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Welsh Government

Implementing the Additional Learning Needs and Education Tribunal (Wales) Act 2018

A technical guide to implementing the Act during the second and third years of implementation (2022 to 2023 and 2023 to 2024)

Implementing the Additional Learning Needs and Education Tribunal (Wales) Act 2018

Audience

Local authorities, governing bodies of maintained schools, management committees of pupil referral units (PRUs), school and PRU teaching staff, additional learning needs coordinators (ALNCos) and early years additional learning needs lead officers (early years ALNLOs). This guide may also be of interest to independent nurseries, independent schools, further education institutions (FEIs), and designated education clinical lead officers (DECLOs).

Overview

The guide sets out the arrangements for the second and third years of implementing the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (the ALN Act). It sets out the actions local authorities, schools and PRUs must take when moving groups of children from the SEN system to the ALN system.

Action required

This guide sets out the requirements imposed on local authorities, governing bodies of maintained schools and PRU management committees by the ALN Act and subordinate legislation.

Further information

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Additional copies

This document can be accessed from the Welsh Government's website at gov.wales/additional-learning-needs-and-education-tribunal-wales-act

Related documents

The Additional Learning Needs Code for Wales 2021
gov.wales/additional-learning-needs-code

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1. Introduction

- 1.1. This guide is for local authorities, governing bodies of maintained schools, management committees of pupil referral units (PRUs), school and PRU teaching staff, additional learning needs coordinators (ALNCOs) and early years additional learning needs lead officers (early years ALNLOs). This guide may also be of interest to independent nurseries, independent schools, further education institutions (FEIs) and designated education clinical lead officers (DECLOs).
- 1.2. The guide sets out the arrangements for children moving from the special educational needs (SEN) system to the additional learning needs (ALN) system from 1 September 2022.
- 1.3. It sets out the actions local authorities, schools and PRUs must take in terms of deciding if children have ALN and, where required, preparing and maintaining individual development plans (IDPs).
- 1.4. The guide covers the movement of children from the SEN system to the ALN system. It is a move away from the existing statements of SEN and associated processes set out in Part 4 of the Education Act 1996 and the arrangements set out in the '[Special Educational Needs Code of Practice for Wales](#)' in relation to children who receive provision through school action/school action plus.

Relevant legislation

- 1.5. The [Additional Learning Needs and Education Tribunal \(Wales\) Act 2018](#) (the ALN Act) aims to create:
 - a unified legislative framework to support all children of compulsory school age or below with ALN and to support young people with ALN who are in school, a PRU or further education (FE)
 - an integrated, collaborative process of assessment, planning and monitoring that facilitates early, timely and effective interventions
 - a fair and transparent system for providing information and advice, and for resolving concerns and appeals
 - a person-centred approach to planning provision, which puts the views of children and their families at the centre of the decision-making process.

The Additional Learning Needs Code and regulations

- 1.6. [The Additional Learning Needs Code for Wales](#) (the ALN Code) places further requirements on schools, PRUs and local authorities and contains guidance on their functions under the ALN Act.
- 1.7. In addition to the ALN Act and the ALN Code, the following [regulations](#) apply:

- the Additional Learning Needs (Wales) Regulations 2021
- the Education Tribunal for Wales Regulations 2021
- the Equality Act 2010 (Capacity of parents and persons over compulsory school age) (Wales) Regulations 2021
- the Independent Schools (Provision of Information) (Wales) Regulations 2003
- the Education (Pupil Referral Units) (Management Committees etc.) (Wales) Regulations 2014

Commencement orders

The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 2) Order 2021¹

The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 5 and Transitional and Saving Provisions) Order 2021²

The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 6 and Transitional and Saving Provisions) Order 2021³

The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 7) Order 2021⁴

The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 8 and Transitional and Saving Provisions) Order 2022⁵

The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 9 and Transitional and Saving Provisions) Order 2022⁶

The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 11) Order 2022⁷

The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 12) Order 2022⁸

¹ [The Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(Commencement No. 5 and Transitional and Saving Provisions\) Order 2021](#) as amended by [The Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(Amendment of Commencement Order No. 5 and Commencement Order No. 6\) Order 2021](#).

² [The Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(Commencement No. 5 and Transitional and Saving Provisions\) Order 2021](#)

³ [The Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(Commencement No. 6 and Transitional and Saving Provisions\) Order 2021](#) as amended by [The Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(Amendment of Commencement Order No. 5 and Commencement Order No. 6\) Order 2021](#).

⁴ [The Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(Commencement No. 7\) Order 2021](#)

⁵ [The Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(Commencement No. 8 and Transitional and Saving Provisions\) Order 2022](#)

⁶ [The Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(Commencement No. 9 and Transitional and Saving Provisions\) Order 2022](#)

⁷ [The Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(Commencement No. 11\) Order 2022](#)

⁸ [The Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(Commencement No. 12\) Order 2022](#)

The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 13 and Transitional and Saving Provisions) Order 2022⁹

The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 14 and Transitional and Saving Provisions) Order 2022¹⁰

The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 15) Order 2022¹¹

Implementation approach

- 1.8. The ALN system set out in the ALN Act will be implemented over school years 2021 to 2022, 2022 to 2023 and 2023 to 2024. The approach to implementation set out in this guide has been informed by the views of stakeholders responding to the [public consultation on how the ALN Act should be implemented](#). The consultation found strong support for mandating a phased approach to implementing the ALN system. Most stakeholders agreed that national timeframes for transferring specific groups of children to the ALN system would be the most manageable and consistent approach.
- 1.9. During the first year of implementation, the ALN Act came into force for all children in Year 10 and below who did not have identified SEN (Commencement Orders 2 and 7).
- 1.10. Commencement Orders 5 and 6 dealt with those children who were in Year 10 and below, at a maintained school or PRU and who had an identified SEN with special educational provision (SEP) via school action/school action plus (Commencement Orders 5 and 6).
- 1.11. Guidance was published which covered the first year of implementation for children captured by Commencement Orders 2, 5, 6 and 7.
- 1.12. This guidance document sets out the arrangements for the second and third years of implementation as [announced](#) in March 2022. This includes the groups of children who could have been moved in the first year of implementation as well as those who were not captured by the arrangements in the first year of implementation.
- 1.13. Arrangements for moving in the previous year of implementation are set out in the following documents:

⁹ [The Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(Commencement No. 13 and Transitional and Saving Provisions\) Order 2022](#)

¹⁰ [The Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(Commencement No. 14 and Transitional and Saving Provisions\) Order 2022](#)

¹¹ [The Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(Commencement No. 15\) Order 2022](#)

- [‘Implementing the Additional Learning Needs and Education Tribunal \(Wales\) Act 2018: A technical guide to implementing the Act during the first year of implementation \(2021 to 2022\), as amended’](#)
- [‘Implementing the Additional Learning Needs and Education Tribunal \(Wales\) Act 2018: practitioner guide’](#)
- [‘Additional learning needs \(ALN\) system: parents’ guide’](#).

Implementation from 1 September 2022

- 1.14. The ALN Act will come into force for children up to, and including, Year 11 in the 2022 to 2023 school year. These children will move from the SEN system to the ALN system between 1 September 2022 and 31 August 2024.
- 1.15. Children who were captured by Commencement Orders 5 and 6 will continue to be moved from the SEN system to the ALN system between 1 September 2022 and 31 August 2024.

Operation of the SEN system during implementation

- 1.16. During implementation, the ALN system will operate in parallel to the SEN system, which will gradually be phased out during the implementation period. Until a child moves to the ALN system, the SEN legislation¹² remains in force, which means schools, PRUs and local authorities must continue to deliver the SEP set out in school action/school action plus plans or statements.
- 1.17. Although the SEN legislation remains in force, and SEP must continue to be provided until a child moves to the ALN system, the provisions of Part 4 of the Education Act 1996 that remain in force are limited. This means that from 1 September 2022 it will not be possible to request an SEN assessment for children. However, children or their parents can request they move to the ALN system earlier than they are otherwise due to move to the ALN system (see paragraphs 11.55 to 11.58 for information about requesting an IDP notice and paragraphs 11.59 to 11.61 for the right to request an ALN notice).
- 1.18. SEN assessments will continue for young people who attend a maintained school or PRU.
- 1.19. Local authorities, schools and PRUs must continue to comply with the Education Act 1996 and regulations made under it, while the Act and the regulations still apply to the child, and with the arrangements set out in the [‘Special Educational Needs Code of Practice for Wales’](#).
- 1.20. From 1 September 2022 children in Year 11 will no longer be able to access a section 140 assessment. However, children or their parents, can request they move to the ALN system earlier than they are otherwise due to move to the ALN system (see paragraphs 11.55 to 11.58 for information about requesting an IDP notice).

¹² Part 4 of the Education Act 1996

Transition arrangements and the ALN Code

- 1.21. The transitional arrangements put in place to implement the ALN system are not identical to the arrangements set out in the ALN Act and ALN Code. The differences include, for example, the timescales for deciding a child has ALN and the timescales for preparing an IDP.

2. Overview of how children will move from the SEN system to the ALN system from 1 September 2022

- 2.1 This chapter provides an overview of how children will move from the SEN system to the ALN system during the second and third years of implementation (2022 to 2023 and 2023 to 2024).

Children who are newly identified as having, or newly thought to have, ALN

- 2.2 The ALN system applies to all children who are newly identified as having, or newly thought to have, ALN regardless of how their education is delivered¹³.
- 2.3 This means the responsibilities in the ALN legislation, including the ALN Act, and the ALN Code apply. Where it is brought to the attention of, or otherwise appears to, a school, PRU or local authority that a child has ALN, the school, PRU or local authority must make a decision and where required prepare an IDP.

Children who attend a maintained school or PRU, have special education provision via school action/school action plus and who are not looked after or not registered at more than one setting

- 2.4 Schools and PRUs will move children who attend a maintained school or PRU, have SEP via school action/school action plus and who are not looked after or are not registered at more than one setting to the ALN system where they fall into the following mandated years:
- school year 2022 to 23: Nursery Years 1 and 2, Reception, Year 2, Year 4, Year 6, Year 8, Year 10 and Year 11
 - school year 2023 to 24: Nursery Years 1 and 2, Year 2, Year 4, Year 6, Year 8 and Year 10¹⁴.
- 2.5 Children, or their parents, can ask that they move to the ALN system earlier than planned by requesting the school or PRU issue an IDP notice (see paragraphs 11.55 to 11.58 for the right to request an IDP notice and paragraphs 11.59 to 11.61 for the right to request an ALN notice). Schools and PRUs can issue an IDP notice or a no IDP notice (see paragraphs 11.38 to 11.43).

Children who attend a maintained school or PRU, have special education provision via school action/school action plus and who are looked after or are registered at more than one setting

- 2.6 Local authorities will move children who attend a maintained school or PRU, have SEP via school action/school action plus and who are looked after or

¹³ Commencement Orders 2, 7 and 12.

¹⁴ Commencement Order 5.

are registered at more than one setting to the ALN system where they fall into the following mandated years:

- school year 2022 to 2023: Nursery Years 1 and 2, Reception, Year 2, Year 4, Year 6, Year 8, Year 10 and Year 11
- school year 2023 to 2024: Nursery Years 1 and 2, Year 2, Year 4, Year 6, Year 8 and Year 10¹⁵.

2.7 Children, or their parents, can ask that they move to the ALN system earlier than planned by requesting the local authority issue an IDP notice (see paragraphs 11.55 to 11.58 for the right to request an IDP notice). Local authorities can issue an IDP notice or a no IDP notice (see paragraphs 11.38 to 11.43).

Children who are registered at a maintained school or PRU, have special education provision via school action/school action plus (who are not looked after or registered at more than one setting) and were in a pipeline on 1 January 2022 which ended before 1 September 2022

2.8 Schools and PRUs will move children who are registered at a maintained school or PRU, have SEP via school action/school action plus on 1 September 2022 (who are not looked after or registered at more than one setting) and who were in a pipeline on 1 January 2022 which ended before 1 September 2022 to the ALN system where they fall into the following mandated years:

- school year 2022 to 2023: Nursery Years 1 and 2, Reception, Year 2, Year 4, Year 6, Year 8, Year 10 and Year 11
- school year 2023 to 2024: Nursery Years 1 and 2, Year 2, Year 4, Year 6, Year 8 and Year 10¹⁶.

2.9 Children, or their parents, can ask that they move to the ALN system earlier than planned by requesting the school or PRU issue an IDP notice (see paragraphs 11.55 to 11.58 for the right to request an IDP notice and paragraphs 11.59 to 11.61 for the right to request an ALN notice). The school or PRU can issue an IDP notice or a no IDP notice (see paragraphs 11.38 to 11.43).

Children who are registered at a maintained school or PRU, have special education provision via school action/school action plus (who are looked after or are registered at more than one setting) and were in a pipeline on 1 January 2022 which ended before 1 September 2022

2.10 Local authorities will move children who are registered at a maintained school or PRU, have SEP via school action/school action plus on 1

¹⁵ Commencement Order 6.

¹⁶ Commencement Order 13.

September 2022 (who are looked after or registered at more than one setting) and who were in a pipeline on 1 January 2022 which ended before 1 September 2022 to the ALN system where they fall into the following mandated years:

- school year 2022 to 2023: Nursery Years 1 and 2, Reception, Year 2, Year 4, Year 6, Year 8, Year 10 and Year 11
- school year 2023 to 2024: Nursery Years 1 and 2, Year 2, Year 4, Year 6, Year 8 and Year 10¹⁷.

2.11 Children, or their parents, can ask that they move to the ALN system earlier than planned by requesting the local authority issue an IDP notice (see paragraphs 11.55 to 11.58 for the right to request an IDP notice). The local authority can issue an IDP notice or a no IDP notice (see paragraphs 11.38 to 11.43).

Children with statements on 1 September 2022

2.12 Local authorities will move children who have statements to the ALN system where they fall into the following mandated years:

- school year 2022 to 2023: Nursery Years 1 and 2, Reception, Year 6, Year 10 and Year 11
- school year 2023 to 2024: Year 2, Year 3, Year 4, Year 5, Year 6, Year 8, Year 9 and Year 10¹⁸.

2.13 Children, or their parents, can ask that they move to the ALN system earlier than planned by requesting the local authority issue an IDP notice (see paragraphs 11.55 to 11.58 for the right to request an IDP notice). Local authorities can issue an IDP notice or a no IDP notice (see paragraphs 11.38 to 11.43).

