

## Draft Additional Learning Needs Code

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

#### Consultation response form

Your name: Dr Alison Stroud

Organisation (if applicable): Royal College of Speech and Language Therapists in Wales

e-mail/telephone number: 029 2039 7729

Your address: Transport House, 1 Cathedral Road, Cardiff CF11 9SD.

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**

This is valuable in making it explicit where statutory duties lie.

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

We believe the description is very wordy with the brackets making it more complicated than necessary. It would be extremely helpful to have visual representations of key timescales for compliance.

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

It is apparent that 'promptly' means quicker than the timescale given but this is vague. It is understood that this may depend on individual situations and timescales being set. We have included further detailed comments on timescales, which are expressed in response to question 22.

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

It is crucial that the code is easy to read in order for it to be interpreted consistently by practitioners and families. The code in its current form is long and unwieldy. This is perhaps inevitable given the breadth of the code but we believe that it may be helpful for officials to consider additional presentation options to ensure the code is as accessible as possible. Additions such as the flowcharts are very welcome. We would particularly welcome visual representation of timescales. Please see below further detailed comments

from members.

- 1.18 – the last sentence is long and difficult to understand
- 1.19 – does this mean though that there has to be adherence to English legislation?
- 1.24 – this seems clear in principle
- 1.25 – the abbreviation IPSI needs full wording
- 1.43 – comment about the code being ‘unworkably long’ is already true.
- 1.45 – this outlines the need to read the ‘implementation guides’ as well.
- 1.47 – references to Part 2 indicates that it is a requirement to read Part 2 of the Act.
- 1.50 – what are ‘proper facilities’ and ‘reasonable facilities’?
- 1.54 – it is unclear where the cut off point is for local authorities being responsible for ‘the most complex and/or severe needs’. The end bracket is missing at the end of the sentence.
- 1.65 – ‘All teaching practitioners must undertake regular professional learning in relation to ALN’ and ‘learning requirements must be identified’ would be appropriate.
- 1.74 – implies that you have to read all of the code as well as the specific chapters about the relevant matters so why are the chapters divided that way to include repetition?
- 1.86 – does chapter 12 make it clear who these young people are?
- 1.91 – refers to ‘a pupil or student’ where elsewhere it is ‘child or young person’.
- 1.92 – ‘IDP review meetings or meetings to decide whether a child ... has ALN or not’ should this read ‘review meetings and meetings to decide ...’

**Glossary –**

- 1.102 – ‘definitions of terms used in the Act are included’ rather than ‘incorporated within this glossary’.
- 1.103 – ALNCo – ‘co-ordinating additional learning provision’ does this include writing IDPs in schools and FEIs? Who has ‘responsibility’ for this? Who signs it?
- “Local authority” – when talking about whether ‘he or she is in the area’ does this mean ‘lives in’ or ‘educated in’?
- ‘Early Years’ should be defined for the purposes of the code. It is currently different in various places in the Code – eg. “under compulsory school age” but should be defined consistently as ‘under compulsory school age and not the responsibility of a governing body of a school’.
- It would be help if ‘referral’ and ‘request for treatment’ could be clarified within the code – ideally within the glossary section.

**Question 5** – Is the draft ALN Code’s focus on describing and explaining the functions and processes 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 that the code needs to fully reflect the transformational nature of the legislation. We are concerned that the code, as stands, doesn’t clarify the functions and processes to support an effective interface between key agencies for children with wide-ranging ALN.

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?

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

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

We would welcome a stronger focus on person centred practice within this chapter as a key principle of the legislation. Please see below further detailed comments from members.

The inclusion of 'places a duty on a person exercising functions under Part 2 of the Act' (paragraph 2.5) implies that the reader of the code needs to read the Act or just put 'Part 2 of the Act' in the footnote rather than in the body of the code.

2.8 – it is positive that the code emphasises the need for information and engaging with and treating pupils with ALN and parent/carers as partners in order to identify and provide to meet their needs. This is comparable with the principle of co-production within Prudent Healthcare.

2.10 – 'considering, intending to make' – what does this mean?

2.14 – 'Identifying ALN at an early stage and delivering appropriate interventions may also prevent the need for future more costly and less effective interventions.'

