

## **Draft Additional Learning Needs Code**

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

**Consultation  
response form**

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

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

or completed electronically and sent to:

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

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

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

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

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

## **Our response**

NEU Cymru welcomes the opportunity to respond to this consultation. We would like to welcome the inclusion of an IDP template. The WG listened to practitioners for the need for a template. However, the template as set out in the Code is extremely long and may prohibit the work of schools and FEIs supporting children and young people with an IDP – as the IDP itself will take up so much time.

We note that the Code is a lengthy document, which has obviously taken a lot of work. We would however like to highlight some issues which we believe would make the Code more usable as a working document – which we believe is the way it has been intended.

To that end we have highlighted a range of issues which have come about through the drafting of the Code. We believe that education professionals will do everything to ensure they are working within the aims of the Code, but that as drafted it is not sufficiently worded as a practical document.

**The Current System** It is critical that communication remains consistent with roll out of the new system, especially regarding Local Authorities' (LA) role within the current (SEN) system in statementing until full roll out. We have concerns that LAs in particular are avoiding the 'statement' process of the current system. They appear to be using the introduction of a new system to pass responsibility on to schools. This is not acceptable. Schools and FEIs need huge amounts of training before full roll out of the new system. How LAs are acting now also contains lessons about how they will approach the new system – and risks schools being over-whelmed, without sufficient funding to support learners.

To that end, reference to other legislation needs to be increased. As does considering an amendment to the Social Services and Wellbeing (Wales) Act to ensure that disabled children are identified as Children in Need. We believe this would provide a better safeguard for the LA to ensure they are planning sufficiently to meet the needs of children and young people in their area – identified under both this Act and the SSW Act.

## **Drafting**

We recognise the Code has taken time and effort to write. However, there remains some work to do in terms of tightening the Code and cutting unnecessary paragraphs. For example, there is a lot of repetition and some aspirational elements, which although relate to WG policy, do not need to be included as the Code.

It should be remembered this is a document meant to be used daily by a range of professionals. That would be impossible in its current format.

As drafted, this Code requires professionals to cross reference with the Act itself. For example, in relation to the term 'lacks capacity', that is set out more clearly in the Act than in the Code.

## **Safeguarding education professionals**

In some instances, the Code says that ‘teachers’ will undertake actions in relation to ALN. However, this is misleading if read in isolation, and should emphasise that the **duty rests with the governing body**.

Indeed, there are many examples of using class teachers in the Code, where it seems more appropriate, they would undertake this work alongside or in consultation with an ALNCo. We also note that the Code does not express who in a LA will be undertaking the duties placed on them. Therefore, we strongly believe that in order to safeguard individual education professionals in the system, the Code should say “governing body”, even if it is understood an ALNCo or class teacher are undertaking that duty.

## **Making a decision**

**There is no assessment process set out in the Code**, for schools, FEIs or LAs. This places individuals within the education profession in a difficult situation, especially given parental/ carer expectation has been raised significantly by this process. We believe there should be a formal ‘assessment’ process, undertaken by the LA.

We are concerned that the way the Code is currently drafted, LAs will be able to pass decisions back to schools and FEIs, where recourse will be taken up in disagreements with governing bodies. There is a real risk this will increase the numbers of Tribunals. In WG’s recent research, mainstream schools felt the ‘statutory assessment process’ helped avoid disagreement.<sup>8</sup> This is important and has not been considered as part of this Act.

## **ALNCos**

There is much concern that the role of the ALNCo is unworkable. We are also concerned that the role of the ALNCo is being changed without regard to the current pay arrangements. In short, the changes will affect the conditions of service for ALNCos, and yet this is not subject to the formal process set up by WG.

Currently, there is a lack of consistency about whether ALNCos, and the ALNCo role receives appropriate TLRs and whether the new Regulations mean they will be considered on the Leadership Pay Scale, especially as the Code implies this will be the case. We have heard that many ALNCos will have less (if not, no) teaching time with children and young people. We therefore have concerns about how the Professional Standards will be applied to ALNCos, especially those with little or no teaching time. This has not been addressed here.

The role of support staff needs to be given more priority in the Code. ‘Differentiated teaching’ will not mitigate the need for tailored support for individuals and small groups. Support staff play a vital role and should be given sufficient training to help meet the requirements of the new system.

<sup>8</sup> Figure 9, “Research to establish a baseline of the special educational needs system in Wales”:  
<https://gweddill.gov.wales/docs/caecd/research/2019/190228-research-to-establish-a-baseline-of-the-specialeducational-needs-system-in-wales-en.pdf>

## **Funding**

We are extremely concerned that the implementation of the Code has serious cost implications – both whilst the new system is being introduced and once it is introduced. There is the extra cost associated with more children and young people being on an IDP. School Action and School Action Plus are currently not such a formal, legal process. If WG is serious about its aims for the Act, funding is key.

