

EDUCATION & YOUTH OVERVIEW AND SCRUTINY COMMITTEE

Date of Meeting	Thursday 19 January 2017
Report Subject	Additional Learning Needs and Education Tribunal (Wales) Bill
Cabinet Member	Cabinet Member for Education
Report Author	Chief Officer – Education & Youth
Type of Report	Operational

EXECUTIVE SUMMARY

This report updates Councillors about the Additional Learning Needs and Education Tribunal (Wales) Bill. The Bill makes provision for a new statutory framework for supporting children and young people with additional learning needs (ALN). This replaces existing legislation surrounding special educational needs (SEN) and the assessment of children and young people with learning difficulties and/or disabilities (LDD) in post-16 education and training. The Bill if enacted will have a significant impact on the delivery of support for ALN. Whilst many of the principles are to be welcomed, there are key questions including around implementation, development capacity and resourcing that need to be resolved.

RECOMMENDATIONS

1	That Committee receives and considers the report on the current ALN Bill.
2	That Committee commissions an update report on implementation plans arising from the legislation.

REPORT DETAILS

1.00	Analysis
1.01	The current legislative framework for supporting children and young people

	<p>with special educational needs (SEN) and learning difficulties and/or disabilities (LDD) is based on a model introduced more than 30 years ago and is widely considered as no longer fit for purpose. A series of enquiries and reviews of SEN provision in Wales by Estyn, the Wales Audit Office and the National Assembly's former Education, Lifelong Learning and Skills Committee have highlighted that the current system is complex, bewildering and adversarial. The White Paper Legislative Proposals for Additional Learning Needs published in May 2014, set out the rationale behind the Welsh Government's proposals for legislative change in order to address the weaknesses in the current system. These weaknesses include:</p> <ul style="list-style-type: none"> • The current terminology stigmatises children and young people and is associated with a system that needs fundamental reform. • There is an unclear divide between those requiring statements of SEN and those who do not. • The existing SEN Code of Practice is not always applied rigorously or is interpreted differently by different local authorities. • It is unfair that the provision necessary to address more complex needs is protected through the issuing of a statement but the provision required to address less complex needs is not statutorily protected. • Trust between parents and local authorities or schools, is often undermined and this leads to dispute. • It is difficult to adopt a flexible approach to the delivery of special educational provision. • The current arrangements for children and young people with LDD potentially disrupt their smooth transition between school and post-16 education and may make the system of post-16 provision less efficient than it should be. • Some parents and families feel excluded from the processes around statements of SEN, which they see as impenetrable, bureaucratic and inefficient. • Parents also say that even when their child has a statement, if their needs change, or if a condition worsens or improves, the system can be too slow to adapt. • For looked after children, the SEN statutory assessment is just one of many assessments, and the separate processes are not well integrated. • The current arrangements for disagreement resolution are insufficiently robust to ensure that disagreements are resolved quickly or avoided altogether.
1.02	<p>The Bill aims to create:</p> <ol style="list-style-type: none"> a) a unified legislative framework to support all children of compulsory school age or below with ALN, and young people with ALN in school or further education (FE); b) an integrated, collaborative process of assessment, planning and monitoring which facilitates early, timely and effective interventions; and c) a fair and transparent system for providing information and advice, and for resolving concerns and appeals. <p>In order to achieve these three overarching objectives, ten core aims have been established, within which the Bill's provisions have been developed. They are:</p>

- **The introduction of the term Additional Learning Needs (ALN):** The Bill replaces the terms 'special educational needs' (SEN) and 'learning difficulties and/or disabilities' (LDD) with the new term ALN. This will help to avoid some of the stigma associated with the existing terms and will mark a clear break from the current systems, which is no longer fit for purpose. Using ALN as a single term which encompasses children and young people aged 0 to 25 reflects the move to a more equitable system for supporting learners with ALN across early years, schools and FE settings.
- **A 0 to 25 age range:** The Bill brings together the existing and different legislative systems for supporting:
 - a) children and young people of compulsory school age who have SEN; and
 - b) young people in FE who have LDD.

