case of a referral under section 12 of the Act (described in paragraph 12.39), 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) in all other cases, when it is brought to the attention of, or otherwise appears to, the local authority that the child may have ALN.

12.96. The relevant period for these purposes is:

(a) 7 weeks in the case of a local authority reconsidering a school's decision under section 26 of the Act;
(b) 12 weeks in all other cases.

[92] Section 14(4) of the Act.
[93] Section 12(3) of the Act.
[94] Under section 14(2)(b)(ii) of the Act.
[95] Requirement (subject to the specified exception) imposed by the Code.

12.97. These are the same periods 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.

12.98. The school need not comply with the requirement to prepare and give a copy of the IDP before the end of that relevant period if it is impractical to do so due to circumstances beyond its control[96].

12.99. When giving a copy of the IDP, the school **must**[97] also give the child and the child's parent:

(a) contact details for 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[98];
(c) details of the responsible local authority's arrangements for the avoidance and resolution of disagreements[99] and its independent advocacy services[100];
(d) information about the rights to request that the responsible local authority reconsiders the IDP and takes over responsibility for maintaining it[101] and the contact details for the responsible local authority
(e) but if the child is in the area of a local authority in England, instead of the information referred to in sub-paragraph (d), information about the right to request the local authority that maintains the school to reconsider the IDP[102] and contact details for that local authority.

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

12.100. A local authority **may**[103] name a maintained school in an IDP it prepares or maintains for a child for the purpose of securing the child's admission to that school (for more information on this, see Chapter 23). Where a maintained school is so named, it **must**[104] admit the child regardless of its duty in relation to the statutory limit on class sizes for infant classes. However, this does not affect any power to exclude a pupil from a school[105].

[96] See Chapter 1 for more information on how timescales in the Code are to be interpreted.
[97] Requirement imposed by the Code.
[98] Under section 9 of the Act.
[99] Under section 68 of the Act.
[100] Under section 69 of the Act.
[101] These are the rights under sections 27 and 28 of the Act respectively. See Chapter 26.
[102] Under sections 27 and 87 of the Act.
[103] Section 48 of the Act.
[104] Section 48(2) and (5) of the Act.
[105] Section 48(6) of the Act.

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

12.101. All those concerned with making ALP for a child with ALN who is being educated at a mainstream maintained school **must**[106] 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 the child will be educated, and
(c) the efficient use of resources.

[106] Section 52 of the Act.

Chapter 13: Duties on local authorities in relation to children of compulsory school age not at a maintained school

Introduction

13.1. This chapter deals with the duties on local authorities in relation to decisions about ALN, the preparation and maintaining of IDPs, and the securing of ALP included in an IDP, for children of compulsory school age who are not registered pupils at a maintained school. This would include, for example, children who are attending independent schools, maintained schools in England or who are educated at home. Specific guidance on each of those situations and others involving children of compulsory school age who are not registered pupils at a maintained school is in Chapter 18 and this chapter should be read in conjunction with relevant provisions of that chapter. This chapter does not deal with the position if the child is looked after (for which see Chapter 14), nor does it deal with the position if the child is subject to a detention order (for which see Chapter 19).

13.2. Accordingly, references in this chapter to a child or to a child who is not at a maintained school, except so far as a contrary intention appears, are to a child of compulsory school age who-

(a) is not registered as a pupil at a maintained school,
(b) is not looked after, and
(c) is not subject to a detention order.

A local authority's duty to decide whether a child has ALN

13.3. Where it is brought to its attention, or otherwise appears to a local authority, that a child for whom it is responsible 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.

13.4. 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 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

[1] Section 13(1) and (2) of the Act.

authority is aware of that possibility, then the duty to decide applies (subject to the exceptions above). (Guidance on the definition of ALN is set out in Chapter 2 and on identifying when a child or young person may have ALN is set out in Chapter 20.)

13.5. Where a local authority is required to decide whether a child not at a maintained school has ALN, it **must**[2]:

(a) designate an officer (the 'designated co-ordinator') to be responsible for co-ordinating the actions required to make that decision and, if an IDP is 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 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 it that the child may have ALN;
(d) notify the child and the child's parent that it is deciding whether the child has ALN;
(e) consider offering an initial meeting with the child and the child's parent, to discuss the process (see Chapter 22 for more details about meetings).

13.6. The notification to the child and child's parent referred to in paragraph 13.5(d) **must**[3] give:

(a) 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[4].

13.7. The notification **should** also provide an indication of the likely timescale for the process (taking account of the timescale requirement set out below).

13.8. When deciding whether the child has ALN, the local authority **must**[5] consider whether to seek advice from an educational psychologist. The authority **must**[6] seek such advice if it considers that the advice is necessary to determine-

(a) the extent or nature of the ALN that the child may have, or
(b) the ALP called for by the child's ALN.

13.9. The advice sought **must**[7] relate to-

[2] Requirement imposed by the Code.
[3] Requirement imposed by the Code.
[4] Under section 9 of the Act.
[5] Requirement imposed by the Code.
[6] Requirement imposed by the Code.
[7] Requirement imposed by the Code.

(a) the educational, psychological or other features of the case which appear to be relevant to the child's educational needs (including the child's likely future needs),
(b) how those features could affect the child's educational needs, and
(c) the provision which may be appropriate for the child in light of those features, whether by way of ALP or other types of provision, and any matters affecting the delivery of that provision.

13.10. Consideration should also be given as to whether the child already has any engagement with or support from other agencies or third sector organisations and the local authority should involve them as appropriate in the process of deciding whether the child has ALN and in preparing any IDP.

13.11. As described in Chapter 4 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 designated 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 22.)

13.12. Where it is brought to the attention of a local authority 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 (see the exception in paragraph 13.3(b)), it **should** notify the child and child's parent of this and **should** provide them with information and advice about ALN and the ALN system (including rights of appeal) if it has not previously or recently done so.

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

13.13. If the local authority decides that the child does not have ALN it **must**[8] notify the child and their parent of the decision and the reasons for that decision.

13.14. The local authority **must**[9] make the decision and give the notification promptly and in any event before the end of 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 local authority need not comply with the requirement to make the decision and give the notification before the end of that 12 week period if it is impractical to do so due to circumstances beyond its control[10].

[8] Section 13(3) of the Act.
[9] Requirement (which is subject to the specified exception) imposed by the Code.
[10] See Chapter 1 for more information on how timescales in the Code are to be interpreted.

13.15. As well as setting out the decision and the reasons for it, the notification to the child and the child's parent **must**[11] give:

(a) 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[12];
(c) details of the local authority's arrangements for the avoidance and resolution of disagreements[13] and its independent advocacy services[14];
(d) information about the right to appeal to the Tribunal against the decision.[15]

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

13.17. It might be helpful to offer an opportunity to the child and child's parent to discuss further.

Preparing an IDP

13.18. If the local authority decides that the child has ALN, it **must**[16] prepare an IDP for the child. However, if the child is to be a registered pupil at a maintained school, in some circumstances the local authority **may**[17] instead direct the school to prepare and maintain an IDP for the child (see paragraphs 12.85 – 12.99 for information on a local authority directing a maintained school in this way).

13.19. See Chapter 2 for information on the meaning of ALN and ALP; Chapter 20 for information on identifying ALN and deciding upon the ALP required; and Chapter 23 for information on preparing an IDP and its contents.

13.20. Before the IDP is completed by the local authority, it **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 appropriately, which may be to update the draft IDP, or explain decisions or other matters further.

[11] Requirement imposed by the Code.
[12] Under section 9 of the Act.
[13] Under section 68 of the Act.
[14] Under section 69 of the Act.
[15] Under section 70. The decision is appealable to the Tribunal – see chapter 33.
[16] Section 14(1) - (2) of the Act.
[17] Section 14(2)(b) of the Act.

13.21. Once prepared, the local authority **must**[18] give a copy of the IDP to the child and their parent.

13.22. The local authority **must**[19] make the decision on ALN, prepare the plan and give a copy of it promptly and in any event before the end of 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.

13.23. The local authority need not comply with the requirement to make the decision, prepare the plan and give a copy of it before the end of that 12 week period if it is impractical to do so due to circumstances beyond its control[20].

13.24. When giving a copy of the IDP, the local authority **must**[21] also give the child and the child's parent:

(a) 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[22];
(c) details of the local authority's arrangements for the avoidance and resolution of disagreements[23] and its independent advocacy services[24];
(d) information about the right to appeal to the Tribunal about particular aspects of the IDP.[25]

Maintaining an IDP

13.25. Where a local authority has prepared an IDP for a child not at a maintained school, it **must**[26] maintain that IDP. However, if the child is to be a registered pupil at a maintained school, in some circumstances the local authority **may**[27] instead direct the school to maintain the IDP (see paragraphs 12.85 – 12.99).

13.26. The consequence of the local authority being required to maintain the IDP is that it will need to keep a copy of the IDP (in accordance with data protection law) and comply with the duties that attach to a local authority maintaining an IDP, which are referred to in the following paragraphs.

[18] Section 22 of the Act.
[19] Requirement (which is subject to the specified exception) imposed by the Code.
[20] See Chapter 1 for more information on how timescales in the Code are to be interpreted.
[21] Requirement imposed by the Code.
[22] Under section 9 of the Act.
[23] Under section 68 of the Act.
[24] Under section 69 of the Act.
[25] Under section 70. Chapter 33 deals with appeal rights.
[26] Sections 14(1) - (2) of the Act.
[27] Section 14(2)(b) of the Act.

13.27. Where a local authority maintains an IDP, it **must**[28] 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**[29] 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**[30] take all reasonable steps to secure that it is provided in Welsh.

13.28. A local authority is also subject to duties[31] to review an IDP (see Chapter 25).

13.29. The local authority **must not**[32] 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.

13.30. If the child becomes a registered pupil at a maintained school, the local authority **may**[33] direct the school to maintain the IDP. However, the local authority **must not**[34] 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 (see Chapter 12 for more information about a local authority directing a maintained school).

13.31. The local authority's duty to maintain an IDP may cease in particular circumstances, which are covered in Chapter 29. It may also transfer to another body, for example, where the local authority has directed the school to maintain the IDP, as mentioned above. Information on other transfers of IDPs is covered in Chapter 28.

[28] Section 14(10) of the Act.
[29] Sections 20(5) and 21(5) of the Act.
[30] Sections 14(10)(c), 20(5)(c) and 21(5)(b) of the Act.
[31] Section 23 of the Act.
[32] Section 49 of the Act. For these purposes, "parent" does not include a parent who is not an individual.
[33] Section 14(4) of the Act.
[34] Sections 14(9) and 30(7) of the Act.

Chapter 14: Duties in relation to Looked After Children

Introduction

14.1. This chapter deals with the duties on 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 looked after children. This chapter also deals with the duties on maintained schools in relation to looked after children with ALN.

14.2. Under the ALN system, duties to identify ALN and prepare and maintain IDPs in respect of looked after children are placed on the local authority that looks after the child, rather than, as is the case in respect of other children, the maintained school they attend and the local authority responsible for them. The rationale for this is to ensure that the authority responsible for planning for the child's needs, including educational needs, is also responsible for planning and meeting their ALN. This is to allow for a more holistic approach to meeting the educational and other needs of looked after children with ALN.

Application of this chapter

14.3. The duties and provisions in this chapter apply in the case of children who are looked after by a local authority and, where indicated, children or young people who have recently ceased to be looked after. Paragraphs 1.27 – 1.28 of Chapter 1 (Introduction) explain when a child is looked after for the purposes of the Act and this Code; and references in this Code to a looked after child are to be construed accordingly, except so far as a contrary intention appears.

14.4. As set out in paragraph 14.2, duties to decide whether a child who is looked after has ALN and to prepare and maintain an IDP for such a child are placed on the local authority that looks after the child. This is the case irrespective of the level of need of the child and it differs from the position for children who are not looked after.

14.5. The position is however different if the looked after child is not in the area of a local authority (for example, if the child is in the area of a local authority in England following a long-term placement there). Those differences are highlighted in this Chapter. For the situation of a child who is in the area of a local authority in England but attends a maintained school (that is, one in Wales), see Chapter 12.

Duties on maintained schools in relation to a looked after child

14.6. Although maintained schools are not subject to duties to decide upon ALN and prepare and maintain IDPs for looked after children (except those that

are in the area of a local authority in England), other duties on maintained schools in relation to children with ALN apply equally to looked after children who have ALN. Specifically, maintained schools **must**[1] do all of the following:

(a) take all reasonable steps to help the local authority secure the ALP specified in an IDP maintained by the local authority for a child it looks after who is a registered pupil at the school;
(b) take all reasonable steps to secure that the ALP called for by a looked after child's ALN is made, where that child does not have an IDP (for example, because it is being prepared) and is a registered pupil at the school;
(c) admit a looked after child to the school where the school is named in the child's IDP for the purpose of securing the child's admission to it;
(d) if the school is a mainstream one, secure that a looked after child who is a registered pupil, engages in the activities of school together with children who do not have ALN (in the case of this duty, it is not on the governing body directly, but on those concerned with making ALP for the child).

14.7. These duties, including limits to them, are explained in more detail in Chapter 12. Statutory guidance in those chapters relating to these duties applies equally to situations in which they are being exercised in relation to a looked after child.

14.8. There is also a duty on maintained schools which is specific to looked after children who are registered pupils at the school. If it is brought to the attention of a maintained school, or it otherwise appears to it, that a registered pupil who is a looked after child may have ALN, the school **must**[2] refer the matter to the local authority that looks after the child.

A local authority's duty to decide whether a looked after child has ALN

14.9. Where it is brought to its attention, or otherwise appears to a local authority that a child it looks after may have ALN, the local authority **must**[3] decide whether the child has ALN, unless any of the following circumstances apply:

(a) an IDP is already being maintained for the 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 that there is no new information that materially affects that decision;
(c) the child is in the area of a local authority in England.

[1] Sections 47(4) and (5), 47(1) and (2), 48 and 52 of the Act respectively.
[2] Section 17 of the Act.
[3] Section 18 of the Act.

14.10. It does not matter how the possibility that a child it looks after has ALN is brought to the attention of a local authority or how it otherwise appears to it that the child may have ALN; if the local authority is aware of that possibility, then, subject to the exceptions listed above, the duty to decide applies.

14.11. One likely means by which the issue might be brought to the local authority's attention is through a referral from a maintained school (see paragraph 14.8). There is also a similar duty on a local authority that is responsible for a child who is looked after by another local authority: if it comes to the attention of, or otherwise appears to, a local authority responsible for a child who is looked after by another local authority, that the child may have ALN, the responsible local authority **must**[4] refer the matter to the local authority that looks after the child.

14.12. Alternatively, there might be a direct approach raising concerns that the child has ALN from someone such as the child or family member, or a referral from another body or professional. The possibility that a child 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.

14.13. Where a local authority is required to decide whether a child it looks after has ALN, it **must**[5]:

(a) designate an officer (the 'designated co-ordinator') to be responsible for co-ordinating the actions necessary to make that decision and, if an IDP is 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 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 it that the child may have ALN;
(d) notify the child, the child's parent and the child's independent reviewing officer that it is deciding whether the child has ALN;
(e) consider offering an initial meeting with the child and the child's parent to discuss the process (see Chapter 22 for more details about meetings).

14.14. The notification to the child and child's parent referred to in paragraph 14.13(d) **must**[6] give:

(a) 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.[7]

[4] Section 17 of the Act.
[5] Requirement imposed by the Code.
[6] Requirement imposed by the Code.
[7] Under section 9 of the Act.

14.15. The notification to the child, the child's parent and the independent reviewing officer **should** also provide an indication of the likely timescale for the process (taking account of the timescale requirement set out below).

14.16. When deciding whether a looked after child has ALN, the local authority **must**[8] consider whether to seek advice from an educational psychologist. The authority **must**[9] seek such advice if it considers that the advice is necessary to determine-

(a) the extent or nature of the ALN that the child may have, or
(b) the ALP called for by the child's ALN.

14.17. The advice sought **must**[10] relate to:

(a) the educational, psychological or other features of the case which appear to be relevant to the child's educational needs (including the child's likely future needs),
(b) how those features could affect the child's educational needs, and
(c) the provision which may be appropriate for the child in light of those features, whether by way of ALP or other types of provision, and any matters affecting the delivery of that provision.

14.18. Consideration **should** also be given as to whether the child has any engagement with or support from other agencies or third sector organisations; and the local authority **should** involve them as appropriate in the process of deciding whether the child has ALN and in preparing any IDP.

14.19. As described in Chapter 4 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 designated coordinator **should** normally arrange a meeting or meetings, as appropriate, with the child, the child's parents and the child's independent reviewing officer, to discuss and decide the child's needs and if required, prepare an IDP for them. (Guidance on these meetings is provided in Chapter 22.)

14.20. Where it is brought to the attention of a local authority that a child it looks after 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 (see the exception in paragraph 14.9(b); it **should** notify the child, the child's parent and the child's independent reviewing officer of this and **should** provide the child and their parent with information and advice about ALN and the ALN system (including rights of appeal) if it has not previously or recently done so.

[8] Requirement imposed by the Code.
[9] Requirement imposed by the Code.
[10] Requirement imposed by the Code.

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

14.21. If the local authority decides that the looked after child does not have ALN it **must**[11] notify the child, their parent and the child's independent reviewing officer of the decision and the reasons for that decision.

14.22. The local authority **must**[12] make the decision and give the notification promptly and in any event before the end of 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 local authority need not comply with the requirement to make the decision and give the notification before the end of that 12 week period if it is impractical to do so due to circumstances beyond its control.[13]

14.23. As well as setting out the decision and the reasons for it, the notification to the child, the child's parent and the child's independent reviewing officer **must**[14] give:

(a) 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;[15]
(c) details of the local authority's arrangements for the avoidance and resolution of disagreements[16] and its independent advocacy services;[17]
(d) information about the right to appeal to the Tribunal against the decision.[18]

14.24. The notification **should** also outline what action the maintained school (if the child attends one) or local authority will undertake to ensure the looked after child's educational needs (which are not ALN) are met. This might include differentiated classroom teaching strategies.

14.25. It might be helpful to offer an opportunity to the child, their parent and the independent reviewing officer for further discussion.

[11] Section 18(3) of the Act.
[12] Requirement (which is subject to the specified exception) imposed by the Code.
[13] See Chapter 1 for more information on how timescales in the Code are to be interpreted.
[14] Requirement imposed by the Code.
[15] Under section 9 of the Act.
[16] Under section 68 of the Act.
[17] Under section 69 of the Act.
[18] Under section 70 of the Act. The decision is appealable to the Tribunal – see Chapter 33.

Preparing an IDP

14.26. Where the local authority decides that the child has ALN it **must**[19] prepare an IDP for the child, providing the child is in the area of a local authority. As set out at the start of this chapter, the duties in relation to the preparation and maintenance of IDPs for looked after children (provided they are in the area of a local authority, that is, one in Wales) always rest with the local authority that looks after the child, regardless of the level of needs of the child. The local authority cannot direct a school to do these things.

14.27. See Chapter 2 for information on the meaning of ALN and ALP; Chapter 20 for information on identifying ALN and deciding upon the ALP required; Chapter 23 in relation to the preparation and content of IDPs; Chapter 24 in relation to the content of IDPs for looked after children.

14.28. Before the IDP is completed, the local authority **should** give the child, the child's parent and the independent reviewing officer, and where the child attends a school (including if it is in England), the school in question, 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 appropriately, which may be to update the draft IDP, or explain decisions or other matters further.

14.29. Once prepared, the local authority **must**[20] give a copy of the IDP to the child, their parent and the child's independent reviewing officer.

14.30. The local authority **must**[21] make the decision on ALN, prepare the IDP and give a copy of it promptly and in any event before the end of 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 local authority need not comply with the requirement to do those things before the end of that 12 week period if it is impractical to do so due to circumstances beyond its control.[22]

14.31. When giving a copy of the IDP, the local authority **must**[23] also give the child, child's parent and the child's independent reviewing officer:

(a) 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;[24]

[19] Section 19 of the Act.
[20] Section 22 of the Act.
[21] Requirement (which is subject to the specified exception) imposed by the Code.
[22] See Chapter 1 for more information on how timescales in the Code are to be interpreted.
[23] Requirement imposed by the Code.
[24] Under section 9 of the Act.

(c) details of the local authority's arrangements for the avoidance and resolution of disagreements[25] and its independent advocacy services;[26]
(d) information about the right to appeal to the Tribunal about particular aspects of the IDP.[27]

Maintaining an IDP

14.32. Where a local authority has prepared an IDP for a looked after child, it **must**[28] maintain that IDP, provided the child is in the area of a local authority. This is any local authority in Wales and not just the one that looks after the child. But if the child were in the area of a local authority in England, the local authority that looks after the child would not, or no longer, have to maintain the IDP.

14.33. A local authority **must**[29] also maintain (or continue to maintain) an IDP for a child where-

(a) the child becomes looked after by the local authority, and
(b) immediately before the child became looked after, an IDP was being maintained for the child.

See Chapter 28 for more information on the transfer of a duty to maintain an IDP in this and other situations. Chapter 29 deals with a local authority's duty to maintain an IDP ceasing.

14.34. Where a local authority maintains an IDP for a child it looks after, it will need to keep a copy of the IDP, or the child's personal education plan (PEP) of which the IDP forms part (complying with data protection law in how it does so); and comply with the duties that attach to a local authority maintaining an IDP for a looked after child, referred to in the following paragraphs.

14.35. The local authority **must**[30] incorporate the looked after child's IDP into the child's PEP. The PEP forms part of the child's overall care and support plan prepared or maintained in accordance with section 83 of the Social Services and Well-being (Wales) Act 2014.[31] The Part 6 Code of Practice on the exercise of social services functions in relation to Part 6 (looked after and accommodated children) of the Social Services and Well-being (Wales) Act 2014 deals with preparing, maintaining and reviewing care and support plans

[25] Under section 68 of the Act.
[26] Under section 69 of the Act.
[27] Under section 70 of the Act. Chapter 33 deals with appeals.
[28] Sections 19(2) and 31(4)(b) of the Act.
[29] Section 35(9) and (10) of the Act. It is then maintained under section 19 of the Act.
[30] Section 83(2C) of the Social Services and Well-being (Wales) Act 2014.
[31] The care and support plan is the overarching plan for the future care and support of the looked after child. It must include a record of various matters as required by Part 6 of the Social Services and Well-being (Wales) Act 2014 and the Care Planning, Placement and Case Review (Wales) Regulations 2015, including, in most cases, a personal education plan.

and personal education plans for looked after children; and should be read in conjunction with this chapter.

14.36. The requirement to incorporate an IDP into a PEP enables a looked after child's ALP and the wider educational provision made for them, to complement one another. Additionally, as it forms part of the child's care and support plan which sets out other matters, including those relating to health, emotional and behavioural development, identity and family and social relationships, it facilitates a holistic approach not just to the planning of educational provision for the looked after child, but also for planning the care of the child as a whole.

14.37. Where a local authority maintains an IDP for a child it looks after, it **must**[32] secure the ALP and any other provision (i.e. a place at a particular school or other institution or board and lodging, which the local authority must secure 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**[33] 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**[34] take all reasonable steps to secure that it is provided in Welsh.

14.38. A local authority maintaining an IDP for a child it looks after is also subject to duties[35] to review the IDP (see Chapter 25 for more information, including on conducting the review at the same time as a review of the child's case under the Social Services and Well-being (Wales) Act 2014).

14.39. The local authority **must not**[36] charge the child or their parent for any ALP described in the IDP, nor for anything else it secures under Part 2 of the Act.

When a child or young person ceases to be a looked after child

14.40. When a person with an IDP ceases to be a looked after child (for whatever reason), the local authority may remain responsible for maintaining the IDP, or that responsibility may pass to another local authority, or it may cease altogether. These matters are dealt with in Chapters 28 and 29. The following paragraphs deal with administrative matters related to the IDP where it continues to be maintained or it is likely that it will continue to be maintained.

14.41. In this situation, the requirement to incorporate the IDP within the PEP ceases, even if the person remains looked after for the purposes of the Social Services and Well-being (Wales) Act 2014.

[32] Section 19(7)(a) and (b) of the Act.
[33] Sections 20(5) and 21(5) of the Act.
[34] Sections 19(7)(c), 20(5)(c) and 21(5)(c) of the Act.
[35] Section 24 of the Act.
[36] Section 49 of the Act

14.42. In practice, this means that where a local authority is responsible for maintaining the IDP, the IDP will be on the standard form for a looked after child, rather than the standard form in Annex A (for children who are not looked after and young people) and will be incorporated into the child's PEP. In preparation for the child ceasing to be looked after, the local authority responsible for maintaining the IDP **should** put the IDP information into a separate document, using the standard form at Annex A. As this standard form requires additional information to that required for a looked after child, the information contained elsewhere in the child's PEP may be used to populate those additional sections, where appropriate. This would not, on its own, constitute a revision of the IDP, as the information should not change. During the course of the first review following the child or young person ceasing to be looked after, the body responsible for maintaining the IDP (whether it is the local authority that looked after the child or another body), **must**[37] give a copy of the IDP (which is on the standard form at Annex A) to the child or young person and in the case of a child, their parent, unless those people already have such a copy. This is so that they have a copy of the IDP that is being reviewed.

[37] Requirement imposed by the Code.

Chapter 15: Duties on maintained schools and local authorities in relation to young people at maintained schools

Introduction

15.1. This chapter deals with the duties on maintained schools and local authorities in relation to decisions about ALN, the preparation and maintaining of IDPs, and securing ALP for a young person registered as a pupil at a maintained school. It does not deal with the position of a young person who is or becomes subject to a detention order (Chapter 19 deals with this).

15.2. Accordingly, references in this chapter to a young person at a school (however expressed) refer to a young person who is registered as a pupil at a maintained school, but do not include a young person who is or becomes subject to a detention order.

A maintained school's duty to decide whether a young person has ALN

15.3. Where it is brought to its attention, or otherwise appears to a maintained school, that a young person at the school may have ALN, the school **must**[1] decide whether the young person has ALN, unless any of the following circumstances apply:

(a) an IDP is already being maintained for the young person;
(b) the school 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 dual-registered and a local authority in Wales is responsible for the young person[2] (see paragraph 15.38 for the school's duty in this instance);
(e) a local authority in England maintains an EHC Plan for the young person (this would only be relevant if the young person is in the area of a local authority in England[3]).

15.4. The possibility that a young person has ALN might be brought to the attention of a maintained school by the young person themselves or by someone else. It does not matter how the possibility that a young person

[1] Section 11 of the Act.
[2] See Chapter 1 for more details on children and young people for whom a local authority is responsible.
[3] See Chapter 1 for more details about when a child is in the area of a local authority in Wales or England.

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 is set out in Chapter 2; and on identifying when a young person may have ALN is set out in Chapter 20.)

15.5. Where a maintained school is required to decide whether a young person at the school has ALN, it **must**[4]:

(a) designate a person (the 'designated co-ordinator') to be responsible for co-ordinating the actions required to make that decision and, if an IDP is 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 a summary of how the possibility that the young person has ALN has been brought to its attention or why it otherwise appears to it that the young person may have ALN;
(d) notify the young person that it has been brought to its attention, or otherwise appears to it, that the young person may have ALN;
(e) consider offering an initial meeting with the young person to discuss the process;
(f) explain to the young person the consequences of consenting to the decision being made and not doing so;
(g) 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.

15.6. For the purposes of the requirement above, the school is required to decide whether the young person has ALN where it is not known whether or not the young person consents to that decision being made. If having sought the young person's consent, the young person does not consent (and see the requirement below about recording this), then the requirement on the school to do the things listed above will cease to apply at that point. The school **must**[5] seek the young person's consent promptly.

15.7. The notification to the young person (referred to in paragraph 15.5(d)) **must**[6] also give:

(a) contact details for 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[7].

[4] Requirement imposed by the Code
[5] Requirement imposed by the Code.
[6] Requirement imposed by the Code
[7] Under section 9 of the Act.

15.8. The notification **should** also provide an indication of the likely timescale for the process (taking account of the timescale requirements set out below).

15.9. The school **must**[8] record:

(a) where the young person consents to the decision being made or an IDP being prepared and maintained, when and how consent was given;
(b) where the young person objects to any of those matters, when and how the young person objected;
(c) where the young person has neither consented nor objected to any of those matters, the steps taken by the school to seek the young person's consent and explain the consequences of the school deciding whether the young person has ALN.

15.10. Schools **should** have appropriate procedures in place to facilitate this, which might include the young person signing to confirm whether or not they consent (more information about requiring a young person's consent can be found in paragraph 4.26).

15.11. Consideration **should** be given as to whether the young person already has any engagement with or support from other agencies or third sector organisations; and the school **should** involve them as appropriate in the process of deciding whether the young person has ALN and in preparing any IDP.

15.12. As described in Chapter 4 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 designated 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 22).

15.13. Where it is brought to the attention of a maintained school that a young person at it may have ALN but it 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 (see the exception in paragraph 15.3(b)), it **should** notify the young person of this and **should** provide them with information and advice about ALN and the ALN system (including rights of appeal) if it has not previously or recently done so.

[8] Requirement imposed by the Code

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

15.14. If the maintained school 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.

15.15. The school **must**[10] make the decision and give the notification promptly and in any event before the end of the period of 35 school days from the young person consenting to the decision being made. The school need not comply with the requirement to make the decision and give the notification before the end of that period of 35 school days if it is impractical to do so due to circumstances beyond its control[11].

15.16. As well as setting out the decision and the reasons for it, the notification to the young person **must**[12] give:

(a) contact details for 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[13];
(c) details of the responsible local authority's arrangements for the avoidance and resolution of disagreements[14] and its independent advocacy services[15];
(d) information about the right to request the responsible local authority to re-consider the matter[16] and the contact details for the responsible local authority.

15.17. The notification **should** also outline what action the school 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.

15.18. It might be helpful to offer an opportunity to the young person for further discussion.

[9] Section 11(4) of the Act.
[10] Requirement (which is subject to the specified exception) imposed by the Code.
[11] See Chapter 1 for more information on how timescales in the Code are to be interpreted.
[12] Requirement imposed by the Code
[13] Under section 9 of the Act.
[14] Under section 68 of the Act.
[15] Under section 69 of the Act.
[16] Under section 26 of the Act. See Chapter 26.

Preparing an IDP (Maintained Schools)

15.19. If the maintained school decides that the young person has ALN, it **must**[17] prepare an IDP for that young person unless any of the following circumstances apply:

(a) the school considers that the young person has ALN;
  i. that may call for ALP it would not be reasonable for it to secure,
  ii. that it cannot adequately determine the extent or nature of, or
  iii. for which it cannot adequately determine ALP,
and the school refers the young person's case to the responsible local authority to decide (see paragraph 15.38 – 15.47 for more information on referrals);

(b) the young person does not consent to an IDP being prepared or maintained (see paragraph 4.26 for information on the consent of young people);

(c) young person is in the area of a local authority in England and the school requests[18] that local authority to secure an EHC needs assessment for the young person;

(d) a local authority in England maintains an EHC plan for the young person.

15.20. If following a school's request that a local authority in England secure an EHC needs assessment for a young person, the school is notified by the local authority in England that it is not required to secure an EHC plan for the young person, the school **must**[19] prepare an IDP unless the young person does not consent to the IDP being prepared.

15.21. See Chapter 2 for information on the meaning of ALN and ALP, Chapter 20 on identifying ALN and deciding upon the ALP required; and Chapter 23 in relation to the preparation and content of IDPs.

15.22. Before the IDP is completed, the school **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 school **should** consider any concerns and act upon them appropriately, which may be to update the draft IDP or explain decisions or other matters further.

15.23. Once prepared, the school **must**[20] give a copy of the IDP to the young person.

15.24. The school **must**[21] make the decision on ALN, prepare the IDP and give a copy of it promptly and in any event before the end of the period of 35 school days from the young person consenting to the decision being made. The school need not comply with the requirement to do those things before the

[17] Section 12(1) and (2) of the Act
[18] Under section 36(1) of the Children and Families Act 2014.
[19] Section 12(5) of the Act.
[20] Section 22(1) of the Act.
[21] Requirement (which is subject to the specified exception) imposed by the Code.

end of that period of 35 school days if it is impractical to do so due to circumstances beyond its control[22].

15.25. When giving a copy of the IDP, the school **must**[23] also give the young person:

(a) contact details for 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[24];
(c) details of the responsible local authority's arrangements for the avoidance and resolution of disagreements[25] and its independent advocacy services[26]; and
(d) information about the rights to request that the responsible local authority reconsiders the IDP and takes over responsibility for maintaining it[27] and contact details for the responsible local authority;
(e) but if the young person is in the area of a local authority in England, instead of the information referred to in sub-paragraph (d), information about the right to request the local authority that maintains the school to reconsider the IDP[28] and contact details for that local authority.

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

15.26. If a young person at a school has ALN but an IDP is not being maintained for them, the maintained school **must**[29], in exercising its functions in relation to the school, take all reasonable steps to secure that the ALP called for by the young person's ALN is made.

15.27. This young person might not have an IDP because-

(a) the school is preparing an IDP for the young person;
(b) the school has made a referral to a local authority and the authority is preparing an IDP;
(c) the young person does not consent to a decision about ALN being made or a plan being prepared or maintained;
(d) an English local authority is carrying out an EHC needs assessment or preparing an EHC plan for the young person (following a request from the school or the local authority that maintains it); or
(e) the young person has an EHC plan.

[22] See Chapter 1 for more information on how timescales in the Code are to be interpreted.
[23] Requirement imposed by the Code.
[24] Under section 9 of the Act.
[25] Under section 68 of the Act.
[26] Under section 69 of the Act.
[27] Under sections 27 and 28 of the Act respectively. See Chapter 26.
[28] Under sections 27 and 87 of the Act. See Chapter 26.
[29] Section 47(1) and (2) of the Act.

15.28. The school will need to determine what it needs to do to meet this duty for each young person who has ALN but does not have an IDP, in light of the particular circumstances.

15.29. Where the young person 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, the school **should** take all reasonable steps to help that local authority secure the special educational provision specified in the EHC plan.

15.30. In cases where it is being decided whether the young person has ALN or an IDP is being prepared (or, in respect of a young person in the area of a local authority in England, if an EHC needs 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 school ought to have information from the young person, 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 would have the views of, and evidence from, teaching and support staff at the school in relation to the young person. That evidence could include how the young person 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 they have just moved from England to Wales.

15.31. From this range of information and advice, including that gained from the young person, the school ought to have a broad understanding of the type of ALN the young person has. In light of that understanding the school **should**:

(a) make arrangements for letting all staff who are involved in teaching or supporting the young person know about those needs;
(b) involve the ALNCo in advising teaching staff on appropriate teaching approaches to use in relation to the young person with a view to meeting the apparent needs and on where to get further information and advice if required;
(c) make any appropriate adjustments to the school environment to improve the young person's access to education;
(d) provide appropriate additional or different support for the young person from the resources available to it, including access to input from external specialists;
(e) monitor the impact of support provided for the young person and alter it if it becomes apparent that this would be appropriate.

15.32. 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, the school **should**, if it is reasonable to do so, begin to secure any ALP that has been identified at the earliest opportunity, whilst it is completing preparation of the IDP. Where it can reasonably provide the

ALP itself, it **should** do so; and where it can reasonably arrange the provision of any element of the ALP by someone else, it **should** also do so.

Maintaining an IDP (Maintained schools)

15.33. Where a maintained school has prepared an IDP for a young person, it **must**[30] maintain that IDP. However, if before the school starts to maintain it, the young person does not or no longer consents to the IDP being maintained, the school's duty to maintain it would not arise. Chapter 29 deals with the circumstances in which a duty to maintain an IDP ceases and Chapter 28 deals with the circumstances in which a duty to maintain an IDP transfers to another body (whether a local authority, maintained school or FEI).

15.34. The consequence of the school being required to maintain the IDP is that it will need to keep a copy of the IDP (complying with data protection law in how it does so) and comply with the duties that attach to a school maintaining an IDP, which are referred to in the following paragraphs.

15.35. Where a school maintains a plan, it **must**[31] 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**[32] secure that ALP. If the IDP specifies that a particular kind of ALP should be provided in Welsh, the school (or NHS body where applicable) **must**[33] take all reasonable steps to secure that it is provided in Welsh.

15.36. A school is also subject to duties[34] to review an IDP it maintains (see Chapter 25).

15.37. The school **must not**[35] charge the young person for the ALP described in the IDP, nor for anything else it secures for the young person under Part 2 of the Act.

Referrals from a maintained school to a local authority

15.38. There is one instance in which a maintained school is required to refer a young person's case to a local authority rather than decide for itself whether the young person has ALN, which is where the young person is dual registered. A maintained school **must**[36] refer the case of a young person at the school to the responsible local authority (if there is one) where-

[30] Section 12(1) and (2) of the Act.
[31] Section 12(7)(a) of the Act.
[32] Sections 20(5) and 21(5) of the Act.
[33] Sections 12(7)(b), 20(5)(c) and 21(5)(a) of the Act.
[34] Section 23 of the Act.
[35] Section 49 of the Act.
[36] Section 30(1) and (2) of the Act.

(a) it is brought to its attention, or otherwise appears to it, that the young person may have ALN,
(b) the young person does not have an IDP, and
(c) the young person is dual registered.

15.39. Otherwise, a maintained school can refer the case of a young person to a local authority on particular grounds related to the nature of a young person's apparent ALN (see the following paragraphs).

15.40. Where a maintained school has decided that a young person at the school has ALN, rather than prepare the IDP, it **may**[37] refer the young person's case to the responsible local authority (if there is one).[38] But the school **must not**[39] do this unless it considers that the young person has ALN:

(a) that may call for ALP it would not be reasonable for the school to secure,
(b) the extent or nature of which it cannot adequately determine, or
(c) for which it cannot adequately determine ALP.

15.41. The school **should** be mindful of the need to make any such referral as early as possible so as to minimise delay in the IDP being prepared. Therefore, where the school becomes aware that there is a ground for referral to the local authority, it **should** act promptly to consider whether to refer the young person's case and in making any referral. In most cases, it ought to be able to make the referral within 20 school days (if not earlier) from the date on which it obtains the young person's consent to the decision being made.

15.42. Occasionally, the grounds for a referral may only emerge later in the process of deciding whether the young person has ALN and 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 young person's ALN is more extensive than it 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 school **may**[40] 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.

15.43. When making a referral to a local authority, the school **should** inform the young person that it is doing so.

15.44. 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, any of the following circumstances might affect that view:

[37] Section 12(1) and (2)(a) of the Act.
[38] This can only be done where the young person is in the area of a local authority. If the young person is in the area of a local authority in England, the school may request the local authority in England to secure an EHC needs assessment: section 12(2)(c) of the Act.
[39] Section 12(1) and (2)(a) of the Act.
[40] Section 12(1) and (2)(a) of the Act.

(a) the young person has a low incidence or rare condition which requires specialism that the school cannot provide;
(b) to meet the young person's needs, the school requires regular advice and support from external agencies which is over and above that which can be reasonably arranged and accessed by the school;
(c) the young person requires equipment which can only be used by one pupil or cannot be reused or is beyond the reasonable resources of the school;
(d) the young person requires very intensive daily support which cannot be reasonably funded or secured by the school's budget.

15.45. Local authorities **should**, in consultation with schools they maintain, FEIs in their area, and any other persons they consider appropriate, establish 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 pupil or whether the authority ought to do so. Principles **should** relate to:

(a) the extent and duration of advice from external specialists that is likely to be unreasonable for a school to secure;
(b) the equipment that is likely to be unreasonable for a school to provide;
(c) 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.

15.46. Where a case is referred to a local authority (whether because the young person is dual registered or on one of the grounds relating to the apparent ALN), the local authority's duty to decide[41] (dealt with below) is likely to apply.

15.47. Where a maintained school refers the case of a young person at the school to the local authority, it **should** consider what information to give the local authority which is relevant to the local authority's decision as to whether or not the young person has ALN. The purpose of passing on this information is so that the local authority has all the information relevant for exercising its functions (of deciding upon ALN and preparing any IDP) and has that information in a timely manner so that it can make a prompt decision, which in turn facilitates early intervention. Where the school has information which is relevant to the local authority's decision, the school **should** provide that information to the local authority promptly, provided that doing so is compatible with data protection law and of course, the school will need to comply with data protection law in how it passes on that information. What information is necessary to the local authority's exercise of its functions will depend upon the circumstances, but could include information about 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 be likely to include any existing reports or written advice received from external

[41] Sections 12(2)(a), 13 and 30(2) of the Act.

agencies as well as whether a young person has consented to a decision being made. If a school does not pass on information a local authority requires to exercise its functions, the local authority could make a request under section 65 of the Act for the information (see Chapter 21).

A local authority's duty to decide whether a young person at a maintained school has ALN

15.48. Where it is brought to its attention, or otherwise appears to, a local authority that a young person at a school and for whom it is responsible may have ALN, the local authority **must**[42] 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 school 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 local authority is satisfied that the question of whether or not the young person has ALN is being decided by the school;
(d) the young person does not consent to the decision being made.

15.49. Furthermore, where a young person requests that the local authority responsible for the young person reconsiders a decision made by a maintained school about whether the young person has ALN (or has refused to make a decision about that matter) the local authority **must**[43] decide whether or not the young person has ALN. The paragraphs that follow, to the extent that they are relevant to reconsideration decisions, should be read together with the sections of Chapter 26 dealing with the duty to reconsider school decisions, which has more information about that duty, including exceptions to it. References below in this chapter to a local authority's reconsideration[44] of a school's decision on ALN (however expressed) include a local authority's reconsideration where the school has refused to make a decision on ALN under section 11.

15.50. As is the case with a school's duty to decide, it does not matter how the possibility that the young person at a school has ALN is brought to the attention of a local authority or how it otherwise appears to it that the young person 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 has referred the young person's case.

[42] Section 13 of the Act.
[43] Section 26 of the Act. In the case of a young person in the area of a local authority in England, for these purposes the local authority (i.e. the one in Wales) that maintains the school is responsible for the young person: section 87 of the Act.
[44] Under section 26 of the Act.

15.51. Alternatively, there might be a direct approach from the young person, 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 young person 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 15.48(c)).

15.52. The possibility that a young person 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 is set out in Chapter 2 and identifying ALN and deciding upon the ALP required is set out in Chapter 20.)

15.53. Where a local authority is required to decide whether a young person at a school has ALN[45], the local authority **must**[46] notify the young person that it is deciding whether the young person has ALN and take the action set out in paragraph 15.58. The local authority **must**[47] also consider offering an initial meeting with the young person to discuss the process (see Chapter 22 for more details about meetings).

15.54. Where a local authority would be required to decide whether a young person at a school has ALN if the young person were to consent to the decision being made, the local authority **must**[48] do the following promptly (this does not apply to reconsideration decisions):

(a) notify the young person-
   i. of the referral under section 12 (see paragraph 15.40) or section 30 (dual registration, see paragraph 15.38) of the Act, or
   ii. where there has not been such a referral, that it has been brought to its attention or otherwise appears to it that the young person may have ALN;

(b) consider offering an initial meeting with the young person to discuss the process (see Chapter 22 for more details about meetings);

(c) explain to the young person the consequences of consenting to the decision being made and not doing so;

(d) 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;

[45] For this to be the case, the young person must have consented to the decision being made or it is a reconsideration request.
[46] Requirement imposed by the Code.
[47] Requirement imposed by the Code.
[48] Requirement imposed by the Code.

(e) take the action referred to in paragraph 15.58.

15.55. The notification to the young person under paragraph 15.53 or 15.54(a) **must**[49] give:

(a) 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[50].

15.56. The notification **should** also provide an indication of the likely timescale for the process (taking account of the applicable timescale requirement set out below.)

15.57. Where the local authority seeks the young person's consent, it **must**[51] record:

(a) where the young person consents to the decision being made or an IDP being prepared and maintained, when and how consent was given;
(b) where the young person objects to any of those matters, when and how the young person objected;
(c) where the young person has neither consented nor objected to any of those matters, the steps taken by the local authority to seek the young person's consent and explain the consequences of the local authority deciding whether the young person has ALN.

15.58. In all cases, the local authority **must**[52]:

(a) designate an officer (the 'designated co-ordinator') to be responsible for co-ordinating the actions required to make the decision as to whether the young person has ALN and, if an IDP is required, to be responsible for preparing it;
(b) in the case of a referral from the school under section 12 or section 30 of the Act, record the date on which it received the referral;
(c) where the local authority is reconsidering a school's decision under section 26 of the Act, record the date on which the local authority received the request for reconsideration;
(d) in other cases, record-
   i. the date on which it is brought to its attention, or otherwise appears to it, that the young person may have ALN, and
   ii. a summary of how the possibility that the young person has ALN has been brought to its attention or why it otherwise appears to it that the young person may have ALN.

[49] Requirement imposed by the Code.
[50] Under section 9 of the Act.
[51] Requirement imposed by the Code.
[52] Requirement imposed by the Code.

15.59. When deciding whether a young person at a school has ALN, a local authority **must**[53] consider whether to seek advice from an educational psychologist. The local authority **must**[54] seek such advice if it considers that the advice is necessary to determine-

(a) the extent or nature of the ALN that the young person may have, or
(b) the ALP called for by the young person's ALN.

15.60. The advice sought **must**[55] relate to-

(a) the educational, psychological or other features of the case which appear to be relevant to the young person's educational or training needs (including the young person's likely future needs),
(b) how those features could affect the young person's educational or training needs, and
(c) the provision which may be appropriate for the young person in light of those features, whether by way of ALP or other types of provision, and any matters affecting the delivery of that provision.

