

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

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

It is important that the response times requested do not create the unintended consequence of creating conflict between ALN and other clinical priority response targets. We would not this to encourage more people into the ALN route in the hope of a quicker response from healthcare services.
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**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	✓	No	<input type="checkbox"/>	Not sure	<input type="checkbox"/>
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#### Supporting comments

"Circumstances beyond the responsible body's control" could be open to a wide interpretation. In the case of healthcare services, would this include other clinical priorities?
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### 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?

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

However, this is a long and technical document. Healthcare professionals and others would no doubt appreciate supporting worked examples or case studies to illustrate how certain processes would work.

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

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

Again, there is a lack of practical advice on how the code will be implemented in different situations. Supporting documents may be necessary to provide this.

## Chapter 2 - Principles of the Code

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

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

We support the principles of the code. We would particularly highlight the importance of both the UNCROC duties and a collaborative approach which ensures that those with healthcare expertise are able to contribute to the support of students with ALN. We hope these principles will be amplified as part of the roll out of this code.

## 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>	✓
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**Supporting comments**

We believe the code could be stronger in setting out how local authorities and NHS bodies will be expected to discharge their duties. Point 4.16 states that “It is for the local authority or NHS body to decide how to exercise its functions and how it does so will depend upon the context”, which leaves considerable wriggle room.

## 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>	✓
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**Supporting comments**

We would argue that sections 6.8-6.11, relating to information provided about ALN, “**must**” rather than “**should**” be clear, accurate and use language that children, their parents and young people can easily understand. We believe this would be keeping with the requirements of section 9 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018.

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

We remain concerned that *Supporting Learners with Healthcare Needs guidance 2017* is described as setting out the arrangements for supporting children under 18 with healthcare needs as part of that definition. This guidance was drawn up before the passing of the ALN Act and therefore uses the term SEN rather than ALN throughout. We are also concerned that the SLHNG leaves the decision on whether or not a healthcare need requires a plan to be put in place in the hands of headteachers exclusively, even if that was at odds with a healthcare professional’s advice. The guidance needs to be updated urgently.

We also believe there needs to be clarity over the difference, or lack thereof, between an Individual Development Plan as required under the ALN Act, and an Individual Health Plan as laid out in SLHNG. If a child has an IHP but it is also determined that they have an ALN and therefore require an IDP, will these two be merged or in some other way specifically connected? We believe this needs to be clarified, and that one unified IDP would be the most logical approach.

**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 are concerned that under section 7.60 that what appears to be a very comprehensive list of agencies, professionals and individuals does not include dietitians or a number of other healthcare professionals. While we recognise that the list is probably not intended to be exhaustive, the length of the list could create the impression that this is an official list of those that must be considered, which may mean those not included are not considered. We would prefer a more general list (for example a description of “Allied Health Professionals” or “Therapy services such as...”

We believe that the requirements outlined in points 7.57 and 7.58, regarding input and involvement from child, child’s parents or young person and any suitably qualified professionals working with the child should have a stronger statement of “**must**” rather than “**should**”. Ensuring that the decision over whether a child has an ALN **must** involve those with the appropriate expertise in their medical condition.

Specific consideration also needs to be given to the interaction between schools and catering services where children and young people with significant difficulty in learning (e.g. autism, ADHD, multiple sclerosis, cerebral palsy, sight or hearing impairment) are more likely to require additional

provisions for eating or drinking that impact on learning (e.g. limited food range, texture modification, food selection difficulties, dining environment modification). The same would be true for disabilities/medical conditions (e.g. severe food allergies, diabetes) that require additional provisions for eating or drinking that impact on learning (e.g. dietary provision). There is not currently sufficiently detailed national guidance for catering for special dietary requirements in Wales (or UK) maintained schools and practices vary across Wales. We would refer you to the work led by of the Welsh Local Government Association's (WLGA) Food in Schools Coordinator on this matter. There is also no national dietetic resource to support this much needed work.

## 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

We support the mandatory content, including the description under 13.3 that the IDP should be created collaboratively and in language that reflects the child whose plan it is. We would suggest that this might also be a “must” rather than “should” requirement.

**Question 19.** Is the proposed mandatory standard form for an IDP (included at Annex A 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

The form has a separate part for input from an ‘NHS body’ it will be important not too separate this out into education input and health input. The focus should be on how the child accesses learning in the environment with therapeutic strategies to support. Health input is not always separate, it is integrated in the child’s occupations enabling them to participate.

## 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?

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

The six week timescale may be too short for many healthcare professionals to provide information or other help, given that typical referral targets for diagnostic services are eight weeks and 14 weeks for therapy services - <https://www.gov.uk/government/statistics/nhs-diagnostic-and-therapy-service-waiting-times-june-2017>. We are sure that all HCP would make every endeavour to respond in a timely manner and provide support, but there may be situations or professions for whom a six week timescale is unrealistic.

We would want to ensure that “if request is urgent”, as mentioned under 15.14, this will not be utilised in order to receive assessments more quickly. Urgent needs to be more clearly defined.

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?

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

See response to question 22

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)?

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

We welcome the specific recognition that this role should be open to Allied Health Professions and Public Health Practitioners with appropriate experience and expertise. We hope all Boards will be encouraged to consider a broad range of applicants for these roles.

It will be vital that the DECLO role can influence strategic consistency in implementation of the Code across Wales. It is essential that the DECLO operates at a level enabling them to champion ALN and engage executive teams and service managers for a multitude of services. There will need to be cohesion and learning from test cases.

## Chapter 16 - Review and revision of IDPs

**Question 25** – Is the content and structure of Chapter 16 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**

We welcome the inclusion of NHS bodies as an organisation that can request a review.

However, we are concerned that any changes to provision must be accompanied by a review meeting. Changes to therapy intervention/ ceasing of intervention may be frequent. There are concerns about the pressures this may place on health professionals where reviews are regular..

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

See response to question 22

## 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?

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

We support the involvement of other professionals, in particular healthcare professionals, in meetings, but would again raise concerns about reasonable timelines for participation as discussed in Q22.

It may be useful to restate the principles here (which we assume are the same as for the Act as a whole).

Again we would emphasise the possible difficulties with timescales for healthcare staff.

## 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?

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

Ensuring health and care transitions are well managed in all settings is essential to ensure good continuity of care and avoid negative impacts. We would urge the Welsh Government to ensure that these this code is aligned with other guidance on transitions in care, such as that proposed relating to transitions within Welsh healthcare settings.

We believe 19.10 should state “**must**” work together and not only “**should**”

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

These arrangements are welcome. As highlighted in our response to question 12, we would like to see a clearer process in place for healthcare needs, rather than the much more limited process outlined in the *Supporting Learners with Healthcare Needs guidance 2017*.

Local authorities and health boards require joined up complaints systems to ensure that learning is shared across both agencies in the best interests of developing a less divisive system of identifying ALN and meeting ALP (not your problem, or my problem, but **our problem**), moving towards shared accountability for solution focussed agency interventions with families.