There will be a single legislative system relating to the support given to children and young people aged 0 to 25 who have ALN. As a result, transition of learners between school and post-16 education will be improved to allow greater equity in terms of support and rights for this group of learners.

- **A unified plan:** The Bill creates a single statutory plan (the individual development plan (IDP)) to replace the existing variety of statutory and non-statutory SEN and LDD plans for learners in schools and FE - including statements of SEN, individual education plans for learners supported through school/early years action or school/early years action plus, and learning and skills plans carried out via assessments under section 140 of the Learning and Skills Act 2000. This will ensure greater consistency and continuity and, unlike the current system, ensure that provision and rights are protected regardless of the severity or complexity of needs. For most children with ALN who are looked after, the Bill will require their IDP to be incorporated into the personal education plans (PEPs) made for these learners as part of their care and support plans (CSP). This will eliminate duplication of effort and ensure that the educational needs of a child who is looked after are considered in a holistic way.
- **Increased participation of children and young people:** The Bill requires that the views of children, their parents and young people should always be considered as part of the planning process, along with those of their parents. It is imperative that children and young people see the planning process as something which is done with them rather than to them. They and their families will, therefore, be supported to participate through the provision of clear and impartial information, advice and advocacy. The Bill provides children and young people with various rights to receive information in relation to ALN and decisions being taken about them, and to make their own decisions in certain circumstances. For children who lack sufficient understanding to make their own decisions, these rights can be exercised by their parent or through the use of a 'case friend' appointed by the Education Tribunal.
- **High aspirations and improved outcomes:** The emphasis of IDPs will be on making provision that delivers tangible outcomes that contribute in a meaningful way to the child's or young person's

achievement of their full potential.

- **A simpler and less adversarial system:** The process of producing and revising an IDP will be much simpler than is currently the case with statements of SEN and should avoid the adversarial nature of the existing, overly bureaucratic approach.
- **Increased collaboration:** The new system will support a strong focus on collaboration. All services involved in working with children, young people and their families, including education, health and social services, will have a crucial role to play in working together to deliver efficient, effective, child-centred support for learners with ALN. Whilst most children with ALN will not require any specific health involvement because their ALN will not be health related, where it is relevant and appropriate, advice and assistance may be sought from health professionals. In particular, local health boards (health boards) or NHS Trusts will be under a duty to consider whether there is a treatment or service that is likely to be of benefit to addressing the learner's ALN and, if so, secure the provision of that treatment or service. That treatment or service will need to be included in the learner's IDP. The reforms will encourage improved collaboration and information sharing between agencies, which are essential to ensuring that needs are identified early and the right support is put in place to enable children and young people to achieve the best possible outcomes.

To support improved collaboration, the Bill places a new duty on health boards to appoint a Designated Education Clinical Lead Officer (DECLO). DECLOs will play a pivotal role in improving the extent and effectiveness of collaboration between health, education and social care in the delivery of services for children and young people with ALN. In addition, maintained schools, including maintained nurseries, pupil referral units and further education institutions (FEIs), will be required to have a designated Additional Learning Needs Co-ordinator (ALNCo). These roles will help to facilitate effective multi-agency collaboration to improve services for learners.

- **Avoiding disagreements and earlier disagreement resolution:** The new system will focus on ensuring that where disagreements occur about an IDP or the provision it contains, the matter is considered and resolved at the most local level possible.
- **Clear and consistent rights of appeal:** Where disagreements about the contents or provision of an IDP cannot be resolved at the local level, the Bill ensures that children and young people entitled to an IDP, or those who believe that they should have an IDP (and their parents in the case of those under 16) have a right of appeal to the Education Tribunal for Wales, currently the Special Educational Needs Tribunal for Wales (SENTW) but which is renamed by the Bill. The Bill extends the right of appeal to young people with ALN up to the age of 25 who are pursuing FE. Children who lack sufficient understanding to make their own decisions, will be able to exercise their right of appeal through the use of a 'case friend' appointed by the Tribunal (as well as by a parent).
- **A mandatory Code:** Responding to calls for a stronger Code that