Acknowledgement of the importance of early intervention (also in chapter 3) is in keeping with the evidence base for early language development.

2.18 – inclusion of 'evidence-based approaches' in the bullet points which are outcome-focused.

2.24 – NHS will consider the clinical need of ALP in any language

## 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?

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

We welcome the focus of the code on greater involvement of children and young people but given that the legislation extends the age-range up to 25, believe this section needs to have a much stronger focus on involving young adults linking to relevant legislation such as the Mental Capacity Act and the Mental Health Measure and to link with legal principles around consent. Further detailed points from members may be found below.

3.7 – 'may be nonetheless' – replaced with 'is'

3.9 – 'information about communication' meaning 'how they communicate and how to communicate with them' will need to be recorded in the IDP.

3.10 – line 8 'support a particular child' – 'particular' is not necessary.

3.17 – reference to 'a person' where in other places 'a child or young person' is used.

3.25 – the first sentence is very long and difficult to understand.

3.26 – the first bullet point refers to 'particular parents', 'particular' is unnecessary.

3.26 – the first bullet point, second line refers to 'the decision the body is making' – is the

body a team or group?

#### 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)?

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

Whilst it is essential that the code has regard to the UNCRC and UNCRPD, we believe that given that the legislation extends the age-range up to 25, the code should also include references to wider legislation covering adults such as the Human Rights and Equalities Acts. Further detailed points from members on this section may be found below.

4.1 – this is not written in ‘plain English’

4.3 – ‘the UNCRC provides: states’ – both words not required.

4.6 – what does this mean?

4.7 – Can ‘is required to’ be replaced with ‘must’ rather than it being in brackets afterwards?

4.7 – the 3<sup>rd</sup> bullet point is not clear

#### 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?

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

Please see below detailed comments from members.

5.15 – ‘bodies and persons’ is very formal – ‘people/roles’ instead?

It is positive that NHS bodies are included in reviewing ALP. Also the partnership working in 5.22.

#### 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?

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

This chapter requires significant revision. There is a great deal of repetition within this chapter and it could be tightened and be more innovative in approach. Please see below more detailed comments from members.

6.1 – ‘have regard to the principle’ – too formal language

6.8 – ‘factual’ but in 6.10 ‘clear and accurate’. Are these the same?  
 Is 6.14 a repetition of 6.8?  
 Is 6.19 a repetition of the meaning of 6.8 but using different words?  
 6.22 unnecessary repetition within the point  
 6.25 The first 2 bullet points can be combined by using ‘website and/or prospectus’. The 3<sup>rd</sup> point is repetition from elsewhere.  
 8.17b repeats some information where readers should be referred to Chapter 6.

**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?

<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**

Please see detailed comments from members below.

7.1 – inclusion of the word ‘usually’ is very important. This is required to ensure that a graduated response is followed. This appears to contradict the flow chart, eg. p.72 where it is indicated that whenever there is a ‘call for ALP’ then the child has ALN and an IDP needs to be devised. Is this the case? 7.10 states that differentiated teaching is not ALP but where is this distinction? It is positive that a differentiated approach does not constitute ALN.

7.3 and 7.9 – is it necessary to include the whole of the definition from the Act, including point 5?

Section beginning with 7.13 – are these children under compulsory school aged who are not the responsibility of a governing body of a school?

7.15 can be added onto the end of 7.13 by stating ‘This difference reflects the fact that children are under 3 ...’

7.16 – is it appropriate to use the example of ‘parent and child groups’ rather than ‘mother and baby groups’?

7.17 Can ‘is determined by the definitions set out in the sections 2 and 3 of the Act’ be omitted?

7.19 – beginning – Is this part of the graduated response – prior to considering ALN? This is useful if it is but it needs to be stated as such.

7.19 - end of the point is unnecessary.

7.25 – are the ‘wider issues’ referred to at the end of the paragraph ‘ALN’?

7.27 – this should refer to **all** the languages they are exposed to, not just the ones they ‘speak’. They may understand languages spoken at home and in settings but not ‘speak’ them.

7.29 is clear.

7.53 and 7.61 references ‘medical advice’. This is a narrow reflection on the role of NHS bodies.

**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?

<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**

Please see detailed comments from members below.

7.34 and 7.35 – some of these include ‘significant’ but others don’t, eg. the last point on page 62 and none at the top of page 63 include ‘significant’.

