

# Draft Additional Learning Needs Code

## Proposed subordinate legislation under the Additional Learning Needs and Education Tribunal (Wales) Act 2018

### Consultation response form

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Responses should be returned by **22 March 2019** to

Additional Learning Needs Transformation Team  
Support for Learners Division  
Education Directorate  
Welsh Government  
Cathays Park  
Cardiff  
CF10 3NQ

or completed electronically and sent to:

e-mail: [SENreforms@gov.wales](mailto:SENreforms@gov.wales)

The questions that are asked in this consultation document cover a broad range of matters relating to the draft Additional Learning Needs (ALN) Code and proposed regulations.

Respondents are reminded that they only need to respond to the questions in the consultation in which they have an interest in or that are relevant to them.

The Welsh Government values and appreciates the time spent and the input from all stakeholders and members of the public who submit responses to this consultation. All responses will be carefully considered by the Welsh Government and will be used to help refine and shape the final Code and regulations.

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here:

# Part 1 of the consultation: The draft ALN Code

## Chapter 1 - Introduction

### The meaning of 'must', 'must not', 'may', 'should' and 'should not' in the ALN Code

**Question 1** – Is the explanation in paragraphs 1.10 -1.16 of the draft ALN Code of the use and meaning of the different terms 'must', 'must not', 'may', 'should' and 'should not' clear?

Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	Not sure	<input type="checkbox"/>
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#### Supporting comments

The meanings are clear. However, our concern is around how adherence to these stipulations will be monitored? Mindful of the enormous financial constraints that LAs are under, there is a real danger of LAs being pressured into making decisions that potentially limit the life chances of young people with learning difficulties and disabilities. This cost-led as opposed to person-centred commissioning has the potential for gross inequalities across Wales and will rely on the 'elephant in the room' that only the most articulate, robust and resilient parents and carers will challenge the decisions made by LAs. Related issues of access to independent advice and guidance and parents and young people's understanding of the options that should be available to them are paramount here.

### Timescales

**Question 2** – Do you agree with the general approach to the timescales for compliance with duties (that is, to act promptly and in any event within a fixed period), as explained in paragraphs 1.31 – 1.32 of the draft ALN Code?

Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	Not sure	<input checked="" type="checkbox"/>
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#### Supporting comments

The approach to timescales is logical but we are unsure if it can be enforced. As above, our concern is the apparent lack of accountability mechanisms. This relates to both when there are delays in individuals' ALN needs being met and how those causing delays are held accountable. Again, the danger is that only the most informed parents and carers are likely to challenge such delays that result in children and young peoples' education and training needs being unmet.

**Question 3** – Is the general exception which applies in the case of timescales, as described in paragraphs 1.33-1.35 of the draft ALN Code, appropriate?

Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	Not sure	<input type="checkbox"/>
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#### Supporting comments

We suggest that the prominence of the word 'promptly' is enhanced here (1.32) to ensure that parents, young people and families get information as soon as possible and to reduce

unnecessary stress and anxiety. Moreover, and crucially, that in order for these stipulations to have any bearing, they must be backed up by clear expectations and accountability mechanisms for such times when timescales are unmet.

### Structure of the draft ALN Code

**Question 4** – Is the structure of the draft ALN Code and the separation of the chapters appropriate, clear and easy to follow?

<b>Yes</b>	<input type="checkbox"/>	<b>No</b>	<input checked="" type="checkbox"/>	<b>Not sure</b>	<input type="checkbox"/>
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### **Supporting comments**

We suggest that the code incorporates too much repetition which is unhelpful.

Chapters 1 to 4 are clear and logical, but other Chapters contain critical information on which the Code is based and need to be earlier in the structure. For example, it would make more sense to place the definitions of ALN and ALP (currently chapter 7) earlier. Similarly, the content of an IDP, currently Chapter 13, is of great interest to parents, young people and families – as well as all professional stakeholders – so should be much earlier in the Code.

Chapters 8 to 12 relating to the duties of LAs, schools and FEIs in different circumstances are not in a logical order. There is a lack of logic and flow relating to the age and stage of children and young people. The current structure fails to recognise the important differences in education and training needs between “children” and “young people” as per the legal definition in paragraph 1.17. For example, Chapter 11 is intended to cover children of compulsory school age, but includes young people on pages 138, 139 and 140.

We therefore believe it would provide far more clarity to families and all organisations, and be much easier to follow if the Code was structured more clearly according to age:

- 1) Children under compulsory school age
- 2) Children of school age
- 3) Young people over compulsory school age in schools, FEIs and other post-16 provision such as ISPIs.

Each of these three sections could then be subsequently split depending on whether the IDP is being maintained by the LA, the school or the FEI.

We believe it is important that the code has a section specifically for young people, that shows the duties on various bodies, wherever they are educated.

As the code currently stands, mixing young people into the schools’ section runs the risk of treating young people inequitably depending on whether they are at a school, FEI, educated elsewhere (e.g. ISPI or home) or NEET.

At present, Chapter 9 and other sections of the Code mix in the term “young people” as though they are under the same legal and regulatory framework as children. Within Chapter 9 the word “pupil” is used throughout. It is unclear as to whether this is about a child, young person, or both. Moreover, paragraphs 11.55 to 11.60 include young people, even though Chapter 11 concerns only children. Also paragraphs 2.20 to 2.23 regarding inclusive

education refer to the Act, which concerns children not young people, but then brings in young people and FEIs.

Structuring the Code more clearly according to age and stage would also emphasise to schools that their sixth forms ought to have a distinctly different, post-school ethos and culture, and that children should be offered a wide choice at Year 11 transition, rather than automatically remaining at school. The risk with the current structure, which splits the Chapters by institution and mixes young people / post-16 education into the schools section, is that there will be a growth in provision of school sixth forms and school-based post-19 centres. This has been one of the biggest unintended consequences of the Children and Families Act in England and has meant that cash-strapped LAs have extended their provision and 'kept' young adults in school environments within schools-based paradigms of education. This fails to recognise the particular needs of young people as opposed to children, and that the characteristics of Further Education should be different from schools. i.e. adult and outcome focussed. This is a crucial matter of equality for young people with learning difficulties and disabilities when comparisons are made with the opportunities available for non-disabled peers.

Our proposal would mean that schools and FEIs are in the same chapter for post-compulsory school age education, but the chapter would remain primarily about FEIs and would provide the added benefit of making it clear to schools that young people are different from children. It would also ensure that FEIs are not subject to different duties from schools when it comes to this age group.

Schools already need to refer to Chapters 7, 9, 13, 16, 18, 19, 21 and 24 throughout the code, and FEIs already need to refer to Chapters 7, 10, 16, 18, 19 20, 21 and 24 so creating a "young people" chapter would fit with the principle of ensuring different institutions were referred to throughout the Code.

**Question 5** – Is the draft ALN Code's focus on describing and explaining the functions and processes appropriate?

<b>Yes</b>	<input checked="" type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Not sure</b>	<input type="checkbox"/>
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**Supporting comments**

Yes, it is appropriate to focus on functions and processes rather than detailed guidance – however, we believe that there should be more guidance included in Chapters 1 and 2 about the importance of working in partnership across all bodies and organisations, not just those with statutory duties.

In relation to post-16, we are disappointed that Specialist Colleges (ISPIs) are not required to have regard to the Code, even when they are on the approved list under Section 56. Specialist Colleges should be included within the system as an alternative to mainstream FEIs, just as special schools are an alternative to mainstream schools. Excluding specialist providers from the post-16 ALN system is extremely unhelpful for all stakeholders, and it would be more helpful if detailed guidance was included in the Code requiring LAs, FEIs and others to include ISPIs within partnership arrangements and within information, advice and guidance on the ALN system.

Specialist Colleges are not schools, and it is misleading to group ISPIs together with independent schools in paragraph 1.72: they should be presented within the Code as part of the further education system for young people over compulsory school age.

In addition, Natspec continues to oppose the term used in the Act 'Independent Special Post-16 education institutions' (ISPIs), on the basis that it is wholly inaccessible to the young people and parents/carers who may need to understand such organisations. The term is also open to misinterpretation. To contextualise:

**'Independent'** Specialist Colleges comprise a range of legal forms. Many of them are charities. The word independent implies that the organisation is privately-owned and profit-driven. It also implies that placements are privately funded. Placements at Welsh Specialist Colleges, like those at mainstream Further Education Colleges are funded with public money.

**'Special'** The word 'Specialist' is more descriptive of the education and training offers both in terms of the curriculum and pedagogic approaches employed.

**'Post-16'** This term is concurrently used to describe school 6<sup>th</sup> form provision. Specialist Colleges are **post-school** environments of **Further Education**

**'Institution'** We believe that this is an outdated term that has negative connotations unhelpful and necessary for parents and carers.

