

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 12 - Duties to prepare and maintain plans: maintained schools and further education institutions

34. **Section 12** requires the governing bodies of maintained schools and FEIs to prepare and maintain an IDP for those learners they have decided have ALN; or in the case of a governing body of a maintained school, where it is directed to do so by a local authority; or in the case of a governing body of an FEI, where it has agreed to, or the Welsh Ministers have determined that it should, maintain a plan previously maintained by a local authority (see section 36). They must also consider whether any ALP should be provided in Welsh and where they decide that is the case, specify this in the IDP.
35. The code will set a deadline within which the governing body must prepare the plan and give a copy of it to the child or young person, and if the plan is for a child, to the child's parent (under section 22), subject to any exceptions specified in the code (see section 4(6)(b)).
36. However, in certain circumstances (set out in subsection (2)), a governing body is not required to prepare and maintain an IDP for a learner it has decided does have ALN. Some of these recognise that in some cases (generally involving greater needs) it is more appropriate for needs to be considered or provision secured by the local authority in whose area the person is. This includes instances where the governing body considers that the learner's needs may call for ALP that it would not be reasonable for the governing body to secure. In that case, the governing body must refer the matter to the relevant local authority for it to decide under section 13(1).
37. Similarly, there is also provision for the duties not to apply where the learner is in the area of a local authority in England and their needs are being considered or addressed by that local authority under the Children and Families Act 2014 (subsection (2)(c) and (d)). Again, this is likely to be in cases of greater needs where a local authority is likely to be better placed to deal with the matter.
38. As education or training is not compulsory for young persons, the duties to prepare or maintain an IDP cease to apply in respect of a young person if that person no longer consents (at any time) to its preparation or maintenance (subsection 2(b)).
39. A governing body may also, in effect, be under the duty in this section to maintain an IDP as a result of a transfer of a duty to maintain an IDP (see section 35 and the regulation power in section 37 about transfers). For example, this would be the case

These notes refer to the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (c.2) which received Royal Assent on 24 January 2018

where a child with an IDP maintained by a school governing body moves to another maintained school.

40. Where a governing body maintains an IDP, it must secure the ALP set out in that IDP and take all reasonable steps to secure provision in Welsh where that is specified (subsection (7)). The duty is qualified in this way as there may be circumstances where it cannot reasonably be provided in Welsh, for example in the case of specialised services where it is not possible to obtain a Welsh speaking practitioner despite attempts to find one.
41. See section 31 for the circumstances in which the duties in this section cease to apply. Also, section 44 deals with the effect upon the duties in this section if the person becomes subject to a detention order.