7.34:

4<sup>th</sup> bullet point ‘significant delays in language functioning’ – change ‘delays’ to ‘difficulties’ in line with Royal College of Speech and Language Therapist terminology where ‘language delay’ is no longer used.

5<sup>th</sup> bullet point ‘impaired social interaction or communication or a ...’ – change the underlined to ‘communication; a significantly restricted ...’

7.35 - Final bullet point – this should refer to ‘speech, language, communication and/or interaction difficulties ...’.

7.38 – FPP can aid identification of ALN and help in **understanding the progress** – may not be ‘developmental’.

7.41 – 3<sup>rd</sup> bullet point ‘fails to close, or widens’. Is ‘or widens’ necessary?

7.54 – refers to ‘person’s needs’ rather than ‘children and young people’s needs’

7.61 – This is an appropriate list of information/engagement needed.

7.64 – 1<sup>st</sup> and 2<sup>nd</sup> bullet points – need to be clear that differentiating the curriculum and strategies are not necessarily (or even definitely) ALP for ALN.

Pages 72 and 73 – needs to clarify ALP is not the entirety of the graduated response required to be made by settings. What constitutes ‘graduated response’ and no ALN and ALP?

## 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)?

<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**

There are many different aspects of the ALNLO role. For this reason, it may be difficult to ensure that those delivering the role have the appropriate level of training to deliver the requirements of the role. There are challenges in terms of making recommendations about the level of training required in terms of SLC and SLCN. While 8.42 does state that the role is strategic, it seems that the experience and expertise required implies some operational work, and 8.46 also implies this. The suggested responsibilities (8.45) include some where the person has to have had an educational delivery role. Is it possible that the role (strategic and operational) could be delivered by more than 1 person (with an overall named lead)?

### 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?

<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 are aware that the formatting varies between the chapters (see 8.5 and 9.3) which we believe may need to be reconsidered. Please see below detailed comments from members.

8.9 – Professionals from Health Bodies will need a clear summary of the individual’s ALN before they can identify a treatment or service which is likely to be of benefit. The outcome of seeking advice from an Educational Psychologist (for children under compulsory school and not the responsibility of a school governing body and LA prepared IDPs) should be provided to the Health professional in order for them to know the individual’s ALN and identify effective intervention.

The stipulation for NHS bodies to provide intervention which is ‘likely to be of benefit’ is not stipulated in the same way for schools, LAs and FEIs. We are interested in why this is the case and elaborate on this further in our response to question 22.

8.28 – IDP needs to be shared with other agencies involved and included in the ALP. How do drafts get shared and how is the IDP finalised? Clarification is also needed around this in relation to 9.24 and 9.76.)

9.2 – do ‘low incidence’ needs have to have an IDP prepared by the LA? What constitutes ‘low incidence’? With the appropriate advice provided from the relevant agencies, could this be done by a maintained school as long as they have the correct advice and they are able to secure the ALP? If the school are not able to secure the ALP or adequately determine the ALP, this is covered in 9.19.

It is clear that responsibility for identification of ALN and completion of IDPs sits with schools and LAs (for school aged children).

SLTs are concerned about how the code will be delivered practically within FEIs. Much of our model of working with schools depends on a universal and targeted approach. This would be very difficult to achieve within the FEI infrastructure which depends on a sessional lecturer model. We believe therapies input to FEIs needs to be carefully considered at a strategic level as services will have little capacity to work in a targeted way with every individual coming through the system and evidence suggests an approach which does not focus on environmental changes will not be effective. It may be helpful to consider the model created for schools following WG funded pilots in this regard. We would be happy to discuss this further.

**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>	✓	<b>No</b>	☐	<b>Not sure</b>	☐
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**Supporting comments**

Please cross-reference these comments with our response to question 22.

We believe it is appropriate for a child or young person to have an IDP prepared within the timescales given e.g. half a term.

9.44 How is ‘reasonably arranged and accessed by the school’ measured? Concern that depending on the advice from SLT, the IDP could transfer between the school and the LA (and 9.45 last bullet point).