	<p>can be enforced, the provisions included in the Bill will be supported by a new statutory ALN Code. The Code will facilitate national consistency by ensuring that the new ALN system has a set of clear, legally enforceable parameters within which local authorities and those other organisations responsible for the delivery of services for children and young people with ALN, must act. It will, therefore, be a type of subordinate legislation, and confer duties and rights on those subject to it. The Code will also set out practical guidance on how the statutory duties will be carried out, which will be supported by best practice illustrations.</p>
1.03	<p>Many of the key aims and principles are to be welcomed. The bill is inclusive and clearly lays out intended responsibilities, duties and roles building upon our pioneering person centred planning approach. The basis and potential benefits for joint agency working is made clear within the Bill. The commitment to avoiding disagreements, earlier disagreement resolution and clear and consistent rights of appeal provide clarity too.</p>
1.04	<p>There are also areas in need of further clarification:</p> <ul style="list-style-type: none"> • Whilst there are benefits from establishing the age range for support from 0 to 25 there will be challenges in implementing this at a time when demand for ALN funding is already under significant pressure. • Lack of clarity around the lines that demarcate school / FE responsibility and LA responsibility for ALN. • Potentially complex cross border issues between the diverging England and Wales systems. • Concerns about the robustness of the legal framework for individual plan preparation, maintenance and review • Lack of clarity on how the new Bill really supports the protection and promotion of the views of children and young people as desired. • Whilst there should be a clear intent to ensure that children and young people with ALN would be protected and promoted, the increased resource burden may impact upon a school's ability to deliver such a commitment. • The challenge for multi-agency working will be establishing the most effective methods for securing such a collaborative approach – new and innovative models of working will need to be explored and established, particularly where previous attempts at joint agency working have been less successful. • In terms of avoiding disagreements / earlier disagreement resolution there is a need to establish an agreed process and protocol where the 'reasonable provision', as expressed within the Bill, is judged to be too difficult to meet. Who is responsible for establishing what is / is not 'reasonable' and who ultimately decides the way forward – keeping the needs of the child / young person at the heart of the process? • Training in use of the draft ALN code will be critical in order to ensure the desired consistency is delivered by key staff across all settings. • The level of increased administration in delivering individual plans for pupils could present significant workload and resource implications for all school sectors. • No obligation upon Health to maintain involvement or provision – particularly within the tribunal process

	<ul style="list-style-type: none"> • Potential increase in tribunal referrals. <p>The Children, Young People and Education Scrutiny Committee of the Welsh Assembly is currently undertaking the scrutiny stage on the Bill. They will be welcoming views and responses from stakeholders until 24th February 2017.</p>
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2.00	RESOURCE IMPLICATIONS
2.01	Effective implementation will rely on trained staff who have the skills and time to work with individuals, family members and associated professionals.
2.02	The Welsh Government has established specialist work streams to further explore the potential impact of this on schools and other educational providers.

3.00	CONSULTATIONS REQUIRED / CARRIED OUT
3.01	None required as a result of this report.

4.00	RISK MANAGEMENT
4.01	Areas of risk needing further analysis and development are identified at 1.04.

5.00	APPENDICES
5.01	None.

6.00	LIST OF ACCESSIBLE BACKGROUND DOCUMENTS
6.01	<p>Additional information can be found at: http://gov.wales/topics/educationandskills/schoolshome/pupilsupport/additional-learning-needs-reform/?lang=en</p> <p>Contact Officer: Jeanette Rock, Senior Manager- Inclusion & Progression Telephone: 01352704017 E-mail: jeanette.rock@flintshire.gov.uk</p>

7.00	GLOSSARY OF TERMS
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7.01	<p>Additional Learning Needs (ALN): The Bill replaces the current terms 'special educational needs' (SEN) and 'learning difficulties and/or disabilities' (LDD) with the one term ALN.</p> <p>Education Tribunal: An independent process that deals with appeals against local authority decisions about a child or young person and their education and also discrimination claims of unfair treatment in schools related to a disability.</p> <p>Code of Practice: WG guidance outlining the statutory requirements and recommended practice in relation to systems and provision for ALN.</p>