Children who are in a statement pipeline on 1 September 2022

2.14 Local authorities will move children who are in a statement pipeline (see paragraphs 11.46 to 11.47 for a definition of pipeline cases) on 1 September 2022 by issuing an IDP notice or no IDP notice when the pipeline is finally determined¹⁹ or the time within which an appeal may be brought has ended without an appeal having been brought.

Children who are in a pre-statement pipeline on 1 September 2022

2.15 Local authorities will move children who are in a pre-statement pipeline (see paragraphs 11.46 to 11.47 for a definition of pipeline cases) on 1 September 2022 by issuing an IDP notice or no IDP notice (see paragraphs 11.38 to 11.43) when the pipeline is finally determined if there is an appeal ongoing

¹⁷ Commencement Order 14.

¹⁸ Commencement Order 8.

¹⁹ Commencement Order 8.

on 1 September 2022, otherwise as soon as is reasonably practicable after 1 September 2022²⁰.

Children who are not registered at a maintained school or PRU on 1 January 2022 who have special educational provision via school action/school action plus and who are not looked after or are not educated other than at school

- 2.16 Children who are not registered at a maintained school or PRU on 1 September 2022 who have SEP via school action/school action plus and who are not looked after or are not EOTAS pupils will move automatically from the SEN system to the ALN system on 1 September 2022²¹.
- 2.17 Children in this group include children who attend an independent nursery or school and children who are not registered at an education setting such as children who are electively home educated.

Children who are not registered at a maintained school or PRU on 1 January 2022 who have special educational provision via school action/school action plus and who are looked after or are educated other than at school

- 2.18 Local authorities will move children who are not registered at a maintained school or PRU on 1 September 2022 who have SEP via school action/school action plus and who are looked after or are educated other than at school to the ALN system where they fall into the following mandated years:
- school year 2022 to 23: Nursery Years 1 and 2, Reception, Year 2, Year 4, Year 6, Year 8, Year 10 and Year 11
 - school year 2023 to 24: Nursery Years 1 and 2, Year 2, Year 4, Year 6, Year 8 and Year 10²².
- 2.19 Children, or their parents, can ask that they move to the ALN system earlier than planned by requesting the local authority issue an IDP notice (see paragraphs 11.55 to 11.58 for the right to request an IDP notice). Local authorities can issue an IDP notice or a no IDP notice (see paragraphs 11.38 to 11.43).

Children with an EHC plan on 1 September 2022

- 2.20 Children who have an EHC plan or who are involved in an EHC plan pipeline under the [Children and Families Act 2014](#) will automatically move to the ALN system on 1 September 2022²³.

²⁰ Commencement Order 9.

²¹ Commencement Order 11.

²² Commencement Order 14.

²³ Commencement Order 15.

3. Children who are registered at a school or PRU, have special education provision via school action/school action plus and who are a looked after child or not registered at more than one setting

Introduction

- 3.1 Commencement Order 5 brings into force the ALN Act for children up to and including Year 10 who on 1 January 2022 have SEP via school action/school action plus, are registered at a maintained school or PRU and who fall into one of the following mandated years:
- school year 2022 to 2023: Nursery Year 2, Reception, Year 2, Year 4, Year 6, Year 8, Year 10 and Year 11
 - school year 2023 to 2024: Nursery, Year 2, Year 4, Year 6, Year 8 and Year 10²⁴.
- 3.2 Commencement Order 5 does not include children who are in a pipeline on 1 January 2022 (see sections 5 and 6 for children who were in a pipeline on 1 January 2022 whose pipeline ended before September 2022 and see sections 7 and 8 for children who are in a pipeline on 1 September 2022). Paragraphs 11.46 to 11.47 provide a definition of pipeline cases.
- 3.3 Commencement Order 5 also excludes looked after children and those who are registered at more than one setting.

Process for moving children from the SEN system to the ALN system

Deciding if a child has ALN and giving a notice

- 3.4 Before giving an IDP notice or a no IDP notice (see paragraphs 11.38 to 11.43), schools and PRUs must decide if children who receive SEP via school action/school action plus, have ALN (see chapter 20 of the ALN Code – ‘Identifying ALN and deciding upon the ALP required’).
- 3.5 It is likely that children who have SEP via school action/school action plus on 1 January 2022 will have ALN. On occasion, a child who had SEP via school action/school action plus will not have ALN because their needs have changed and they do not need additional learning provision (ALP) to help them learn.
- 3.6 Where a child who had SEP via school action/school action plus on 1 January 2022 subsequently ceases to have SEP, that child is still captured by Commencement Order 5 (because the child had SEN on 1 January 2022). As a result, the school or PRU must decide if the child has ALN.

²⁴ Commencement Order 5, articles 10 and 11.

- 3.7 Having decided whether or not a child has ALN, the school or PRU must give an IDP notice or a no IDP notice to the child and their parents.
- 3.8 Where a school or PRU has decided a child has ALN, the school or PRU must give an IDP within 35 school days of the date of the notice²⁵, other than where:
- there are exceptional circumstances
 - any of the circumstances in section 12(2) of the ALN Act apply.
- 3.9 The notice means that the decision a child has ALN is treated as if it were made on the date of the notice. The date of the notice is the date the new law applies and the old law ceases to apply for the child.
- 3.10 Once the ALN system applies to a child, and that child subsequently becomes a child who is looked after by a local authority in Wales or becomes registered or enrolled at another setting, the school or PRU must refer the child's case to the local authority²⁶.
- 3.11 A school or PRU can refer a child's case to the local authority where an IDP notice has been given and the needs of the child mean the school considers the child now has ALN:
- that may call for ALP it would not be reasonable for the school to secure
 - the extent or nature of which it cannot adequately determine, or
 - for which it cannot adequately determine ALP²⁷.
- 3.12 Where a school decides a child does not have ALN, the school must give a no IDP notice to the child and the child's parent. The notice confirms the school or PRU has decided the child does not have ALN for the purposes of chapter 2 of Part 2 of the ALN Act. The ALN system applies from the date of the notice and the old law ceases to apply.
- 3.13 Where a child, or their parent, is dissatisfied with the decision made by the school or PRU about whether the child has ALN, it is expected this dissatisfaction would normally be resolved directly with the school or PRU or by recourse to the local authority disagreement arrangements. Alternatively, or additionally, where the disagreement is not resolved children and their parents may request the responsible local authority reconsiders the decision made by the school or PRU (further information about local authority reconsiderations can be found in the ALN Code, chapter 26, page 287).

²⁵ Commencement Order 5, article 13.

²⁶ Further information about referrals from a maintained school to a local authority, where the child is registered at more than one setting, can be found in the ALN Code chapter 12, page 101; and in chapter 14, pages 122 to 123, where a child is looked after.

²⁷ ALN Act, section 12(2)(a).

ALN notices

- 3.14 Commencement Order 5 provides for the appropriate local authority (see paragraphs 11.9 to 11.12 for an explanation of appropriate local authority) to give an ALN notice. Unlike an IDP notice or a no IDP notice, the ALN notice does not involve the local authority making a decision about whether the child has ALN.
- 3.15 The effect of the ALN notice is that the ALN system applies on the date of the notice and the SEN system ceases to apply on that date. As a result, the duties provided for in the ALN Act and subordinate legislation, including the ALN Code, apply from that date.
- 3.16 The ALN notice has 2 functions:
- (1) The ALN notice enables local authorities to move children from the SEN to the ALN system at any time. The provision gives local authorities the power to move any child captured by the order²⁸ (whether or not they continue to be registered at a maintained school or PRU) to the ALN system at any time. It is not expected local authorities will use this power on a frequent basis. It can only be exercised in exceptional circumstances (unless the parent requests the ALN notice is given).
 - (2) The ALN notice enables a child who on 1 January 2022 had SEN and who is no longer a registered pupil at a maintained school or PRU and who has not already moved to the ALN system, or that child's parent, to request the appropriate local authority gives an ALN notice. Where a child or their parent requests the local authority gives an ALN notice, the appropriate local authority must give an ALN notice within 10 working days of the request.

This provision could be used where, for example, a child ceases to be a registered pupil of a maintained school at the end of Year 6 and does not join another maintained school at the start of Year 7 due to, for example, becoming electively home educated or attending an independent school.

Where the child ceases to be a registered pupil of a maintained school at the end of Year 6 and joins a maintained school or PRU at the start of Year 7, the child or their parent can request the school or PRU gives an IDP notice.

Preparing an IDP

- 3.17 As stated above, the date of the IDP notice, or the no IDP notice, is the date the new law applies and the old law ceases to apply to the child. Since the school or PRU has up to 35 school days to give the IDP from the date of the IDP notice, there will be a period of time where provision delivered by school

²⁸ That is children who on 1 January 2022 have SEN via school action/school action plus (not a statement or engaged with the SEN statement process (in a pipeline)) and are registered at a maintained school or a PRU.

action/school action plus does not apply and the provision under the ALN system has not yet been agreed via an IDP. During this time, schools and PRUs must take reasonable steps to deliver provision to support the child²⁹ (for guidance on this duty, see the ALN Code, chapter 12, pages 98 to 100).

- 3.18 When preparing the IDP the school or PRU must have regard to the SEP provided to the child to facilitate continuity of provision during the transition from the SEN system to the ALN system (for information about preparing an IDP see the ALN Code, chapter 12, pages 97 to 98).

Automatically moving to the ALN system at the end of a mandated year

- 3.19 Where a school or PRU has not provided a child (who has not already moved to the ALN system) and their parent with an IDP notice, or a no IDP notice, by 30 August 2023 if they were due to be given a notice by that date, Commencement Order 5 provides a safeguard to ensure all of those pupils move to the ALN system within the school year (referred to in this guide as the ‘automatic end of year transfer provision’)³⁰.
- 3.20 Where a child described in paragraph 3.1 has not moved to the ALN system by 30 August 2023, the child will automatically move to the ALN system on 31 August 2023. This means the old law will cease to apply on the 31 August 2023 and the new law will apply on that date. The duties provided for in the ALN Act and subordinate legislation, including the ALN Code, apply from 31 August 2023.
- 3.21 This means that from the date it is brought to the attention of, or otherwise appears to, the school or PRU that a child may have ALN, the school or PRU will have 35 school days to make a decision and, where the decision is that the child has ALN, to prepare and give an IDP (see ALN Code, chapter 12, pages 94 to 96 for guidance about a school’s duty to decide whether a child has ALN).
- 3.22 If the child was in receipt of school action/school action plus before automatically moving to the ALN system, then it would appear to the school or PRU that the child has ALN and the school or PRU must make a decision under section 11 of the ALN Act.
- 3.23 If the child is no longer in receipt of SEP via school action/school action plus before automatically moving to the ALN system, the duty to decide under section 11 applies once it is brought to the attention of, or otherwise appears to, the school or PRU that the child may have ALN.

²⁹ Section 47 of the ALN Act places a duty on schools to take all reasonable steps to secure ALP where a child has ALN but an IDP is not being maintained.

³⁰ Commencement Order 5, article 15

The right to request an IDP notice (or a no IDP notice)

- 3.24 Children captured by Commencement Order 5, or their parents, have a right to make a request at any time, to the school or PRU that an IDP notice is given³¹ (see paragraphs 11.55 to 11.58 for the right to request an IDP notice).
- 3.25 The request can be made either verbally or in writing.
- 3.26 The school or PRU must give an IDP notice or a no IDP notice within 15 school days of the request. As above, where the school or PRU considers the child has ALN and gives an IDP notice, the school or PRU must prepare an IDP within 35 school days of the date of the notice³², other than where exceptions or exceptional circumstances apply.
- 3.27 The right to request an IDP notice enables those children who are dissatisfied with the SEP delivered via school action/school action plus to move to the ALN system earlier than they are due to move and to benefit from the rights provided by the ALN Act.

Change of circumstances

- 3.28 Children captured by Commencement Order 5 who have not already been moved to the ALN system, will automatically move from the SEN system to the ALN system where they have one of the following changes of circumstance:
- was registered at a maintained school or PRU on 1 January 2022 and, at some point after 1 January 2022, also became a registered pupil or an enrolled student at another institution (that is, registered at more than one setting) and for whom a local authority in Wales is responsible;
 - was registered at a maintained school or PRU on 1 January 2022 and, at some point after 1 January 2022, became looked after by a local authority in Wales; or
 - ceased to be a registered pupil at the maintained school or PRU at which the child was a registered pupil on 1 January 2022, other than where the child ceases to be a registered pupil due to making an ordinary transition or due to a school/PRU closure.
- 3.29 Where a child ceases to be a registered pupil at the maintained school or PRU at which the child was a registered pupil on 1 January 2022, for the purposes of making the ordinary transition from one school or PRU to another – that is, from Year 2 to Year 3 or from Year 6 to Year 7 – they are excluded from automatically moving from the SEN to the ALN system.
- 3.30 In addition, where a child ceases to be a registered pupil at the maintained school or PRU at which the child was a registered pupil on 1 January 2022

³¹ Commencement Order 5, article 12.

³² Commencement Order 5, article 12.

due to their school or PRU closing, the child will be excluded from automatically moving from the SEN to the ALN system.

- 3.31 This means that children who are removed from the register of their school or PRU due to an ordinary transition or a school/PRU closure, and move to another maintained school or PRU, will move to the ALN system in the school year in which they are mandated to move.
- 3.32 A child described at paragraph 3.1 can, however, request to move to the ALN system earlier than planned (see paragraphs 11.59 to 11.61 for information about requesting an IDP notice and paragraphs 11.38 to 11.43 for information about requesting an ALN notice).
- 3.33 Schools and PRUs should be aware that the change of circumstance provision in Commencement Order 6 (see section 4) differs from Commencement Order 5. The change of circumstance provision in Commencement Order 6 is not affected by ordinary transitions or school/PRU closures. This means that where a child was, for example, registered at more than one setting and, at the end of Year 6, becomes sole registered at a maintained school or PRU, the child will automatically move to the ALN system. Where this arises, the local authority should inform the school or PRU the child has ceased to be registered at more than one setting and, therefore, the child has automatically moved to the new law and that the duties placed on the school or PRU apply.
- 3.34 The different approaches to the change of circumstance means that if there has been a change of school or PRU from Year 2 and Year 3 or from Year 6 to Year 7, schools will need to identify whether their Year 3 and Year 7 pupils during the 2022 to 2023 school year were, on 1 January 2022:
- a. in receipt of school action/school action plus and were registered at more than one setting or looked after; or
 - b. in receipt of school action/school action plus and were sole registered at a maintained school or a PRU.
- 3.35 Schools and PRUs will need to identify whether children fall into group (a) or (b) so that they know whether children have automatically moved to the ALN system. Children who fall into (a) will automatically move to the ALN system when they make the transition from Year 2 to Year 3 and from Year 6 to Year 7. Thus, there is no need for the receiving school or PRU to give a notice to move the child to the ALN system.
- 3.36 Children who fall into (b) will not automatically move to the system when they make the transition from Year 2 to Year 3 and from Year 6 to Year 7. Thus, the receiving school or PRU will need to give a notice during the third year of implementation to move these children from the SEN system to the ALN system.

