

ADDITIONAL LEARNING NEEDS AND EDUCATION TRIBUNAL (WALES) ACT 2018

EXPLANATORY NOTES

COMMENTARY ON SECTIONS OF THE ACT

Part 2 – Additional Learning Needs

Chapter 1 – Key Terms, Code and Participation

Code of practice

Section 4 - Additional learning needs code

16. **Section 4** requires the Welsh Ministers to issue and publish on their website a code on ALN. This can contain guidance about the exercise of functions under Part 2 of the Act, and about other matters relating to ALN and it must include guidance on a governing body's duty to take all reasonable steps to secure ALP for a pupil or student whilst an IDP is being prepared for that person (see section 47(3)). The persons listed in section 4(3) must have regard to the code when exercising their functions under this Act in relation to ALN. This means that the guidance in the code should be adhered to unless there is a good reason to depart from it. Subsection (4) signposts section 153 of the Education Act 2002 which, as amended by this Act (see Schedule 1), requires local authorities, in funding non-maintained providers of nursery education, to require the provider to have regard to relevant guidance in the code.
17. The code may also impose requirements on local authorities and governing bodies of maintained schools or FEIs in respect of specific matters (see subsection (5)). It may also set out what is required of a local authority and local health board to discharge their duties in sections 7(1) and 8(1) to have due regard to particular United Nations Conventions (see sections 7(4) and 8(4)).
18. There are certain requirements on governing bodies and local authorities which the code must include (subsection (6)). It must include one or more standard form or forms for an IDP and require that the appropriate form is used. It must also require those bodies to do the following within a period of time set by the code, subject to any exceptions (also provided for in the code):
 - a. give any notification that a child or young person does not have ALN; and
 - b. where it is determined that the child or young person has ALN, prepare and give a copy of the IDP.
19. The code may make different provision for different purposes or cases, and make transitory, transitional or saving provision in relation to both a requirement imposed under subsection (5) or provision made under section 7 or 8.
20. The Tribunal must have regard to the code where relevant to any questions arising on an appeal under Part 2 (subsection (10)).