In previous consideration of this nomenclature, Natspec has agreed with Estyn that the term 'Specialist Further Education College' be adopted to describe such organisations currently named Independent Specialist Colleges. In agreeing this however, Estyn were clear that the adoption of this term would require Welsh Government agreement. In the spirit of avoiding unnecessary bureaucracy and confusion for such vulnerable young people and their parents we urge Welsh Government to re-consider the use of the term Independent Special Post-16 institutions and to adopt the term 'Specialist Further Education Colleges'. Whilst we recognise that the term cannot be changed legally without amendments to the Act itself, it should still be possible for Welsh Government to use the term "Specialist Further Education College" instead of ISPI in policy papers and guidance.

Pupil referral units (PRUs) - Proposed regulations to be made under Paragraph 15 of Schedule 1 to the Education Act 1996

**Question 6** – Do you agree with the proposal to use regulations to delegate functions from a local authority to a Management Committee of a PRU?

Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	Not sure	<input checked="" type="checkbox"/>
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**Supporting comments**

**Chapter 2 - Principles of the Code**

**Question 7** – Are the principles set out in Chapter 2 of the draft ALN Code the right ones?

Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	Not sure	<input type="checkbox"/>
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**Supporting comments**

We agree that the principles are sound. Whether they are ‘right’ or not is wrapped up in LAs having the resources to uphold them. Natspec is wholly supportive of the principle of inclusive education and quality improvement across mainstream and specialist Further Education environments, our concerns here are how the principles can realistically be manifested in practice. As it currently stands, the code itself is in danger of perpetuating a system where young people with learning difficulties and disabilities live excluded and isolated lives. For example, by inappropriate placements at FEIs if ILS departments are pressured to accept learners with high needs they have little or no prior experience of working with, resulting in placement breakdowns or education and training needs not being adequately met. Or, placements are made at FEIs for 16 hours per week and this is the only time a young person is able to leave a family home and s/he has no opportunity to become independent of parental support and develop adult social relationships.

Fundamentally, the code delivers mixed messages for young people with high needs and their parents/carers on what Post 16 options will be available to them. For the principles to have any bearing in practice, clear stipulations must be made that the assessment of individuals education and training needs are made those by those with the expertise to do so, and not by LA professionals with little or no experience of Post-16 education and training, and who are under financial pressure not to identify specialist provision as an option.

A rights-based approach must ensure:

- access to relevant assessments and therapeutic support;
- needs-led Post-16 (and post-school) education and training opportunities for young people with learning difficulties and disabilities;
- transparent quality assurance mechanisms for young people and parents/carers to be able to judge the quality of Further Education offered to them.
- parity of opportunity for all young people, and parity of placement tenure between young people with ALN attending FEIs and for those who attend specialist provision (ISPIs),
- that IDPs are not ceased by LAs because of age of the young person or funding, and LAs and FEIs consider the same factors in relation to maintaining plans for young people.
- access to impartial advice and guidance on Post-16 options for young people and their families/carers

### Chapter 3 - Involving and supporting children, their parents and young people

**Question 8** – Is the explanation of the duties relating to involving and supporting children, their parents and young people provided in Chapter 3 of the draft ALN Code appropriate?

<b>Yes</b>	<input type="checkbox"/>	<b>No</b>	<input checked="" type="checkbox"/>	<b>Not sure</b>	<input type="checkbox"/>
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**Supporting comments**

Involving and supporting children, their parents and young people must include a duty on professionals to ensure children, young people and their families have access to impartial advice and guidance. The code is very weak here: paragraph 3.4 and subsequent references to involving children and young people needs to be changed from “should” to “must”. If this

section is not strengthened, it opens the doors to LAs signposting young people and parents to limited and potentially incomplete information. The implementation and maintenance of a rights-based and person-centred system is unachievable when an inevitable bias towards 'local', low cost provision likely to be manifested in the withholding of information on all Post-16 options that are legally available to young people and their families.

Also, in relation to consulting young people, paragraph 3.12 contains conflicting and unclear statements. The statement "views and wishes **should** be ascertained" and the statement "{views and wishes} **must** be taken into account" are incompatible and the first "should" needs to change to "Must".

There is a real danger that LAs will cease IDPs if FEIs state they are unable to meet a young person's needs, denying these young people an education that will help them progress and live fulfilled lives. A related issue here is that of the need for guidance on the parameters of education and training for young people, particularly those with high needs. It is imperative that LA officials understand the education and training offers provided by the specialist sector, how they impact on individuals' life chances, reduce pressure on families and ultimately reduce costs to the public purse. Without clarity for LAs, there is a danger they will assume that further education necessitates the achievement of accredited learning and/or employment outcomes rather than equally valuable non accredited learning programmes, holistic personal development and life skills that provide positive outcomes and improve life chances.

## Chapter 4 - Duties on local authorities and NHS bodies to have regard to the UNCRC and the UNCRPD

**Question 9** – Is Chapter 4 of the draft ALN Code clear about what is expected of local authorities and NHS bodies when discharging their duties to have due regard to the United Nations Convention on the Rights of the Child (UNCRC) and United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)?

<b>Yes</b>	<input type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Not sure</b>	<input checked="" type="checkbox"/>
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### Supporting comments

The code places Local Authorities in what will arguably be an impossible position, particularly in relation to ALP for young people with high level, complex or low incidence ALN. Such people who, arguably in regard to the principles of the code and its call for LAs to have due regard to the UNCRC and UNCRPD, will require their ALN to be met by a Specialist Further Education College (ISPI). Without the maintenance of ring-fenced funding for this small but vulnerable group, and clear guidance on what education and training for this group constitutes, then funding-restricted Local Authorities will inevitably feel pressured into ending an IDP. For such a small group of young people (around 300), this would be a completely false economy, as short term savings would be off-set by much greater social care costs in the longer term, and would also be a contravention of the principles of the Code and the right of every individual to education opportunities.

There is a very real danger of assumptions being made that an IDP should end because LA representatives have limited or no expertise in this area. In direct contradiction to the principles of the code, UNCRC and the UNCRPD this will not be because this young person's education and training needs cannot be met by the Local Authority securing a placement at a Specialist Further Education College (ISPI) but because of the inescapable financial pressures they face. In consideration of 'discharging the duties in practice' (4.16),

the code includes the caveat that Local Authorities or NHS bodies should use the ‘context’ when deciding how to exercise its functions. We believe that given the structural barriers outlined above whereby LAs are assessors, commissioners and funders of education and training for young people with learning difficulties and disabilities who would benefit from a placement at Specialist Provider that the word ‘context’ is too weak and that the code requires further guidance from Welsh Government on what aspects of the UNCRC and UNCRPD, Welsh Government believes that it will be acceptable for LAs to not have due regard for. To not do so simply opens the doors for legal challenge and Welsh money that could be used for ensuring the ALN of young people are met instead is spent instead on paying legal fees associated with Tribunals. We believe that a priority for Welsh Government should be on ensuring LAs’ ability to adhere to the principles laid out in the code particularly in relation to them having due regard to the UNCRC and UNCRPD.

In relation to the UNCRPD, articles 5, 8, 9, 12, 17,19,21 & 24 are problematised by LAs being placed in the compromised position of being assessors, commissioners and funders of specialist provision placements.

Articles 5 & 9: Young people with learning difficulties and disabilities will be discriminated against in relation to the Post-16 education and training offers available to non-disabled peers. Similarly, young people with more complex ALN, whose IDPs are maintained by the LA, will be discriminated against in relation to those whose plans are maintained by an FEI.

Article 8 & 21: Without access to independent advice and guidance young people and parents will not be aware of the Post -16 options available to them.

Article 12: There are no funding restrictions or considerations about the tenure of placements when FEIs are maintaining the IDP. However, the code advises that LAs maintaining plans for specialist provision have regard to a totally different set of regulations, including taking into account the length of course, leading to limited time for young people in specialist provision.

Articles 17 & 24: The code offers no reassurance that the decisions to cease IDPs by Local Authorities will be made by professionals with the skillsets to decide when a placement at a specialist college (ISPI) should not be considered for a young person with complex ALN.

Article 19: There is danger of the code resulting in LAs placing undue pressure on parents to maintain the care of young adults with learning difficulties and disabilities at home. This will inevitably put continued stress on families and limit individuals’ opportunities to learn to live independent lives and reduce their dependency on parents.

## Chapter 5 - Duty to keep additional learning provision (ALP) under review

**Question 10** – Is the guidance provided in Chapter 5 of the draft ALN Code in relation to the duties to keep ALP under review appropriate?

<b>Yes</b>	<input type="checkbox"/>	<b>No</b>	<input checked="" type="checkbox"/>	<b>Not sure</b>	<input type="checkbox"/>
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### Supporting comments

We agree with the principle of Review but are concerned that the emphasis on local review and planning does not take into account the equally important need for regional and

national planning with regard to more specialist services. This is even more relevant for post-16 services, as catchment areas for further education are not confined to individual local areas. For specialist further education, local planning and review is completely illogical. In relation to Specialist Further Education sector (ISPIs), the review stipulations are weak, there is not enough reference to the need to plan across boundaries, and it appears cost rather than quality-driven.