15.61. Consideration **should** also be given as to whether the young person has any engagement with or support from other agencies or third sector organisations and involve them as appropriate in the process of deciding whether the young person has ALN and in preparing any IDP.

15.62. As described in Chapter 4 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 designated 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 22.

15.63. Where a local authority relies upon the exception in paragraph 15.48(b) (it 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** notify the young person of this and **should** provide them with information and advice about ALN and the ALN system (including rights of appeal) if it has not previously or recently done so.[56]

[53] Requirement imposed by the Code.
[54] Requirement imposed by the Code
[55] Requirement imposed by the Code.
[56] See Chapter 26 for similar guidance for the situation where the local authority relies on a similar exception for a reconsideration decision.

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

15.64. Where the local authority decides that the young person (who is at a school) does not have ALN it **must**[57] notify the young person of the decision and the reasons for that decision.

15.65. The local authority **must**[58] make the decision and give the notification promptly and in any event before the end of the relevant period (see below) from:

(a) in the case of a referral from a maintained school under section 12 of the Act (described in paragraph 15.40), 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) in all other cases, when the young person consents to the decision being made.

15.66. The local authority need not comply with the requirement to make the decision and give the notification before the end of that relevant period if it is impractical to do so due to circumstances beyond its control[59].

15.67. The relevant period for these purposes is:

(a) 7 weeks in the case of a local authority reconsidering a school's decision under section 26 of the Act;
(b) 12 weeks in all other cases.

15.68. As well as setting out the decision and the reasons for it, the notification to the young person **must**[60] give:

(a) 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[61];
(c) details of the local authority's arrangements for the avoidance and resolution of disagreements[62] and its independent advocacy services[63];
(d) information about the right to appeal to the Tribunal against the decision.[64]

[57] Section 13(3) of the Act.
[58] Requirement (which is subject to the specified exception) imposed by the Code
[59] See Chapter 1 for more information on how timescales in the Code are to be interpreted.
[60] Requirement imposed by the Code.
[61] Under section 9 of the Act.
[62] Under section 68 of the Act.
[63] Under section 69 of the Act.
[64] Under section 70. The decision is appealable to the Tribunal – see Chapter 33.

15.69. The notification **should** also outline what action the school or local authority will undertake to ensure the young person's needs (which are not ALN) are met. This might include differentiated classroom teaching strategies.

15.70. It might be helpful to offer an opportunity to the young person for further discussion.

Preparing an IDP (Local authorities)

15.71. If a local authority has decided that a young person at a school and for whom it is responsible has ALN, it **must**[65] either prepare an IDP or direct the school to prepare and maintain an IDP. If the local authority prepares an IDP, it **must**[66] then either maintain it or, if the authority considers it appropriate, direct the school to maintain it. The exception to all of this is if the young person does not consent to the IDP being prepared or maintained.[67] (See Chapter 2 for information on the meaning of ALN and ALP; Chapter 20 for information on identifying ALN and deciding upon the ALP required; and Chapter 23 information on the preparing an IDP and its contents.)

15.72. See paragraphs 15.89 – 15.103 for more information about a local authority's power to direct a school.

15.73. The position is slightly different if the young person is in the area of a local authority in England. In this case, the local authority's decision that the young person has ALN would have been taken as a reconsideration of the school's decision on ALN. The local authority in Wales (the one that maintains the school) **must**[68] either-

(a) direct the school to prepare and maintain an IDP for the young person, or
(b) prepare an IDP for the young person and direct the school to maintain it.

But the local authority does not have to do this if it has requested the one in England to secure an EHC needs assessment or the authority in England maintains an EHC plan for the young person.[69]

15.74. If following a local authority's request that a local authority in England secures an EHC needs assessment for a young person, the local authority is notified by the local authority in England that it is not required to secure an EHC plan for the young person, the local authority **must**[70] direct the school in one of the two ways mentioned in the preceding paragraph (having first

[65] Section 14(1) and (2) of the Act.
[66] Section 14(1) and (2) of the Act.
[67] Section 14(3) of the Act.
[68] Section 14(2) of the Act as applied by section 87(3)(c).
[69] Section 87(3)(d) of the Act.
[70] Section 87(3)(e) of the Act.

prepared an IDP in respect of the second way).

15.75. Before the IDP is completed, 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 appropriately, which may be to update the draft IDP, or explain decisions or other matters further.

15.76. Once prepared, the local authority **must**[71] give a copy of the IDP to the young person.

15.77. The local authority **must**[72] make the decision on ALN, prepare the IDP and give a copy of it promptly and in any event before the end of the relevant period (see below) from:

(a) in the case of a referral under section 12 of the Act (described in paragraph 15.40), 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, the young person consenting to the decision being made on whether the young person has ALN.

15.78. The local authority need not comply with the requirement to make the decision, prepare an IDP and give a copy of it before the end of that relevant period if it is impractical to do so due to circumstances beyond its control[73].

15.79. The relevant period for these purposes is:

(a) 7 weeks in the case of a local authority reconsidering a school's decision under section 26 of the Act;
(b) 12 weeks in all other cases.

15.80. When giving the copy of the IDP, the local authority **must**[74] also give the young person:

(a) 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[75];
(c) details of the local authority's arrangements for the avoidance and resolution of disagreements[76] and its independent advocacy services[77];

[71] Section 22 of the Act.
[72] Requirement (subject to the specified exception) imposed by the Code.
[73] See Chapter 1 for more information on how timescales in the Code are to be interpreted.
[74] Requirement imposed by the Code
[75] Under section 9 of the Act.
[76] Under section 68 of the Act.
[77] Under section 69 of the Act.

(d) information about the right to appeal to the Tribunal about particular aspects of the IDP.[78]

Maintaining an IDP (Local authorities)

15.81. Where a local authority has prepared an IDP for a young person at a school, it **must**[79] maintain the IDP unless either of the following circumstances apply:

(a) it directs the school to maintain the IDP;
(b) the young person does not consent to the IDP being maintained.

It **must**[80] direct the school to maintain the IDP if the young person is in the area of a local authority in England. See paragraphs 15.89 – 15.103 for more information about a local authority's power to direct a school.

15.82. Where the local authority maintains an IDP for a young person at a school, the consequence of this is that it will need to keep a copy of the IDP (complying with data protection law in how it does so) and comply with the duties that attach to maintaining an IDP, referred to in the following paragraphs.

15.83. Where a local authority maintains an IDP, it **must**[81] 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**[82] 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**[83] take all reasonable steps to secure that it is provided in Welsh.

15.84. A local authority is also subject to duties[84] to review an IDP it maintains (see Chapter 25).

15.85. The local authority **must not**[85] charge the young person for the ALP described in the IDP, nor for anything else it secures under Part 2 of the Act.

15.86. The local authority's duty to maintain an IDP may cease in particular circumstances, which are covered in Chapter 29. It may also transfer to another body, for example, where the local authority has directed the school

[78] Under section 70 of the Act. Chapter 33 deals with appeals.
[79] Section 14(1) to (4) of the Act.
[80] Section 87(3)(c) of the Act.
[81] Section 14(10)(a) and (b) of the Act
[82] Sections 20(5) and 21(5) of the Act.
[83] Sections 14(10)(c), 20(5)(c) and 21(5)(b) of the Act.
[84] Section 23 of the Act.
[85] Section 49 of the Act.

to maintain the IDP. Information on other transfers of IDPs is covered in Chapter 28.

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

15.87. Where a local authority maintains an IDP for a young person at a school, the school **must**[86] take all reasonable steps to help the local authority secure the ALP specified in it. This **should** include, but is not limited to, the following where relevant:

(a) helping the local authority to secure the ALP by delivering the ALP which it is reasonable for the school to deliver;
(b) secure training and development for staff so that they have the expertise and skills to deliver the ALP which is for the school to deliver;
(c) helping the local authority secure the provision of ALP in Welsh, if the IDP specifies that it should be provided in Welsh;
(d) facilitating the use of appropriate equipment specified in the young person's IDP;
(e) ensuring that all those teaching the young person are aware of the young person's ALN and the ALP to be provided;
(f) facilitating the delivery of the ALP which is to be delivered by others;
(g) making arrangements for ensuring effective communication between the school and the local authority and an NHS body, about the practical action to be taken to deliver the ALP specified in the IDP.

15.88. In addition, more generally, a maintained school **should** take reasonable steps to help a local authority in the exercise of the authority's functions under the ALN system in relation to young people at the school.[87] For example, in respect of a young person at the school who has a local authority maintained IDP, the school **should**:

(a) monitor the effectiveness of ALP made for a young person and support the young person to make progress and achieve the outcomes specified in their IDP;
(b) contribute to the review of the IDP and planning transitions to any other institutions and to adult life;
(c) integrate external advice and specialist support for the young person into their teaching and learning programmes in a non-disruptive way.

[86] Section 47(4) and (5) of the Act.
[87] A local authority, if it is not getting information or help that it needs from the school to exercise its functions, can request it formally, in which case the school must comply with the request subject to limited exceptions: see Chapter 21.

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

15.89. In the following circumstances, a local authority can direct a maintained school about an IDP:

(a) where the local authority has decided that a young person at the school, or who is to be a registered pupil at the school, has ALN, it **may,**[88] if it considers it appropriate, direct the school to prepare and maintain an IDP for the young person;
(b) where the authority has decided that a young person at the school, or who is to be a registered pupil at the school, has ALN and has prepared an IDP for the young person, it **may,**[89] if it considers it appropriate, direct the school to maintain the IDP;
(c) where the local authority has revised an IDP for a young person at the school following its reconsideration of it (see Chapter 26) or an order of the Tribunal to revise it, the local authority **may**[90] direct the school to maintain it;
(d) where the local authority already maintains an IDP for a young person at the school, it **may**[91] direct the school to maintain it.

In these circumstances, if the local authority does not direct the school, it **must**[92] maintain the IDP itself.

15.90. Before a local authority can direct a school that is maintained by another local authority, the local authority **must**[93] consult the local authority that maintains the school about its proposal to direct the school.

15.91. A local authority **should not** direct a school to prepare an IDP unless it considers that-

(a) the young person has ALN that call for ALP it would be reasonable for the school to secure,
(b) the school could adequately determine the extent and nature of the ALN, and
(c) the school could adequately determine the ALP.

15.92. But the local authority **must not**[94] direct the school in any way if-

(a) the young person is dual registered, or
(b) the local authority is required to specify a place at a particular school or other institution or board and lodging in the IDP (this is where the reasonable needs of the young person for ALP cannot be met unless

[88] Section 14(2)(b) of the Act.
[89] Section 14(2)(b) of the Act.
[90] Section 27(6)(a) of the Act.
[91] Section 14(4) of the Act.
[92] Sections 14(2) and 27(6) of the Act.
[93] Section 38 of the Act.
[94] Sections 30(7) and 14(9) of the Act.

the local authority secures either or both of those things for the young person).

15.93. The position is slightly different if the young person is in the area of a local authority in England, in which case, the local authority **must**[95] direct the maintained school in one of the ways set out in paragraph 15.89(a) to (c). The exceptions to this are if the local authority, having decided that the young person has ALN, has requested the local authority in England to secure an EHC needs assessment or if that authority in England maintains an EHC plan for the young person.

15.94. Where a local authority directs a school to maintain an IDP the authority has prepared, the local authority **must**[96] give a copy of the IDP to the young person and the school. It **should** give the copy to the school at the same time as it directs the school. Where a local authority is already maintaining an IDP and directs the school to maintain it instead, the local authority **must**[97] send a copy of the IDP to the school unless the school already has a copy of it. This **should** be done at the same time as it directs the school. The school **must**[98] inform the young person that it has become responsible for maintaining the IDP.

15.95. The local authority **must**[99], when directing a school to prepare and maintain an IDP for a young person, inform the school of the date on which the event referred to in paragraph 15.99(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.

15.96. Where a local authority directs a school to prepare and maintain an IDP for a young person at the school, or who is to be registered as a pupil at the school, the local authority **should** do so promptly and sufficiently early within the period within which it would otherwise have been required to prepare and give a copy of the IDP (see paragraph 15.77). This is so that the school has adequate time to prepare the IDP.

15.97. 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 it to the young person before the end of the relevant period (see paragraphs 15.77 and 15.99). 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**[100] subsequently direct it to maintain the plan if the young person is already a registered pupil at the school.

[95] Sections 14(2), 27(6) and 87 of the Act.
[96] Section 22(1) of the Act and regulation 15 of the Additional Learning Needs (Wales) Regulations 2021.
[97] Regulation 15 of the Additional Learning Needs (Wales) Regulations 2021.
[98] Section 22(2) of the Act.
[99] Requirement imposed by the Code.
[100] Section 14(4) of the Act.

15.98. Where a maintained school is directed by a local authority to prepare and maintain, or to maintain, an IDP for a young person at the school (or for a young person who is to be a registered pupil at the school), the school **must**[101] do so. The exceptions to this are where the young person does not (or no longer) consents it being prepared or maintained or where a local authority in England maintains an EHC plan for the young person (which would only be if the young person were in the area of that local authority in England). The following are relevant to preparing an IDP: Chapter 2 on the meaning of ALN and ALP; Chapter 20 on identifying ALN and deciding upon the ALP required; Chapter 23 in relation to the preparation and content of IDPs; and paragraph 15.22. Paragraphs 15.33 to 15.37 deal with a maintained school maintaining an IDP (including where the school did not prepare the IDP).

15.99. Where a maintained school is required to prepare and maintain an IDP for a young person following a local authority direction,[102] the school **must**[103] prepare and give a copy of the IDP to the young person promptly and in any event before the end of the relevant period (see below) from:

(a) in the case of a referral under section 12 of the Act (described in paragraph 15.40), 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, the young person consenting to the decision being made on whether the young person has ALN.

15.100. The relevant period for these purposes is:

(a) 7 weeks in the case of a local authority reconsidering a school's decision under section 26 of the Act;
(b) 12 weeks in all other cases.

15.101. These are the same periods 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.

15.102. The school need not comply with the requirement to prepare and give a copy of the IDP before the end of that relevant period if it is impractical to do so due to circumstances beyond its control[104].

15.103. When giving a copy of the IDP, the school **must**[105] also give the young person:

(a) contact details for the school;

[101] Section 12(3) of the Act.
[102] Under section 14(2)(b)(ii) of the Act.
[103] Requirement (which is subject to the specified exception) imposed by the Code.
[104] See Chapter 1 for more information on how timescales in the Code are to be interpreted.
[105] 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 system[106];
(c) details of the responsible local authority's arrangements for the avoidance and resolution of disagreements[107] and its independent advocacy services[108];
(d) information about the rights to request that the responsible local authority reconsiders the IDP and takes over responsibility for maintaining it[109] and the contact details for the responsible local authority,
(e) but if the young person is in the area of a local authority in England, instead of the information referred to in sub-paragraph (d), information about the right to request the local authority that maintains the school to reconsider the IDP[110] and contact details for that local authority.

[106] Under section 9 of the Act.
[107] Under section 68 of the Act.
[108] Under section 69 of the Act.
[109] Under sections 27 and 28 of the Act respectively. See Chapter 26.
[110] Under sections 27 and 87 of the Act.

Chapter 16: Duties on FEIs and local authorities in relation to young people at an FEI

Introduction

16.1. This chapter deals with the duties on FEIs and local authorities in relation to decisions about ALN, the preparation and maintaining of IDPs, and securing ALP for a young person enrolled as a student at an FEI. It does not deal with the position for a young person who is or becomes subject to a detention order (Chapter 19 deals with this).

16.2. Accordingly, references in this chapter to a young person at an FEI (however expressed), refer to a young person who is enrolled as a student at an FEI, but do not include a young person who is or becomes subject to a detention order.

16.3. As explained in Chapter 1, references to a person being enrolled as a student at an FEI do not include a person insofar as the person is undertaking a higher education course provided by the FEI.

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

16.4. Where it is brought to its attention, or otherwise appears to, an FEI that a young person at the FEI may have ALN, the FEI **must**[1] decide whether the young person has ALN, unless any of the following circumstances apply:

(a) an IDP is already being maintained for the 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 dual-registered and a local authority in Wales is responsible for the young person[2] (see paragraph 16.40 for the FEI's duty in this instance);
(e) a local authority in England maintains an EHC plan for the young person. (This would only be relevant if the young person is in the area of a local authority in England[3].)

16.5. 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

[1] Section 11(2) and (3) of the Act.
[2] See Chapter 1 for more details on children and young people who are dual-registered and for whom a local authority is responsible.
[3] See Chapter 1 for more details about when a child is in the area of a local authority in Wales or England.

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 is set out in Chapter 2 and identifying when a young person may have ALN is set out in Chapter 20.)

16.6. Where an FEI is required to decide whether a young person at the FEI has ALN, it **must**[4]:

(a) designate a person (the 'designated co-ordinator') to be responsible for co-ordinating the actions required to make that decision and, if an IDP is 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 a summary of how the possibility that the young person has ALN has been brought to its attention or why it otherwise appears to it that the young person may have ALN;
(d) notify the young person that it has been brought to its attention, or otherwise appears to it, that the young person may have ALN;
(e) consider offering an initial meeting with the young person to discuss the process (see Chapter 22 for more details about meetings);
(f) explain to the young person the consequences of consenting to the decision being made and not doing so;
(g) 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.

16.7. For the purposes of the requirement above, an FEI is required to decide whether the young person has ALN where it is not known whether or not the young person consents to that decision being made. If having sought the young person's consent, the young person does not consent (and see the requirement below about recording this), then the requirement on the FEI to do the things listed above will cease to apply at that point. The FEI **must**[5] seek the young person's consent promptly.

16.8. The notification to the young person (referred to in paragraph 16.6(d)) **must**[6] also give:

(a) 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 system[7].

[4] Requirement imposed by the Code.
[5] Requirement imposed by the Code.
[6] Requirement imposed by the Code.
[7] 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.

16.9. The notification **should** also provide an indication of the likely timescale for the process (taking account of the applicable timescale requirement set out below).

16.10. The FEI **must**[8] record:

(a) where the YP consents to the decision being made or an IDP being prepared and maintained, when and how consent was given;
(b) where the YP objects to any of those matters, when and how the young person objected;
(c) where the YP has neither consented nor objected to any of those matters, the steps taken by the FEI to seek the young person's consent and explain the consequences of the FEI deciding whether the young person has ALN.

16.11. FEIs **should** have appropriate procedures in place to facilitate this, which might include the young person signing to confirm whether or not they consent (more information about requiring a young person's consent can be found in Chapter 4).

16.12. Consideration **should** be given as to whether the young person already has any engagement with or support from other agencies or third sector organisations; and the FEI **should** involve them as appropriate in the process of deciding whether the young person has ALN and in preparing any IDP.

16.13. As described in Chapter 4 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 designated 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 22.)

16.14. Where it is brought to the attention of an FEI that a young person at it 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 (see the exception in paragraph 16.4(b)), it **should** notify the young person of this and **should** provide them with information and advice about ALN and the ALN system (including rights of appeal) if it has not previously or recently done so.

[8] Requirement imposed by the Code.

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

16.15. If the FEI 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.

16.16. The FEI **must**[10] make the decision and give the notification promptly and in any event before the end of the period of 35 term time days from the young person consenting to the decision being made.

16.17. The FEI need not comply with the requirement to make the decision and give the notification before the end of that period of 35 term time days if it is impractical to do so due to circumstances beyond its control[11].

16.18. As well as setting out the decision and the reasons for it, the notification to the young person **must**[12] give:

(a) 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 system[13];
(c) details of the responsible local authority's arrangements for the avoidance and resolution of disagreements[14] and its independent advocacy services[15];
(d) information about the right to appeal to the Tribunal against the decision.[16]

16.19. 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.

16.20. It might be helpful to offer an opportunity to the young person for further discussion.

Preparing an IDP (FEI)

16.21. If the FEI decides that the young person has ALN, it **must**[17] prepare an IDP for the young person unless any of the following circumstances apply:

(a) the FEI considers that the young person has ALN-

[9] Section 11(4) of the Act.
[10] Requirement (which is subject to the specified exception) imposed by the Code.
[11] See Chapter 1 for more information on how timescales in the Code are to be interpreted.
[12] Requirement imposed by the Code.
[13] Under section 9 of the Act.
[14] Under section 68 of the Act.
[15] Under section 69 of the Act.
[16] Under section 70 of the Act. The decision is appealable to the Tribunal – see Chapter 33.
[17] Section 12(1) and (2) of the Act.

i. that may call for ALP it would not be reasonable for it to secure,
ii. that it cannot adequately determine the extent or nature of, or
iii. for which it cannot adequately determine ALP,

and the FEI refers the young person's case to the responsible local authority to decide (see paragraphs 16.40 – 16.48 for more information on referrals);

(b) the young person does not consent to an IDP being prepared or maintained (see paragraph 4.26 for information on the consent of young people);

(c) the young person is in the area of a local authority in England and the FEI requests[18] that local authority to secure an EHC needs assessment for the young person;

(d) a local authority in England maintains an EHC plan for the young person.

16.22. If, following an FEI's request that a local authority in England secure an EHC needs assessment for a young person, the FEI is notified by the local authority in England that it is not required to secure an EHC plan for the young person, the FEI **must**[19] prepare an IDP unless the young person does not consent to the decision being made.

16.23. See Chapter 2 for information on the meaning of ALN and ALP, Chapter 20 on identifying ALN and deciding upon the ALP required; and Chapter 23 in relation to the preparation and content of IDPs.

16.24. Before the IDP is completed, 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 appropriately, which may be to update the draft IDP or explain decisions or other matters further.

16.25. Once prepared, the FEI **must**[20] give a copy of the IDP to the young person.

16.26. The FEI **must**[21] make the decision on ALN, prepare the plan and give a copy of it promptly and in any event before the end of the period of 35 term time days from the young person consenting to the decision being made. The FEI need not comply with the requirement to do those things before the end of that period of 35 term time days if it is impractical to do so due to circumstances beyond its control[22].

16.27. When giving a copy of the IDP, the FEI **must**[23] also give the young person:

(a) contact details for the FEI;

[18] Under section 36(1) of the Children and Families Act 2014.
[19] Section 12(5) of the Act.
[20] Section 22(1) of the Act.
[21] Requirement (which is subject to the specified exception) imposed by the Code.
[22] See Chapter 1 for more information on how timescales in the Code are to be interpreted.
[23] 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 system[24];
(c) details of the local authority's arrangements for the avoidance and resolution of disagreements[25] and its independent advocacy services[26];
(d) information about the right to request that the responsible local authority takes over responsibility for maintaining the IDP[27] and contact details for the responsible local authority, but these details are not to be given if the young person is in the area of a local authority in England;
(e) information about the right to appeal to the Tribunal about particular aspects of the IDP.[28]

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

16.28. If a young person at an FEI has ALN but an IDP is not being maintained for them, the FEI **must**[29], 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.

16.29. The young person might not have an IDP because:

(a) the FEI is preparing an IDP for the young person,
(b) the FEI has made a referral to a local authority and the authority is preparing an IDP,
(c) the young person does not consent to a decision about ALN being made or an IDP being prepared or maintained,
(d) an English local authority is carrying out an EHC needs assessment or preparing an EHC plan, or
(e) the young person has an EHC plan.

16.30. The FEI will need to determine what it needs to do to meet this duty for each young person who has ALN but does not have an IDP in light of the particular circumstances.

16.31. Where the young person 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, the FEI **should**, where appropriate, take all reasonable steps to help the local authority in England secure the special educational provision specified in the

[24] Under section 9 of the Act.
[25] Under section 68.
[26] Under section 69.
[27] Under section 28 of the Act. See Chapter 26.
[28] Under section 70 of the Act. Chapter 33 deals with appeals.
[29] Section 47(1) and (2) of the Act.

EHC plan.

16.32. In cases where it is being decided whether the person has ALN or an IDP is being prepared (or, in respect of a young person in the area of a local authority in England, if an EHC needs 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, 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 would have the views of, and evidence from, teaching and support staff at the FEI about the young person. That evidence could include how the young person 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 they have just moved from England to Wales.

16.33. From this range of information and advice, including that gained from 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**:

(a) make arrangements for letting all staff who are involved in teaching or supporting the young person know about those needs;
(b) involve the ALNCo in advising teaching staff on appropriate teaching approaches to use in relation to the young person with a view to meeting the apparent needs and on where to get further information and advice if required;
(c) make any appropriate adjustments to the environment of the FEI to improve the young person's access to education;
(d) provide appropriate additional or different support for the young person from the resources available to it, including access to input from external specialists;
(e) monitor the impact of support provided for the young person and alter it if it becomes apparent that this would be appropriate.

16.34. 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, an FEI **should**, if it is reasonable to do so, begin to secure any ALP that has been identified at the earliest opportunity, whilst it is completing preparation of the IDP. Where it can reasonably provide the ALP itself, it **should** do so; and where it can reasonably arrange the provision of any element of the ALP by someone else, it **should** also do so.

Maintaining an IDP (FEI)

16.35. Where an FEI has prepared an IDP for a young person, it **must**[30] maintain that IDP. However, if before the FEI starts to maintain it, the YP does not or no longer consents to the IDP being maintained, the FEI's duty to maintain it would not arise. Chapter 29 deals with the circumstances in which a duty to maintain an IDP ceases and Chapter 28 deals with the circumstances in which a duty to maintain an IDP transfers.[31]

16.36. The consequence of the FEI being required to maintain the IDP is that it will need to keep a copy of the IDP (complying with data protection law in how it does so) and comply with the duties that attach to a FEI maintaining an IDP, which are referred to in the following paragraphs.

16.37. Where an FEI maintains a plan, it **must**[32] 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**[33] secure that ALP. If the IDP specifies that a particular kind of ALP should be provided in Welsh, the FEI (or NHS body where applicable) **must**[34] take all reasonable steps to secure that it is provided in Welsh.

16.38. An FEI is subject to duties[35] to review an IDP it maintains (see Chapter 25).

16.39. An FEI **must not**[36] 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.

Referrals from an FEI to a local authority

16.40. There is one instance in which an FEI is required to refer a young person's case to a local authority rather than decide for itself whether the young person has ALN, which is where the young person is dual registered. An FEI **must**[37] refer the case of a young person at the FEI to the responsible local authority (if there is one) where-

(a) it is brought to its attention, or otherwise appears to it, that the young person may have ALN,
(b) the young person does not have an IDP, and
(c) the young person is dual registered.

[30] Section 12(1) and (2) of the Act.
[31] Although in the case of a young person at an FEI, responsibility for it would only transfer to another if the young person were to become dual registered.
[32] Section 12(7)(a) of the Act.
[33] Sections 20(5) and 21(5) of the Act.
[34] Sections 12(7)(b), 20(5)(c) and 21(5)(a) of the Act.
[35] Section 23 of the Act.
[36] Section 49 of the Act.
[37] Section 30(1) – (2) of the Act.

16.41. Otherwise, an FEI can refer the case of a young person to a local authority on particular grounds related to the nature of a young person's apparent ALN (see the following paragraphs).

16.42. Where an FEI has decided that a young person at the FEI has ALN, rather than prepare the IDP it **may**[38] refer the young person's case to the responsible local authority (if there is one).[39] But the FEI **must not**[40] do this unless it considers that the young person has ALN:

(a) that may call for ALP it would not be reasonable for the FEI to secure,
(b) the extent or nature of which it cannot adequately determine, or
(c) for which it cannot adequately determine ALP.

16.43. The FEI **should** be mindful of the need to make any such referral as early as possible so as to minimise delay in the IDP being prepared. Therefore, where the FEI becomes aware that there is a ground for referral to the local authority, it **should** act promptly to consider whether to refer the young person's case and in making any referral. In most cases, the FEI ought to be able to make the referral within 20 term time days (if not earlier) from the date on which it obtains the young person's consent to the decision being made.

16.44. Occasionally, the grounds for a referral may only emerge later in the process of deciding whether the young person has ALN and 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 it 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**[41] 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.

16.45. When making a referral to a local authority, the FEI **should** inform the young person, that it is doing so.

16.46. 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, any of the following circumstances might affect that view:

(a) the young person has a low incidence or rare condition which requires specialism that the FEI cannot provide;

[38] Section 12(1) and (2)(a) of the Act.
[39] This can only be done where the young person is in the area of a local authority. If the young person is in the area of a local authority in England, the FEI may request the local authority in England to secure an EHC needs assessment: section 12(2)(c) of the Act.
[40] Section 12(1) and (2)(a) of the Act.
[41] Section 12(1) and (2)(a) of the Act.

(b) to meet the young person's needs, the FEI requires regular advice and support from external agencies which is over and above that which can be reasonably arranged and accessed by the FEI;
(c) the young person requires equipment which can only be used by one student or cannot be reused or is beyond the reasonable resources of the FEI;
(d) the young person requires very intensive daily support which cannot be reasonably funded or secured by the FEI's budget.

16.47. Where a case is referred to a local authority whether because the young person is dual registered or on one of the grounds relating to the apparent ALN), the local authority's duty to decide[42] (dealt with below) is likely to apply.

16.48. Where an FEI refers the case of a young person at the FEI to the local authority, it **should** consider what information to give the local authority which is relevant to the local authority's decision as to whether or not the young person has ALN. The purpose of passing on this information is so that the local authority has all the information relevant for exercising its functions (of deciding upon ALN and preparing any IDP) and has that information in a timely manner so that it can make a prompt decision, which in turn facilitates early intervention. Where the FEI has information which is relevant to the local authority's decision, the FEI **should** provide that information to the local authority promptly, provided that doing so is compatible with data protection law and of course, the FEI will need to comply with data protection law in how it passes on that information. What information is necessary to the local authority's exercise of its functions will depend upon the circumstances, but could include information about 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 be likely to 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. If a FEI does not pass on information a local authority requires to exercise its functions, the local authority could make a request under section 65 of the Act for the information (see Chapter 21).

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

16.49. Where a referral is made by an FEI to the responsible local authority in respect of a young person at the FEI, the local authority **must**[43] 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 because the FEI ought to know about

[42] Sections 12(2)(a), 13 and section 30(2) of the Act.
[43] Section 13(1) and (2) of the Act.

any IDP and can only make such a referral if an IDP is not being maintained for the 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.

16.50. If a local authority is aware of the possibility that a young person at an FEI has ALN, it does not have a duty to decide whether the young person has ALN in the absence of a referral from the FEI. The only exception to this is if the young person is dual registered and the possibility that the young person has ALN comes to the local authority's attention in some other way (besides a referral from the FEI or other institution attended by the young person). If that is the case, the local authority **must**[44] decide whether or not the young person has ALN unless any of the circumstances listed in the previous paragraph apply.

16.51. Where a local authority is required to decide whether a young person at an FEI has ALN[45], the local authority **must**[46] notify the young person that it is deciding whether the young person has ALN and take the action referred to in paragraph 16.56. The local authority **must**[47] also consider offering an initial meeting with the young person to discuss the process (see Chapter 22 for more details about meetings).

16.52. Where a local authority would be required to decide whether a young person at an FEI has ALN if the young person were to consent to the decision being made,[48] the local authority **must**[49] do the following promptly:

(a) notify the young person-
   i. of the referral under section 12 (see paragraph 16.42) or section 30 (see paragraph 16.40) of the Act, or
   ii. where there has not been such a referral, that it has been brought to its attention or otherwise appears to it that the young person may have ALN;

(b) consider offering an initial meeting, with the young person to discuss the process (see Chapter 22 for more details about meetings);

(c) explain to the young person the consequences of consenting to the decision being made and not doing so;

(d) 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

(e) take the action referred to in paragraph 16.56.

[44] Section 13(1) and (2) of the Act.
[45] For this to be the case, the young person must have already consented to the decision being made.
[46] Requirement imposed by the Code.
[47] Requirement imposed by the Code.
[48] This situation is likely to be relatively rare.
[49] Requirement imposed by the Code.

16.53. The notification to the young person under paragraph 16.51 or paragraph 16.52(a) **must**[50] give:

(a) 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[51].

16.54. The notification **should** also provide an indication of the likely timescale for the process (taking account of the applicable timescale requirement below).

16.55. Where the local authority seeks the young person's consent it, **must**[52] record:

(a) where the YP consents to the decision being made or an IDP being prepared and maintained, when and how consent was given;
(b) where the YP objects to any of those matters, when and how the young person objected;
(c) where the YP has neither consented nor objected to any of those matters, the steps taken by the local authority to seek the young person's consent and explain the consequences of the local authority deciding whether the young person has ALN.

16.56. In all cases the local authority **must**[53]:

(a) designate a person ("the designated co-ordinator") to be responsible for co-ordinating the actions required to make the decision as to whether the young person has ALN and, if an IDP is required, to be responsible for preparing it;
(b) record the date on which it received the referral from the FEI under section 12 or section 30 of the Act;
(c) in other cases, record-
    i. the date on which it is brought to its attention or otherwise appears to it that the young person has ALN, and
    ii. a summary of how the possibility that the young person has ALN has been brought to its attention or why it otherwise appears to it that the young person may have ALN.

16.57. When deciding whether a young person at an FEI has ALN, a local authority **must**[54] consider whether to seek advice from an educational psychologist. The local authority **must**[55] seek such advice if it considers that the advice is necessary to determine-

(a) the extent or nature of the ALN that the young person may have, or

[50] Requirement imposed by the Code.
[51] Under section 9 of the Act.
[52] Requirement imposed by the Code.
[53] Requirement imposed by the Code.
[54] Requirement imposed by the Code.
[55] Requirement imposed by the Code.

(b) the ALP called for by the young person's ALN.

16.58. The advice sought **must**[56] relate to-

(a) the educational, psychological or other features of the case which appear to be relevant to the young person's educational or training needs (including the young person's likely future needs),
(b) how those features could affect the young person's educational or training needs, and
(c) the provision which may be appropriate for the young person in light of those features, whether by way of ALP or other types of provision, and any matters affecting the delivery of that provision.

16.59. Consideration **should** also be given as to whether the young person has any engagement with or support from other agencies or third sector organisations and involve them as appropriate in the process of deciding whether the young person has ALN and in preparing any IDP.

16.60. As described in Chapter 4 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 designated 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 22).

16.61. Where a local authority relies upon the exception in paragraph 16.49(b) (it 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** notify the young person of this and **should** provide them with information and advice about ALN and the ALN system (including rights of appeal) if it has not previously or recently done so.

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

16.62. Where the local authority decides that the young person (who is at an FEI) does not have ALN it **must**[57] notify the young person of the decision and the reasons for that decision.

16.63. The local authority **must**[58] make the decision and give the notification promptly and in any event before the end of the period of 12 weeks from:

[56] Requirement imposed by the Code.
[57] Section 13(3) of the Act.
[58] Requirement (which is subject to the specified exception) imposed by the Code.

(a) in the case of a referral from an FEI under section 12 of the Act (described in paragraph 16.42), the local authority receiving the referral;
(b) in the case of a dual registered young person, the young person consenting to the decision being made.

16.64. The local authority need not comply with the requirement to make the decision and give the notification before the end of that 12 week period if it is impractical to do so due to circumstances beyond its control[59].

16.65. As well as setting out the decision and the reasons for it, the notification to the young person **must**[60] give:

(a) 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[61];
(c) details of the local authority's arrangements for the avoidance and resolution of disagreements[62] and its independent advocacy services[63];
(d) information about the right to appeal to the Tribunal against the decision.[64]

16.66. The notification **should** also outline any action the FEI or local authority will undertake to ensure the young person's other needs (which are not ALN) are met.

16.67. It might be helpful to offer an opportunity to the young person for further discussion.

Preparing an IDP (Local authorities)

16.68. If a local authority has decided that a young person at an FEI and for whom it is responsible has ALN, it **must**[65] prepare an IDP for the young person unless the young person does not consent to an IDP being prepared or maintained. (See Chapter 2 for information on the meaning of ALN and ALP; Chapter 20 for information on identifying ALN and deciding upon the ALP required; and Chapter 23 information on the preparing an IDP and its contents.)

[59] See Chapter 1 for more information on how timescales in the Code are to be interpreted.
[60] Requirement imposed by the Code.
[61] Under section 9 of the Act.
[62] Under section 68 of the Act.
[63] Under section 69 of the Act.
[64] Under section 70 of the Act. The decision is appealable to the Tribunal – see Chapter 33.
[65] Section 14(1) and (3) of the Act.

16.69. Before the IDP is completed, 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 appropriately, which may be to update the draft IDP, or explain decisions or other matters further.

16.70. Once prepared, the local authority **must**[66] give a copy of the IDP to the young person.

16.71. The local authority **must**[67] make the decision on ALN, prepare the IDP and give a copy of it promptly and in any event before the end of the period of 12 weeks from:

(a) in the case of a referral from an FEI under section 12 of the Act (described in paragraph 16.42), the local authority receiving the referral;
(b) in the case of a dual registered young person, the young person consenting to the decision being made.

16.72. The local authority need not comply with the requirement to make the decision, prepare an IDP and give a copy of it before the end of that 12 week period if it is impractical to do so due to circumstances beyond its control[68].

16.73. When giving the copy of the IDP, the local authority **must**[69] also give the young person:

(a) 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[70];
(c) details of the local authority's arrangements for the avoidance and resolution of disagreements[71] and its independent advocacy services[72];
(d) information about the right to appeal to the Tribunal about particular aspects of the IDP.[73]

Maintaining an IDP (Local authorities)

16.74. Where a local authority has prepared an IDP for a young person at a FEI, it **must**[74] maintain the IDP unless the young person does not consent to the

[66] Section 22 of the Act.
[67] Requirement (which is subject to the specified exception) imposed by the Code.
[68] See Chapter 1 for more information on how timescales in the Code are to be interpreted.
[69] Requirement imposed by the Code.
[70] Under section 9 of the Act.
[71] Under section 68 of the Act.
[72] Under section 69 of the Act.
[73] Under section 70 of the Act. Chapter 33 deals with appeals.
[74] Section 14(2) and (3) of the Act.

IDP being maintained.

16.75. Where the local authority maintains an IDP for a young person at an FEI, the consequence of this is that it will need to keep a copy of the IDP (complying with data protection law in how it does so) and comply with the duties that attach to maintaining an IDP, referred to in the following paragraphs.

16.76. Where a local authority maintains an IDP, it **must**[75] 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**[76] 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**[77] take all reasonable steps to secure that it is provided in Welsh.

16.77. A local authority is subject to duties[78] to review an IDP it maintains (see Chapter 25).

16.78. The local authority **must not**[79] charge the young person for the ALP described in the IDP, nor for anything else it secures for the person under Part 2 of the Act.

16.79. The local authority's duty to maintain an IDP may cease in particular circumstances, which are covered in Chapter 29. It may also transfer to another body, for example, the local authority **may**[80] request the FEI to become responsible for maintaining the IDP. Information on transfers of IDPs is covered in Chapter 28.

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

16.80. Where a local authority maintains an IDP for a young person at an FEI, the FEI **must**[81] take all reasonable steps to help the local authority secure the ALP specified in it. This **should** include, but is not limited to, the following where relevant:

(a) helping the local authority to secure the ALP by delivering the ALP which it is reasonable for the FEI to deliver;

[75] Section 14(10)(a) and (b) of the Act.
[76] Sections 20(5) and 21(5) of the Act.
[77] Sections 14(10)(c), 20(5)(c) and 21(5)(b) of the Act.
[78] Section 23 of the Act.
[79] Section 49 of the Act.
[80] Section 36 of the Act.
[81] Section 47(4) and (5) of the Act.

(b) secure training and development of staff so that they have the required expertise and skills to deliver the ALP which is for the FEI to deliver;
(c) helping the local authority secure the provision of ALP in Welsh, if the IDP specifies that it should be provided in Welsh;
(d) facilitating the use of appropriate equipment specified in the young person's IDP;
(e) ensuring that all those teaching the young person are aware of the young person's ALN and the ALP to be provided;
(f) facilitating the delivery of the ALP which is to be delivered by others;
(g) making arrangements for ensuring effective communication between the FEI and the local authority and an NHS body, about the practical action to be taken to deliver the ALP specified in the IDP.

16.81. In addition, more generally, an FEI **should** take reasonable steps to help a local authority in the exercise of the authority's functions under the ALN system in relation to young people at the FEI.[82] For example, in respect of a young person at the FEI who has a local authority maintained IDP, the school **should**:

(a) monitor the effectiveness of ALP made for the young person and support the young person to make progress and achieve the outcomes specified in their IDP;
(b) contribute to the review of the IDP and planning transitions to any other institutions and to adult life
(c) integrate external advice and specialist support for the young person into their teaching and learning programmes in a non-disruptive way.

[82] A local authority, if it is not getting information or help that it needs from the FEI to exercise its functions, can request it formally, in which case the FEI must comply with the request subject to limited exceptions: see Chapter 21.

Chapter 17: Duties on local authorities in relation to young people not at a maintained school or FEI

Introduction

17.1. This chapter deals with the duties on local authorities in relation to decisions about ALN, the preparation and maintaining of IDPs, and securing ALP for a young person who is not attending a maintained school or FEI. It does not deal generally with the position for a young person who is or becomes subject to a detention order (Chapter 19 deals with that).

17.2. Accordingly references to a young person in this chapter, except so far as a contrary intention appears, are to a young person who is neither a registered pupil at a maintained school nor enrolled as a student at an FEI, but do not include a young person who is or becomes subject to a detention order.

17.3. However, as explained in Chapter 19, whether an IDP is necessary for a detained person who is a young person, can depend upon the likelihood of the person having reasonable needs for education or training when released from detention. For the purposes of a home authority considering whether that is the case, paragraphs 17.64 to 17.78 are relevant.

17.4. Also, in the case of a young person subject to a detention order and detained in hospital under Part 3 of the Mental Health Act 1983, as explained in Chapter 19, paragraphs 19.71 to 19.75 are relevant to any decision on whether an IDP is necessary for that young person.

17.5. Paragraphs 19.71 to 19.75 are also relevant to-

(a) reviews of a young person's IDP and the question of when a local authority must continue to maintain an IDP or whether it may cease to do so (see paragraph 17.27), and
(b) reviews by a local authority of a child's IDP where the child is in their final year of compulsory schooling (see paragraph 17.28 – 17.29), and they could also be relevant in other similar situations (see paragraph 17.30).

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

17.6. Where it is brought to its attention, or otherwise appears to a local authority, that a young person for whom it is responsible may have ALN, the local authority **must**[1] 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;

[1] Section 13(1) and 13(2) of the Act.

(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.

17.7. 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 or by someone else. 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 (subject to the exceptions above). (Guidance on the definition of ALN is set out in Chapter 2 and on identifying when a young person may have ALN in Chapter 20).

17.8. Where a local authority is required to decide whether a young person for whom it is responsible has ALN, it **must**[2]:

(a) designate a person ("the designated co-ordinator") to be responsible for coordinating the actions required to make that decision and, if an IDP is 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 it that the young person may have ALN;
(d) notify the young person that it has been brought to its attention, or otherwise appears to it, that the young person may have ALN;
(e) consider offering an initial meeting, with the young person to discuss the process (see Chapter 22 for more details about meetings);
(f) explain to the young person the consequences of consenting to the decision being made and not doing so;
(g) 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.

17.9. For the purposes of the requirement above, the local authority is required to decide whether the young person has ALN where it is not known whether or not the young person consents to that decision being made. If having sought the young person's consent, the young person does not consent (and see the requirement below about recording this), then the requirement on the local authority to do the things listed above will cease to apply at that point. The local authority **must**[3] seek the young person's consent promptly.

17.10. The notification to the young person (referred to in paragraph 17.8(d)) **must**[4] also give:

[2] Requirement imposed by the Code.
[3] Requirement imposed by the Code.
[4] Requirement imposed by the Code.

(a) 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.[5]

17.11. The notification **should** also provide an indication of the likely timescale for the process (taking account of the timescale requirement set out below).

17.12. The local authority **must**[6] record:

(a) where the young person consents to the decision being made or an IDP being prepared and maintained, when and how consent was given;
(b) where the young person objects to any of those matters, when and how the young person objected;
(c) where the young person has neither consented nor objected to any of those matters, the steps taken by the authority to seek the young person's consent and explain the consequences of the authority deciding whether the young person has ALN.

17.13. Local authorities **should** have appropriate procedures in place to facilitate this, which might include the young person signing to confirm whether or not they consent (more information about requiring a young person's consent can be found in paragraph 4.26).

17.14. Consideration **should** be given to whether the young person already has any engagement with or support from other agencies or third sector organisations 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.

17.15. As described in Chapter 4 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 designated 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 22.

17.16. Where it is brought to the attention of a local authority that a 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 (see the exception in paragraph 17.6(b)), it **should** notify the young

[5] Under section 9 of the Act.
[6] Requirement imposed by the Code.

person of this and **should** provide them with information and advice about ALN and the ALN system (including rights of appeal) if it has not previously or recently done so.

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

17.17. Where the local authority decides that the young person does not have ALN, it **must**[7] notify the young person of the decision and the reasons for that decision.

17.18. The local authority **must**[8] 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. The local authority need not comply with the requirement to make the decision and give the notification within that 12 week period if it is impractical to do so due to circumstances beyond its control.[9]

17.19. As well as setting out the decision and the reasons for it, the notification to the young person **must**[10] give:

(a) 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[11];
(c) details of the local authority's arrangements for the avoidance and resolution of disagreements,[12] and its independent advocacy services;[13]
(d) information about the right to appeal to the Tribunal against the decision.[14]

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

A local authority's decision on whether an IDP is necessary

17.21. If a local authority decides that a young person has ALN, it **must**[15] prepare and maintain an IDP for that person if-

[7] Section 13(3) of the Act.
[8] Requirement (which is subject to the specified exception) imposed by the Code.
[9] See Chapter 1 for more information on how timescales in this Code are to be interpreted.
[10] Requirement imposed by the Code.
[11] Under section 9 of the Act.
[12] Under section 68 of the Act.
[13] Under section 69 of the Act.
[14] Under section 70 of the Act. The decision is appealable to the Tribunal – see Chapter 33.
[15] Section 14(1) to (3) of the Act.

