

# **ADDITIONAL LEARNING NEEDS AND EDUCATION TRIBUNAL (WALES) ACT 2018**

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## **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 13 - Duty to decide: local authorities***

42. **Section 13** requires a local authority to decide if a child or young person has ALN where it comes to its attention or appears to it that the child or young person may have ALN. A local authority would exercise the functions set out in this section where, for example, a decision about a child or young person's ALN has been referred by a governing body under section 12 or a child, a child's parent or a young person has made a direct request to the local authority; or a Local Health Board has made a referral under section 64.
43. However, there are certain exceptions to the duty to decide (see subsection (2)). For example, where a young person does not consent to the decision being made about them; where the local authority 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.
44. Generally, if the person is a registered pupil of a maintained school or an enrolled student of an FEI, it will be for the respective governing body to determine whether the person has ALN under section 11. In the case of a pupil, the local authority does not have the duty to do so if satisfied that the question is being decided by the governing body under section 11. In the case of an FEI student, the local authority is only subject to the duty if the student is dual registered (see section 30(1)-(2)) or the governing body has referred the case to the local authority under section 12(2)(a).
45. Where the local authority 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 (subsection (3)). See sections 84 and 85 in respect of the requirement to notify a child. The code will set a deadline for the notification of this decision, subject to any exceptions specified in the code (see section 4(6)(a)).
46. The duty to decide in this section applies in respect of children or young persons for whom the local authority is responsible, namely those in its area (including if they attend school in a different area), except for children who are looked after for the purposes of this Act (see the definition in section 15 and the duties in sections 17 and 18 which apply instead). See also section 562 of the Education Act 1996 and section 44 for the effect on these duties where the person to whom they relate is subject to a detention order.