Children who move into a mandated year after the start of the school year

- 3.37 Commencement Order 5 brings into force the ALN Act for children described at paragraph 3.1. That is, in the second year of implementation, a child is registered at a maintained school or a PRU, and is in one of the mandated years on 1 September 2022 and, in the third year of implementation, is in one of the mandated years on 1 September 2023.
- 3.38 During the second year of implementation, where a child captured by Commencement Order 5 moves into a 2022 to 2023 mandated year after 1 September 2022 (see example at paragraph 3.39), the school or PRU must either give an IDP notice or a no IDP notice to the child, and the child's parent, during the 2023 to 2024 school year³³. The ALN system applies from the date of the notice and the SEN system ceases to apply. This is the position unless the child, or their parent, requests the school or PRU gives an IDP notice or that the appropriate local authority gives an ALN notice (see paragraphs 11.9 to 11.12 for an explanation of appropriate local authority).
- 3.39 An example of a child moving into a mandated year after the start of the school year would be where a child moved forward a year from Year 9 into Year 10 during the second year of implementation.

Capacity

- 3.40 Schools, PRUs or local authorities do not have to give a notice or a copy of an IDP to a child where the child does not have capacity to understand the information in the notice of IDP³⁴.

Duties in relation to young people

- 3.41 Where a child has become a young person prior to a school, PRU or local authority giving notice, the school or PRU or local authority is only required to give the notice or the IDP to the young person. The duty to give the notice to a parent or to respond to a request does not apply.

Consent

- 3.42 Where a child has become a young person prior to a school, PRU or local authority giving an IDP notice or a no IDP notice, the school, PRU or local authority will need to gain the consent of the young person for a decision to be made about whether they have ALN. This is because young people have the right not to consent to a decision being made about whether they have

³³ During the second and third years of implementation, this action must be taken where a child moves into a mandated year after 1 September.

³⁴ [The Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(Commencement No. 5 and Transitional and Saving Provisions\) Order 2021](#) as amended by [The Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(Amendment of Commencement Order No. 5 and Commencement Order No. 6\) Order 2021](#).

ALN or to an IDP being prepared or maintained or, in respect of a detained young person, kept.

- 3.43 If a young person does not consent to a decision being made about whether they have ALN, the school, PRU or local authority will not be able to issue an IDP or no IDP notice since this requires a decision to be made. Where a young person consents to a decision being made but not to an IDP being prepared, maintained or (in the case of a detained person who is a young person) kept, the duty to prepare an IDP does not apply.

4. Children who attend a maintained school or PRU, have special education provision via school action/school action plus and who are looked after or are registered at more than one setting

Introduction

4.1 Commencement Order 6 brings into force the ALN Act for children up to and including Year 11 who, on 1 January 2022, are registered at a maintained school or PRU, have SEP via school action/school action plus, are looked after or registered at more than one setting and who fall into the following mandated years:

- in school year 2022 to 2023: Nursery Year 2, Reception, Year 2, Year 4, Year 6, Year 8, Year 10 and Year 11
- in school year 2023 to 2024: Year 2, Year 4, Year 6, Year 8 and Year 10.

4.2 Commencement Order 6 does not include children who are in a pipeline on 1 January 2022 (see chapters 5 and 6 for children who were in a pipeline on 1 January 2022 whose pipeline ended before September 2022 and see sections 7 and 8 for children who are in a pipeline on 1 September 2022). Paragraphs 11.46 to 11.47 provide a definition of pipeline cases.

4.3 To enable children described at paragraph 4.1 to move from the SEN system to the ALN system, local authorities must give an IDP notice or a no IDP notice to these children and their parents, at some point during the school year in which they are due to be moved³⁵.

Process for moving children from the SEN system to the ALN system

Deciding if a child has ALN and giving a notice

4.4 Before giving an IDP notice or a no IDP notice (see paragraphs 11.38 to 11.43), local authorities must decide if children who receive SEP via school action/school action plus have ALN (see chapter 20 of the ALN Code – ‘Identifying ALN and deciding upon the ALP required’).

4.5 It is likely that children who have SEP via school action/school action plus on 1 January 2022 will have ALN. On occasion, a child who had SEP via school action/school action plus will not have ALN because their needs have changed and they do not need ALP to help them learn.

4.6 Where a child who had SEP via school action/school action plus on 1 January 2022, subsequently ceases to have SEP, the child is still captured

³⁵ Commencement Order 6, article 9. The position on giving notices to children and/or parents who lack capacity in the ALN Code do not apply to the notices given under Commencement Order 6.

by Commencement Order 6 (because the child had SEN on 1 January 2022). As a result, the local authority must decide if the child has ALN.

- 4.7 Having decided whether or not a child has ALN, the appropriate local authority (see paragraphs 11.9 to 11.12 for an explanation of appropriate local authority) must give an IDP notice or a no IDP notice to the child and their parents.
- 4.8 Where a local authority has decided a child has ALN, the local authority must give the child, and the child's parent, an IDP notice and prepare an IDP within 12 weeks of issuing the IDP notice. The notice means that the decision the child has ALN is treated as if it were made on the date of the notice. The date of the notice is the date the new law applies and the old law ceases to apply for the child.
- 4.9 Where a local authority has decided a child does not have ALN, the local authority must give the child, and the child's parent, a no IDP notice confirming the local authority has decided the child does not have ALN for the purposes of chapter 2 of Part 2 of the ALN Act. The ALN system applies from the date of the notice and the old law ceases to apply.
- 4.10 Where a child or parent disagrees with the decision made by a local authority, they may appeal to the Education Tribunal for Wales against the decision.
- 4.11 Commencement Order 6 provides for the appropriate local authority to give an ALN notice. The appropriate local authority may only give an ALN notice in exceptional circumstances (see paragraphs 11.9 to 11.12 for an explanation of appropriate local authority).
- 4.12 The appropriate local authority may, of its own volition and at any time, give an ALN notice to a child and the child's parents.
- 4.13 The effect of the ALN notice is that the ALN system applies on the date of the notice and the SEN system ceases to apply on that date. As a result, the duties provided for in the ALN Act and subordinate legislation, including the ALN Code, apply from that date.

Preparing an IDP

- 4.14 As stated above, the date of the IDP notice or the no IDP notice is the date the new law applies and the old law ceases to apply to the child. Since the local authority has up to 12 weeks to give the IDP from the date of the notice, there will be a period of time where provision delivered by school action/school action plus does not apply and the provision under the ALN system has not yet been agreed via an IDP. During this time, schools and PRUs must take reasonable steps to deliver provision to support the child (for guidance on this duty, see the ALN Code, chapter 12, pages 98 to 100).
- 4.15 When preparing the IDP the local authority must have regard to any SEP provided to the child to facilitate continuity of provision during the transition

from the SEN system to the ALN system (for information about preparing an IDP see the ALN Code, chapter 12, pages 107 to 109).

Automatically moving to the ALN system at the end of a mandated year

- 4.16 Where a local authority does not have the opportunity to provide a child in a mandated year (who has not already moved to the ALN system) and their parents with a notice, Commencement Order 6 provides a safeguard to ensure all pupils within a mandated year move to the ALN system. Any child who has not moved to the ALN system by the end of the relevant school year will automatically move to the ALN system at the end of the school year (31 August). This is referred to as the automatic end of year transfer provision.
- 4.17 The provision means that at the end of the school year the ALN legislation, including the ALN Code, will apply to the child and Part 4 of the Education Act 1996 will cease to apply to the child at the end of the school year.
- 4.18 If the child was in receipt of school action/school action plus before automatically moving to the ALN system, an IDP notice is given³⁶.

Right to request an IDP notice (or a no IDP notice)

- 4.19 Commencement Order 6 provides a right for children captured by the commencement orders, or their parents, to request an IDP notice (see paragraphs 11.55 to 11.58 for the right to request an IDP notice) is given at any point during the implementation period³⁷.
- 4.20 The request can be made either verbally or in writing.
- 4.21 The local authority must give an IDP notice or a no IDP notice within 15 working days of the request. As above, where the local authority considers the child has ALN and gives an IDP notice, the local authority must prepare an IDP within 12 weeks of the date of the notice³⁸, other than where exceptional circumstances apply.
- 4.22 The right to request an IDP notice enables those children who are dissatisfied with the SEP delivered via school action/school action plus to move to the ALN system earlier than they are due to move and to benefit from the rights provided by the ALN Act.

³⁶ Commencement Order 6, article 12.

³⁷ Commencement Order 5, article 12; and Commencement Order 6, article 12.

³⁸ Commencement Order 6, article 13.

Change of circumstances

- 4.23 Children captured by Commencement Order 6, who have not already been moved to the ALN system, will automatically move from the SEN system to the ALN system where they cease to be:
- looked after
 - registered at more than one setting.
- 4.24 The change of circumstance provision in Commencement Order 6 is not affected by ordinary transitions or school closures. That is, where a child was, for example, registered at more than one setting and, at the end of Year 6, becomes sole registered at a maintained school, the child will automatically move to the ALN system.
- 4.25 Where a child who was registered at more than one setting becomes sole registered at a maintained school or PRU, the local authority should inform the school or PRU that the child has ceased to be registered at more than one setting and, therefore, has automatically moved to the new law and that the duties placed on the school or PRU in the ALN Act and subordinate legislation, including the ALN Code, apply.

Children who move into a mandated year after the start of the school year

- 4.26 Commencement Order 6 brings into force the ALN Act for children described at paragraph 4.1. That is, in the second year of implementation, a child is registered at a maintained school or a PRU, and is in one of the mandated years on the 1 of September 2022 and in the third year is in one of the mandated years on 1 September 2023.
- 4.27 During the second year of implementation, where a child captured by Commencement Order 6 (see paragraph 4.1) moves into a 2022 to 2023 mandated year after 1 September 2022 (see example at paragraph 4.28), the local authority must either give an IDP notice or a no IDP notice to the child and the child's parents during the 2023 to 2024 school year³⁹. The ALN system applies from the date of the notice, and the SEN system ceases to apply. This is the position unless the child or their parents request the school or PRU gives an IDP notice or that the appropriate local authority gives an ALN notice.
- 4.28 An example of a child moving into a mandated year after the start of the school year would be where a child moved forward a year from Year 5 into Year 6.

³⁹ During the second and third years of implementation, this action must be taken where a child moves into a mandated year after 1 September.

Capacity

- 4.29 Local authorities do not have to give a notice or a copy of an IDP to a child where the child does not have capacity to understand the information in the notice of IDP⁴⁰.

Duties in relation to young people

- 4.30 Where a child has become a young person prior to a local authority giving notice, the local authority is only required to give the notice or the IDP to the young person. The duty to give the notice to a parent or to respond to a request does not apply.

Consent

- 4.31 Where a child has become a young person prior to a local authority giving an IDP notice or a no IDP notice, the local authority will need to gain the consent of the young person for a decision to be made about whether they have ALN. This is because young people have the right not to consent to a decision being made about whether they have ALN or to an IDP being prepared or maintained or, in respect of a detained young person, kept.
- 4.32 If a young person does not consent to a decision being made about whether they have ALN, the local authority will not be able to issue an IDP or no IDP notice since this requires a decision to be made. Where a young person consents to a decision being made but not to an IDP being prepared, maintained or (in the case of a detained person who is a young person) kept, the duty to prepare an IDP does not apply.

⁴⁰ [The Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(Commencement No. 6 and Transitional and Saving Provisions\) Order 2021](#) as amended by [The Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(Amendment of Commencement Order No. 5 and Commencement Order No. 6\) Order 2021](#).

5. Children who are registered at a maintained school or PRU, have special education provision via school action/school action plus (who are not looked after or registered at more than one setting) and were in a pipeline on 1 January 2022 which ended before 1 September 2022 or who were not captured by Commencement Orders 5 or 6 because they did not attend a maintained school on 1 January 2022

5.1 Commencement Order 13 brings into force the ALN Act for children who are registered at a maintained school or PRU and who were in a pipeline on 1 January 2022 which ended before 1 September 2022, who have SEP via school action/school action plus on 1 September 2022 and who are not looked after or registered at more than one setting.

5.2 Schools and PRUs must move children described in paragraph 5.1 from the SEN system to the ALN system via an IDP notice or a no IDP notice (see paragraphs 11.38 to 11.43) where they fall within the following years:

- school year 2022 to 2023: Nursery Years 1 and 2, Reception, Year 2, Year 4, Year 6, Year 8, Year 10 and Year 11⁴¹
- school year 2023 to 2024: Nursery Years 1 and 2, Year 2, Year 4, Year 6, Year 8 and Year 10⁴².

Issuing an IDP

5.3 Schools and PRUs must issue an IDP within 35 school days of the IDP notice being issued unless:

- any of the circumstances in section 12(2) of the Act apply,
- section 31 of the Act applies, or
- there are exceptional circumstances⁴³.

5.4 Where there are exceptional circumstances, a copy of the IDP must be given as soon as is reasonably practicable.

5.5 Any timescales in the ALN Code relating to the preparation of an IDP by a governing body, a PRU or local authority do not apply when an IDP is prepared following an IDP notice being given.

5.6 When preparing an IDP, the school, PRU or local authority must have regard to the SEP provided to the child to facilitate continuity of provision during the transition from the SEN system to the ALN system (for information about

⁴¹ Commencement Order 13, article 9.

⁴² Commencement Order 13, article 10.

⁴³ Commencement Order 13, article 12.

preparing an IDP see the ALN Code, chapter 12, pages 97 to 98 for schools and PRUs, or pages 107 to 109 for local authorities)⁴⁴.

Capacity

- 5.7 Schools, PRUs and local authorities do not have to give a notice or a copy of an IDP to a child where the child does not have capacity to understand the information in the notice of IDP⁴⁵.

Duties in relation to young people

- 5.8 Where a child has become a young person prior to a school, PRU or local authority giving notice, the school or PRU or local authority is only required to give the notice or the IDP to the young person. The duty to give the notice to a parent or to respond to a request does not apply.