(a) it decides in accordance with regulations (see 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
(b) the young person consents to the plan being prepared and maintained. Usually, consent would have been given to this at the same time as the young person consented to the decision being made as to whether they have ALN.

17.22. Whether it is necessary for the local authority to prepare an IDP for a young person in any case will depend upon the circumstances. Just because the young person has ALN, does not mean that the young person should have an IDP prepared by the local authority. In some cases, the young person may be able to get a place at, for example, an FEI and it would be more appropriate for the FEI to prepare and maintain an IDP for the young person.

17.23. In cases where the young person has already undertaken two or more years of further education or training, the young person may not have reasonable needs to more education or training. 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 a young person's choice (although the young person's views, wishes and feelings **must**[16] be taken into account). The intention underlying the ALN system is to give all young people with ALN equitable access to education or training, compared to young people who do not have ALN.

17.24. 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. In both cases, the expectation is that mainstream FEIs, and in some cases, maintained schools, will usually be able to meet the education or training needs of the majority of young people who have ALN.

17.25. However, occasionally, there may not be available provision within FEIs or maintained schools to meet a young person's reasonable needs for education or training (including their reasonable needs for ALP to undertake that education or training) or a young person may not be able to access such provision which might otherwise be suitable for meeting their needs. In these cases, a local authority through maintaining an IDP, may need to secure a place at a particular institution for the young person or board and lodging so that the young person's reasonable needs can be met.

17.26. The regulations, in accordance with which local authorities must take the decision on whether an IDP is necessary for a young person, provide the process for identifying a suitable programme of study for the young person. Where the programme can be undertaken within an FEI or maintained school (including any in England), they set out when it is necessary for the local authority to prepare and maintain an IDP for that young person. Where

[16] Section 6 of the Act.

provision elsewhere is needed, or likely to be needed, the regulations provide for the circumstances in which the young person does have reasonable needs to particular education or training and when an IDP is necessary for securing it.

17.27. This process, provided for by the regulations, also applies to the question of whether it is necessary for a local authority to continue to maintain an IDP for a young person[17] to meet their reasonable needs for education or training or whether the local authority may cease to maintain it (see Chapter 29 for more information on ceasing to maintain an IDP). The paragraphs below also cover this question. This question would arise where a young person with a local authority maintained IDP has just finished compulsory schooling or a course of further education or training or is undertaking further education or training at a specialist placement in accordance with their IDP.

17.28. Although the process provided for by the regulations only applies in respect of young people, it is also relevant to an IDP review by a local authority for a child in their final year of compulsory schooling. As part of that review, the local authority should be considering what will happen when the child finishes compulsory schooling and what it might need to secure for the child after that point to meet the child's reasonable needs for ALP. If, after ceasing to be of compulsory school age, the (by then) young person is neither a registered pupil at a maintained school nor enrolled as a student at an FEI, then the regulations about the necessity of the IDP will be relevant to the next review of the IDP.

17.29. Therefore it is important, wherever possible, that the local authority goes through the process provided for in the regulations during the review in the final year of a child's compulsory schooling, and that it does so sufficiently early in that year so that any required provision (reflecting what the child's entitlements will be when they become a young person) can, where necessary, be provided for in the IDP and arranged in advance, thereby avoiding any unnecessary gap in their education. Therefore local authorities, when reviewing an IDP for a child in their final year of compulsory schooling, **should** have regard to the requirements of the regulations dealing with necessary decisions for young people (described below[18]) and the guidance on them below.

17.30. The process provided for in the regulations, and guidance below on it, could be similarly relevant in other situations, for example in a review for a young person who is a registered pupil at a maintained special school and it is likely to be the final review of the IDP before the young person ceases to be a registered pupil.

17.31. The process, provided for by the regulations, of determining whether an IDP is necessary to meet a young person's reasonable needs for education or

[17] This is where the young person is neither registered as a pupil at a maintained school nor enrolled as a student at an FEI.
[18] The requirements are in regulations 6 to 9 of, and Schedule 1 to, the Additional Learning Needs (Wales) Regulations 2021.

training (whether the question is whether an IDP needs to be prepared or whether an IDP should continue to be maintained) involves addressing the following matters:

- what are the young person's desired outcomes;
- what provision ("programme of study") may be available which would be suitable to enable the young person to meet those desired outcomes;
- is it necessary for the local authority to prepare and maintain or continue to maintain an IDP for the young person.

The young person's desired outcomes

17.32. The local authority **must**[19] first identify if the young person has desired outcomes and what they are.

17.33. For these purposes, an outcome is one which relates to preparing for work, progressing to other education, including higher education, or training opportunities or developing independent living skills or other useful skills or qualities for adulthood.[20] Outcomes are about enabling the young person to move towards long-term aspirations, be they developing independent living skills, 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 desired outcomes could be to complete a particular vocational qualification or to develop particular independent living skills.

17.34. In identifying desired outcomes, it is essential to consider the young person's views, wishes and feelings about what is important to them[21] and what they want to achieve. If the person has previously had an IDP, it might also inform the matter. Advice from an educational psychologist or other professionals may also be useful to inform this matter. Furthermore, advice from careers advisers may be helpful. If the young person is already on a programme of study and has an IDP, then it may just be a case of confirming with the young person that their desired outcomes remain those that the local authority has previously identified.

Identifying a potential suitable programme of study

17.35. Having identified a young person's desired outcomes, the next step is to identify potential suitable programmes of study. A programme of study is[22] one or more courses of further education or training, whether or not leading to a qualification. In the case of more than one course, it does not matter whether the courses are taken concurrently or in succession (but if in succession they must be part of an overall programme of study). For

[19] Regulation 7(2) of the Additional Learning Needs (Wales) Regulations 2021.
[20] Regulation 6(1) of the Additional Learning Needs (Wales) Regulations 2021.
[21] The local authority **must** do this: see section 6 of the Act and Chapter 4.
[22] Regulation 6(1) of the Additional Learning Needs (Wales) Regulations 2021.

example, a programme of study could involve a young person studying towards one or more qualifications, it could be a course provided by FEI which is specifically designed for learners with ALN or it could be a course at an ISPI which is designed specifically for the individual young person, perhaps to enable the young person to access mainstream courses leading to qualifications or solely to enable the young person to develop independent living skills.

17.36. The local authority **must**[23] consider what programmes of study may be available that would be suitable for enabling the young person to meet their desired outcomes.

17.37. If the young person is already undertaking a programme of study, the local authority is not required to consider other programmes of study, so long as it is satisfied that the programme of study the young person is undertaking remains suitable for enabling them to meet their desired outcomes.[24]

17.38. Otherwise, the local authority **must**[25] first consider programmes of study at mainstream maintained schools or FEIs (this could include such schools and FEIs in England). More often than not, those settings will be able to provide a suitable programme of study for a young person with ALN and the young person's reasonable needs to ALP would be met in undertaking it.

17.39. In some cases, identifying a suitable programme of study might be straight-forward. For example, the young person may identify programmes at a mainstream maintained school or FEI (for example, A levels or a programme leading to a vocational qualification) that they wish to pursue and apply to that institution for a place. If the young person is accepted, then the local authority can proceed to the question of whether it is necessary for it to prepare an IDP for the young person (see below).

17.40. In other cases, it might not be clear whether the young person's desired outcomes could be met by a mainstream maintained school or an FEI (including any in England). The local authority may need to discuss with, for example, the local FEI whether the young person could undertake a programme of study with it and what ALP might be needed to enable the person to access any programme of study. FEIs should be engaged early in the transition planning process which may involve meeting with the young person. However, a visit by the young person to the FEI may not always be necessary for the FEI to make a determination on whether it is able to meet the young person's needs. Where a young person has significantly complex and holistic needs the FEI could determine, based on a detailed description of the individual's needs, whether it clearly could not provide the necessary provision.

[23] Regulation 7(2) of the Additional Learning Needs (Wales) Regulations 2021. See the exception to this below.
[24] Regulation 7(5) of the Additional Learning Needs (Wales) Regulations 2021.
[25] Regulation 7(3) of the Additional Learning Needs (Wales) Regulations 2021.

17.41. The local authority may need to consider the suitability of potential available programmes of study, both locally and anything further afield. The local authority, having first considered programmes of study at mainstream maintained schools or FEIs, **may**[26] go on to consider whether a suitable programme of study may be available at maintained special schools, or at an Academy.

17.42. When considering whether any potential programme of study is suitable, the local authority will need to understand how it is expected to equip the young person to achieve their desired outcomes and also whether any potential programme is suitable for the young person. The views, wishes and feelings of the young person will be of critical importance.[27] This would include getting the young person's consent to a proposed placement or any authorisations which might be needed. Where a potential placement is residential, this can include consideration of its compliance with regulatory standards for residential establishments.

17.43. In many cases, the local authority, or even the young person, will identify a suitable programme of study at a maintained school, Academy or FEI (whether in Wales or England) and with the provision of ALP, the young person's reasonable needs for ALP to undertake that programme of study will be capable of being met. However, in some cases, it may appear likely that the young person's reasonable needs for ALP to undertake a suitable programme of study cannot be met unless the authority were to secure for the young person-

(a) a place at an institution other than a maintained school in Wales or England, an FEI in Wales or England or an Academy, or
(b) board and lodging.

17.44. If this is the case (and *only* if this is the case), the local authority **may**[28] consider programmes of study at other institutions (in the rest of this Chapter, "specialist institution" is used to refer to these other institutions). These other institutions could be an independent school in Wales, a non-maintained special school in England, an independent educational institution in England, an independent special post-16 institution (ISPI) or even occasionally, an institution outside England and Wales which is organised to make the ALP that the young person would need.

17.45. To consider programmes of study at specialist institutions, it does not have to be clear that the young person's needs for ALP cannot be met unless the local authority secures a place at a specialist institution or board and lodging, but it does have to be *likely* that that is the case. In other words, there needs to be some doubt over whether the person's reasonable needs for ALP could be met at, for example, the local FEI. Where that is the case, the local authority can consider and compare programmes of study at specialist institutions to ascertain what would meet the young person's reasonable

[26] Regulation 7 of the Additional Learning Needs (Wales) Regulations 2021.
[27] See the duty in section 6 of the Act about involving young people.
[28] Regulation 7(3)(b) of the Additional Learning Needs (Wales) Regulations 2021.

needs for ALP. In doing so, it should bear in mind the restrictions on it in securing a placement at a specialist institution (these are dealt with in Chapter 23).

17.46. Where a young person would prefer a placement at a specialist institution (including a mainstream one), but their reasonable needs for ALP to do a suitable programme of study can be met within a maintained school, Academy or FEI (including any of these in England), the local authority is not required to consider a programme of study elsewhere. Nor is the local authority required to prepare an IDP which secures a place at the young person's preferred choice of institution.[29] However, where this situation arises, the local authority **should** explain to the young person how their needs could be met without recourse to the young person's preferred institution. Similarly, if the young person attends a specialist institution through their own means but a placement there is not required to meet their reasonable needs for ALP, the local authority is not required to prepare and maintain an IDP for that young person, nor secure the placement.

17.47. Considering programmes of study at a specialist institution is dealt with further below, after the section about when an IDP is necessary where the young person is to attend a maintained school, Academy or FEI (whether the school is in Wales or England). All the guidance above about identifying whether a potential programme of study is suitable for a young person also applies when identifying whether a potential programme of study at a specialist institution is suitable for a young person.

17.48. However, a local authority is not required to consider potential programmes of study, or indeed to identify a young person's desired outcomes, if it is satisfied that doing so would not affect its decision on whether it is necessary for it to prepare and maintain an IDP for the young person in order to meet their reasonable needs for education or training.[30] This might be the case, for example, where it is clear that the young person does not wish to undertake any education or training or where it is clear that an IDP is not necessary for the young person.

Determining whether an IDP is necessary: programmes of study at maintained schools, Academies and FEIs, (including ones in England)

17.49. The following paragraphs deal with deciding when an IDP is necessary if the young person-

(a) is to be a registered pupil or enrolled student at a maintained school or FEI (in either case, one in Wales) to undertake a programme of study to meet the young person's desired outcomes, or
(b) is already, or is to be, a registered pupil or enrolled student at a maintained school in England, an Academy or an FEI in England to

[29] Regulations 7 and 9 of the Additional Learning Needs (Wales) Regulations 2021.
[30] Regulation 7(6) of the Additional Learning Needs (Wales) Regulations 2021.

undertake, or continue to undertake, a programme of study to meet the young person's desired outcomes.

17.50. In cases where a local authority would be required[31] to describe other provision (i.e. a place at a particular school or other institution or board and lodging) in any IDP, it is necessary for the local authority to prepare and maintain, or continue to maintain, an IDP for the young person.[32] This might be the case, for example, if the young person requires board and lodging in order to access a programme of study at a maintained school or FEI. See Chapter 23 for more information about when a local authority is required to describe other provision in an IDP.

17.51. Where a young person already has an IDP and is to register as a pupil at a maintained school (that is, one in Wales) or enrol as a student at an FEI (again, one in Wales), it is necessary for a local authority to continue to maintain the IDP.[33] This might be the case, for example, if a young person with an IDP, had attended a maintained school in England or an independent school for their compulsory education and was going to attend a maintained school (in Wales) for post-16 education. It is necessary for the IDP to continue to be maintained in these cases (including cases where it would be more appropriate for the school or FEI to maintain it) so that there is continuity, rather than the new school or FEI being required to decide on ALN and prepare an IDP once the young person has become registered or enrolled. If it is more appropriate for the school or FEI to maintain the IDP, once the young person is registered or enrolled, the local authority **may**[34] direct the school to maintain it or request the FEI to do so.

17.52. In other cases,[35] if the young person is to register as a pupil at a maintained school or enrol as a student at an FEI (that is, in either case, one in Wales), the local authority **must**[36] consider whether it is reasonable for the school or FEI to secure the ALP. The local authority **must**[37] consult the school or FEI about this.

17.53. It is necessary for the local authority to prepare and maintain an IDP for the young person if, having consulted the school or FEI, the local authority considers that it is not reasonable for the school or FEI to secure the ALP the young person needs to undertake the programme of study.[38]

17.54. Where the local authority's view is that it is reasonable for the school or FEI to secure the ALP, it is not necessary for the local authority to prepare and

[31] Under section 14(6) of the Act.
[32] Regulation 8(1) of the Additional Learning Needs (Wales) Regulations 2021.
[33] Regulation 8(2) of the Additional Learning Needs (Wales) Regulations 2021.
[34] Sections 14(4) and 36 of the Act respectively. See Chapters 15 and 28 for more information about such directions and requests.
[35] In other words, if it is not necessary to prepare or continue to maintain an IDP in either of the two situations described above.
[36] Regulation 8(3)(a) of the Additional Learning Needs (Wales) Regulations 2021.
[37] Regulation 8(4) of the Additional Learning Needs (Wales) Regulations 2021.
[38] Regulation 8(5)(a) of the Additional Learning Needs (Wales) Regulations 2021.

maintain an IDP.[39] The maintained school or FEI would be likely to be subject to the duties to decide whether the young person has ALN and prepare and maintain an IDP once the young person has become a registered pupil or has enrolled as a student (Chapters 15 and 16 deal with these duties).

17.55. Finally, if the young person is, or is to be, a registered pupil or enrolled student at a maintained school in England, Academy or FEI in England and it is not necessary to prepare or continue to maintain an IDP on the basis set out in paragraph 17.50, the local authority **must**[40] consider whether the school, proprietor of the Academy or FEI would secure the ALP the young person needs to undertake the programme of study. The local authority **must**[41] consult the school, proprietor or FEI about this. A situation where this would apply would be if a child living in Wales attended a maintained school or Academy in England, and upon becoming a young person, stayed on at that school to study in the sixth form.

17.56. It is necessary for the local authority to prepare and maintain, or continue to maintain, an IDP for the young person if, having consulted the maintained school, proprietor of the Academy or FEI, the local authority is not satisfied that the school, proprietor or FEI would secure the ALP the young person needs to undertake the programme of study.[42]

17.57. Mainstream maintained schools in England, proprietors of Academies (that are not special schools) and FEIs in England are required under the Children and Families Act[43] to use their best endeavours to secure that the special educational provision called for by their pupils' or students' special educational needs is made. In some cases, the special educational provision that the institution would provide may encompass all of the ALP that the young person needs to undertake the programme of study. Where the local authority is satisfied that the ALP the young person requires will be made for them at the institution, then it is not necessary for the local authority to prepare and maintain an IDP for the young person.[44]

Other cases

17.58. As explained above, a programme of study at a specialist institution may only be considered by a local authority where it appears likely that the young person's reasonable needs for ALP cannot be met unless the local authority secures a place at a specialist institution or board and lodging. Chapter 23 has more information generally about the duties to describe in an IDP, and secure, a place at a particular institution or board and lodging, including the restrictions on doing so.

[39] Regulation 8(6) of the Additional Learning Needs (Wales) Regulations 2021.
[40] Regulation 8(3)(b) of the Additional Learning Needs (Wales) Regulations 2021.
[41] Regulation 8(4) of the Additional Learning Needs (Wales) Regulations 2021.
[42] Regulation 8(5)(b) of the Additional Learning Needs (Wales) Regulations 2021.
[43] Section 66 of the Children and Families Act 2014.
[44] Regulation 8(6) of the Additional Learning Needs (Wales) Regulations 2021.

17.59. When a local authority considers whether a programme of study at a specialist institution is, or remains (where the young person is already undertaking it), suitable for a young person, it **must**[45] consider whether there is a realistic prospect that the young person would meet their desired outcomes by undertaking, or continuing to undertake the programme of study (in the latter case, continuing it with any proposed modifications to it). Such modifications might include, for example, a change in the level of the programme of study that the young person requires because upon starting their programme of study, it has transpired that the young person is not as, or more, capable at that level than first anticipated during the institution's assessment of their needs.

17.60. In considering whether there is a realistic prospect of the young person meeting their desired outcomes, the local authority **must**[46] take into account the following factors:

(a) the young person's ability to undertake the programme of study;
(b) the suitability of the programme of study to meet the young person's desired outcomes;
(c) any other factors the local authority reasonably considers to be relevant.

17.61. When considering those factors, the local authority **must**[47] take into account relevant information relating to those factors, including any provided by the following:

(a) those involved in providing education or training to the young person, or those who have recently done so;
(b) health or social care professionals, including any involved with the young person;
(c) the proprietor of the educational institution at which a proposed programme of study may be undertaken;
(d) persons who provide, or who are employed by bodies that provide, careers advice[48].

17.62. This does not preclude the local authority from taking into account any other relevant information. The young person's views, wishes and feeling will also be highly relevant and important.[49]

17.63. Where a young person is already undertaking a programme of study, the young person may expect to have a fair opportunity to complete the course. Learners' progress at different rates and slow progress at the start of a

[45] Regulation 7(4) of the Additional Learning Needs Regulations 2021.
[46] Regulation 7(4) of and paragraph 1 of Schedule 1 to the Additional Learning Needs (Wales) Regulations 2021.
[47] Regulation 7(4) of and paragraph 1 of Schedule 1 to the Additional Learning Needs (Wales) Regulations 2021.
[48] Where this is pursuant to arrangements made or directions given under section 10 of the Employment and Training Act 1973, although that is not to say that other careers advice might not also be relevant.
[49] See the duty in section 6 of the Act.

programme, particularly if the learner is adapting to a new setting, new teaching staff or a new way of learning, may not necessarily mean the learner does not have a realistic prospect of meeting their desired outcomes by the end of the programme. On the other hand, on rare occasions, it might become apparent during the course of a programme that there is no longer a realistic prospect of the young person being able to meet their desired outcomes. Therefore, where a young person is already undertaking a programme of study, the local authority **must not**[50] conclude that there is no longer a realistic prospect that continuing to undertake the programme of study, as intended from the outset, would enable the young person to meet their desired outcomes unless it has taken into account the following factors:

(a) that young people progress at different rates and a young person's progress towards meeting the desired outcomes may not be apparent until later in the programme of study;
(b) the young person's expectation of having the opportunity to complete the programme of study as intended at the outset;
(c) whether the young person's capability to learn has been affected by a significant change in the young person's personal circumstances or needs.

17.64. A specialist placement secured for a young person through an IDP can only be necessary where the young person has reasonable needs for education or training, and reasonable needs to the ALP comprised in it. That depends upon the details of the proposed programme of study, or of an existing programme, including with any proposed modifications to it. The following paragraphs deal with the situations in which a young person has reasonable needs for education or training.

17.65. The starting point is that a young person is entitled to up to two years of further education or training. Beyond that, a local authority may determine that a young person has reasonable needs for education or training in particular circumstances.

17.66. Specifically, a young person has reasonable needs for education or training where the duration of the suitable programme of study that it is proposed the young person undertake, or continue to undertake, together with any other further education or training undertaken by the young person, is not more than two years.[51] Where the young person's desired outcome is quite general (such as acquiring independent living skills) a reasonable period of time for a programme of study would not normally exceed two academic years and bespoke programmes of study are usually expected to be designed to be delivered over this period.

17.67. For these purposes, the duration of the programme of study runs from the day on which the young person starts or is expected to start it and ends with the day on which the young person is expected to complete it. If the

[50] Regulation 7(4) of and paragraph 2 of Schedule 1 to the Additional Learning Needs (Wales) Regulations 2021.
[51] Regulation 9(1) of the Additional Learning Needs (Wales) Regulations 2021.

duration, or part of it, lasts for at least 38 weeks in any one year period, then the duration of it, or that part of it, is to be treated as being one year. This is to take account of holidays during a year.[52]

17.68. For the purposes of calculating the duration of any previous further education or training, it is treated as having started at the start of the month in which the young person commenced it and as ending at the end of the month during which the young person completed it or otherwise ceased to receive it or (where the person is still undertaking it) is expected to complete or otherwise cease receiving it. Similarly, if the duration of the previous further education or training or part of it, lasts for at least 38 weeks in any one year period, then the duration of it, or that part of it, is to be treated as being one year.[53]

17.69. However, in some instances a young person may have reasonable needs to undertake further education or training for more than two years. Under the regulations, a local authority **may**[54] determine that a young person has reasonable needs for education or training in the following four circumstances, provided it has taken into account the factors relevant to the particular circumstance (these are set out below). Although examples are given in the context of some of the factors set out below, these examples are very general and intended to illustrate the sort of situations where the factors are likely to be relevant. Ultimately local authorities have to take their decisions in light of all the circumstances (which may be more complicated than the examples given) having taken account of all the relevant factors.

(1) The proposed suitable programme of study is intended at the outset to last for more than 2 years

17.70. In this circumstance,[55] the duration of the suitable programme of study that it is proposed the young person undertake (including where it is a programme of study which is additional to previous further education or training) is intended at the outset to take place over a period of more than 2 years.

17.71. For the purposes of determining whether the young person has reasonable needs for education or training in relation to such a programme of study, the local authority **must**[56] take into account the following factors, where relevant:

(a) where the programme is designed to allow the young person to access a course of further education or training which is undertaken by young people who do not have ALN—

i. the usual length of the course for young people who do not have ALN, and

[52] Regulation 6(2) of the Additional Learning Needs (Wales) Regulations 2021.
[53] Regulation 6(3) of the Additional Learning Needs (Wales) Regulations 2021.
[54] Regulation 9(2) and (3) of the Additional Learning Needs (Wales) Regulations 2021.
[55] Set out in paragraph 3 of Schedule 1 to the Additional Learning Needs (Wales) Regulations 2021.
[56] Regulation 9 of and paragraph 3 of Schedule 1 to the Additional Learning Needs (Wales) Regulations 2021.

ii. whether the young person requires additional time in comparison to the majority of other young people who do not have ALN, to complete the course;

(b) where the programme of study is specially designed to provide ALP for the young person, whether there are any exceptional reasons relating to the young person's capability to learn such that the person's desired outcomes cannot realistically be met within the period of 2 years.

(2) Proposed extension to a suitable programme of study which the young person is undertaking

17.72. In this circumstance,[57] the young person has been unable to complete a suitable programme of study (including where the programme was additional to further education or training previously undertaken by the young person) within the programme's duration as intended at the outset and it is proposed to extend the programme to enable the young person to meet their desired outcomes at the start of the programme ("original outcomes") or ones that are substantially similar to the original outcomes ("adjusted outcomes").

17.73. For the purposes of determining whether the young person has reasonable needs in this circumstance, the local authority **must**[58] take into account the following factors, where relevant:

(a) whether the circumstances giving rise to the proposed extension are unavoidable, for example, where a young person has been unable to complete their agreed programme of study due to absence as a result of unexpected illness, which has ultimately impacted on their ability to learn. By contrast, matters such as where delivery of effective transition arrangements has not taken place may not be regarded as unavoidable;

(b) whether the proposed extension is necessary to enable the young person to complete the programme of study and meet the original or adjusted outcomes, for example, in the case of an unexpected illness, the remaining time left on the programme of study would be insufficient for the young person to complete the remaining aspects of programme of study and therefore achieve their desired outcomes;

(c) whether the proposed extension is for a purpose that should have been addressed during the original duration of the programme of study and where that is the case, the reasons why it was not addressed;

(d) whether the proposed extension is proportionate to the original outcomes which are not yet met or the adjusted outcomes and whether an alternative length of extension is required in the circumstances;

(e) where the programme of study has previously been extended—

[57] Set out in paragraph 4 of Schedule 1 to the Additional Learning Needs (Wales) Act 2021.
[58] Regulation 9 of and paragraph 4 of Schedule 1 to the Additional Learning Needs (Wales) Regulations 2021.

i. whether the proposed extension arises from the same facts as the previous one, and

ii. whether there are exceptional reasons why the young person was unable to achieve the outcomes during the previous extension.

(3) Additional programme of study

17.74. In this circumstance,[59] the suitable programme of study that it is proposed the young person undertake is additional to further education or training which the young person has already undertaken.

17.75. For the purposes of determining whether the young person has reasonable needs for education or training in relation to an additional programme of study, the local authority **must**[60] take into account the following factors, where relevant:

(a) that the young person is unable to benefit in a meaningful way from the previous further education or training due to—

i. the previous further education or training falling so far below the expected standard that the provider of it cannot reasonably be said to have delivered the education or training necessary to meet the young person's desired outcomes,

ii. a significant change in the personal circumstances or needs of the young person. 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 further education or training, or may require a programme of study to learn skills in light of the person's new ALN, or

iii. any other exceptional circumstances;

(b) where the previous further education or training was undertaken by the young person at a maintained school or institution in the further education sector, that an essential and substantial element of the further education or training necessary to meet the young person's desired outcomes could not have been delivered as part of that previous further education or training;

(c) where the duration of the previous education or training was less than 2 years, the total duration of that previous education or training and that of the proposed programme of study and whether the extent to which that total duration exceeds two years is reasonable in all the circumstances. For example, this might be where a young person had begun a course of education or training at an FEI but the young person ceased it early because the FEI could not, or no longer, adequately meet the young person's needs. The young person may therefore require a specialist placement to meet their needs and given

[59] Set out in paragraph 5 of Schedule 1 to the Additional Learning Needs (Wales) Regulations 2021.
[60] Regulation 9 of and paragraph 5 of Schedule 1 to the Additional Learning Needs (Wales) Regulations 2021.

the circumstances of the previous education or training, a programme of study lasting 2 years may be reasonable;

(d) whether there are any other exceptional circumstances to suggest that the young person has not received effective access to further education or training.

17.76. Where a local authority determines that a young person has reasonable needs to a suitable additional programme of study, then the duration of that programme of study can then be for up to two years. If it is proposed that the programme of study last for longer than this, then circumstance (1) above will also apply and the local authority will need to determine whether the young person has reasonable needs to it being for longer than two years.

(4) Other exceptional circumstances

17.77. This circumstance[61] is that the situation is substantially similar to one or more of the circumstances set out in the preceding sub-headings.

17.78. Where this is the case, for the purposes of determining whether the young person has reasonable needs for education or training in relation to the proposed suitable programme of study, the local authority **must**[62] take into account the factors, where relevant, attaching to the preceding circumstance to which the situation is substantially similar. This might apply, for example, in the case of a young person who is already accessing a programme of study at a specialist institution by other means (perhaps via an EHC plan if they were previously in the area of a local authority in England but a local authority in Wales has just become responsible for them), which was planned to last for more than 2 years, and mid-way through their studies, their ALN has come to the attention of a local authority that is responsible for them.

Necessity of plan where specialist placement

17.79. Where the young person has, or the local authority determines that the young person has, reasonable needs for education or training,[63] it is necessary[64] for the local authority to prepare and maintain, or continue to maintain, an IDP for the young person if the local authority in preparing or maintaining an IDP, would be or is under the duty[65] to specify in the IDP a place at a particular school or other institution. Where the local authority considers a potential programme of study at a specialist institution, provided the young person has, or the local authority determines that the young person has, reasonable needs for education or training, an IDP is likely to be

[61] Set out in paragraph 6 of Schedule 1 to the Additional Learning Needs (Wales) Act 2021.
[62] Regulation 9 of and paragraph 6 of Schedule 1 to the Additional Learning Needs (Wales) Regulations 2021.
[63] In the case of a local authority determination that a young person has reasonable needs for education or training, where the young person is then undertaking a suitable programme of study in accordance that determination and an IDP, the young person continues to have reasonable needs for that education or training: regulation 9(4) of the Additional Learning Needs (Wales) Regulations 2021.
[64] Regulation 9(5) of the Additional Learning Needs (Wales) Regulations 2021.
[65] In section 14(6) of the Act.

required. It may be that the young person's reasonable needs for ALP to do a suitable programme of study can only be met if the local authority secures the specialist placement. Or it may be the case that the young person's reasonable needs for ALP could be met after all by a maintained school, Academy or FEI (including any in England) and if the young person is to attend such an institution, it may be necessary for the local authority to prepare and maintain or continue to maintain an IDP (paragraphs 17.49 – 17.57 deal with this).

17.80. In some cases where a young person has, or a local authority determines that the young person has, reasonable needs to education or training, a local authority might identify more than one proposed suitable programme of study. In this instance, when choosing between them the local authority can take into account the compatibility of alternative options with the need to avoid unreasonable public expenditure.

17.81. If the young person does not have reasonable needs for education or training or the local authority has not determined that the young person has such needs, it is not necessary for the local authority to prepare and maintain, or continue to maintain, an IDP for the young person.[66]

A local authority's duty to prepare an IDP for a young person

17.82. 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**[67] prepare an IDP for that person unless the person does not consent to the plan being prepared.

17.83. When preparing the IDP, the local authority **must**[68] consider whether to seek advice from an educational psychologist. The local authority **must**[69] seek such advice if it considers that the advice is necessary to determine-

(a) the extent or nature of the ALN that the young person may have, or
(b) the ALP called for by the young person's ALN.

17.84. The advice sought **must**[70] relate to:

(a) the educational, psychological or other features of the case which appear to be relevant to the young person's educational or training needs (including the young person's likely future needs),
(b) how those features could affect the young person's educational or training needs, and

[66] Regulation 9(6) of the Additional Learning Needs (Wales) Regulations 2021.
[67] Section 14(1) to (3) of the Act.
[68] Requirement imposed by the Code.
[69] Requirement imposed by the Code.
[70] Requirement imposed by the Code.

(c) the provision which may be appropriate for the young person in light of those features, whether by way of ALP or other types of provision, and any matters affecting the delivery of that provision.

17.85. Such advice might also be necessary to inform the matters a local authority must consider as part of its decision on whether an IDP is necessary to meet the young person's reasonable needs for education or training. It could be useful even in cases where the local authority concludes that it is not necessary for it to prepare and maintain an IDP.

17.86. Before the IDP is completed, 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 appropriately, which may be to update the draft IDP, or explain decisions or other matters further.

17.87. Once prepared, the local authority **must**[71] give a copy of the IDP to the young person.

17.88. The local authority **must**[72] make the decision on whether an IDP is necessary, prepare the IDP and give the copy of it promptly and in any event within the period of 12 weeks from the young person consenting to the decision being made as to whether the person has ALN.

17.89. The local authority need not comply with the requirement to do those things within that 12 week period if it is impractical to do so due to circumstances beyond its control.[73]

17.90. When giving a copy of the IDP, the local authority **must**[74] also give the young person:

(a) 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 system[75];
(c) details of the local authority's arrangements for the avoidance and resolution of disagreements[76] and its independent advocacy services;[77]
(d) information about the right to appeal to the Tribunal about particular aspects of the IDP.[78]

[71] Section 22 of the Act.
[72] Requirement (which is subject to the specified exception) imposed by the Code.
[73] See Chapter 1 for more information on how timescales in this Code must be interpreted.
[74] Requirement imposed by the Code.
[75] Under section 9 of the Act.
[76] Under section 68 of the Act.
[77] Under section 69 of the Act.
[78] Under section 70 of the Act. Chapter 33 deals with appeals.

A local authority's decision that it is not necessary to prepare and maintain an IDP for a young person

17.91. 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 or training, it **must**[79] notify the young person of the decision and the reasons for that decision.

17.92. The local authority **must**[80] make the decision and give the notification promptly and in any event before the end of the period of 12 weeks from the young person consenting to the decision being made as to whether or not the young person has ALN.

17.93. The local authority need not comply with the requirement to make the decision and give the notification within that 12 week period if it is impractical to do so due to circumstances beyond its control.[81]

17.94. When giving the notification, the local authority **must**[82] also give:

(a) 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[83];
(c) details of the local authority's arrangements for the avoidance and resolution of disagreements,[84] and its independent advocacy services;[85]
(d) information about the right to appeal to the Tribunal against the decision.[86]

17.95. It might be helpful to offer an opportunity to the young person to discuss the matter further. It might also be helpful to signpost them to other sources of information and advice about education courses or careers advice.

Maintaining an IDP for the young person

17.96. Where a local authority has prepared an IDP for a young person, it **must**[87] maintain that IDP unless the young person does not consent to the IDP being maintained.

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[79] Regulation 10 of the Additional Learning Needs (Wales) Regulations 2021.
[80] Regulation 10 of the Additional Learning Needs (Wales) Regulations 2021.
[81] Regulation 10 of the Additional Learning Needs (Wales) Regulations 2021. See Chapter 1 for more information on how timescales in the Code are to be interpreted.
[82] Regulation 10 of the Additional Learning Needs (Wales) Regulations 2021.
[83] Under section 9 of the Act.
[84] Under section 68 of the Act.
[85] Under section 69 of the Act.
[86] Under section 70 of the Act. Chapter 33 deals with appeals.
[87] Section 14(1) to (3) of the Act.

17.97. Where the local authority maintains an IDP for a young person, the consequence of this is that it will need to keep a copy of the IDP (complying with data protection law in how it does so) and comply with the duties that attach to maintaining an IDP, referred to in the following paragraphs.

17.98. Where a local authority maintains an IDP, it **must**[88] 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**[89] 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**[90] take all reasonable steps to secure that it is provided in Welsh.

17.99. A local authority is also subject to duties[91] to review an IDP it maintains (see Chapter 25).

17.100. The local authority **must not**[92] charge the young person for any ALP described in the IDP, or for anything else it secures for the young person under Part 2 of the Act.

17.101. The local authority's duty to maintain an IDP may cease in particular circumstances, which are covered in Chapter 29. It may also transfer to another body. Information on transfers of IDPs is covered in Chapter 28.

[88] Section 14(10)(a) and (b) of the Act.
[89] Sections 20(5) and 21(5) of the Act.
[90] Sections 14(10)(c), 20(5)(c) and 21(5)(b) of the Act.
[91] Section 23 of the Act.
[92] Section 49(1) of the Act.

Chapter 18: Children and young people in specific circumstances

Introduction

18.1. This chapter deals with children and young people in specific circumstances.

18.2. These groups are:

(a) children and young people who are in the area of a local authority in England and registered as pupils at a maintained school or enrolled as students at an FEI;[1]
(b) children and young people who are in the area of a local authority and attending maintained schools, academies or FEIs in England;
(c) children receiving from a local authority education otherwise than at school (EOTAS) (including at a PRU);
(d) children and young people receiving EOTAS because of healthcare needs;
(e) other circumstances in which children receive education other than in a maintained school in Wales (this covers home educated children and those attending independent schools);
(f) 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 or enrolled as students at an FEI (in either case, in Wales)

18.3. 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 or is a young person enrolled as a student at an FEI, the school or FEI has duties to decide whether the child has ALN and to prepare and maintain an IDP. These duties and the exceptions to them, are described in Chapters 12, 15 and 16.

18.4. As a local authority 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 a maintained school or enrolled as students at an FEI (as described in Chapters 12, 15 and 16) do not generally apply in relation to such pupils and students. However, the provisions on local authority reconsiderations described in Chapters 26 and 12 and 15, do apply with modifications in cases where a pupil at a maintained school 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

[1] As explained in Chapter 1, references in this Code to maintained schools, FEIs or local authorities are to maintained schools in Wales, FEIs in Wales or local authorities in Wales unless otherwise indicated.

maintains the school. This, and the further modifications, are described in those Chapters.

18.5. 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 32, include making such arrangements for children or young people in the area of a local authority in England who are registered as pupils at a maintained school in its area or enrolled as students at an FEI in its area[2].

Children and young people who are in the area of a local authority and attending maintained schools, academies or FEIs in England

18.6. Where a child or young person is in the area of a local authority but attends a maintained school, academy or FEI in England, the local authority[3] has duties to decide whether the child or young person has ALN and to prepare and maintain an IDP for them. These duties and the exceptions to them are described in Chapters 11, 13, 14 and 17. In the case of a young person who has ALN, their entitlement to an IDP depends upon the local authority's decision about the necessity of it maintaining an IDP to meet the young person's reasonable needs for education or training (see Chapter 17).[4]

18.7. Where a child or young person with an IDP attends such an institution in England, the local authority **must**[5] secure the ALP set out in the IDP. To do that, the local authority **should** work with that school or FEI to ensure that the ALP described in the child or young person's IDP is delivered. The local authority **may**[6] request information or other help from the governing body of a maintained school or FEI in England, or the proprietor of an academy, which it requires to exercise its functions under the Act. The governing body or proprietor **must**[7] comply with that request unless they consider that doing so would be incompatible with their own duties or otherwise have an adverse effect on the exercise of their functions (see Chapter 21 for more information about this).

18.8. A school or FEI in England is likely also to owe duties to the child or young person under England's Special Educational Needs and Disability system[8].

[2] Section 87(4) of the Act.
[3] In the case of a looked after child, it is the local authority that looks after the child that has these duties (see Chapter 14).
[4] Sections 14(1)(c) and 31(6)(b) of the Act and the Additional Learning Needs (Wales) Regulations 2021.
[5] Sections 14(10) and 19(7) of the Act, unless it is ALP to be secured by an NHS body.
[6] Section 65 of the Act.
[7] Section 65 of the Act.
[8] Under Part 3 of the Children and Families Act 2014. For example, the duty in section 66 to use best endeavours to secure that the special educational provision called for by a pupil or student's special educational needs is made.

Children and young people receiving EOTAS

18.9. Under the Education Act 1996, local authorities have functions in relation to the provision of EOTAS services. They have a duty[9] to make arrangements for the provision of suitable education for children of compulsory school age who, for whatever reason, may not receive suitable education in the absence of such arrangements. They also have a power[10] to do the same in relation to young people. The child or young person may be ill or injured or have been excluded. Examples of EOTAS provision include PRUs, schools established in hospitals, FEIs, and individual tuition at home (this is different to elective home education).

18.10. A PRU is within the definition of a maintained school for the purposes of the ALN system.[11] Its management committee has responsibility[12] for the functions placed on governing bodies of maintained schools under the ALN system (including those described in Chapter 12). Therefore if it comes to the attention of, or otherwise appears to, the management committee of the PRU that a pupil (other than a looked after child) may have ALN, the management committee **must**[13] decide whether the pupil 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 12.

18.11. Where a child or young person (who is not at a maintained school or FEI) is educated through EOTAS provision which is not at a PRU and it is brought to the attention of, or otherwise appears to, the responsible local authority, or in the case of a looked after child, the local authority that looks after the child, that the child or young person may have ALN, the local authority **must**[14] decide whether the child or young person 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 Chapters 13, 14 and 17.

18.12. If a child or young person already has an IDP prior to EOTAS being arranged, and if it is maintained by a school, its duty to maintain the IDP will cease if the child or young person ceases to be a registered pupil[15]. If this is the case, the responsible local authority is likely to be subject to the duty to decide whether the child or young person has ALN, and if it decides that the child does have ALN, the duties to prepare and maintain[16] an IDP are likely to apply (see Chapters 13, 14 and 17). The local authority ought to be able to do these things fairly quickly in light of the previous IDP (see paragraphs

[9] Section 19 of the Education Act 1996.
[10] Section 19(4) of the Education Act 1996.
[11] See the definition of "maintained school" in section 99(1) of the Act and the glossary in Chapter 1.
[12] The Education (Pupil Referral Units) (Management Committees etc.) (Wales) (Amendment) Regulations 2021 requiring local authorities to delegate their functions as governing body of the PRU to the PRU's management committee.
[13] Section 11 of the Act.
[14] Section 13 of the Act and in the case of a looked after child, section 18 of the Act.
[15] Section 31(1)(a) of the Act.
[16] In the case of a young person who is not a registered pupil or enrolled student, there is first the duty to decide whether it is necessary to prepare and maintain an IDP – see Chapter 17.

28.35 – 28.36). However, if the child or young person immediately becomes a registered pupil at a PRU, then the PRU's management committee will become responsible for maintaining the IDP (see Chapter 28[17] for more details on transfer of responsibility for maintaining an IDP).

18.13. If EOTAS provision has been arranged, a child or young person may remain registered as a pupil at the original school (which was maintaining the IDP). However, if the pupil becomes dual registered (for example, by becoming a registered pupil of a PRU and both the PRU and school are to provide education for the pupil), then the local authority will become responsible for maintaining the IDP (see Chapter 28[18]). Alternatively, if the child or young person remains a registered pupil of the original school whilst receiving EOTAS other than as a registered pupil at a maintained school or an enrolled student of an FEI (for example, if the pupil is receiving individual tuition at home or in hospital due to sickness whilst still a pupil), it may be more appropriate for the responsible local authority to take over responsibility for maintaining the IDP. In these circumstances, the school **should** request it to do so[19]. (See Chapter 26 for more information about local authorities taking over responsibility for an IDP.)

18.14. If the child or young person already has an IDP maintained by a local authority when the EOTAS is arranged, the local authority **must**[20] continue to maintain the IDP (unless and until any of the circumstances occur which result in the duty to maintain it ceasing – see Chapter 29). It would often be appropriate for the local authority to review the plan in light of the changed circumstances.

18.15. A local authority **may**[21] only 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 if it is satisfied that it would be inappropriate for the ALP to be made in a school. This applies equally in respect of children receiving EOTAS, but where that EOTAS is not provided in a PRU, then the circumstances giving rise to the need for EOTAS may well also mean that it would be inappropriate for the child's ALP to be made in a school.

18.16. 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.

[17] And section 35(1) and (3) of the Act.
[18] And section 30(3) – (7) of the Act.
[19] Under section 28 of the Act.
[20] Section 14(2)(a), or in the case of a looked after child, section 19(2), of the Act.
[21] Section 53 of the Act.

Children and young people receiving EOTAS because of healthcare needs

18.17. The Welsh Government's statutory guidance on *Supporting Learners with Healthcare Needs*[22] addresses the arrangements to be made by maintained schools and local authorities to support learners under the age of 18 with healthcare needs.

18.18. Duties under the Act apply equally in respect of a child or young person who has healthcare needs, including if they experience an interruption to their education as a result, for example because of admission to hospital for a sustained period. This includes compulsory admission to hospital under Part 2 of the Mental Health Act 1983[23]. 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:

(a) if a child or young person with an IDP is admitted to hospital for a sustained period of time, it might be appropriate or even necessary to review the IDP (see Chapter 25 on reviews);
(b) if a school is maintaining an IDP for a child or young person who needs to receive EOTAS for more than a minimal period, as explained above, it may be appropriate for the local authority to take over responsibility for maintaining the plan (see Chapter 26 on local authorities taking over responsibility for IDPs).
(c) if a child or young person with healthcare needs is returning to mainstream education following a prolonged hospital stay, it might be appropriate for a local authority maintaining the IDP to direct the maintained school at which the person is a registered pupil to maintain the plan and/or for the IDP to be reviewed in light of the changed circumstances (see Chapters 12 and 15 on directing a maintained school and Chapter 25 on reviews).

Other circumstances in which children receive education other than at a maintained school

18.19. In other circumstances where a child is receiving education other than at a maintained school, the local authority responsible for the child, or if the child is looked after, the local authority that looks after the child, has duties to determine whether the child has ALN and to prepare and maintain an IDP.[24] (The position is slightly different if the child is subject to a detention order – see Chapter 19.)

18.20. This covers children who are home educated and those who attend an independent school even though they have not been placed there by the

[22] https://gov.wales/sites/default/files/publications/2018-12/supporting-learners-with-healthcare-needs.pdf
[23] For detention in a hospital under Part 3 of the Mental Health Act 1983 (i.e. in the course of criminal proceedings or under sentence) see Chapter 19.
[24] Sections 13, 14, 18 and 19 of the Act.

local authority (for children who are placed by a local authority at an independent school, see Chapter 13).

