

Agenda – Y Pwyllgor Plant, Pobl Ifanc ac Addysg

Lleoliad: I gael rhagor o wybodaeth cysylltwch a:
Ystafell Bwyllgora 1 – Y Senedd Jon Antoniazzi
Dyddiad: Dydd Mercher, 8 Mawrth 2017 Clerc y Pwyllgor
Amser: 09.30 0300 200 6565
SeneddPPIA@cynulliad.cymru

Cyfarfod anffurfiol

09.15 – 09.30

1 Cyflwyniad, ymddiheuriadau, dirprwyon a datgan buddiannau
(09.30)

2 Y Bil Anghenion Dysgu Ychwanegol a'r Tribiwnlys Addysg (Cymru)
– sesiwn dystiolaeth 7
(09.30 – 10.30) (Tudalennau 1 – 61)

Mary van den Heuvel, Swyddog Polisi – ATL Cymru

Lisa Edwards, Swyddog Polisi a Chyfathrebu – UCU Cymru

Phil Higginson, Is-Lywydd – Undeb Cenedlaethol Athrawon Cymru UCAC

Gareth Parry – Llywydd Adran Gwynedd yr NUT

Rex Phillips, Swyddog Cenedlaethol Cymru – NASUWT

Dogfennau atodol:

Papur Ymchwil

CYPE(5)–08–17 – Papur 1: Ymateb ar y cyd gan: : ATL UCAC NAHT UCU (Saesneg yn unig)

CYPE(5)–08–17 – Papur 2 : Undeb Cenedlaethol yr Athrawon, Cymru (Saesneg yn unig)

CYPE(5)–08–17 – Papur 3: Cymdeithas Genedlaethol yr Ysgolfeistri ac Undeb yr Athrawesau (NASUWT) (Saesneg yn unig)



Egwyl 10.30 – 10.40

3 Y Bil Anghenion Dysgu Ychwanegol a'r Tribiwnlys Addysg (Cymru)

– sesiwn dystiolaeth 8

10.40 – 11.40

(Tudalennau 62 – 66)

Rob Williams, Cyfarwyddwr Polisi – NAHT

Tim Pratt, Cyfarwyddwr – ASCL Cymru

Dogfennau atodol:

CYPE(5)–08–17 – Papur 4: Cymdeithas Arweinwyr Ysgolion a Cholegau (Cymru)

(ASCL) (Saesneg yn unig)

4 Y Bil Anghenion Dysgu Ychwanegol a'r Tribiwnlys Addysg (Cymru)

– sesiwn dystiolaeth 9

11.40.12.40

(Tudalennau 67 – 79)

Jassa Scott, Cyfarwyddwr Cynorthwyol – Estyn

Huw Davies, Arolygydd EM – Estyn

Dogfennau atodol:

CYPE(5)–08–17 – Papur 5 : Estyn (Saesneg yn unig)

5 Papurau i'w nodi

Datganiad Ysgrifenedig gan y Llywydd ynghylch y Senedd Ieuenctid

(Tudalennau 80 – 81)

Dogfennau atodol:

CYPE(5)–08–17 – Papur | Paper 6 – i'w nodi | to noteent

**Llythyr gan Ysgrifennydd y Cabinet dros yr Economi a'r Seilwaith –
FyNgherdynTeithio**

(Tudalen 82)

Dogfennau atodol:

CYPE(5)-08-17 – Papur | Paper 7 – i'w nodi | to note

Llythyr at y Cadeiryddion ynghylch Datblygiad Proffesiynol Parhaus

(Tudalennau 83 – 85)

Dogfennau atodol:

CYPE(5)-08-17 – Papur | Paper 8 – i'w nodi | to note

Mae cyfyngiadau ar y ddogfen hon



Additional learning needs and Educational Tribunal (Wales) Bill (ALNET)

1. Background

1.1 We welcome this opportunity to respond to the Stage One scrutiny process of the ALNET Bill.

1.2 As the Explanatory Memorandum, which was laid alongside the copy of the Bill, says:

“3.3 The Bill will create: 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.”¹

1.3 There are many things which can be welcomed within the Bill. These include:

- a single framework for support for children and young people aged 0-25,
- an emphasis on listening to children and young people and their parents;
- increased collaboration with health services and joined up plans for children looked after by the local authority (LAC).

1.4 The Welsh Government plan to implement the changes in stages, as part of what they describe as the wider transformational programme.

1.5 This is all to be welcomed and therefore we would agree with the General Principles of the legislation.

2. Barriers to implementation

2.1 There are many barriers to implementation of this Bill. We feel that some of these need to be addressed in order that the Bill will meet its stated aims and that children and young people with ALN are able to meet their full potential and the education workforce is able to support them to do this.

2.2 Our key concerns are as follows:

- Funding
- ALNCo role
- Duties on governing bodies
- Assessment and IDP template

2.3 More specific detail related to more of our concerns, which we believe could prevent smooth implementation of the stated aims, are set out below.

¹ <http://www.assembly.wales/laid%20documents/pri-ld10862-em/pri-ld10862-em-e.pdf> p.7

3. Funding

3.1 ALN must be properly funded, with prevention of cuts by local authorities to ALN budgets.

3.2 The EM sets out additional costs for organisations, not covered by the cost savings:

- **Health boards: £825,600 (£206,400 per year)**
- **Further education institutions (FEIs): £92,800 (£23,200 per year)**
- **Estyn: £172,000 (£ 43,000 per year)**
- **Welsh Government: £680 (£170 per year).²**

3.3 It goes on to state:

The Welsh Government is supporting the implementation of the Bill through transition grants totalling £6,956,000. Thus, there are transition costs of £2,600,050 which will not be covered by Welsh Government grant funding and will be incurred by local authority education services, local authority social services, mainstream schools, health boards, FEIs, Estyn and pupil referral units.³

3.4 Whilst all organisations and public bodies, including schools, are facing challenging times in terms of budgets, further education institutions in particular have faced substantial funding cuts in recent years⁴.

3.5 We believe that in order for this Bill to provide ALP for children and young people with ALN it needs to be fully funded.

4. Additional Learning Needs Coordinators 54 (4)

4.1 The Bill says governing bodies must appoint an ALNCo and that the role of the ALNCo and their qualifications and / or experiences should be set out in the code by the Minister.

We believe this should be subject to affirmative procedure and subject to greater scrutiny by the Assembly.

4.2 Currently, the role within an FEI is not always undertaken by a qualified teacher, therefore FEIs need to be taken into account when drafting the Code.

4.3 Training must be ensured outside of ITE and the “New Deal” for ALNCos. We would also note that ALN training for all staff must be wider than that offered by the New Deal or ITET – and include those in FEIs and support staff roles.

5. Governing Bodies (section 10 and 41)

5.1 The primary duty for providing additional learning provision must lie with the local authority. Governors should be given more training on ALN, but this cannot supersede the need for specialist advice and support from the LA. Clarity around the duty on FEIs is also sought.