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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 type="checkbox"/>	<b>Not sure</b>	<input type="checkbox"/>
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**Supporting comments**

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

The focus on expected outcomes of ALP as the starting point of the description of ALP is positive.
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**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 checked="" type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Not sure</b>	<input type="checkbox"/>
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**Supporting comments**

As with all ALP, it will be important for the intended outcome to be stated (eg 2C for Health Bodies) but also how the ALP relates to the intended outcome (in the rationale section, 2C.7). It is only where there is a very clear, strong correlation between these <b>and</b> a strong evidence base to support this, that there is indication that therapy may be appropriate to deliver.  It would be helpful to reference 15.33 next to the Annex C form.  It needs to be reiterated that this is mandatory content rather than a mandatory form to ensure the content and purpose is paramount rather than the form.  Members also wish to clarify that ALP includes the provision of communication equipment.
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**Question 20** – Is the guidance in Chapter 13 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**

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Chapter 13, paragraph 13.54 indicates the summary of the discussion taken as part of the preparation and revision of an IDP. Given that not all those involved may be able to attend PCP meetings (although a written report should be issued), it will be important to determine how decisions about the priorities for the IDP are made and what happens after this. A report written before a PCP meeting may not necessarily reflect the discussion/decisions made. How will this be managed?

13.40 2B.6 – End review – should it be stated that this should never be more than 12 months from the date of the IDP (or is it the review?), but is more likely to be far less than that timespan (in line with predicted change).

15.42 Under the suggestions of the DECLO role, the Code states that health professionals ‘should provide in writing their advice and evidence in advance of the meeting’ (the IDP meeting) (p.183). This will be in advance of the PCP discussion about what is important to and for the child or young person. Following this discussion, priorities may change.

Transport

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

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

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

We have two main areas of concern relating to chapter 15, where we believe it may be helpful to have further clarification, namely usage of the term ‘likely to benefit’ and timescales.

*‘Likely to benefit’*

Point 1.66 states that ‘*NHS bodies have a direct role in providing Additional Learning Provision (ALP) in instances where that ALP is a treatment or service normally provided by the NHS and likely to be of benefit in addressing a child or young person’s ALN.*’ This point is also raised in 8.23, 8.33, 9.22 and 9.75. We believe clarity is required around the term ‘likely to benefit’ as we are concerned that this may be open to interpretation in many different ways and be a source of dispute between families and key partners.

Prudent health care for health services in Wales ensures a health economic, value based

healthcare system. This requires health professionals to base their decisions on the need for intervention on clinical need not on likely benefit. By 'clinical need', we mean the ability to affect positive change outcomes for a patient balanced with the resource/cost. 'Likely Benefit' in health culture also means a health economic judgement where the cost benefit is analysed. Formal structures such as NICE guidance judge the cost benefit of the treatment to include the cost of the health gain. Health economics ensures that health spend does the most good to the most people given that health boards commission for populations not just individuals.

Point 9.75 states, '*Where, following a referral to an NHS body, the body identifies **relevant** treatment or service likely to be of benefit in addressing the pupil's ALN, the local authority must describe the treatment or service in the IDP, specifying that it is ALP to be secured by the NHS body*'. The addition of the word 'relevant' has significant meaning and indicates a treatment or service which is appropriate to the individual's needs and normally provided by the health service in Wales, as judged by a balance of benefit and cost. This would be in line with clinical pathways and evidence based approaches, which is key in terms of delivering intended outcomes. To aid clarity, we are of the view that the term 'relevant' should consistently be included in other statements about the treatment or services NHS bodies are required to provide e.g point 1.66 and 8.23. We would also welcome consideration of the insertion of the phrase 'evidence-based' which would provide further clarification. We believe that these changes would be consistent with duties on schools, Further Education Institutions and Local Authorities who can consider the efficient use of resources when deciding on the Additional Learning Provision (7.69).

### *Timescales*

We believe that six weeks is an appropriate timescale if the child or young person is known to services. However we have a number of concerns about how workable this timescale would be in relation to a child or young person who is not known to services at the time of referral. Services currently adhere to priority targets (referral to treatment timescales of 14 weeks). We wish to flag up that there will be times where NHS bodies are not able to meet the timescales suggested and will therefore be 'exceptional situations' due to the requirements on the NHS to provide services to the population and to meet targets as reported to Welsh Government. Failure to meet these targets could potentially contradict the principle of prudent healthcare to 'care for those with the greatest need first'. We believe consideration should be given to this key issue. It is important to emphasise however, that the IDP can include information about how a child's speech, language and communication needs are going to be addressed prior to information being obtained from a Speech and Language Therapist.