Children who are home educated

18.21. Where it is brought to its attention or otherwise appears to a local authority that a home educated child (other than a looked after child[25]) for whom it is responsible, may have ALN, the local authority **must**[26] decide whether or not the child has ALN and, if it decides that the child has ALN, prepare and maintain an IDP and secure the ALP described in that plan (see Chapter 13 for more details about these duties and the exceptions to them).

18.22. A parent has a duty to cause their child to receive efficient full-time education suitable to his age, ability and aptitude and to any ALN that the child might have either by regular attendance at school or otherwise.[27]

18.23. A local authority preparing or reviewing an IDP for a home educated child, **should** work with the child and child's parent to identify the appropriate ALP and then secure it. This involves identifying the type of ALP called for by the child's needs and whether the parent will be able to deliver it (either directly or by arranging for someone else to deliver it). Subsequently, if the parent is to deliver it as part of the child's home education, in order to secure the ALP set out in the IDP, the local authority will need to satisfy itself that it is being delivered. Where parents are not able to provide all of the ALP called for by the child's needs, the local authority will need to consider how the ALP can be secured. There may be various ways of doing this. For example, in some instances, it could be through extra provision arranged by the local authority to supplement the education being provided by the parent at home, or it could be the provision of training to help the parent deliver the required ALP at home. In other cases, the local authority may need to exercise its education functions to secure education for the child at a particular school.

Children attending an independent school

18.24. Where it is brought to its attention or otherwise appears to a local authority that a child attending an independent school (other than a looked after child)[28] for whom it is responsible, may have ALN, the local authority **must**[29] decide whether or not the child has ALN and, if it decides that the child has ALN, prepare and maintain an IDP and secure the ALP described in that plan (see Chapter 13 for more details about these duties and the exceptions to them).

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[25] In the case of a looked after child (provided the child is not in the area of a local authority in England), the local authority that looks after the child has a duty to decide whether or not the child has ALN and is likely also to have duties to prepare and maintain an IDP and secure the ALP described in it: sections 18 and 19 of the Act (see Chapter 14 for more details).
[26] Sections 13 and 14 of the Act.
[27] Section 7 of the Education Act 1996.
[28] In the case of a looked after child in the area of a local authority in Wales, these duties are on the local authority that looks after the child: sections 18 and 19 of the Act (see Chapter 14 for more details).
[29] Sections 13 and 14 of the Act.

18.25. Independent schools are not required by the Act to decide whether a child attending the school has ALN, nor to maintain an IDP for pupils with ALN, nor are they subject to other duties under the Act. They are however subject to the standards regime for independent schools, which include standards about the quality of education and the provision of information by the independent school.[30] A local authority deciding whether a child attending an independent school has ALN or preparing or reviewing an IDP for such a child, **should** work with the independent school to identify any ALN and ALP. When maintaining an IDP for such a child, in order to secure the ALP specified in it, the authority **should** work with the school to satisfy itself that it is being delivered.

Children and young people of Service Personnel

18.26. The Directorate of Children and Young People (DCYP) provides a single Ministry of Defence (MoD) focus for all issues related to children and young people with a parent who is Service Personnel ("Service children and young people"). The Children's Education Advisory Service (CEAS) are part of DCYP and provide advice, support and guidance regarding the educational well-being of the children and young people belonging to families in all 3 Services and eligible MoD civilians who are based overseas. MoD Schools 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 for all Service children and young people with complex needs before an overseas posting is agreed.

18.27. Service children and young people may face difficulties that are unique to the nature of their parent's employment. These needs may arise from:

(a) 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 and young people with ALN experiencing delays in having their needs identified and met;
(b) the deployment of serving parents to operational arenas may result in a Service child or young person experiencing anxiety, dips in educational performance and/or emotional difficulties, which could contribute towards or exacerbate ALN. Children and young people may also be affected similarly by siblings' deployment.

18.28. 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 7 for further guidance on keeping ALP under review).

[30] Provided for in Part 10 of the Education Act 2002 and the Independent School Standards (Wales) Regulations 2003.

18.29. A maintained school, FEI or local authority when deciding upon ALN,[31] preparing or reviewing an IDP[32] for a Service child or young person **must**[33]

(a) take into account any relevant issues arising from the nature of their parent's service (e.g. the effects of Service induced mobility),
(b) consider seeking advice from the CEAS, and
(c) use all available relevant evidence in respect of the child or young person, including any previous educational plans or other documents relating to the child or young person's needs, such as an EHC plan (in relation to England), a statement (in relation to Northern Ireland), a Co-ordinated Support Plan (in relation to Scotland) and the Service Children's Assessment of Need completed by MoD Schools.

[31] Under section 11 (school or FEI) or sections 13, 18 or 40 (local authority) of the Act.
[32] Under section 12 (school or FEI) or sections 14, 19 or 40 (local authority) of the Act (preparing an IDP) or under sections 23 or 24 of the Act (reviewing an IDP).
[33] Requirement imposed by the Code.

Chapter 19: Children and young people subject to detention orders

Introduction and key terms

19.1. This chapter deals with the position for children and young people who are:

(a) subject to a detention order and detained in relevant youth accommodation in Wales or England. The term "detained person" is used in the Code and Act to describe children and young people in this situation[1].
(b) subject to a detention order and detained in a hospital under the Mental Health Act 1983 ("the 1983 Act") in the course of criminal proceedings or for sentence.

19.2. This chapter deals with the rights of children and young people in these two situations to a decision on ALN, to ALP and to appeal, and explains what happens to an IDP whilst they are detained. It applies to children who are looked after immediately prior to being detained.

19.3. A person is subject to a detention order if remanded or sentenced by the courts to detention or recalled to detention by the Secretary of State[2].

19.4. Relevant youth accommodation refers to a young offender institution (provided that it, or the part in which the person is detained, is not used wholly or mainly for the detention of persons aged 18 and over), a secure training centre, a secure children's home or a secure college.

19.5. For the first situation (children and young people detained in relevant youth accommodation in Wales or England) – see paragraphs 19.8 to 19.73. In summary, the duties on schools, FEIs and local authorities under the Act (for example to maintain an IDP) cease to apply whilst the child or young person is detained[3]. Instead, the detained person's home authority (see paragraph 19.12), if it is in Wales, is subject to duties to decide on ALN and keep an IDP[4].

19.6. For the second situation (children and young people detained in hospital under the 1983 Act in the course of criminal proceedings or for sentence) - see paragraphs 19.74 onwards. In summary, local authorities' duties under the Act apply in this scenario (for example, to decide upon ALN and prepare and maintain an IDP), but with a few modifications. Duties on schools and FEIs under the Act do not apply in this scenario[5].

[1] Section 39(1) of the Act.
[2] Section 39(1) of the Act defining "detention order" by reference to section 562 of the Education Act 1996.
[3] Section 44(1) and (2) of the Act.
[4] Sections 40 to 42 of the Act.
[5] Section 44(3) and (4) of the Act.

19.7. This chapter does not apply to children or young people who are-

- remanded on bail or serving a sentence in the community – they have the same rights under the ALN system as any other child or young person who is not detained;
- remanded to, or serving their sentence in, a young offenders institution used wholly or mainly for persons over the age of 18 or a prison. In these cases, rights to ALN decisions, IDPs and related matters do not apply whilst the person is detained in such an institution;[6]
- compulsorily admitted to hospital under the civil provisions of the 1983 Act - they have the same rights under the ALN system as any other child or young person who is not detained.

Detained children and young people

19.8. Whether or not a detained person has an IDP before they are detained, the person's home authority **must**[7] promote the fulfilment of the learning potential of a detained person during detention and on release.

19.9. Upon detention, the child or young person will undergo an assessment where their needs for education or training will be recorded and developed into an education plan to support their needs for the duration of their detention.

19.10. These plans are further informed through sentence planning meetings, where a multi-agency approach is taken involving the detained person, the child's parent when the detained person is a child, and other partners such as the youth offending team, the local authority's educational representative and other appropriate services such as Health and Social Services.

A home authority's duty to decide whether a detained person has ALN

19.11. 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 (see below on when an IDP is kept), the authority **must**[8]-

(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.

[6] Section 44 of the Act and section 562 of the Education Act 1996.
[7] Section 562B of the Education Act 1996. The duty does not apply in relation to children or young people who are looked after under the Social Services and Well-being (Wales) Act 2014 or the Children Act 1989; in those cases the looking after authority has duties to safeguard and promote the person's well-being or welfare, including to promote educational achievement.
[8] Section 40(2) of the Act.

19.12. The home authority for a child or young person is:[9]

(a) where immediately before the beginning of the detention, or at any time since then, the child or young person was looked after, the local authority in Wales or England who is looking after, or that has most recently been looking after, the child or young person. For these purposes, a wider definition of being looked after applies than the usual one for the ALN system. A person is looked after if they are looked after by a local authority for the purposes of the Social Services and Well-being (Wales) Act 2014 or by a local authority in England for the purposes of the Children Act 1989.
(b) otherwise, the local authority (whether in Wales or England) in whose area the person is ordinarily resident.

19.13. But it is only if a detained person's home authority is in Wales that the home authority is subject to the duties described in this chapter relating to detained persons. If the home authority is in Wales, it has those duties even if the detained person is detained in England.

19.14. The possibility that a detained person may have ALN might be brought to the attention of a home authority in a number of ways, including by the person in charge of the relevant youth accommodation, a Youth Offending Team or a school or FEI that a child or young person attended before they were detained, or as a result of assessments undertaken whilst the person is detained. It does not matter how the possibility that a detained person may have ALN comes to the home authority's attention or how it otherwise appears to it that this is the case; if the authority is aware of that possibility, then the duty to decide applies. (Guidance on the definition of ALN is set out in Chapter 2 and on identifying when a person may have ALN in Chapter 20.)

19.15. But a home authority is not required to make this decision where:[10]

- the detained person is a young person who does not consent to the decision being made or to a plan being prepared (see Chapter 4 for more detail on a young person's consent); or
- the authority has previously decided whether the detained person has ALN and is satisfied that the person's needs have not changed materially since that decision 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 release. In these circumstances, the local authority **should** notify the detained person of this, and in the case of a detained person who is a child, their parent and **should** provide them with information and advice about ALN and the ALN system (including rights of appeal) if it has not previously or recently done so.

[9] Section 39(1) of the Act applying the definition in section 562J of the Education Act 1996, subject to any regulations under section 39(2), of which, at the time of issuing the Code, there are none.
[10] Section 41 of the Act.

19.16. Where a home authority is required to decide whether a detained person has ALN, it **must**[11]:

(a) designate an officer (the 'designated co-ordinator') 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 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 a summary of how the possibility that the detained person has ALN has been brought to its attention or why it otherwise appears to it that the detained person may have ALN.

19.17. If the detained person is a child, the home authority **must**[12] also:

(a) notify the child and the child's parent that it is deciding whether the child has ALN;
(b) consider offering a meeting with the child and the child's parent to discuss the process (see Chapter 22 for more details about meetings).

19.18. For the purposes of the requirement in paragraph 19.16, if the detained person is a young person, the home authority is required to decide whether the young person has ALN where it is not known whether or not the young person consents to that decision being made. If having sought the young person's consent, the young person does not consent, then the requirement on the authority to do the things listed above will cease to apply at that point.

19.19. If the detained person is a young person, the home authority **must**[13] also do the following promptly:

(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) consider offering an initial meeting with the young person to discuss the process (see Chapter 22 for more details about meetings);
(c) explain to the young person the consequences of consenting to the decision being made and not doing so;
(d) seek the young person's consent to the decision being made and, should an IDP be necessary, to an IDP being prepared.

19.20. If the detained person is a young person, the home authority **must**[14] record:

(a) where the young person consents to the decision being made or an IDP being prepared, when and how consent was given;

[11] Requirement imposed by the Code.
[12] Requirement imposed by the Code.
[13] Requirement imposed by the Code.
[14] Requirement imposed by the Code.

(b) where the young person objects to either of those matters, when and how the young person objected;
(c) where the young person has neither consented nor objected to either of those matters, the steps taken by the authority to seek the young person's consent and explain the consequences of the authority deciding whether the young person has ALN.

19.21. Home authorities **should** have appropriate procedures in place to facilitate this, which might include the young person signing to confirm whether or not they consent.

19.22. The notification to the detained person and, if the detained person is a child, their parent (referred to in paragraphs 19.17 and 19.19) **must**[15] also give:

(a) 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 system[16].

19.23. The notification **should** also provide an indication of the likely timescale for the process (taking account of the applicable timescale requirement below).

19.24. Where a home authority is required to make the decision it **must**[17], 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. That person may be able to provide information and advice relevant to the decision and any IDP (including information from the institution's education provider).

19.25. In coming to its decision on whether a detained person has ALN, the home authority **should** consider any relevant information, for instance from youth offending teams as well as from any schools and FEIs previously attended by the person. Carers, health and social care professionals, youth workers, education psychologists, other staff working in the unit where the child or young person is detained or any other relevant professionals can also support the identification of ALN. The home authority **may**[18] 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 21 deals with local authority requests for information or other help and the corresponding duties on relevant persons).

19.26. As described in Chapter 4 there is a general duty to involve children, their parents and young people in decisions that relate to any ALN a child or young person 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

[15] Requirement imposed by the Code.
[16] Under section 9 of the Act.
[17] Section 40(3) of the Act.
[18] Section 65 of the Act.

fulfil this duty and objective, the designated co-ordinator **should** normally arrange a meeting or meetings, as appropriate, with the child, their parent or young person, to discuss and decide the child or young person's needs and if required, prepare an IDP for them. (Guidance on these meetings is provided in Chapter 22).

A home authority's decision that a detained person has ALN – deciding whether an IDP will be necessary

19.27. Where a home authority decides that a detained person has ALN, it **must**[19] decide in accordance with regulations whether it will be necessary for an IDP to be maintained for the person when released from detention 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. The regulations provide that it is necessary to prepare an IDP except where[20]:

(a) it is likely that the person will have attained the age of 25 before being 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.

19.28. To ascertain whether the detained person is likely to have attained the age of 25 before release, the home authority will need to take into account the circumstances of the detention such as the length of any sentence and eligibility for earlier release. In the case of a detained child, an IDP will almost always be necessary since, in light of the length of custodial sentences for children, it is very unlikely that the person would be detained beyond their 25th birthday.

19.29. In the case of a detained young person, assuming that it is likely they will be released before their 25th birthday, the home authority will need to consider whether the person *will be likely to have* reasonable needs for education or training when released. For these purposes, the regulations provide that a young person *has* reasonable needs for education or training in each of the following circumstances-[21]

(a) the young person is registered as a pupil or enrolled as a student at a maintained school, an Academy or an FEI (whether the school or FEI is in Wales or England);
(b) the young person has reasonable needs for education or training under the regulation[22] which deals with this in respect of a young person who is not to be registered as a pupil or enrolled as a student at one of the institutions referred to in sub-paragraph (a);

[19] Section 40(2)(b) of the Act.
[20] Regulation 18 of the Additional Learning Needs (Wales) Regulations 2021.
[21] Regulation 18(3) of the Additional Learning Needs (Wales) Regulations 2021.
[22] Specifically, regulation 9(1) of the Additional Learning Needs (Wales) Regulations 2021.

(c) a local authority has determined[23] that the young person has reasonable needs for education or training under the regulation that deals with this in respect of a young person who is not to be registered as a pupil or enrolled as a student at one of the institutions referred to in sub-paragraph (a).

19.30. See Chapter 17 for more information about the regulations referred to in the circumstances in sub-paragraphs (b) and (c).

19.31. The issue is not whether one of those circumstances currently applies, but as to the likelihood that one of those circumstances *will* apply when the young person is released. So the local authority, to decide whether an IDP is necessary, needs to consider the likely position after release, for example, whether the young person is likely to enrol as a student at an FEI then. The young person's views, wishes and feelings as to what they wish to do when released will be critical to the issue. Does the young person wish to do education or training upon release and if so, what sort of education or training might that be? If the young person is already a registered pupil or enrolled student, are they likely to return to those studies? It is not necessary to identify any particular programme of study that the young person might undertake nor institution that the young person might attend. Rather the local authority **should** consider the likelihood of the young person attending an institution mentioned in sub-paragraph (a) or having reasonable needs to education or training as referred to in sub-paragraphs (b) or (c), taking account of all known relevant information. It is not necessary to ascertain exactly what will happen on release, rather what may happen and it is only where it is *unlikely* that the young person would have reasonable needs for education or training that an IDP is not necessary.

A home authority's decision that a detained person does not have ALN or that it is not necessary to prepare an IDP

19.32. 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**[24] notify the detained person, the 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.

19.33. The home authority **must**[25] make the decision concerned and give the notification promptly and in any event before the end of the period of 12 weeks from-

(a) in the case of a child, when it is brought to the attention of, or otherwise appears to, the home authority that the child has ALN;

[23] Specifically, regulation 9(2) of the Additional Learning Needs (Wales) Regulations 2021.
[24] Section 40(4) of the Act.
[25] Requirement imposed by the Code in respect of a decision that the young person does not have ALN and regulation 18(4) of the Additional Learning Needs (Wales) Regulations 2021 in respect of a decision that an IDP is not necessary.

(b) in the case of a young person, the young person consenting to the decision being made on whether the person has ALN.

19.34. The home authority need not comply with the requirement to make the decision and give the notification before the end of that 12 week period if it is impractical to do so due to circumstances beyond its control.[26]

19.35. As well as setting out the decision and the reasons for the decision, the notification to the detained person and, if the detained person is a child, their parent **must**[27] also give:

(a) 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 system[28];
(c) details of the home authority's arrangements for the avoidance and resolution of disagreements[29] and its independent advocacy services[30];
(d) information about the right to appeal to the Tribunal against the decision.[31]

19.36. The notification **should** also outline what action the home authority will undertake in light of its consideration to ensure the detained person's needs are met.

19.37. It might be helpful to offer an opportunity to the detained person, and if a child, their parent for further discussion.

A home authority's duty to prepare an IDP for a detained person

19.38. If a home authority in Wales decides that a detained person has ALN and that it will be necessary for an IDP to be maintained on their release, it **must**[32] prepare an IDP for that person (unless in the case of a young person, they do not consent to the plan being prepared).

19.39. See Chapter 2 for information on the meaning of ALN and ALP, Chapter 20 on identifying ALN and deciding upon the ALP required; and Chapter 23 in relation to the preparation and content of IDPs.

19.40. Chapter 23 deals with the requirement on a local authority to describe other provision (namely, a place at a particular school or other institution) in an IDP where the reasonable needs of the child or young person to ALP cannot

[26] See Chapter 1 for more information on how timescales in the Code are to be interpreted.
[27] Requirement imposed by the Code in respect of a decision that the young person does not have ALN and regulation 18(6) of the Additional Learning Needs (Wales) Regulations 2021 in respect of a decision that an IDP is not necessary.
[28] Under section 9 of the Act.
[29] Under section 68 of the Act.
[30] Under section 69 of the Act.
[31] Under section 72 of the Act. The decision is appealable to the Tribunal – see Chapter 33.
[32] Sections 40(5) and 41 of the Act.

be met unless the local authority also secures that other provision. In the case of preparing an IDP for a detained person, there is a slightly different requirement due to the detention situation. The home authority **must**[33] describe such other provision in the IDP if it will not be possible to meet the reasonable needs of the detained person for ALP when the person is released from detention unless the home authority also secures the other provision. This is subject to the same restrictions on describing placements in IDPs[34] (see Chapter 23) and the guidance in that chapter on describing other provision in an IDP is relevant to the question of whether other provision must be described in an IDP being prepared for a detained person.

19.41. Chapter 23 also explains the duty on a local authority, school or FEI, when preparing an IDP, to decide whether ALP should be provided in Welsh and if it decides that a particular kind of ALP should be provided in Welsh, to specify this in the IDP. A home authority preparing an IDP for a detained person **must**[35] also decide this matter and where it decides that a particular kind of ALP should be provided in Welsh, specify this in the IDP.

19.42. 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 and naming a maintained school for the purpose of securing a child's admission. These matters are dealt with in Chapter 23. The home authority would need 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.

19.43. The home authority, in preparing the an IDP, **may**[36] make a referral to an NHS body for it to consider whether there is any relevant treatment or service that is likely to be of benefit in addressing the ALN of the detained person (these referrals are dealt with in more detail in Chapter 21). However, NHS bodies are not subject to the duty to secure a relevant treatment or service for a detained person during their detention.[37] Any referral to an NHS body **should** be about whether there is a relevant treatment or service that is likely to be of benefit in addressing the ALN of the detained child or young person when they are released. Accordingly any referral to a Local Health Board **should** be to the one that would be responsible for the detained person following their release (Chapter 21 addresses when a Local Health Board is responsible for a person). Such a referral could be helpful where the detention is likely to end shortly as any ALP which is a relevant treatment or service would then be set out in the IDP for when the person is released. However, where the likely release of the detained person is some time away, a referral is less likely to be helpful, particularly if there is uncertainty as to what the detained person's situation will be on release (for example, where they might be living or what their needs might then be). In those cases, if the IDP is required to be maintained

[33] Section 40(7) of the Act.
[34] Section 40(9) of the Act.
[35] Section 40(6) of the Act.
[36] Section 20 of the Act.
[37] Section 44 of the Act.

on release (see below), a referral to an NHS body could be considered at that point.

19.44. If the home authority makes a referral[38] to an NHS body and in response the NHS body informs the home authority that it has identified a relevant treatment or service that is likely to be of benefit in addressing a detained person's ALN, the home authority, in preparing the IDP, **must**[39] describe the treatment or service in the IDP, specifying that it is ALP to be secured by the NHS body. If the NHS body also informs the home authority that a relevant treatment or service should be provided to the detained person in Welsh, the home authority **must**[40] specify in the IDP it is preparing that the treatment or service should be provided in Welsh.

19.45. Before the IDP is completed, 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 it and **should** encourage them to raise any concerns as soon as possible. The home authority **should** consider any concerns and act upon them appropriately, which may be to update the draft IDP, or explain decisions or other matters further.

19.46. Once prepared, the home authority **must**[41] give a copy of the IDP to the detained person, the parent of a detained person who is a child and the person in charge of the relevant youth accommodation.

19.47. The home authority **must**[42] make the decision on ALN, prepare the IDP and give a copy of it promptly and in any event before the end of the period of 12 weeks from-

(a) in the case of a child, when it is brought to the attention of, or otherwise appears to, the home authority that the child has ALN;
(b) in the case of a young person, the young person consenting to the decision being made on whether the person has ALN.

19.48. The home authority need not comply with the requirement to make the decision, prepare the IDP and give a copy of it before the end of that 12 week period if it is impractical to do so due to circumstances beyond its control.[43]

19.49. When giving a copy of the IDP to the detained person and, if the detained person is a child, their parent, the home authority **must**[44] also give-

(a) contact details for the home authority;

[38] Under section 20 of the Act.
[39] Requirement imposed by the Code.
[40] Requirement imposed by the Code.
[41] Section 40(5) of the Act.
[42] Requirement (which is subject to the specified exception) imposed by the Code.
[43] See Chapter 1 for more information on how timescales in the Code are to be interpreted.
[44] Requirement imposed by the Code.

(b) information about how to access the home authority's arrangements for providing people with information and advice about ALN and the ALN system[45];
(c) details of the home authority's arrangements for the avoidance and resolution of disagreements[46] and its independent advocacy services[47];
(d) information about the right to appeal to the Tribunal about particular aspects of the IDP.[48]

Representatives for detained young people, and parents of detained children, lacking mental capacity

19.50. Representatives are available for detained young people who lack mental capacity, and for parents of detained children who lack capacity (see Chapter 31 for further guidance on representatives).[49]

A home authority's duty to keep an IDP for a detained person and arrange appropriate ALP

19.51. 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 detention[50], the home authority, if in Wales, **must**[51] keep the IDP whilst the person is detained. This entails keeping a copy of the IDP. In doing so, the authority will need to comply with data protection law.

19.52. Where the IDP was being maintained by a school, FEI or another local authority prior to detention, the home authority's duty to keep the IDP only applies when this is brought to its attention[52]. The school, FEI or other local authority, if aware of the circumstances giving rise to the home authority's duty to keep it, **must**[53] give a copy of the IDP to the home authority unless the home authority already has a copy of it.

19.53. The home authority **must**[54] 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**[55] give a copy of the IDP to the person in charge of the relevant youth accommodation.

[45] Under section 9 of the Act.
[46] Under section 68 of the Act.
[47] Under section 69 of the Act.
[48] Under section 72 of the Act. Chapter 33 deals with appeals.
[49] Part 4 of the Additional Learning Needs (Wales) Regulations 2021.
[50] Under section 40 of the Act.
[51] Section 42(1) to (3) of the Act.
[52] Section 42(5) of the Act.
[53] Regulation 15 of the Additional Learning Needs (Wales) Regulations 2021.
[54] Section 42(6) of the Act.
[55] Section 42(7) of the Act.

19.54. Where the home authority keeps an IDP, it **must**[56] arrange for "appropriate ALP" to be provided to the detained person.

19.55. "Appropriate ALP"[57] is-

- the ALP specified in the IDP,
- 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.

19.56. The ALP specified in the IDP includes any ALP which is specified as being for an NHS body to secure. An NHS body's duties to secure ALP that is a relevant treatment or service for a child or young person and to secure it in Welsh, do not apply whilst the child or young person is a detained person.[58]

19.57. If the IDP specifies that ALP should be provided in Welsh, the home authority **must**[59] take all reasonable steps to secure that the appropriate ALP is provided in Welsh.

19.58. 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.

19.59. 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. The home authority **should** seek to do this as soon as it becomes aware of the detained person entering detention and that they have an IDP, or as it is preparing an IDP for the detained person, using the relevant youth accommodation's and youth offending team's existing planning procedures wherever possible. Youth offending teams have duties[60] to notify local authorities about a child or young person's detention in, transfer to, or release from, relevant youth accommodation. For the purpose of exercising its ALN duties, a home authority **may**[61] request the person in charge of the relevant youth accommodation or the youth offending team (or other relevant persons) to provide information or other help. Chapter 21 deals with such requests.

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[56] Section 42(8) of the Act.
[57] Section 42(9) of the Act.
[58] Section 44 of the Act.
[59] Section 42(8)(b) of the Act.
[60] Under Section 39A of the Crime and Disorder Act 1998.
[61] Section 65 of the Act.

19.60. 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**[62] 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 ascertain whether the ALP remains appropriate and if it does not, to determine what appropriate ALP would consist of.

19.61. 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 detention and that they have an IDP, or as it is preparing an IDP for the detained person, using the relevant youth accommodation's and youth offending team's existing planning procedures wherever possible. Youth offending teams have duties[63] to notify local authorities about a child or young person's detention in, transfer to, or release from, relevant youth accommodation.

19.62. 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 a detained person on release

19.63. 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**[64] maintain the IDP unless:-

(a) (a) the person is a child who, on release, is looked after by another local authority, in which case that other local authority **must**[65] maintain the IDP;
(b) (b) the person is a young person and does not consent to the IDP being maintained.

19.64. Chapters 12 to 17 each deal with what it means for a local authority to maintain an IDP in the circumstances covered by each chapter.

[62] Section 42(8) and (9) of the Act.
[63] Under Section 39A of the Crime and Disorder Act 1998.
[64] Sections 43(1) and (2) and 14(2) and (3) of the Act. It should become aware of the person's release shortly after it (if not already aware) by notification from the youth offending team as required by section 39A of the Crime and Disorder Act 1998.
[65] Section 43(3) and (4) of the Act.

19.65. Where, following the release of a detained person, a local authority is maintaining an IDP for that person, the authority **must**[66] review the IDP. The authority **must**[67] complete that review (including, as the case may be, giving a copy of the revised IDP or notification of another conclusion of the review – see Chapter 25) promptly and in any event before the end of the period of 7 weeks from the person's release from detention. The authority need not comply with the requirement to complete the review before the end of that 7 week period if it is impractical to do so due to circumstances beyond its control.[68]

19.66. A local authority, if aware that it will have to maintain an IDP for a detained person who is due to be released, **may** take steps towards that review before the release, but only preparatory steps and only if doing so is appropriate in the circumstances. The authority's consideration of the evidence for the purpose of deciding what to do in light of the review **must**[69] take place after release. This is to allow the actual circumstances following release and the views, wishes and feelings of the released person and if a child, their parent, in light of those circumstances, to be taken into account. This means that the meeting which should take place as part of the review needs to take place after release, although this does not preclude other meetings or discussions taking place prior to release. (See Chapter 25 for more about reviews of IDPs.)

19.67. In cases where the released child or young person is to attend a maintained school or FEI, the local authority may consider that it would be more appropriate for the school or FEI to maintain the IDP. Depending upon the circumstances, it might also be more appropriate for that institution to review the IDP. This might be the case where, for example, the IDP was recently prepared by the authority and the released person has low level needs or where the institution previously maintained the IDP and the period of detention was very short. If responsibility for maintaining the IDP is transferred to a maintained school or FEI[70] without the local authority having reviewed it following release, the school or FEI **must**[71] review the IDP and complete the review (including, as the case may be, giving a copy of the revised IDP or notification of another conclusion of the review – see Chapter 25) promptly and in any event within the period of 35 school days (in the case of a school) or term time days (in the case of an FEI) from the child or young person's release from detention. The school or FEI need not comply with the requirement to complete the review within that 35 day period if it is impractical to do so due to circumstances beyond its control.[72]

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[66] Requirement imposed by the Code.
[67] Requirement (which is subject to the specified exception) imposed by the Code.
[68] See Chapter 1 for more information on how timescales in the Code are to be interpreted.
[69] Requirement imposed by the Code.
[70] This would be following a direction by the local authority under section 14(4) of the Act in the case of a school or following an FEI agreeing to the authority's request under section 36(2) of the Act that the FEI become responsible for the IDP. Also, a transfer can only take place if the released person is a registered pupil of the school or is a young person enrolled as a student at the FEI. See Chapters 12 and 15 (for directions to a school) and Chapter 28 in the case of an FEI.
[71] Requirement (which is subject to the specified exception) imposed by the Code.
[72] See Chapter 1 for more information on how timescales in the Code are to be interpreted.

19.68. The local authority, in considering whether to direct a school to maintain the IDP or request an FEI to become responsible for it, **should** take into account any relevant evidence provided by the custodial establishment, education provider and youth offending team and, if it has not reviewed the IDP since the person's release, whether there would be adequate time for the school or FEI to complete a review within the 35 day period. If it is unlikely that the school or FEI would be able to complete a review within that period, the local authority **should not** transfer the IDP until after it has reviewed it.

19.69. A local authority, school or FEI conducting a review following a person's release from detention **should**, as part of that review, take into account any relevant evidence provided by the custodial establishment, education provider and youth offending team.

19.70. Following the review, the giving of a notice that the IDP is not to be revised or a copy of the revised plan triggers the start of the next review period (Chapter 25 deals with the duty to review an IDP before the end of a review period).

Children and young people subject to a detention order and detained in hospital under Part 3 of the 1983 Act

19.71. Part 2 of the 1983 Act deals with civil compulsory admission to hospital[73]. 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 12 – 17 are relevant to such cases, according to whether the learner is a child or young person, a pupil registered at a maintained school, a looked after child, a student enrolled at an FEI, or neither such a pupil nor such a student.

19.72. 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. The remainder of this chapter deals with the duties 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.

19.73. A person may be detained in a place of safety between the making of an order under Part 3 of the 1983 Act and the person's detention in hospital. References in this chapter to a person's situation before their detention in hospital refer to their situation immediately before the beginning of that detention, except that if the person is detained in a place of safety under Part 3 of the 1983 Act immediately before the detention in hospital, they refer to

[73] These admissions do not involve the patient being subject to a detention order as defined for the purposes of the Act.

their situation immediately before the detention in a place of safety.[74] In other words, for the purpose of references to a child or young person's situation before their detention in hospital, any detention in a place of safety is to be ignored.

19.74. Before 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;
(c) have an IDP which is being maintained. This would be where the person was not subject to a detention order, for example, the person was a pupil at a school, and the school was maintaining an IDP.

19.75. The position varies depending upon whether or not there was an IDP being maintained or kept prior to the detention in hospital. In short, the relevant local authority, if in Wales, for a child or young person detained in hospital has the same functions under the Act and regulations in respect of that child or young person, with a few modifications, as a local authority has in respect of a child or young person for whom it is responsible. These duties are described in the rest of this chapter.

A relevant local authority's duty to decide whether a child or young person detained in hospital has ALN

19.76. If an IDP was neither being maintained nor kept for a child or young person before their detention in hospital and it is brought to the attention of, or otherwise appears to the relevant local authority for the child or young person (if there is one) that the child or young person may have ALN, the relevant local authority **must**[75] decide whether or not the child or young person has ALN. However, in the case of a young person, this only applies from 1 September 2022 (including that date), that is where, on or after that date, it is brought to the attention of or otherwise appears to the relevant local authority for the young person (if there is one) that the young person has ALN and an IDP was neither being maintained nor kept for the young person before their detention in hospital (whenever that was).

19.77. The relevant local authority for a child or young person is as provided for in the following table:[76]

[74] Regulation 20 of the Additional Learning Needs (Wales) Regulations 2021.
[75] Section 13 of the Act as applied by the Additional Learning Needs (Wales) Regulations 2021.
[76] Regulation 21 of the Additional Learning Needs (Wales) Regulations 2021.

Situation of child or young person	Relevant local authority
(a) the child or young person was a detained person before the detention in hospital	The home authority for the child or young person[77] But, if the home authority is a local authority in England, there is no relevant local authority.
(b) the child or young person is not within the description for entry (a) in this Table and was either looked after before the detention in hospital or has been looked after at any time since then. For these purposes a child or young person is looked after if looked after by a local authority for the purposes of Part 6 of the Social Services and Well-being (Wales) Act 2014 or by a local authority in England for the purposes of the Children Act 1989.	The local authority that looks after the child or young person, or that most recently did so. But, if the child or young person is looked after by a local authority in England, there is no relevant local authority.
(c) all other cases	The local authority in whose area the child or young person is ordinarily resident. When determining this, any period when the person is subject to a detention order is to be disregarded. But, if the child or young person is ordinarily resident in the area of a local authority in England, there is no relevant local authority.

19.78. The possibility that the child or young person may have ALN might be brought to the attention of a relevant 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 its attention or how it otherwise appears to it that this is the case; if the relevant local authority is aware of that possibility, then the duty to decide applies. (Guidance on the definition of ALN is set out in Chapter 2 and on identifying when a child or young person may have ALN in Chapter 20.)

19.79. However, a relevant local authority is not required to make this decision where- [78]

[77] For the purposes of the definition of "home authority" in these circumstances, the detention in hospital is treated as continuing to be detention in relevant youth accommodation.
[78] Section 13 of the Act as applied by the Additional Learning Needs (Wales) Regulations 2021.

- In the case of a young person, the young person does 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 decision. In these circumstances, the local authority **should** notify the detained young person of this, and if the detained person is a child, their parent, and **should** provide them with information and advice about ALN and the ALN system (including rights of appeal) if it has not previously or recently done so.

19.80. Where a relevant local authority is required to decide whether a child or young person detained in hospital has ALN, it **must**[79]:

(a) designate an officer ('the designated co-ordinator') to be responsible for coordinating the actions required to make that decision, any decision on whether an IDP is necessary for a young person and, if an IDP is 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) 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 it that the child or young person may have ALN;

19.81. In the case of a child, the relevant local authority **must**[80] also:

(a) notify the child and the child's parent that it is deciding whether the child has ALN;
(b) consider offering an initial meeting with the child and the child's parent to discuss the process (see Chapter 22 for more details about meetings).

19.82. For the purposes of the requirement in paragraph 19.80, in the case of a young person, the relevant local authority is required to decide whether the young person has ALN where it is not known whether or not the young person consents to that decision being made. If having sought the young person's consent, the young person does not consent, then the requirement on the authority to do the things listed above will cease to apply at that point.

19.83. In the case of a young person, the relevant local authority **must**[81] also do the following promptly:

(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;

[79] Requirement imposed by the Code (applicable by virtue of the Additional Learning Needs (Wales) Regulations 2021).
[80] Requirement imposed by the Code (applicable by virtue of the Additional Learning Needs (Wales) Regulations 2021).
[81] Requirement imposed by the Code (applicable by virtue of the Additional Learning Needs (Wales) Regulations 2021).

(b) consider offering an initial meeting with the young person to discuss the process (see Chapter 22 for more details about meetings);
(c) explain to the young person the consequences of consenting to the decision being made and not doing so;
(d) seek the young person's consent to the decision being made and, should an IDP be necessary, to an IDP being prepared and maintained.

19.84. The relevant local authority **must**[82] record:

(a) where the young person consents to the decision being made or an IDP being prepared and maintained, when and how consent was given;
(b) where the young person objects to any of those matters, when and how the young person objected;
(c) where the young person has neither consented nor objected to any of those matters, the steps taken by the authority to seek the young person's consent and explain the consequences of the authority deciding whether the young person has ALN.

19.85. The notification to the child or young person and, in the case of a child, their parent (whether under paragraph 19.81 or 19.83) **must**[83] also give:

(a) contact details for the relevant local authority;
(b) information about how to access the relevant local authority's arrangements for providing people with information and advice about ALN and the ALN system[84].

19.86. The notification **should** also provide an indication of the likely timescales for the process.

19.87. Where a relevant local authority is required to decide whether a child or young person detained in hospital has ALN, it **should** invite the child or young person's care co-ordinator[85] and the hospital manager to participate in the decision, and, if needed, in the preparation of the IDP. They may be able to provide information and advice relevant to the decision and any IDP (including information from the institution's education provider)."

[82] Requirement imposed by the Code (applicable by virtue of the Additional Learning Needs (Wales) Regulations 2021).
[83] Requirement imposed by the Code (applicable by virtue of the Additional Learning Needs (Wales) Regulations 2021).
[84] Under section 9 of the Act.
[85] 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.

A relevant local authority's decision that a child or young person detained in hospital does not have ALN

19.88. Where a relevant local authority decides that a child or young person detained in hospital does not have ALN, it **must**[86] notify the child or young person and, in the case of a child, the child's parent of the decision and the reasons for it.

19.89. The relevant local authority **must**[87] make the decision and give the notification promptly and in any event before the end of the period of 12 weeks from:

(a) in the case of a child, when it is brought to the attention of, or otherwise appears to, the authority that the child has ALN;
(b) in the case of a young person, the young person consenting to the decision being made on whether the person has ALN.

19.90. The relevant local authority need not comply with the requirement to make the decision and give the notification before the end of that 12 week period if it is impractical to do so due to circumstances beyond its control.[88]

19.91. As well as setting out the decision and the reasons for the decision, the notification to the child or young person and, in the case of a child, the child's parent **must**[89] also give:

(a) contact details for the relevant local authority;
(b) information about how to access the relevant local authority's arrangements for providing people with information and advice about ALN and the ALN system[90];
(c) details of the relevant local authority's arrangements for the avoidance and resolution of disagreements[91] and its independent advocacy services[92];
(d) information about the right to appeal to the Tribunal against the decision.[93]

[86] Section 13 of the Act as applied by the Additional Learning Needs (Wales) Regulations 2021.
[87] Requirement imposed by the Code (applicable by virtue of the Additional Learning Needs (Wales) Regulations 2021).
[88] See Chapter 1 for more information on how timescales in the Code are to be interpreted.
[89] Requirement imposed by the Code (applicable by virtue of the Additional Learning Needs (Wales) Regulations 2021).
[90] Under section 9 of the Act.
[91] Under section 68 of the Act.
[92] Under section 69 of the Act.
[93] Under section 70 of the Act (applicable by virtue of the Additional Learning Needs (Wales) Regulations 2021). Chapter 33 deals with appeals.

A relevant local authority's decision that a child or young person detained in hospital has ALN

19.92. Where a relevant local authority decides that a child detained in hospital has ALN, it **must**[94] prepare an IDP for the child.

19.93. Where the relevant local authority decides that a young person detained in hospital has ALN, if the young person is a registered pupil at a maintained school or enrolled as a student at an FEI, it **must**[95] prepare an IDP for the young person.

19.94. In the case of any other young person detained in hospital, if the relevant local authority decides that the young person has ALN, it **must**[96] decide in accordance with regulations[97] whether it is necessary for it to prepare and maintain an IDP to meet the young person's reasonable needs for education or training. Paragraphs 17.6 to 17.16 deal with these decisions and those paragraphs are equally relevant where the young person is detained in hospital. In considering whether an IDP is necessary, the local authority will need to take account of all the circumstances, including the person's detention in hospital and its likely length. Due to those circumstances, it might not be possible to identify an available, suitable programme of study to enable the young person to meet their desired outcomes, leading the local authority to decide that an IDP is not necessary for the young person at that particular time. This does not preclude an IDP being necessary at a future time, when the young person's circumstances have changed. If the local authority decides that an IDP is necessary, it **must**[98] prepare an IDP for that person unless the person does not consent to the plan being prepared.

19.95. Where the relevant local authority decides that it is not necessary to prepare and maintain an IDP for the young person, it **must**[99] notify the young person of the decision and the reasons for it.

19.96. The relevant local authority **must**[100] make that decision and give the notification promptly and in any event before the end of the period of 12 weeks from the young person consenting to the decision being made as to whether or not the young person has ALN. The relevant local authority need not comply with the requirement to make the decision and give the notification within that 12 week period if it is impractical to do so due to circumstances beyond its control.[101]

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[94] Section 14 of the Act as applied by the Additional Learning Needs (Wales) Regulations 2021.
[95] Section 14 of the Act as applied by the Additional Learning Needs (Wales) Regulations 2021.
[96] Section 14 of the Act as applied by the Additional Learning Needs (Wales) Regulations 2021.
[97] Those regulations are regulations 6 to 10 of and Schedule 1 to the Additional Learning Needs (Wales) Regulations 2021.
[98] Section 14 of the Act as applied by the Additional Learning Needs (Wales) Regulations 2021.
[99] Regulations 10 and 23 of, and Schedule 2 to, the Additional Learning Needs (Wales) Regulations 2021.
[100] Regulations 10 and 23 of, and Schedule 2 to, the Additional Learning Needs (Wales) Regulations 2021.
[101] Regulations 10 and 23 of, and Schedule 2 to, the Additional Learning Needs (Wales) Regulations 2021. See Chapter 1 for more information on how timescales in the Code are to be interpreted.

19.97. When giving the notification, the relevant local authority **must**[102] also give:

(a) contact details for the relevant local authority;
(b) information about how to access the relevant local authority's arrangements for providing people with information and advice about ALN and the ALN system[103];
(c) details of the relevant local authority's arrangements for the avoidance and resolution of disagreements[104] and its independent advocacy services[105];
(d) information about the right to appeal to the Tribunal against the decision.[106]

A relevant local authority's duty to prepare an IDP for a child or young person detained in hospital

19.98. 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 who is neither a registered pupil at a maintained school nor enrolled as a student at an FEI, has decided that it is necessary to prepare an IDP, it **must**[107] 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.[108]

19.99. See Chapter 2 for information on the meaning of ALN and ALP; Chapter 20 for information on identifying ALN and deciding upon the ALP required; and Chapter 23 for information on preparing an IDP and its contents.

19.100. Before the IDP is completed by the relevant local authority, it **should** give the child or young person and, in the case of a child, their parent an opportunity to comment on a draft of it and **should** encourage them to raise any concerns as soon as possible. The authority **should** consider any concerns and act upon them appropriately, which may be to update the draft IDP, or explain decisions or other matters further.

19.101. Once prepared, the relevant local authority **must**[109] give a copy of the IDP to the child or the young person and, in the case of a child, their parent.

[102] Regulation 10 and 23 of, and Schedule 2 to, the Additional Learning Needs (Wales) Regulations 2021.
[103] Under section 9 of the Act.
[104] Under section 68 of the Act.
[105] Under section 69 of the Act.
[106] Under section 70 of the Act. Chapter 33 deals with appeals.
[107] Section 14 of the Act as applied by the Additional Learning Needs (Wales) Regulations 2021.
[108] Section 14 of the Act as applied by the Additional Learning Needs (Wales) Regulations 2021.
[109] Section 22(1) of the Act as applied by the Additional Learning Needs (Wales) Regulations 2021.

19.102. The relevant local authority **must**[110] make the decision on ALN, prepare the IDP and give a copy of it promptly and in any event before the end of the period of 12 weeks from:

(a) in the case of a child, when it is brought to the attention of, or otherwise appears to, the relevant local authority that the child has ALN;
(b) in the case of a young person, the young person consenting to the decision being made on whether the person has ALN.

19.103. The relevant local authority need not comply with the requirement to make the decision, prepare the IDP and give a copy of it before the end of that 12 week period if it is impractical to do so due to circumstances beyond its control.[111]

19.104. When giving a copy of the IDP to the child or young person and, in the case of a child, their parent, the relevant local authority **must**[112] also give :

(a) contact details for the relevant local authority;
(b) information about how to access the relevant local authority's arrangements for providing people with information and advice about ALN and the ALN system[113];
(c) details of the relevant local authority's arrangements for the avoidance and resolution of disagreements[114] and its independent advocacy services[115]; and
(d) information about the right to appeal to the Tribunal about particular aspects of the IDP.[116]

Maintaining an IDP (relevant local authorities) for a child or young person detained in hospital

19.105. Where a relevant local authority has prepared an IDP for a child or young person detained in hospital, it **must**[117] maintain the IDP whilst the person is detained in hospital.