In relation to 5.11 for example, the implication is that low take up of a service equals inefficiency, and the emphasis is on economic rather than quality considerations. It also restricts LAs to thinking internally, rather than working in partnership across a number of areas to deliver more highly specialist provision more effectively and efficiently.

We believe that there is an inherent lack of ambition for, and understanding of, outcomes associated with Post-16 options for young people with high ALN. Reviews of ALN should include all provision available, not just in the local area, and should also reference the quality of that provision. LAs should include reference to Estyn in their reviews: the quality of education at specialist colleges in Wales is judged by Estyn consistently to be good or excellent. Moreover, access to Estyn full inspection reports and Annual Monitoring Visits reports are fully transparent and accessible on the Estyn website. Unfortunately, it is far more difficult for parents and other stakeholders including Local Authorities to understand the quality of Post-16 ILS provision at FEIs, as FEIs are only inspected every seven years, and until comparatively recently ILS provision may not even have been inspected.

The unintended consequences of planning and reviews having too “local” a focus have been clearly shown following the English SEND reforms. Local Authorities in England have not planned across boundaries and have not understood the economies of scale of using regional specialist provision for further education. They have instead funded social enterprises and organisations allied to existing schools to establish their own Post-16 Specialist Provision. The new providers have little or no experience of the delivery of Post-16 education and training, resulting in a declining picture in overall quality as evidenced by inspection reports – over 90% of new providers were judged “requires improvement” or “inadequate” at their first inspection. Key issues have been a lack of appropriate staff and governance specialism in disability and knowledge of the FE sector. Other factors identified through inspection have been ineffective quality assurance mechanisms, a lack of impartial advice and guidance, poor work-related experiences, poor development of essential skills and inadequate progress recording mechanisms.

Rather than discouraging the small minority of young people with ALN whose ALP is best met by specialist providers, we argue that Local Authorities should be incentivised through the code to seek to establish strategic relations with regional specialist providers so ensuring that the majority of the Authorities young people’s education and training needs can be met locally.

As we have raised in previous consultation responses, Welsh Specialist Further Education Colleges are funded by very comparable mechanisms to FE colleges and by their very nature constitute ‘local’ provision and should be thus be referred to as so. For many young people, their local specialist further education college (ISPI) may be both their most geographically and needs-based appropriate option. To not recognise this provides an unnecessary and further barrier and complication for young people with learning difficulties, their families/carers and other stakeholders involved in securing ALP including School-based ALNCOs.

We are confused by the terminology “specialist post 16 education providers” in paragraph 5.14 when the term ISPIs has been used elsewhere in the code. If Specialist post-16 education providers is a wider group, then ISPIs should be clearly identified within this term.

Given the above, it is our view that Chapter 5 has an over emphasis on cost-led rather than quality-led commissioning of the education and training of young people with learning difficulties and disabilities and that this is in direction contradiction to the principles and spirit laid out in Chapter 1. It concurrently de-values the aspirations and ambitions that we should have for increasing the life chances of our most vulnerable young people. Without stronger stipulations on who *should* rather than *might* be included involved in reviews and a baseline of expectations/minimum outcomes particularly in relation to Post-16 education and training then the reviews will have limited validity and utility in relation to the promotion of quality-driven outcomes that increase the life chances of young people with learning difficulties and disabilities.

## Chapter 6 - Advice and information

**Question 11** – Is the guidance provided in Chapter 6 of the draft ALN Code in relation to making arrangements to provide advice and information about ALN and the ALN system appropriate?

<b>Yes</b>	<input type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Not sure</b>	<input checked="" type="checkbox"/>
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### Supporting comments

We welcome the stipulation that advice and guidance should be provided free of charge. We also welcome the references to objective and impartial advice and guidance. In order to achieve this, there should be more explicit reference that LAs should include **all** provision in a **comprehensive** manner. There is an opportunity within the Code to require LAs to include all provision both within their immediate area, and outside the local area if the LA expects that provision to be used by children and young people with ALN.

We are concerned that the code is not clearer in relation to the communication of Post-16 education and training options to young people and their families. Post-16 education, by its nature, is not local and many FEIs and ISPIs have catchment areas that are wider than one LA area. Advice and guidance from LAs must therefore include all FEIs and ISPIs that would be appropriate for young people in their area to use.

With reference to our response to question 4 raising concerns on the code structure we believe that these sections of the code should be structured by age and stage of young people, so that it is clearer to parents, families and young people themselves, and also so that schools, LAs and FEIs have the same duties regarding young people wherever they are educated.

This change would not require a major re-structure, as most of Chapter 8, 9 and 11 would remain the same, but it would be much clearer and limited to children of compulsory school age; whereas Chapters 10 and 12 could be linked together or placed next to each other and be limited to young people (but also include young people at schools).

In addition, we recommend that the word “pupil” is removed and replaced by the words “children” or “young people” to make it very clear as to whether or not the person is of compulsory school age or older.

The code would be strengthened by a stipulation that Post 16 options are considered as a discrete area of any advice and guidance and that LAs have a duty to identify all Post-16 education and training options including those offered by specialist further education colleges (ISPIs).

## Chapter 7 - The definition of ALN and ALP, identifying ALN and deciding upon the ALP required

**Question 12** – Is this explanation of the definition of ALN provided in paragraphs 7.4 – 7.32 of the draft ALN Code clear?

Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	Not sure	<input type="checkbox"/>
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**Supporting comments**

**Question 13** – Does Chapter 7 of the draft ALN Code provide a clear and comprehensive explanation of the evidence on which decisions about ALN and ALP should be based, the sources from which this evidence might be collated, and the way in which it should be considered?

Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>	Not sure	<input type="checkbox"/>
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**Supporting comments**

We believe that this Chapter of the code fails to highlight the degree of expertise required to protect and promote high quality post 16 education for learners with ALN. We are unclear as to why specialist FE colleges / ISPIs have been omitted from the list in paragraph 7.60? This is one of a number of examples throughout the Code where a greater emphasis on partnership and sharing of expertise would produce far more effective practice if it was written into the Code. There are particular issues relating to the assessment of older teenagers and young adults and appropriate expertise should be explicitly referenced for this age group. ISPIs should also be included in relation to post-16 assessment and supporting FEIs to help them assess and provide for young people in later paragraphs in this section.

## Chapters 8 to 12 – Duties on schools, FEIs and local authorities

### Early Years ALN Lead Officer

**Question 14** – Is the guidance on the role, experience and expertise of the Early Years ALNLO set out in paragraphs 8.40 - 8.47 of the draft ALN Code appropriate for achieving the objectives (that the role is strategic and such officers have the appropriate experience and expertise to meet the expectations of the role)?

Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	Not sure	<input checked="" type="checkbox"/>
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**Supporting comments**

### Duties on schools, FEIs and local authorities

**Question 15** – Is the structure and content of Chapters 8 to 12 of the draft ALN Code clear?

Yes	<input type="checkbox"/>	No	✓	Not sure	<input type="checkbox"/>
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**Supporting comments**

No. Regarding structure, please see responses to questions 4 & 11.

Regarding content, we have comments on Chapter 10 relating to FEIs as follows:

We are concerned about the effect on the well-being of young people with ALN who are placed in the position of enrolling at an FEI, waiting for the FEI to make a decision about their ALN, and then the FEI deciding that it cannot reasonably secure the ALP, and the young person subsequently being referred by the FEI to the LA. Transition to further education is a stressful and anxious time for all young people, and is even more so for those with ALN and especially those with autism. With a maximum 20 term time days for the FEI to refer, followed by 12 weeks for the LA to take decisions, the young person could be without an education for several months - There should be a smoother and quicker transition for young people who need more specialist provision. This could be achieved by:

- changing the timescale from 20 term time days to make the referral to 15 term time days in paragraph 10.39
- strengthening paragraph 10.39 so that FEIs “MUST” (rather than “should”) refer a young person’s case **promptly** to the LA where there is grounds for referral.
- changing the “Should” to “must” notify the young person in paragraph 10.40
- changing the “should” to “Must” act promptly in paragraph 10.41
- changing the “should” to “must” pass on information in paragraph 10.45
- changing the “should” to “must” for the LA to provide information on timescales in paragraph 10.51 **and** the same for consulting the young person in paragraph 10.56

With reference to 10.54 and the stipulation that LAs seek advice from an education psychologist. We stress the importance of all relevant educational psychologists being required to have a clear understanding of Post-16 education and training options particularly in relation to therapeutic learning opportunities within FEIs and ISPIs.

FEIs will be responsible for assessing, preparing and maintaining IDPs for young people with ALN, some of whom will have complex needs. We are concerned that FEIs / LAs may not have the resources or expertise to do this effectively. There is an opportunity for the Code to encourage greater partnership working between FEIs and ISPIs/specialist colleges, so that there is a more effective use of resources with regard to young people with more complex needs. Paragraphs 10.5, 10.6 and 10.7 should include reference to FEIs having discussions regarding partnerships or sub-contracting with local specialist colleges so that use of resources are maximised.