5.2 The EM says:

² <http://www.assembly.wales/laid%20documents/pri-ld10862-em/pri-ld10862-em-e.pdf> in 6.2, p86

³ Ibid p87

⁴ <http://www.walesonline.co.uk/news/education/tories-warn-fatal-damage-wales-9734751>

3.91 Where a learner with an IDP maintained by a local authority is registered or enrolled at a maintained school (including a maintained nursery) or FEI, the Bill (section 41) requires that the school or FEI takes all **reasonable** steps to secure the ALP included in the IDP – but ultimate responsibility rests with the local authority that maintains the IDP.⁵

5.3 This is welcomed.

5.4 Within section 10 of the Bill it states the circumstances when a governing body may pass the responsibility to a local authority:

(2) The circumstances are— (a) the governing body considers that the child or young person has additional learning needs— (i) that may call for additional learning provision it would not be reasonable for the governing body to secure, (ii) the extent or nature of which the governing body cannot adequately determine, or (iii) for which the governing body cannot adequately determine additional learning provision, and the governing body refers the child’s or young person’s case to the local authority responsible for the child or young person to decide under section 11(1); ⁶

5.5 There is still a question about when and in what circumstances the governing body is capable or not of making that decision.

5.6 We are concerned the local authority, rather than the governing body will decide when it takes over a plan – and what ‘reasonable’ looks like.

5.7 We would be concerned that rather than create a unified system this will create an additional barrier for support with ALP as the governing body and the local authority dispute who is responsible.

5.8 An exchange between Llyr Gruffydd AM and the Minister summarises our concerns⁷:

“[295] **Llyr Gruffydd:** But ultimately, if there is a stand-off, let’s say, between a governing body and the local authority, the local authority trumps the governing body.

[296] **Alun Davies:** I would anticipate that to be the case, but I would also be disappointed—

[297] **Llyr Gruffydd:** If it came to that, yes.

[298] **Alun Davies:** —were that stand-off to happen.”

5.9 We are deeply concerned about this. We believe this to be a barrier to providing the most appropriate support for young people with ALN. This is not sufficiently clarified by the draft Code.

6. Specialist Provision

⁵ <http://www.assembly.wales/laid%20documents/pri-ld10862-em/pri-ld10862-em-e.pdf> p30-31

⁶ <http://www.assembly.wales/laid%20documents/pri-ld10862/pri-ld10862-e.pdf>

⁷ <http://www.senedd.assembly.wales/documents/s58417/12%20January%202017.html?CT=2#Sesiwn1>

6.1 We have concerns about the level of specialist provision that will be available and funded under the Bill. Whilst we welcome the Cabinet Secretary's assertion in July that:

“all education settings should have access to individuals with specialist skills, for instance, educational psychologists, teachers of the visually or hearing impaired, and speech therapy.”⁸

6.2 We would seek assurances that all education settings **must** have access to such specialists. We believe “should” is not strong enough in this context.

6.3 The EM suggests (7.109) it will be the role of health boards to appoint someone to co-ordinate the role of such specialists in carrying out an assessment of ALN⁹. We would however seek clarity about the role of such specialists in delivering ALP in schools and FEIs, and what specialist provision will be funded by the local authority and made available to schools and FEIs to ensure they can assess and support children with ALN?

6.4 Further concerns about who pays for specialist provision are raised by the Code.

7. Assessment (Sections 9)

7.1 Whilst the LA or a governing body must make a decision (section 9) about the child's ALN, the assessment process remains unclear. It is described as ‘seamless’ and ‘unified’ within the EM, but lacks clarity. This is not cleared up in the Draft Code.

7.2 An assessment road map would be helpful – which outlines the steps taken by each individual and organisation and reasonable timeframes for decisions.

7.3 We would seek clarity as to when it is the duty of the school or FEI to assess a child for ALN and when it should fall to the local authority.

7.4 The Minister gave evidence to the CYPE Committee, and suggested he would seek to ‘articulate rather than define’¹⁰ what ALN looks like: “I think is probably the best way of doing it. We have put examples in the code.”

7.5 He went on to say:

“We do rely on the professionalism and the trust of individuals taking these decisions. I hope that we will articulate that these are the sorts of places where we expect decisions to be taken—these are the edges, if you like—and I would expect and anticipate that local authorities or schools would then go through an iterative process of determining what their decisions would be for that individual. Of course, you then have the right of appeal if you believe that your individual development plan doesn't deliver on the needs. But I really hope that the appeal and tribunal system is very much a backstop. What I want to be able to do is lead a process of transformation—and it's a wider process of transformation in terms of training and in terms of providing the funding to enable change to take place—and then the change of culture that we spoke about earlier, which will deliver on these needs. But, you know,

⁸ <http://www.assembly.wales/en/bus-home/pages/rop.aspx?meetingid=3616&language=en&assembly=5&c=Record%20of%20Proceedings&startDt=30/06/2016&endDt=13/07/2016&keyword=kirsty%20williams>

⁹ <http://www.assembly.wales/laid%20documents/pri-ld10862-em/pri-ld10862-em-e.pdf> p113

¹⁰ <http://www.senedd.assembly.wales/documents/s58417/12%20January%202017.html?CT=2#Sesiwn1> [294]

there will always be those difficult areas at the edges where a finely balanced decision might be required.”

7.6 We believe clarity is needed on who is involved, the role of appropriate health practitioners, and who will pay for the assessment process for children and young people. This is not clarified by the draft Code.

8. Favouring mainstream schools: Section 45(2)

8.1 This section is a Duty to favour education for children at maintained schools. Regulations under this section allow Welsh Ministers to set out further circumstances in which local authorities would not be under a duty to favour maintained schools.¹¹

8.2 We have concerns about the wording in terms of the individual with ALN. We would seek clarity that the local authority will place the needs of the child with ALN, and the most appropriate setting for them, at the heart of their decision making, and that the duty will lie with the local authority to ensure that any additional learning provision (ALP) is met.

8.3 We would welcome the Minister making provision about the type of school attended by a child with ALN subject to affirmative procedure.

9. The individual development plan (IDP) (Section 10)

9.1 We welcome that the aim of the IDP is to avoid duplication, and to bring together differing plans for children and young people.¹²

9.2 However, we would strongly recommend a Wales wide IDP template.

9.3 The Minister said he was happy to look at the IDP when he gave evidence to CYPE Committee:

“[279...] The IDP is very clear: it goes up to age 25, and it looks at the sort of support that a young person will need as they move from childhood into adulthood, if you like—as they move from being in education into the world of work and, sometimes, supported employment. Certainly, the IDP will identify the sort of support that that young person will need as they embark upon the next stage of their life. Now, I think it’s an interesting matter of debate—and this is something that I hope the code will cover when we publish the implementation code on this legislation—as to how detailed that IDP is, whether it is a mandated IDP template, or whether it’s a mandated skeleton that is then filled in by professionals, and to what extent, then, does that actually mandate support for that young person moving, for argument’s sake, from a further education college to a work-based apprenticeship, for argument’s sake. How is that support delivered? How is that support provided? Who’s responsible for doing that? What is the nature of that transition and the support through that transition? I think it’s absolutely critical that we get that right. At the moment, I think that is one of the real pinch points in the whole system.”

9.4 We would recommend a standard template, but with the flexibility to include additional relevant information, as required.

¹¹ <http://www.assembly.wales/laid%20documents/pri-ld10862-em/pri-ld10862-em-e.pdf> p70-7

¹² <http://www.assembly.wales/laid%20documents/pri-ld10862-em/pri-ld10862-em-e.pdf> p8

9.5 The IDP needs to be legally enforceable at a local authority level. The IDP must be undertaken and reviewed in a timely fashion, with input from the head/ head of year / director of studies as well as information from **all** agencies involved.

9.6 The Code needs to be easier to read in relation to the IDP – and include clear examples.

10. Transition

10.1 Arrangements for transition between key stages and settings are key to young people receiving the right support, as is a plan for once they reach 25 – and at key stages before that age, including the transition between school and college. The Bill and Draft Code are not strong on transition.

