

**JOINT EDUCATION, YOUTH & CULTURE AND SOCIAL & HEALTH CARE
OVERVIEW AND SCRUTINY COMMITTEE**

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| Date of Meeting | Thursday 29 th June, 2023 |
| Report Subject | Additional Learning Needs and Education Tribunal (Wales) Act 2018 |
| Cabinet Member | Cabinet Member for Education, Welsh Language, Culture and Leisure |
| Report Author | Chief Officer (Education & Youth) |
| Type of Report | Operational |

EXECUTIVE SUMMARY

The report provides an overview of the duties placed on the Council by the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (ALNET) in relation to post-16 education and training along with an outline of the systems that are being implemented in response to these.

The financial model for allocating funding to support the provision for post-16 learners remains under consideration and review by Welsh Government.

RECOMMENDATIONS

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| 1 | Members recognise the revised duties placed on the Council by ALNET and the actions undertaken to implement the new system. |
| 2 | Members note the potential financial pressure due to the revised post-16 funding model and support officers in their engagement with Welsh Government. |

REPORT DETAILS

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| 1.00 | EXPLAINING THE ADDITIONAL LEARNING NEEDS AND EDUCATION TRIBUNAL (WALES) ACT 2018 |
| 1.01 | <p>The Additional Learning Needs and Education Tribunal (Wales) Act 2018, known as ALNET, seeks to create a unified system for supporting children and young people with additional learning needs (ALN) from 0 to aged 25. The Act brings together several separate systems and legislation into one for those who access their education in schools, pupil referral units, via elective home education or in further education institutes (FEIs). The changes within the Act also bring about an extension of the Council's responsibilities for those over the age of 16. Under the previous legislation, the duties were to those who had a Statement of Special Educational Need and continued to attend a school placement up until the age of 19 (school year 14), either in a maintained or independent setting. As outlined, ALNET has extended the age range to 25 and now includes provision within FEIs, i.e. local college provision. The starting point is that a young person is entitled to up to two years of further education or training. Beyond that, a local authority may determine that a young person has reasonable needs for education or training in particular circumstances. The individual must meet the definition for ALN (see glossary) and as such will have an Individual Development Plan (IDP) outlining their needs and the additional learning provision (ALP) to be made. The IDP will either be developed by the FEI, or in cases where the young person's needs require ALP that it is unreasonable for the FEI to provide, it will be written and maintained by the Council and referred to as a local authority IDP.</p> <p>A further significant change is shift of responsibility from Welsh Government (WG) to the Council with regards to both decision-making and the funding of provision at independent special post-16 institutions (ISPIs).</p> |
| 1.02 | <p>It is also important to note that ALNET brings with it legal protection for all those within the ALN process, unlike previous legislation where it was restricted to those with a Statement of Special Educational Need. Young people over compulsory school age also have the right to object to the Council making an assessment of ALN or the drafting of an IDP (assuming they have not been identified as lacking capacity to do so) at which point the duties on the Council will cease.</p> |
| 1.03 | <p>The implementation of ALNET commenced in September 2021 with children and young people being gradually transitioned from the old to the new system. A 'flow through' approach is being adopted for post-16 as indicated by the WG timescale below:</p> <ul style="list-style-type: none">• Those in Year 11 in 2022 -2023 will move to the ALN system by 31 August 2023 (local authorities are expected to make decisions and secure placements for these young people during 2022-2023 in preparation for their transition to post-compulsory education in September 2023).• Those in Year 11 in 2023-2024 will move to the ALN system by 31 August 2024 (local authorities are expected to make decisions and secure placements for these young people during 2023-2024 in |

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| | <p>preparation for their transition to post-compulsory education in September 2024).</p> <ul style="list-style-type: none"> Any young person not yet in the ALN system at the end of the 2024-25 school year will move to the ALN system at that point. <p>Until ALNET applies to a young person, the Education Act 1996 and the Learning and Skills Act 2000 will continue to apply and they will continue to benefit from the support available via the existing systems, i.e. WG will continue to secure and directly fund placements until they have completed their programmes of study.</p> |
| 1.04 | <p>As indicated, the Council is responsible for making decisions around appropriate provision for year 11 learners this academic year (2022-23). Previously, Careers Wales held responsibility to assess need and draft a Learning & Skills Plan which would outline the individual's needs and inform post-16 decision making. They had a duty to explore and discount all local options prior to making a request to WG for funding for ISPIs. WG would then consider the request and decide whether to support it or not. Under the new legislation, Careers Wales no longer has the remit to draw up a plan and the responsibility to assess individual need for specialist provision has now moved to the Council.</p> |
| 1.05 | <p>The process being implemented in Flintshire for post-16 mirrors that for all learners under ALNET, in that it starts with a person-centred review where the individual's strengths, needs and aspirations are identified along with the ALP that may be required to enable the learner to engage with education. Where possible, representation from local FEIs will be at the meeting to support decision making at this local level. There has been a high level of engagement with the local colleges to develop a shared understanding of the provision that can and cannot be made in response to the presenting needs. A post-16 specific role has been established within Flintshire's ALN Team in response to the new duties. This officer is attending the review meetings and working as part of local, sub-regional and national groups to ensure processes are in place and are in line with the ALN Code and legislation. Whilst the Act and the associated ALN Code are comprehensive documents, there are some aspects that are open to interpretation and a national task and finish group is working to provide greater clarity on these for all councils.</p> |
| 1.06 | <p>Where the review meeting and subsequent process has determined the absence of suitable local FEI provision, the information is presented to the Council's joint commissioning panel for agreement to place in an ISPI. This panel is already in existence and agrees placements that are referred to as 'out of county', namely those in non-Flintshire Council maintained provision; geographically, some of these may be located within Flintshire. The panel has managerial representation from Education, Social Services and Health to support financial decision making.</p> |
| 1.07 | <p>From September 2023, although the decisions will have been made by the Council, the budget will be retained by WG. Councils will be reimbursed for placement costs via the Local Authority Education Grant. A schedule of returns has been determined by WG to ensure the financial information is accurate and appropriate payment is made to councils and providers. This</p> |