19.106. If a child or young person had an IDP maintained by a school or FEI before being detained in hospital, the school or FEI has no duty to maintain it whilst the person is subject to a detention order[118]. Instead, the relevant local

[110] Requirement (which is subject to the specified exception) imposed by the Code (applicable by virtue of the Additional Learning Needs (Wales) Regulations 2021).
[111] See Chapter 1 for more information on how timescales in the Code are to be interpreted.
[112] Requirement imposed by the Code (applicable by virtue of the Additional Learning Needs (Wales) Regulations 2021).
[113] Under section 9 of the Act.
[114] Under section 68 of the Act.
[115] Under section 69 of the Act.
[116] Under section 70 of the Act (applicable by virtue of the Additional Learning Needs (Wales) Regulations 2021). Chapter 33 deals with appeals.
[117] Section 14 of the Act as applied by the Additional Learning Needs (Wales) Regulations 2021.
[118] Section 44 of the Act.

authority **must**[119] maintain the IDP whilst the person is detained in hospital. The relevant local authority **must**[120] inform the child or young person and in the case of a child, the parent, that it has become responsible for maintaining the plan.

19.107. If a child or young person had an IDP maintained by a local authority before being detained in hospital, the relevant local authority **must**[121] maintain the IDP whilst the person is detained in hospital. If the relevant local authority is different to the local authority that was previously maintaining the plan, the relevant local authority **must**[122] inform the child or young person and in the case of a child, the parent, that it has become responsible for maintaining the plan.

19.108. If a child or young person who has an IDP was detained in relevant youth accommodation in Wales or England before being detained in hospital, the home authority's duty to keep the IDP does not apply whilst the person is detained in the hospital. Instead the home authority (as the relevant local authority) **must**[123] maintain the IDP whilst the person is detained in hospital. In this case, the authority **must**[124] inform the child or young person and in the case of a child, the parent, that it has become responsible for maintaining the plan. The authority **must**[125] also review the plan and complete the review (including, as the case may be, giving a copy of the revised IDP or notification of another conclusion of the review – see Chapter 25) promptly and in any event within the period of 7 weeks from when the child or young person is detained in hospital. The authority need not complete the review within that 7 week period if it is impractical to do so due to circumstances beyond the authority's control.[126] Giving the copy of a revised IDP or notification that it is not to be revised triggers the start of the next review period.

19.109. But the relevant local authority does not have to maintain the plan in any of these cases if it is for a young person who does not consent to the plan being maintained.[127]

19.110. Where an IDP was maintained or kept by a body other than the relevant local authority prior to the detention in hospital, the body that was keeping or maintaining it, **must**[128] give a copy of the IDP to the relevant local authority if it is aware of the circumstances which give rise to the transfer of responsibility to the relevant local authority. The relevant local authority's

[119] Regulation 22 of the Additional Learning Needs (Wales) Regulations 2021.
[120] Section 22(2) of the Act as applied by the Additional Learning Needs (Wales) Regulations 2021.
[121] Regulation 22 of the Additional Learning Needs (Wales) Regulations 2021.
[122] Section 22(2) of the Act as applied by the Additional Learning Needs (Wales) Regulations 2021.
[123] Regulation 22 of the Additional Learning Needs (Wales) Regulations 2021.
[124] Regulation 22 of the Additional Learning Needs (Wales) Regulations 2021.
[125] Regulation 22 of the Additional Learning Needs (Wales) Regulations 2021.
[126] See Chapter 1 for more information on how timescales in the Code are to be interpreted.
[127] Section 14 of the Act as applied by the Additional Learning Needs (Wales) Regulations 2021.
[128] Regulation 15 of the Additional Learning Needs (Wales) Regulations 2021.

duty to maintain the IDP only applies when the fact that it was being maintained or kept comes to its attention.[129]

19.111. Where a relevant local authority maintains an IDP for a child or young person detained in hospital, the consequence of this is that it will need to keep a copy of the IDP (complying with data protection law in how it does so) and comply with the duties that attach to maintaining an IDP, referred to in the following paragraphs.

19.112. Where a relevant local authority maintains an IDP, it **must**[130] secure the ALP and any other provision (i.e. a place at a particular school or other institution or board and lodging) 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**[131] secure the ALP. If the IDP specifies that a particular kind of ALP should be provided in Welsh, the relevant local authority (or NHS body where applicable) **must**[132] take all reasonable steps to secure that it is provided in Welsh.

19.113. A relevant local authority maintaining an IDP for a child or young person detained in hospital **must**[133] review the IDP in line with the duties on reviews of IDPs (set out in Chapter 25). Where the IDP was maintained prior to the detention in hospital, the review period is unchanged by that detention (though an early review is likely to be appropriate or necessary given the change in circumstances). Where it was kept prior to that detention, see the requirement above to review it. 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 Chapter 17). If the local authority decides that it is not necessary to maintain the IDP it may cease to maintain it. Chapter 29 deals with this and other circumstances in which a duty to maintain an IDP ceases.

19.114. The relevant local authority **should** involve the professionals providing the healthcare services to the child or young person and consider inviting the child or young person's care co-ordinator to participate in any review.

19.115. The relevant local authority **must not**[134] charge the child or young person and, in the case of a child, the parent for any ALP described in the IDP, or for anything else it secures for the child or young person under Part 2 of the Act.

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[129] Regulation 22 of the Additional Learning Needs (Wales) Regulations 2021.
[130] Section 14(10)(a) – (b) of the Act as applied by the Additional Learning Needs (Wales) Regulations 2021.
[131] Sections 20(5) and 21(5) of the Act as applied by the Additional Learning Needs (Wales) Regulations 2021.
[132] Sections 14(10)(c), 20(5)(c) and 21(5)(b) of the Act as applied by the Additional Learning Needs (Wales) Regulations 2021.
[133] Section 23 of the Act as applied by the Additional Learning Needs (Wales) Regulations 2021.
[134] Section 49(1) of the Act as applied by the Additional Learning Needs (Wales) Regulations 2021.

A local authority's duty when a child or young person leaves detention in hospital

19.116. If the child or young person (for whom an IDP is being maintained) is released back into the community following detention in hospital and on the release date, a local authority is the responsible for the child or young person, that local authority **must**[135] maintain the IDP. But if the person is a child who, on release, is looked after by a local authority, the local authority that looks after the child **must**[136] maintain the IDP instead.

19.117. Chapters 12 to 17 each deal with what it means for a local authority to maintain an IDP in the circumstances covered by each chapter.

19.118. If the child or young person with an IDP moves from hospital detention to detention in relevant youth accommodation in Wales or England, the person's home authority **must**[137] keep the IDP and it is subject to the duties that flow from keeping an IDP (see above).

[135] Regulation 24 of the Additional Learning Needs (Wales) Regulations 2021.
[136] Section 35(9) and (10) of the Act.
[137] Section 42 of the Act and Regulation 25 of the Additional Learning Needs (Wales) Regulations 2021.

Chapter 20: Identifying ALN and deciding upon the ALP required

Introduction

20.1. 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 that the person may have ALN (there is more on these duties in Chapters 11 – 17 and 19). This chapter provides guidance on when it appears that a child or young person *may have* ALN, determining whether a child or young person *has* ALN (including where it has been brought to the attention of the school, FEI or local authority that the child may have ALN), and deciding on the ALP required.

Gathering evidence

20.2. Identifying whether a child or young person may have ALN and the subsequent decision as to whether the person has ALN requires evidence. This evidence might come from staff within a school or FEI or other education setting or 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.

20.3. Where the child or young person has an identified disability for the purposes of the Equality Act 2010, the evidence gathered will relate to whether that disability prevents or hinders the child or young 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 in Wales or (for those under compulsory school age) places in Wales at which nursery education is provided. This evidence is likely to be provided in the form of advice from specialist services.

20.4. For those children and young people who do not have an identified disability, in the first instance, observing and assessing their progress will provide information about areas where they are 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). These include, but are not limited to:

- standardised screening or assessment tools and frameworks;
- observational data;
- the quality of their work;
- developmental checklists;
- scaling questionnaires;
- assessment through intervention;
- assessments from other agencies, such as health bodies;
- behaviour and social emotional questionnaires and standardised tests;

- other forms of personalised assessment, especially where sensory impairments render standardised screening and assessment tools and frameworks inappropriate.

20.5. 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 an appropriate assessment profile can aid identification of ALN. In the case of other children under compulsory school age, information may come from health visitors, or early years screening, or arise as a consequence of the child's involvement with Flying Start provision.

20.6. 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 an appropriate assessment profile.

20.7. FEIs will also use regular monitoring data to track progress of learners. All applicants and enrolled students at FEIs **should** be given the opportunity at application stage, at enrolment and during the course to raise any concerns about their learning needs.

20.8. 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).

Considering and using evidence

20.9. Slow progress and low attainment do not necessarily mean that a child or young person has ALN and would not automatically lead to a decision that the learner has ALN. Equally, it ought not to be assumed that attainment in line with chronological age means that there is no ALN.

20.10. Children and young people will inevitably progress at different rates so the fact that a child or young person is apparently underperforming by comparison with others of the same age is not, on its own, proof of ALN. When considering the child or young person's needs, it might be revealed that the child or young person is actually making good progress from a low base. Indeed, 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.

20.11. 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 child or young person's needs and other services which need to be involved in the child or young person's life such as an educational psychologist, education welfare services, social services or health bodies.

20.12. In particular, many factors can contribute to poor academic performance or inadequate progress. These can include poor attendance records, not having adequate learning opportunities, frequent moves or changes to teaching staff or the learning environment or wider social and family challenges. Although these factors could be present where a child or young person has ALN and might even contribute towards ALN, they do not necessarily mean that the child or young person has ALN.

20.13. To establish the cause of poor academic performance or inadequate progress, it might be useful to consider if the child or young person is showing different behaviour or demonstrating different learning ability in different settings and environments. Where a child or young person is already known to another agency, for example social services, it might be useful to work closely with them. 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 or young person'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 or young person's needs in a holistic manner.

20.14. 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 a learner's 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. Indeed, most children and young people will require a differentiated approach in some aspect of their education at some point. This is a fundamental element of high quality – but routine – teaching.

20.15. Such differentiated teaching does not, itself, constitute ALP and just because a child or young person requires a differentiated approach does not mean that they have ALN. ALP encompasses additional or different educational or training provision, which goes beyond that generally made available.

When it appears that a child or young person may have ALN

20.16. Where progress continues to be less than expected and the application of differentiated teaching or standard targeted interventions have failed to address the attainment gap between the child or young person and their peers, this would usually indicate to the school, FEI or local authority that the child or young person may have ALN. Alternatively, it might be obvious from the outset that the extent of the concern or nature of a pre-identified disability is such that it is clear that differentiated teaching or standard targeted interventions will not be sufficient.

20.17. In these circumstances, teaching staff at a maintained school or FEI **should** involve the school or FEI's ALNCo (if not already involved). There **should** be clear processes in maintained 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.

Determining the ALN and the ALP required

20.18. Once it appears to a maintained school, FEI or local authority that a child or young person may have ALN, or it is brought to their attention that this may be the case, the duty to decide whether the child or young person has ALN applies (that is, does the child or young person have a learning difficulty or disability which calls for ALP). This will include determining the extent or nature of any ALN, and the ALP it calls for.

20.19. These decisions need to be based upon evidence. This will include any evidence already collected prior to it appearing that the child or young person may have ALN, but may also require further evidence, advice, or input from other professionals or organisations to be gathered as necessary during the decision-making process. What further evidence or input is appropriate will depend upon the circumstances of each individual case and it is for the school, FEI or local authority deciding on ALN or determining ALP to determine what input to seek according to the individual circumstances.

20.20. However, in some instances there is a requirement on the person exercising a function to consider seeking particular advice or to involve a particular person in the decision. For example, there are requirements on local authorities to consider seeking advice from an Educational Psychologist, and to seek it where it considers it necessary, when deciding whether a child or young person has ALN (see Chapters 11 to 16). The mere fact of there being such requirements in some cases does not mean that advice from an Educational Psychologist would not be relevant in other cases, such as where a school is deciding whether a pupil has ALN or a local authority is reviewing an IDP. Nor does the fact of those requirements mean that advice from other experts (e.g. social workers, qualified teachers of the deaf, or qualified teachers of the visually impaired) or the involvement of other people in decisions would not be necessary in those cases; it will depend upon the circumstances.

20.21. Additionally, 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 of, and duties on, health bodies is provided in Chapter 21.)

20.22. As described in Chapter 4 there is a general duty about involving children, their parents and young people in decisions that relate to any ALN the child or young person 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 (see principles in Chapter 3). Guidance on meeting children, their parents and young people to discuss decisions about ALN and IDPs can be found at Chapter 22.

The graduated response for children and young people with ALN

20.23. Maintained schools, FEIs and local authorities **should** adopt a graduated response in relation to children and young people with ALN, making use of a wide range of strategies. This means that the ALP made **should** be at the lowest level necessary to meet the child or young person's identified needs. In particular, schools and FEIs **should** make full use of their available resources before, where necessary, bringing specialist expertise to bear on the difficulties that a child or young person may be experiencing.

20.24. In many cases the ALP initially made will mean that the child or young person's needs are fully met or resolved. Only for those children or young people whose progress continues to cause concern is increased or different ALP likely to be needed. Some children or young people may gradually require less rather than more ALP if the interventions are a success.

Chapter 21: Multi-Agency Working

Introduction

21.1. A key principle underpinning the ALN system is the need for collaboration between all those involved in identifying needs and planning and providing support to children and young people with ALN. As such, in addition to the main duties on local authorities and governing bodies, there are also functions on relevant persons (see paragraph 21.5 for the definition of 'relevant persons'). The functions on relevant persons are intended to provide support to local authorities and governing bodies in the exercise of their functions relating to ALN. This chapter explains the functions on relevant persons and gives guidance on them. (See Chapter 3 for more information on the overarching principles of the Code; and Chapters 11 to 17 for more information on the main duties.)

21.2. Paragraphs 21.5 – 21.13 deal with the duty on relevant persons to comply with a request for information or other help. They are relevant to all relevant persons.

21.3. Paragraphs 21.14 – 21.20 deal with the duties on health bodies[1] related to identifying children under compulsory school age who may have ALN.

21.4. Paragraphs 21.21 – 21.39 are relevant to NHS bodies and deal with referrals to them to identify whether there is ALP that they can provide.

Statutory requests by local authorities for information or other help from relevant persons

21.5. 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. Relevant persons are[3]:

- a 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;

[1] See Chapter 1 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.

- a Local Health Board;
- an NHS Trust;
- the National Health Service Commissioning Board;
- a clinical commissioning group;
- an NHS foundation trust;
- a Special Health Authority.

21.6. A relevant person **must**[4] comply with such a request unless it considers that doing so would be incompatible with its own duties or would otherwise have an adverse effect on the exercise of its functions.

21.7. If a relevant person decides not to comply with the request from the local authority, the person **must**[5] give the authority written reasons for the decision.

21.8. This duty to respond only applies when a *local authority* makes the request for information or other help. 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.

21.9. Where a school or FEI is preparing or maintaining an 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 preparation[6] or maintenance[7] of the IDP and then request the information or other help from the relevant person itself.

21.10. 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 its functions.

21.11. 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 by the end of the period of six weeks from receiving the request. The relevant person need not comply with the request by the end of that 6 week period if it is impractical to do so due to circumstances beyond its control[9]. If the relevant person knows it is not going to be able to respond before the end of that six week period, it **should**

[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] Regulation 31 of the Additional Learning Needs (Wales) Regulations 2021.
[9] See Chapter 1 for more information on how timescales in this Code are to be interpreted.

inform the local authority at the earliest opportunity of this, the reasons for it, and indicate when it expects to be able to respond.

21.12. 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 to comply **must**[10] 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 ALN[11] or putting in place a mechanism for effective communication relating to the exercise of functions under the Act generally.

21.13. 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, by the end of 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** 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 much earlier than the 6 week deadline if the request is urgent. This might be particularly important when requesting information or other help from relevant persons who may rarely receive requests under the ALN system. For example, when preparing or reviewing an IDP, a local authority may request information from a relevant person outside Wales, such as a request for information about a child or young person to a youth offending team in England.

Identifying ALN in respect of children under compulsory school age – health bodies' role and duty to inform

21.14. Health bodies can support early identification of young children who may have ALN through a range of services. 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 potential 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.

21.15. 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

[10] Regulation 31 of the Additional Learning Needs (Wales) Regulations 2021.
[11] Under section 63 of the Act.

must[12] inform the child's parent of its opinion and of its duty (described in the next paragraph) to bring this to the attention of a local authority. It **must**[13] give the parent an opportunity to discuss the issue with one of its officers.

21.16. 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 local authority would be in the child's best interests, it **must**[14] then do so. For these purposes, the local authority to whose attention the health body is required to bring the matter, is the local authority responsible for the child[15] or, if the child is looked after,[16] the local authority that looks after the child.

21.17. Whether bringing it to the attention of the local authority is in the best interests of the child or not, 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 or she attends an early years setting or primary school;
- informing the local authority could enable it to put ALP in place before the child reaches compulsory school age – this early intervention may reduce the impact of ALN on the child or prevent the impact of ALN on the child from becoming more severe;
- the local authority might be able to support the parents to support their child in other ways. Such support might be emotional or help to establish trust and positive relationships between the local authority and the parents.

21.18. In most situations, it would be likely that bringing the matter to the attention of the local authority would be in the child's best interests, but there might occasionally be over-riding reasons why this would not be case, or it might not be the case at the current time. The discussion with the parents is the opportunity to explore whether there are any countervailing considerations, as well as to ascertain the parents' views.

21.19. If the health body is of the opinion that a particular voluntary organisation is likely to be able to give the parents advice or other assistance in connection with any ALN the child may have, it **must**[17] inform the parents of that.

21.20. When a health authority notifies a local authority of its view that a child has or probably has ALN, the local authority is likely to be subject to the duty to decide whether or not the child does have ALN (see Chapter 11).

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[12] Section 64 of the Act.
[13] Section 64(4) of the Act.
[14] Section 64(4) of the Act.
[15] This is the local authority responsible for the child (i.e. the local authority in whose area the child is) (section 99(4) of the Act). See Chapter 1 for more information about the meaning of this.
[16] See Chapter 1 for the meaning of a child being looked after.
[17] Section 64(5) of the Act.

ALP to be secured by NHS bodies

21.21. 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.

21.22. A local authority may seek this sort of input from an NHS body by making a request for information or other help (see paragraphs 21.5 to 21.13).

21.23. 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 23 for more information on ALP and its intended outcomes).

21.24. 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 (but see below for the details of who may make a referral and what it must do first). It could 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 Wales.[19]

21.25. When referring a matter to a Local Health Board, the referral **should** be made to the Local Health Board responsible for the child or young person. In most instances, a Local Health Board is responsible for the persons usually resident in the area for which it is established.[20] In the event that the Local Health Board considers that it is not responsible for the child or young person, it **should** raise the matter at the earliest opportunity with the local authority or FEI that made the referral, so that if it is not responsible, the local authority or FEI can, as soon as possible, make a referral to the Local Health Board that is responsible for the child or young person.

[18] Section 20(1) of the Act.
[19] Section 20(6) of the Act.
[20] The Local Health Boards (Directed Functions) (Wales) Regulations 2009.

Who can make a referral to an NHS body?

The referral relates to	The body that can refer[21]
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

21.26. A local authority or FEI **must not**[22] make a referral to an 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, and
- is satisfied that making the referral is in the best interests of the child or young person.

21.27. 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.

21.28. Where a matter is referred, the NHS body **must**[23] 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 – i.e. as referred to above, whether there is a treatment or service that it would normally provide (to that child or young person) as part of the comprehensive health service in Wales.

21.29. If the NHS body identifies such a treatment or service it **must**[24]-

- 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.

21.30. It **must**[25] also-

- inform the FEI or local authority that made the referral of the treatment or service,

[21] Section 20(2) of the Act.
[22] Section 20(3) of the Act.
[23] Section 20(4) of the Act.
[24] Section 20(5) of the Act.
[25] Section 21(1) of the Act.

- 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
- if the NHS body considers that the treatment or service should be provided in Welsh, inform those listed above (in the previous two bullets) that it should be provided in Welsh.

21.31. 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**[26]:

- inform the body that made the referral of that fact, and
- if the referral was not made by a body that maintains an IDP for the child or young person, inform the body that maintains the plan of that fact.

21.32. The NHS body **must**[27] comply with the duty to inform of the outcome of its consideration (described in paragraphs 21.30 – 21.31) promptly and in any event before the end of the period of six weeks from receiving the referral. The NHS body need not comply with the duty to inform of the outcome of its consideration before the end of that six week period if it is impractical to do so due to circumstances beyond its control[28].

21.33. If the NHS body knows it is not going to be able to respond by the end of the six week deadline, the NHS body **should** inform the local authority or FEI that made the referral at the earliest opportunity of this, the reasons for the delay, and indicate when it expects to be able to respond.

21.34. If a relevant treatment or service is identified and the NHS body informs the body maintaining the IDP of it, the body maintaining the IDP **must**[29] 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 and so informed the body maintaining the IDP, the body maintaining the IDP **must**[30] specify in the IDP that the treatment or service is ALP that should be provided in Welsh. Further information about IDPs and their content is set out in Chapter 23.

21.35. 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 template is provided in Annex C.

21.36. As noted above, the NHS body **must**[31] secure for the child or young person the ALP that is a treatment or service it has identified. The description of this

[26] Section 21(2) of the Act.
[27] Regulation 11 of the Additional Learning Needs (Wales) Regulations 2021.
[28] See Chapter 1 for more information on how timescales in this Code are to be interpreted.
[29] Section 21(3) of the Act.
[30] Section 21(4) of the Act.
[31] Section 20(5) of the Act.

ALP **must not**[32] be removed from the IDP or revised except on review of the IDP[33] and with the agreement, or at the request, of the NHS body. The NHS body **may**[34] request a review at any time and if it does so, the body maintaining the IDP **must**[35] review it. If, on review, the NHS body requests the body maintaining an IDP 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**[36] comply with the request. For more information on reviewing IDPs see Chapter 25.

21.37. In the event that a child or young person is no longer the responsibility of the Local Health Board identified in an IDP as responsible for securing ALP (for example, following the child or young person's move out of the Local Health Board's area), that Local Health Board **may**[37] request the school, FEI or local authority which maintains the IDP to review it; and that the description of ALP specified as for it to secure is removed upon review. The Local Health Board would need to do this to be relieved of its duty to secure that ALP. The school, local authority or FEI, **must**[38] then review the IDP and remove or change the description of the ALP, so that it is no longer specified as to be secured by that Local Health Board. The school, FEI or local authority, as the case may be, **may**[39] make a referral to the Local Health Board that has become responsible for the child or young person.

21.38. All those concerned with making ALP for a child with ALN who is being educated in a mainstream maintained school, **must**[40] 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.

21.39. 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 so.[41] The body maintaining the IDP **should** work with the NHS body in such circumstances to see what agreement can be reached.

[32] Section 21(6) of the Act.
[33] Under section 23 or 24 of the Act.
[34] Sections 23(7) and 24(6) of the Act.
[35] Sections 23(7) and 24(6) of the Act.
[36] Section 21(7) of the Act.
[37] Sections 23(7), 24(6) and 21(6) of the Act.
[38] Sections 23(7), 24(6) and 21(7) of the Act. See also Chapter 25 on reviews of IDPs.
[39] Section 20 of the Act (subject to the conditions set out above).
[40] Section 52 of the Act.
[41] Section 21(9) of the Act.

Chapter 22: Meetings about ALN and IDPs

Introduction

22.1. This chapter sets out guidance and good practice principles for meetings about ALN and IDPs. It deals with the role of meetings in the ALN system, good practice principles, preparing for them and what should be covered at particular types of meeting.

22.2. As described in Chapter 4, there is a general duty to involve and support children, their parents and young people in decisions about them, including whether they have ALN and the preparation or review of IDPs. (This chapter should be read in conjunction with Chapter 4; and, where meetings relate to a review of an IDP, Chapter 25).

22.3. Meeting play a critical part in helping to fulfil this duty and ensure that a child or young person is at the heart of the process that identifies their ALN and determines their ALP. They can provide an effective opportunity for children, young people and parents to ask questions as they arise, offer views and respond to issues raised. They can also be a means for supporting children, their parents and young people to understand the processes and the issues. They have the advantage of giving professionals present the opportunity to gauge whether a child, parent or young person has understood something and to seek to clarify points where it appears that they might not have done so.

22.4. Whilst meetings to discuss a child or young person's education and needs have traditionally taken place face to face, advances in technology give more scope for meetings to take place wholly or partly virtually, connecting people who are located remotely from each other. Whether it is appropriate to conduct a meeting in this way, will depend upon all the circumstances, including, critically, whether the child, their parent or the young person has sufficient access to the appropriate technology and would be able to participate effectively virtually. Holding meetings with everyone in the same room is likely to be the most effective approach in most cases. However, on some occasions, there may be obstacles to holding a meeting in that way and holding it wholly, or in part, virtually may be appropriate. For example, it could allow a professional, who is unable to attend at the meeting's location, to participate in the discussion.

22.5. The guidance in this chapter assumes that the child will be present at the meeting. However, this might not always be appropriate, for example, a very young child is unlikely to attend and some children may only attend for part of the meeting.

Good practice principles for meetings

22.6. A maintained school, FEI or local authority holding a meeting with a child, their parent or a young person **should**:

(a) run the meeting(s) following person-centred practice approaches, and
(b) take a person-centred practice approach to the gathering and presentation of information (where relevant).

22.7. Person-centred practice puts the child, child's parent or young person at the centre of decisions. The Welsh Government has published a number of guidance documents on person-centred practice, which are available online.[1]

22.8. As the key principle for meetings is to take a person-centred practice approach, the preparation for, format and conduct of any meeting and the number of meetings held will depend upon the particular circumstances of the case. Any policies or processes of schools, FEIs or local authorities relating to meetings will need to be sufficiently flexible to allow for an approach that is appropriate in the individual circumstances of any case.

22.9. To give effect to person centred-practice, meetings **should** involve the child or young person and, in the case of a child, their parent attending. However, this might not always be appropriate or possible.

22.10. Meetings can be intimidating for children, their parents and young people, particularly if there are a large number of professionals in attendance. The maintained school, FEI or local authority organising a meeting **should** consider whether there are measures it could take which would better facilitate the participation of the child or young person, and in the case of a child, their parent in the meeting itself, or in the wider decision-making process. In doing this, it **should** take into account the child, their parent or the young person's views and any preferences they have previously expressed. Such measures could include the following:

(a) a separate meeting or meetings with a child, their parent or young person and just one or two professionals. This could be a meeting with the child, their parent or young person to elicit their views in advance of a larger meeting with all the necessary professionals. There could also be a separate meeting afterwards to get the child, their parent or young person's feedback on views reached at the larger meeting. It might also be appropriate for the person organising a meeting with a large number of professionals to ask some of them to leave during the meeting if that would better enable the child, their parent or young person to give their views.
(b) a child or young person only attending part of the meeting;
(c) designing the layout of the room to suit the child, their parent or the young person;
(d) holding the meeting in a room with which the child, their parent or young person is familiar or in which they are comfortable;

[1] Person-centred Practice in Education: a guide for early years, schools and colleges in Wales, https://gov.wales/sites/default/files/publications/2019-01/person-centred-practice-in-education-a-guide-for-early-years-schools-and-colleges-in-wales.pdf
Person-centred Reviews toolkit: a guide for early years, schools and colleges in Wales, https://gov.wales/sites/default/files/publications/2018-12/person-centred-reviews-toolkit.pdf

(e) having a teaching staff member present who the child or young person trusts or communicates well with to help explain matters and gauge whether the child or young person seems to have understood. The involvement of a person who is well-known to the child or young person may prompt greater confidence amongst the child, their parent or the young person;

(f) preparing a child, their parent or a young person for the meeting by explaining what will happen, how many people will be there, who will sit where, the questions they are likely to be asked and the issues likely to be discussed;

(g) enabling the child or young person to participate virtually, provided they are able to participate effectively (see paragraph 22.4).

22.11. Where the meeting is for a maintained school, FEI or local authority to decide whether a child or young person has ALN or to prepare an IDP, the designated co-ordinator (see Chapters 11 to 17 and 19) **should** be responsible for arranging the meeting and **should** lead it. Similarly, when reviewing an IDP, it **should** be the person responsible for conducting the review who is responsible for arranging the meeting and who **should** lead it. For other meetings, they may be arranged and run in other ways, provided always that the approach is appropriate to the circumstances of the particular child and their parent or the young person. For example, a school or FEI might decide that the ALNCo should arrange and lead all meetings to seek consent from a young person to a decision on ALN, but, depending upon the circumstances, the ALNCo might need to involve a teacher who knows the young person better to take the lead in communicating with the young person at that meeting.

22.12. The maintained school, FEI or local authority **should** take the time to explain to the child or young person, and in the case of a child, their parent the reasoning behind any decision that is made. This is especially important where there has been a difference of opinion.

Preparation for meetings

22.13. Meetings, provided that they are properly prepared for, will usually be the most effective and efficient way of involving children, their parents and young people in decisions about ALN. Preparation for meetings is critical.

22.14. A maintained school, FEI or local authority **should** consider whether they need to seek evidence or advice in advance of the meeting and consider who else ought to attend it. Evidence and advice will almost always be necessary for meetings to make decisions related to ALN matters. The school, FEI or local authority organising the meeting **must**[2] also have regard to the views, wishes and feelings of the child or young person and, in the case of a child, their parent when considering who should attend the meeting and its format.

[2] Section 6 of the Act.

22.15. So far as possible, the person at the maintained school, FEI or local authority responsible for arranging a meeting ought to be aware of any other matters connected to the child or young person's wider needs. This may help them consider what further evidence to seek for the meeting and ultimately give them a more rounded and comprehensive understanding of the child or young person and their needs. To this end, it may be appropriate for the person to attend any other meetings about the child or young person of which the school, FEI or local authority is aware, such as safeguarding meetings. Where it is not possible for the person to attend other meetings connected to a child or young person's wider needs, a school, FEI or local authority **should**, where possible, seek to ascertain the outcome of any decisions at such meetings or obtain any other relevant information arising out of them.

22.16. For decisions about whether a person has ALN or on the contents of an IDP, 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:

(a) What do you like most, admire or appreciate about the learner?
(b) What has happened since the last review? (Where applicable)
(c) What do you think, from your perspective, are the learner's aspirations for the future?
(d) What do you think is most important in the learner's life at the moment?
(e) What do you think is important for the learner to help them develop and progress?
(f) What do other people need to know or do to help the learner?
(g) What is going really well from your perspective at the moment?
(h) What is not going so well at the moment from your perspective?
(i) Do you have any questions you would like to ask?

22.17. As set out throughout the Code, 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 input in another way, where they are likely to make a relevant contribution to a decision being taken or an IDP being prepared or reviewed. How this is done, is likely to depend upon what is appropriate in the circumstances. Such invitations **should** be made as soon as possible to give sufficient notice to enable attendance or sufficient time to provide written advice in advance of the meeting so that it can be properly considered by all parties. When they are invited to provide input, other agencies and professionals **should** be informed of the proposed format of the meeting, or the desired format of any written contribution.

22.18. For some children or young people, it may not be necessary to invite other agencies or professionals to attend meetings and so meetings could be very small. For example, for a child whose needs are neither severe nor complex, it might only include the child, their parent, and the designated co-ordinator. A meeting for a young person might include just the young

person, the designated co-ordinator, and possibly another person, whom the young person has requested attends.

22.19. In other cases, the school, FEI or local authority might seek external advice or information and may invite other professionals to attend the meeting or to provide input. Where a local authority, for the purposes of exercising its functions under the Act, requests information or help from a relevant person, the relevant person **must**[3] comply with that request unless it considers that doing so would be incompatible with its own duties or would have an adverse effect on the exercise of its functions - see Chapter 21 for more information.

22.20. The attendance at meetings of professionals with relevant expertise is generally desirable so that they can contribute fully to the discussion and respond to matters raised. Relevant persons **should** take this into account when responding to a request to attend a meeting. However, it might be that not all professionals will be able to attend every meeting, or be able to attend every meeting in person (e.g. they may be able to attend, but only able to do so virtually on occasion); this **should** be explained to the child, the child's parent or the young person by the school, FEI or local authority. It may, therefore, be helpful if maintained schools, FEIs or local authorities, when inviting professionals, indicate the priority attached to their attendance. Liaison 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 relevant persons are not going to attend they **should** provide in writing, sufficiently in advance of the meeting, any advice and evidence required to inform the meeting so that it can be properly considered in advance by all parties.

22.21. Where agencies or professionals have supplied advice/reports in advance of the meeting, this **should** also be shared with the child or young person and, in the case of a child, their parent in sufficient time for them to consider it and enable them to participate as fully as possible in discussion and decisions.

22.22. The maintained school, FEI or local authority **should** invite and encourage the child or young person, and in the case of a child, their parent to provide feedback, share views and raise any concerns before a meeting; and **should** offer opportunities to discuss and check their understanding of all information and advice that has been gathered. This includes, but is not limited to, any advice/reports from other agencies or professionals; the report on the child or young person's progress and any concerns, feedback or views that the child, child's parent or young person has previously raised.

22.23. The body organising the meeting will have to comply with any applicable Welsh language obligations[4].

[3] Section 65(2) of the Act.
[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 given by the Welsh Language Commissioner to Local Authorities for

Location of meetings

22.24. In most cases, the most suitable location for a meeting will be at any school, FEI or early years setting which the child or young person attends. Sometimes, it will be necessary, or more appropriate, for a meeting to take place in another location, such as a children's centre, a hospital or the local authority's offices. It may also be necessary or appropriate, on occasion, for a meeting to be held virtually; either wholly (i.e. all attendees participate virtually), or in part (e.g. certain attendees may only be able to attend virtually for various reasons; or the child or young person may wish to attend virtually).

Matters relevant to particular types of meeting

22.25. There are different types of meetings that might be held. There is guidance elsewhere in the Code that meetings should be held as part of the process for making decisions, for example on whether a child or young person has ALN or as part of preparing or reviewing an IDP. There can also be meetings for other purposes, such as to explain the decision making process to a child, child's parent or young person or to seek a young person's consent to a decision on ALN or to the maintenance of an IDP. In all cases, the general principles that are contained in this chapter apply. The following paragraphs contain guidance specific for particular types of meeting.

Meetings to explain a process

22.26. Other provisions of this Code require a maintained school, FEI or local authority subject to a duty to decide whether a child or young person has ALN, to consider offering an initial meeting to discuss the process. Such a meeting could be in conjunction with the formal notification that a decision is being taken. A meeting may better facilitate the child, child's parent or young person's understanding of, and therefore involvement in, the process. It can also be an opportunity to seek the child or young person and, in the case of a child, their parent's preferences as to their participation in the process and identify any additional support they might need to participate.

22.27. In the case of a young person, it is also necessary to get their consent to the decision being made (if not already obtained) on whether they have ALN or to an IDP being prepared or maintained (see young people's consent in Chapter 4 for more detail). There are also requirements to explain to the young person the consequences of consenting to a decision on ALN being made and not consenting to it. A meeting could be held to address both these matters. However, where a young person is not consenting to a decision being made on whether they have ALN, or to an IDP being

the individual standards which are applicable to each local authority, e.g. in respect of correspondence and meetings.

prepared or maintained, if a meeting has not already been held, a meeting **should** be held to explain to the young person the consequences of not consenting and to provide the young person with further opportunities to give consent.

22.28. Where a maintained school, FEI or local authority is carrying out another function, such as reviewing an IDP, it could also be helpful for it to hold a meeting to explain the process.

Meetings to decide whether a child or young person has ALN and, if required, prepare an IDP

22.29. During and after meetings, the designated co-ordinator (or other person leading the meeting) **should** consider offering opportunity to the child or young person and, in the case of a child, their parent to discuss the information and advice gathered.

22.30. Where it is decided at the meeting that the child or young person does have ALN, in most circumstances it will be helpful to proceed to prepare the IDP in that meeting. This will enable those attending the meeting to contribute their views towards the content of the IDP without unnecessary delay. See Chapter 20 for more details on identifying ALN and deciding upon the ALP required; and Chapters 23 and 24 on preparing IDPs and their content.

Meetings to review and revise an IDP

22.31. Where a meeting is held to review an IDP, the maintained school, FEI or local authority responsible for the review **should** in advance of the meeting seek input from all those agencies and professionals whose input, it considers, may be required to conduct an effective review. This would include those already engaged in the delivery of ALP described in the IDP. However, to ensure the effective and efficient use of agencies and professionals, their input need only be sought if their continued involvement is likely to be useful in identifying or delivering future ALP for the child or young person, or otherwise inform the contents of the IDP. Therefore meetings may not always include all those who were involved in the preparation of the original IDP.

22.32. The maintained school, FEI or local authority responsible for the review **should** provide a report to the child or young person and, in the case of a child, their parent on the child or young person's progress in sufficient time for them to consider it and enable them to participate as fully as possible in discussions at the meeting. Where advice/reports have been supplied by agencies or professionals in advance of a review meeting, these **should** be shared with the child or young person and, in the case of a child, their parent, for their consideration.

22.33. When seeking input from agencies or professionals, the maintained school, FEI or local authority responsible for maintaining the IDP, **should** indicate to those whose input is being sought, that the review will have a focus on transition and/or preparation for adulthood where this is the case (see Chapter 27). Where the review does have a focus on next steps such as leaving school or preparing for adulthood, different professionals might also be involved, such as career specialists.

22.34. A review meeting will require those contributing to the review to consider whether the ALP which has been delivered has led to the outcomes set out in the IDP being achieved. This is a key difference between review meetings and meetings to decide whether a child or young person has ALN and if so, to prepare the IDP (where usually, there is no recent IDP to consider).

22.35. It would not usually be necessary to repeat or reconsider background information or evidence unless a change has occurred which affects the matters under consideration.

22.36. Chapter 25 sets out the matters which it is the purpose of a review to consider. Maintained schools, FEIs and local authorities **should** use review meetings to gather and analyse any new information or evidence that has come to light which affects those matters and in light of that information and evidence, consider whether to, and if so how to, revise the IDP.

22.37. During and after meetings, the person leading it **should** offer an opportunity to the child or young person and, in the case of a child, their parent to discuss the information and advice gathered.

22.38. To aid in the evaluation and assessment of the effectiveness of the child or young person's ALP, impact monitoring is a useful tool. Interim short term targets can help to indicate whether ALP is contributing effectively towards meeting the outcomes 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

22.39. A maintained school, FEI or local authority **may**[5] 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. The school, FEI or local authority **may**[6] include the other document in the IDP and vice versa. This is subject to any limits on what may be done in relation to each matter (such as timescales that must be complied with).

[5] Section 25 of the Act.
[6] Section 25 of the Act.

22.40. Where it can be done and the school, FEI or local authority preparing, reviewing or revising the IDP is aware of the other document, it **should** consider whether it is appropriate to co-ordinate the two matters in this way.

22.41. Generally, to be more efficient and effective, schools, FEIs and local authorities **should** seek to co-ordinate, where practical, with any other relevant planning or review processes that are 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 better facilitate integrated planning and 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.

22.42. A co-ordinated approach can avoid the child, child's parent or young person attending unnecessarily a series of similar meetings and reduce the need for the child, child's parent or young person to repeat the same information to different people. It could also assist professionals by reducing the number of meetings they are required to attend.

22.43. However, in some cases it may be that the plans will need to be reviewed separately to best meet the needs of the child or young person or to satisfy legal requirements. Chapter 25 deals further with co-ordinating reviews of IDPs with other matters, including in relation to looked after children.

Chapter 23: Preparing and maintaining an IDP, and its content

Introduction

23.1. This chapter should be used when preparing or maintaining an Individual Development Plan (IDP) for a child or young person with ALN. There are slight differences in the IDP for children who are looked after, therefore please also refer to Chapter 24 when preparing or maintaining an IDP for a looked after child. Additionally, references throughout this chapter to the standard form at Annex A should be read as references to the standard form at Annex B when preparing or maintaining an IDP for a looked after child.[1]

23.2. This chapter is set out in two parts. Part A provides information, guidance and requirements in relation to preparing and maintaining an IDP. Part B (from paragraph 23.97 onwards) provides further detail on certain matters relating to the preparing and maintaining of an IDP, specifically the duty to favour mainstream maintained schools, placements at independent schools, independent special post-16 institutions (ISPIs) and other placements and considerations.

23.3. Throughout this chapter, there is some variation in the language used to describe various actions in relation to the IDP (for example, sometimes "maintaining the IDP" may be used and other times "revising the IDP" may be used). These variations typically follow the language of the Act. However, in the absence of specific language in the Act, the terms "preparing" and "maintaining" have generally been used. These terms are used as a catch-all, to cover any action in relation to the IDP which may be relevant in the context, including preparing, revising, reviewing and maintaining.

Part A

23.4. An IDP[2] is a document that contains a description of a child or young person's ALN and the ALP that is called for by the child or young person's learning difficulty or disability (see Chapter 2 for information on the definition of ALN and ALP; and Chapter 20 for information on identifying ALN and deciding upon the ALP required), and anything else required or authorised by or under Part 2 of the Act. It is a "plan" because 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 value if it results in the successful implementation of provision that meets the needs of the child or young person.

[1] However, see paragraph 24.4 of Chapter 24 when using Chapter 23 to complete the standard form at Annex B for a looked after child.
[2] Section 10 of the Act contains the definition of IDP.

23.5. It is important that all IDPs contain certain key elements and have the same basic structure. This will ensure broad consistency and equity in terms of the way that learners are treated and will underpin the cohesion of the ALN system as a whole, as well as the portability of IDPs. For those reasons, schools, FEI and local authorities **must**[3] use the standard form at Annex A when preparing or maintaining an IDP for a child or young person who is not looked after. The Chapter provides guidance and sets out requirements as to how the standard form should be completed. The body preparing or maintaining an IDP **may** include further information as appendices, should it consider it appropriate to do so. References in this Chapter to the IDP are references to the standard form at Annex A.

23.6. Although schools, FEIs and local authorities must use the standard form at Annex A when preparing or maintaining an IDP, the form allows for flexibility in length and style. For example, a child or young person with less severe or complex needs is likely to have a simpler (and therefore less populated) 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, in most cases, 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.

23.7. Similarly, provided that the headings and fundamental structure of the standard form is not altered (such alteration would contravene the requirement at paragraph 23.5), the appearance of the standard form **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, using images as well as text, avoiding the use of certain colours etc.) as can the presentation of the information inserted into those sections and sub-sections (for example, when developing a profile for section 1C – see paragraphs 23.22 to 23.26).

23.8. Nevertheless, the information included in the IDP **should** be:

(a) created by involving, where appropriate, agencies and professionals working together to identify the child or young person's ALN and the provision to meet those ALN;
(b) created through collaboration with the child or young person, and in the case of a child, their parent;
(c) developed on a flexible, person-centred basis that reflects the needs of the child or young person;
(d) 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, wherever 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;

[3] Requirement imposed by the Code.

(e) 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, with a view to all who are likely to read the IDP being able to understand it, including, wherever possible, the child or young person;

(f) kept under consideration in order to inform whether a review should be conducted ahead of when it otherwise would be (see Chapter 25 on reviews).

23.9. Where appropriate, the IDP **may**[4] be prepared, reviewed or revised at the same time as another document or plan relating to the child or young person is prepared, reviewed or revised. The IDP **may**[5] be included within other documents or plans for the child or young person and other documents or plans can be included within it. (See Chapter 25 for more information on reviewing or revising an IDP together with another document or plan; and Chapter 22 on Meetings about ALN and IDPs which contains information on co-ordinating meetings for children and young people with multiple plans.)

23.10. Following initial preparation of an IDP, a school, FEI or local authority **must not**[6] revise the IDP unless it has undertaken a review (see Chapter 25 for information on reviews). The exception to this is amendments to section 1A, which do not amount to a revision (see paragraphs 23.16 to 23.20).

23.11. Where possible, a local authority, school or FEI who has prepared or revised an IDP **should** make the IDP available in alternative versions (for example, Braille or in languages other than English or Welsh) for the child or young person, and in the case of a child, their parent, where that person requires such an alternative version.

Content of the IDP

23.12. The paragraphs in this section follow the order of the sections and sub-sections of the standard form at Annex A (from paragraph 23.15 to 23.96). The paragraphs detail how each corresponding section of the standard form should be completed, including guidance and certain requirements. A school, FEI or local authority preparing or maintaining an IDP **must**[7] complete each section of the standard form, unless that section is not applicable to the child or young person in question, in which case it should be marked as such. For example, section 2D could be marked "not applicable" in cases where the child or young person is not placed at a named school, other institution, or board and lodging.

23.13. The paragraphs below indicate those elements of the IDP in relation to which appeals to the Tribunal can be made. The corresponding elements of the standard form at Annex A are also indicated as underlined, bold and red.

[4] Section 25 of the Act.
[5] Section 25 of the Act.
[6] Section 23 of the Act.
[7] Requirement imposed by the Code

When using the standard form, it is permissible to change this indication, but these sections **should** be marked in some way in order to make it clear to the child, their parent or the young person, the sections to which appeal rights are attached. The relevant elements are listed below and have been identified throughout this Chapter.

23.14. The elements are:

(a) 2A
(b) 2B.2
(c) 2B.3
(d) 2B.5
(e) 2B.6
(f) 2C.2
(g) 2C.3
(h) 2C.5
(i) 2C.6
(j) 2D

Part 1.

23.15. The details in section 1A **should** be kept up to date. Changes to this section 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

23.16. 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. However, schools, FEIs and local authorities **should** only include as much information as they consider necessary to achieve this purpose. In many cases, for example, it will be not always be necessary to include the home address and contact details of parents, as the relevant body will likely have these details already and these parts of the IDP can be left blank. Relevant persons will need to be mindful of, and comply with, data protection law and their own organisation's data protection and processing policies when processing personal data, including sharing it with others.[8]

23.17. Section 1A of the IDP contains the following sub-sections:

1A.1) Full name.
1A.2) Likes to be known as.