11. Transport

11.1 Local authority transport arrangements could be considered under the IDP. Transport arrangements are not in the Bill, as tabled. They would currently fall under the Learner Transport (Wales) Measure 2008.¹³

11.2 However, we would stress that the local authority where the child or young person lives **must** be responsible for providing transport to the most appropriate setting. Transport requires a wider over-view than an individual school or FEI can offer.

12. Health and Collaborative working (Section 18 and 19)

12.1 The EM sets out the role of the Designated Education Clinical Lead Officer (DECLO).¹⁴

12.2 The Minister added to his vision for the role in his evidence session:

[221...] “The role of the designated education clinical lead officers, or DELCOs, for example, is something that came out of the more recent consultation in the predecessor committee, so that each health board will have a structure within which they can operate to deliver on the duty to deliver the sort of treatment and support that a young person may require according to the clinical judgment of the specialist dealing with that individual.”¹⁵

12.3 We believe Health boards and health professionals must have a duty placed upon them to ensure they are involved in the planning or provision of ALN, if the health needs of the child or young person affect their access to education.

12.4 Schools and FEIs are not health specialists and are therefore in no position to decide on a child or young person’s healthcare needs.

12.5 We have concerns that the draft Code lacks a clear vision for the way in which the DECLO role will support schools, FEIs and LAs. It seems very high-level. It is unclear how, if at all, LAs, schools or FEIs can challenge the health provision which HBs are prepared to provide.

¹³ <http://www.legislation.gov.uk/mwa/2008/2/contents>

¹⁴ <http://www.assembly.wales/laid%20documents/pri-ld10862-em/pri-ld10862-em-e.pdf> p39

¹⁵ <http://www.senedd.assembly.wales/documents/s58417/12%20January%202017.html?CT=2#Sesiwn1>

12.6 We believe that whilst schools and FEIs can put some simple assistance in place, if a child has an unmet health need this may have a detrimental impact on their learning? (Eg undiagnosed sight problem or hearing loss).

13. Communication needs (Especially Section 2)

13.1 We recognise that the Bill is stronger than previous drafts in terms of Welsh medium provision, but still needs strengthening. The effectiveness of ALN provision can be undermined unless it is available in the language of choice.

13.2 Local Authorities' access to Welsh medium ALN resources is varied and limited. According to evidence gathered jointly by the WLC and the Children's Commissioner for Wales, Local Authorities' ability to provide Welsh Medium ALN support is inconsistent and though some LAs claim to be able to provide for ALN through the medium of Welsh the majority of LAs admitted to failing to provide in at least some fields, especially Autism, Speech and Language Difficulties and Behavioural Difficulties. We are also aware of problems concerning the availability of Welsh medium diagnostic tests and staff to carry out assessments in Welsh. The wording of the Bill does nothing to get to grips with these current failures in the system – and it should. There should be some clear guidelines about how to determine the language medium of the provision.

13.3 There are clearly issues concerning insufficient numbers of Welsh speakers in the workforce (including Educational Psychologists; teachers; other providers of specialist support, such as speech and language therapists) and lack of workforce planning. We would welcome increased training for the current and future workforce to ensure they can fully meet the needs of Welsh speaking learners.

13.4 We note that the Bill does not make the same requirements that the process of applying for ALN and receiving ALP be delivered in accessible formats – such as Braille, large print, BSL etc.

13.5 We would expect a clear commitment of resources in order that schools and FEIs are able to meet the needs of learners with ALN in their preferred formats and language.

14. Examinations and tests

14.1 The duty for ensuring that resources for qualifications and examinations are accessible to a child or young person with ALN must lie with the appropriate exam board (usually WJEC) and qualifications regulator (Qualifications Wales) – or indeed Welsh Government for testing. We would seek to avoid a repeat of any situation where the young person with ALN is at a disadvantage¹⁶.

15. Further Education Institutions

15.1 We have already mentioned some specific issues, however, FEIs are independent of local authorities, and we would seek clarity on how the Bill will apply to them – particularly in terms of how a local authority takes over a plan maintained by an FEI.

15.2 We would also have concerns about the provision of ALP for those undertaking work-based learning and apprenticeships and how the age-range will work within an

¹⁶ <http://www.walesonline.co.uk/news/education/exam-board-told-visually-impaired-11223658>

FE context – including the provision for people wishing to undertake adult and community learning.

15.3 When asked about work-based learning the Minister said:

“[272...] I think there are two gaps, in fact. I think the gap is work-based learning and the university sector as well.”¹⁷

15.4 He explained the legislative context and went on to add that the IDP could be shared with an employer or HEI.

15.5 We would seek clarity that if a young person at a FEIs wants help from their parents – or another appropriate person - to articulate their needs during any assessment process they be allowed this help.

16. Tribunals (Chapter 4)

16.1 We accept the need for a commitment to conflict resolution prior to going on to a tribunal. We would wish to avoid disputes wherever possible.

16.2 However, we have some concerns about the potentially prolonged period that such a system adds to a process, particularly if such a case ultimately continues on to tribunal. The potential delay is not in the best interests of the child or young person. The timescales are set out in the Draft Code.

16.3 Any delay in the process may also be exacerbated by the widening of the right to appeal to a tribunal, which may well result in increased requests for tribunals. The potential for increasing the number of tribunals may also arise as a result of the lack of clarity around responsibilities – particularly between school and FEI governing bodies and local authorities.

16.4 The limited resources available for effective support for pupils with ALN should be focused upon the best provision and not on a potentially lengthy and costly dispute, appeal and tribunal process.

16.5 The greatest potential for conflict appears to be the lack of clarity for the role of the local authority and that of the governing body in providing ALP. Greater definition is needed, and as we have already stated, the duty to provide ALP, should lie primarily with the local authority.

16.6 The strengthened role for health is welcomed, particularly the commitment to place the clinical needs of the child / young person at the centre of NHS / LHB duty. There is now greater clarity showing that if a matter is referred to an NHS body, they **must** consider whether a relevant treatment or service is likely to be of benefit in addressing the child / young person’s ALN.

16.7 However, fundamental concerns still remain concerning the following section of the bill 19 (8):

‘If the Education Tribunal for Wales orders the revision of an individual development plan in relation to additional learning provision specified under this section as provision

¹⁷ <http://www.senedd.assembly.wales/documents/s58417/12%20January%202017.html?CT=2#Sesiwn1>

an NHS body is to secure, an NHS body is not required to secure the revised additional learning provision unless it agrees to do so.'

16.8 The above still suggests that even if a particular health-related provision is agreed to be revised at a tribunal, the tribunal has no power to compel a LHB or NHS trust to revise the health provision.

16.9 During a technical briefing, it was explained that, as a result of existing appeals processes already in place for health services, it was deemed unnecessary to bring health services into the educational tribunal processes. The success of such a multi-faceted approach is dependent upon the following:

- Clarity of each process to the individual / organisation choosing to appeal
- The ability of educational organisations to make an appeal within a health appeals system
- The potential bureaucratic nature of multiple appeals running in parallel
- The quality of advocacy services for those who require them
- The capacity of the NHS / LHB to meet the demands of potentially increasing appeals.

16.10 This potentially does not represent the best interests of the child or young person and in many cases the duty may still fall to educational settings to seek to provide the appropriate health-related provision – not the health board or NHS trust.

