

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

Date of Meeting	Thursday 24 th May 2018
Report Subject	Additional Learning Needs and Education Tribunal (Wales) Act 2018
Cabinet Member	Cabinet Member for Education
Report Author	Chief Officer Education & Youth
Type of Report	Operational

EXECUTIVE SUMMARY

This report updates Members about the Additional Learning Needs and Education Tribunal (Wales) Act 2018 which 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 report also highlights the activity undertaken by the Local Authority in response to the Act to date and highlights the potential impact once the legislation is implemented.

RECOMMENDATIONS

1	That Committee receives and considers the report on the Additional Learning Needs and Education Tribunal (Wales) Act 2018.
2	That Committee commissions an update report on local and regional implementation plans arising from the legislation.

REPORT DETAILS

1.00	EXPLAINING THE ADDITIONAL LEARNING NEEDS AND EDUCATION TRIBUNAL (WALES) ACT 2018
1.01	<p>The Welsh Government (WG) gave a commitment to review the legislation and guidance covering children and young people with special educational needs (SEN) following a period of consultation with all stakeholders in 2007. This was followed by a period of research, targeted trials/pilots and further consultation which fed into a white paper in 2014 and resulted in the publication of the draft Additional Learning Needs and Education Tribunal Bill (2015). Following a pause in process, the Additional Learning Needs and Education Tribunal (Wales) Bill was passed by the National Assembly for Wales on 12 December 2017 and became an Act on 24 January 2018 after receiving Royal Assent. The anticipated implementation date of the reforms as a result of the Act is September 2020.</p>
1.02	<p>To accompany the Bill, WG produced a draft Code of Practice which provided further information and detail regarding the duties to be placed on schools, local authorities and other stakeholders. Following the progression of the Bill into an Act, this document is being revised and this is due to be published in 2018 for further consultation.</p>
1.03	<p>The purpose of the revised legislation is to transform expectations, experiences and outcomes for children and young people with additional learning needs. To achieve this, WG has developed the ALN Transformation Programme which will transform the separate systems for special education (SEN) in schools and learning difficulties and/or disabilities (LDD) in further education, to create a unified system for supporting learners from 0-25 with ALN.</p> <p>WG states that the transformed system will:</p> <ul style="list-style-type: none">• ensure that all learners with ALN are supported to overcome barriers to learning and can achieve their full potential;• improve the planning and delivery of support for learners from 0 to 25 with ALN, placing learners' needs, views, wishes and feelings at the heart of the process; and• focus on the importance of identifying needs early and putting in place timely and effective interventions which are monitored and adapted to ensure they deliver the desired outcomes.
1.04	<p>One of the key factors of the unified system is the legislative protection that the Act offers to all children and young people with ALN; this was previously restricted to those who underwent statutory assessment or were in receipt of a Statement of SEN. Individual Development Plans (IDPs) will replace Statements and will have the same legal status. Schools currently have a responsibility to assess for SEN/ALN and identify an appropriate programme of intervention, accessing external advice where required. Within the existing process, this is known as School Action/School Action Plus. Children and young people with significant individual need may be put forward for statutory assessment following School Action/School Action Plus intervention which may result in the issuing of a Statement of SEN. From 2020, any child/young person identified as having ALN, should have an IDP. Depending on the severity of need, this will either remain the responsibility</p>

	<p>of the education provider, e.g. school or college, or will transfer to the Local Authority.</p> <p>It is reasonable to anticipate that the increase in age range from 19 to 25 and the broadening of the legislative cover, will result in a larger number of IDPs as compared to Statements which potentially creates capacity issues both in educational settings and the Local Authority. The revised legislation also provides for the responsibility for the commissioning and funding of Post 16 specialist provision to transfer from WG to LAs; the mechanism for this is yet to be defined.</p>
1.05	<p>The ALN Transformation Programme includes a clear focus on the development of skills across the education workforce to deliver effective support to learners with ALN in the classroom, as well as facilitating easier access to specialist support, information and advice. All educational establishments are required to have an Additional Learning Needs Coordinator (ALNCo) to lead and monitor processes and intervention in relation to ALN. There is also a further requirement for local authorities to have an Early Years ALNCo.</p>
1.06	<p>Four regional ALN Transformational Leads have been appointed to support the implementation of the Transformation Programme. Since taking up their posts at the beginning of March 2018, the Leads have developed an audit tool to support local authorities to identify their current 'state of readiness', the outcomes of which will be used to inform local and regional implementation plans. The Leads also have a remit to ensure that all relevant partners are suitably informed and engaged and that opportunities for sharing/co-constructing are maximised.</p> <p>The audit tool is divided into the following sections:</p> <ul style="list-style-type: none"> A. Implementing a unified plan for children and young people with additional learning needs B. Putting in place policies to support the implementation of a single, unified plan for young people aged 0-25 C. Clear and consistent rights of appeal D. Increasing participation of children and young people E. High aspirations and improved outcomes F. Increased Collaboration G. Avoiding disagreements and early disagreement resolution H. A bilingual system <p>Completion of the audit from a Flintshire perspective has been useful and has identified areas of good progress and also a number of factors that need consideration and/or action. The areas of progress include the training and support offered around Person Centred Planning (PCP). This will be an integral part of the new processes and all schools have had the opportunity to engage in initial and refresher training on this. An ongoing training and support programme will be offered through to the implementation date to ensure schools are prepared and able to respond to the reforms once implemented.</p> <p>Communication has been another key area of activity with information being shared regularly at a number of forums at Member, Officer, Headteacher</p>