## **Training**

We believe that training is critical to ensuring this Code, and indeed the Act itself, will fulfil the aims set out by WG – both within and alongside the Code. We are concerned that the current proposals around training alongside this Code are not consistent enough to ensure WG's aims.

We have concerns that the current approach, in which different consortia areas are using different models to apply for different 'pots' for training could lead to inconsistency. In North Wales our members are pleased to have the chance to apply for funding to attend courses and see other settings in which 'high quality inclusive learning' are taking place. But these should not be available through applying for money but be guaranteed to all practitioners as part of WG roll out of the Code.

## **Workload**

The Code needs to be workload impact assessed more thoroughly – both for ALNCOs and for education professionals more widely. The amount of extra work involved in fulfilling the duties of the Act and Code will have a significant impact on workload. It is essential that we are mindful of this as the system will experience a huge amount of change in relation to the new Curriculum in particular, but the reform agenda in Our National Mission more widely.

Our members tell us they are considering giving up their roles as ALNCOs. These roles are inconsistently recognised, both financially, and within the structure of the organisation. They raise concerns about workload as a particular worry in relation to IDPs and the Code more widely. They also highlight the challenge in relation to managing expectations of parents and carers and negotiating with LAs and health bodies as prohibitive to supporting children and young people with ALN.

## **Governing Bodies**

With no changes planned for Governing Bodies either <sup>9</sup>, they need support – **including training and funding** - to ensure that they are able to understand and meet the duties placed on them by the Code.

**We have answered the questions below which are most relevant to us.**

<sup>9</sup>Written Statement 2.4.19 <https://gov.wales/written-statement-school-governance-next-steps>

## **Part 1 of the consultation: The draft ALN Code**

### **Chapter 1 - Introduction**

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

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

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

Yes, this is clear.

However, what is less clear is where these are referenced to the Act – this should be clear in all cases. We know this creates more footnotes, but sometimes the Act is clearer than the Code, for example in relation to 'lacks capacity'. To read the Code here without the Act, it is more confusing than the Act itself.

#### Timescales

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

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

We have concerns about the timescales, in relation to information which would support a 'decision' on whether a child has ALN and needs an IDP. We are concerned that education professionals will be under pressure to decide within the timescales, whilst information, which is critically held by health, for example, will not be available.

We think this risks education professionals being put in an unacceptable position in terms of making a decision. The expectations of parents have been hugely inflated by this Act, and yet education professionals will be left to have extremely challenging conversations with parents without sufficient training, support or funding to meet expectations.

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

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

It could be made clearer using examples. E.g. If a school is made aware of a possible ALN the day before the summer holidays, for example, it would not be expected to decide in the usual way. This should be highlighted.

Also, if an NHS body takes longer to respond, is it reasonable to delay a decision? We believe it should be.

Structure of the draft ALN Code

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

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

Whilst the Chapters themselves are acceptable to follow in the way they are set out, there is a huge amount of cross-referencing involved. This, together with the length of the Code, makes it unworkable as a Code of practice. There is no way that any chapters can be understood in isolation, and the whole Code needs to be made clearer and reviewed to ensure there is no repetition.

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

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

Whilst the Code is clear in places, overall, it does not clarify the Act, and as we have already said, cannot always be read and understood without the Act.

This Code should be a working document and needs to act as such. In being so, it should be short and succinct. It cannot be an overarching document reflecting the aims of the WG’s reform agenda. It should be a clear working document, setting out how the Act is to be used in practice.

The Act itself describes the Code as a Code of Practice – this should be the approach.

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

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

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

The position of a PRU in relation to ALN is a concern. We know there are a high proportion of young people in PRUs who have additional learning needs. We therefore think it would be more appropriate for LAs to keep their duties in relation to young people with ALN in a PRU. This would safeguard both the child and the PRU.

**Chapter 2 - Principles of the Code**

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

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

Whilst the principles of the Code are all exhaustively drafted, this is not helpful for a Code of practice. This section should be much shorter. For education professionals this should be a working document. It is not the place for WG to set out their ALN ambitions. This is a specific document which should show how the Act operates in practice. Not a policy position.

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

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

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

Again, this should work better for education professionals. Whilst there is a duty is to 'involve', it is not clear to either party how this should be done. If an education professional talks to a parent but does not agree with them, they would be within their duty to 'decide'. Yet this is not clear. That this is not clear leaves education professionals in a difficult position in relation to parents in particular, and, is especially difficult given that expectations have been raised by this Act.