16.11 The Code should clarify these issues.

17. Contact details

17.1 If you would like to contact us with any further questions, please email:

Mary van den Heuvel, ATL Cymru, mvandenheuvel@atl.org.uk

Rob Williams, NAHT Cymru, Rob.Williams@naht.org.uk

Elaine Edwards, UCAC, Rebecca@ucac.cymru

Lisa Edwards, UCU, LEdwards@ucu.org.uk

Areas for consideration:

The general principles of the Additional Learning Needs and Education Tribunal (Wales) Bill and whether there is a need for legislation to deliver the Bill's stated policy objectives;

We support the general principles and aspirations for the Bill.

Any potential barriers to the implementation of the key provisions and whether the Bill takes account of them;

We are somewhat unclear as to the boundaries between the responsibility of the governing body to create an Individual Development Plan (IDP) and that of the local authority. It may be envisaged that the local authority would only use their power if there was an obvious need for ALN provision to which the governors have not responded? However it is somewhat hard to fully appreciate how this shared/dual responsibility is to work in practice. There is potentially a serious lack of clarity which could result in a lack of standardisation across Wales leading to ALN provisions differing vastly depending on the differing approaches undertaken by councils.

Whether there are any unintended consequences arising from the Bill;

See above

The financial implications of the Bill (as set out in Part 2 of the Explanatory Memorandum.

At present, the provision arising from a statement is the financial responsibility of the local authority. If a school creates an IDP, presumably they will be responsible for funding the provision. However, if the local authority can create an IDP and require the school to maintain it who pays in this case? Some local authorities already have delegated funding up to, but not including, statements. If the school creates an Individual Education Plan for a pupil on, say, school action +, the school pays for the provision out of its delegated funding. However, if the IDPs are going to replace statements,

the level of need will often be more profound, the provision more extensive and the costs higher.

If the responsibility for the IDPs falls on schools and Governing Bodies it would be an expectation that local authorities will also delegate funding. Experience with other funding streams, such as the pupil deprivation grant, suggests that the money does not always follow the specific pupils for which it was intended. It may prove therefore that this delegated responsibility and funding could lead to a poorer level of provision for ALN pupils.

There will be costs to the implementation of the Bill that the Welsh Government must commit to covering. Further to this the ambitious nature of the proposals will undoubtedly mean there will need to be significant professional development for teachers if they are to be achievable. This will have cost implications not only in terms of providing training but also in relation to securing release for teachers to attend training events and to work across clusters effectively. We are unconvinced at present that, at least long-term, this financial provision will be made available. CPD amongst the teaching profession is already patchy at best and so identifying an ability to enhance that provision, within a specific sector and against the backdrop of budget cuts, is difficult to ensure.

The appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum).

Whether the Welsh Government's three overarching objectives (listed at para 3.3 of the Explanatory Memorandum) are the right objectives and if the Bill is sufficient to meet these;

We agree that these are sound objectives for a Bill of this nature. The question of whether the Bill is sufficient to meet these is, in part open to how the proposals will work in practice. Certainly, as it stands, there is enough

of a concern around workload, access to provision and the effectiveness of tribunals to question if it is achievable.

Whether the Welsh Government's ten core aims for the Bill (listed at paras 3.5-3.16 of the Explanatory Memorandum) are the right aims to have and if the Bill is sufficient to achieve these;

As above, the aims of the Bill are not misguided. Many are laudable and are positive steps forward. Extending the age range for support for example is a welcomed move. However, again as above, the test of the Bill will come in its practical delivery and as yet there remain enough outstanding concerns to suggest that revisions are needed.

The provisions for collaboration and multi-agency working, and to what extent these are adequate;

In principle collaboration across different stakeholders and agencies is a good thing. Ensuring a coordinated approach whereby different expertise are utilised for the benefit of a pupil should be encouraged. However in practice the fear is there will be a lack of leadership. Ultimately, a decision will need to be made in each case about the provision to be made and who is going to pay for it. The question therefore is who has the final say? Can anyone direct an NHS trust, for example, to make the provision?

Whether there is enough clarity about the process for developing and maintaining Individual Development Plans (IDPs) and whose responsibility this will be;

See comments in sections above.

In addition to this whilst the local authority or a governing body must make a decision about the child's ALN, the assessment process remains unclear. It is described as 'seamless' and 'unified' within the EM, but lacks clarity. We would seek clarity when it is the duty of the school and when the local authority to assess a child for ALN. We would also seek clarity on what an assessment will look like and who will be involved, who will pay for the

assessment of children with ALN and how will the governing body decide if the child or young person has ALN and what ALP to provide?

Whether Bill will establish a genuinely age 0–25 system;

This is an ambition that is very much welcomed. NUT Cymru have supported widening the age span for support. However, there are certainly outstanding questions as to if the expertise, training and funding exist within the Further Education sector to support this objectives.

The capacity of the workforce to deliver the new arrangements;

This is sadly doubtful. If any local authority is not proactive in assessing pupils' needs and starting the ball rolling to create an IDP, the burden will fall on the school. There may be an increase in the number of meetings and co-ordination work which come with workload and cost implications.

The Welsh Government also needs to clarify its position on the status of the ALNCO. It is believed that the new Code of Practice (ALNCOP) will require (or at least recommend) that the ALNCO has no other management roles and significantly more non-contact time than at present. There will again be cost implications. How these work in smaller primary schools is particularly concerning.

If the proposal is that small primary schools are all going to have to form clusters with one designated person the problem with this will be that this person will have no financial authority outside their own institution, unless in a formal federation. Indeed if there are ALNCOs employed to work across clusters of schools, small or otherwise, there is a fear there will be a turf war for their attention and support. While flexible deployment of staff according to need can be a good thing it undoubtedly has potential pitfalls in this case.

It is also rumoured that the ALNCO will have to be part of the senior leadership team. There are implications here too.

There will be significant workload implications on both schools and Governing Bodies if the responsibility falls on them to draft the IDPs.

The proposed new arrangements for dispute resolution and avoidance.

It appears the new system will make it easier to take individual schools to tribunal. We do not oppose the principle of allowing parents and guardians better access and knowledge of their rights and avenues of support. Indeed we also support the promotion of conflict resolution prior to tribunal which may potentially resolve some more minor issues. However, should these changes increase dramatically the number of tribunal cases schools and governing bodies are dealing with there is the prospect of increased stress, conflict and additional work for schools and governing bodies which will harm the provision they can offer.

In addition there are concerns about the prolonged nature of these tribunals delaying the support a pupil should receive. With the lack of clarity around some of the responsibilities, in particular between school governing bodies and local authorities, it is reasonable to anticipate that the number of tribunals will increase creating a further backlog in delivery.

Any delay in the process may also be exacerbated by the widening of the right to appeal to a tribunal, which may well result in increased requests for tribunals. The potential for increasing the number of tribunals may also arise as a result of the lack of clarity around responsibilities – particularly between school governing bodies and local authorities.

It would be better for resources to be focused on support for ALN pupils rather than spent facilitating costly and prolonged tribunal proceedings.

**Children, Young People and Education Committee
Inquiry into the Additional Learning Needs and Education Tribunal
(Wales) Bill
3 March 2017**

1. The NASUWT welcomes the opportunity to submit written evidence to the Children, Young People and Education Committee (CYPEC) Inquiry into the Additional Learning Needs and Education Tribunal (Wales) Bill (the Inquiry)
2. The NASUWT is the largest teachers' union in Wales representing teachers and school leaders.

