

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**

Ceasing to maintain plans

Section 31 - Ceasing to maintain individual development plans

89. **Section 31** sets out the circumstances in which a governing body's or local authority's particular duty to prepare or maintain an IDP ceases. These circumstances cover where:
- the child or young person ceases to be a registered pupil or enrolled student or the child becomes looked after (in the case of governing bodies),
 - the local authority ceases to be responsible for the child or young person, or a child becomes or ceases to be looked after (for the purposes of Part 2),
 - a looked after child ceases to be in the area of any local authority,
 - the governing body or local authority decides that the child or young person no longer has ALN,
 - in the case of a young person not at a maintained school or FEI, the local authority decides in accordance with regulations made under section 46 that it is no longer necessary to maintain the plan to meet the young person's reasonable needs for education or training.
90. Before deciding to cease to maintain an IDP because it believes the child or young person no longer has ALN or, in the case of a young person, that it is no longer necessary to maintain it, the governing body or local authority must notify the child, child's parent, young person and in the case of a looked after child, the independent reviewing officer, of the proposed decision. It must also notify the same persons when it has made its decision (together with reasons). A governing body of a maintained school must also inform those persons of their right to request a local authority reconsideration of the decision under section 32.
91. **Section 35** deals with situations where a duty to maintain an IDP is transferred to another body (see also the regulation power about transfers in section 37). Section 562 of the 1996 Act and section 44 deal with the effect on duties in the Act (including duties to maintain an IDP) where a child or young person becomes subject to a detention order. See sections 84 and 85 in respect of the requirements to notify a child.

Section 32 - Reconsideration by local authorities of decisions of governing bodies under section 31

92. **Section 32** enables a child, a child's parent or a young person to request that a local authority (which is responsible for the person) reconsiders a school governing body's decision to cease to maintain an IDP. The period during which this request can be made will be set out in regulations. The local authority must decide whether the duty to maintain the IDP should cease and notify (with reasons) the governing body, the child and their parent, or the young person accordingly. See sections 84 and 85 in respect of a request by a child and the requirements to notify a child.
93. If the local authority decides that the IDP should be maintained, the governing body must continue to maintain it. Where the local authority agrees that the IDP should cease to be maintained, its decision is appealable under section 70 and the appeal must be determined or the time for bringing an appeal must have expired with no appeal being made, before the governing body can cease to maintain the IDP (see section 33).
94. See also paragraph 73 above for further information.

Section 33 - Limitation on ceasing to maintain plans to allow reconsideration or appeal

95. **Section 33** ensures that where there has been a decision that an IDP should cease to be maintained, it continues to be maintained until the child, the child's parent or young person has had the opportunity to exhaust their appeal options. So the governing body of a maintained school may not cease to maintain the IDP unless the period prescribed for requesting reconsideration by the local authority under section 32 has ended without a request being made. If a request is made in that period, the governing body of a maintained school may not cease to maintain the IDP until the local authority has made its decision and the period for appealing it has ended, or where an appeal is brought within that period, it has been fully determined. Similarly, a governing body of a FEI or a local authority may not cease to maintain the IDP until the period for an appeal to be made ends without an appeal being brought or, where an appeal is brought in that period, it has been fully determined. The period for bringing an appeal is to be set out in regulations made under section 75.

Section 34 - Individual development plan after a young person's 25th birthday

96. **Section 34** ensures that if a young person with an IDP (being prepared or maintained) becomes 25, the duty to prepare or maintain it does not immediately cease, rather it continues until the end of the academic year as defined in subsection (2). This means that the body responsible for the IDP and the ALP it contains must continue to deliver the ALP until the end of the academic year.