[8] The Information Commissioner's Office's website has guidance for organisations about compliance with data protection law: www.ico.org.uk

1A.3) Date of birth.

1A.4) Gender and preferred pro-nouns. This is the gender with which the child or young person identifies and the pro-nouns they prefer to use (for example, he/him, she/her, they/them).

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"; or, if the child or young person is being educated at home, it **should** be marked "home-educated".

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 parent's name(s) should be inserted here. For a young person, their parent's 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 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' telephone number(s) (if different, and only where the parent(s) consent to their details being included). This should be given 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 parent or the young person.

23.18. Section 1A.10 **should** include the following, where relevant:

- language of communication – including, for example, Welsh language and British sign language. Where the child, the child's parent, or the young person is not a first language Welsh or English speaker, consideration **should** be given to whether they need 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

23.19. 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

23.20. 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

23.21. Section 1B of the IDP contains the following sub-sections:

1B.1) Organisation responsible for maintaining the IDP. This is to record the body that maintains the IDP, whether that be the school, FEI or local authority. This section **should** also include the contact details of that body.

1B.2) Date before which the IDP must be reviewed. This is the date on which the 'review period' ends. See Chapter 25 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 25 for more information on reviews.

Section 1C: Profile (About me)

23.22. This section of the IDP is primarily aimed at setting out a summary about the child or young person. There is no one way to develop and present a profile, but 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 focussed on the positives, whilst being clear, concise, and accurate.

23.23. The profile should provide key information, such as describing the child or young person's character, their gifts and talents, what is important to them, and the best way to support them. This could include: their likes and dislikes; details about play, health, independence, communication; the people that the child or young person considers important to them (family,

friends or personal support staff, for example a carer or personal assistant); aspirations about, for example, their education and career, independent living and community participation.

23.24. It may also be helpful if the information gathered is organised under headings, for example:

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

23.25. The profile, as with the IDP as a whole[9], should be developed and revised with the active involvement of the child or young person to ensure that their voice is heard; not only when preparing the IDP, but also by those that will be directly involved in their education and support. For children of compulsory school age, parents might also be involved in developing the profile and, for younger children, parents will likely provide the majority of information about the child's interests and support needs. Parents may also be involved in developing a young person's profile, provided the young person consents to their parent's involvement.

23.26. The views, wishes and feelings of a child, their parent, or young person in relation to their ALN, ALP and education and training should also be discussed and recorded. However, the body preparing the IDP **should** record the views, wishes and feelings of the child or young person separately from that of their parents and others who work closely with them, such as a carer or personal assistant. 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.

Part 2.

Section 2A: Description of the child or young person's additional learning needs (ALN) (This section is appealable to the Tribunal.)

23.27. 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 identified need, i.e. 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.

[9] See section 6 of the Act.

23.28. 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)

23.29. 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 sub-sections in section 2B **must**[10] be given for each element of ALP.

2B.1) Intended outcome. This is the outcome intended to result from the provision of that ALP.

23.30. 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.

23.31. 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).

23.32. 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*[11].

23.33. In order to determine the progress towards achieving the intended outcome(s), it may be helpful to set interim or short-term 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. If such targets or milestones are required, these **should** be

[10] Requirement imposed by the Code.
[11] http://learning.gov.wales/docs/learningwales/publications/150909-reviews-toolkit-en.pdf

recorded in an appendix to the IDP. Any concerns raised as a result of this monitoring might lead to a review of the IDP as a whole (see Chapter 25).

2B.2) ALP to be provided. **(This element is appealable to the Tribunal.)**
This is a description of the ALP to be provided with a view to meeting the intended outcome.

23.34. This section **should**, where relevant, include details of how regularly the ALP is to be provided (for example, whether it will be provided daily, weekly, at weekends, school days only, term time only or once each term, etc.)

23.35. 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;
- guidance or support provided by the education setting or others, for the child or young person.

23.36. 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.

23.37. 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.

23.38. The body maintaining the IDP has duties about securing the ALP set out in it[12]. 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? **(This element is appealable to the Tribunal.)**

23.39. A body preparing or maintaining an IDP has a duty to consider whether ALP should be provided in Welsh and if it decides that it should, this **must**[13] be

[12] See Chapters 11 – 17 of the Code.
[13] 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.

specified in the IDP and the body maintaining the IDP then has a duty to take all reasonable steps to secure that the ALP is 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. This is the date from which that ALP will be provided. In many cases, this will be from the date the IDP is finalised. However, in some cases, particularly when planning for transitions, there may be a need to plan for future ALP following a transition point during the forthcoming year. For example, this could include when a child or young person is due to change education setting, such as moving from secondary school to an FEI. (See guidance on section 3C below and Chapter 27 for more information on transitions.)

2B.6) End or review date. This is the date until which the particular ALP will be provided or that date on which it will be reviewed (where an end date or review date is set). However, an 'End' date should only be used in limited circumstances where it is clear that the particular form of ALP is not going to be required beyond that date or on an ongoing basis. In cases where it is unclear whether a particular form of ALP will achieve the intended outcome, a review date should be used.

23.40. 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. (Both of these elements (2B.5 and 2B.6) are appealable to the Tribunal.)

2B.7) Rationale for the ALP listed above.

23.41. 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 as set out under section 3A of the IDP.

23.42. However, where there has been a difference of opinion about the ALP to be made, this section **should** provide an explanation as to why certain decisions have been taken. 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.

Section 2C: Description and delivery of ALP to be secured by an NHS body (This section is appealable to the Tribunal, with the exception of elements 2C.1, 2C.4 and 2C.7.)

23.43. This section is for recording the description of any ALP that **must**[14] be secured by an NHS Body, having been identified by that body as a relevant

[14] Section 20(5) of the Act contains the requirement on the NHS body to secure it.

treatment or service that is likely to be of benefit in addressing the child or young person's ALN. This section only applies in cases where there has been a referral to an NHS body for consideration as to whether there is a relevant treatment or service.

23.44. Where no referral has been made, the section **should** be marked "referral not required". Where a referral has been made but the NHS body has not identified any relevant treatment or service, this section **should** be marked as "Referral made. No relevant treatment or service identified.", and ensure any difference of opinion is recorded, as set out under paragraph 23.42 above.

23.45. Where, following a referral to an NHS body, the NHS body informs the body preparing or maintaining the IDP that there is a relevant treatment or service likely to be of benefit in addressing the child or young person's ALN, the body preparing or maintaining the IDP **must**[15] describe the treatment or service in the IDP, specifying that it is ALP to be secured by the NHS body. The body preparing or maintaining the IDP **must**[16] 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 and informed the body which made the referral (see Chapter 21 for more information about this). Before finalising the IDP, the body responsible for preparing or maintaining the IDP **must**[17] ensure that the NHS body is content with the description of any ALP to be secured by that NHS body.

23.46. 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 sub-sections of section 2C **must**[18] be given for each element of that ALP. The sub-sections of section 2C are:

- 2C.1) Intended outcome;
- 2C.2) ALP to be provided;
- 2C.3) Should the ALP be provided in Welsh;
- 2C.4) Organisation/service to provide the ALP, and contact details (where relevant);
- 2C.5) Start date;
- 2C.6) End or review date. This is the date until which that ALP will be provided or the date on which it will be reviewed (where an end date or review date is set);
- 2C.7) Rationale for the ALP listed above.

23.47. In completing this section, the guidance in relation to the completion of section 2B is equally relevant.

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[15] Section 21(3) of the Act applies in relation to maintaining an IDP; a requirement is imposed by the Code in relation to preparing an IDP.
[16] Section 21(4) of the Act applies in relation to maintaining an IDP; a requirement is imposed by the Code in relation to preparing an IDP.
[17] Requirement imposed by the Code
[18] Requirement imposed by the Code.

Section 2D: Place at a named school, other institution, or board and lodging (This section is appealable to the Tribunal.)

23.48. This section **should** only be used in very specific circumstances.

23.49. Where the body preparing or maintaining an IDP is the local authority, the local authority has functions which relate to where the child or young person is to be educated or trained and receive ALP. The local authority might need to consider where they should be educated or trained.

23.50. The Act provides two different functions that enable such placements. Section 2D.1 of the IDP relates to the function under section 48 of the Act, and sections 2D.2 and 2D.3 of the IDP relate to the function under section 14 of the Act (or section19 of the Act when discharging this function for a looked after child). The corresponding information below on completing those sections details the thresholds or conditions that need to be complied with when exercising these functions, and provides further details on each function.

23.51. It should be noted that a placement at a particular school or institution (for example, a special school) does not negate the requirement on a local authority to consider and record the intended outcomes and associated ALP under section 2B of the IDP, or to maintain the IDP as a whole.

23.52. As with the exercise of any function in relation to any child or young person, when considering a placement, the local authority **must**[19] have regard to the child, the child's parent, or young person's views, wishes and feelings; together with other matters which form part of the duty to involve and support children, their parents and young people. (See Chapter 4 for more information.)

23.53. In cases where any of the provision set out in sub-sections 2D.1 – 2D.3 has been considered, but is determined as not required, the section or particular sub-section **should** be marked "not applicable", but **should** also record the reasons for the decision.

- 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.

23.54. Local authorities will need to complete this sub-section of the standard form to exercise their power under section 48 of the Act.

23.55. The power at section 48 provides that a local authority which is preparing or maintaining an IDP for a child, **may**[20] name a maintained school in Wales for the purpose of securing admission of the child to that school. The school

[19] Section 6 of the Act.
[20] Section 48(1) of the Act.

must[21] then admit the child. However, this does not affect any power to exclude a pupil from a school[22].

23.56. Before exercising its power under section 48, a local authority **must**[23] consult with the school. If neither the local authority exercising the power nor the school being named is the admissions authority[24] for the school being named, then, before exercising its power, the local authority **must**[25] also consult with the local authority for the area in which the school being named is located.

23.57. Additionally, a local authority **must not**[26] exercise its power under section 48 unless-

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

23.58. Accordingly, where a school is named in this sub-section, the local authority **should** set out underneath 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.

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

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

- 2D.2) The name of a particular school or other institution at which a place for child or young person must be secured
- 2D.3) A description of board and lodging provision which must be secured for a child or young person

[21] Section 48(2) of the Act.
[22] Section 48(6) of the Act.
[23] Section 48(3)(a) of the Act.
[24] "Admissions authority" has the meaning given by section 88 of the School Standards and Framework Act 1998.
[25] Section 48(3)(b) of the Act.
[26] Section 48(4) of the Act.

23.60. Local authorities will need to complete this sub-section when complying with their duty under section 14(6) of the Act, or section 19(4) in relation to a looked after child.

23.61. Sections 14(6) and 19(4) provide that, if the reasonable needs of a child, young person or looked after child for ALP cannot be met unless a local authority also secures provision of the kind mentioned in paragraph 23.62, the local authority **must**[27] include a description of that provision in this sub-section and **must**[28] secure that provision.

23.62. The kinds of provision are:

(a) A place at a particular school or other institution;
(b) Board and lodging[29].

23.63. Where the particular school or other institution (including board and lodging) is not a maintained school in Wales, a local authority **must**[30] obtain the consent of that school or institution before including a description of the provision and securing the provision.

23.64. A local authority also **must not**[31] include a description of provision or secure provision at a school or other institution (including board and lodging) which is not a maintained school in Wales if doing so would be inconsistent with the conditions in sections 55, 56(3) and 59 of the Act. For a child of compulsory school age (including those who are looked after), any such provision will also need to come under the exceptions to the duty at section 51 of the Act to favour education at mainstream maintained schools. Further detail regarding the duty on local authorities to favour mainstream maintained schools, placements at independent schools, and placements outside England and Wales, is provided at **Part B** of this Chapter.

23.65. Where a local authority has secured provision of the kind mentioned in paragraph 23.62, the local authority **must not**[32] direct a school, where the child or young person is (or is to be) a registered pupil, to-

(a) prepare and maintain the IDP,
(b) maintain the IDP after the local authority has prepared it, or
(c) maintain the IDP.

23.66. Section 2D of the IDP **should** 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

[27] Section 14(6) of the Act; section 19(4) for looked after children.
[28] Section 14(10)(b) of the Act; section 19(7)(b) for looked after children.
[29] Section 14(7) of the Act; section 19(5) for looked after children.
[30] Section 14(8)(a) of the Act; section 19(6)(a) for looked after children.
[31] Section 14(8)(b) of the Act; section 19(6)(b) for looked after children.
[32] Section 14(9) of the Act (there is no equivalent provision for looked after children, because the local authority must maintain their IDP in any event).

professionals, or any other difference of opinion. It **should** explain how different opinions have been taken into consideration before a particular decision was reached.

23.67. 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 or young person's reasonable needs for ALP (there may be other relevant considerations, depending upon the circumstances):

- whether the ALP that is reasonably required by the child or young person's needs is such that it cannot be delivered in full at any maintained school or FEI;
- whether specific characteristics of the school or other institution make it especially good at making the required ALP – 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;
- whether it would be unreasonable for another school or institution to provide the child's ALP.

23.68. The following considerations are likely to be relevant when determining whether board and lodging is required in order to meet a child or young person's reasonable needs for ALP (there may be other relevant considerations, depending upon the circumstances):

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

23.69. The local authority **should** consider all relevant circumstances of the particular case, bearing in mind that it may require the child or young person to be resident away from their family, and as such, the duty to involve and support children, young people and their parents will have particular importance (see Chapter 4). This may include the need to ensure that appropriate support arrangements are in place, such as those which enable the child or young person's continuing contact with their family.

23.70. The local authority **should** 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;
- transport.

23.71. This is an area in which multi-agency and cross-departmental working will be extremely important. In particular, local authorities and NHS bodies might consider appropriate joint funding arrangements. Local authorities **should** ensure that they apply a co-ordinated approach internally to the funding of the education and social care elements of the placement[33].

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

23.73. Please also see the information provided under Part B of this chapter when considering placements.

Part 3.

Section 3A: Record of information used to develop the IDP

23.74. Section 3A of the IDP **must**[34] 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.

23.75. 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.

23.76. 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.

23.77. 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.

23.78. 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.

[33] 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.
[34] Requirement imposed by the Code.

Specific names or titles **should** be used only if the individual that holds that view requests it to be recorded as such.

23.79. 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

23.80. Section 3B of the IDP **must**[35] 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 the following sub-sections.

- 3B.1) Significant events or information relevant to understanding the child or young person's ALN and planning the necessary ALP

23.81. 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;
- an event that has had an emotional, behavioural or attainment impact.

23.82. The events do not need to be recorded in detail, but the following information **should** be noted—

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

[35] Requirement imposed by the Code.

23.83. 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.

23.84. 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 or childcare settings previously attended (and dates). This should record education settings, including settings that provide non-maintained nursery education or childcare settings attended since they were first identified as having ALN.

Section 3C: Transition

23.85. The aim of transition planning is to prepare the child or young person for a significant change in their educational journey. Section 3C of the IDP provides space to set out any information or arrangements which might be considered necessary or appropriate for that transition planning. Information on the different types of transition, the point at which they may occur and how to plan for and support transitions is set out in Chapter 27, which **should** be read when completing this section of the IDP.

23.86. The section 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,
- other support for a forthcoming transition which is not ALP,
- anything which might affect any of the ALP identified in section 2B of the IDP following a transition in the forthcoming year – this can include suggestions on matters which may need to be considered or re-considered following a transition, as the effects may not be identifiable at the time of preparing or reviewing the IDP, and
- any ALP that may already be identified but that which is not required until the following year (after a review) or later, and therefore not classed as ALP for the current version of the IDP (and therefore not recorded in section 2B), but would be useful to note for future planning.

23.87. Including information in this section may assist a body that becomes responsible for maintaining the IDP following a move to a new setting to perform its functions under the Act, for example, to review the IDP. It may also assist a school or FEI to plan ahead where they are required to help a local authority secure provision in an IDP for plans which are maintained by the local authority. However, where ALP can be determined for the

forthcoming year, even if it is to continue after a transition, it **must**[36] be included in section 2B of the IDP rather than this section.

23.88. Where any information or arrangements to support a child or young person's transition are planned, the body responsible for 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.

23.89. The contents of this section cannot be appealed to the Tribunal.

Section 3D: Travel arrangements

23.90. Those preparing or reviewing an IDP for a child or young person **should**, where relevant, record in the IDP any arrangements for the child or young person's travel between their home and the education institution. This may be relevant in some cases, for example, if it informs the delivery of ALP or the child or young person's placement is dependent on specific travel arrangements. However, in many cases there will be no additional benefit in recording travel arrangements in an IDP.

23.91. Provision for travel arrangements for learners, including those with ALN, is made in the Learner Travel (Wales) Measure 2008 and there is guidance relating to this provision issued under section 15 of the Measure[37].

23.92. Where a local authority is preparing or reviewing an IDP for a child or young person and considering where the person is to be educated, the travel arrangements for the child or young person to get to any proposed school or other institution **should**, where relevant, 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 or training, 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.

23.93. As part of planning for transition, a school or local authority **should**, where relevant, consider the travel arrangements for the child or young person to get to the school or other institution that the child or young person is to attend.

[36] Section 10 of the Act: it is the ALP called for by the person's learning difficulty or disability.
[37] At the time of issuing this Code, the Learner Travel Operational Guidance is available at: https://gov.wales/learner-travel-statutory-provision-and-operational-guidance

23.94. If a local authority makes or will make travel arrangements under the Learner Travel (Wales) Measure 2008 for a child or young person, a local authority, school or FEI preparing or reviewing an IDP for that child or young person **must**[38] consider recording in the IDP the travel arrangements made, or to be made, by the local authority. Recording this may be relevant in exceptional cases, for example, where the child or young person has particular travel needs or where the travel arrangements and the delivery of ALP require careful coordination.

23.95. Where a school, FEI or local authority decides to record travel arrangements in an IDP, it **must**[39] record them in section 3D.

23.96. The contents of this section cannot be appealed to the Tribunal.

PART B

Duty to favour education for children at mainstream maintained schools

23.97. Local authorities, in exercising their functions under Part 2 of the Act in relation to a child of compulsory school age who should be educated in a school, **must**[40] 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. To the extent that they apply to children of compulsory school age who should be educated in a school, the functions outlined under section 2D above are also, therefore, subject to this duty.

23.98. There are three exceptions to this duty[41]:

(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;
(c) where the child's parent wishes the child to be educated otherwise than in a mainstream maintained school.

23.99. This means that, the local authority **must not**[42] name a maintained special school, PRU or other institution (such as an independent school or board

[38] Requirement imposed by the Code.
[39] Requirement imposed by the Code.
[40] Section 51 of the Act.
[41] Section 51(2) of the Act.
[42] Section 51 of the Act

and lodging) in section 2D of the IDP (for admission purposes), unless one of these exceptions applies.

23.100. The first exception referred to above may only be relied upon by a local authority where there are no reasonable steps it could take to prevent or remove the incompatibility[43]. 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.

23.101. 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:

- the extent to which the step would be effective;
- 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;
- the extent to which the step is compatible with the needs of the child.

23.102. The local authority's duty to secure that the child is educated in a mainstream maintained school does not apply if the parent wishes their child to be educated otherwise than in a mainstream maintained school. Where this is the case, the local authority is not necessarily required to secure that the child is educated otherwise than in a mainstream maintained school[44]. However, the local authority **must**[45] have regard to those wishes, will need to consider the circumstances of the case, and comply with its education duties[46].

23.103. 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**[47] have regard to the views, wishes and feelings of the child and the child's parents. The local authority will also need to consider other relevant factors, including the ability of the mainstream maintained school, or any potential alternative setting, to offer appropriate ALP. These views and factors will need to be considered

[43] Section 51(3) of the Act.
[44] Section 51(4) of the Act.
[45] Section 6 of the Act.
[46] 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.
[47] Section 6 of the Act

together with 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 individual circumstances of each case.

23.104. 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 authority[48].

Placements at independent schools or ISPIs

23.105. For a local authority to describe an independent school in Wales in section 2D.2 or 2D.3 (or both) of an IDP and secure provision at that school, the following conditions **must**[49] be met-

(a) the school is included in the register of independent schools in Wales[50], and
(b) the local authority is satisfied that the school can make the ALP described in the child or young person's IDP.

23.106. Similar conditions **must**[51] be met when describing and securing provision at independent educational institutions in England, namely—

(a) that the institution is included in the register of independent educational institutions in England[52], and
(b) that the local authority is satisfied that the institution can make the ALP described in the child or young person's IDP.

23.107. The condition for describing and securing provision for a young person at an ISPI is that the ISPI **must**[53] be included in the list of ISPIs, established, maintained and published by the Welsh Ministers[54]. Please also see Chapter 17 when considering a placement for a young person at an ISPI.

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[48] Section 51(5) of the Act.
[49] Section 55(1) of the Act. Also, a local authority could only describe an independent school if the duty to favour education at a mainstream maintained school for a child of compulsory school age did not apply, and the thresholds and requirements for placements under section 14 (or section 19 for looked after children) of the Act are met– see above.
[50] Under section 158 of the Education Act 2002
[51] Section 55(2) of the Act. Also, a local authority could only describe an independent school if the duty to favour education at a mainstream maintained school for a child of compulsory school age did not apply, and the thresholds and requirements for placements under section 14 (or section 19 for looked after children) of the Act are met– see above.
[52] 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.
[53] Section 56(3) of the Act. The condition at section 56(3) is also subject to any prescribed exemptions which may be made; and the thresholds and requirements for placements under section 14 of the Act are met – see above.
[54] Sections 56(1) and 56(2) of the Act

23.108. Where a child or parent would prefer a placement at an independent school but the child's reasonable needs for ALP can be met within a maintained education setting or FEI, the local authority is not required to fund the learner's place at the independent school[55]. However, where this situation arises, the local authority **should** explain to the parent and child how the learner's needs could be met without recourse to an independent placement.

23.109. When a local authority is considering whether they should place the child or young person at an independent school or an ISPI, they will need to consider whether:

- evidence demonstrates that the ALP required to meet the child or young person's ALN is only available in that independent school or ISPI;
- the child or young person has medical and/or social care needs that cannot be met by, or in conjunction with, local providers in a maintained school setting or FEI and which would prevent them from accessing education or training suitable to meet their identified needs;
- if provision to meet the child or young person's needs could also be secured at another independent school or ISPI, whether placement at that particular independent setting would be compatible with the provision of efficient instruction and training, and the avoidance of unreasonable public expenditure.[56]

23.110. The expectation is that independent schools and ISPIs will work with the local authority to deliver the ALP which the child or young person needs in a similar way to maintained schools. 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 outside England and Wales

23.111. 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. A local authority **must not**[57] describe a placement outside of England and Wales in section 2D.2 or 2D.3 (or both) of an IDP and secure that provision unless the institution is organised to make the ALP described in the child or young person's IDP.

[55] Section 9 of the Education Act 1996.
[56] See section 9 of the Education Act 1996.
[57] Section 59 of the Act. Also, a local authority could only describe such a placement if the duty to favour education at a mainstream maintained school for a child of compulsory school age did not apply, and the thresholds and requirements for placements under section 14 (or section 19 for looked after children) of the Act are met– see above.

ALP for a child otherwise than in a school

23.112. A local authority **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 but it **must not**[59] do so unless it is satisfied that it would be inappropriate for the ALP to be made in a school.

Other considerations when preparing an IDP

23.113. 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 an appendix to the IDP.

23.114. As part of the discussion around determining ALP, the body responsible for preparing or maintaining the IDP **should** consider any other relevant factors, such as maintenance and insurance of any specialist equipment including who is responsible for these matters.

[58] Section 53(1) of the Act.
[59] Section 53(2) of the Act.

Chapter 24: Preparing and maintaining an IDP for a looked after child, and its content

Introduction

24.1. This chapter should be used when preparing or maintaining[1] an Individual Development Plan (IDP) for a looked after child with ALN.

24.2. The bulk of the information relevant to completing an IDP for a looked after child with ALN can be found in Chapter 23 and those completing an IDP for a looked after child should also refer to that chapter. Chapter 23 provides detailed information, guidance and requirements in relation to the preparing and maintaining of an IDP for all children and young people, together with further detail on certain matters, specifically the duty to favour mainstream maintained schools, placements at independent schools, and other placements and considerations. However, there are slight differences in the IDP for children who are looked after compared with the IDP for children who are not looked after and young people. The purpose of this chapter is to highlight those differences.

24.3. In addition to Chapter 23, this chapter should be read in conjunction with Chapter 14 (Duties in relation to looked after children), and the relevant guidance in the Social Services and Well-being (Wales) Act 2014 Part 6 Code of Practice (Looked After and Accommodated Children).

Preparing an IDP

24.4. It is important that all IDPs contain certain key elements and have the same basic structure. This will ensure broad consistency and equity in terms of the way that learners are treated and will underpin the cohesion of the ALN system as a whole, as well as the portability of IDPs. For these reasons, a local authority preparing or maintaining an IDP for a looked after child **must**[2] use the standard form at Annex B for the IDP. The local authority preparing or maintaining the IDP **may** include further information as appendices, should it consider it appropriate to do so. References in this chapter to the IDP are references to the standard form at Annex B. When using Chapter 23 to complete Annex B, where the context requires, references in that chapter to the IDP or Annex A should be read as references to the standard form at Annex B.

24.5. Although local authorities must use the standard form at Annex B when preparing or maintaining an IDP for a looked after child, the form allows for flexibility in length and style. For example, a child with less severe or complex needs is likely to have a simpler (and therefore less populated) IDP than a child with more severe or complex needs, or low incidence needs. A child with severe, complex or low incidence needs will, in most cases,

[1] See paragraph 23.3 of Chapter 23 for more information on use of these terms.
[2] Requirement imposed by the Code.

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.

24.6. Similarly, provided that the headings and fundamental structure of the standard form is not altered (such alteration would contravene the requirement), the appearance of the standard form **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, using images as well as text, avoiding the use of certain colours etc.), as can the presentation of the information inserted into those sections and sub-sections.

24.7. Nevertheless, the information included in the IDP **should** be:

(a) created by involving, where appropriate, agencies and professionals working together to identify the child's ALN and the provision to meet those ALN;
(b) created through collaboration with the child and child's parent;
(c) developed on a flexible, person-centred basis that reflects the needs of the child;
(d) written in a style that reflects that it is the child's plan and not simply part of an administrative process. The style and, wherever 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;
(e) 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, with a view to all who are likely to read the IDP being able to understand it, including, wherever possible, the child;
(f) kept under consideration in order to inform whether a review should be conducted ahead of when it otherwise would be (see Chapter 25 on reviews).

24.8. An IDP for a looked after child **must**[3] be incorporated into the child's personal education plan[4] (PEP). This is to facilitate a holistic approach and enable a looked after child's ALP and the wider educational provision made for them, to complement one another. Where possible and appropriate, the IDP **may**[5] be prepared, reviewed or revised at the same time as another document or plan relating to the child (such as the PEP) is prepared, reviewed or revised. (See Chapter 25 for more information on reviewing or revising an IDP together with another document or plan; and Chapter 22 on Meetings about ALN and IDPs, which contains information on co-ordinating meetings for children with multiple plans. 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).)

[3] Section 83(2C) of the Social Services and Well-being (Wales) Act 2018.
[4] Required under the Care Planning, Placement and Case Review (Wales) Regulations 2015
[5] Section 25 of the Act.

Content of the IDP

24.9. A local authority preparing or maintaining an IDP for a looked after child **must**[6] complete each section of the standard form at Annex B, unless that section is not applicable to the child in question, in which case it should be marked as such. For example, section 2D could be marked "not applicable" in cases where the child is not placed at a named school, other institution, or board and lodging.

24.10. The key difference between IDPs for looked after children and those for other children or young people, is that the IDP for looked after children does not include a Part 1. This is because there is a requirement that the IDP for a looked after child is incorporated within the child's personal education plan (see paragraph 24.8 above) and the information which is required under Part 1 is expected to be contained elsewhere in the child's personal education plan. Part 1 is therefore omitted from the standard form at Annex B. For ease of reference when using the information, guidance and requirements in Chapter 23 to complete an IDP for a looked after child, the numbering and headings of the remaining sections and sub-sections in Annex B correspond with those in Annex A, namely 2A to 3D.

24.11. There are certain elements of the IDP for looked after children in relation to which appeals to the Tribunal can be made. The corresponding elements of the standard form at Annex B are indicated as underlined, bold and red. When using the standard form at Annex B, it is permissible to change this indication, but these sections **should** be marked in some way in order to make it clear to the child and their parent, the sections to which appeal rights are attached. For ease of reference, the relevant elements are listed below.

24.12. The elements are:

(a) 2A
(b) 2B.2
(c) 2B.3
(d) 2B.5
(e) 2B.6
(f) 2C.2
(g) 2C.3
(h) 2C.5
(i) 2C.6
(j) 2D

[6] Requirement imposed by the Code

Chapter 25: Review and revision of IDPs

Introduction

25.1. 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.

25.2. 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. There is also a requirement to review an IDP for a person who is released from detention: this is dealt with in Chapter 19.

25.3. The efficacy of an IDP **should** be monitored on an on-going basis by the body responsible for maintaining it and it **should** conduct reviews as often as required by the circumstances.

25.4. It is important to remember that children and young people learn in different ways, and their needs may change over time. Through a continuous cycle of planning, action and review, different support or expertise can be identified and provided as necessary. The range and style of support ought, therefore, over time be increased, reduced or changed according to the child or young person's individual needs and progress.

Review of an IDP

25.5. This section sets out the guidance for the process and timescale requirements for the following three different circumstances in which an IDP review may take place:[1]

(a) school, FEI and local authority initiated reviews;
(b) requests for reviews from children, their parents and young people;
(c) requests for reviews from NHS bodies.

School, FEI and local authority initiated reviews (including mandatory annual reviews)

25.6. A school, FEI or local authority required to maintain an IDP **may**[2] review it at any time but in any event **must**[3] do so before the end of each "review period". The school, FEI or local authority maintaining the IDP **may**[4] revise the IDP following the review.

[1] A review is also required following the release of a detained person. This matter is dealt with in Chapter 19.
[2] Sections 23(9) and 24(8) of the Act.
[3] Sections 23(1) and 24(1) of the Act.
[4] Sections 23(9) and 24(8) of the Act.

25.7. A review period is essentially the period of one year from when the IDP was either prepared, revised or a decision was made not to revise it. For these purposes the important date is that on which the IDP, revised IDP or notice of decision not to revise it was first given to the child, the child's parent, the independent reviewing officer for a looked after child or the young person. Review periods are not affected by any transfer since that date of the duty to maintain an IDP or change in the basis upon which a local authority maintains an IDP following a child or young person becoming or ceasing to be a looked after child.[5]

25.8. The exact details for review periods are as follows[6];

(a) the first review period is the 12 month period starting with the date on which a copy of the IDP is first given[7];

(b) each subsequent review period is the 12 month period starting with —

(i) the date during the preceding review period on which a copy of the revised IDP was first given[8],

(ii) where the IDP has not been revised in the preceding review period —

(1) the date during that preceding review period on which notice was first given of a decision that the IDP should not be revised[9], or

(2) the date during that preceding review period on which notice was first given of a decision that following a reconsideration by a local authority of an IDP maintained by a school, the IDP should not be revised[10], or

(iii) where neither a copy of a revised IDP nor one of those notices (i.e. those in paragraph (ii)) has been given during the preceding review period, the first day after the end of that preceding review period.

[5] Sections 23 and 24 of the Act; and regulation 16 of The Additional Learning Needs (Wales) Regulations 2021.

[6] Sections 23(2) – (5) and 24(2) – (4) of the Act.

[7] 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.

[8] 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.

[9] 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.

[10] 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, 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.

25.9. Where a copy of a revised IDP or a notice that the IDP is not to be revised is given late, that is, after the end of the review period to which it relates, then the giving of the copy of the IDP or the notice is to be ignored[11]. The effect is that (in accordance with paragraph (iii)) the new review period starts immediately after the end of the preceding review period, and the late giving of a copy of the IDP or notice in that new review period, does not trigger the next review period starting and is ignored for the purposes of calculating the following review period.

25.10. The references above to notices or copies of IDPs being *first* given are to deal with the possibility that where it 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 counts[12].

25.11. The duty on a school, FEI or local authority maintaining an IDP to review it before the end of the review period is treated as met in cases where the IDP is reviewed or revised by another body. This means that the body maintaining the IDP no longer has to review it before the end of the current review period and a new review period starts. Those cases are:[13]

(a) where the IDP is reconsidered by a local authority (this could only be in the case of an IDP maintained by a school)[14];
(b) where the Tribunal orders a local authority or an FEI to revise the IDP;
(c) in the case of an IDP maintained by a school, where the Tribunal orders a local authority to review the IDP.

25.12. 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 a 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.

[11] Sections 23(3) and 24(3) of the Act.
[12] Sections 23(5) and 24(3) of the Act.
[13] Sections 23(6) and 24(5) of the Act.
[14] Under section 27 of the Act.

25.13. A copy of the revised IDP (for cases where it is decided to revise it) or the notification of another conclusion of the review (e.g. that the IDP is not to be revised – see below) **must**[15] be given before the end of the review period.

25.14. A school, FEI or local authority maintaining an IDP still needs to consider when during the review period to commence the review. The school, FEI or local authority, in doing so, **should** take into account the following matters:

(a) the intended outcomes set out in the IDP and the target date for the achievement of these, or milestones towards their achievement;
(b) the timescales for the delivery of any activities or provision in the IDP;
(c) 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 person is due to move on to a new stage of education, especially where an early decision might be required so that a place at a particular school or other institution can be secured to meet their reasonable needs for ALP (see Chapter 27 for more information on transition planning);
(d) events occurring during the review period (for example, a deterioration in the child or young person's health) or matters coming to light, where as a result, it appears likely that the child or young person's ALN may have changed or the ALP they require may be different to that set out in their IDP;
(e) whether there are proposed assessments or tests whose results would impact on the intended outcomes, planned activity or provision;
(f) 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;
(g) where another plan or document relating to the child or young person is due to be prepared, reviewed or revised, whether it would be beneficial to review the IDP at the same time or subsequently[16];
(h) 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.

25.15. So that they are able to make any necessary preparations to contribute to a review, local authorities maintaining IDPs **should** liaise with any education setting 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.

[15] Requirement imposed by the Code in relation to the timescale aspect. Sections 23(10)-(11), 24(9)-(10) and 31(8) of the Act are the requirements to give a revised IDP or notification of other decision. For the avoidance of doubt, the guidance in Chapter 1 on timescale requirements does not apply to the calculation of the review period, nor this requirement.
[16] For more information on conducting reviews at the same time as other documents or plans see the section later in this chapter, together with Chapter 22 on meetings.

25.16. The school, FEI or local authority maintaining the IDP **should** engage regularly with the child, child's parent or young person in order to discuss progress, which in turn should help inform the timing of the review and contribute towards meeting the duty to involve and support children, their parents and young people (see Chapter 4). Where the IDP is maintained by a local authority, the authority **should** consider how to involve any institution attended by the child or young person in considering progress and engaging with the child, their parent or the young person. The engagement with the child, their parent or young person **should** include:

(a) the provision of clear and accessible information to them about the child or young person's progress and how ALP may or may not be contributing to this;
(b) the provision of opportunities for the child, child's parent or young person to discuss their opinions about the approaches and strategies being used;
(c) the provision of opportunities for the child, child's parent or young person to discuss when they think a review of an IDP may be beneficial and why.

25.17. These discussions contribute to on-going monitoring and the evidence gathered from them can be used to inform the review itself, as well as its timing. They can also help 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 a review might be appropriate.

25.18. Schools, FEIs and local authorities might want to consider the impact on their staff resources and that of others when planning reviews and might 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.

25.19. A proposed review date **may**[17] be changed to an earlier or later date (providing a later date allows the review to be conducted within the review period).

25.20. An earlier 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

[17] Sections 23(9) and 24(8) of the Act.

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.

Requests for reviews from children, their parents and young people

25.21. If a request to review an IDP is made by the child, the child's parent or young person, to the maintained school, FEI or local authority that maintains the IDP, it **must**[18] conduct a review unless it considers a review to be unnecessary.

25.22. If the school, FEI or local authority conducts a review following such a request, it **must**[19] complete the review (including, as the case may be, giving a copy of the revised IDP or notification of another conclusion of the review – see paragraphs 25.41 – 25.43) promptly and in any event before the end of the relevant period (see the following paragraph). The school, FEI or local authority need not comply with the requirement to complete the review before the end of that relevant period if it is impractical to do so due to circumstances beyond its control.[20]

25.23. For the purpose of paragraphs 25.22 and 25.28 the relevant period is-

(a) in the case of a school, 35 school days,
(b) in the case of an FEI, 35 term time days, or
(c) in the case of a local authority, 7 weeks,

from the school, FEI or local authority (as the case may be) receiving the request for a review.

25.24. If the school, FEI or local authority decides that a review is unnecessary, it **should** notify the child or young person and, in the case of a child, their parent and if the local authority looks after the child, the independent reviewing officer, of that decision and the reasons for it.

25.25. Where notification is given that a review is unnecessary, the information set out in paragraph 25.47 **should** be given to the child, their parent or young person with the notification.

25.26. 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.

[18] Sections 23(8) and 24(7) of the Act.
[19] Requirement (which is subject to the specified exception) imposed by the Code.
[20] See Chapter 1 for more information on how timescales in the Code are to be interpreted.

Requests for reviews from NHS bodies

25.27. A maintained school, FEI or local authority **must**[21] review an IDP it is maintaining if the IDP includes ALP that an NHS body is required to secure and the NHS body asks it to review the IDP[22]. Where an NHS body asks for a review they **should** set out the reasons for doing so.

25.28. If the school, FEI or local authority conducts a review following such a request, it **must**[23] complete the review, (including, as the case may be, giving a copy of the revised IDP or notification of another conclusion of the review – see paragraphs 25.41 – 25.43) promptly and in any event before the end of the relevant period (see paragraph 25.23). The school, FEI or local authority need not comply with the requirement to complete the review before the end of that relevant period if it is impractical to do so due to circumstances beyond its control.[24]

Conducting reviews

25.29. The purpose of a review is to consider:

(a) the child or young person's progress towards achieving the intended outcomes;
(b) whether the child or young person still has ALN and, if so, whether their needs have changed and if so, what those needs now are;
(c) the continued suitability of the outcomes and, if appropriate, decide new or revised outcomes;
(d) whether the ALP and any other provision (namely, a place at a particular institution; board and lodging) to meet the child or young person's reasonable needs for ALP is still appropriate and whether additional or different ALP is called for;
(e) whether the child or young person might need to receive the ALP at a particular school or other institution and whether board and lodging may be needed;
(f) consider any other matters related to the child or young person's education or training which affect the IDP (for instance a forthcoming transition, or in the case of a young person not at a maintained school or FEI, whether it is necessary to maintain the IDP to meet the young person's reasonable needs for education or training (see Chapter 17)).

25.30. The maintained school, local authority or FEI conducting a review and any other relevant person exercising a function under the Act which relates to the review (for example, an NHS body requesting a change to the description of

[21] Sections 23(7) and 24(6) of the Act.
[22] For more information on conducting a review for an IDP that includes ALP that an NHS Body is required to secure see paragraph 25.32.
[23] Requirement (which is subject to the specified exception) imposed by the Code.
[24] See Chapter 1 for more information on how timescales in the Code are to be interpreted.

the ALP) is subject to the duty to involve and support children, their parents and young people (see Chapter 4)[25].

25.31. Reviews **should** include a meeting (see Chapter 22 on meetings, including those held to review an IDP).

25.32. Where ALP is specified in an IDP as provision an NHS body is to secure, this **must not**[26] be removed or changed, unless, it is done through a review and the NHS body has requested the change or agrees to it. Also, 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**[27] comply with that request.

25.33. During the review, the school, FEI or local authority **should** consider the likely timescale for the next review. The contents of an IDP (such as the period for achieving outcomes, or the period over which a particular ALP is to be provided) can influence the timing of a subsequent review. The school, FEI or local authority **should**, following discussions with the child, the child's parent or young person and any other professionals involved with the review, and taking into account the factors listed in paragraph 25.14, determine a proposed review date, which should be marked in section 1B of the IDP (see Chapter 23). This date is not binding, but indicative of the likely time when the next review would be appropriate. The school, FEI or local authority **should** nevertheless continue to monitor on an on-going basis the efficacy of the IDP. Depending on the circumstances, it may need to start the next review earlier or (providing it would not be after the end of the review period) later than the proposed date.

25.34. When reviewing the IDP for a young person not at a maintained school or FEI, the local authority **must**[28] 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 17 addresses when it will be necessary for a local authority to continue to maintain an IDP for a young person. Chapter 29 deals with the process for ceasing to maintain an IDP.

Conducting reviews at the same time as other documents or plans

25.35. A maintained school, FEI or local authority **may**[29] 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. The school, FEI or local authority

[25] Section 6 of the Act.
[26] Section 21(6) of the Act.
[27] Section 21(7) of the Act.
[28] Section 31(6)(b) of the Act.
[29] 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.

may[30] include that other document in the IDP, and the IDP **may**[31] be included in that other document.

25.36. Therefore, 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). Where this is the case, it may also be appropriate or beneficial to co-ordinate any meetings that may be required. Chapter 22 provides further guidance on co-ordinating meetings for these purposes.

25.37. 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**[32] 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, or to satisfy legal requirements.

25.38. 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, therefore, 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. This may also be appropriate where a child or young person who is not looked after has either a care and support plan, or a support plan, under Part 4 of that Act. In cases where a local authority is responsible for both the child or young person's care and support plan (or support 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.

25.39. Reviewing plans simultaneously can facilitate a more holistic approach to the planning of care and support for the child or young person; allowing consideration of how ALN are to be met alongside consideration of other relevant matters, such as wider educational support or placement decisions, and may also inform what support and ALP is most suitable to meet the child or young person's needs.

25.40. On other occasions, it might be more appropriate, or even necessary in order to meet the requirements of the ALN system, for the IDP to be reviewed separately to any other review. Where reviews are conducted separately, the outcome of a review under one Act may have consequences for a local authority's (or another person's) obligations under the other Act.

[30] Section 25 of the Act.
[31] Section 25 of the Act.
[32] 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.

For example, a review under the Social Services and Well-being (Wales) Act 2014 might reveal a need to review the person's IDP under the ALN system.

Conclusions of a review

25.41. If the conclusion of the review is that the IDP should be revised, the body maintaining the plan **must**[33] give a copy of the revised IDP to the child, child's parent or young person, and if the local authority looks after the child, the independent reviewing officer.

25.42. If the conclusion of the review is that the IDP should not be revised, the body maintaining the plan **must**[34] 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.

25.43. If the conclusion of the review is 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, the specific provisions on ceasing to maintain an IDP will apply. See Chapter 29 for details about this[35]. These include notifying the child, their parent or the young person, and in the case of a looked after child, their independent reviewing officer of this decision.

25.44. The timescale requirements for doing these things (namely, giving a copy of a revised IDP or notification of one of these decisions) are set out above.

25.45. Where a maintained 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. Either during or after the review, the school or FEI **may**[36] request the local authority to take over responsibility for the IDP, though whilst it is still maintaining the IDP, the school or FEI remains subject to the duty to review it either (as the case may be) before the end of the review period or within the timescale for completing a review following a request to it. Chapter 26 deals with requests to local authorities to take over responsibility for IDPs.

25.46. Following a review, the school, FEI or local authority **should** also consider whether the IDP (whether or not revised), or parts of it, should be given to anyone else (see Chapter 1 for more information on data protection).

25.47. Following a review, when a maintained school, FEI or local authority notifies a child, the child's parent or a young person of its decision not to revise an IDP or gives a copy of a revised IDP to a child, the child's parent or a young person, the school, FEI or local authority **must**[37] also give:

[33] Sections 23(11) and 24(10) of the Act.
[34] Sections 23(10) and 24(9) of the Act.
[35] There are specific requirements relating to ceasing to maintain IDPs for these reasons in sections 31 – 33 of the Act.
[36] Section 28 of the Act.
[37] Requirement imposed by the Code.

(a) the proposed date for starting the next review;
(b) contact details for the school, FEI or local authority, as the case may be;
(c) information about how to access the responsible local authority's arrangements for providing people with information and advice about ALN and the ALN system[38];
(d) details of the responsible local authority's arrangements for the avoidance and resolution of disagreements[39] and its independent advocacy services;[40]
(e) in the case of an IDP maintained by a school, information about the rights to request that the responsible local authority reconsiders the IDP and takes over responsibility for maintaining it[41] and contact details for the responsible local authority;
(f) but if the child is in the area of a local authority in England, instead of the information referred to in sub-paragraph (e), information about the right to request the local authority that maintains the school to reconsider the IDP[42] and contact details for that local authority;
(g) in the case of an IDP maintained by an FEI, information about the right to request that the responsible local authority takes over responsibility for maintaining it[43] and contact details for the responsible local authority (this is not required if the young person is in the area of a local authority in England as there is no responsible local authority for the purposes of that right);
(h) in the case of an IDP maintained by an FEI or local authority, information about the right to appeal to the Tribunal about particular aspects of the IDP.[44]

25.48. For these purposes, in the case of a looked after child, the responsible local authority is the local authority that looks after the child and not (if a different local authority) the one in whose area the child is.

[38] Under section 9 of the Act.
[39] Under section 68 of the Act.
[40] Under section 69 of the Act.
[41] Under sections 27 and 28 of the Act respectively. See Chapter 26.
[42] Under sections 27 and 87 of the Act.
[43] Under section 28 of the Act.
[44] Under section 70 of the Act. The decision is appealable to the Tribunal - see Chapter 33.