GENERAL COMMENTS

3. The NASUWT submitted detailed and comprehensive responses to the various consultations that stemmed from *Forward in partnership for children and young people with additional needs* issued in June 2012 and which led to the publication of the Additional Learning Needs and Education Tribunal (Wales) Bill (the Bill). A copy of the latest response to the consultation on the Bill is attached as Annex A to this response and can be accessed on the NASUWT website at <http://www.nasuwt.org.uk/specialadditionalneeds>.
4. In providing this written evidence, the NASUWT has considered the specific issues raised by the Bill, as particularised in the CYPEC letter of 15 December 2016 (the Letter), in the context of the terms of reference set for the Inquiry, rather than focusing on the terms of reference themselves.
5. The Union notes that the Welsh Government published a draft Code of Practice (the draft Code) in February 2017 to assist both the CYPEC and the respondents to the Inquiry in their consideration of the ways in which the provisions of the Bill might be implemented in practice.

6. Whereas, the draft Code has proved helpful and is referenced in this evidence, the NASUWT looks forward to responding formally to the separate consultation on the draft Code, required under the provisions of the Bill.
7. In addition, although the mandatory nature of the Code is acknowledged, the NASUWT has some concerns about it being targeted towards practitioners so that 'they understand and can implement the new Additional Learning Needs (ALN) system'. The Union will need to be assured that the Code will assist and support practitioners in providing for children and young people with ALN rather than becoming an accountability tool.

SPECIFIC COMMENTS

8. As referred to previously, the NASUWT offers the comments and observations which follow on the specific issues identified in the Letter to assist CYPEC in scrutinising the Bill in the context of the terms of reference for the Inquiry.

The Welsh Government's three overarching objectives

9. The NASUWT does not object in principle to these objectives and recognises that they have the potential to form the basis of an effective package of reforms when viewed in the context of the ten core aims which have underpinned the development of the Bill.
10. The Union recognises that the effective introduction of the reforms, as described in the Explanatory Memorandum, will require the amendments to existing legislation as set out in the Bill, but maintains that detailed scrutiny of the draft Code will be essential as this will be the key document for providing guidance to relevant bodies on the implementation of this legislation.

The Welsh Government's ten core aims for the Bill

11. The NASUWT believes that a hallmark of an effective and equitable education system is the extent to which it seeks to remove the barriers to achievement faced by children and young people with ALN.
12. The Union has identified in previous consultation responses that such a system must:
 - ensure that ALN provision is an integral and coherent part of the funding arrangements for all schools;

- establish an approach to the early identification of ALN that makes effective use of the distinctive skills, talents and expertise of the children and young people's workforce and focuses on identifying and removing barriers to pupils' educational achievement and wellbeing;
- assess pupils' ALN and the settings within which their needs are best met on the basis of clear and objective criteria;
- support parents in becoming constructive and informed partners in supporting their children's progress;
- support teachers and school leaders in their work with pupils with ALN through approaches that avoid excessive workload and allow them to focus on their core responsibilities for teaching and leading teaching and learning;
- give local authorities the powers and resources necessary to enable them to play an effective strategic role in the provision of ALN services and in co-ordinating the work of schools and other agencies within the children's services sector;
- adopt an approach to school accountability, curriculum and qualifications that supports the ability of teachers and school leaders to provide a broad and balanced learning offer for pupils with ALN; and
- give children and young people with ALN the support and resources they need to progress with as much economic and social independence as possible into adulthood.

13. The NASUWT urges the CYPEC to consider the ten core aims for, and the provisions of, the Bill and the accompanying draft Code against these requirements.

The provisions for collaboration and multi-agency working

14. The NASUWT notes that the Bill and the accompanying documentation places particular emphasis on the need for other children and young people's services, particularly those located within the NHS, to collaborate with schools and local authorities in meeting the needs of pupils with ALN.

15. The NASUWT maintains that the development of more effective arrangements for multi-disciplinary planning and working is central to the successful delivery of a holistic service focused on promoting the educational and wider wellbeing of children and young people with ALN.

16. The Union acknowledges that the Bill has been strengthened to refocus the duty on NHS bodies to secure the provision of a relevant treatment or service that would address a learner's ALN if it is available, rather than merely enabling local authorities to request help from NHS bodies.
17. In addition, the NASUWT notes that the Bill places a new duty on health boards to appoint a Designated Education Clinical Lead Officer (DECLO) to play a pivotal role 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.
18. However, the Union remains concerned that the Bill fails to identify effectively the barriers to enhancing multi-disciplinary working and how these barriers might best be addressed. In particular, without a more robust requirement on these bodies to co-operate, there could be no assurance that local authorities would receive positive responses to their requests for help.
19. The NASUWT asserts that this dimension of policy development will need to consider the extent to which policy priorities established for different services for children with ALN are coherent and that the frameworks for multi-agency working should be based on a recognition of the related, but distinct, roles of individual children's services and how effective collaboration can be secured in ways that do not add to the workload burdens of staff within the children's services sector and that avoid unnecessary bureaucracy.
20. The lack of any meaningful consideration of these issues by the Welsh Government in terms of its proposed legislative framework remains a matter of serious and legitimate concern.
21. Consequently, the NASUWT seeks the support of the CYPEC in recognising that the provisions of Chapter 4 should not be implemented until the Welsh Government, in consultation with the Union and other relevant stakeholders, has reviewed and assessed the effectiveness of the strategy for multi-agency working presented in the Bill.

The process for developing and maintaining individual development plans (IDPs) and whose responsibility this will be

22. The NASUWT notes that the Bill would create a single statutory plan, the individual development plan (IDP), to replace the existing variety of plans for learners in schools and further education (FE).
23. It is clear that the Welsh Government's intention is to ensure that the IDP details specific outcomes to be achieved and the necessary adjustments and interventions required to ensure that children and young people with an IDP make appropriate progress.
24. The NASUWT does not object in principle to the intended focus of the IDP on outcomes and recognises that moves to replace existing systems provide an opportunity to ensure that systems for documenting, monitoring and reviewing actions are streamlined so that they minimise bureaucracy and workload for teachers.
25. In noting that the Bill confirms the significant responsibilities that governing bodies would have in relation to provision for pupils with ALN, the NASUWT maintains that, in practice, these duties and responsibilities will fall on the school workforce rather than on school governing bodies. The Union is concerned specifically in this respect with the workload implication associated with the management of transfers of pupils onto the IDP system, not least since schools will be held to account for the capacity and support provided to the workforce and for engaging with parents and carers.
26. The NASUWT maintains, therefore, that the CYPEC should encourage the Welsh Government to work with the Union and other relevant stakeholders to develop effective proposals for the IDP and to establish clarity about the ways in which their introduction can address the shortcomings inherent in current systems.

A genuinely age 0-25 system

27. The NASUWT recognises that the Bill will introduce a single legislative system relating to the support given to children and young people aged 0 to 25 who have ALN, and acknowledges the intention to improve the transition of learners between school and post-16 education to allow greater equity in terms of support and the rights for this group of learners.

28. However, the Union would need to consider the draft Code in detail to ensure that the concerns identified in the response to the consultation in 2015 on the Draft Additional Learning Needs and Education Tribunal (Wales) Bill (Annex A) that, despite the assurances that both non-statutory and statutory provision for children and young people with special educational needs (SEN) and learning difficulties and/or disabilities (LDD) will fall within the scope of an IPD, fewer children and young people may benefit from additional learning provision (ALP) than is the case under the current system.
29. The NASUWT remains concerned that the presumption in favour of mainstream maintained schooling and the promotion of an inclusive education system which has underpinned the Bill could have the unintended consequence of denying children and young people access to the specialist help they require.
30. The NASUWT urges the CYPEC to seek assurances from the Welsh Government that access to ALN provision for 0 to 25 year olds will not be determined by reference to current costs.

