

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 10 - Individual development plans

26. **Section 10** sets out what an individual development plan (IDP) is. This plan will form the basis of the system for planning and providing ALP for children and young people with ALN as set out in the Act. Generally, all children and young people with ALN will have an IDP, in contrast to the system under the 1996 Act, which only provided for statements of ALN for those with greater needs.
27. The ALP called for by a child or young person's ALN must be set out in the IDP, as must other matters required to be included by or under Part 2. For example, where it is decided that a particular kind of ALP should be provided in Welsh, that must be specified in the IDP (sections 12(6), 14(5), 19(3), 21(4) and 40(6)). There are appeal rights in respect of certain content of an IDP, or a failure to include something in an IDP (sections 70 and 72), including in respect of the description of the person's ALN and the ALP set out (including whether it is specified that ALP should be provided in Welsh). For looked after children with ALN, their IDP must be incorporated into their personal education plan if they have one (section 16).
28. The code must contain at least one standard form IDP and require that it (or where more than one, the appropriate one) is used (section 4(6)). The code may include guidance about the process for preparing an IDP (see section 4).

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.

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

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.

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.

Section 14 - Duties to prepare and maintain plans: local authorities

47. Where a local authority decides that a child or young person has ALN, section 14 sets out the circumstances where it is required to prepare and maintain an IDP and secure the ALP set out in that IDP; or, if the child or young person attends, or will attend, a maintained school, the local authority may prepare an IDP and direct the governing body of the school to maintain the plan; or direct the governing body of the school to prepare and maintain a plan.
48. These duties apply in relation to children, young people who are registered pupils at maintained schools or enrolled students at FEIs, and to other young people where the

local authority decides it is necessary to prepare and maintain a plan under this section to meet the person's reasonable needs for education or training. Consideration of where it is so 'necessary' is to be undertaken in accordance with regulations made by the Welsh Ministers under section 46.

49. The section also sets out matters which may need to be set out in an IDP prepared or maintained by a local authority, namely:
 - a. the local authority must consider whether any ALP should be provided in Welsh and where it decides that is the case, so specify in the IDP (subsection (5)); and
 - b. if the local authority is satisfied that the reasonable needs of a child or young person for ALP cannot be met unless it also secures a place at a particular school or institution (provided the person or body responsible for admissions to the institution consents, unless it is a maintained school in Wales); and/or board and lodging, that 'other provision' must be described in the plan and must be secured by the local authority. Where this applies, the local authority is unable to direct the governing body of a maintained school to prepare and/or maintain the IDP. (subsections (6) – (9)).
50. See sections 35 (and the related regulation making power in section 37) and 43 for other situations in which a local authority is, in effect, subject to the duty in this section to maintain an IDP, for example where a child with an IDP maintained by another local authority moves into its area.
51. Where the local authority maintains an IDP it must secure the ALP and any other provision described in the plan and take all reasonable steps to secure provision in Welsh where that is specified (subsection (10)). The duty to secure ALP in Welsh 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 or treatments where it is not possible to obtain a Welsh speaking practitioner despite attempts to find one.
52. The duties in this section apply 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 section 31 for the circumstances in which the duties in this section cease to apply. Also, see 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.