Consent

- 5.9 Where a child has become a young person prior to a school or PRU giving an IDP notice or a no IDP notice, the school or PRU will need to gain the consent of the young person for a decision to be made about whether they have ALN. This is because young people have the right not to consent to a decision being made about whether they have ALN or to an IDP being prepared or maintained or, in respect of a detained young person, kept.
- 5.10 If a young person does not consent to a decision being made about whether they have ALN, the school or PRU will not be able to issue an IDP or no IDP notice since this requires a decision to be made. Where a young person consents to a decision being made but not to an IDP being prepared, maintained or (in the case of a detained person who is a young person) kept, the duty to prepare an IDP does not apply.

Right to request an IDP notice

- 5.11 Children captured by Commencement Order 13, or their parents, can request they move to the ALN earlier than intended by requesting an IDP notice⁴⁶ (see paragraphs 11.55 to 11.58 for the right to request an IDP notice and paragraphs 11.59 to 11.61 for the right to request an ALN notice).
- 5.12 Where an IDP notice is requested, the school or PRU must give either an IDP notice or a no IDP notice within 15 school days of the request. The date of the notice is the date the child moves to the ALN system. That is, the ALN Act and associated subordinate legislation, including the ALN Code, applies from that date and the school or PRU has 35 school days to prepare an IDP for the child where an IDP notice is given.

⁴⁴ Commencement Order 13, articles 19 and 20.

⁴⁵ Commencement Order 13, article 21.

⁴⁶ Commencement Order 13, article 11.

ALN notice

- 5.13 The appropriate local authority can, of its own volition, give an ALN notice in exceptional circumstances (see paragraphs 11.29 to 11.32 for a definition of exceptional circumstances). The ALN notice enables local authorities to move any child captured by Commencement Order 13, whether they remain registered at a maintained school or not, to the ALN system at any time⁴⁷.
- 5.14 Children captured by Commencement Order 13 and who in certain circumstances cease to be a registered pupil at a maintained school, and their parents, can request the appropriate local authority move them to the ALN system earlier than planned by requesting an ALN notice, and following such a request the appropriate local authority must give an ALN notice (see paragraphs 11.59 to 11.61 for information about requesting an ALN notice)⁴⁸.
- 5.15 The effect of the ALN notice is that the ALN system applies on the date of the notice and the SEN system ceases to apply on that date.
- 5.16 This means the duties in the ALN Act placed on schools, PRUs and local authorities to make a decision, and where required, to prepare an IDP for the child, apply.

Automatically moving to the ALN system at the end of the school year

- 5.17 Where a school or PRU does not have the opportunity to provide a child in a mandated year (who has not already moved to the ALN system) and their parent with a notice, Commencement Order 13 provides a safeguard to ensure all pupils within a mandated year move to the ALN system. Any child who has not moved to the ALN system by the end of the relevant school year will automatically move to the ALN system at the end of the school year (31 August)⁴⁹. This is referred to as the automatic end of year transfer provision. The provision means that at the end of the school year the ALN legislation, including the ALN Code, will apply to the child and Part 4 of the Education Act 1996 will cease to apply to the child at the end of the school year.

Change of circumstances

- 5.18 Children captured by Commencement Order 13 who have not already moved to the ALN system, will automatically move from the SEN system to the ALN system where they have one of the following changes of circumstance:
- ceased to be a registered pupil at the maintained school or PRU at which the child was a registered pupil on 1 September 2022, other than

⁴⁷ Commencement Order 13, article 13.

⁴⁸ Commencement Order 13, article 13.

⁴⁹ Commencement Order 13, articles 14 and 15.

where the child ceases to be a registered pupil due to making an ordinary transition or due to a school/PRU closure⁵⁰;

- was registered at a maintained school or PRU on 1 September 2022 and, at some point after 1 September 2022, also became a registered pupil or an enrolled student at another institution (that is, registered at more than one setting) and for whom a local authority in Wales is responsible⁵¹; or
- was registered at a maintained school or PRU on 1 September 2022 and, at some point after 1 September 2022, became looked after by a local authority in Wales⁵².

Moving into a mandated year after the start of the school year

- 5.19 Where a child captured by Commencement Order 13 moves into a 2022 to 2023 mandated year after 1 September 2022, the school or PRU must either give an IDP notice or a no IDP notice to the child and the child's parents during the 2023 to 2024 school year. The ALN legislation, including the ALN Code, applies from the date of the notice, and the SEN system ceases to apply. This is the position unless the child or their parents request the school or PRU gives an IDP notice or that the appropriate local authority gives an ALN notice.

⁵⁰ Commencement Order 13, article 16.

⁵¹ Commencement Order 13, article 17.

⁵² Commencement Order 13, article 18.

6. Children who are registered at a maintained school or PRU, have special education provision via school action/school action plus (who are looked after or are registered at more than one setting) and were in a pipeline on 1 January 2022 which ended before 1 September 2022 or who were not captured by Commencement Orders 5 or 6 because they did not attend a maintained school on 1 January 2022

6.1 Commencement Order 14 brings into force the ALN Act for children who are registered at a maintained school or PRU and who were in a pipeline on 1 January 2022 which ended before 1 September 2022, who have SEP via school action/school action plus on 1 September and who are looked after or are registered at more than one setting.

6.2 Local authorities must move children described in paragraph 6.1 from the SEN system to the ALN system via an IDP notice or a no IDP notice (see paragraphs 11.38 to 11.43) where they fall within the following years:

- school year 2022 to 2023: Nursery Years 1 and 2, Reception, Year 2, Year 4, Year 6, Year 8, Year 10 and Year 11⁵³
- school year 2023 to 2024: Nursery Years 1 and 2, Year 2, Year 4, Year 6, Year 8 and Year 10⁵⁴.

Issuing an IDP

6.3 Local authorities must issue an IDP within 12 weeks of the IDP notice being issued unless there are exceptional circumstances⁵⁵.

6.4 Where there are exceptional circumstances, a copy of the IDP must be given as soon as is reasonably practicable.

6.5 Any timescales in the ALN Code relating to the preparation of an IDP by a governing body or a PRU do not apply when an IDP is prepared following an IDP notice being given⁵⁶.

6.6 When preparing an IDP, the local authority must have regard to the SEP provided to the child to facilitate continuity of provision during the transition from the SEN system to the ALN system (for information about preparing an IDP see the ALN Code, chapter 12, pages 107 to 109)⁵⁷.

⁵³ Commencement Order 14, article 9.

⁵⁴ Commencement Order 14, article 10.

⁵⁵ Commencement Order 14, article 12.

⁵⁶ Commencement Order 14, article 12.

⁵⁷ Commencement Order 14, article 19.

Capacity

- 6.7 Local authorities do not have to give a notice or a copy of an IDP to a child where the child does not have capacity to understand the information in the notice of IDP⁵⁸.

Duties in relation to young people

- 6.8 Where a child has become a young person prior to a local authority giving notice, the local authority is only required to give the notice or the IDP to the young person. The duty to give the notice to a parent or to respond to a request does not apply.

Consent

- 6.9 Where a child has become a young person prior to a local authority giving an IDP notice or a no IDP notice, the local authority will need to gain the consent of the young person for a decision to be made whether they have ALN. This is because young people have the right not to consent to a decision being made about whether they have ALN or to an IDP being prepared or maintained or, in respect of a detained young person, kept.
- 6.10 If a young person does not consent to a decision being made about whether they have ALN, the local authority will not be able to issue an IDP or no IDP notice since this requires a decision to be made. Where a young person consents to a decision being made but not to an IDP being prepared, maintained or (in the case of a detained person who is a young person) kept, the duty to prepare an IDP does not apply.

Right to request an IDP notice

- 6.11 Children captured by Commencement Order 14, or their parents, can request they move to the ALN earlier than intended by requesting an IDP notice⁵⁹ (see paragraphs 11.55 to 11.58 for the right to request an IDP notice).
- 6.12 Where an IDP notice is requested, the local authority must give either an IDP notice or a no IDP notice within 15 working days of the request (see paragraphs 11.38 to 11.43 for information about notices). The date of the notice is the date the child moves to the ALN system. That is, the ALN Act and associated subordinate legislation, including the ALN Code, applies from that date and the school or PRU has 12 weeks to prepare an IDP for the child where an IDP notice is given.

⁵⁸ Commencement Order 14, article 21.

⁵⁹ Commencement Order 14, article 11.

ALN notice

- 6.13 The appropriate local authority can, of its own volition, give an ALN notice (see paragraphs 11.2 to 11.5) in exceptional circumstances⁶⁰. The ALN notice enables local authorities to move any child, captured by Commencement Order 14, from the SEN system to the ALN system.
- 6.14 The date of the notice is the date the child moves to the ALN system. That is, the ALN Act and associated subordinate legislation, including the ALN Code, applies from that date and the school or PRU has 12 weeks to prepare an IDP for the child where an IDP notice is given.

Automatically moving to the ALN system at the end of the school year

- 6.15 Where a local authority does not have the opportunity to provide a child in a mandated year (who has not already moved to the ALN system) and their parent with a notice, Commencement Order 14 provides a safeguard to ensure all pupils within a mandated year move to the ALN system. Any child who has not moved to the ALN system by the end of the relevant school year will automatically move to the ALN system at the end of the school year (31 August). This is referred to as the automatic end of year transfer provision. The provision means that at the end of the school year, the ALN Act and associated subordinate legislation, including the ALN Code, applies to the child.

Change of circumstances

- 6.16 Children captured by Commencement Order 14 who have not already moved to the ALN system, will automatically move from the SEN system to the ALN system where they have one of the following changes of circumstance:
- was not looked after and registered at more than one setting on 1 September 2022 and subsequently ceased to be registered at more than one setting⁶¹
 - was looked after on 1 September 2022 and subsequently ceases to be a looked after child⁶².

Moving into a mandated year after the start of the school year

- 6.17 Where a child captured by Commencement Order 14 moves into a 2022 to 2023 mandated year after 1 September 2022, the school or PRU must either give an IDP notice or a no IDP notice to the child and the child's parents during the 2023 to 2024 school year. The ALN legislation, including the ALN Code, applies from the date of the notice, and the SEN system ceases to apply. This is the position unless the child or their parents request the school

⁶⁰ Commencement Order 14, article 13.

⁶¹ Commencement Order 14, article 16.

⁶² Commencement Order 14, article 17.

or PRU gives an IDP notice or that the appropriate local authority gives an ALN notice.

7. Children with statements on 1 September 2022

- 7.1 Commencement Order 8 brings into force the ALN Act for children up to, and including, Year 11 who had a statement on 1 September 2022.
- 7.2 The arrangements provided for in Commencement Order 8 do not include a young person who would ordinarily be in Year 12 who has been held back in Year 11. This is because the arrangements only capture children, they do not capture young people.
- 7.3 Local authorities must move children who, on 1 September 2022, have a statement (but not a statement pipeline), from the SEN system to the ALN system via an IDP notice or a no IDP notice where they fall within one of the following mandated years:
- school year 2022 to 2023: under compulsory age or of compulsory school age in Reception, Year 6, Year 10 and Year 11⁶³
 - school year 2023 to 2024: Year 2, Year 3, Year 4, Year 5, Year 6, Year 8, Year 9 and Year 10⁶⁴.
- 7.4 The duty to give an IDP notice or a no IDP notice does not apply when an appeal is ongoing in relation to a child.
- 7.5 Other than where a child, or their parent, requests an IDP notice, local authorities can issue an IDP notice or no IDP notice at any point between 1 September and 30 August in a given mandated year. Local authorities could, for example, issue an IDP notice prior to the date of the statement annual review and could hold the IDP meeting instead of the annual review.
- 7.6 During the school year 2022 to 2023, local authorities will be responsible for arranging and funding placements for children in Year 11 who require a specialist college placement from September 2023⁶⁵. This duty comes into effect once a child has moved onto the new system. To facilitate effective transition planning for children in Year 11 moving into special post-16 education, particularly those who may require a specialist placement at, for example, an independent special post-16 institution (ISPI), local authorities should move children in Year 11 from the SEN system to the ALN system during the autumn term of 2022 to 2023.
- 7.7 Where a child in Year 11 is involved in a pipeline case, it will not be possible for the local authority to move the child from the SEN system to the ALN system until the pipeline has ended. In such cases the local authority should undertake preparatory work, so the local authority will be in a position to issue the IDP notice and the IDP as soon as possible.

⁶³ Commencement Order 8, article 9.

⁶⁴ Commencement Order 8, article 10.

⁶⁵ Welsh Government has put in interim arrangements for local authorities to claim the cost of these placements from Welsh Government. Details about the funding arrangements can be found in [Guidance for Local Authorities on Interim Arrangements for Funding for Specialist Post-16 ALN Placements](#)

Issuing an IDP

- 7.8 Local authorities must issue an IDP within 12 weeks of the IDP notice being issued unless there are exceptions or exceptional circumstances⁶⁶.
- 7.9 Where there are exceptional circumstances, a copy of the IDP must be given as soon as is reasonably practicable.
- 7.10 Any timescales in the ALN Code relating to the preparation of an IDP by a local authority do not apply when an IDP is prepared following an IDP notice being given⁶⁷.
- 7.11 When preparing an IDP, the local authority must have regard to the SEP provided to the child to facilitate continuity of provision during the transition from the SEN system to the ALN system (for information about preparing an IDP see the ALN Code, chapter 12, pages 107 to 109)⁶⁸.

Capacity

- 7.12 Local authorities do not have to give a notice or a copy of an IDP to a child where the child does not have capacity to understand the information in the notice of IDP⁶⁹.

Duties in relation to young people

- 7.13 Where a child has become a young person prior to a local authority giving notice, the local authority is only required to give the notice or the IDP to the young person. The duty to give the notice to a parent or to respond to a request does not apply.

Consent

- 7.14 Where a child has become a young person prior to a local authority giving an IDP notice or a no IDP notice, the local authority will need to gain the consent of the young person for a decision to be made about whether they have ALN. This is because young people have the right not to consent to a decision being made about whether they have ALN or to an IDP being prepared or maintained or, in respect of a detained young person, kept.
- 7.15 If a young person does not consent to a decision being made about whether they have ALN, the local authority will not be able to issue an IDP or no IDP notice since this requires a decision to be made. Where a young person consents to a decision being made but not to an IDP being prepared, maintained or (in the case of a detained person who is a young person) kept, the duty to prepare an IDP does not apply.

⁶⁶ Commencement Order 8, article 13.

⁶⁷ Commencement Order 8, article 13.

⁶⁸ Commencement Order 8, article 22.