Paragraph 10.9 should be amended to include where the young person has expressed a preference for another type of provision, such as another FEI with more specialist support or an ISPI/specialist college.

All the notifications from the FEI to the young person in this chapter should also contain, with the information about the ALN system, information about the FE options for the young person, with details of the specialist support available at FEIs and ISPIs/specialist colleges.

Paragraph 10.22 – FEIs giving the opportunity for the young person to comment on the draft, and considering and acting on concerns, need to be changed to “Must” rather than “should”

Paragraphs 10.32 and 10.72 on ceasing an IDP. It would be helpful to have the reasons given in Chapter 21 listed here, including the reference to a young person reaching the age of 25.

We believe that the content of paragraphs relating to maintaining a plan ought to be consistent for any young person over compulsory school age – wherever they are educated. The creation of additional regulations for a very small group of young people (Chapter 12) is illogical and the regulations under Section 46 should reflect the same considerations as those specified in paragraphs 10.32, 10.72, 21.4 and 21.5.

Paragraph 10.67 is not clear, particularly the reference to “the sections...{of Chapter 12} that deal with powers and limitations in respect of placements are also relevant where a local authority is preparing a plan young person who is a student at an FEI in Wales” This does not seem to make grammatical sense; nor does it make clear which sections of Chapter 12 it is referring to.

**Question 16** – Are the timescales for decisions by schools, FEIs and local authorities on ALN and preparing an IDP as set out in Chapters 8-12 appropriate?

<b>Yes</b>	<input type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Not sure</b>	<input checked="" type="checkbox"/>
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**Supporting comments**

We believe the timescales will be challenging for FEIs placing additional pressures at the already pressured start of the academic year. This may result in Reviews being delayed or postponed and inappropriate ALP decisions made that will ultimately result in placement breakdowns.

Deciding whether it is ‘necessary’ for a local authority to prepare and maintain an IDP for a young person not at a maintained school or FEI - Proposed regulations to be made under Section 46 of the 2018 Act

**Question 17** – Are the proposed requirements and guidance in paragraphs 12.22 – 12.51 of the draft ALN Code on when it is necessary for a local authority to maintain an IDP for a young person not at a school or FEI in Wales appropriate?

<b>Yes</b>	<input type="checkbox"/>	<b>No</b>	<input checked="" type="checkbox"/>	<b>Not sure</b>	<input type="checkbox"/>
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**Supporting comments**

No. The proposed requirements will mean that young people who are not at a school or FEI are not entitled to further education in the same way as those who are. This is inequitable and discriminatory against those for whom FEIs are not appropriate or where FEIs have decided that they are unable to secure the ALP.

The proposed regulations focus on the term “reasonable needs” for education and training. We believe these regulations should mirror the guidance for FEIs: Welsh Ministers have duties to secure provision for further education under the Learning and Skills Act 2000 and this duty extends to ALL young people, regardless of whether they have ALN or how complex their needs are.

The guidance is unclear. 12.17 states that “young people with ALN **may** need ALP” – this is in direct conflict with the definition of ALN given in the Act and illustrated in the flowchart in

Chapter 7 i.e. the legal definition is that someone only has ALN **because** they need ALP (a person has ALN if they have a learning difficulty or disability that calls for ALP).

12.19 asserts that there is no entitlement to continuous education and that LAs need to consider what are reasonable needs for education. Crucially, these statements **are not** made in relation to Chapter 10 / for young people at FEIs. It is inequitable for young people whose needs cannot be met by mainstream colleges to be subject to different considerations than those who have their IDPs maintained by FEIs.

12.22 asserts '*The local authority must consider whether there is a **realistic prospect** of the young person achieving **a desired objective** within a reasonable period of time by undertaking a course of education and training*'. Much greater clarity is required for when Post 16 or perhaps more importantly, Post 19 education and training might be necessary. The considerations for a local authority in respect of whether to maintain or cease an IDP for a young person with ALN should be the same as the considerations for FEIs set out in paragraph 21.4.

It is here that the inherent conflict of interest in local authorities having responsibility for assessing, commissioning and funding provision for young people with ALN again comes to the fore. In England, these conflicting functions have led to local authorities focusing on provision rather than need, and commissioning what is affordable rather than what is needed. Many are overwhelmed by the administrative burden of fulfilling all the functions required of them and the lack the resource to do so effectively. In addition, some local authorities are struggling to understand further education for young people with ALN, an area for which they have not traditionally been responsible. Moreover, Local Authorities' decision-making is often focused on short term outcomes and heavily influenced by budgetary constraints.

Within the Draft Code there is scope for LAs to be at best ambiguous and at worst discriminatory around what can be deemed a 'realistic prospect' and what 'constitutes a 'desired objective'. In paragraph 12.23, it is not clear who is responsible for determining the objective. We support the fact that objectives can cover a range of long-term aspirations, and this should be emphasised more with LAs having to consider all of these, to avoid 'objectives' being seen as synonymous with accredited learning or employment/work-related outcomes which will be inappropriate to the education and training needs of individuals with high ALN.

The Code could be strengthened with recognition that the pursuit and attainment of formal accredited learning outcomes are not always the most appropriate route for young people with complex needs. For example, a person-centred non-accredited learning pathway with learning goals that are in the best interests of the individual are likely to have far greater impact on individuals' destination goals than a formal qualification which is often reliant on support staff to complete the requirements of the Award necessitated by awarding bodies. Importantly, this should also be included in Chapter 10 as guidance for FEIs.

Paragraph 12.25 reiterates the need for the code to ensure that responsible professionals within Local Authorities understand all the Post 16 options available. That is within FEIs, locally-based specialist provision as well as out of county and indeed out of country provision.

We believe that 12.27 is both disappointing and contradictory. Again, none of these requirements are made for FEIs who are maintaining IDPs for young people at FEIs, and therefore they should not be considerations for young people who are not being educated at an FEI. There are currently **no** funding restrictions for young people with learning difficulties and disabilities attending FEIs. Ceasing a code for an FEI is not dependent on tenure of placement, so it is highly likely that FEI students with ALN will remain at college for more than two years. Even students without ALN often remain at college as they progress through different levels of learning or if they have missed part of their education earlier. The reference

to a two-year placement norm is thus inaccurate, misleading and discriminatory, and we argue that this inaccuracy is removed from the code. Moreover, there is a lack of recognition that those people with multiple and complex learning difficulties will by their very nature require additional time to successfully complete programmes of education and training.

The often-profound challenges facing young people with learning difficulties, disabilities and autism who have been highly supported in special schools up the ages of 16 - 19 must be recognised and accommodated within the code. Many of these people, in meeting the increased expectations of further education, require their first academic year to acclimatise to new living environments, ways of learning and an extended curriculum. It is during this time, they acquire the requisite skills of self-reliance to effectively identify and express aspirations for further learning and post-college life choices. They are then best placed to maximise the specialist support available to them. We believe that the code should more explicitly recognise that people with learning difficulties and disabilities require extended periods of time to learn in comparison to those with less severe or no learning difficulties and disabilities. Moreover, that a person-centred approach to the nature and duration of further education programmes is promoted in which young people are not discriminated against by the nature of their ALP.

Additionally, we are concerned that the code has little or no references to the quality and expectations of Post-16 ALP and that this can be perceived as a fundamental lack of ambition for young people with high ALN. This reinforces the importance for young people whose IDPs will be LA maintained that requisite guidance and expertise is in place to ensure the appropriateness of IDP outcomes.

## Chapter 13 - Content of an IDP

**Question 18** – Are the elements of the mandatory content of an IDP which are required by the ALN Code, appropriate?

<b>Yes</b>	✓	<b>No</b>	<input type="checkbox"/>	<b>Not sure</b>	<input type="checkbox"/>
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### Supporting comments

Yes the elements are appropriate however we believe that the IDP template is weak in relation to the Learner voice. It would be strengthened by inclusion of details of the child/young person's preferences and aspirations.

**Question 19** – Is the proposed mandatory standard form for an IDP (included at Annex A of the draft ALN Code) appropriate?

<b>Yes</b>	<input type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Not sure</b>	✓
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### Supporting comments

There is a danger that a focus on the content and nature of the IDP from will detract from the code demonstrating how it will seek to address the issues faced by England in the development of the comparable Education and Health and Care Plans (EHCPs). In particular the code fails to address how it will seek to avoid:

1. inconsistency in process or interpretation of regulations between Local Authorities
2. quality variances at both inter and intra-Local Authority levels
3. poorly written LA or parent-centred rather than person-centred outcomes
4. inconsistencies in the breadth and depth of detail about individual learners
5. post-19 issues

6. lack of joined up working
7. lack of adherence to specified timelines and processes, particularly in relation to Reviews.
8. Local authority personnel not having the requisite skillsets and capacities to undertake their duties.