The capacity of the workforce to deliver the new arrangements

31. The NASUWT notes that the Bill makes provision for the Additional Learning Needs Coordinator (ALNCO) to replace the current, non-statutory special educational needs co-ordinator (SENCO) role.
32. The NASUWT agrees that it is appropriate in principle to place the ALNCO role on a statutory footing, as it would allow for the establishment of common expectations in respect of the functions of the post and the support that an ALNCO would be entitled to expect.
33. However, the Union is aware that the SENCO role currently faces many challenges. These include a lack of appropriate training, insufficient time to carry out the role effectively and low status within the school. The Union is clear that, to a large extent, these issues arise because the SENCO is often required to undertake tasks that do not make the best possible use of the skills, talents and expertise of qualified teachers. In particular, SENCOs are often obliged to undertake administrative tasks related to preparing and monitoring mandatory assessments that could be carried out by appropriate support staff.
34. Whilst it is accepted that the introduction of the ALNCO role will address some of these concerns, the NASUWT remains concerned that the Welsh Government

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appears to have given insufficient regard to the workload burdens faced currently by SENCOs

35. Consequently, the Union maintains that Section 54 of the Bill, which provides Welsh Ministers with the power to confer functions on the ALNCO, could have the unintended consequence of compounding the workload issues currently faced by SENCOs, which would undoubtedly overburden the ALNCO role.
36. The NASUWT expects the exercise of this power by Welsh Ministers to be subject to a workload impact assessment before any additional functions are placed on ALNCOs.
37. The NASUWT recognises that the three-tier approach to meeting the existing and future development needs of the workforce in order to better support learners with ALN which focuses on: i) core skills, for all teaching practitioners; ii) advanced skills, in particular for the ALNCO; and iii) specialist skills, for specific individuals across a school cluster or within a specialist support service, coupled to the commitment to develop a masters level qualification for existing SENCOs and future ALNCOs, and the development of a national workforce planning system for ALN specialist support services, demonstrate the Welsh Government's endeavour to ensure that policy has been developed alongside the Bill.
38. However, the NASUWT maintains that the future workforce will be insufficient to implement the new provisions set out in the Bill. The latest NASUWT comparison for 2014/15 between the on-average per-pupil funding for maintained schools in Wales and those in England shows that the school funding gap between Wales and England now stands at £607 and teacher number have dropped by 1,051 since 2010 whereas the pupil numbers are down by just 586.
39. The NASUWT suggests that the CYPEC would do well to reflect on the fact that the £607 gap presents a shortfall of £283 million in the funding going into the schools each year, when considering the capacity of the workforce to deliver the new arrangements.
40. The NASUWT asserts that it will be necessary to address the years of under-investment in schools, even on a gradual basis, to enable the employment of sufficient staff to ensure that children and young people benefit from the new arrangements and to protect the wellbeing of the workforce.

The proposed new arrangements for dispute resolution and avoidance

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41. In noting that the provisions of Chapter 4 confirm the right of children of compulsory school age to make, in their own right, an appeal against a decision of their local authority to the Education Tribunal for Wales (the Right), the NASUWT maintains that this provision adds weight to the view expressed previously in this written evidence that the implementation of the provisions of Chapter 4 should be delayed.
42. The NASUWT suggests that the duty to involve and support children, their parents and young people enshrined in Chapter 1, Section 6 of the Bill is adequate for the purpose of listening to and considering the views and opinions of children and young people with ALN in the context of dispute resolution and avoidance; not least, since children and young people with ALN are entitled to attend Tribunal hearings and express their views about issues that impact upon them directly.
43. Whilst acknowledging that the Right was introduced in March 2015, following the evaluation of a pilot project arising out of the Education (Wales) Measure 2009, the NASUWT suggests that the CYPEC should seek to establish if the Right and the existing entitlement to attend Tribunals has given cause for concern in relation to: children being used to advance the views of adults, including parents, inappropriately; parental pressure being put on children with ALN to exercise this right in the expectation this would enhance the prospects of a more successful outcome; the views of children being manipulated to serve and add legitimacy to arguments supportive of the interests of particular groups of adults within a school, especially but not exclusively; instances where children with ALN may be less able to articulate their views or to resist manipulation; and circumstances where a child or young person holds a different view on the merits of appealing than their parents.
44. The NASUWT notes that Chapter 5, Section 76 provides for children who lack capacity to have a 'case friend' appointed to assist them where appropriate. The Explanatory Memorandum suggests that case friends could be appointed if parents refuse to support their children's appeals. This provision does not appear to take account of the fact that the parent in such circumstances may not support their child's appeal on entirely legitimate grounds.
45. The NASUWT suggests, therefore, that the CYPEC should consider whether case friends should only be deployed to support parents who may experience difficulty in pursuing an appeal rather supporting children in circumstances where parents have legitimate grounds for not wishing to appeal.



Rex Phillips

National Official for Wales

For further information on this written evidence, contact Rex Phillips, National Official for Wales.

NASUWT Cymru

Greenwood Close

Cardiff Gate Business Park

Cardiff

CF23 8RD

029 2054 6080

www.nasuwt.org.uk

nasuwt@mail.nasuwt.org.uk

Annex A

Welsh Government

Draft Additional Learning Needs and Education Tribunal (Wales) Bill

18 December 2015

1. The NASUWT welcomes the opportunity to comment on the draft Additional Learning Needs and Education Tribunal (Wales) Bill (the draft Bill).
2. The NASUWT is the largest teachers' union in Wales and the UK representing teachers and school leaders.

GENERAL COMMENTS

3. The NASUWT notes that although the consultation document is brief and the response form asks just seven questions, the accompanying documents are extremely detailed and lengthy. It is, however, recognised that the Easy Read explanation of the draft Bill presents an extremely helpful oversight of the proposals.
4. In addition, the NASUWT recognises that the draft Additional Learning Needs Code (the draft Code) provides the most accessible means of understanding the purpose of the Bill.
5. The NASUWT submitted a detailed response to the 2014 White Paper, *Legislative Proposals for Additional Learning Needs*, which was broadly positive of the changes that were being proffered (a copy of the NASUWT response is attached as Annex A, including the annexes to that response).
6. However, the Union identified three important areas that would need to be addressed in the Bill, in order to protect those charged with the responsibility of implementation, namely:
 - workload impact assessment;
 - access to professional development;
 - sufficiency of funding.

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7. The NASUWT is disappointed to note that the draft Explanatory Memorandum, accompanying the draft Bill, does not include a specific impact assessment of the workload implication associated with the draft Bill.
8. Likewise, apart from stating that teaching practitioners have responsibility for their own professional learning and development, and that they should undertake professional learning in relation to additional learning needs (ALN), neither the draft Explanatory Memorandum, nor the draft Code, provide any confidence that the training and development needs of the education workforce have been given careful consideration.
9. The NASUWT maintains that references to teaching practitioners being able to access information guidance, tools and/training materials, and suggestions that there are a range of organisations able to offer support and professional learning in relation to ALN, demonstrate a woeful lack of understanding of teachers' contractual rights and entitlements, especially, but not exclusively, the right to a work/life balance.
10. The NASUWT is concerned that the failure to undertake an assessment of the workload and of the training and development implications associated with the draft Bill, casts grave doubt on the credibility of the costs attributed to options 2 and 3 in the draft Explanatory Memorandum.
11. The NASUWT believes that the funding requirements of the person-centred approach, the enhanced duties and responsibilities placed on the Additional Learning Needs Coordinator (ALNCo) and all teaching practitioners, and the introduction of the individual development plan (IDP) envisaged in the draft Bill, have been seriously underestimated.
12. The NASUWT maintains that the draft Bill must make provision to:
 - protect teaching practitioners, and others, from excessive workload and unnecessary bureaucracy;
 - require the identification of the provision of time within the timetabled teaching week for the ALNCo to fulfil the duties and responsibilities associated with the role, including access to professional development;

- require the identification of time within the timetabled teaching week to enable teaching practitioners to adopt the person-centred approach, including access to professional development;
- place a duty on the Welsh Government to assess and provide annually sufficient funding to support, fully and transparently, the requirements of the Bill;
- place a duty on the Welsh Government to establish a formula for restricting class and group size, and identifying the number of teachers and support staff required, in relation to the number of pupils in receipt of an IDP.