⁶⁹ Commencement Order 8, article 23.

Right to request an IDP notice

- 7.16 Children captured by Commencement Order 8, or their parents, can request they move to the ALN earlier than intended by requesting an IDP notice⁷⁰ (see paragraphs 11.55 to 11.58 for the right to request an IDP notice).
- 7.17 Where an IDP notice is requested, the local authority must give either an IDP notice or a no IDP notice as soon as reasonably practicable after the request (see paragraphs 11.38 to 11.43 for information about notices). The date of the notice is the date the child moves to the ALN system. That is, the ALN Act and associated subordinate legislation, including the ALN Code, applies from that date and the school or PRU has 12 weeks to prepare an IDP for the child where an IDP notice is given.

ALN notice

- 7.18 The appropriate local authority can, of its own volition, give an ALN notice (see paragraphs 11.2 to 11.5) in exceptional circumstances⁷¹. The ALN notice enables local authorities to move any child, captured by Commencement Order 8, from the SEN system to the ALN system.
- 7.19 The date of the notice is the date the child moves to the ALN system. That is, the ALN Act and associated subordinate legislation, including the ALN Code, applies from that date and the local authority has 12 weeks to prepare an IDP for the child where an IDP notice is given.

Automatically moving to the ALN system at the end of the school year

- 7.20 Where a local authority does not have the opportunity to provide a child in a mandated year (who has not already moved to the ALN system) and their parent with a notice, Commencement Order 8 provides a safeguard to ensure all pupils within a mandated year move to the ALN system. Any child with a statement (who is not in a pipeline) who has not moved to the ALN system by the end of the relevant school year will automatically move to the ALN system at the end of the school year (31 August). This is referred to as the automatic end of year transfer provision. The provision means that at the end of the school year, the ALN Act and associated subordinate legislation, including the ALN Code, applies to the child.
- 7.21 Arrangements for how children with statements who are in a pipeline will automatically move to the ALN system are set out in section 8.

⁷⁰ Commencement Order 8, article 12.

⁷¹ Commencement Order 14, article 13.

Change of circumstances

7.22 Children captured by Commencement Order 8 who have not already moved to the ALN system, will automatically move from the SEN system to the ALN system where they have one of the following changes of circumstance:

- the child's statement ceases to be maintained
- where a child, who had a statement on 1 September 2022, moves from the area of the local authority that was maintaining the statement on 1 September 2022.

Moving into a mandated year after the start of the school year

7.23 Where a child captured by Commencement Order 8 moves into a 2022 to 2023 mandated year after 1 September 2022, the local authority must either give an IDP notice or a no IDP notice to the child and the child's parents during the 2023 to 2024 school year. The ALN legislation, including the ALN Code, applies from the date of the notice, and the SEN system ceases to apply. This is the position unless the child or their parents request the school or PRU gives an IDP notice or that the appropriate local authority gives an ALN notice.

8. Moving children from the SEN system to the ALN system who are involved in a statement pipeline case

- 8.1 Commencement Order 8 brings into force the ALN Act for children up to, and including, Year 11 who were involved in a statement pipeline on 1 September 2022.
- 8.2 The arrangements provided for in Commencement Order 8 do not include a young person who would ordinarily be in Year 12 who has been held back in Year 11. This is because the arrangements only capture children, they do not capture young people.
- 8.3 Where a child was not issued with an IDP notice or a no IDP notice in the year the local authority was mandated to move them because they were involved in an appeal, or the period within which an appeal could be made has not expired, and the child has not otherwise moved to the ALN system, the local authority must give the child, and their parent, an IDP notice or no IDP notice as soon as reasonably practicable after:
- the period within which an appeal could be made has expired, if no appeal has been made; or
 - where an appeal has been made, the appeal has been finally determined⁷².
- 8.4 Where a child captured by Commencement Order 8 was not issued with an IDP notice or a no IDP notice because the child is involved in an ongoing pipeline on 30 August 2024, the child will transfer to the ALN system:
- immediately after the end of the period within which an appeal could be made has expired, where no appeal has been made
 - immediately after the appeal has been finally determined, other than where the local authority is ordered to undertake an action
 - where the local authority is ordered to undertake an action as a result of the ongoing appeal being finally determined and the action has not been performed by 30 August 2023, the child will automatically move on the transfer day⁷³. The transfer day means the day after which the action is performed, or all of the actions have been performed if there is more than one action.

Issuing an IDP

- 8.5 An IDP must be issued within 12 weeks of the IDP notice being issued unless:
- any of the circumstances in section 12(2) of the Act apply,
 - section 31 of the Act applies, or

⁷² Commencement Order 8, article 11.

⁷³ Commencement Order 8, article 19.

- there are exceptional circumstances⁷⁴.
- 8.6 If any of the circumstances in section 12(2) of the ALN Act apply, section 31 of the ALN act applies, or there are exceptional circumstances, a copy of the IDP must be given as soon as is reasonably practicable.
- 8.7 Any timescales in the code relating to the preparation of an individual development plan do not apply when an individual development plan is prepared following the giving of an IDP notice⁷⁵.
- 8.8 When preparing an IDP, the local authority must have regard to the contents of the statement which was maintained immediately before moving to the new law⁷⁶. This will facilitate continuity of provision during the transition from the SEN system to the ALN system (for information about preparing an IDP see the ALN Code, chapter 12, pages 107 to 109).

Capacity

- 8.9 Local authorities do not have to give a notice or a copy of an IDP to a child where the child does not have capacity to understand the information in the notice of IDP⁷⁷.

Duties in relation to young people

- 8.10 Where a child has become a young person prior to a local authority giving notice, the local authority is only required to give the notice or the IDP to the young person. The duty to give the notice to a parent or to respond to a request does not apply.

Consent

- 8.11 Where a child has become a young person prior to a local authority giving an IDP notice or a no IDP notice, the local authority will need to gain the consent of the young person for a decision to be made about whether they have ALN. This is because young people have the right not to consent to a decision being made about whether they have ALN or to an IDP being prepared or maintained or, in respect of a detained young person, kept.
- 8.12 If a young person does not consent to a decision being made about whether they have ALN, the local authority will not be able to issue an IDP or no IDP notice since this requires a decision to be made. Where a young person consents to a decision being made but not to an IDP being prepared, maintained or (in the case of a detained person who is a young person) kept, the duty to prepare an IDP does not apply.

⁷⁴ Commencement Order 8, article 13.

⁷⁵ Commencement Order 8, article 13.

⁷⁶ Commencement Order 8, article 22.

⁷⁷ Commencement Order 8, article 23.

Right to request an IDP notice

- 8.13 Children captured by Commencement Order 8, or their parents, can request they move to the ALN system earlier than intended by requesting an IDP notice.
- 8.14 The local authority must give an IDP notice or a no IDP notice to the child and their parent as soon as is practicable after the notice has been requested⁷⁸.
- 8.15 In contrast to Commencement Order 6 and Commencement Order 14, Commencement Order 8 does not require the local authority to give an IDP notice or a no IDP within 15 working days of the request being made. This is because there will be instances where a statement pipeline has been finally determined and the local authority is complying with an order given by Tribunal.
- 8.16 Where a request to move to the ALN system is made and there is no Tribunal order for the local authority to comply with, it is expected the local authority will issue an IDP notice within 15 working days.
- 8.17 The right to request does not apply where:
- an appeal is ongoing in relation to a child, or
 - the child has automatically moved to the ALN system due to, for example, a change of circumstance⁷⁹.

ALN notice

- 8.18 The appropriate local authority can, of its own volition, give an ALN notice in exceptional circumstances. The ALN notice enables local authorities to move any child captured by Commencement Order 8 other than where there is an appeal ongoing in relation to the child⁸⁰.

Automatically moving to the ALN system at the end of the school year

- 8.19 Where a local authority does not have the opportunity to provide a child in a mandated year (who has not already moved to the ALN system) and their parent with a notice, Commencement Order 8 provides a safeguard to ensure all pupils within a mandated year move to the ALN system. Any child who has not moved to the ALN system by the end of the relevant school year will automatically move to the ALN system at the end of the school year (31 August). This is referred to as the automatic end of year transfer provision. The provision means that at the end of the school year the ALN legislation, including the ALN Code, will apply to the child and Part 4 of the

⁷⁸ Commencement Order 8, article 12.

⁷⁹ Commencement Order 8, article 12.

⁸⁰ Commencement Order 8, article 14.

Education Act 1996 will cease to apply to the child at the end of the school year⁸¹.

- 8.20 The automatic move at the end of the year does not apply to a child, who is in a year mandated to move during the 2022 to 2023 school year, where the local authority is ordered to undertake an action as a result of an ongoing appeal under the SEN system being finally determined and the action has not been performed by 30 August 2023.
- 8.21 In this instance, the child will automatically move to the ALN system on the day after the action is performed (or all actions have been performed, if there are more than one).
- 8.22 Additionally, the automatic move at the end of the year does not apply where a child, who is in a year mandated to move during the 2022 to 2023 school year, is involved in an ongoing appeal on 30 August 2023. In that case the child will move automatically on the transfer date. In this scenario the transfer day is:
- (a) the day after the end of the period within which an appeal could be made, if no appeal has been made;
 - (b) unless paragraph (c) applies, the day after the appeal has been finally determined, where an appeal has been made;
 - (c) where the local authority is ordered to perform an action as a result of an ongoing appeal being finally determined, the day after which the action is performed (or all of the actions have been performed, if there is more than one action).
- 8.23 Where a child has not moved to the ALN system by 30 August 2024, Commencement Order 8 provides a safeguard to ensure all pupils move to the ALN system. They will automatically move to the ALN system on 31 August 2024. The provision means that at point the ALN legislation, including the ALN Code, will apply to the child and Part 4 of the Education Act 1996 will cease to apply to the child.
- 8.24 This does not apply to a child where the local authority is ordered to undertake an action as a result of an ongoing appeal under the SEN system being finally determined and the action has not been performed by 30 August 2024. In this instance, the child will automatically move to the ALN system on the day after the action is performed (or all actions have been performed, if there is more than one).
- 8.25 Additionally, the automatic move at the end of the year does not apply where a child is involved in an ongoing appeal on 30 August 2024. In that case the child will move automatically on the transfer date. In this scenario the transfer day is:
- (a) the day after the end of the period within which an appeal could be made, if no appeal has been made

⁸¹ Commencement Order 8, articles 15 and 17.

- (b) unless paragraph (c) applies, the day after the appeal has been finally determined, where an appeal has been made
- (c) where the local authority is ordered to perform an action as a result of an ongoing appeal being finally determined, the day after which the action is performed (or all of the actions have been performed, if there is more than one action).

Change of circumstances

8.26 Children captured by Commencement Order 8, who have not already moved to the ALN system, will automatically move from the SEN system to the ALN system where:

- a local authority ceases to maintain their statement⁸², or
- a child moves from the area of the local authority that was maintaining their statement on 1 September 2022⁸³.

8.27 Where a local authority ceases to maintain a statement for a child who had a statement on 1 September 2022, the child will automatically move to the ALN system on the date the local authority ceases to maintain the statement and the ALN legislation, including the ALN Code, applies to the child.

Moving into a mandated year after the start of the school year

8.28 Where a child captured by Commencement Order 8 moves into a 2022 to 2023 mandated year after 1 September 2022, the appropriate local authority must either give an IDP notice or a no IDP notice to the child and the child's parents during the 2023 to 2024 school year. The ALN legislation, including the ALN Code, applies from the date of the notice, and the SEN system ceases to apply. This is the position unless the child or their parents request the school or PRU gives an IDP notice or that the appropriate local authority gives an ALN notice.

⁸² Commencement Order 8, article 20.

⁸³ Commencement Order 8, article 21.

9. Children up to, and including, Year 11 who are in a pre-statement pipeline

- 9.1 Commencement Order 9 brings into force the ALN Act for children up to, and including, Year 11 who are in a pre-statement pipeline on 1 September 2022 (see paragraphs 11.46 to 11.47 for a definition of pipeline cases).
- 9.2 Commencement Order 9 does not include children who are in a statement pipeline. Arrangements for children up to, and including, Year 11 who were involved in a statement pipeline on 1 September 2022 are provided for in Commencement Order 8 (see section 7).

Issuing an IDP or no IDP notice

- 9.3 Local authorities must move children who are involved in a pre-statement pipeline by giving them an IDP notice or a no IDP notice as soon as is reasonably practicable after the 1 September 2022⁸⁴ unless an appeal is ongoing under sections 329(2), 329A(8) or 325(2) of the 1996 Act.
- 9.4 Where an appeal has been made to the Tribunal under sections 329(2), 329A(8) or 325(2) of the 1996 Act and that appeal is ongoing on 1 September 2022, the appropriate local authority should either give an IDP notice or a no IDP notice to the child, and their parents, as soon as reasonably practicable after that appeal is finally determined.

Issuing an IDP

- 9.5 An IDP must be issued within 12 weeks of the IDP notice being issued unless:
- any of the circumstances in section 12(2) of the Act apply
 - section 31 of the Act applies, or
 - there are exceptional circumstances⁸⁵.
- 9.6 If any of the circumstances in section 12(2) apply or there are exceptional circumstances, a copy of the IDP must be given as soon as is reasonably practicable.
- 9.7 Where a local authority, school or PRU is required to prepare an individual development plan for a child within 12 weeks of moving to the new law, the local authority or school must have regard to any special educational provision provided to the child immediately before moving to the ALN system⁸⁶.

⁸⁴ Commencement Order 9, article 9.

⁸⁵ Commencement Order 9, article 11.

⁸⁶ Commencement Order 9, article 16.

- 9.8 Any timescales in the code relating to the preparation of an individual development plan do not apply when an individual development plan is prepared following the giving of an IDP notice⁸⁷.

Capacity

- 9.9 Local authorities and schools do not have to give a notice or a copy of an IDP to a child where the child does not have capacity to understand the information in the notice of IDP⁸⁸.

Duties in relation to young people

- 9.10 Where a child has become a young person prior to a local authority giving notice, the local authority is only required to give the notice or the IDP to the young person. The duty to give the notice to a parent or to respond to a request does not apply.

Consent

- 9.11 Where a child has become a young person prior to a local authority giving an IDP notice or a no IDP notice, the local authority will need to gain the consent of the young person for a decision to be made about whether they have ALN. This is because young people have the right not to consent to a decision being made about whether they have ALN or to an IDP being prepared or maintained or, in respect of a detained young person, kept.
- 9.12 If a young person does not consent to a decision being made about whether they have ALN, the local authority will not be able to issue an IDP or no IDP notice since this requires a decision to be made. Where a young person consents to a decision being made but not to an IDP being prepared, maintained or (in the case of a detained person who is a young person) kept, the duty to prepare an IDP does not apply.