The code fails to acknowledge any need to make IDPs available in alternative formats. It also fails to provide clear guidance on the structure, length, depth and type of information required. We are concerned that upon implementation there will be a great variance in the quality, appropriateness and number of IDP outcomes.

[Natspec's research](#) has identified that one of the key reasons given for the variable quality of EHCPs in England was the knowledge and experience of the person writing it. Sometimes colleges expressed concerns about the skills of the staff completing plans, or their limited contact with the young person - for example feedback from Natspec colleges included that Local Authority staff had "*limited experience of SEN, particularly very complex students*" and "*no education knowledge and no understanding of qualifications or realistic targets*". Moreover that "*plans are sometimes written by LA staff who have not met the young person or been able to attend Reviews*"

We are concerned that plans written by non-educationalists without consultation will be unrealistic or simply inappropriate.

There is concurrently a danger that important information be omitted from plans meaning that learners may be unable to secure the ALP they require. For example, in relation to support needs. This can have a detrimental impact upon the young person settling into an FEI or ISPI and their achievement of outcomes in the first term. A lack of information can potentially have serious consequences, especially if it relates to safeguarding or behaviour. The same piece of Natspec research referred to above identified that one college had experienced two serious assaults on staff before it came to light that the risk assessment from the school had not been included in the plan.

To avoid such issues in Wales, we argue that education professionals, with experience of post-16 education, should be involved in writing the IDP alongside the proper **and informed** engagement of the young person and their family/carers.

The danger of outcomes being poorly written are hugely significant to the life chances of young people with learning difficulties and disabilities. This remains a huge issue in relation to English EHCPs for young people, particularly because the outcomes form the basis of individuals' learning programmes. It is vital that young people's life chances are not bound by 'postcode' or 'provider' lotteries. In a Welsh context and in relation to the code, there is a clear and unambiguous link here with the role of Estyn in relation to the quality assurance of Post 16 education and training for young people with learning difficulties and disabilities. Quality issues that need to be addressed are consistency in number and nature of outcomes; monitoring and review and the appropriateness of provision in preparing young people for their post-college lives.

Post-16 outcomes should be stretching, aspirational, and updated to reflect adult learning environments. They should also be wholly person-centred, meaningful and achievable, rather than for example being contingent upon the achievement of employment for those for whom this is clearly not an option.

Colleges making provision for those with the most complex needs have many concerns about the impact of the planning process for young people 19+. In England, we have seen that budget pressures have led to LAs trying to avoid educational provision for young people aged

19. Instead such young people are moved into adult services with no recognition of how structured learning programmes can positively impact on individuals' transition to adulthood.

**Question 20** – Is the guidance in Chapter 13 of the draft ALN Code clear?

Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	Not sure	<input type="checkbox"/>
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**Supporting comments**

**Yes, although there are some specific sections that require greater clarity. This includes:**

13.2: “an IDP is intended to be a flexible document” ... how does this flexibility align with the fact that there is a mandatory form? Does the flexibility just relate to length or detail of an IDP?

13.7: it would be clearer if this paragraph was more specific about what can and can't be changed from the mandatory form, rather than the use of the phrase “such as...” or “for example”

13.30: we believe strongly that the “should” here needs to be changed to “Must”. It is imperative that outcomes are aspirational and, for young people moving towards adulthood, include outcomes related to independence, living and health and community as well as any relevant further education and employment where appropriate. IDPs maintained by LAs for young people not attending FEIs or maintained schools should include all these outcomes and be bound by the same guidance as for IDPs maintained by FEIs and schools.

13.65: the example in the brackets is not inclusive in nature. It would be more inclusive if it were to say “e.g. from school to post-school education”

Transport

**Question 21** – Is the guidance on transport in paragraphs 13.74 - 13.76 of the draft ALN Code appropriate?

Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	Not sure	<input checked="" type="checkbox"/>
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**Supporting comments**

The Learner Travel (Wales) Measure 2008 is clear that travel arrangements should not favour certain types of education and training (Section 9) and includes those aged 16-19; however the LA policies relating to charges and guidance issued to families can vary between LAs. Guidance should be in place to prevent LAs including policies which impose charges based on local authority boundaries, rather than distance or suitability of placement. In England, there have been illogical cases where an LA has imposed charges on post-16 travel arrangements for placements in neighbouring boroughs, even where the proposed placement is closer to the family home than an alternative “in area” provider where transport would be free of charge.

**Chapter 15 – Duties on health bodies and other relevant persons**

Statutory requests by local authorities to relevant persons for information or other help - Proposed regulations to be made under Section 65(5) of the 2018 Act

**Question 22** – Is the proposed timescale and exceptions for relevant persons to comply with a local authority request for information or other help (under section 65 of the 2018 Act) appropriate?

Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	Not sure	<input type="checkbox"/>
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**Supporting comments**

We are hopeful that the Act will provide a basis for an improvement in the way that agencies work together to deliver for children and young people with ALN. Any collaborative framework must ensure that decisions made are done so in the best interests of individual learners and that person-centred educational outcomes guide decision making. The different priorities, resources, knowledge, experience and seniority of stakeholders has the potential to result in gross inequalities within and across Local Authorities. The weight of budgetary constraints and management will inevitably compromise participation and ability for co-operation from being able to attend relevant meetings to agreeing funds available to support the educational needs of young people with multiple and complex learning difficulties and disabilities. This reinforces the importance of clarity in thresholds of responsibility and that young people and their families are provided with independent and impartial Advocates who can ensure decisions made are done so in full light of the options available to them.

ALP to be secured by NHS bodies - Proposed regulations to be made under Section 21(10) of the 2018 Act

**Question 23** – Is the proposed period and exception within which an NHS body must inform others of the outcome of a referral to it (under section 20 of the 2018 Act) to identify whether there is a relevant treatment or service, appropriate?

<b>Yes</b>	<input type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Not sure</b>	<input checked="" type="checkbox"/>
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**Supporting comments**

The Designated Education Clinical Lead Officer (“DECLO”)

**Question 24** – Is the guidance on the role, experience and expertise of the DECLO set out in paragraphs 15.37 – 15.53 of the draft ALN Code appropriate for achieving the objectives (that the role is strategic and such officers have appropriate experience and expertise)?

<b>Yes</b>	<input type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Not sure</b>	<input checked="" type="checkbox"/>
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**Supporting comments**

## Chapter 16 - Review and revision of IDPs

**Question 25** – Is the content and structure of Chapter 16 of the draft ALN Code clear?

<b>Yes</b>	<input type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Not sure</b>	<input checked="" type="checkbox"/>
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**Supporting comments**

The structure of Chapter 16 is clear and logical.

The content is unclear in places:

Paragraph 16.3: "...an IDP should be constantly monitored..." The word constantly is not helpful here, particularly when the IDP is being maintained by the LA. 'Frequently' might be more accurate.

Paragraph 16.6 – the content of this section could be enhanced by more guidance on the critical transition point between school and post-school/FE education. The paragraph should state more precisely when transition reviews should take place, so that there is enough time for schools and FEIs/ISPIs to consult with LAs about the needs of young people before they start at college.

Paragraph 16.10 – this should make clear that LAs should consult with any provider that they are likely to use, not just schools and FEIs.

Paragraph 16.21 – it would be helpful if this paragraph could be clearer to avoid different LA interpretations of when they should, and should not, consider a review unnecessary. For example, it could say that reviews will always be necessary if the plan child, child's parent or young person has given a reason within the request that about circumstances which are NOT considered reasons for declining a review, in order to of this paragraph. We advise that it should be clear to LAs and FEIs that they should NOT decline a request to review based on solely on the age of the young person.

Paragraph 16.30: as commented in our response to questions on Chapter 12, it is inequitable that a very small number of young people are subject to different considerations from their peers at FEIs regarding review of their IDPs.

**Question 26** – Is the proposed period and exception for completing reviews in response to a request from a child, their parent, a young person or an NHS body (set out in paragraph 16.18 of the draft ALN Code) appropriate?

Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	Not sure	<input type="checkbox"/>
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**Supporting comments**

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## Chapter 17 – Local authority reconsiderations and taking over responsibility for an IDP

**Question 27** – Is the content and structure of Chapter 17 of the draft ALN Code clear?

Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>	Not sure	<input type="checkbox"/>
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**Supporting comments**

It is not clear from the introductory paragraph whether this Chapter relates to children or young people. The first sentence and paragraph only refers to the decision of a maintained school. The second paragraph includes FEIs. The headings in the rest of the chapter only refer to school decisions. If the whole chapter is to include children and young people, then the introductory paragraph and subsequent sub-headings of the chapter should include decisions of both schools and FEIs.

There is also repetition of much of this section in paragraphs 21.20

We understand that the Welsh Government will not be prescribing a quality assurance mechanism for LAs to use in relation to the quality of IDPs that they maintain. We believe that quality assurance mechanisms should be in place for IDPs maintained by the LAs. Given the enormous pressures that Local Authorities are under, it is anticipated that IDPs will be necessarily LA-centred as opposed to person-centred

**Question 28** – Is the proposed period and exception for a local authority reconsidering a school IDP (set out in paragraph 17.20 of the draft ALN Code) appropriate?