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| | is a 2-year interim arrangement pending the transfer of the budget to councils, planned for September 2025. |
| 1.08 | <p>The model for allocating the funding by WG is under review. A proposed model has been shared with the Association of Directors of Education in Wales (ADEW) and several concerns have been raised as this would see a significant reduction in the level of funding received by a number of councils including Flintshire. Funding is currently allocated to the placements agreed by WG of which Flintshire has a comparatively high number; as indicated earlier, this process has not previously involved Flintshire officers with all decisions having been made by WG. The proposal is to transfer the budget over a 4 year period of time from September 2025 to support a period of adjustment for those councils who will see a negative impact.</p> <p>Given the potential financial impact for Flintshire, the proposed model has been challenged by a number of officers with regards to its suitability to respond to the very individual needs of a relatively small cohort and there has been agreement to pause and consult further prior to implementing the budget transfer. A meeting between WG and Chief Officers of those councils adversely affected in the North is planned for September.</p> |

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| 2.00 | RESOURCE IMPLICATIONS |
| 2.01 | The revised duties for the Council has made it necessary to appoint an ALN officer with responsibility for post-16. This has been an internal appointment from within the team and the WG ALN Implementation grant of £70k is being used to cover the cost of backfilling via a secondment. It is anticipated that the grant funding will be available for the next financial year 2024/25. The cessation of the grant will bring the secondment to an end and this will have implications for the ALN team in terms of capacity to respond to the additional workload around Statement conversion if the funding is not available for 2024/25. WG have recognised the potential implications around the published timescales for conversion and have extended the initial 3 to 4 years however, this remains extremely challenging given the number of Statements to be converted. |
| 2.02 | The proposed financial model from September 2023 to August 2025 will see the continuation of the budget being held centrally by WG, with a commitment to fund the placements agreed by councils. As indicated above, should the proposed model of budget transfer be implemented, there is potentially a financial pressure on the Council from September 2025. |

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| 3.00 | IMPACT ASSESSMENT AND RISK MANAGEMENT |
| 3.01 | Impact assessment is not required as the report is for information only. |
| 3.02 | Flintshire has representation at a number of forums to raise the concerns regarding the post-16 funding model including ADEW, ADEW Finance |

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| | meetings and the National ALN Steering Group to ensure the impact is clearly understood and to influence a change of approach. |
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| 4.00 | CONSULTATIONS REQUIRED/CARRIED OUT |
| 4.01 | None carried out as part of this report. |

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| 5.00 | APPENDICES |
| 5.01 | None. |

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| 6.00 | LIST OF ACCESSIBLE BACKGROUND DOCUMENTS |
| 6.01 | <p>Welsh Government Guidance - <i>Additional Learning Needs and Education Tribunal (Wales) Act 2018: guidance for local authorities on interim arrangements for funding for specialist post-16 additional learning needs (ALN) placements</i></p> <p>https://www.gov.wales/additional-learning-needs-and-education-tribunal-wales-act-2018-guidance-local-authorities-interim</p> |

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| 7.00 | CONTACT OFFICER DETAILS |
| 7.01 | <p>Contact Officer: Jeanette Rock Senior Manager Inclusion & Progression Telephone: 01352 704017 E-mail: jeanette.rock@flintshire.gov.uk</p> |

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| 8.00 | GLOSSARY OF TERMS |
| 8.01 | <p>Additional learning needs (ALN) : Section 2 of ALNET defines ALN as -</p> <ol style="list-style-type: none"> 1) 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. 2) A child of compulsory school age or person over that age has a learning difficulty or disability if he or she – <ol style="list-style-type: none"> 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 |

- 3) 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.
- 4) 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.

Additional Learning Provision: Section 3 of ALNET defines the term 'additional learning provision' (ALP), as -

- 1) "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 -
 - a) mainstream maintained schools in Wales,
 - b) mainstream institutions in the further education sector in Wales, or
 - c) places in Wales at which nursery education is provided.
- 2) "Additional learning provision" for a child aged under three means educational provision of any kind.
- 3) In subsection (1), "nursery education" means education suitable for a child who has attained the age of three but is under compulsory school age.

Young person: for the purposes of ALNET and the ALN Code, a young person means a person over compulsory school age but under the age of 25.

The Association of Directors in Wales (ADEW): ADEW is the professional group of local authority officers accountable for statutory education functions in each of the local authorities in Wales. There are a number of ADEW sub groups including a finance group attended by lead education finance officers.

National Additional Learning Needs Steering Group: A national group established by WG to oversee and inform the implementation of ALNET. Membership includes representation from ADEW, Inclusion officers, ESTYN, Education Wales Tribunal, National Leadership Academy and Health alongside WG representatives.