It will be important for those preparing IDPs to include information about meeting speech, language and communication needs possibly prior to individual information for a child or young person from a Speech and Language Therapist. Depending on whether the child or young person is already known to Health Board departments or not, it may take longer than the stated timescales (and these are defined in the exceptions).

Please also see below more detailed comments from members.

15.7 'Incompatible with their own duties'. Is this the situation if a referral does not meet the referral criteria? This also acknowledges that NHS services have other demands such as Referral to Treatment (RTT) targets which have to be met.

15.12 'due to circumstances beyond their control' (rather than 'its')

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

Please see below detailed comments from members which we believe may be helpful to be read in conjunction with our response to question 22. The timescale stated in 15.12 may result in an indication from a health body that a child is waiting for assessment or that a referral has been accepted/rejected. Health Boards have priority targets (currently 14 weeks wait for assessment and treatment) which need to be adhered to and therefore this may result in a circumstance 'beyond its control', that is, waiting times across the service meaning that the timescale is not met. It is very important that lessons are learned from SEND in England where RCSLT have published a report revealing that SLTs have an obligation to respond to EHC Plans, reducing the capacity to support other children who require services but do not have EHC Plans.

15.14 is very long to describe the possibilities.

15.20 Is this the same wording as in the Act? It reads like legislation but should the Code provide more information that the Act/be easier to read?

15.24 refers to 'ALP as something they would normally provide as part of the health service in Wales'. This is different from/contradictory to 'likely to be of benefit' (at the beginning of 15.25 although the wording from 15.24 is then repeated in 15.25). What is normally provided would be in line with other principles of the NHS (for the population) and where there is a clinical pathway, should be evidence based which is very important regarding the intended outcomes. 15.28 returns to 'likely to be of benefit'. (Same points for paragraphs 8.23, 8.33, 9.22, 9.75 as referenced in response to question 22 ) and the wording in 15.46 is different again when describing the DECLLO role, 'enabling health professional to input into the preparation of IDPs and the securing of ALP by – making evidence-based recommendations on effective interventions' (p.184). Again, this is different from and more of an accurate description than 'likely to be of benefit'.

'other staff' (5<sup>th</sup> line of 15.24) should be changed to 'education staff'.

15.25 The referrer to an NHS body should be the person who is asking for the assistance. If a child is in school then it would be the school (class teacher or ALNCO, person closest to the child with responsibility) who makes the referral. We believe it is very important that people who work with children and young people who feel that the child (and they) would benefit from information from a Speech and Language Therapist are able to refer to the relevant service in a Local Health Board. The table on page 180 of the code (after 15.25) currently indicates that only Local Authorities are able to refer to Health Services. The profession has an open referral system and does not support this restriction. The title before the box should also read 'Who can refer a matter to an NHS body?'

15.28 If the NHS body does not think there is a relevant treatment or service then we would not assess a child or young person again.

In recommending services in Welsh this would be in collaboration with parents / guardians and complying with the active offer of Welsh provision.

15.29 Instead of the wording “of the treatment” should say “about the treatment or service required”

15.31 We recommend change word “referral” to “request for information”

15.34 We believe this may need to be considered within the restrictions of current capacity arrangements. Currently children are discharged and information about this is fed into the annual review. Members are concerned it would take a lot of time to arrange a review of IDP and attend it before discharging, time potentially that other children who require input could be receiving.

15.36 It is appropriate that the NHS body is not required to provide ALP as directed by the Tribunal unless it agrees to do so. We would welcome clarification as to whether this applies to recommendations made by independent therapists.

It is positive that the code enables NHS bodies to request a review of the IDP at any time and that any request to remove or amend the NHS bodies’ ALP must be done.

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**

We are of the view that the document should focus on key function, expectations and competencies as otherwise the likelihood of appointment will be significantly reduced. It must also allow for the different structures in health boards as each will have to make modifications of authority and reporting lines. IT developments will be key.