<b>Yes</b>	✓	<b>No</b>	<input type="checkbox"/>	<b>Not sure</b>	<input type="checkbox"/>
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**Supporting comments**

Yes, but it should also be made clear what is the case for a local authority reconsidering an FEI IDP?

## Chapter 18 - Meetings about ALN and IDPs

**Question 29** – Are the principles and the guidance provided in Chapter 18 of the draft ALN Code on meetings about ALN and IDPs appropriate?

<b>Yes</b>	<input type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Not sure</b>	✓
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**Supporting comments**

The principles are sound, but the guidance should be more comprehensive.

Although the principles are right and to be supported, there are elements of the Code that actively ignore or contradict these principles. For example, LAs are asked in Chapter 12 to ignore the questions posed in paragraph 18.5 and consider the Section 46 regulations instead.

Chapter 18 would be more inclusive and comprehensive if it also considered children and young people educated somewhere other than a maintained school or FEI. We suggest throughout this Chapter, all references to schools and FEI should be replaced by “school, FEI or other education provider” (e.g. in paragraphs 18.7, 18.17). It would also be helpful and more inclusive to acknowledge that providers such as ISPs / specialist colleges should be involved in review meetings where the young person is either attending them or requesting their support.

## Chapter 19 – Planning for and supporting transition

**Question 30** – Is the guidance in Chapter 19 of the draft ALN Code on supporting children and young people to make effective transitions appropriate?

<b>Yes</b>	<input type="checkbox"/>	<b>No</b>	✓	<b>Not sure</b>	<input type="checkbox"/>
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**Supporting comments**

In addition to the comments below please note that our response to question 4 in relation to the inequitable treatment of young people in the code is also of key significance here.

There is a clear contradiction in the reference to the negative and considerable consequences of poor transitions (19.5) with the promotion of a system that can be seen to be predicated on placement failure, enormous stress on families and young people’s education and training needs being unmet.

19.9 raises the issue of the importance of ALNCOs having a clear and full understanding of Post-16 further education and training options.

19.11 promotes the notion of a ‘Transition Key Worker’. What reassurances can be offered that such roles will have adequate knowledge and understanding of the young person and **all** the Post-16 options available to young people with learning difficulties and disabilities and their families? And, more importantly that young people and families will be made aware of them? This is of particular

pertinence to those whose IDPs are maintained by LAs and who have low incidence or high /more complex ALN.

19.20 given our concerns raised throughout this response on the pressure being placed on LAs we believe that the use of the phrase ‘reasonable needs’ as a determining factor for the maintenance of IDPs is wholly inadequate here and that LAs should be given stronger guidance in the code to ensure adherence to the Learning and Skills Act 2000.

19.60 we question the use of the words and the meaning here on understanding ‘the implications’ of a placement at an ISPI. We suggest this paragraph has an unwarranted negative connotation. The content is also unnecessary because in EVERY case of transition, wherever the eventual placement, the young person and their family need understand and identify the placement, and to be provided with detailed information on the placement.

## Chapter 20 - Transferring an IDP

**Question 31** – Is the content and structure of Chapter 20 of the draft ALN Code clear?

<b>Yes</b>	<input type="checkbox"/>	<b>No</b>	<input checked="" type="checkbox"/>	<b>Not sure</b>	<input type="checkbox"/>
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### Supporting comments

The introductory paragraphs to the Chapter are not clear.

Paragraph 20.1 states that the Chapter covers all transfers described in the paragraph (from school to school, from school to FEI, from LA to LA)

Paragraph 20.2 states that the Chapter covers transfers from LA to FEI

Paragraph 20.3 states that the Chapter covers transfers from school or FEI to an LA (although it omits the word “Chapter”)

Paragraph 20.4 is completely unclear.

The remainder of the Chapter then deals with each case in turn, but not in the same order as the introductory paragraphs. It also includes reference to transfers where a child becomes looked after – which isn’t mentioned at all in the introductory paragraphs.

We suggest that the Chapter also needs to cover what happens when an IDP transfers from a school to an LA (as with the case of a young person transfers from a school to and ISPI / Specialist college)

Paragraphs 20.20 and 20.21 do not fully explain the circumstances they are describing and are very unclear as to what is meant by “board and lodging” as opposed to educational provision. We recognise that the regulations that these paragraphs refer to (Regulations to be made under section 37(1) of the Act are yet to be published but feel that these paragraphs provide no information to organisations, parents and families as they are currently written.

### Transfers of IDPs - Proposed regulations to be made under Section 36(3) of the 2018 Act and Section 37 of the 2018 Act

**Question 32** – Are the requirements that are intended to be included in regulations in relation to requests to transfer an IDP to an FEI (as described in paragraphs 20.12 - 20.17 of the draft ALN Code) appropriate?

<b>Yes</b>	<input checked="" type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Not sure</b>	<input type="checkbox"/>
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### Supporting comments

Much depends on the contents of the proposed regulations under section 37(1) of the Act.

We are concerned that local authorities will make finance-driven decisions to request a FEI to become responsible for maintaining the IDP, rather than uphold their duty to promote and protect the best interests of disabled young people. An LA's reasons for requesting the IDP to transfer to an FEI may not be in the best interests of the young people, and it should be made clear that Welsh Ministers should take a person-centred, rather than a resource driven, approach when coming to a decision.

**Question 33** – Are the arrangements that are intended to be included in regulations in relation to all other transfers (as described in paragraphs 20.18 – 20.21 of the draft ALN Code) appropriate?

<b>Yes</b>	<input type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Not sure</b>	<input checked="" type="checkbox"/>
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**Supporting comments**

These paragraphs do not give enough information to answer the question about the regulations.

## Chapter 21 - Ceasing to maintain an IDP

**Question 34** – Is the content and structure of Chapter 21 of the draft ALN Code clear?

<b>Yes</b>	<input type="checkbox"/>	<b>No</b>	<input checked="" type="checkbox"/>	<b>Not sure</b>	<input type="checkbox"/>
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**Supporting comments**

We believe that all young people regardless of ALN or the nature of the ALP they require should be treated equally in being able to access further education and training to meet their needs.

We believe that the content of paragraphs relating to maintaining or ceasing a plan ought to be consistent for any young person over compulsory school age – wherever they are educated. This would also help to make it clearer the differences between the situation for a child of compulsory school age and that of a young person.

Therefore, paragraphs 21.3 relating to schools and paragraph 21.4 relating to FEIs should be restructured to refer to circumstances for a) children and b) young people. We believe in all cases, it should be added that the decision to cease the IDP **must** only be reached as an outcome of a review (ref Chapter 16 on reviews).

The last bullet point in paragraph 21.4 states that the duty to maintain the IDP ceases to apply if the young person attains the age of 25. Whilst we agree that this needs to be stated, in accordance with the legislation, it implies that the FEI will maintain the IDP up to the age of 25 unless any of the other bullet points apply. We believe the main consideration relating to ceasing IDPs into adulthood is when the young person has achieved their (stretching and aspirational) educational outcomes and there is proper, planned progression and transition to the next stage of their adult lives. Creating an expectation that IDPs will continue until age 25, unless any of the other bullet points in paragraph 21.4 occur, runs the risk of unintended consequences of young people staying in FEIs too long without progressing and limiting resources for others.

Paragraphs 21.10 to 21.13:

The creation of additional regulations for a very small group of young people (Chapter 12) is illogical and inequitable. The regulations under Section 46 should reflect the same considerations as those specified for young people in schools and FEIs, as set out in paras 21.3 and 21.4. We reiterate here

that there is no two-year norm for placements at FEIs for young people with learning difficulties and disabilities and hence the code is factually incorrect in this regard.

We are very concerned that a young person may have ALN, but a local authority deems it is no longer necessary to maintain an IDP not because they don't think the young person has ALN, but because of pressure not to engage Specialist Providers. In other words, that the need for specialist provision will not be deemed reasonable.

**Question 35** – Is the period of time for making a reconsideration request (described at 21.18 of the draft ALN Code), appropriate?

Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	Not sure	<input checked="" type="checkbox"/>
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**Supporting comments**

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## Chapter 22 – Children and young people subject to detention orders

**Question 36** – Is the content and structure of Chapter 22 of the draft ALN Code clear?

Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	Not sure	<input checked="" type="checkbox"/>
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**Supporting comments**

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**Question 37** – Are the proposals for the regulations in relation to deciding whether it will be necessary to maintain an IDP for a detained child or young person upon their release appropriate?

Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	Not sure	<input checked="" type="checkbox"/>
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**Supporting comments**

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**Question 38** – Are the proposals for the regulations in relation to children or young people who are subject to a detention order and detained in hospital under Part 3 of the Mental Health Act 1983 (as described in paragraphs 22.45 – 22.74 of the draft ALN Code) appropriate?

Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	Not sure	<input checked="" type="checkbox"/>
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**Supporting comments**

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**Question 39** – Are the timescale requirements to act “promptly” in relation to decisions about ALN and preparing IDPs for children and young people subject to detention orders

(as set out in Chapter 22) appropriate, rather than also having a requirement to comply within a fixed period subject to an exception or exceptions?

<b>Yes</b>	<input type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Not sure</b>	<input checked="" type="checkbox"/>
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**Supporting comments**

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## Chapter 23 - Children and young people in specific circumstances

**Question 40** – Is the guidance in Chapter 23 of the draft ALN Code on children and young people in specific circumstances appropriate?

<b>Yes</b>	<input type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Not sure</b>	<input checked="" type="checkbox"/>
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**Supporting comments**

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## Chapter 24 - Role of the Additional Learning Needs Co-ordinator (ALNCo)

**Question 41** – Is the information set out in Chapter 24 of the draft ALN Code about the role and responsibilities of the ALNCo appropriate?

<b>Yes</b>	<input type="checkbox"/>	<b>No</b>	<input checked="" type="checkbox"/>	<b>Not sure</b>	<input type="checkbox"/>
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**Supporting comments**

<p>The ALNCo role is clearly a different and more senior role to that of the SENCo. However, 24.26 conflates the two roles in relation to schools at least.</p> <p>From our perspective, it is imperative that there is a clear remit that schools-based ALNCOs understand further education and training and the options available to young people. They should also have a responsibility for ensuring that young people are not 'held' in special schools when it may be in their best interests to progress to a FEI or Specialist Further Education College (ISPI).</p> <p>There are a lot of "musts" in the Chapter which are a very big responsibility for the ALNCo; therefore it will not be possible for them to teach as well. We suggest that the ALNCo role might be best placed under learning and quality roles, so that the person responsible for transitions has an understanding of the curriculum and personalised programmes</p> <p>It will be important for the ALNCo to have an understanding of the legislation and a background in ALN.</p> <p>This could be a big resource implication for FEIs, especially the small ones, to appoint the right person at the right level.</p>
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## Chapter 25 - Avoiding and resolving disagreements

**Question 42** – Are the requirements imposed in Chapter 25 of the draft ALN Code on local authorities in respect of arrangements to avoid and resolve disagreements appropriate?

Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>	Not sure	<input type="checkbox"/>
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### Supporting comments

No. We believe that it is almost impossible for LAs to avoid or resolve disagreements when they are in the conflicted position of having to fund the disputed ALP. Hence they simply cannot be objective in resolving a disagreement.

Paragraphs 25.3 and 25.4 talk about the LA having to “make arrangements” for resolving or avoiding disagreements but it is unclear what those arrangements must be. We believe that LAs should be required to utilise independent mediation panels.

We believe the code needs give a stronger steer on the responsibility of LAs to be liaising with mainstream and specialist providers at an early stage to ensure a clear understanding of children and young people’s education and training needs and how they can best be met.

**Question 43** – Are the requirements imposed in Chapter 25 of the draft ALN Code on local authorities in respect of arrangements to avoid and resolve disagreements appropriate?

Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>	Not sure	<input type="checkbox"/>
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### Supporting comments

We believe that the compromised position that LAs are placed in by this code will make it impossible for them to act impartially.

We also question how adherence to arrangements including the promotion of advice and guidance will be monitored.

## Chapter 26 - Appeals and applications to the Tribunal

**Question 44** – Is the information about appeals and the appeals process set out in Chapter 26 of the draft ALN Code appropriate?

Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	Not sure	<input checked="" type="checkbox"/>
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### Supporting comments

## Chapter 27 - Case friends for children who lack capacity

**Question 45** – Is the information about case friends, including the duties on the Tribunal to appoint and remove case friends, clearly explained in the Chapter 27 of the draft ALN Code?

Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	Not sure	<input checked="" type="checkbox"/>
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### Supporting comments

### Any other comments

**Question 46** – Please provide any other comments that you would like to make on the draft ALN Code. Where your comments relate to a specific chapter or paragraph within the draft ALN Code, please indicate this in your response.

Our additional comments relate to eight principal areas of inclusive provision, quality of provision, ceasing IDPs, transferring IDPs, transitions, information advice and guidance, local authority ALN planning and funding for specialist placements.

**1. Inclusion of specialist provision.** We are disappointed that the code promotes an unwelcome and adversarial approach to specialist providers of education and training. Whilst special schools are included as an alternative to mainstream schools, specialist colleges / ISPs are not seen as an equivalent alternative to FEIs and are excluded from almost every Chapter in the Code. We believe this is at best unhelpful and at worst blatant discrimination against young people with more complex needs for whom FEIs cannot meet ALP needs. This is in direct contradiction to the Learning & Skills Act 2000, the aspirations of the code and its proposed adherence to the UNCRC and UNCRPD. It promotes an inequitable system in relation to the Post-16 education and training opportunities for Welsh young people and disappointingly opens and widens the doors for scarce resources to be drained by legal costs as those parents resilient enough to challenges these inequalities do so. The promotion of an inclusive education agenda should not be used to shroud a reduction in resource and support for education and training opportunities that will increase the life chances of some of our most vulnerable young people. We note that guidance provided in previous versions of the code for LAs when considering a place at a specialist college have been omitted from this latest draft version (i.e. Feb 17 code 13.37).

We believe that the draft code is seeking to deny specialist provision as an option without any communication or any strategic planning as to how this could be achieved. Moreover, that it burdens LAs to do the 'dirty work' of denying young people the ALP they need as they are forced to make LA-centred rather than person-centred decisions. We believe this approach to be discriminatory, unreasonable system that will deny access to further education to those who FEIs are unable to offer ALP. With such a small number of young people who might need this provision, it should be easy to identify, plan for and provide for specialist further education without the unnecessary and completely disproportionate response from LAs that the Code describes.

An Equality and Human Right's Commission's report on the UNCRPD notes the UK's reservation on Article 24 around inclusive education and advises that a move towards high quality inclusive education

should include ***‘a fully-funded strategy, with concrete timelines and measurable goals, to make education more inclusive. The strategy should cover implementation of laws and policies, teacher training, awareness-raising among parents of disabled children, and data collection about where disabled children go to school’.***

We are concerned that the code is seeking to impose a system that will exclude young people whose ALN cannot be met in a FEI from any further education. Moreover, that access to specialist provision will be inequitable across Wales. This is simply unreasonable and unfair.

Having said this, we completely understand the resource issues that are linked with more specialist provision, We are very willing to discuss how to limit this provision to the very small number that actually need and would benefit most from it, in order to avoid escalating costs, but we can only do this when it is described in the Code more positively as a much need provision for a very small but vulnerable group. If the ALN reforms do not make a positive difference for the most vulnerable, it is less likely that they will achieve the aspirations for the wider population.

## **2. Quality of ALP**

While we acknowledge that the role of quality assurance of education and training is outside the remit of this code, we are disappointed in the lack of reference within it to the need to ensure the promotion of best practice and a need for high quality provision particularly in reference to young people with high ALN and in relation to:

- (i) IDP Outcomes;
- (ii) Baseline assessments of education & training needs;
- (iii) Expectations of Post-16 education and training;
- (iv) Post-college destination planning.

**3.Ceasing IDPs for young people:** We believe that the content of paragraphs relating to maintaining a plan ought to be consistent for any young person over compulsory school age – wherever they are educated. The creation of additional regulations for a very small group of young people (Chapter 12) is illogical. The regulations under Section 46 should reflect the same considerations as those specified for young people in schools and FEIs. We reiterate here that there is no two-year norm for placements at FEIs for young people with learning difficulties and disabilities and hence the code is factually incorrect in this regard.

We are concerned that in situations where FEIs cannot meet individuals’ ALN, LAs may be pressured by this code to cease IDPs on false or ill-informed premises resulting in young people with learning difficulties and disabilities being denied further education by the nature of their disabilities.

**4.Transfer of IDPs:** We believe that a range of safeguarding mechanisms is required to ensure the education and training needs of all Post-16 Welsh learners can be realised. If such measures including:

- (i) the recognition of ISPIs as part of the Post 16 offer, requirements for baseline assessing and progressing measuring;
- (ii) clarity on Post 16 education and training outcomes for people with high ALN;
- (iii) transparent and measurable quality assurance mechanisms on IDP outcomes, Review processes and progress recording;

are not in place then the inescapable financial pressures Local Authorities are under will create and perpetuate an inequitable system that will rely on the resilience and tenacity of parents/carers to impose any element of regulatory control. We believe this is unreasonable and unfair.

**5.Transition to post-school education:** The code and the proposed regulations are predicated on failure. That is, placement failure at a FEI before specialist provision can be considered. Without a strategic recognition of the specialist sector as part of the Post-16 landscape, inappropriate

placements at FEIs will be made. As we have seen in England, the resultant stress and pressure this puts on disabled young people and their families as placements break down is unfair and avoidable. Each LA will inevitably have a small percentage of young people requiring specialist provision and transition to post-school education arrangements for this group should be planned as part of LA wider planning and reviews of ALN. Post-16 transition also requires planning across boundaries between LAs: the emphasis on local review and planning does not take into account the equally important need for regional and national planning with regard to more specialist services.