SPECIFIC COMMENTS

13. The NASUWT offers the observations and comments that follow in relation to the questions posed on the consultation response form.

Question 1 – The introduction of the term ALN and a 0–25 age range

Do you agree that the definitions of additional learning need ALN and ALP set out in the draft Bill appropriately reflect our intended focus on educational needs and do you agree that the draft Bill would deal properly with the age range it sets out to capture?

Agree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input checked="" type="checkbox"/>
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Supporting comments

Although it is accepted that the draft Bill reflects appropriately the Welsh Government's intended focus on educational needs, it is clear from the draft Explanatory Memorandum, where the advantages and disadvantages of Option 3 (the option on which the draft Bill and the draft Code has been progressed) are considered, that the draft Bill will limit the scope of learners to be captured by the proposed definition of ALN to those most in need of support.

Indeed, it is suggested that the number of learners who would come under the new definition of ALN should be no greater than those currently captured under the

special educational needs (SEN) definition in schools or the learning difficulties and/or disabilities (LDD) definition in post-16 education. The NASUWT is concerned that, despite assurances that both non-statutory and statutory provision for children and young people with SEN and LDD will fall within the scope of an IPD, this could imply that fewer children and young people will benefit from additional learning provision (ALP) than is the case under the current system.

Consequently, the NASUWT reserves judgement on whether the draft Bill will deal properly with the age range it sets out to capture.

Question 2 – A unified planning process with increased participation by children and young people

Do you agree that the draft Bill would create a robust legal framework for the preparation, maintenance and review of Individual Development Plans (IDPs)?

Agree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input checked="" type="checkbox"/>
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Supporting comments

The NASUWT has identified several deficiencies in terms of the robustness of the legal framework for the preparation, maintenance and review of an IDP as set out in paragraphs 6 to 12 of this response.

Further, the NASUWT notes that the draft Code provides Health Boards (HBs) and National Health Service Trusts (NHS Trusts) with the option to disagree with requirements, which must be made by a school, further education institution (FEI) or local authority (LA) in IDPs that seek the input of health professionals. The draft Code is silent on how such decisions by HBs and NHS Trusts can be challenged.

The NASUWT is concerned that a school, FEI or LA could be left to provide for the requirements of an IDP and ALP where a HB or NHS Trust does not agree to provide the support requested.

Question 3 – High aspirations and improved outcomes

Do you agree that the draft Bill would help to ensure that the interests of children and young people with ALN would be protected and promoted?

Agree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input checked="" type="checkbox"/>
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Supporting comments

The NASUWT recognises that the draft Bill could help to ensure that the interests of children and young people with ALN are protected and promoted but maintains that the issues raised in this response must be addressed, if high aspirations are to result in improved outcomes.

Investment in, and the protection of, the education workforce will be vital to the successful implementation of the provisions of the draft Bill.

Question 4 – Increased collaboration

Do you agree that the draft Bill would provide the basis for an improvement in the way that agencies work together to deliver for children and young people with ALN?

Agree	<input type="checkbox"/>	Disagree	<input checked="" type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Supporting comments

Regrettably, the NASUWT must disagree here, as it appears that the burden of delivery will fall mainly on schools and FEIs (especially, but not exclusively on the ALNCo) and on LAs.

The concerns of the Union are compounded by the provision in the draft Code that allows HBs and NHS Trusts to decide if they agree to collaborate with the requirements of an IDP or ALP, as referred to in answer to question 2.

Question 5 – Avoiding disagreements, earlier disagreement resolution and clear and consistent rights of appeal

Do you agree that the draft Bill would provide an appropriate framework to support disagreement avoidance and resolution, and that the provisions relating to appeals are properly founded?

Agree	<input checked="" type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Supporting comments

In noting, with concern, the extent of the responsibilities placed on LAs in relation to making arrangements for both avoiding and resolving disagreements in relation to ALP, the NASUWT acknowledges the appropriateness of the proposed framework and recognises that the draft Explanatory Memorandum makes it clear that Option 3 (the option on which the draft Bill and the draft Code has been progressed) would not require dispute resolution procedures to take place before an appeal can be made.

Question 6 – Supporting documents

Please provide any feedback you think would be useful in relation to the supporting documents published alongside this consultation, i.e. draft Explanatory Memorandum (including the Regulatory Impact Assessment), all Impact Assessments and the draft ALN Code (which will be published in the autumn).

As stated previously, the NASUWT felt that the Easy Read explanation of the draft Bill provided a helpful oversight to the proposals and that the draft Code provided the most accessible means of understanding the purpose of the draft Bill.

In addition, the draft Explanatory Memorandum proved useful for carrying out specific word searches, such as ‘funding’, ‘workload’, and ‘professional learning’ (this is, of course, not possible with a hard copy) and the draft Explanatory Notes at Annex A, in particular the commentary on sections of the draft Bill, provided a good synopsis of the provisions of the Bill.

As referred to elsewhere in this response, the NASUWT found the impact assessments to be deficient in relation to workload, professional development and funding.

Question 7

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.

The NASUWT notes, from the Ministerial Foreword to the consultation document, the desire of the Welsh Government to introduce the Bill as early as possible in the next assembly term.

The Union expects due regard to be given to the raft of changes that the schools, in particular, are currently coping with, and that the New Deal on professional learning and development is in its early stages, when considering the date of enactment of the Bill.

In addition, the NASUWT maintains that the timescale, of one year, for transferring learners with statements of SEN to an IDP is far too short and will place those involved in the process of developing or contributing to the IDP under pressure, which could be alleviated by extending the transfer period.



Chris Keates (Ms)

General Secretary

For further information on the Union's response, contact Rex Phillips, National Official Wales.

NASUWT Cymru, Greenwood Close, Cardiff Gate Business Park, Cardiff, CF23 8RD
029 2054 6080

www.nasuwt.org.uk

nasuwt@mail.nasuwt.org.uk

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Consultation on the Additional Learning Needs and Education Tribunal (wales) Bill

Response of the Association of School and College Leaders (Cymru)

1. The Association of School and College Leaders (ASCL) represents over 17,000 heads, principals, deputies, vice-principals, assistant heads, business managers and other senior staff of maintained and independent schools and colleges throughout the UK. ASCL Cymru represents school leaders in more than 90 per cent of the secondary schools in Wales.
2. ASCL endorses the need for significant changes to the provision for children and young people with Additional Learning Needs in Wales. We fully support the intent to provide a system that is more flexible and responsive to the ongoing needs of the individual and less administratively bureaucratic.
3. ASCL supports the concept of a more straight-forward approach to ALN provision that removes the artificial layering that previously has led to disagreement and conflict.
4. ASCL supports the concept of greater participation of both parents and young people in the preparation of any plan.
5. We consider that there is a need for legislation to update and make fit for purpose the provision for students with ALN.
6. ASCL is concerned that the highly detailed nature of the ALN Code as published in its draft form, may result in more potential for disagreement as individuals attempt to interpret the code to fit the needs of their particular perspective; this may apply equally to schools as parents. Our view is that whilst it is right to do everything possible to ensure that the code is fully inclusive, in its present state it is unwieldy and could be the cause of conflict.