Right to request an IDP notice

- 9.13 Children captured by Commencement Order 9, or their parents, can request they move to the ALN system earlier than intended by requesting an IDP notice⁸⁹.
- 9.14 The local authority must give an IDP notice or a no IDP notice to the child, and their parent, as soon as is practicable after the notice has been requested.
- 9.15 In contrast to Commencement Order 6 and 14, Commencement Order 9 does not require the local authority to give an IDP notice or a no IDP within 15 working days of the request being made. This is because there will be

⁸⁷ Commencement Order 9, article 11.

⁸⁸ Commencement Order 9, article 17.

⁸⁹ Commencement Order 9, article 10.

instances where a statement pipeline has been finally determined and the local authority is complying with an order given by Tribunal.

- 9.16 Where a request to move to the ALN system is made and there is no Tribunal order for the local authority to comply with, it is expected the local authority will issue an IDP notice within 15 working days.
- 9.17 The right to request does not apply where:
- a pre-statement is ongoing in relation to a child; or
 - the child has automatically moved to the ALN system due to, for example, a change of circumstance.

Automatically moving to the ALN system at the end of the implementation period

- 9.18 Where a local authority has not had the opportunity to move a child to the ALN system on 30 August 2024, Commencement Order 9 provides a safeguard to ensure all children move to the ALN system.
- 9.19 A child will automatically move to the ALN system on 31 August 2024 unless:
- the child is involved in an appeal; or
 - the local authority has been ordered to undertake an action as a result of an ongoing appeal being finally determined and the action which must be undertaken has not been performed by 30 August 2024⁹⁰.
- 9.20 This means that on 31 August 2024 the ALN legislation, including the ALN Code, will apply to the child and Part 4 of the Education Act 1996 will cease to apply to the child at the end of the school year.
- 9.21 Where any of the circumstances in paragraph 9.19 apply, a child will automatically move from the SEN system to the ALN system on the day after the appeal is finally determined or (where the local authority has been ordered to undertake an action) the day after the action is performed, or all of the actions have been performed if there is more than one action (this date is referred to as the transfer day).

Change of circumstances

- 9.22 A child captured by Commencement Order 9, who has not already moved to the ALN system, will automatically move from the SEN system to the ALN system where they move from the area of the local authority in which the child was in on 1 September 2022.

⁹⁰ Commencement 9, article 12.

10. Children who have SEP via school action/school action plus and who did not attend a maintained school or PRU on 1 September 2022

- 10.1 Children up to, and including, Year 11 who had SEP via school action/school action plus and who were not registered at a maintained school or PRU on 1 September 2022 will move from the SEN system to the ALN system in one of two ways, depending on their circumstances:
- automatically moved from the SEN system to the ALN system: children who, on 1 September 2022, are not registered at a maintained school or PRU and who are not looked after or not an EOTAS pupil will automatically move to the ALN system on 1 September 2022 (Commencement Order 11); or
 - moved from the SEN system to the ALN by the local authority issuing an IDP notice or a no IDP notice: children who, on 1 September 2022, are not registered at a maintained school or PRU and are looked after or an EOTAS pupil will be moved to the ALN system during a mandated year (Commencement Order 14).
- 10.2 The 2 approaches reflect the extent to which local authorities will know about children who are not registered at a maintained school or PRU. Local authorities will know about children who do not attend a maintained school or PRU who are EOTAS pupils or looked after children. Thus, it is possible for local authorities to issue IDP notices or no IDP notices to move these children.
- 10.3 Local authorities will not necessarily know about children who are not registered at a maintained school or PRU who are not EOTAS pupils or looked after children. Thus, it would not be possible for local authorities to move these children via an IDP notice or no IDP notice. These children will, therefore, move automatically to the ALN system on 1 September 2022.
- 10.4 Commencement Orders 11 and 14 do not capture children who had a statement and who were not registered at a maintained school or PRU on 1 September 2022 – these children are captured by Commencement Order 8.
- 10.5 Commencement Order 14 places responsibilities on local authorities.
- 10.6 How children described at 10.1 move from the SEN system to the ALN system is discussed in the following sections.

Children who are not looked after or an EOTAS pupil

- 10.7 Commencement Order 11 brings into force the ALN Act for children up to, and including, Year 11 who had SEP via school action/school action plus and who were not registered at a maintained school or PRU on 1 September 2022 and who are not looked after children or EOTAS pupils.

10.8 Children described in paragraph 10.7 will automatically move to the ALN system on 1 September 2022. This means that on 1 September 2022, the ALN Act and subordinate legislation, including the ALN Code, apply to these children on 1 September 2022 and, where it is brought to the attention of, or otherwise appears to, a local authority a child has ALN, the local authority must make a decision and, where required, prepare an IDP.

Children who are EOTAS pupils or looked after

10.9 Commencement Order 14 brings into force the ALN Act for children up to, and including, Year 11 who had SEP via school action/school action plus and who were not registered at a maintained school or PRU on 1 September 2022 and who are looked after children or EOTAS pupils.

10.10 Local authorities must move children described in paragraph 10.9 from the SEN system to the ALN system via an IDP notice or a no IDP notice where they fall into one of the following mandated years:

- school year 2022 to 2023: Nursery Years 1 and 2, Reception, Year 2, Year 4, Year 6, Year 8, Year 10 and Year 11
- school year 2023 to 2024: Year 2, Year 3, Year 4, Year 5, Year 6, Year 8, Year 9 and Year 10⁹¹.

Issuing an IDP

10.11 Local authorities must issue an IDP within 12 weeks of the IDP notice being issued unless:

- there are exceptional circumstances; or
- section 31 of the Act applies⁹².

10.12 Where there are exceptional circumstances, a copy of the IDP must be given as soon as is reasonably practicable.

10.13 Any timescales in the ALN Code relating to the preparation of an IDP do not apply when an IDP is prepared following an IDP notice being given⁹³.

10.14 Where a local authority is required to prepare an individual development plan for a child within 12 weeks of moving to the ALN system, the local authority must have regard to the SEP provided to the child immediately before moving to the new law. This will facilitate continuity of provision during the transition from the SEN system to the ALN system (for information about preparing an IDP see the ALN Code, chapter 12, pages 107 to 109)⁹⁴.

⁹¹ Commencement Order 14, articles 9 and 10.

⁹² Commencement Order 14, article 12.

⁹³ Commencement Order 14, article 12.

⁹⁴ Commencement Order 14, article 19.

Capacity

- 10.15 Local authorities do not have to give a notice or a copy of an IDP to a child where the child does not have capacity to understand the information in the notice of IDP⁹⁵.

Duties in relation to young people

- 10.16 Where a child has become a young person prior to a local authority giving notice, the local authority is only required to give the notice or the IDP to the young person. The duty to give the notice to a parent or to respond to a request does not apply.

Consent

- 10.17 Where a child has become a young person prior to a local authority giving an IDP notice or a no IDP notice, the local authority will need to gain the consent of the young person for a decision to be made about whether they have ALN. This is because young people have the right not to consent to a decision being made about whether they have ALN or to an IDP being prepared or maintained or, in respect of a detained young person, kept.
- 10.18 If a young person does not consent to a decision being made about whether they have ALN, the local authority will not be able to issue an IDP or no IDP notice since this requires a decision to be made. Where a young person consents to a decision being made but not to an IDP being prepared, maintained or (in the case of a detained person who is a young person) kept, the duty to prepare an IDP does not apply.

Right to request an IDP notice

- 10.19 Children captured by Commencement Order 14, or their parents, can request they move to the ALN earlier than intended by requesting the appropriate local authority issue an IDP notice⁹⁶.
- 10.20 Where an IDP notice is requested, the appropriate local authority must give an IDP notice or a no IDP notice to the child, and their parents, within 15 working days of the request⁹⁷. The date of the notice is the date the child moves to the ALN system. That is, the ALN Act and associated subordinate legislation, including the ALN Code, applies to the child.

ALN notice

- 10.21 The appropriate local authority can, of its own volition, give an ALN notice in exceptional circumstances. The ALN notice enables local authorities to move

⁹⁵ Commencement Order 14, article 20.

⁹⁶ Commencement Order 14, article 11.

⁹⁷ Commencement Order 14, article 11.

any child captured by Commencement Order 14 from the SEN system to the ALN system⁹⁸.

Automatically moving to the ALN system at the end of the school year

10.22 Where a local authority does not have the opportunity to provide a child in a mandated year (who has not already moved to the ALN system) and their parent with a notice, Commencement Order 14 provides a safeguard to ensure all pupils within a mandated year move to the ALN system. Any child who has not moved to the ALN system by the end of the relevant school year will automatically move to the ALN system at the end of the relevant school year (31 August)⁹⁹. This is referred to as the automatic end of year transfer provision. The provision means that at the end of the school year the ALN legislation, and subordinate legislation including the ALN Code, will apply to the child and Part 4 of the Education Act 1996 will cease to apply to the child at the end of the school year.

Change of circumstances

10.23 Children captured by Commencement Order 14 who are EOTAS pupils or looked after and who have not already moved to the ALN system, will automatically move from the SEN system to the ALN system where they:

- cease to be a looked after child¹⁰⁰
- ceased to be an EOTAS pupil where the child is not looked after¹⁰¹

10.24 On the date of either of these changes, the ALN and associated subordinate legislation, including the ALN Code, apply.

Moving into a mandated year after the start of the school year

10.25 Where a child captured by Commencement Order 14 moves into a 2022 to 2023 mandated year after 1 September 2022, the local authority must either give an IDP notice or a no IDP notice to the child and the child's parents during the 2023 to 2024 school year. The ALN legislation, including the ALN Code, applies from the date of the notice, and the SEN system ceases to apply. This is the position unless the child or their parents request the school or PRU gives an IDP notice or that the appropriate local authority gives an ALN notice.

⁹⁸ Commencement Order 14, article 13.

⁹⁹ Commencement Order 14, articles 14 and 15.

¹⁰⁰ Commencement Order 14, article 17.

¹⁰¹ Commencement Order 14, article 18.

11. Terms explained

Additional learning needs (ALN)

- 11.1 Additional learning needs (ALN) has the meaning given by section 2 of the ALN Act. That is:
- (3) **A person has additional learning needs if he or she has a learning difficulty or disability (whether the learning difficulty or disability arises from a medical condition or otherwise) which calls for additional learning provision.**
 - (4) **A child of compulsory school age or person over that age has a learning difficulty or disability if he or she -**
 - a) has a significantly greater difficulty in learning than the majority of others of the same age, or
 - b) has a disability for the purposes of the Equality Act 2010 which prevents or hinders him or her from making use of facilities for education or training of a kind generally provided for others of the same age in mainstream maintained schools or mainstream institutions in the further education sector.
 - (5) **A child under compulsory school age has a learning difficulty or disability if he or she is, or would be if no additional learning provision were made, likely to be within subsection (2) when of compulsory school age.**
 - (6) **A person does not have a learning difficulty or disability solely because the language (or form of language) in which he or she is or will be taught is different from a language (or form of language) which is or has been used at home.**

(See the ALN Code, chapter 2 for further information about the definition of ALN).

ALN notice

- 11.2 The appropriate local authority can, of its own volition, give an ALN notice in exceptional circumstances. The ALN notice enables local authorities to move any child captured by Commencement Orders 5, 6, 8, 13 and 14.
- 11.3 In certain circumstances, children captured by Commencement Orders 5 and 13, and their parents, can request the appropriate local authority move them to the ALN system earlier than planned by requesting an ALN notice. Following such a request the appropriate local authority must give an ALN notice.
- 11.4 The effect of the ALN notice is that the ALN system applies on the date of the notice and the SEN system ceases to apply on that date.

- 11.5 This means the duties in the ALN Act placed on schools, PRUs and local authorities to make a decision, and where required, to prepare an IDP for the child apply.

ALN system

- 11.6 The ALN system refers to the legal arrangements set out in the ALN Act and subordinate legislation, including the ALN Code. The ALN Code places requirements on schools, PRUs, FEIs, local authorities and NHS bodies and gives guidance to them and others on the ALN system.

Additional learning provision (ALP)

- 11.7 ALP has the meaning given by section 3 of the ALN Act. That is:

- (7) Additional learning provision for a person aged three or over means educational or training provision that is additional to, or different from, that made generally for others of the same age in:
- c) mainstream maintained schools in Wales,
 - d) mainstream institutions in the further education sector in Wales, or
 - e) places in Wales at which nursery education is provided.
- (8) Additional learning provision for a child aged under three means educational provision of any kind.
- (9) In subsection (1), “nursery education” means education suitable for a child who has attained the age of three but is under compulsory school age.

- 11.8 Further information about the definition of ALP can be found in chapter 2 of the ALN Code.

Appropriate local authority

- 11.9 Reference is made to the appropriate local authority when discussing:
- the duty placed on a local authority to give an IDP notice or no IDP notice
 - the right for children who are captured by Commencement Orders 6, 8, 9, 13 and 14, or their parents, to make a request to the appropriate local authority that an IDP notice be given
 - the power for a local authority to give an ALN notice
 - the right for children captured by Commencement Orders 5 and 14, or their parents, to make a request to the appropriate local authority that an ALN notice be given.
- 11.10 The appropriate local authority is the local authority in Wales that looks after a child or, where a child is not looked after, is the local authority responsible

for the child (see ALN Code, chapter 1, page 4 for a definition of children and young people for whom a local authority is responsible).

- 11.11 For example, a child is registered at a PRU in Cardiff and lives most of the time in Cardiff. Cardiff Council is the responsible local authority and hence, the appropriate local authority. If, however, the child who is registered at the PRU in Cardiff lives most of the time in Rhondda Cynon Taff, the responsible local authority would be Rhondda Cynon Taff County Borough Council, and so the request for the new law to apply to the child would be made to Rhondda Cynon Taff County Borough Council as the appropriate local authority.
- 11.12 If a local authority in Wales is not responsible for the child (for example because the child lives in England and is registered at a maintained school or PRU in Wales), then the appropriate local authority is the local authority in whose area the maintained school or PRU is located.