**6.Information, advice and guidance:** Throughout the code but particularly in relation to Post 16 education and training offers, Local Authorities are placed in contradictory and compromised positions. We are concerned that this will negatively impact the veracity and utility of information, advice and guidance for young people with complex and low incidence ALN.

**7.The LA ALN system / planning for provision:** Following English SEND reform, some LAs make one-year-only post-16 placements despite a young person's clear need for a two or three-year programme to achieve their outcomes. This short-termism causes huge and unnecessary anxiety for young people and families. A recent survey of Natspec colleges revealed that 72% of colleges had one or more returning students where the local authority, at the end of May, had not yet confirmed their ongoing placements for September. We believe that Wales is well-placed to avoid such problems being repeated and look to the final version of the Code to ensure they are avoided.

**8.Funding of specialist placements:** Natspec advocates that the existing circa £12million per annum held centrally by Welsh Government that funds around 300 placements per annum at Specialist Colleges should be both ring-fenced and held nationally. This will allow for the natural fluctuations in numbers of low incidence high needs young people across Wales who require specialist placements to be accommodated. i.e. one LA may have no such learners one year and five the next.

We believe that the un-ringfenced devolution of funding will place unwarranted pressure on LAs to fulfil their obligations. It will problematise parent/LA relationships and these young people will equally be 'a problem' for already financially stretched LAs. The maintenance of a centrally held fund will free LAs from the inherent conflicts of interests of being responsible for assessing, commissioning and funding placements at specialist colleges. It will also help to ensure that young people with learning difficulties and disabilities are not denied ALP by the nature of their ALN.

## **Part 2 of the consultation: Draft Education Tribunal for Wales regulations**

**Question 47** – Overall, do the draft Education Tribunal regulations provide clear processes and procedures relating to appeals and claims to the Education Tribunal?

Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	Not sure	<input checked="" type="checkbox"/>
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**Supporting comments**

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**Question 48** – Overall, will the processes and procedures outlined in the draft Education Tribunal regulations enable the Education Tribunal to deal with cases fairly and justly?

Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	Not sure	<input checked="" type="checkbox"/>
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**Supporting comments**

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**Question 49** – Is the proposed case statement process (regulations 12-15 and 19-21 of the draft Education Tribunal regulations) appropriate?

Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	Not sure	<input checked="" type="checkbox"/>
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**Supporting comments**

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**Question 50** – Are the proposed timescales for each party in the case statement process (regulations 12-15 and 19-21 of the draft Education Tribunal regulations) reasonable?

Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	Not sure	<input checked="" type="checkbox"/>
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**Supporting comments**

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**Question 51** – Is the 6 week timescale within which NHS bodies must report to the Education Tribunal in response to a recommendation (regulation 65 of the draft Education Tribunal regulations) appropriate?

<b>Yes</b>	<input type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Not sure</b>	<input checked="" type="checkbox"/>
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**Supporting comments**

**Question 52** – Are the timescales relating to compliance with Education Tribunal orders appropriate?

<b>Yes</b>	<input type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Not sure</b>	<input checked="" type="checkbox"/>
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**Supporting comments**

**Question 53** – Is the approach to extensions to timescales (regulation 66 of the draft Education Tribunal regulations) appropriate?

<b>Yes</b>	<input type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Not sure</b>	<input checked="" type="checkbox"/>
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**Supporting comments**

**Question 54** – Are the proposed regulations relating to case friends (draft Education Tribunal regulations 61 to 64) appropriate?

<b>Yes</b>	<input type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Not sure</b>	<input checked="" type="checkbox"/>
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**Supporting comments**

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**Part 3 of the consultation: Draft ALNCo regulations**

**Question 55** – Are the prescribed qualifications to be an ALNCo set out in the draft ALNCo regulations appropriate?

<b>Yes</b>	<input type="checkbox"/>	<b>No</b>	<input checked="" type="checkbox"/>	<b>Not sure</b>	<input type="checkbox"/>
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**Supporting comments**

<p>We argue here that it is more important for ALNCOs to have experience and expertise in ALN and ALP than it is for them to be qualified teachers. It is also crucial that they have knowledge of FE and understand the college context and what it means to provide further education and adult oriented programmes</p> <p>Para 24.26 implies the conversion of SENCOs to ALNCOs is only applicable to schools; there is no mention if it is the same for FEIs (Our response to question 41 above is also of relevance here).</p>
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**Question 56** – Do you agree with the tasks that ALNCOs must carry out or arrange to carry out as set out in the draft ALNCo regulations?

<b>Yes</b>	<input type="checkbox"/>	<b>No</b>	<input checked="" type="checkbox"/>	<b>Not sure</b>	<input type="checkbox"/>
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**Supporting comments**

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## **Part 4 of the consultation: Looked after children**

### **(a) Proposed regulations to be made**

**Question 57** – Do you agree that the Looked after Children in Education (LACE) Co-ordinator should be a statutory role?

<b>Yes</b>	<input type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Not sure</b>	<input checked="" type="checkbox"/>
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**Supporting comments**

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### **(b) Chapter 14 of the draft ALN Code – Content of an IDP for a looked after child**

**Question 58** – Do you agree that there should be a separate standard form for looked after children and is the proposed standard form, together with the guidance and requirements related to it, appropriate?

<b>Yes</b>	<input type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Not sure</b>	<input checked="" type="checkbox"/>
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**Supporting comments**

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### **(c) Proposed revisions to the Part 6 Code**

**Question 59** – Do the draft revisions to the Part 6 Code provide a clear explanation of the duties on local authorities in relation to their social services functions for looked after children with ALN and what these duties mean in practice?

<b>Yes</b>	<input type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Not sure</b>	<input checked="" type="checkbox"/>
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**Supporting comments**

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**Question 60** – Overall, do you agree with the approach taken in the draft revised Part 6 Code to explaining the legislative changes, including the integration of personal education plans (PEPs) and IDPs and the mandatory content of PEPs? Are the requirements and expectations and what these mean in practice clearly explained?

Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	Not sure	<input checked="" type="checkbox"/>
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**Supporting comments**

**Question 61** – Do the changes that have been made to the Part 6 code clearly explain the role of the LACE Co-ordinator in overseeing the ALN arrangements for looked after children and what this means in practice?

Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	Not sure	<input checked="" type="checkbox"/>
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**Supporting comments**

## **Part 5 of the consultation: Impact of proposals**

**Question 62** – What impacts do you think there will be as a result of the proposed regulations?

We believe that regulations that will the biggest impact for FEIs and ISPIs are those relating to:

- Deciding is an IDP is necessary not in a maintained school or FEI – Section 46
- Timescales for NHS bodies to respond
- Timescales for compliance with duty to provide information
- Transfers of IDPs
- Period of time for making requests
- Deciding if it is no longer necessary to maintain and IDP for a young person not in school or FEI
- ALNCo responsibilities
- Education Tribunal

We believe the regulations should play a role to enforce better partnerships between specialist providers (schools and colleges) and FEIs to explore options for joint provision

There needs to be a recognition of the additional resources that will be required for FEIs to carry out assessments and recognition of how long it will take to do an assessment for an IDP – especially where it is decided that the FEI can't meet individuals' ALP. We also believe that Specialist Colleges (ISPIs) on the section 56 list should be included more formally in terms of partnerships with LAs and FEIs, and need to be required to take account of / have regard for the Code of Practice. For

example, where LAs are maintaining an IDP, they need to take account of possibilities to use a section 56 provider in conjunction with a FEI.

Resource implications: devolution of the £12million per annum currently held centrally by Welsh Government to funds around 300 placements per annum at Specialist Colleges is a false economy and will lead to unnecessary expenditure by LAs on a) creating unnecessary new local specialist FE provision and b) mediation and tribunals on disputed decisions which are made due to resource constraints rather than quality considerations.

This £12m fund should be both ring-fenced and held nationally. This will allow for the natural fluctuations in numbers of low incidence high needs young people across Wales who require specialist placements to be accommodated. i.e. one LA may have no such learners one year and five the next.

The maintenance of a centrally held fund will free LAs from the inherent conflicts of interests of being responsible for assessing, commissioning and funding placements at specialist colleges. It will also help to ensure that young people with learning difficulties and disabilities are not denied ALP by the nature of their ALN.

Natspec understands the need to protect resources, and is very willing to discuss how to limit this provision to the very small number that actually need and would benefit most from it, in order to avoid escalating costs, but it should be recognised as an important part of the ALN system.

**Question 63** – What impact do you think the proposals in the draft ALN Code and proposed regulations would have on the Welsh language?

No comment

**Question 64** – How do you think the proposals in the draft ALN Code and proposed regulations could be formulated or changed so as to have:

- i) positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language?;
- ii) no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language?

No comment

**Question 65** – We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

No further comments