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

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

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

We are concerned about the asymmetrical duties which the Act places upon health bodies – indeed the duties placed on individual governing bodies are far greater.

Throughout the consultation process many of our members have attended consultation events including health representatives. Whilst we sympathise with concerns raised by them – especially in relation to waiting list targets and priorities – we are doubly concerned about the duties and expectations placed on education professionals.

Since there are so few duties placed on health here, our members believe that they will not participate within the ALN process, especially within the timescales.

This leaves education professionals open to criticism and having to ‘make a decision’ based on less than the full picture about a child. This is not acceptable.

We are also concerned that clinicians are using the term ‘clinical judgement’ to avoid any duties. Whilst we recognise this is important to the health professions, we would be concerned that the same approach has not been used towards education professionals. ‘Clinical judgement’ within the NHS works within a framework. The ALN framework should be looked at with health professionals, so that it is not undermining them, but could operate in the same way as AWMB or NIHCE.

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

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

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

Given the current level of resource, which is falling, we would have huge concerns about the sector's ability to fulfil this duty. Whilst expectations are so high, there is a real risk here that these duties will not be met.

5.12 needs revising – 'high quality differentiated teaching', whilst key to ensuring the WG vision is enacted, is not enacting the Act. We would be concerned that this is not a supportive way to help schools and FEIs with the new duties. There is also concern that this highlights the way in which Consortia, LAs and Estyn can have contradictory roles.

Training is critical for education professionals and should be included in an indicative list.

5.22 needs to make clear that regardless of how ALP is secured it is still the LA's duty.

## Chapter 6 - Advice and information

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

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

Provision of advice and information is extremely important and will be critical to ensuring the system works. We believe advice should set out what to expect and what not to expect from a school/FEI so that children, young people and their parents know from the outset who to approach.

We would welcome the Code including LAs 'should' provide advice to schools and FEIs. Particularly given the situation in relation to advice for governing bodies in Wales<sup>10</sup>, we believe this is key.

We also note LAs only have to provide advice to 'people', which is very different in law than 'persons'. It is not clear how an individual gains specific advice from a LA.

<sup>10</sup> <https://gov.wales/written-statement-school-governance-next-steps>

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

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

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

Our members are concerned that the term ‘significantly greater difficulty’ is too ambiguous and will lead to disagreement between, in particular, parents and education professionals. Whilst we recognise the Act contains the definition, the Code does not give sufficient worked examples of how the Act works in practice. We believe this would be extremely helpful.

As we have already stated, our members are extremely concerned about the expectations which have been generated by the ‘buzz’ around the Act.

A clear assessment process should be set out in the Code. Currently the idea an education practitioner ‘makes a decision’ is open to challenge. In a sense the LA becomes the judge and jury – they must set up a process to review an IDP decision if asked, resolve disagreement, but also can direct a governing body following their decision. There should be a means by which governing bodies can challenge a decision.

Without setting this out in the Code, the Tribunal will interpret what it considers to be a ‘good’ or ‘just’ decision, and the future will not depend on the law as passed, but on case law. This is not the aim of the WG and is not helpful to our members.

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

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

As we have previously stated, the asymmetrical duties placed here on governing bodies to decide, does not reflect how important the input from health is for children and young people with ALN.

Whilst we accept that an education professional can make a judgement without the input of health, or other services, we believe it is going to be extremely difficult for parents to accept this.

Some young children will have needs which are more easily identified and articulated. Others may need a range of services to input their views on how best to help them make progress.

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

Early Years ALN Lead Officer

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

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

As with the whole system, funding and training are critical to this role working. Early years practitioners are often poorly paid and should be given opportunities to undertake training within their roles.

Some young children will have needs which are more easily identified and articulated. Others may need a range of services to input their views on how best to help them make progress

Duties on schools, FEIs and local authorities

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

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

As already stated, the content of the Code as drafted is largely unworkable as a Code of practice. The length is inhibitive. The aspirational content should not be included – this is not related to the Act, which is about how to identify children and young people with ALN and create an IDP etc. This is WG policy, not for the Code.

The way in which a LA takes over an IDP should be much clearer or will lead to conflict and increased use of Tribunals.

Worked examples would help.

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

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

We have already set out how the duties make it difficult, given there are not parallel duties on health.

Our members are especially concerned about the long waits for CAMHS referrals. Children and young people with mental health difficulties are especially ill served by the current system and there is no attempt to change that under this system. Schools and colleges will have to support children and young people with mental health difficulties. However, without expert input from health the children, and the education professionals, could be in a vulnerable situation.