Automatic end of year transfer provision

- 11.13 Children who are captured by Commencement Orders 5, 6, 8, 9, 13 and 14 and who are in a mandated year, are moved from the SEN system to the ALN system throughout the relevant school year. To enable this to happen, schools, PRUs and local authorities give children either an IDP notice or a no IDP notice (see paragraphs 11.38 to 11.43).
- 11.14 Where a school, PRU or a local authority does not have the opportunity to provide a child in a mandated year (who has not already moved to the ALN system) and their parent with a notice, Commencement Orders 5, 6, 8, 9, 13 and 14 provide a safeguard to ensure all pupils within a mandated year move to the ALN system. Any child who has not moved to the ALN system by the end of the relevant school year will automatically move to the ALN system at the end of the school year (31 August). This is referred to as the automatic end of year transfer provision. The provision means that at the end of the school year the ALN legislation, including the ALN Code, will apply to the child and Part 4 of the Education Act 1996 will cease to apply to the child at the end of the school year.
- 11.15 Where it is brought to the attention of, or otherwise appears to, a local authority, school or PRU that a child, who has automatically moved to the ALN system, may have ALN, the local authority, school or PRU must decide whether the child has ALN¹⁰². Where the local authority, school or PRU decides the child has ALN, the local authority, school or PRU will then usually be required to prepare and maintain an IDP for the child¹⁰³.
- 11.16 Schools and PRUs have 35 school days to make a decision and, where required, issue an IDP, local authorities have 12 weeks.

¹⁰² ALN Act, sections 11, 13, 18 and 40. The definition of ALN is in section 2 of the ALN Act and that of ALP in section 3.

¹⁰³ ALN Act, sections 12, 14, 19 and 40.

Avoiding pipelines cases

- 11.17 From the 1 September 2022, children who are captured by the Commencement Orders 5, 6, 8, 9, 13 and 14 will not be able to get into a pipeline (see paragraphs 11.46 to 11.47 for a definition of pipeline cases). Although the SEN legislation remains in force, and SEP must continue to be provided until a child moves to the ALN system, the provisions of Part 4 of the Education Act 1996 that remain in force are limited.
- 11.18 This means that children captured by the Commencement Orders 5, 6, 8, 9, 13 and 14 cannot be given a statement of SEN or ask for an SEN assessment.
- 11.19 Children, or their parents, can however ask for a notice to be given (see paragraphs 11.55 to 11.58 for information about requesting an IDP notice and paragraphs 11.59 to 11.61 for information about requesting an ALN notice).

Children captured by an order

- 11.20 Children captured by an order refers to the groups of children who are included in a specific commencement order and who will move from the SEN system to the ALN system in 2 of the 3 implementation years.
- 11.21 The Commencement Orders are described in section 12.

Deciding whether a child has ALN

- 11.22 Generally, where it is brought to the attention of, or otherwise appears to, a local authority, school, or PRU that a child may have ALN, the local authority, school or PRU must decide whether the child has ALN¹⁰⁴. Where the local authority, school or PRU decides the child has ALN, the local authority, school or PRU will then usually be required to prepare and maintain an IDP for the child¹⁰⁵.
- 11.23 Schools and PRUs will generally be responsible for deciding whether a child has ALN and for preparing an IDP but there are a number of circumstances set out in the ALN Act where responsibility to decide generally lies with the local authority. These include where a child:
- is not registered at a maintained school or PRU
 - is registered at more than one setting
 - is looked after by a local authority in Wales
 - is detained.
- 11.24 Where a child is looked after by a local authority in England and is registered at a maintained school or PRU in Wales, the school or PRU will be

¹⁰⁴ ALN Act, sections 11, 13, 18 and 40. The definition of ALN is in section 2 of the ALN Act and that of ALP in section 3.

¹⁰⁵ ALN Act, sections 12, 14, 19 and 40.

responsible for deciding if the child has ALN, other than where a local authority in England maintains an EHC plan for the child¹⁰⁶.

- 11.25 Further information on deciding whether a child has ALN and on preparing and maintaining IDPs can be found in the ALN Code.

Detained children

- 11.26 Reference to detained children in this guide has the meaning given by section 39 of the ALN Act. That is, children who are:

- subject to a detention order, and
- detained in relevant youth accommodation in Wales or England (see chapter 19 or the ALN Code).

Education other than at school (EOTAS)

- 11.27 Local authorities have a duty¹⁰⁷ to make arrangements for the provision of suitable education for children of compulsory school age who, for whatever reason, may not receive suitable education in the absence of such arrangements. They also have a power¹⁰⁸ to do the same in relation to young people.

- 11.28 This provision is referred to as EOTAS. Examples of EOTAS provision include PRUs, schools established in hospitals, FEIs, and individual tuition at home (this is different to elective home education). EOTAS pupils include children and young people who, for example, may be ill or have been excluded from school (information about EOTAS can be found in chapter 18 of the ALN Code).

Exceptional circumstances

- 11.29 Reference is made to duties placed on local authorities, schools and PRUs to give a copy of an IDP within a specific timescale, unless exceptional circumstances apply. Exceptional circumstances refer to instances where it is impossible for the responsible body to comply within the specified period due to circumstances beyond the control of the responsible body.

- 11.30 During the implementation period, an example of an exceptional circumstance is likely to be where a significant number of children, or their parents, request the school, PRU or appropriate local authority give an IDP notice. Where the number of requests involved would mean it was impossible to prepare and give an IDP within the required timescale, such an instance is very likely to be an exceptional circumstance. However, where there are exceptional circumstances, the IDP must be given as soon as is reasonably practicable. Where it is apparent there are exceptional circumstances that will prevent, or are likely to prevent, the IDP being given

¹⁰⁶ ALN Act, section 11(3)(e).

¹⁰⁷ Section 19 of the Education Act 1996.

¹⁰⁸ Section 19(4) of the Education Act 1996.

in the required timescale, this should be explained in writing to the child and their parents at the earliest opportunity.

- 11.31 Exceptional circumstances also apply in relation to the power, provided for in Commencement Orders 5, 6, 8, 13 and 14, given to a local authority to give an ALN notice to move a child from the SEN to the ALN system.
- 11.32 The power has been given to local authorities to be used in an exceptional circumstance. Such a situation might be where a child's needs have increased beyond the SEP that can be delivered in a mainstream school. Without the power to give an ALN notice, the local authority would not be able to make a decision about whether the child has ALN and, where required, prepare an IDP. In addition, it is not possible for a school to request that a local authority undertake a statutory assessment or issue a statement for a child captured by Commencement Orders 5, 6, 13 and 14. Thus, it would not be possible for the local authority to place the child in a special school as the SEN system requires that a child attending a special school should have a statement.

Looked after children

- 11.33 Reference to looked after children in this guide has the same meaning as a child looked after by a local authority in section 15 of the ALN Act (see paragraphs 1.27 to 1.30 of the ALN Code).

Mandated years

- 11.34 Mandated years refer to the groups of children who fall into specific year groups that will move from the SEN system to the ALN system in each of the 3 years of implementation.

Newly identified as having, or newly thought to have, ALN

- 11.35 Children who are newly identified as having, or newly thought to have, ALN from 1 September 2021 means children who were not engaged in any way with the SEN system on 1 September 2021. That is, they are children who do not have a statement of SEN, SEP via school action/school action plus nor are they involved in a pipeline case (see paragraphs 11.46 to 11.47 for a definition of pipeline cases).
- 11.36 The ALN system came into force for children up to, and including, Year 10¹⁰⁹ who are newly identified as having, or newly thought to have, ALN from 1 September 2021, regardless of how their education is delivered.
- 11.37 From 1 September 2022, the ALN Act will come into force for children up to, and including, Year 11 who are newly identified as having, or newly thought to have, ALN¹¹⁰.

¹⁰⁹ Commencement Order 2.

¹¹⁰ Commencement Order 12.

Notices – IDP notices and no IDP notices

- 11.38 Commencement Orders 5, 6, 8, 9, 13 and 14 require schools, PRUs and appropriate local authorities to give an IDP notice or a no IDP notice to move children from the SEN system to the ALN system. The notice can be given at any point in the relevant school year that the child is moving to the ALN system.
- 11.39 An IDP notice means the child is deemed to have ALN for the purposes of chapter 2 of Part 2 of the ALN Act on the date of the notice and that an IDP will be prepared for the child¹¹¹. The school or PRU must give a copy of the IDP to the child and their parent within 35 school days of the date of the notice and local authorities must give a copy of the IDP to the child and the child's parent within 12 weeks of the date of the notice, unless exceptions apply or there are exceptional circumstances (see paragraphs 11.29 to 11.32 for a definition of exceptional circumstances).
- 11.40 The date of the notice is the date the child moves to the ALN system. That is, the ALN Act and associated subordinate legislation, including the ALN Code, apply from that date and the SEN legislation ceases to apply.
- 11.41 A no IDP notice means the child is deemed not to have ALN for the purposes of chapter 2 of Part 2 of the ALN Act on the date of the notice¹¹². The date of the notice is the date the child moves to the ALN system. That is, the ALN Act and associated subordinate legislation, including the ALN Code, apply from that date. This means children, and their parents, have rights to challenge decisions made by schools, PRUs and local authorities.
- 11.42 Where a child, or their parent, disagrees with the decision made by a school, they can request the local authority reconsiders the decision¹¹³.
- 11.43 Where a child, or their parent, disagrees with the decision made by a local authority, they may appeal to the Education Tribunal for Wales against the decision.

Nursery class – Nursery Years 1 and 2

- 11.44 The commencement orders make provision for children in a nursery class in a maintained school to move to the ALN system. Nursery class means the classes in a maintained school that provide foundation phase nursery education¹¹⁴ for children who have attained the age of 3 but are under compulsory school age. Generally, schools organise nursery classes into 2 years and, thus, reference is made in this guide to Nursery Years 1 and 2 when referring to nursery classes.

¹¹¹ Other than where a local authority is required to secure an EHC plan following a request under section 12(2)(c) of the Act, Commencement Order 5, article 5.

¹¹² Commencement Order 5, article 8; and Commencement Order 6, article 8.

¹¹³ ALN Act, section 26.

¹¹⁴ See '[Nursery education for 3 and 4 year olds in Wales – Foundation Phase nursery: a guide for parents and carers](#)'.

Parent

- 11.45 Parent has the meaning given in section 576 of the Education Act 1996. That definition includes any person who is not a parent but who has parental responsibility for the child and any person who has care of the child¹¹⁵.

Pipeline cases

- 11.46 A pipeline case refers to instances where a child or young person is either engaged with a process relating to the SEN statement system provided for in the Education Act 1996 or with a process relating to EHC plans provided for in the Children and Families Act 2014.
- 11.47 While there are a large number of diverse pipeline cases, they can be categorised into 2 types: those that are pre-statement pipelines and those that are statement pipelines. A pre-statement pipeline is where a child or young person does not have a statement but is seeking to get a statement. This pipeline could end by a statement being given or by no statement being given. A statement pipeline is where a statement has already been given but there is an ongoing appeal in relation to its content or the local authority is trying to cease to maintain the statement.

Preparing an IDP

- 11.48 Under the ALN Act, where it has been decided by a local authority, school or PRU that a child has ALN, an IDP must be prepared for the child¹¹⁶.
- 11.49 During the implementation period, preparing an IDP will generally take place within the context of moving a child from the SEN system, and their existing plans and SEP delivered via school action/school action plus, to the ALN system.
- 11.50 Further information on deciding whether a child has ALN and on preparing and maintaining IDPs can be found in the ALN Code.

Pupil referral units (PRUs)

- 11.51 For brevity, the term PRU is used in this guide when describing a duty placed on the management committee of a PRU under the ALN Act, ALN Code or regulations under the ALN Act. This also reflects the practical operation of the system where, for the most part, the functions of a management committee are undertaken by staff members acting for the management committee.

¹¹⁵ 'Parents and parental responsibility: guidance for schools' contains guidance for schools on the meaning of parents and parental responsibility for the purposes of the Education Act 1996.

¹¹⁶ Other than where a local authority in England maintains an EHC plan for the child or where a local authority in England is required to secure an EHC assessment following a request under section 12(2)(c) or section 87(3)(d)(i) of the ALN Act.

Regard to previous provision

- 11.52 When preparing an IDP, the school, PRU or local authority must have regard to the SEP provided to the child to facilitate continuity of provision during the transition from the SEN system to the ALN system (for information about preparing an IDP see the ALN Code, chapter 12, pages 97 to 98 for schools and PRUs, or pages 107 to 109 for local authorities).

Registered at more than one setting (dual registered)

- 11.53 When a child is described as being registered at more than one setting, it means the child is registered as a pupil or enrolled as a student at more than one setting, one of which is a maintained school or PRU in Wales and also that the child is to be provided with education or training at each of the settings at which the child is a registered pupil or an enrolled student¹¹⁷.

Responsible local authority

- 11.54 The ALN Code, chapter 1, page 4 provides a definition of children and young people for whom a local authority is responsible.

Right for a child or their parent to request an IDP notice

- 11.55 Commencement Orders 5, 6, 8, 9, 13 and 14 provide a right for children captured by the commencement orders, or their parents, to request an IDP notice is given at any point during the implementation period.
- 11.56 In addition, Commencement Orders 5 and 13 provide, in certain circumstances, a right for children captured by the order, or their parents, to request an ALN notice is given at any point during the implementation period.
- 11.57 Where an IDP notice is requested, the school, PRU or appropriate local authority must give either an IDP notice or a no IDP notice within 15 school days or 15 working days (as appropriate) of the request (see paragraphs 11.38 to 11.43 for information about notices). The date of the notice is the date the child moves to the ALN system. That is, the ALN Act and associated subordinate legislation, including the ALN Code, applies from that date and the school or PRU has 35 school days to prepare an IDP for the child where an IDP notice is given¹¹⁸. Local authorities have 12 weeks to prepare an IDP for the child where an IDP notice is given¹¹⁹.
- 11.58 Where a child requests an ALN notice, the appropriate local authority has 10 working days to give the notice (see paragraphs 11.59 to 11.61 for

¹¹⁷ ALN Act, sections 30(1) and (3).

¹¹⁸ The Code timescales relating to a governing body preparing an IDP do not apply when an IDP is prepared following the giving of an IDP notice. Commencement Order 5, article 13.

¹¹⁹ The Code timescales relating to a local authority preparing an IDP do not apply when an IDP is prepared following the giving of an IDP notice. Commencement Order 6, article 13.

information about the right for a child or their parent to request an ALN notice).

