

ADDITIONAL LEARNING NEEDS AND EDUCATION TRIBUNAL (WALES) ACT 2018

EXPLANATORY NOTES

COMMENTARY ON SECTIONS OF THE ACT

Part 2 – Additional Learning Needs **Chapter 2 – Individual Development Plans**

Preparing and maintaining individual development plans

Section 11 - Duty to decide: maintained schools and further education institutions

29. **Section 11** requires the governing body of a maintained school or FEI, if it appears to it that one of its learners (who is a young person, in the case of an FEI) may have ALN or this has been brought to its attention, to decide whether that child or young person has ALN. However, the governing body does not have to do so in certain circumstances (see subsection (3)). For example, where a young person does not consent to the decision being made about them; where the governing body has previously decided whether the child or young person has ALN and is satisfied that there has been no material change in the child or young person's needs or new information that materially affects the decision; where a learner (for whom a local authority is responsible) is registered or enrolled at more than one institution (see subsection (3)(d) and section 30(1) and (2) which requires the governing body to refer the case to the local authority).
30. Where the governing body decides that the child or young person does not have ALN it must notify the child and their parent, or the young person, of the decision and the reasons for that decision. Where a child does not have sufficient understanding and intelligence to understand what this means, the duty to notify the child does not apply (see section 84). However, where a child has a case friend under section 85, the governing body must notify the child's case friend. The code will set a deadline for the notification of these decisions, subject to any exceptions specified in the code (see section 4(6)(a)).
31. The duties in this section apply in respect of children and young people resident in England where they attend the maintained school or FEI in Wales, except where an Education Health and Care plan (EHC plan) is being maintained for the learner by a local authority in England under the Children and Families Act 2014. This is because that plan will address the special educational provision that their needs call for.
32. The duties in this section apply to a child looked after by a local authority who is resident in England, but not to other looked after children (subsection (5)). See sections 17 to 19 for the applicable duties in such cases.
33. **Section 44** deals with the effect upon the duties in this section if the person becomes subject to a detention order.