	<p>and ALNCo level. Whilst the Act is now in place, much of the operational detail will come through the Code of Practice and information channels are established to support dissemination and discussion.</p> <p>WG allocated some financial resource through the Innovation Fund to LAs to support their preparation for the Act. Flintshire worked in collaboration with other North Wales authorities to look at the role of the ALNCo and information acquired through questionnaires and interviews was used to develop and facilitate a range of support mechanisms which included the development of ALNCo cluster meetings where these were not in place, information regarding specialist services and referral processes and the identification and sharing of effective practice amongst others.</p> <p>As indicated above, alongside the areas of progress, the tool has identified areas for targeted focus for the implementation plan which is under development.</p>
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2.00	RESOURCE IMPLICATIONS
2.01	<p>The Act has a number of potentially significant resource implications for both the LA and schools. In a number of small primary schools, the Headteacher has taken on the responsibility of ALNCo as a cost saving measure. It appears from the information gathered to date that the processes involved in the new systems may be very resource intensive in terms of staff time which could impact on the ability for schools to combine the roles effectively and meet the duties placed on them. Employing additional staff to take on the responsibilities will come with additional financial implications.</p>
2.02	<p>As referenced in section 1.05, a requirement of the Act is that LAs must have an Early Years ALNCo. This is not currently a role within the Education & Youth Portfolio and consideration will need to be given as to whether there is any capacity to absorb the duties within the current structure or whether an additional post needs to be created with the associated costs.</p>
2.03	<p>The extension of the age range from 19 to 25 along with the duty to cover further education as well as school-based provision is also likely to have resource implications in terms of officer capacity to implement the revised processes and offer the required specialist intervention. Commissioning specialist Post 16 provision may also create further capacity issues within the Inclusion Service and create further financial pressures.</p> <p>Given the broadening of the legislative protection, the revised process includes dispute resolution as a formal part of the process. This has potential resource implications as does the potential increase in appeals to the Educational Tribunal which becomes an option for all children and young people with ALN under the new Act.</p> <p>The Act also requires services to consider whether a child or young person needs provision through the medium of Welsh. If they do, 'all reasonable steps' must be taken to secure the provision in Welsh. WG have indicated that further duties will come into play that mean the requirement to provide provision for ALN through the medium of Welsh will become a mandatory</p>

	requirement over time which also has associated resource implications in terms of staff skills and available provision.
2.04	It is anticipated that completion of the implementation plan and the information offered through the revised Code of Practice will give insight into the resource requirements around the pre and post implementation stages. These will need to be carefully considered and may result in the need for reorganisation or prioritisation of services and provision.

3.00	CONSULTATIONS REQUIRED / CARRIED OUT
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3.01	No formal consultation is currently required in relation to the Act however some consultation has been undertaken with schools around the role of the ALNCo and the identification of effective provision through the WG Innovation Fund projects. Further consultation with stakeholders is being planned to identify where the key areas of need are in relation to ALN and to review whether the resources available are mapped effectively against these.
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4.00	RISK MANAGEMENT
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4.01	The potential impact of the Act and its reforms have been identified as a risk both through the Council planning system (CAMMS) and Medium Term Financial Strategy. It has been difficult to quantify the risk to date however, the passing of the Act and the publication of the code of Practice will enable more detailed risk analysis to take place.
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5.00	APPENDICES
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5.01	None.
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6.00	LIST OF ACCESSIBLE BACKGROUND DOCUMENTS
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6.01	<p>Additional information on the Act is available at - https://gov.wales/topics/educationandskills/schoolshome/additional-learning-special-educational-needs/transformation-programme/legislation-and-statutory-guidance/?lang=en</p> <p>Contact Officer: Jeanette Rock, Senior Manager - Inclusion & Progression Telephone: 01352 704017 E-mail: jeanette.rock@flintshire.gov.uk</p>
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7.00	GLOSSARY OF TERMS
7.01	<p>Additional Learning Needs (ALN): The Act replaces the current terms 'special educational needs' (SEN) and 'learning difficulties and/or disabilities' (LDD) with the one term ALN where ALN is defined as:</p> <p>(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.</p> <p>(2) A child of compulsory school age or person over that age has a learning difficulty or disability if he or she—</p> <p>(a) has a significantly greater difficulty in learning than the majority of others of the same age, or</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>Statement of Special Educational Need: A Statement is a document which sets out a child's SEN and any additional help that the child should receive. The aim of the Statement is to make sure that the child gets the right support to enable them to make progress in school.</p> <p>Individual Development Plan: An Individual Development Plan (IDP) is a plan created and agreed by those people most closely involved with supporting a child or young person with ALN including parents/carers, which outlines the support and provision that should be made for the individual.</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>