Members in North Wales in particular have expressed a number of concerns about the viability of the DECLO role due to the workload and geography of the health board area, requiring engagement with six Local Authorities. Members have also called for clarification about the DECLO’s role in deciding on interventions that may be of benefit and how this will align with uni-professional knowledge.

**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 checked="" type="checkbox"/>	<b>Not sure</b>	<input type="checkbox"/>
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**Supporting comments**

16.12 – We appreciate that it may be difficult to recommend how often IDPs should be reviewed. However, a 12 month period appears arbitrary and does not fit with a Malconess care aims nor person centred planning approach and could lead to continuation of a statementing approach.

**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?

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

Please see detailed comments from members.

16.9 – Therapy plans can be changed at least 3 times a year, ie. intended outcomes changing every term. This system seems to be based on annual intended outcomes. Would it be the Health Professional’s responsibility to ask ALNCo for IDP review at the start of every therapy plan?

16.22 Would an NHS body have to request a review of an IDP prior to discharge from the service if the child/young person has an IDP? How will this work in practice?

**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?

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

We would wish to avoid a situation whereby families experience significant delays and conflict due to lack of clarity about whom is responsible for maintaining an IDP, depending on the provision described by NHS bodies.

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

See comments above.

**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>	✓	<b>Not sure</b>	<input type="checkbox"/>
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**Supporting comments**

The guidance is useful but the principles aren’t clearly stated. It appears that the underlying principles for meetings are similar to the principles underpinning the whole act. If this is so

then we believe this should be stated and guidance provided as to how these may be applied in practice meetings.

Members have expressed many concerns about the ability to attend IDP meetings due to capacity. We would welcome further detail on contributing paperwork “in advance” to ensure appropriate notice periods are observed and also on how such written contributions will be used in the process. There is current good practice by schools which set meetings in September for the academic year which could be considered.

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

19.10 – should read ‘must’ rather than should.

### Chapter 20 - Transferring an IDP

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

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

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### 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?

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

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**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?

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

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## Chapter 21 - Ceasing to maintain an IDP

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

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

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

Research has shown that ensuring appropriate education, training and employment are available to children and young people during their detention and upon release help reduce the risk of re-offending.

Would an IDP be maintained where appropriate when the child or young person is detained eg. youth offending institute/secure children's home?

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

Given the wide range of variable factors affecting detained children and young people, acting promptly is reasonable.

**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>	✓
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**Supporting comments**

Given the age-range of the legislation, we believe this section should also include those aged up to 25 years old and detained within prisons.

**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 type="checkbox"/>	<b>Not sure</b>	✓
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**Supporting comments**

It is vitally important for all teachers to have received training on child development and language development as part of core, initial teacher education/PGCE.

**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?

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

**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?

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

**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?

<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**

p.288 the final section of the flowchart needs to be changed - the appeal process. If the process is to go through all the 3 stages described at the bottom, they can go in 1 box, certainly the final 2 can be combined. 'tribunal will hear the case and will notify the parties of their decision'.

**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?

<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**

Information about accessing services would be useful.

**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.

Please see below detailed comments from members.

Chapter 8, paragraph 8.28, also 9.24, 9.79 and 9.96. No description is given of the need for the organisations preparing the IDP to circulate it to the agencies included in it. Is this required? Chapter 13, paragraph 13.44 indicates that the health body has to be content with the ALP they are providing prior to the IDP being finalised but not how this finalisation occurs.

**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?

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

We still are of the view that it would be useful to consider the composition of the tribunal to ensure that there is clinical expertise available.

**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?

<b>Yes</b>	<input type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Not sure</b>	<input 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?

<b>Yes</b>	<input type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Not sure</b>	<input 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?

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

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**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 type="checkbox"/>
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**Supporting comments**

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**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 type="checkbox"/>
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**Supporting comments**

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**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 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 type="checkbox"/>	<b>Not sure</b>	<input type="checkbox"/>
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**Supporting comments**

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**Question 56** – Do you agree with the tasks that ALNCo 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 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 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 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 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?

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

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**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?

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

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**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?

Members have a number of concerns about the implications of the proposals on the use of SLT time. This will need to be carefully monitored. Without extra capacity, the proposals could take SLT time away from therapy with children with less difficulties, i.e. speech only difficulties, as has been the case in England.

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

**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?

**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.