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

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

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

We are concerned this is not a holistic approach to education. The Act, as well as the Social Services and Wellbeing Act, are set out to support people up to 25. Reading this, it looks like a young person will have to prove their right to education. We do not believe this is equitable with non-disabled young people and could increase the numbers of NEETs.

An indicative list of criteria, if there are to be some, would be more helpful to practitioners.

Without more funding in the system there is a very real risk that young people will not be supported to undertake education up to the age of 25. This goes against the Minister’s approach to Life Long learning – in that learners should be able to access it ‘throughout their lives’.

## Chapter 13 - Content of an IDP

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

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

There are too many elements set out in this mandatory IDP. An IDP has the capacity, if as described, to have a huge impact on workload. We believe more work needs to be done in streamlining this process.

The Person-Centred Plan also could be removed from the IDP section and set out as a document which is there to help education practitioners speak to the child or young person and their parents. Person Centred Practice comes from the care sector, where it is used as a tool for care sector professionals who are 'new' to working with a disabled person, so they can get to know their needs quickly.

In that way, the PCP would be useful for supply teachers, and those education professionals who don't work with a child or young person often. For an education professional who is working on a daily basis with a child or young person, the PCP contains information they would be using (and adapting) daily.

Firstly, it is important to note that the definition of ALN is different at the start of Chapter 13 than elsewhere in the Act – this is extremely unhelpful and needs to be changed to ensure consistency.

The list in 13.3 needs to also separate out aspiration from the requirements of the Act. It is not to be 'created through collaboration' – elsewhere the Code states that the 'views, wishes and feelings' must be considered. However, these are very different things.

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

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

Please see comments above.

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

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

Whilst this is clear, it needs consideration in light of the comments above.

## Transport

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

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

This section needs to be clearer – it is not the responsibility of the school to set transport arrangements within an IDP. The LA must be consulted however and ensure they can make provision for a child or young person to travel to the most suitable school for their needs.

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

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

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

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

See comments above.

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

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

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

See comments above.

The Designated Education Clinical Lead Officer (“DECLO”)

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

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

We believe the expectations of what this role will achieve are not sufficiently clearly communicated and have been used throughout this process to reassure those with concerns about the involvement of health.

During the consultation events it has been clear that health does not believe ALN is their responsibility and see Referral to Treatment targets as their priority – not responding to a request on ALN.

We do sympathise with health colleagues in terms of their conflicting priorities. However, under the Act a governing body must make a decision about ALN regardless of what information they hold.

**Chapter 16 - Review and revision of IDPs**

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

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

There are huge concerns about the provision of ALP which should be secured from health. As with comments above, it is hard to see that the timings will work without health’s commitment.

Because of the asymmetrical duties on health and education, the workload implications for education professionals are huge, and could prohibit experienced practitioners from taking on the role of ALNCo.

We would welcome clear buy-in and commitment from health bodies and believe that if this is not given voluntarily then there should be an amendment to the Act.

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

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

Please see comments above.

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

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

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

As stated elsewhere, we are concerned that there are no clear criteria for a LA to take over a plan. They will be able to decide what ‘severe and complex’ looks like – and direct a school if they consider that they should not take over a plan. The school’s method for recourse is unclear, with the FEIs ability to challenge a LA even more unclear.

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

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

As we have already stated, as there are not symmetrical duties on health, it is difficult to see how this will work in practice. It should also set out more clearly the expectations placed on a school or FEI whilst the LA is considering.

## Chapter 18 - Meetings about ALN and IDPs

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

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

We welcome the inclusion of good practice examples and believe this would be helpful throughout this document.

However, we believe this Chapter does not really help to enable the Act and needs to be considered more as a means of doing so for education professionals.

Information from health will be critical for these meetings and we are concerned that education professionals will be forced to make a decision without all the information about the person with ALN. This too, may mean that those who are most able to gather information themselves, or for their child, will be better supported. That is not the aim of this Act.

## Chapter 19 – Planning for and supporting transition

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

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

We are extremely concerned that this part of the Code is both workload intensive for education professionals, but also sufficiently unclear in terms of individuals' roles.

19.60 needs to make clear who decides if an independent specialist placement is needed. The criteria for this should not disadvantage any young person from staying in education beyond 16. The provision should be found to best meet their needs, and cost should not be the primary priority for a LA.

## Chapter 20 - Transferring an IDP

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

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

See comments above.