Right for a child or their parent to request an ALN notice

- 11.59 Children captured by Commencement Orders 5 and 13 who are no longer registered at a maintained school or PRU (and who, thus, cannot request their school or PRU give an IDP notice), or their parent, can ask the appropriate local authority to give an ALN notice.
- 11.60 The appropriate local authority must give the notice within 10 working days. The timeframe for giving an ALN notice is shorter than the timeframe to give an IDP notice or a no IDP notice. This is because giving an ALN notice does not involve making a decision.
- 11.61 The ALN legislation, including the ALN Code, applies to the child on the date of the notice and the old law ceases to apply on that date.

Schools

- 11.62 Commencement Orders 5, 8, 9 and 11 to 14 use the definition of a maintained school provided in section 99(1) of the ALN Act. This definition includes PRUs.
- 11.63 Duties in the ALN Act relating to schools are placed on the governing bodies of maintained schools and those relating to PRUs are placed on the management committee of a PRU.
- 11.64 For brevity, when describing a duty placed on the governing body of a maintained school or on the management committee of a PRU (or which may be placed on either in subordinate legislation), school or PRU is used, rather than referring to the governing body or management committee each time. This also reflects the practical operation of the system where, for the most part, the functions of governing bodies and management committees are undertaken by staff members acting on their behalf.

Securing ALP

- 11.65 The school, PRU or local authority that maintains an IDP must secure the ALP described within the IDP and, where an IDP specifies ALP should be provided in Welsh, the school, PRU or the LA must take all reasonable steps to secure that provision in Welsh¹²⁰.
- 11.66 Further information on deciding whether a child has ALN and on preparing and maintaining IDPs can be found in the ALN Code.

¹²⁰ The exception to this is where the IDP specifies that the ALP is to be secured by an NHS body, in which case it is the NHS body's duty to secure that ALP, and if it is specified that that ALP should be provided in Welsh, the NHS body must take all reasonable steps to secure that provision in Welsh (ALN Act, sections 20 and 21).

Special educational needs (SEN) system

- 11.67 The SEN system refers to the legal arrangements set out in Part 4 of the Education Act 1996 and subordinate legislation, and '[Special Educational Needs Code of Practice for Wales](#)'.

Special educational provision (SEP) via school action/school action plus

- 11.68 Throughout this guide, reference is made to children who have SEP via school action/school action plus. School action/school action plus is used to signify any SEP that is provided to a child that is not delivered via a statement of SEN.
- 11.69 This guide covers children from birth up to, and including, Year 10 and, thus, reference to school action/school action plus includes SEP delivered to young children via early years action/early years action plus, as well as any SEP delivered to young children that is not delivered via a statement.

12. Description of the commencement orders

The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 2) Order 2021

- 12.1 The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 2) Order 2021¹²¹ (referred to as Commencement Order 2)¹²² brings into force the ALN Act for children up to, and including, Year 10 who from the 1 September 2021, are newly identified as having, or are newly thought to have, ALN (see paragraphs 11.35 to 11.37 for information about newly identified as having, or newly thought to have, ALN). In addition, Commencement Order 2 brings into force the ALN Act for children of compulsory school age who are detained on or after 1 September 2021 (see paragraph 11.26 for a definition of detained).
- 12.2 Commencement Order 2 also commences provisions relating to the Education Tribunal for Wales.

The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 5 and Transitional and Saving Provisions) Order 2021

- 12.3 The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 5 and Transitional and Saving Provisions) Order 2021 (referred to as Commencement Order 5) brought into force the ALN Act for children who attend a maintained school or PRU up to and including Year 10 (during the 2021 to 2022 school year), had SEP via school action/school action plus.¹²³
- 12.4 Children who fell into one of the 2021 to 2022 mandated years on 1 January 2022 were due to move to the ALN system during the spring and summer terms of the 2021 to 2022 school year. Following the making of an amendment order¹²⁴, this was extended so that children in one of those mandated years on 1 January 2022 may also be moved during the 2022 to 2023 school year.
- 12.5 This means that in the second year of implementation, children who fall into the following mandated years will move to the ALN system:

¹²¹ [The Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(Commencement No. 2\) Order 2021 as amended by The Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(Amendments to Commencement Orders No. 2, No. 3 and No. 4\) Order 2021 and by The Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(Amendment of Commencement Order No. 2 and Revocation of Commencement Order No. 3 and Commencement Order No. 4\) Order 2021.](#)

¹²² [The Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(Commencement No. 5 and Transitional and Saving Provisions\) Order 2021 as amended by The Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(Amendment of Commencement Order No. 5 and Commencement Order No. 6\) Order 2021.](#)

¹²³ Commencement Order 5, article 9.

¹²⁴ [The Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(Amendment of Commencement Order No. 5 and Commencement Order No. 6\) Order 2022.](#)

- school year 2022 to 2023 (unless already moved): Nursery Year 2, Reception, Year 2, Year 4, Year 6, Year 8, Year 10 and Year 11
- 12.6 The order also deals with the mandated years, which will transfer to the new ALN system during the school year 2023 to 2024¹²⁵. During the third year of implementation, children who fall into the following mandated years will move to the ALN system:
- school year 2023 to 2024: Nursery Year 2, Year 2, Year 4, Year 6, Year 8 and Year 10.
- 12.7 Commencement Order 5 does not include those who are in a pipeline (see paragraphs 11.46 to 11.47 for information about pipeline cases) on 1 January 2022, for example those undergoing a statutory assessment or having requested one under the Education Act 1996¹²⁶.
- 12.8 Commencement Order 5 places requirements on schools, PRUs and local authorities.

The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 6 and Transitional and Saving Provisions) Order 2021

- 12.9 The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 6 and Transitional and Saving Provisions) Order 2021¹²⁷ (referred to as Commencement Order 6) brings into force the ALN Act for children up to, and including, Year 10 who have SEP via school action/school action plus and who:
- are registered at more than one setting where one of those settings is a maintained school or PRU in Wales; or
 - are registered at a maintained school or PRU in Wales and are looked after in Wales by a local authority in Wales¹²⁸.
- 12.10 As with Commencement Order 5, order 6 provides for children described at paragraph 12.9 to move to the new ALN system via mandated years.
- 12.11 Those who fell into one of the following mandated years on 1 January 2022 were due to move to the ALN system during the spring and summer terms of the 2021 to 2022 school year: Nursery Years 1 and 2, Year 1, Year 3, Year 5, Year 7 and Year 10¹²⁹. Following the making of an amendment order¹³⁰,

¹²⁵ Commencement Order 5, articles 10 and 11.

¹²⁶ Commencement Order 5, article 2.

¹²⁷ [The Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(Commencement No. 6 and Transitional and Saving Provisions\) Order 2021](#) as amended by [The Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(Amendment of Commencement Order No. 5 and Commencement Order No. 6\) Order 2021](#).

¹²⁸ Commencement Order 6, article 2.

¹²⁹ Commencement Order 6, article 9.

¹³⁰ [The Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(Amendment of Commencement Order No. 5 and Commencement Order No. 6\) Order 2022](#).

this was extended so that children in one of the mandated years on 1 January 2022 may also be moved during the 2022 to 2023 school year.

12.12 This means that in the second year of implementation, children who fall into the following mandated years will move to the ALN system:

- school year 2022 to 2023: Nursery Years 1 and 2, Reception, Year 2, Year 4, Year 6, Year 8, Year 10 and Year 11

12.13 The order also deals with the mandated years which will transfer to the new ALN system in the school years 2023 to 2024¹³¹. During the third year of implementation, children who fall into the following mandated years will move to the ALN system:

- school year 2023 to 2024: Nursery Years 1 and 2, Year 2, Year 4, Year 6, Year 8 and Year 10.

12.14 Commencement Order 6 does not include those who are in a pipeline on 1 January 2022, for example those undergoing a statutory assessment or who have requested one under the Education Act 1996¹³².

12.15 Commencement Order 6 places requirements on local authorities.

The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 7) Order 2021

12.16 The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 7) Order 2021¹³³ (referred to as Commencement Order 7) brings into force the ALN Act for children up to, and including, Year 10 who on 1 January 2022 did not have identified SEN. In the main, this will capture those who, on 1 September 2021, had identified SEN or who were in a pipeline case and who, on 1 January 2022, no longer had identified SEN or were no longer in a pipeline case. Commencement Order 7 treats these children as being newly identified as having, or newly thought to have, ALN (see paragraphs 11.35 to 11.37 for information about newly identified as having, or newly thought to have, ALN).

The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 8 and Transitional and Saving Provisions) Order 2022

12.17 The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 8 and Transitional and Saving Provisions) Order 2022¹³⁴ (referred to as Commencement Order 8) brings into force the ALN

¹³¹ Commencement Order 6, articles 10 and 11.

¹³² Commencement Order 6, article 2.

¹³³ [The Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(Commencement No. 7\) Order 2021](#)

¹³⁴ [The Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(Commencement No. 8 and Transitional and Saving Provisions\) Order 2022](#)

Act for children up to, and including, Year 11 who on 1 September 2022 have a statement, or who are involved in a statement pipeline, such as those who have made an appeal about a statement under the Education Act 1996 (see also paragraphs 11.46 to 11.47 for a definition of pipeline cases).

- 12.18 Children with statements who are under compulsory school age and those of compulsory school age who fall into one of the following mandated years on 1 September 2022 will move to the ALN system during the school year 2022 to 2023: Nursery Years 1 and 2, Reception, Year 6, Year 10 and Year 11¹³⁵.
- 12.19 Children with a statement who fall into one of the following mandated years on 1 September 2023 will move to the ALN system during the school year 2022 to 2023: Year 2, Year 3, Year 4, Year 5, Year 6, Year 8, Year 9 and Year 10¹³⁶.
- 12.20 Children who are in a statement pipeline on 1 September will move to the ALN system as soon as it is reasonably practicable after the pipeline is finally determined¹³⁷.
- 12.21 Commencement Order 8 does not include children who are in a pre-statement pipeline. Arrangements for these children are provided for in Commencement Order 9.
- 12.22 Commencement Order 8 places requirements on local authorities.

The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 9 and Transitional and Saving Provisions) Order 2022

- 12.23 The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 9 and Transitional and Saving Provisions) Order 2022¹³⁸ (referred to as Commencement Order 9) brings into force the ALN Act for children up to, and including, Year 11 who on the 1 September 2022 are in a pre-statement pipeline. That is, the child does not have a statement and is engaged with a statutory process under the Education Act 1996 (see paragraphs 11.46 to 11.47 for a definition of pipeline cases).
- 12.24 Children who are in a pre-statement pipeline on 1 September 2022 will move to the ALN system as soon as it is reasonably practicable after 1 September 2022 unless there is an appeal ongoing. If there is an appeal ongoing on 1 September 2022 then the local authority must issue an IDP notice or a no IDP notice as soon as reasonably practicable after that appeal is finally determined.
- 12.25 Commencement Order 9 places requirements on local authorities.

¹³⁵ Commencement Order 8, article 9.

¹³⁶ Commencement Order 8, article 10.

¹³⁷ Commencement Order 8, article 12.

¹³⁸ [The Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(Commencement No. 9 and Transitional and Saving Provisions\) Order 2022](#)

The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 11) Order 2022

- 12.26 The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 11) Order 2022¹³⁹ (referred to as Commencement Order 11) brings into force the ALN Act for children up to, and including, Year 11 who on the 1 September 2022 have SEP via school action/school action plus and who are not registered at a maintained school or PRU and who are not EOTAS pupils or looked after children.
- 12.27 Children captured by Commencement Order 11 will automatically move to the ALN system on 1 September 2022. The ALN legislation, including the ALN Code, applies to these children on 1 September 2022.

The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 12) Order 2022

- 12.28 The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 12) Order 2022¹⁴⁰ (referred to as Commencement Order 12) brings into force the ALN Act for children up to, and including, Year 11 who do not have an identified SEN on 1 September 2022.
- 12.29 In the main this will capture children who were in a pipeline on the 1 January 2022 which had ended before 1 September 2022. These children are treated as being new to the system and the ALN legislation, including the ALN Code, applies to these children on 1 September 2022.

The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 13 and Transitional and Saving Provisions) Order 2022

- 12.30 The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 13 and Transitional and Saving Provisions) Order 2022¹⁴¹ (referred to as Commencement Order 13) brings into force the ALN Act for children who have SEP via school action/school action plus, attend a maintained school or PRU, and who are not looked after or registered at more than one setting.
- 12.31 In the main, this will capture children who were in a pipeline on 1 January 2022 which ended before 1 September 2022. Children captured by Commencement Order 13 will move to the ALN system during the 2022 to 2023 school year where they fall into one of the following years: Nursery

¹³⁹ [The Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(Commencement No. 11\) Order 2022](#)

¹⁴⁰ [The Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(Commencement No. 12\) Order 2022](#)

¹⁴¹ [The Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(Commencement No. 13 and Transitional and Saving Provisions\) Order 2022](#)

Years 1 and 2, Reception, Year 2, Year 4, Year 6, Year 8, Year 10 and Year 11.

12.32 Children will move during the 2023 to 2024 school year where they fall into one of the following years: Nursery Years 1 and 2, Year 2, Year 4, Year 6, Year 8 and Year 10.

12.33 The order places responsibilities on schools and PRUs.

The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 14 and Transitional and Saving Provisions) Order 2022

12.34 The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 14 and Transitional and Saving Provisions) Order 2022¹⁴² (referred to as Commencement Order 14) brings into force the ALN Act for children who:

- have SEP via school action/school action plus, attend a maintained setting, and who are looked after or registered at more than one setting (and in the main this will capture those who were in a pipeline on 1 January 2022 which ended before 1 September 2022 who have SEP via school action/school action plus)
- have SEP via school action/school action plus, do not attend a maintained school or PRU and are EOTAS pupils or looked after children.

12.35 Children captured by Commencement Order 14 will move to the ALN system during the 2022 to 2023 school year where they fall into one of the following years: Nursery Years 1 and 2, Reception, Year 2, Year 4, Year 6, Year 8, Year 10 and Year 11.

12.36 Children will move during the 2023 to 2024 school year where they fall into one of the following years: Nursery Years 1 and 2, Year 2, Year 4, Year 6, Year 8 and Year 10. The order places responsibilities on local authorities.

The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 15) Order 2022

12.37 The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 15) Order 2022¹⁴³ (referred to as Commencement Order 15) brings into force the ALN Act for children who on 1 September 2022 have an EHC plan or are in an EHC pipeline.

¹⁴² [The Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(Commencement No. 14 and Transitional and Saving Provisions\) Order 2022](#)

¹⁴³ [The Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(Commencement No. 15\) Order 2022](#)

12.38 Children who have an EHC plan or who are involved in an EHC plan pipeline under the [Children and Families Act 2014](#) will automatically move to the ALN system on 1 September 2022.