Chapter 26: Local authority reconsiderations and taking over responsibility for IDPs

Introduction

26.1. Where a child, the child's parent or a young person is dissatisfied with the decision of a maintained school 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. Alternatively or additionally where the disagreement is not resolved, children, their parents, and young people **may**[1] request that the responsible local authority reconsiders the school's decision. While there are no rights of appeal to the Tribunal in respect of decisions about ALN made by a school, a local authority's decision in reconsidering a school's decision on ALN or an IDP the school maintains can be appealed. These provisions apply with a few modifications where the pupil concerned is in the area of a local authority in England.

26.2. At the request of a school, FEI, child, child's parent or young person or when reconsidering an IDP maintained by a school, a local authority can decide to 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 appealable to the Tribunal. This only applies where the child or young person is in the area of a local authority in Wales.

26.3. A school's decision that a pupil no longer has ALN (which may lead to the IDP ceasing to be maintained) can also be referred to the local authority for reconsideration and the local authority's decision, if it is that the IDP should cease to be maintained, can be appealed to the Tribunal. This matter is dealt with in Chapter 29.

A local authority's reconsideration of a maintained school's decision about ALN

26.4. Where a maintained school in Wales has made a decision[2] about whether one of its registered pupils has ALN, or has refused to make such a decision, the pupil (a child or young person) or, in the case of a child, the child's parent, **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 that maintains the school, reconsiders the matter.

[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.

26.5. This provides children, their parents and young people with a means of challenging the school's decision or failure to make a decision.

26.6. If a local authority receives such a request for reconsideration, it **must**[4] decide whether the child or young person has ALN, unless any of the following circumstances apply:

(a) the local authority has previously reconsidered the matter and is satisfied that the child or young person's needs have not changed materially since that decision and that there is no new information which materially affects that decision;
(b) the request relates to a child who has become looked after by a local authority[5] (except where that child is in the area of a local authority in England);
(c) the request relates to a child or young person who has become subject to a detention order.[6]

26.7. 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.

26.8. See Chapters 12 and 15 for guidance and requirements in relation to a local authority deciding whether, respectively, a child or young person, who is a registered pupil at a maintained school has ALN. This includes such decisions following a request for reconsideration of the school's decision or refusal to make such a decision. This section of this chapter should be read in conjunction with the relevant parts of those chapters, as the relevant requirements in those chapters apply equally in reconsideration decisions. As set out in those chapters, in reconsideration cases, the relevant period in the timescale requirements for giving a notification of a decision that the pupil does not have ALN or for giving a copy of an IDP (whether prepared by the local authority itself or the school following a direction to it by the local authority), is 7 weeks from the local authority receiving the request for reconsideration.[8]

26.9. Where a local authority does not make a decision because of the exception in paragraph 26.6(a) (it has previously reconsidered the matter 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** notify the child or young person and, in the case of a child, their parent of this; and **should** provide them with information and advice about ALN and the ALN system (including rights of appeal) if it has not previously or recently done so.

[4] Sections 26(2), 29, 44 and 87(2) of the Act and section 562 of the Education Act 1996.
[5] See Chapter 14 for duties in relation to looked after children.
[6] See Chapter 19 for information about children and young people subject to a detention order.
[7] Section 26(3) of the Act.
[8] See those chapters for the detail of the timescale requirements, including the exception. See Chapter 1 for more information on how timescale requirements are to be interpreted.

26.10. Once made, the local authority's decision replaces the school's decision and is appealable to the Tribunal.[9] This 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 ALN.[10] See Chapters 12 and 15 for the consequences of the decision.

A local authority's reconsideration of a maintained school IDP

26.11. Where a school maintains an IDP for a pupil, the pupil (a child or young person) or, in the case of a child, the child's parent **may**[11] request that the responsible local authority, or in the case of a pupil who is in the area of a local authority in England, the local authority that maintains the school, reconsiders the IDP with a view to it being revised. The local authority **must**[12] then reconsider the IDP and decide whether or not to revise it, unless any of the following circumstances apply:

(a) the local authority has previously reconsidered the IDP and is satisfied that the pupil's needs have not changed materially since that decision and that there is no new information which materially affects that decision;
(b) the request relates to a child who has become looked after by a local authority[13] (except where that child is in the area of a local authority in England);
(c) the pupil has become subject to a detention order.[14]

26.12. This provides children, their parents and young people with a means of challenging the content of an IDP maintained by the school.

26.13. Where such a request is made, the local authority **must**[15] inform the school and invite representations from it before the local authority decides whether to revise the IDP.

26.14. The local authority **must**[16] 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**[17] specify in the plan that it should be provided in Welsh (unless this is already provided for in the plan).

26.15. As described in Chapter 4, there is a general duty to involve children, their parents and young people in decisions that relate to an IDP. See Chapter 2 for information on the meaning of ALN and ALP; Chapter 20 for information

[9] Sections 26(5) and 70 of the Act.
[10] Section 26(4) of the Act.
[11] Sections 27(1) and 87(2) of the Act.
[12] Sections 27(2), 29, 44 and 87(2) of the Act and section 562 of the Education Act 1996.
[13] Where a child with an IDP becomes looked after by a local authority, that local authority has a duty to maintain the IDP: section 35(9)-(10) of the Act and see Chapters 14 and 28.
[14] See Chapter 19 for information about children and young people subject to a detention order.
[15] Section 27(3) of the Act.
[16] Section 14(5) of the Act.
[17] Section 14(5) of the Act.

on identifying ALN and deciding upon the ALP required; Chapter 23 for information on preparing an IDP and its contents (which is also relevant to reviewing an IDP); and Chapter 22 for further information on meetings to review or revise IDPs.

26.16. If the local authority decides not to revise the IDP, it **must**[18] 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 notification to the school.

26.17. If the local authority decides that the IDP should be revised, it **must**[19] prepare a revised IDP and either:

(a) direct the school to maintain it, or,
(b) take over responsibility for maintaining it (see below for more on a local authority taking over responsibility for an IDP).

26.18. See paragraphs 12.85 – 12.89 and 15.90 to 15.94 for more information (including limitations) on a local authority directing a maintained school to maintain an IDP it has revised.

26.19. If the local authority revises the IDP, it **must**[20] give a copy of the revised plan to the pupil, if the pupil is a child, their parent, and the school.

26.20. The local authority **must**[21] reconsider the IDP, make its decision and give either the notification referred to in paragraph 26.16 (if it decides not to revise the IDP) or a copy of the revised IDP (if it decides to revise the IDP) promptly and in any event before the end of the period of 7 weeks from receiving the request for reconsideration. The local authority need not comply with the requirement to do those things before the end of that 7 week period if it is impractical to do so due to circumstances beyond its control.[22]

26.21. When the local authority gives either the notification of its decision not to revise the IDP, or a copy of the revised IDP, to the pupil and, if the pupil is a child, the child's parent, it **must**[23] also give:

(a) 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[24];
(c) details of the local authority's arrangements for the avoidance and resolution of disagreements[25] and its independent advocacy services;[26]

[18] Section 27(4) and (5) of the Act.
[19] Sections 27(6) and 28(6) of the Act.
[20] Sections 23(11) and 27(7) of the Act.
[21] Requirement (which is subject to the specified exception) imposed by the Code.
[22] See Chapter 1 for more information on how timescales in the Code are to be interpreted.
[23] Requirement imposed by the Code.
[24] Under section 9 of the Act.
[25] Under section 68 of the Act.
[26] Under section 69 of the Act.

(d) information about the rights to appeal to the Tribunal about particular aspects of the IDP.[27]

A local authority taking over responsibility for an IDP maintained by a maintained school or FEI

26.22. A maintained school, an FEI, a child, the child's parent or a young person **may**[28] 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 England.[29]

26.23. 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.

26.24. 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 which 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).

26.25. Where a school or FEI has requested that the local authority take over responsibility for the IDP, it **should** send a copy of the IDP promptly to the local authority (provided that doing so, and how it does it, is in compliance with data protection law), so that it is able to consider the request. In any case, if the local authority does not have a copy of the IDP, it **may**[30] request it from the school or FEI along with any other information or help it might require to consider the request (see Chapter 21 which deals with the duty on relevant persons to comply with a local authority's request for information or other help).

26.26. Following such a request, the responsible local authority **must**[31] decide whether it should take over responsibility for a child or young person's IDP unless any of the following circumstances apply:

(a) the local authority has previously made such a decision in relation to the child or young person's IDP and is satisfied that the child's or young person's needs have not changed materially since that

[27] Under section 70 of the Act. Chapter 33 deals with appeals.
[28] Section 28(1) of the Act.
[29] Section 28(1) of the Act: requests may only be made to the responsible local authority and this is not modified by section 87.
[30] Under section 65 of the Act.
[31] Sections 28(3), 29 and 44 of the Act and section 562 of the Education Act 1996.

previous decision and that there is no new information that would materially affect that decision;

(b) the request relates to a child who has become looked after by a local authority[32];

(c) the child or young person has become subject to a detention order.[33]

26.27. Before taking the decision, the local authority **must**[34]:

(a) inform the child or young person and, in the case of a child, their parent, of the request and invite representations (where the school or FEI has made the request);

(b) inform the school or FEI of the request and invite representations (where the request is from a child, child's parent or young person).

26.28. A local authority **may**[35] also decide to take over responsibility for maintaining a school maintained IDP if, when reconsidering an IDP maintained by a school, it determines that the IDP should be revised.

26.29. Where the local authority decides the matter following a request, or decides to take over responsibility when reconsidering and revising a plan maintained by a school, the authority **must**[36] notify the child or young person, in the case of a child, the child's parent and (as the case may be) the school or FEI of the decision and the reasons for it. Where the local authority decides the matter following a request that it take over responsibility,[37] the notification to the child or young person, and in the case of a child, the child's parent **should** also give:

(a) 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[38];

(c) details of the local authority's arrangements for the avoidance and resolution of disagreements[39] and its independent advocacy services;[40]

(d) where the decision was not to take over responsibility for the plan, information about the right to appeal that decision to the Tribunal.[41]

26.30. The local authority **should** act promptly to decide whether it should take over responsibility for maintaining the IDP and to give the notification of its

[32] Where a child with an IDP becomes looked after by a local authority, that local authority has a duty to maintain the IDP: section 35(9)-(10) of the Act and see Chapters 14 and 28.
[33] See Chapter 19 for information about children and young people subject to a detention order.
[34] Section 28(4) and (5).
[35] Section 28(6) of the Act.
[36] Section 28(7) of the Act.
[37] See above for the requirement to give similar information where the decision to take over responsibility arises out of a reconsideration of the IDP.
[38] Under section 9 of the Act.
[39] Under section 68 of the Act.
[40] Under section 69 of the Act.
[41] Under section 70 of the Act. Chapter 33 deals with appeals.

decision. In any event, it **should** do this before the end of the period of 7 weeks from receiving the request to take over responsibility for the IDP unless it is unable to do so before the end of that period due to circumstances beyond its control.[42]

26.31. If the local authority decides to take over responsibility for maintaining the IDP, from the date on which the notification referred to in paragraph 26.27 is given, the school or FEI is no longer required to maintain it and the local authority **must**[43] maintain it. Chapters 12, 15 and 16 deal with a local authority's duty to maintain an IDP for a registered pupil at a maintained school and a student enrolled at an FEI.

26.32. If the local authority decides to take over responsibility, the school or FEI **should** consider what, if any, further information to give the local authority which is necessary for it to exercise its functions under the ALN system, including the duty to maintain the IDP. The school or FEI will need to comply with data protection law in providing (including in how it provides) any information to the local authority.

[42] The day on which the request is received does not count towards the 7 week period and if the last day of that period is not a working day, then it should be extended to the next working day. The guidance about timescale requirements imposed by the Code in Chapter 1 is also relevant to this statutory guidance.
[43] Section 28(8) of the Act.

Chapter 27: Planning for and supporting transition

Introduction

27.1. This chapter focusses on transitions for children and young people with ALN who are moving into, between and out of educational settings. The chapter sets out general principles and good practice on planning for transitions and highlights the additional support some learners with ALN may require to overcome common issues related to transitions. Every child and young person will experience transitions in different ways, and any plans made for additional support need to be developed around their individual needs.

27.2. The chapter ought to be read in conjunction with the guidance in:

- Chapter 22 on conducting IDP meetings;
- Chapter 23 on the content of an IDP which contains a specific section on transitions;
- Chapter 25 on the review and revision of IDPs;
- Chapter 14 for looked after children.

27.3. There is guidance available on transitions within other services relevant to some learners with ALN which may help inform a more holistic approach to transition planning. These include:

- 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 Programme[1];
- information on making the transition from children's to adult health care services can be found in NICE guidance[2];
- information on supporting transitions for children and young people who are looked after by the local authority can be found in Welsh Government guidance[3].

Aims of transition planning

27.4. All children and young people will go through some transitions during the course of their education and training. Planning ahead can help deliver a smooth transition which is 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,

[1] Together for Children and Young People: good transition guidance. A seamless 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

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.

27.5. Children and young people with ALN may find transitions more challenging than their peers do and consequently, may need additional support to ensure their education or training, including their ALP, is not adversely effected by the transition.

27.6. Transition planning is usually most effective when a person centred practice approach is adopted, allowing the child, the child's parent, or young person to voice any concerns relating to their next transition. Discussing the likely changes to the child or young person's education or training can help prepare the learner for transition and highlight what additional support may be required. Some meetings that discuss transition planning will benefit from involving other partners that can help the child or young person understand how transitions will work in practice and what additional support is available to them. Any additional support identified for transitions can be documented in the child or young person's IDP to enable action to be taken at the relevant time.

27.7. This approach mirrors the arrangements for preparing and reviewing an IDP. Combining transition planning with IDP reviews can therefore be an efficient and effective way of using resources to support the child or young person as they approach a period of transition.

27.8. The aim of transition planning is to prepare the child or young person for a significant change in their educational journey. Identifying the changes between settings can help consider what arrangements may be required to ensure the transition is successful. Good transition planning can ease the anxiety caused by unfamiliar environments and help bridge any gaps between settings in terms of the support available to children and young people.

Different types of transition

27.9. Transition points in education include moves into, between and out of pre-school settings; primary school; secondary school; post-16 education; and special and mainstream education settings.

27.10. Transitions into and out of specific phases of education may also benefit from further planning. This may include children and young people preparing to make the transition between key stages, or from education and training to independent living.

27.11. Some children and young people may experience other transition points, such as transition to an education setting from detention in relevant youth

accommodation or from detention in a hospital under the Mental Health Act 1983; from an education setting into relevant youth accommodation or a hospital; or between relevant youth accommodation places or hospitals.

27.12. In some cases, a transition to a new setting will also involve transferring an IDP to another person (a school, FEI or local authority). For example, a learner could transition from a maintained school to an FEI, or move from one local authority's area to another. In such cases, responsibility for maintaining their IDP may transfer at the same time as the child or young person transitions. (See Chapter 28 for more information on transfer of responsibility for an IDP).

Good practice

27.13. Involving the child, the child's parent or young person in meetings to discuss transitions can be an effective way to take their views into account and plan around their needs. Additionally, research[4] has shown that using a person centred approach to transition planning helps improve the experience of children, their families and young people by reducing duplication such as providing information to numerous services, or attending numerous reviews. Additionally, having a single person to co-ordinate transition planning, including organising multi-agency meetings or sharing information across organisations as necessary, can ease the burden on children, young people and their families.

27.14. Early and co-ordinated transition planning will support children and young people with ALN to make positive transitions. It is good practice to view transition planning as an ongoing process rather than a single event, and to tailor it to suit the child or young person's individual needs.

27.15. By identifying potential interruptions to the child or young person's education or training, good transition planning can help ensure continuity throughout the transition.

27.16. The IDP can play a key role in planning and supporting children and young people with ALN through their transitions. Whilst discussions on known transitions as part of an IDP review may lead to revising the ALP specified in the IDP or describing a place at a particular school or other institution, additional support (which is not ALP) to help a smooth transition **should** be recorded separately in section 3C of the IDP (see Chapter 23 for the content of an IDP and Chapter 24 for the content of an IDP for a LAC). IDP reviews can therefore help guide transition planning.

27.17. Whilst this chapter discusses some key transition points in a child or young person's education pathway, it is important to consider transition planning in a holistic way as part of a child and young person's natural development.

[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/costs-and-benefits-transition-key-working-analysis-five-pilot-projects-0

Some transition planning meetings will benefit from a multi-agency approach that takes account of other relevant services for individuals, such as health, social care, mental health, housing or other support services. A multi-agency approach can help deliver an integrated support package for children and young people with ALN.

Planning for transition

27.18. Different transition points may require different approaches depending on factors such as the child or young person's specific needs or the nature of the new setting they are transitioning to. Considering how far in advance transition planning should begin for each new setting may therefore require an individualised approach.

27.19. When to arrange a discussion on transition planning depends on a number of factors, such as the level of support the child or young person requires, or the significance of a transition to the individual. In some cases, the final IDP review before an expected transition may be sufficient to put in place some additional supporting arrangements for the child or young person.

27.20. It is expected planning for a known transition would usually coincide with when an IDP is reviewed. This approach helps ensure that transition planning becomes a regular process in which children and young people become familiar with and feel comfortable discussing how transition may affect them.

27.21. If the transition is due to take place before the next IDP review, it may be appropriate to move forward the IDP review to enable any additional support to be put in place ahead of transition.

27.22. However, in other cases, an IDP review which takes place shortly after a transition to a new setting gives the opportunity for the child, a child's parent, or the young person to discuss their experience and whether any revisions need to be made to their IDP in light of it. This may be particularly useful when a young person with ALN has recently started at an FEI.

27.23. Transition planning is not confined to IDP reviews and broader transition planning can take place outside a formal review. This may be helpful when discussing and identifying wider support to enable the learner to make an effective transition. If, during the course of a discussion on transition planning outside of a IDP review, it becomes clear that the IDP requires a revision, it may be necessary to review the IDP as the description of ALP cannot be revised without a review. See Chapter 25 for information on the review and revision of IDPs.

27.24. There will however be some transition points that require far longer to plan than others. In some cases, such as the move to further education or independent living, successful planning may need to start at least two years in advance of the transition. In these situations, the support of careers

advisers may be particularly valuable for the child or young person making the transition.

27.25. Some transitions may be unexpected. As such, planning for a specific transition may not always be possible. However, IDPs **may**[5] be reviewed at any time, and in cases of an unexpected transition, an IDP review could be appropriate to consider whether the ALP remains appropriate in the new setting.

27.26. Planning for transition provides an opportunity for children and young people to raise any concerns they may have about the new setting. It also provides an opportunity for parents to engage with professionals and discuss how best their child can be supported to make a smooth transition into the education setting and to ensure their child is supported to fully take part in nursery or school activities.

Who is involved in transition planning

27.27. If a school, FEI or local authority intends to plan for a forthcoming transition when preparing or reviewing an IDP, the school, FEI or local authority **should** involve all those agencies and professionals they consider necessary for effective transition planning. This may be particularly relevant when planning for a transition into a new setting. In particular, the involvement of professionals from the new setting (where known), can provide expert advice on the new setting, including the ALP that the child or young person might need at the new setting and arrangements to help ensure a smooth transition. Chapter 22 (Meetings about ALN and IDPs) addresses preparing for meetings, involving other professionals and agencies in them, including where there is to be a focus on transition (see in particular the guidance at paragraph 22.31).

Recording transition arrangements

27.28. Section 3C of the IDP allows arrangements for transitions to be recorded, see Chapter 23 on the content of an IDP, Chapter 24 on the content of an IDP for LAC and Annex A for the IDP template.

Supporting transition

27.29. This section discusses supporting children and young people making transitions into, between and out of education settings. Much of the guidance and underlying principles are relevant for supporting children and young people through any transition, however certain aspects relate more to specific transition points.

[5] Sections 23(9) and 24(8) of the Act.

Transition into a learner's first education setting

27.30. In most cases, the transition into a child's first education setting would be from their home environment. For many children with ALN, the general approach taken by the setting to support them make the transition into an education setting for the first time would be sufficient to reduce any concerns and address any issues related to starting education. Some children with ALN may, however, require additional time and support to make the transition into an education setting for the first time. Also, in some cases, the learner may be an older child or a young person. The approach taken to support the child or young person through this first transition ought to depend on the individual's circumstances, level of need and the type of setting as well as taking into account their views, wishes and feelings.

27.31. For example, when supporting a child who is entering an education setting for the first time, it may be helpful to arrange for the child and their parent to visit the setting to provide an opportunity to consider, alongside teaching staff, 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. This would also provide the child with an opportunity to experience the classroom, meet the teacher and other staff and familiarise themselves with the new environment.

27.32. Visits to the child's home by someone from the setting, such as a teacher or ALNCo, 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 views, wishes and feelings of the child and of their parents;
- gain a fuller picture of the child's stage of learning and development;
- gain insights into how the setting may need to adapt arrangements to match or mirror aspects of the home.

27.33. Photos can help create familiarity and act as prompts for discussion with the child. The photos, kept at the education setting, could be of the child's family, pets, or anything else which helps to calm and comfort the child.

27.34. Where parents have concerns about the setting's ability to provide a suitable learning environment for their child, discussing with the parent how the setting can meet the needs of the child may be useful in reducing parents' concerns. It can also help the setting better understand any adjustments which may facilitate the child's inclusion in the full range of school activities.

Transition into secondary school

27.35. For children transitioning from primary to secondary school, specific issues may include:

- travelling independently to school;
- becoming familiar with the timetable and the books and materials required for specific classes;
- finding the way around the school;
- carrying equipment around all day and not losing it;
- learning teachers' names and understanding their expectations and styles of teaching;
- becoming familiar with new subject areas;
- independently organising work and managing own timetable;
- less supervision at break and at lunchtimes;
- understanding school rules;
- meeting children who may not understand their ALN;
- coping with activities such as changing into and out of PE kit.

27.36. Discussing these issues with an ALNCo or teacher can help inform what additional support may be required for an effective transition. This might include:

- opportunities for the child and their parent to meet 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 the school and the timetable;
- arranging a phased entry into the new school;
- putting in place a buddy system.

27.37. Schools may also consider organising specific transition workshops for children with ALN. 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 within settings

27.38. Children and young people will also make a number of transitions within education settings. For example, moving up to the next school year – such as moving from Reception to Year 1; or moving through phases – such as moving from Foundation Phase to Key Stage 2.

27.39. 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.

27.40. To ensure children and young people feel comfortable with these changes within settings, it may be useful for some children and young people to spend additional time in their new classroom or to visit the new classroom with their current teacher or support worker. They can also use this time to take photographs of the new classroom to use at home to help familiarise themselves and to feel more confident.

Careers advice

27.41. To support children 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.

27.42. For most learners with ALN, the careers advice they receive as part of their compulsory education would 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. Career advisers may need to be involved in supporting those children and young people with ALN who would benefit from enhanced services.

27.43. Careers advisers provide careers information, advice and guidance to children and young people on 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.

27.44. For learners in year 9, 10 or 11, the school or local authority undertaking a review of their IDP which is to consider transition from compulsory education may wish to involve a careers adviser in the review to discuss career options.

Transition to further education

27.45. Providing additional support for young people with ALN moving into further education may require similar approaches to other transitions. Opportunities to become familiar with a new setting, meeting teaching staff or taking part in taster sessions can help prepare young people with their transition to an FEI.

27.46. There may be some circumstances when an FEI has not been involved in the transition process before a young person enrols. An FEI **should** provide young people at the time they are enrolling as students at the FEI, with an opportunity to raise any ALN they may have and state whether they have or have had an IDP. This provides an opportunity for discussion between the young person and the FEI about their needs and the support that may be required and to discuss any issues about the young person's consent.[6] If the young person does not have an IDP, the FEI may be under a duty to decide upon ALN.[7] If the young person has an IDP, it is important that the FEI knows this: the FEI may be required to maintain it;[8] or if it is maintained by a local authority, the FEI is under a duty to help the local authority secure the ALP.[9] If the FEI is required to maintain the IDP, it is an opportunity for the FEI to consider whether it requires a review.

27.47. A review meeting in respect of an IDP maintained by a local authority that discusses a child or young person's planned transition into an FEI with representatives from the FEI, provides a good opportunity to also discuss which body should be responsible for maintaining the IDP once the young person enrols at the FEI. This should support a smooth transition for the young person and a timely transfer of their IDP. See Chapter 28 for information on a local authority transferring responsibility for an IDP to an FEI.

Transitioning from education

27.48. When a young person with ALN is leaving education or training and preparing for adulthood, transition planning can help with the emotional and practical challenges ahead. An important discussion as part of their final transition plan is around what happens when their IDP ceases, and what support is available to them in their next stage in life. Advice about the support provided by other agencies can help young people as they leave education and, with the right support, the majority of young people with ALN can reach their potential and live independent, fulfilled lives.

[6] See Chapter 4.
[7] Under section 11 of the Act. See Chapter 16.
[8] Section 35(4) – (6) of the Act. See Chapter 28.
[9] Section 47(4) – (5) of the Act. See Chapter 16.

Chapter 28: Transfer of responsibility for maintaining an IDP

Introduction

28.1. This chapter addresses:

i. situations in which responsibility for maintaining an IDP automatically transfers from one body to another;
ii. how responsibility can be transferred from a local authority to a FEI in appropriate cases;
iii. the consequences of such transfers;
iv. situations where a body has a duty to prepare an IDP for a child or young person who recently had one but responsibility for it did not transfer.

28.2. A few other situations involve the transfer of responsibility for an IDP and these are dealt with elsewhere in the Code as follows:

- a transfer of responsibility from a local authority to a maintained school following the local authority directing the school to maintain it – see Chapters 12 and 15;
- a local authority's decision to take over responsibility for a plan maintained by a school or FEI, following a request that it consider doing so, in the course of reconsidering an IDP maintained by a school, or following an order of the Tribunal – see Chapters 26 and 33;
- in some detention situations, including detention under Part 3 of the Mental Health Act 1983 – see Chapter 19.

Transfer of the duty to maintain an IDP

28.3. 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 it for them. To ensure that the IDP usually moves with the child and young person as they progress between educational stages and to ensure continuity in other situations, the Act provides for the duty to maintain an IDP to transfer in the following cases:

i. an in-year move between maintained schools;
ii. a move into a maintained school at the start of an academic year, having been in another one in the previous year;
iii. a move into an FEI at the start of an academic year, having been at a maintained school in the previous year;
iv. a child or young person becomes dual registered
v. moving from one local authority area to another;
vi. a child becomes looked after;
vii. a child or young person ceases to be looked after;

viii. from a local authority to an FEI by agreement or following determination by the Welsh Ministers.

28.4. The following paragraphs set out the exact circumstances for each of these cases which give rise to responsibility for maintaining an IDP transferring. In most instances, the transfer involves one body (a school, FEI or local authority) ceasing to be responsible for maintaining the IDP and another school, FEI or local authority becoming responsible for doing so instead. However, where a child becomes or ceases to be looked after, depending upon the circumstances, the same local authority may continue to be responsible for maintaining the IDP.

In-year move between maintained schools

28.5. Where a child or young person becomes a registered pupil at a maintained school, that school **must**[1] maintain the child or young person's IDP if:

(a) immediately before becoming registered at the school, another maintained school was maintaining the IDP, and
(b) it is not intended that the child or young person will continue to be provided with education or training at that other school (where this is intended, it is a dual registration case, for which see paragraph 28.11).

28.6. This is intended to capture a child or young person moving between maintained schools during the course of an academic year where there is no gap in the child or young person's registration.

Move into maintained school at start of academic year, having been in maintained school in previous year

28.7. Where a child or young person becomes a registered pupil at a maintained school before the end of September in an academic year, that school **must**[2] maintain the child or young person's IDP if:

(a) the child or young person was a registered pupil at another maintained school during the previous academic year, and
(b) that other school was maintaining the IDP on the last day of education or training provided for the child or young person at that school.

28.8. This is intended to capture a child or young person moving to a new maintained school for the next academic year.

[1] Section 35(1) and (3) of the Act.
[2] Section 35(2) and (3) of the Act.

Start of academic year transfers from a school to an FEI

28.9. Where a young person becomes enrolled as a student at an FEI before the end of September in an academic year[3], the FEI **must**[4] maintain the young person's IDP if:

(a) the young person was a registered pupil at a maintained school during the previous academic year, and
(b) that school was maintaining an IDP for the young person on the last day of education or training provided for them at the school.

28.10. This is intended to capture a young person moving from a maintained school to an FEI at the start of an academic year.

Transfer of an IDP in dual registration cases

28.11. Where-

(a) a school or FEI is maintaining an IDP for a child or young person, and
(b) the child or young person then becomes dual registered,

then the local authority responsible for the child or young person **must**[5] maintain the IDP. It **must**[6] do so from the day that it is informed by a maintained school or FEI of the child or young person's dual registration and their IDP or it otherwise becomes aware of those circumstances. Any maintained school or FEI (that is, if in Wales) at which the dual registered child or young person is a registered pupil or enrolled student (whether or not it was the one maintaining the IDP), if it is aware of those circumstances, **must**[7] inform the local authority responsible for the child or young person of those circumstances.

28.12. This does not apply if there is not a local authority responsible for the child or young person, which would be the case if the child or young person were in the area of a local authority in England.[8] In such a case, the school or FEI (that is, the one in Wales) maintaining the IDP **must**[9] continue to maintain it, even if the child or young person becomes registered or enrolled at another school or institution.

Moving from one local authority area to another

[3] For these transfers, "academic year" means any period from 1 August to 31 July: section 35(5) of the Act.
[4] Section 35(4) and (6) of the Act.
[5] Section 30(4) and (5) of the Act.
[6] Section 30(5) of the Act.
[7] Section 30(6) of the Act.
[8] Section 30(3)(d) of the Act.
[9] Under section 12 of the Act unless or until the duty to maintain it ceases (see Chapter 29).

28.13. Where a child (other than a looked after one) or young person becomes the responsibility of a local authority, that local authority **must**[10] maintain the child or young person's IDP if, immediately before the child or young person became its responsibility, another local authority was maintaining the IDP.

28.14. This captures the situation of a child (who is not looked after) or young person with an IDP maintained by their local authority, moving their residence from that local authority's area into the area of another local authority (see Chapter 1 for the meaning of local authority responsibility for a child or young person).

Transfers where a child becomes looked after

28.15. 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**[11] maintain the IDP.

28.16. If, before becoming looked after, the IDP was being maintained by the local authority that is looking after the child, then there is no change in the body responsible for maintaining the IDP. That local authority continues to be responsible for it, but on a different basis: the provisions relevant to maintaining an IDP for a looked after child apply (see Chapter 14 for more information).

Transfers where a child ceases to be looked after

28.17. Where:

(a) a child or young person ceases to be a looked after child,
(b) a local authority is responsible for the child or young person, and
(c) immediately before ceasing to be looked after, the local authority that was looking after the child or young person was maintaining an IDP for them,

the local authority that is responsible for the child or young person **must**[12] maintain the IDP.

28.18. This includes the situation where the child ceases to be looked after because of becoming a young person (when they cease to be of compulsory school age) even if the person remains looked after for the purposes of the Social Services and Well-being (Wales) Act 2014. Where the local authority responsible for the child or young person when they cease to be looked after is also the local authority that was looking after the child, then there is no

[10] Section 35(7) and (8) of the Act.
[11] Section 35(9) and (10) of the Act.
[12] Section 35(11) to (13) of the Act.

transfer of responsibility between local authorities. It is just the basis upon which the IDP is maintained that changes: the specific provisions of the Act and Code on maintaining IDPs for looked after children will no longer apply and provisions relevant to a local authority maintaining an IDP for a child or young person (as the case may be) apply instead.

28.19. In other cases, where the local authority responsible for the child or young person is different to that which was looking after the child, there is a transfer between local authorities of responsibility for maintaining the IDP and the basis upon which it is maintained also changes (the provisions relevant to a local authority maintaining an IDP for a child or young person apply instead of those relevant to looked after children). An example of this could be where a looked after child is placed on a long term basis in the area of another local authority and, upon becoming a young person, remains in that placement and looked after for social services purposes.

28.20. Where a local authority is responsible for maintaining an IDP following a child or young person ceasing to be looked after, if the child or young person is a registered pupil at a maintained school or enrolled as a student at an FEI, the local authority **should** consider whether it on the one hand, or, on the other, the school or FEI (as the case may be) is better placed to maintain the plan.

Transfers from a local authority to an FEI

28.21. There are a range of circumstances where a local authority may come to be maintaining an IDP for a young person enrolled as a student at an FEI where it would be more appropriate for the FEI to maintain it. Examples could include where a child ceases to be looked after upon becoming a young person or a young person is released from detention in relevant youth accommodation or a young person ceases to be dual registered. In all these instances, a local authority is automatically responsible for maintaining the young person's plan irrespective of the level of needs. However, in some of these cases it might be more appropriate for the FEI at which the young person is enrolled to maintain the IDP instead.

28.22. This section deals with how responsibility for a young person's IDP can be transferred from a local authority to the FEI at which the young person is an enrolled student. (See Chapter 16 for more information about duties on FEIs and local authorities in relation to young people at an FEI.)

28.23. 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**[13] 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 and the local authority **must**[14] have regard to the views, wishes and feelings of the young

[13] Section 36(1) and (2) of the Act.
[14] Section 6 of the Act. See Chapter 4.

person. The request **must**[15] be made in writing and be accompanied by a copy of the IDP unless the FEI already has a copy. In most cases, the FEI will be familiar with the young person's IDP, even if the young person has only just enrolled, as it is likely to have been invited to be involved in the young person's IDP review during their final year of compulsory education (see Chapter 27 for information on planning for and supporting transition). The FEI, local authority and young person may even have discussed as part of such a review who should, in principle, maintain the IDP once the young person is enrolled. Therefore, the FEI might be able to respond very quickly to the request. If there is a disagreement as to which of them should maintain the IDP, the FEI and local authority **should** work together with a view to resolving the matter as soon as possible.

28.24. Where an FEI agrees to the request, it **must**[16] inform the local authority in writing of its agreement and 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, the day on which the local authority receives the written agreement to the request.[17]

28.25. If the FEI fails to agree to the request before the end of the period of 20 term time days (that period starts with the day after the FEI receives the request), the local authority **may**[18] refer the matter to the Welsh Ministers, within the following four weeks.[19] The local authority **must**[20] make the referral in writing and at the same time also give the Welsh Ministers a copy of the sections of the IDP containing the description of the ALN and the description of the ALP, together with a copy of any other information in the IDP which the local authority considers is necessary to determine the matter.

28.26. Where a referral has been made to them by a local authority, the Welsh Ministers **must**[21] determine whether the FEI should maintain the IDP. Before making their determination, the Welsh Ministers **must**[22] notify the young person and the governing body of the referral and invite representations.

[15] Regulation 13 of the Additional Learning Needs (Wales) Regulations 2021.
[16] Regulation 12 of the Additional Learning Needs (Wales) Regulations 2021.
[17] Regulation 12 of the Additional Learning Needs (Wales) Regulations 2021. The duty to maintain it is in section 12(4) of the Act.
[18] Section 36(3) of the Act and regulation 14 of the Additional Learning Needs (Wales) Regulations 2021.
[19] If the last day of the 4 week period is not a working day, the period is extended to the next working day (regulation 2(4) of the Additional Learning Needs (Wales) Regulations 2021). A "working day" is any day that is not a Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday in Wales and England under the Banking and Financial Dealings Act 1971.
[20] Regulation 14 of the Additional Learning Needs (Wales) Regulations 2021.
[21] Section 36(4) of the Act.
[22] Regulation 14 of the Additional Learning Needs (Wales) Regulations 2021.

28.27. Once they have made their determination, the Welsh Ministers **must**[23] 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.

28.28. If the Welsh Ministers determine that the FEI should maintain the IDP, the FEI **must**[24] maintain it from:

(a) the day which may be specified in the notification of the determination;

(b) otherwise, the day on which that notification is received by the FEI.

Consequences of transfer

28.29. Where there is a transfer of responsibility for maintaining an IDP from one body ("the old body") to another body ("the new body") in any of the circumstances set out above, the old body **must**[25] give a copy of the IDP to the new body upon becoming aware of the circumstances which give rise to the transfer. Also, where a local authority becomes responsible for maintaining an IDP for a looked after child that was previously being maintained by another body, it **must**[26] give a copy of the plan to the child's independent reviewing officer.

28.30. The new body **must**[27] inform the child or young person, and in the case of a child, their parent, that is has become responsible for maintaining the plan.

28.31. Once the new body is responsible for maintaining the IDP, it is required to maintain it just as if it were maintaining it having prepared it itself. Duties and powers that attach to maintaining an IDP in the particular circumstances apply and guidance in the Code on such matters is also relevant. For example, the new body is required to secure the ALP described in the IDP and to review the IDP before the end of the review period[28], just as the old body would have been required to review it before the end of that period had the transfer not occurred. Similarly, the new body can only cease to maintain the IDP in accordance with the rules on ceasing to maintain an IDP.[29]

28.32. 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 (see Chapter 27 for guidance on dealing with transitions). Where this is the case, at the last review prior to the transition, there ought to have been consideration of what ALP would be needed in the forthcoming year, including following the transition, and this reflected in the IDP. In other transfer cases, the circumstances giving rise to the transfer might not have

[23] Regulation 14 of the Additional Learning Needs (Wales) Regulations 2021.
[24] Regulation 14 of the Additional Learning Needs (Wales) Regulations 2021 and the duty to maintain it is in section 12(4) of the Act.
[25] Regulation 15 of the Additional Learning Needs (Wales) Regulations 2021.
[26] Section 22(3) of the Act.
[27] Section 22(2) of the Act.
[28] See Chapter 25 for information about reviews and review periods, including following a transfer.
[29] See Chapter 29.

been anticipated at the last review and an immediate review might be necessary in light of those circumstances, for example, if the child has moved house and as a result, can no longer attend a school or other institution named in the IDP. In all of the transfer cases dealt with in this chapter, the new body **should** consider whether to conduct an early review of 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 any transition planning). If the relevant review period is due to end shortly, the new body will have to review the IDP anyway as it is subject to the duty to review the IDP before the end of the review period (see Chapter 25 for reviews of IDPs).

Duty to secure a place at a particular school or other institution

28.33. Where-

(a) by virtue of the transfer of an IDP from one local authority to another, the latter local authority is under a duty to secure a place at a particular school or other institution described in the plan in order to meet the child or young person's reasonable needs for ALP[30], 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 school or other 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 the next paragraph.[31]

28.34. Until such time as it is possible to revise the IDP, the local authority responsible for maintaining the IDP **may**[32] arrange board and lodging to enable the child or young person to continue to attend the school or institution named in the IDP. Where board and lodging is arranged on this basis, the local authority **must not**[33] charge the child, child's parent or young person for that provision.

Instances where there is not a transfer of a duty to maintain an IDP, but a child or young person recently had one

28.35. 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

[30] In accordance with section 14(6) or 19(4) of the Act – see Chapter 23 for more detail on this.
[31] Regulation 17 of the Additional Learning Needs (Wales) Regulations 2021.
[32] Regulation 17 of the Additional Learning Needs (Wales) Regulations 2021.
[33] Section 49 of the Act.

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.

28.36. 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 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. Similarly, if a child or young person moves from England to Wales having had an EHC plan whilst living in England, the provisions of the EHC plan can help inform the preparation of any IDP for the child or young person. In these circumstances and any others where a child or young person has recently had an EHC plan, the school, FEI or local authority in deciding whether the child or young person has ALN and preparing any IDP, **should** take into account that EHC plan (and any other related information) where it is available to it.

Chapter 29: Ceasing to maintain an IDP

Introduction

29.1. 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 28 on transfer of responsibility for maintaining 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.

29.2. 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

29.3. 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 school[1] ceases to apply in the following circumstances:

(a) the school decides that the child or young person no longer has ALN and that decision is not successfully challenged[2] (see below for more detail on this);
(b) 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, the young person does not consent to the IDP being maintained[3] (see Chapter 4 for more detail on a young person's consent);
(c) the child or young person ceases to be a registered pupil at the school[4]. In such cases, the duty to maintain a plan might transfer to another body, depending upon the circumstances (see Chapter 28 on transfer of responsibility for maintaining an IDP);
(d) the child or young person becomes dual registered and a local authority is responsible for the pupil. In such cases the duty to maintain the IDP transfers to the local authority[5] (see Chapter 28);

[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.
[5] Section 30(3) and (4) of the Act.

(e) the local authority decides to take over responsibility for the IDP[6] (see Chapter 26 for more information on local authorities taking over responsibility for maintaining an IDP);
(f) the pupil is a child who becomes looked after by a local authority in Wales[7]. In such cases, the duty to maintain the IDP transfers to the authority looking after the child[8] (see Chapter 28 and Chapter 14 for the duties on local authorities in respect of children they look after);
(g) a local authority in England starts to maintain an EHC plan for the child or young person.[9] This would only be in cases where the child or young person is in the area of a local authority in England;
(h) the child or young person becomes subject to a detention order (see Chapter 19 on children and young people subject to detention orders)[10].

The circumstances in which an FEI's duty to maintain an IDP ceases

29.4. 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 IDP[11] ceases to apply in the following circumstances:

(a) the FEI decides that the young person no longer has ALN and that decision is not successfully challenged[12] (see below for more detail on this);
(b) the young person no longer consents to the IDP being maintained[13] (see Chapter 4 for more detail on a young person's consent);
(c) the young person ceases to be an enrolled student at the FEI[14];
(d) the young person becomes dual registered and a local authority is responsible for the young person. In such cases the duty to maintain the IDP transfers to the local authority (see Chapter 28 on transfer of responsibility for maintaining an IDP);[15]
(e) the local authority decides to take over responsibility for the IDP[16] (see Chapter 26 for more information on local authorities taking over responsibility for maintaining an IDP);
(f) a local authority in England starts to maintain an EHC plan for the young person.[17] This would only be in cases where the young person is in the area of a local authority in England;

[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(2)(d) 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.
[16] Section 28(8) of the Act.
[17] Section 12(2)(d) of the Act.

(g) the young person becomes subject to a detention order[18] (see Chapter 19 on children and young people subject to detention orders);
(h) the young person attains the age of 25,[19] in which case the duty to maintain the IDP will cease at the end of the academic year in which the person attains that age[20].

The circumstances in which a local authority's duty to maintain an IDP ceases

29.5. 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 IDP[21] ceases to apply in the following circumstances:

(a) the local authority decides that the child or young person no longer has ALN and that decision has not been successfully challenged[22] (see below for more detail on this);
(b) 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, the young person does not consent to the IDP being maintained[23] (see Chapter 4 for more detail on a young person's consent);
(c) the local authority ceases to be responsible for the child (provided the child is not looked after) or young person[24] that is, if the child or young person ceases to be in the area of the local authority.[25] 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 anther local authority, the duty to maintain the IDP transfers to that other local authority[26] (see Chapter 28 on transfer of responsibility for maintaining an IDP);
(d) 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 person is not in its area).[27] Where another local authority is responsible for the

[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. These matters are explained further in Chapter 1.
[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).

child or young person, the duty to maintain the IDP transfers to that local authority (see Chapter 14 on looked after children and Chapter 28 on transferring of responsibility for maintaining an IDP);

(e) 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 Wales,[28] for example, this could be the case if the child were to be placed with foster parents in England;

(f) in the case of a child or young person who is a registered pupil at a maintained school, the local authority directs the school to maintain the plan[29] (see Chapters 12 and 15 for information on directing maintained schools in this way)

(g) in the case of a young person who is enrolled as a student at an FEI, 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 plan[30] (see Chapter 28);

(h) the child or young person becomes subject to a detention order[31] (see Chapter 19 on children and young people subject to detention orders);

(i) in the case of a young person, the young person attains the age of 25[32], in which case the duty to maintain the IDP will cease at the end of the academic year in which the person attains that age[33];

(j) in the case of a young person who is neither a registered pupil at a maintained school nor enrolled as a student at an FEI, 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 training and that decision has not been successfully challenged[34] (see below for more detail on this).

29.6. 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 child[35] and the child becomes looked after by that local authority, in which case the local

[28] Section 31(4)(b) of the Act.
[29] Sections 12(3) 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) defines an academic year for these purposes as:
(a) in relation to a young person who attends an FEI, a period of 12 months ending on 31 July, and
(b) 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] Sections 31(6)(b) and 33(4) of the Act.
[35] Under section 14 of the Act.

authority **must**[36] continue to maintain the plan, but on the basis that the child is looked after;[37]

(b) the local authority maintains an IDP for a child it looks after[38] 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 after.[40] Where it may be more appropriate for the maintained school or FEI 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 the FEI becomes responsible for it (see Chapters 12, 14, 15 and 28).

Deciding that a child or young person no longer has ALN

29.7. 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 an IDP, they will continue to need one until they leave education or training (although for some, 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 sets out the process by which it can cease to be maintained.

29.8. A decision by a maintained school, FEI or local authority that a child or young person no longer has ALN **should** only be reached as a conclusion of a review of the IDP (see Chapter 25 for information about reviews). Guidance on the definition of ALN and identifying when a child or young person may have ALN is set out in Chapters 2 and 20.

29.9. Before a maintained school, FEI or local authority can take a decision that a child or young person no longer has ALN it **must**[41] notify the child or young person, in the case of a child, the child's parent and in the case of a looked after child, the child's independent reviewing officer, that it proposes to make

[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.
[41] Section 31(7) of the Act.

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 duty[42] to involve and support children, their parents and young people applies). This **should** occur through the normal review process.