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

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

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

It reads as though a school cannot transfer an IDP to and FEI – therefore we presume that only an IDP looked after by the LA will be transferred. Whilst this is welcome in some ways, there needs to be a mechanism by which a young person leaving school, and attending an FEI, may share the contents of their IDP if they wish. FEIs are dealing with young adults, who will have a range of ALN. However, here again, the issues with CAMHs services (as in long waits etc) will have a particular impact.

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

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

As already stated, we believe that young people should have access to education which best meets their needs.

**Chapter 21 - Ceasing to maintain an IDP**

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

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

We believe more guidance for education professionals is needed in terms of handling difficult conversations. This is where training will be absolutely critical to ensuring that the system works.

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

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

As already stated, without buy-in from health, this is going to be extremely difficult.
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**Chapter 22 – Children and young people subject to detention orders**

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

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

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

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

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

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

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**Question 39** – Are the timescale requirements to act “promptly” in relation to decisions about ALN and preparing IDPs for children and young people subject to detention orders (as set out in Chapter 22) appropriate, rather than also having a requirement to comply within a fixed period subject to an exception or exceptions?

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

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

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

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

The guidance for children in specific circumstances needs to have more emphasis on the role of LAs. We need to avoid the rise of home educated children, highlighted in the press recently <sup>11</sup> –particularly those with ALN.

A register of children and their educational circumstances could help safeguard children and LAs should be funded to undertake this work. It would also help identify children with ALN, and make sure that the LA was providing any appropriate ALP.

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

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

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

Please see our comments at the start. We are concerned that there is a risk of real differences in terms of school-by-school and different FEIs approaches to the ALNCo role.

We would also point out that 24.10 in relation to an ALNCo ensuring ‘the needs of all learners are met’ needs clarity. The financial position of the school should be taken into account. The Act and the Code are looking at the reasonable needs of learners. The LA should be ensuring the needs of all learners in its area are met.

The role of support staff should also be recognised and the ALNCo's role in relation to them.

We have commented on Professional standards for assisting teaching, which should be read alongside this document.

<sup>11</sup> <https://www.walesonline.co.uk/news/education/awful-price-paid-children-permanently-15934942>

## Chapter 25 - Avoiding and resolving disagreements

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

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

We have already stated that the LA can act as both judge and jury and there is nowhere for schools to challenge their decision. Because LAs can direct schools, there should also be a duty on LAs to ensure schools have sufficient funds to pay for ALP. We are also concerned that with challenging times in terms of funding, LAs are going to be looking to save money. Our experience of the consultation events relating to ALN is that LAs see the Act as passing many more responsibilities onto schools, which LAs can direct.

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

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

See above.

## Chapter 26 - Appeals and applications to the Tribunal

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

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

As stated above we are concerned about the Tribunal acting as judge and jury. We are also concerned that with challenging times in terms of funding, LAs are going to be looking to save money. Our experience of the consultation events relating to ALN is that LAs see the Act as passing many more responsibilities onto schools, which LAs can direct.

The role of the Tribunal in hearing cases of disability discrimination should be set out in the Code. This is an instance where the Code could work better as a working document. This is extremely important for governing bodies when making decisions in relation to ALN.

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

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

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

We are concerned that there are too many people in the Code named as being able to decide who 'lacks capacity'.

For a disabled child, for example, to be designated as 'lacks capacity' could have huge implications if it is confused with this term under the Mental Capacity Act. We are concerned that in order to safeguard both children and young people, and the education professionals involved, this be given a clearer name. This is also an instance in which the Act is clearer than the Code – which should not be the case.

### Any other comments

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

Please see the start of this document.

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

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

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

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

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

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

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

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

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

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

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

As stated above we have concerns about health buy-in.

Whilst it is welcome that health bodies must respond to the Tribunal, it is disappointing that this is in a situation where previous decisions have been challenged. Health have been clear they see RTT a priority.

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

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

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

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

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

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

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

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

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

Whilst we would welcome some of the explanation set out in the Code of the ALNCo role, we are extremely concerned this is not part of the formal pay process. WG is setting pay for teachers for the first time, and the ALNCo role should form part of that process to ensure it is sufficiently rewarded.

**Question 56** – Do you agree with the tasks that ALNCoS must carry out or arrange to carry out as set out in the draft ALNCo regulations?

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

See comments above.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

We have made comments above about workload being an extremely prohibitive impact of the new Code and would ask what WG is going to do to help mitigate this, without sufficient funds in the system.

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

We believe that the Code could have a positive impact on the Welsh language, as requirements are set out in the Code and on the face of the Act. However, we would highlight that in order to fulfil these aspirations funding and training is needed.

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

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

See comments above.

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

See comments at the start.