Notification of a decision that a child or young person no longer has ALN

29.10. If the maintained school, FEI or local authority has gone on to decide that the child or young person no longer has ALN, it **must**[43] notify the child or young person, in the case of a child, the child's parent and, in the case of a looked after child, the independent reviewing officer, of the decision, and the reasons for it. In the case of a school, the school **must**[44] also notify the child or young person, and in the case of a child, the child's parent of their right to request the local authority to reconsider the matter.[45]

29.11. In addition, the notification to the child and the child's parent, or the young person **must**[46] give:

(a) contact details for the school, FEI or local authority (as the case may be);
(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[47];
(c) details of the responsible local authority's arrangements for the avoidance and resolution of disagreements[48] and its independent advocacy services[49];
(d) in the case of an FEI or local authority decision, information about the right to appeal to the Tribunal against the decision.[50]

29.12. For these purposes, in the case of a looked after child, the responsible local authority is the local authority that looks after the child and not (if a different local authority) the one in whose area the child is.

29.13. To provide reassurance to the child, their parent or the young person, who may be concerned that the IDP is ceasing, the notification **should** also provide, as may be appropriate, information about any on-going support to meet the child or young person's needs (which are not ALN). In the case of decisions made by a school or FEI, this might include on-going support the

[42] Under section 6 of the Act. See Chapter 4.
[43] Section 31(8) of the Act.
[44] Section 31(9) of the Act.
[45] This is the right under section 32 of the Act.
[46] Requirement imposed by the Code.
[47] Under section 9 of the Act.
[48] Under section 68 of the Act.
[49] Under section 69 of the Act.
[50] Under section 70 of the Act. The decision is appealable to the Tribunal – see Chapter 33.

school or FEI will provide through the employment of differentiated teaching strategies or similar.

A local authority's reconsideration of a maintained school's decision to cease to maintain an IDP

29.14. Where a child, their parent or a young person is dissatisfied with a maintained school's decision that the pupil no longer has ALN, it is expected that this dissatisfaction would normally be resolved directly with the school or by recourse to the responsible local authority's arrangements for resolving disagreements.[51]

29.15. Alternatively or additionally, children, their parents, and young people, are able to request that the responsible[52] local authority reconsiders the school's decision[53]. This provides children, their parents and young people with a means of challenging the school's decision.

29.16. A child, their parent or a young person has 4 weeks[54] within which to request the responsible local authority to reconsider the maintained school's decision. The 4 weeks runs from the giving of the notification of the school's decision.[55] Where such a request is made within that period, the local authority **must**[56] decide whether the school should cease to maintain the IDP and **must**[57] notify the child or young person, in the case of a child, the child's parent and (in all cases) the school of the decision and the reasons for it. The local authority **must**[58] make the decision and give the notification promptly.

29.17. Before the local authority makes the decision, it **must**[59] 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. The local authority's duty[60] to involve and support children, their parents and young people applies.

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[51] Under section 68 of the Act.
[52] 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).
[53] Section 32 of the Act.
[54] Regulation 12 of the Additional Learning Needs (Wales) Regulations 2021.
[55] As with other time periods (see Chapter 1), the day on which the notification is given does not count towards the 4 weeks (the 4 weeks begins on the next day) and if the last day of the 4 week period is not a working day, the period is extended to include the next working day: regulations 2(4) and 12(1) of the Additional Learning Needs (Wales) Regulations 2021. Where notifications are given on different days, the 4 week period runs from the later of the days on which a notification is given: regulation 12 of the Additional Learning Needs (Wales) Regulations 2021.
[56] Section 32(2) of the Act.
[57] Section 32(3) of the Act.
[58] Requirement imposed by the Code.
[59] Requirement imposed by the Code.
[60] Under section 6 of the Act. See Chapter 4.

29.18. If the local authority decides that the IDP should be maintained, the school **must**[61] continue to maintain it. If the local authority decides that the IDP should not be maintained, the school **must**[62] cease to maintain the IDP, but this is subject to the limitation on ceasing to maintain a plan set out below.

29.19. Once made, the local authority's decision replaces the school's decision and is appealable to the Tribunal.[63]

29.20. Where the decision is that the school should cease to maintain the IDP, the notification of that decision (referred to in paragraph 29.16) **must**[64] also give:

(a) 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[65];
(c) details of the local authority's arrangements for the avoidance and resolution of disagreements[66] and its independent advocacy services[67];
(d) information about the right to appeal to the Tribunal against the decision.[68]

Deciding that it is no longer necessary to maintain an IDP for a young person

29.21. Where a local authority maintains an IDP for a young person who is neither a registered pupil at a maintained school nor an enrolled student at an FEI, the local authority **may**[69] 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 training.

29.22. A decision that it is no longer necessary to maintain an IDP for a young person **should** only be reached as a conclusion of a review (see Chapter 25 on reviews). The local authority **must**[70] decide the matter in accordance with regulations[71]. See Chapter 17 for further guidance on these regulations, including when it is necessary to continue to maintain an IDP for a young person who is neither a registered pupil at a maintained school nor an enrolled student at an FEI.

[61] Section 32(4) of the Act.
[62] Section 32(5) of the Act.
[63] Section 70 of the Act. Chapter 33 deals with appeals.
[64] Requirement imposed by the Code.
[65] Under section 9 of the Act.
[66] Under section 68 of the Act.
[67] Under section 69 of the Act.
[68] Under section 70 of the Act. See Chapter 33.
[69] Section 31(6)(b).
[70] Section 31(6)(b) of the Act.
[71] See regulations 6 to 9 of and Schedule 1 to the Additional Learning Needs (Wales) Regulations 2021.

29.23. Before a local authority can take a decision that it is no longer necessary to maintain an IDP for a young person, it **must**[72] notify the young person that it proposes to make such a decision. The authority **should** then allow sufficient time for the young person to consider the matter and give their views on it (the authority's duty[73] to involve and support young people applies and the young person should already have been involved in the process of the local authority considering whether it is necessary to continue to maintain the IDP). This **should** occur through the normal review process.

Notification of a decision that IDP no longer necessary for a young person

29.24. If the local authority has gone on to decide that it is no longer necessary to maintain an IDP for the young person, it **must**[74] notify the young person of the decision, and the reasons for it.

29.25. In addition, the notification to the young person **must**[75] give:

(a) 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[76];
(c) details of the local authority's arrangements for the avoidance and resolution of disagreements[77] and its independent advocacy services[78];
(d) information about the right to appeal to the Tribunal against the decision.[79]

Limitation on ceasing to maintain plans to allow reconsideration and / or appeal

29.26. Following a school's decision that a pupil no longer has ALN, the school **must not**[80] cease to maintain the IDP unless-

(a) the period of 4 weeks 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-

[72] Section 31(7) of the Act.
[73] Under section 6 of the Act. See Chapter 4.
[74] Section 31(8) of the Act.
[75] Requirement imposed by the Code.
[76] Under section 9 of the Act.
[77] Under section 68 of the Act.
[78] Under section 69 of the Act.
[79] Under section 70 of the Act. The decision is appealable to the Tribunal – see Chapter 33.
[80] Section 33(1) – (3) of the Act.

i. the period for bringing an appeal against the decision to the Tribunal[81] has ended without an appeal having been brought, or
ii. an appeal has been brought in that period and it has been fully determined.

29.27. 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**[82] cease to maintain the IDP until the later of-

(a) the period for bringing an appeal against the decision to the Tribunal[83] has ended without an appeal having been brought, or
(b) if an appeal has been brought in that period, when it has been fully determined.

[81] Provided for under The Education Tribunal for Wales Regulations 2021; and see Chapter 33.
[82] Section 33(4) of the Act.
[83] Provided for under The Education Tribunal for Wales Regulations 2021; and see Chapter 33.

Chapter 30: Case friends for children who lack capacity

Introduction

30.1. 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.

30.2. 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 4). If a child is lacking capacity, the general duty[2] 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.

30.3. For children in the ALN system, capacity specifically relates to their ability to understand matters relating to the ALN system (see paragraph 30.5).

30.4. 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 needs to bring an appeal 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

30.5. The Act provides that children who lack the capacity to understand[4]:

- information or documents that must be given to them in relation to their ALN or
- 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

[1] Section 6 of the Act.
[2] Section 6 of the Act.
[3] Section 85 of the Act.
[4] Section 84 of the Act.

cases, the reason could be the child's ALN. A child's capacity to understand can change over time.

30.6. If a local authority, governing body of a school, or NHS body considers that a child lacks capacity, then the following specific duties or conditions, do not apply[5]:

- the duty to notify or inform a child[6] (see Chapter 1);
- the duty to give a copy of a plan or a revised plan to a child[7] (see Chapter 25);
- 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 made[8] (see Chapter 21);
- the duty to review a plan following a request by a child[9] (see Chapter 25);
- the duty to reconsider following a request by a child[10] (see Chapter 26);
- the duty to decide whether a local authority takes over a governing body maintained plan following a request by a child[11] (see Chapter 26).

30.7. A child's parents will continue to have these rights where the child lacks capacity.

Assessing the capacity of children

30.8. Assessing capacity in children relates to a child's ability to understand issues relating to their ALN, as set out in paragraph 30.5. 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 a child's capacity[12].

30.9. 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 local authority decides that the child does have capacity, the specific rights conferred on the child are exercisable by the child[13];

[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.
[12] Assessing a child's capacity is different to the more formal assessment undertaken for young people or parents of children who may lack capacity (see Chapter 31).
[13] Section 84(5) and (6) of the Act.

- A child or a child's parent may apply to the Tribunal for a declaration[14] that a child does or does not have capacity[15] (see paragraph 30.12). Where the Tribunal declares that the child does have capacity, the specific rights conferred on the child are exercisable by the child;
- Where a child does not have capacity, the Tribunal may by order appoint a person to be a case friend. 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.

30.10. Case friends are only available to children who lack capacity. Where a child is found to have capacity, alternative support will be available to them[16], for example they can access independent advocates (see Chapter 32)

30.11. In addition to responding to an application, 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.

30.12. 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. This evidence could be a statement that gives an informed opinion of the child's level of capacity. However, in some circumstances the Tribunal may require expert evidence to support their determination.

Case friends for children who lack capacity

30.13. The Act provides that a child who lacks capacity can have a person to 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.

30.14. Case friends **must**[17]:

(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.

[14] For information on how to apply to the Tribunal for a Declaration see Chapter 33, paragraphs 33.8 to 33.10.
[15] Section 70(3) of the Act.
[16] Sections 6 and 69 of the Act.
[17] Section 85(6) of the Act.

Purpose and functions of a case friend

30.15. Children, as well as parents, have rights to bring appeals to the Tribunal. Case friends allow children lacking capacity who are seeking 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.

30.16. Case friends differ from independent advocates because they exercise the rights of the child on their behalf under certain provisions in the Act[18]; whereas independent advocates offer advice and assistance and representation[19]. Case friends listen to the child and work with them to ensure the child's voice is always represented in decisions affecting them.

30.17. 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.

30.18. 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 disagreements[20]. 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 32 for more information on avoiding and resolving disagreements.

30.19. If a disagreement does escalate to the Tribunal, case friends can support the child through the appeal process and during the hearing itself. Although a child does not need the consent of their parent to make an appeal in their own name, if the child lacks capacity, they **must**[21] have a case friend to continue with an appeal made to the Tribunal.

30.20. If a case friend is used when a child is pursuing an appeal with the Tribunal, the secretary of the Tribunal **must**[22] send all the relevant information and documents relating to the case to the case friend instead of the child. See Chapter 33 for more information on appeals.

30.21. Case friends acting on behalf of children may need support from someone with a detailed understanding of the ALN system. Independent advocacy

[18] Section 85(4) of the Act.
[19] Section 69(2) of the Act.
[20] Section 68 of the Act.
[21] Regulation62 of the draft Education Tribunal for Wales Regulations.
[22] Regulation 62(3) of the Education Tribunal for Wales Regulations.

services are also available for a child's case friend. Local authorities **must**[23] refer a case friend to an independent advocacy service provider if the case friend has requested this service.

Appointing and removing a case friend by the Tribunal

30.22. Case friends can only be appointed or removed by order of the Tribunal. The Tribunal may appoint a case friend on their own initiative or on application of any other person.[24]

30.23. When appointing a case friend, 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 purpose of the evidence accompanying the application form is to enable the Tribunal to assess whether the person applying will be a suitable case friend for the child. The form is produced by the Tribunal and can be found on their website or by requesting one in writing.

30.24. 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.

30.25. The application **must**[25] reflect the eligibility criteria which are based on four conditions a case friends **must**[26] follow (see paragraph 30.14).

30.26. A case friend will usually be a relative or a close family friend of the child i.e. parent, step-parent, brother, step-brother, sister, step-sister, half-brother, half-sister, grand parent, uncle, aunt, nephew or niece. 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**[27] also accompany the declaration of suitability form unless the person applying to be a case friend is a close family member.[28]

30.27. The application **must**[29] also include, amongst other matters, the contact details of the person wishing to be a case friend, and **must**[30] 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.

30.28. The application **must**[31] be signed by the person applying to act as the child's case friend.

[23] Section 69(1)(c) of the Act.
[24] Section 85 (2) of the Act.
[25] Section 85(6) of the Act.
[26] Section 85(6) of the Act.
[27] Regulation 61(4) of the Education Tribunal for Wales Regulations.
[28] Regulation 61(5) of the Education Tribunal for Wales Regulations.
[29] Regulation 61(2) of the Education Tribunal for Wales Regulations.
[30] Regulation 61(3) of the Education Tribunal for Wales Regulations.
[31] Regulation 61(8) of the Education Tribunal for Wales Regulations.

30.29. Once received, the Secretary of the Tribunal **must**[32] record on the Tribunal's register the enhanced disclosure certificate's details. The Secretary **must**[33] also ensure all parties are informed that the child has a case friend.

30.30. 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.

30.31. 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.

30.32. 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[34].

30.33. 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.

30.34. The Tribunal **may**[35] remove a case friend either on its own initiative or an application supported by evidence from any other person.

30.35. If a case friend is removed, the secretary of the Tribunal **must**[36] inform all parties involved of the removal, and inform the case friend they can no longer act as the child's case friend.

[32] Regulation 61(6) of the Education Tribunal for Wales Regulations.
[33] Regulation 62(2) of the Education Tribunal for Wales Regulations.
[34] Regulation 62(1) of the Education Tribunal for Wales Regulations.
[35] Section 85(2)(b) of the Act.
[36] Regulation 63(4) and (5) of the Education Tribunal for Wales Regulations.

Chapter 31: Representatives for young people, and parents of children, lacking mental capacity

Introduction

31.1. This chapter relates to young people who lack capacity at the relevant time, and also to parents of a child where a parent[1] lacks capacity at the relevant time. Young people, and parents, can use a representative to act on their behalf when exercising rights under the Act if they lack capacity. This chapter also explains who can be a representative for that parent or young person.

31.2. The definition for young people and parents lacking capacity in the Act[2] has the same meaning as 'lacking capacity' in the Mental Capacity Act 2005[3]. It means a person who lacks the capacity to make a particular decision or take a particular action for themselves at the time the decision or action needs to be taken.

31.3. Whether a young person, or a parent of a child, has capacity or not, they can still make significant contributions when decisions are being made about their or their child's ALN. The general duty[4] to have regard to the following still applies:

- their views, wishes and feelings,
- the importance of them participating as fully as possible in decisions; and
- the importance of them being provided with the information and support necessary to enable participation in those decisions.

31.4. The regulations in Part 4 of the Additional Learning Needs (Wales) Regulations 2021[5] ('Lacking Capacity Regulations') made under section 83 of the Act provide that where a child's parent lacks capacity specified references to the child's parent are to be read as references to a representative of the parent. The Lacking Capacity Regulations also provide that where a young person lacks capacity, specified references to the young person are to be read as references to the young person's representative, or to the young person's parent. These Regulations also provide who can act as a representative in the context of the Act.

[1] References in this chapter to "parents" refer to a parent of a child, where that parent lacks capacity.
[2] Section 83 of the Act.
[3] Section 2 of the Mental Capacity Act 2005.
[4] Under section 6 of the Act.
[5] See regulations 34 to 42 of the Additional Learning Needs (Wales) Regulations 2021

Assessing mental capacity of a young person or parent

31.5. A young person or parent who lacks capacity will usually have already been identified as such, for example by NHS, or education professionals in the case of a young person.[6]

31.6. The Mental Capacity Act 2005 and its Code of Practice set out the law and provide guidance on how to assess whether someone has the capacity to make a decision, including when professionals should be involved in the assessment.[7]

31.7. The Mental Capacity Act 2005 sets out five key principles[8]:

- A person must be assumed to have capacity unless it is established that they lack capacity.
- A person is not to be treated as unable to make a decision unless all practicable steps to help them to do so have been taken without success.
- A person is not to be treated as unable to make a decision merely because they make an unwise decision.
- An act done, or decision made, for or on behalf of a person who lacks capacity must be done, or made, in his best interests.
- Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

Representatives for young people and parents lacking capacity

31.8. The Lacking Capacity Regulations, provide that where a child's parent lacks capacity specified references in the Act to the child's parent are to be read as references to a representative of the parent[9]. They also provide that where a young person lacks capacity, the references to the young person are to be read as references to the young person's representative, or to the young person's parent[10]. For example, a representative, on behalf of a young person or parent who lacks capacity:

- can request the local authority responsible for the child or young person to reconsider decisions made about whether the child or young person has ALN[11];

[6] For children who lack capacity, see Chapter 30 on case friends.
[7] Mental Capacity Act Code of Practice in force from time to time. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/497253/Mental-capacity-act-code-of-practice.pdf
[8] Section 1 of the Mental Capacity Act 2005.
[9] Regulation 35 Additional Learning Needs (Wales) Regulations 2021.
[10] Regulation 37 of the Additional Learning Needs (Wales) Regulations 2021.
[11] Regulation 35(1)(h) of the Additional Learning Needs (Wales) Regulations 2021 and section 26 of the Act.

- can take forward an appeal to the Education Tribunal[12];
- will receive information, documents and notifications of decisions, including a copy of an IDP[13];
- can engage in the arrangements made by a local authority for the avoidance and resolution of disagreements[14];
- can request independent advocacy services. Where such a request has been made, the local authority **must**[15] refer a representative of a young person to an independent advocacy service.[16]

Who can be a representative for the purpose of the Lacking Capacity Regulations

31.9. Where a young person or a parent lacks capacity the Lacking Capacity Regulations provide that references to parent or young person read as a reference to their representative. Representative for the purpose of those regulations means one of the following[17]:

(a) a **deputy**[18], appointed by the Court of Protection to make decision on behalf of the parent or young person. Deputies are bound by the terms of the order of appointment, issued by the Court of Protection;
(b) a **donee of lasting power of attorney**[19] (LPA), appointed by the parent or young person to make decisions on behalf of the parent or young person, which includes giving them the authority to make decisions in circumstances where the person no longer has capacity;
(c) an **attorney with an enduring power of attorney**[20] (EPA); or
(d) the young person's parent[21], where the young person does not have a representative listed in (a), (b) or (c) above.

[12] Regulation 41 of the Additional Learning Needs (Wales) Regulations 2021 and sections 70 and 72 of the Act.
[13] See for example Regulation 35(1)(a)3 of the Additional Learning Needs (Wales) Regulations 2021.
[14] Regulation 39 of the Additional Learning Needs (Wales) Regulations 2021 and section 68 of the Act.
[15] Regulation 40 of the Additional Learning Needs (Wales) Regulations 2021 and section 69 of the Act.
[16] See Chapter 32 for information relating to independent advocacy services.
Independent mental capacity advocate (IMCA) services are also be available for young people who lack capacity. See Chapter 10 of the Mental Capacity Act Code of Practice for more details on IMCAs.
[17] See the definition of "representative" in regulation 34of the Additional Learning Needs (Wales) Regulations 2021.
[18] Paragraph (a) of the definition of 'representative' in regulation 34 of the Additional Learning Needs (Wales) Regulations 2021 and section 16(2)(b) of the Mental Capacity Act 2005. (Parents can apply to the Court of Protection to be deputies.)
[19] Paragraph (b) of the definition of 'representative' in regulation 34 of the Lacking Capacity Regulations and section 9 of the Mental Capacity Act 2005.
[20] Paragraph (c) of the definition of 'representative' in regulation [34(c)] of the Additional Learning Needs (Wales) Regulations 2021 and Schedule 4 to the Mental Capacity Act 2005.
[21] Regulation 34(d) of the Additional Learning Needs (Wales) Regulations 2021.

Deprivation of liberty

31.10. Any educational placement which could have the potential to constitute a deprivation of liberty will need to be considered in accordance with the relevant case law and the Mental Capacity Act 2005[22]. Parents of 16 and 17 year olds will not be able to consent to matters which would otherwise constitute a deprivation of liberty, in accordance with *Re D (A Child)*[23].

[22] Until the changes made by the Mental Capacity Amendment Act 2019 come into force, the existing DOLS safeguards apply to those aged 18 and above. For 16 and 17 year olds, applications for authorisations of relevant placements will need to be made to the Court of Protection. When the changes in the 2019 Act above come into force, the Liberty Protection Safeguards will apply to those aged 16 and above. Practitioners are required to refer to the Mental Capacity Act 2005 and its relevant Code of Practice.

[23] [2019] UKSC 42, which provided that a parent could not give consent for the deprivation of liberty of 16 and 17-year-olds, the mother's agreement thus amounting to a lack of valid consent and satisfying the second component of the Storck test. See *Cheshire West and Chester Council v P and another* [2014] UKSC 19, where the Supreme Court described three components of deprivation of liberty, derived from the 'Storck' test:

a. 'the objective component of confinement in a particular restricted place for a not negligible length of time'
b. 'the subjective component of lack of valid consent'
c. 'the attribution of responsibility to the state'.

Chapter 32: Avoiding and resolving disagreements and independent advocacy services

Introduction

32.1. 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.

32.2. 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

32.3. 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 part 2 of the Act.

32.4. 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 for children or young people.

32.5. For the purposes of paragraph 32.4, 'relevant institutions'[3] 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(1) of the Act.
[2] Section 68(2) of the Act.
[3] Section 68(7) of the Act.

32.6. For the purposes of the duties in paragraphs 32.3 and 32.4, the responsible local authority is:

- in the case of a child or young person who is 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 located[4];
- in the case of a looked after child, the authority that looks after the child[5];
- in the case of a detained person, the person's home authority;[6]
- in the case of all other children and young people, the local authority in whose area the child or young person is.

32.7. Where a child's parent or a young person lacks capacity at the relevant time, arrangements made by a local authority for avoiding and resolving disagreements **must**[7] provide for a representative to engage in the arrangements on the person's behalf.

32.8. Local authorities **must**[8] promote the arrangements for avoiding and resolving disputes. One method, for example, is 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. Local Authorities must take reasonable steps to inform children, their parents and young people that entering into disagreement resolution arrangements does not affect any rights they have to appeal to the Tribunal.[9] Chapters 11 to 17, 19, 25, 26 and 29 set out the duties to provide information about the arrangements when a decision has been made, an IDP prepared or revised or a decision has been made to cease to maintain an IDP. The arrangements should also be promoted and publicised more generally at earlier opportunities, for example at early meetings to discuss a child or young person's ALN.

32.9. Furthermore, local authorities **must**[10] 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 point of contact, a telephone number and email address.

32.10. The local authority **must**[11] ensure its arrangements for avoiding and resolving disagreements are provided free of charge at the point of delivery.

[4] Section 87(4) of the Act.
[5] Section 68(8) of the Act.
[6] Section 68(8) of the Act (amended by the Additional Learning Needs (Wales) Regulations 2021).
[7] Regulation 39 of the Additional Learning Needs (Wales) Regulations 2021.
[8] Section 68(4) of the Act.
[9] Section 68(5) of the 2018 Act.
[10] Requirement imposed by the Code.
[11] Section 49 of the Act.

32.11. The local authority **must**[12] ensure that those delivering the arrangements have a detailed understanding of the ALN system. To do so, the local authority **should** ensure appropriate training and development is provided and training is refreshed to improve standards.

32.12. The local authority **must**[13] ensure that the staff delivering these arrangements are impartial to the outcome of any potential disagreements.

32.13. The local authority **must**[14] 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 4 on involving and supporting children, their parents and young people).

32.14. 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**[15] facilitate this.

32.15. Local authorities are responsible for ensuring that the arrangements for avoiding and resolving disagreements are appropriate and of suitable quality. In delivering these arrangements, the local authority **must**[16]:

(a) take responsibility for the overall standard of the arrangements, including having a development plan with clear targets which are reviewed regularly;
(b) ensure there are appropriate management structures for the arrangements, which include overseeing, regularly monitoring and reviewing the arrangements;
(c) ensure there is adequate resource and staffing to meet the needs of children, their parents and young people in their area (this may include working with a range of specialist agencies or third sector organisations who can provide support and advice on specific issues);
(d) 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;
(e) actively seek feedback about the arrangements from those using them to inform the development and continuous improvement of the arrangements; and
(f) have clear funding and budgeting plans for the arrangements.

Arrangements to avoid disagreements

32.16. The inclusive process of developing an IDP and the duty[17] to take into account the views, wishes and feelings of the child, child's parent or young

[12] Requirement imposed by the Code.
[13] Requirement imposed by the Code.
[14] Requirement imposed by the Code.
[15] Requirement imposed by the Code.
[16] Requirement imposed by the Code.
[17] Section 6 of the Act.

person (see Chapter 4), is intended to help to overcome concerns at an early stage and prevent 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, allowing matters to be addressed and resolved promptly.

32.17. 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.

32.18. 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 as required;
- ongoing support if problems are difficult to solve.

32.19. 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;
- ensuring decisions are explained in a way that is clear to the child, child's parent or young person;
- explaining the decisions that are taken and encourage the child, child's parents or young person to ask questions regarding the decisions, and direct to independent advocacy services as required;
- providing an early opportunity to discuss decisions, which is key to avoiding disputes and ensuring that issues are presented and dealt with promptly;
- 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.

32.20. Independent advocates and, if they have been appointed, case friends or representatives, may have a critical role to play in the effective functioning of the arrangements for avoiding disagreements. See paragraphs 32.53 – 32.65 for more information about independent advocacy services. Chapter 30 provides guidance on case friends. See Chapter 31 in relation to representatives for those lacking capacity.

Arrangements to resolve disagreements

32.21. 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. The arrangements to resolve disagreements can help resolve the issues before they escalate further, 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.

32.22. Local authorities **must**[18] make arrangements for resolving disagreements (disagreement resolution arrangements) 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**[19] relate to 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.

32.23. 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.

32.24. 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.

32.25. Where a maintained school has made a decision that a child or young person has ALN, or has refused to make a decision, the child, child's parent or young person has an opportunity to request that the local authority reconsiders the matter.[20] 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 plan.[21]

[18] Section 68(1) and (2) of the Act.
[19] Requirement imposed by the Code.
[20] Section 26 of the Act.
[21] Section 27 of the Act.

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

32.27. Successful 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.

32.28. 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.

32.29. 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.

32.30. When a child, child's parent or young person decides to use the disagreement resolution arrangements, the parties **should** arrange to meet[22] 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**[23] be supported to make their views known.

32.31. 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.

32.32. 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

[22] See Chapter 22 meetings about ALN and IDPs.
[23] Under Section 6 of the Act.

'agreements reached' and/or 'agreement to disagree' statement following the process.

Independence of persons helping to resolve disagreements

32.33. As part of the disagreement resolution arrangements, the local authority **must**[24] include provision for parties to the disagreement to access help in resolving that disagreement from persons who are independent of the parties.

32.34. 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.

32.35. The person should have no vested interest in the outcome. The independent person can help parties discuss the disagreement and to try to find a mutually acceptable solution.

The involvement of health bodies in avoiding and resolving disagreement arrangements

32.36. 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.

32.37. 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 9).

32.38. The DECLO should consider whether the involvement of NHS bodies in the arrangements can help to resolve disagreements and take part in the arrangements where they believe this to be the case.

32.39. As well as using the local authorities' avoidance of disagreement arrangements and disagreement resolution arrangements, where there is a

[24] Section 68(3) of the Act.

concern about 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.

32.40. The Welsh Government has put in place arrangements for the management of concerns and complaints relating to the NHS in Wales: *Putting Things Right.*[25] 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.'

32.41. 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** refer the child, child's parent or young person to Putting Things Right.

32.42. In certain circumstances, both the arrangements made by the local authority to resolve disagreements and the Putting Things Right process may be followed. The local authority and DECLO **should** work together to make arrangements to attempt resolution. Where advocacy or support for the child, young person or family member is required, this is often more effective when undertaken by a single individual.

Interrelationship with the Tribunal

32.43. 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 has not used the disagreement resolution arrangements prior to lodging an appeal. If a child, child's parent or young person decides to use disagreement resolution arrangements before the end of the limitation period for bringing an appeal, the time limit for bringing an appeal is extended by 8 weeks to allow for the attempted resolution.[26] At any point after an appeal has been issued (including at the very early stages), any party to the proceedings **may**[27] apply for a stay to consider alternative dispute resolution.

32.44. 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]Information on Putting Things Right can be found at:
http://www.wales.nhs.uk/ourservices/publicaccountability/puttingthingsright
[26] Regulation 10 of the Education Tribunal for Wales Regulations 2021.
[27] Regulation 8(2) of the Education Tribunal Regulations 2021.

Other means of challenge

32.45. 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.[28]

32.46. These may include, but are not limited to, using a school, FEI, or local authority complaint procedure.

32.47. The Public Services Ombudsman for Wales[29] can consider procedural complaints about a public service provider in Wales, including local authorities and NHS bodies.

32.48. The Children's Commissioner for Wales has a free investigation and advice service that can provide assistance on complaints and issues relating to the ALN system[30].

32.49. The Welsh Language Commissioner can consider complaints about organisations in Wales who fail to adhere to the appropriate Welsh language standards[31].

32.50. In some circumstances, applications can be made to the Administrative Court for judicial review in relation to the lawfulness of a decision or action by a public body, including the procedures used to reach the decision. There are strict time limits for bringing such actions. The Administrative Court[32] can, for example, consider the way in which decisions of local authorities have been made.

32.51. Local Authorities can consider intervening in schools causing concern in their area in exercise of their powers under the School Standards and Organisation Wales Act 2013. There is also School Standards Guidance to be followed by local authorities.[33]

32.52. The Welsh Ministers also have direction making powers in respect of FEIs, for example where they have failed to discharge duties or have acted unreasonably.[34]

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[28] See Chapter 33 for information on the grounds of an appeal.
[29] https://www.ombudsman.wales/
[30] https://www.childcomwales.org.uk/about-us/investigation-advice/
[31] http://www.comisiynyddygymraeg.cymru/English/Organisations/Complain/Pages/Complaints-form.aspx
[32] 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/
[33] https://gov.wales/sites/default/files/publications/2018-03/schools-causing-concern-statutory-guidance-for-schools-and-local-authorities.pdf. The guidance also sets out the approach the Welsh Ministers may take in exercising their own intervention functions under the School Standards and Organisation Wales Act 2013.
[34] Under section 57 of the Further and Higher Education Act 1992.

Independent advocacy services

32.53. Local authorities **must**[35]:

(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[36] for a child for whom it is responsible and who requests independent advocacy services to an independent advocacy service provider.

32.54. For the purposes of the duties in paragraph 32.53 and 32.59, the responsible local authority is:

- in the case of a child or young person who is 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 located[37];
- in the case of a looked after child, the authority that looks after the child[38];
- in the case of a detained person, the person's home authority;[39]
- in the case of all other children and young people, the local authority in whose area the child or young person is.

32.55. Independent advocacy services provide expert advice and assistance, by way of representation or otherwise, to a child or young person, including 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 in, or intending to take part in arrangements for avoiding or resolving disagreement.

32.56. Where a young person for whom a local authority is responsible lacks capacity at the relevant time, if a representative requests independent advocacy services on behalf of the young person, a local authority **must**[40] refer the representative to an independent advocacy service provider.

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

[35] Section 69 of the Act.
[36] Further information on case friends is provided in Chapter 30.
[37] Section 87(4) of the Act.
[38] Section 68(8) of the Act.
[39] Section 68(8) of the Act (amended by the Additional Learning Needs (Wales) Regulations 2021).
[40] Regulation 40 of the Additional Learning Needs Wales Regulations 2021.

- 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;
- 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.

32.58. Other advisory or advocacy services may also be available to support a child or young person more generally, such as to help them to make informed decisions about their ALP. Informal advocates, or advocacy services provided by a third party may be useful when attending an IDP review meeting or planning for transition (see Chapter 27 for information on planning for and supporting transition).

32.59. Local authorities **must**[41] 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, representatives, Health Boards, early years education settings, FEIs etc.

32.60. The local authority **must**[42] 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 11 to 17, 19, 25, 26 and 29 set out the duties to provide information about the arrangements when a decision has been, an IDP prepared or revised or a decision has been made to cease

[41] Requirement imposed by the Code.
[42] Requirement imposed by the Code.

to maintain an IDP. Other similar opportunities to provide information will also arise.

32.61. 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**[43] 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;
(b) has a clear and easy to use complaints procedure, monitors service user satisfaction 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 provides value for money.

32.62. The local authority **must**[44] ensure its advocacy service is provided free of charge at the point of delivery.

32.63. The local authority **must**[45] 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[46] (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"[47]). If this information is not held by the advocacy providers, the local authority **must**[48] ensure the advocates apply for an enhanced level disclosure and barred list check from the Disclosure and Barring Service before they can proceed.

32.64. Whilst children and young people can choose to ask for advocacy, local authorities **must**[49] take all reasonable steps to 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

[43] Requirement imposed by the Code.
[44] Section 49 of the Act.
[45] Requirement imposed by the Code.
[46] https://www.gov.uk/guidance/basic-dbs-checks-guidance
[47] Under section 126 of the Social Services and Well-being (Wales) Act 2014.
[48] Requirement imposed by the Code.
[49] Requirement imposed by the Code.

during an IDP review meeting. Staff **should** be suitably skilled to identify those children and young people who would benefit from having an advocate.

32.65. The local authority, school and FEI **should** take reasonable steps to assist the advocate in carrying out their role, for example, where appropriate, letting other agencies know that an advocate is supporting a child or young person, and if appropriate, providing relevant information. Relevant persons **should** recognise the advocate's role in supporting and representing the child or young person.

Independence of advocacy services

32.66. The independence of the advocate is essential to enable them to effectively act on behalf of the individual.

32.67. The local authority **must**[50] 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.

32.68. 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

32.69. In some circumstances, a local authority may already be providing advocacy services for a child or young person with ALN. In these circumstances, the local authority **should** consider using the same advocate to undertake both advocacy roles. This may maximise the opportunities to secure continuity in individuals' advocacy needs, and reduce 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.

32.70. For example, a looked after child may also have ALN, and would therefore be entailed 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

[50] Section 69(3) of the Act.

advocate is suitably qualified to provide advocacy and understand both systems they are providing advocacy on.

Independent advocates acting as case friends

32.71. 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 may not have someone they know to ask to act as their case friend.

32.72. For the avoidance of doubt, independent advocates are not prevented from applying to the Tribunal to become a child's case friend[51]. 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.

[51] See regulations 60-62 of the Education Tribunal for Wales Regulations 2021.

Chapter 33: Appeals and applications to the Education Tribunal for Wales

Introduction

33.1. The Education Tribunal is independent of government, local authorities, schools and FEIs; and its decisions are legally binding. 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[1].

33.2. The Education Tribunal for Wales Regulations, made under the Act[2], set out the procedures to be followed in proceedings before the Tribunal, including the initiation of an appeal.

33.3. The Education Tribunal provides on its website advice and guidance on the appeal process and the procedures to be followed.

33.4. There are other means by which children, their parents and young people can challenge a public body if they feel that that body has failed to carry out their public duties, including those duties under the Act. For example Local Authorities have a duty to make arrangements for avoiding and resolving disagreements between parties to hopefully avoid the need to take cases to the Tribunal.[3]

Matters which can be appealed

33.5. A child, child's parent or young person **may**[4] appeal to the Tribunal about:

- a decision by a FEI[5] or local authority[6] as to whether the child or young person has ALN;
- in the case of a young person, a decision by a local authority[7] 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;
- the provision included in an IDP by a local authority under sections 14(6) or 19(4) or the fact that provision under those sections is not in a plan[8]

[1] The Education Tribunal also hears claims in relation to disability discrimination; however this Code focuses solely on Appeals relating to ALN.
[2] Made under the Act at Sections 74(1), 75(1), 75(2), 75(4), 76(3), 77, 91(6) and 92(2).
[3] See for example Chapter 32 paragraphs 32.50 – 32.60.
[4] Section 70 of the Act.
[5] Section 11 of the Act.
[6] Sections 13, 18 and 26 of the Act.
[7] Section 14(1)(c)(ii) of the Act.
[8] 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 institution.

- the school named in an IDP for the purpose of admitting a child to a named institution[9], 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 school[10];
- 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 school[11];
- a decision to cease to maintain an IDP[12]; and
- a refusal to decide a matter on the basis that there is no material change in needs or no new information that materially affects the decision[13].

33.6. A detained person, or the parent of a detained person who is a child, **may**[14] 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, 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.

Applications for a declaration for children who lack capacity

33.7. A child or a child's parent **may**[15] apply to the Tribunal for a declaration that the child either does or does not have the capacity to understand;

[9] Section 48 of the Act.
[10] Section 27 of the Act.
[11] Section 28 of the Act.
[12] Sections 31(5) and 31(6) of the Act.
[13] Where sections 11(3)(b), 13(2)(b), 18(2)(b) or 29(2)(a) apply.
[14] Section 72 of the Act.
[15] Section 70(3) of the Act.

- 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.

33.8. A child or child's parent seeking a declaration from the Tribunal **must**[16] submit an application in writing to the Tribunal. The Education Tribunal will provide the relevant Application Forms upon request.

Decisions the Tribunal can make

33.9. On appeal, the Tribunal **may**[17]:

- 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 and it is necessary for a different decision to be made or different action to be taken.

33.10. On appeals in relation to detained persons, the Tribunal **may**[18]:

- 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 the Tribunal and it is necessary for a different decision to be made or different action to be taken.

Appeals by children

33.11. Children can bring their own appeals to the Tribunal if they have sufficient capacity (or understanding) to do so. Where required, the Tribunal can

[16] Regulation 59(1) of the Education Tribunal for Wales Regulations 2021.
[17] Sections 71 and 73 of the Act.
[18] Section 73 of the Act.

make decisions about a child's ability to understand matters relating to the ALN system.

33.12. Children who lack capacity can still bring an appeal to the Tribunal in their own name with a case friend to represent, support and take decisions on their behalf if they do not have a parent who is willing or able to bring a case to the Tribunal for the child.[19]

Timescales relating to the appeals process and compliance with orders

33.13. 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, and NHS bodies, as appropriate. At any point during Tribunal proceedings, any party to the proceedings **may**[20] 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.

33.14. An appellant, local authority or FEI concerned **may**[21] apply to the Tribunal for an extension to a timescale. The Tribunal **may**[22] extend a timescale at its discretion if it considers it fair and just to do so.

Appeal application and case statement period

33.15. An appeal application and the supporting case statement (evidence) **must**[23] 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 notice[24] of the decision of the local authority or the FEI was given. The appeal application and the case statement do not have to be submitted together. If a child, child's parent or young person decides to use disagreement resolution arrangements (see Chapter 32), the 8 week period is extended by a further 8 weeks.[25]

33.16. Upon receipt, the Secretary of the Tribunal **must**[26] send the appeal application and any accompanying documents to the relevant FEI or local authority; and if received at the same time, this will include the full case statement.

[19] Chapter 30 Case Friends for children who lack Capacity.
[20] Regulation (6)(2) of the Education Tribunal for Wales Regulations 2021.
[21] Regulation 65(1) of the Education Tribunal for Wales Regulations 2021.
[22] Regulation 65(2) of the Education Tribunal for Wales Regulations 2021.
[23] Regulation 10(1) and 17(1) of the Education Tribunal for Wales Regulations 2021.
[24] Regulation 10(1) of the Education Tribunal for Wales Regulations 2021.
[25] Regulation 10 of the Education Tribunal for Wales Regulations 2021.
[26] Regulation 13(2)(a) & (c) of the Education Tribunal for Wales Regulations 2021.

33.17. The case statement period for a local authority or FEI governing body in an appeal is—

(a) 4 weeks, beginning with the date on which the notice accompanying the appellant's case statement is taken to have been received in accordance with regulation 75(11), and
(b) includes any extension to that period ordered by the President under regulation 65[27].

Timescales relating to compliance with an order

33.18. If the Tribunal makes an order following a hearing, the local authority or FEI concerned must 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 for Wales Regulations[28].

33.19. Timescales set out by the Tribunal **may**[29] only be extended at the discretion of the Tribunal following an application from an appellant, local authority or FEI.

NHS bodies: evidence and Tribunal recommendations

33.20. In relation to an appeal made under Part 2 of the Act, the Tribunal **may**[30], 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.

33.21. If the Tribunal makes a recommendation to an NHS body, that body **must**[31] report to the Tribunal, before the end of 6 weeks beginning with the date on which the recommendation was made. The report **must**[32] 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 repose to the recommendation.

[27] Regulation 17(4) of the Education tribunal for Wales Regulations 2021.
[28] Regulation 58 of the Education Tribunal for Wales Regulations 2021.
[29] Regulation 65 of the Education Tribunal for Wales Regulations 2021.
[30] Section 76(1)(a) of the Act.
[31] Regulation 64(1) of the Education Tribunal for Wales Regulations 2021.
[32] Section 76(4) of the Act.

Reviews of and appeals against decisions of the Tribunal

33.22. A party to proceedings **may**[33] apply to the Secretary of the Tribunal for a decision of the Tribunal panel to be reviewed on the grounds that:

(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.

33.23. Any application to the secretary of the Tribunal **must**[34] be made in writing stating the grounds of appeal and be received by the Tribunal no later than 28 days from when the Decision was sent to the parties.

33.24. The President or Chair of the Tribunal panel that made the decision **may**[35] 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**[36] only be determined after the parties concerned have had an opportunity to be heard.

Appeals to the Upper Tribunal

33.25. A party to any proceedings before the Tribunal **may**[37] appeal to the Upper Tribunal on any point of law arising from a decision made by the Tribunal. This means that if a child, child's parent or young person or the respondent 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.

[33] Regulation 53(1) of the Education Tribunal for Wales Regulations 2021.
[34] Regulation 53(2) of the Education Tribunal for Wales Regulations 2021.
[35] Regulations 53(3) and (4) of the Education Tribunal for Wales Regulations 2021.
[36] Regulation 53(7) of the Education Tribunal for Wales Regulations 2021.
[37] Section 81 of the Act.

Annex A: Individual Development Plan (IDP): Standard form

Part 1.

Section 1A: Basic biographical information about the child or young person[1] and contact details	
1A.1) Full name:	
1A.2) Likes to be known as:	
1A.3) Date of birth:	
1A.4) Gender and preferred pronouns:	
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' telephone number(s) (if different, and only where parent(s) consent to their details being included)[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: Profile (About me)

Part 2.

Part 2 includes those elements of the IDP in relation to which appeals to the Tribunal can be made.
These elements are **underlined, bold and red**.

Section 2A: Description of the child or young person's additional learning needs (ALN)

Section 2B: Description and delivery of the child or young person'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 or review date:**
2B.7) Rationale for the ALP listed above				

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 relevant):	**2B.5) Start date:**	**2B.6) End or review date:**
2B.7) Rationale for the ALP listed above				

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 relevant):	**2B.5) Start date:**	**2B.6) End or review 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?**	2C.4) Organisation/ service to provide the ALP, and contact details (where relevant):	**2C.5) Start date:**	**2C.6) End or review date:**
2C.7) Rationale for ALP listed above				

2C.1) Intended outcome:				
2C.2) ALP to be provided:	**2C.3) Should the ALP be provided in Welsh?**	2C.4) Organisation/ service to provide the ALP, and contact details (where relevant):	**2C.5) Start date:**	**2C.6) End or review date:**
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:
3B.2) Education settings previously attended (and dates):

Section 3C: Transition

Section 3D: Travel arrangements

Annex B: Individual Development Plan (IDP) for a looked after child: Standard form

The elements of the IDP for a looked after child in relation to which appeals to the Tribunal can be made are **underlined, bold and red**.

Part 2.

Section 2A: Description of the child or young person's additional learning needs (ALN)

Section 2B: Description and delivery of the child or young person'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 or review date:**
2B.7) Rationale for the ALP listed above				

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 or review date:**
2B.7) Rationale for the ALP listed above				

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 or review date:**
2B.7) Rationale for the ALP listed above				

Section 2C: 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?**	2C.4) Organisation/ service to provide the ALP, and contact details (where relevant):	**2C.5) Start date:**	**2C.6) End or review date:**
2C.7) Rationale for ALP listed above				

2C.1) Intended outcome:				
2C.2) ALP to be provided:	**2C.3) Should the ALP be provided in Welsh?**	2C.4) Organisation/ service to provide the ALP, and contact details (where relevant):	**2C.5) Start date:**	**2C.6) End or review date:**
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:
3B.2) Education settings previously attended (and dates):

Section 3C: Transition

Section 3D: Travel arrangements

Annex C: ALP to be secured by an NHS body: Non-mandatory form

Basic information about the child or young person	
Full name:	
Date of birth:	
Home address and telephone number:	
Parental[1] telephone number (if different):	
Current education setting (if applicable):	
Language(s) spoken at home:	

Details about the referral	
Date of referral:	
Date health input sent:	
Contact details of referring body:	

[1] ”Parents” includes anyone with parental responsibility.

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:
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:
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:
Rationale for ALP listed above:				