We would rather see a much shorter and more concise code that sets out the main duties and structures, rather than one that attempts to provide such a level of detail that it becomes impenetrable and open to interpretation.

A lot of the material currently contained in the Code document could be more appropriately published as Guidance documents, or as appendices to the code, which would allow for greater usability.

7. We are also concerned that, whilst the principle of involving other agencies is a very helpful one, the practicalities, given the number of schools and students involved may prove to be unmanageable. Our members report that, all too frequently representatives of other agencies are invited, but are unable to attend scheduled meetings, and our concern is that this could cause significant delays in the preparation of IDPs and further increase the workload of school staff.
8. We understand the financial implications of the Bill as set out, but are concerned that the model does not take into account the cost of a greatly increased workload on ALNCOs at a school level. If some of the savings created at a Local Authority level were passed on to schools, this might alleviate some of the problems that might arise from the need for schools to spend a greater proportion of ALNCOs' time on meetings with parents and students in order to create and keep up-to-date IDPs.
9. We are content that the powers in the Bill for Welsh Ministers to make subordinate legislation are appropriate.
10. We support the three over-arching objectives of the bill and consider that they are appropriate.
11. We would largely support the ten core aims, but would make the following observations.
12. *The introduction of the term Additional Learning Needs (ALN).* This is welcomed, but we would further hope that there is a commitment to ensure that the terminology is not changed further in the near future. This area of education has been subject to a plethora of acronyms over the years and we would welcome some longer term certainty and consistency.
13. *0-25 age range.* We feel this is appropriate. However, we note that the guidance is somewhat limited on the matter of appropriate support for young

adults after the age of 25 when in certain cases this may be essential to their wellbeing.

14. *A unified plan.* We would support this concept; however, we are concerned that the additional volume of work it will create for school staff has not been fully appreciated or taken into account in the impact assessment. Our members feel that there will be a significant financial impact felt at school level for staffing, and that ALNCOs will end up having to spend a significant proportion of their time dealing with assessments and creating IDPs, rather than working with students and implementing interventions.
15. *Increased participation of children and young people.* We welcome this commitment, and fully support the right of young people to be involved. However, there will inevitably be a cost in terms of increased time of school staff in order to ensure that young people and parents understand fully the implications of what is being proposed and have the opportunity to contribute fully. This again will add to staff workload and costs to the school (see comments in point 14 above).
16. *High aspirations and improved outcomes.* We would absolutely support this aim, which are central to the purpose of all schools.
17. *A simpler and less adversarial system.* We applaud this aim, and understand that the removal of various categories of support should create a simpler system and remove some of the potential for conflict. We are not certain how this will play out in the school context, and have some concerns that it may simply result in shifting the issues from the local authority to the school, once again creating more pressures on school staff.
18. *Increased collaboration.* We support the principle behind the core aim, but would refer to our comment in point 7 above. We welcome the creation of the DECLO role, but wonder how one person in each Health Board will have the capacity to deal with the needs of all the schools and young people within its remit.
19. We do have some concerns about the idea of ALNCOs being encouraged to achieve a master's level qualification. Whilst we fully support the idea of ALNCOs being fully trained and able to assume the role of "expert" in their field, we are not sure that a qualification at master's level would always be appropriate, and in certain situations might indeed act as a barrier to some very able and effective people assuming this vital role.

20. *Avoiding disagreements and early disagreement resolution.* We support this aim, although would point out that it will inevitably create further calls on the time and resources of schools.

21. *Clear and consistent rights of appeal.* We welcome the clarity of these proposals.

22. *A mandatory code.* We support the concept of the code; however, we would refer to our comments in point 6 above, in which we make the case for a simpler and more concise code with separate guidance documents.

23. We note in the section of the code on identifying children and young people's ALN there is only passing reference to needs being identified by teachers. We would consider it important that any ALN school policy should contain a section that encourages teachers to express any concerns they may have about an individual student's needs. Whilst this may be standard practice in most schools, it may be something that more inexperienced staff need guidance and support to ensure that no student with particular needs is missed.

24. We feel the code is quite clear about the process and responsibilities for developing and maintaining IDPs, and do not consider this needs any further exemplification.

25. As explained in earlier paragraphs we do have concerns about the capacity of the workforce to deliver the new arrangements. These concerns inevitably boil down to matters relating to funding. Our members feel that the requirements of the bill will involve greater staff time, and this in many cases will require additional staffing in order to ensure that the level of classroom support is maintained for ALN students. Currently there does not appear to be sufficient recognition of this in the impact assessment, and we would urge the Welsh government to take note of this and use some of the savings that the new arrangements will create elsewhere in the system to ensure that schools are able to their part of the process effectively and efficiently.

Conclusion

26. I hope that this is of value to your inquiry. ASCL Cymru would be happy to contribute to further discussions.



Tim Pratt
Director of ASCL Cymru
March 2017

Estyn response to Consultation on the Additional Learning Needs and Education Tribunal (Wales) Bill – February 2017

Terms of Reference:

To consider:

- the general principles of the Additional Learning Needs and Education Tribunal (Wales) Bill and whether there is a need for legislation to deliver the Bill's stated policy objectives;
 - any potential barriers to the implementation of the key provisions and whether the Bill takes account of them;
 - whether there are any unintended consequences arising from the Bill;
 - the financial implications of the Bill (as set out in Part 2 of the Explanatory Memorandum, and
 - the appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum).
1. The responses contained are largely based on the comments made by Estyn as part of the consultation that ended on 18th December 2015. Where appropriate, they have been amended to reflect the updated Bill, the draft Additional Learning Needs (ALN) code and the information provided by Welsh Government in the technical briefing of December 2016. We welcome the opportunities we have had to work with Welsh Government during the process of developing the Bill and accompanying guidance.
 2. Overall, Estyn supports the principles, aims and objectives of the Bill. The ALN code, which was very recently published in draft, will be of vital importance in translating the Bill into practice. Estyn identifies through this response, a number of potential challenges for schools, local authorities and further education institutions (FEIs) in implementing the Bill. We welcome the fact that the Welsh Government has given consideration as to how they can financially support the transition into the new arrangements.

Comments made in relation to specific issues raised by the Bill, in particular:

Whether the Welsh Government's three overarching objectives (listed at para 3.3 of the Explanatory Memorandum) are the right objectives and if the Bill is sufficient to meet these;

Overarching objective (1) 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);

Response:

3. The bringing together of different legislation to cover the 0-25 age range appears largely appropriate. The move towards having a system that runs from 0 to 25 is

welcomed, and should ensure a more joined-up approach at different phases of a child/young person's life. However, it is slightly misleading to state the legislation will cover young people up to 25 years of age, when this extends to learners in further education only and excludes those in work-based learning (including apprenticeships), adult community-based learning and those in higher education. Learners in further education are only around a fifth of the total population of 16-25 year olds in Wales.

4. This Bill rightly focusses on learners with special educational needs (to be renamed additional learning needs). NAFW Circular 47/2006 Inclusion and Pupil Support introduced the concept of additional learning needs as a broad umbrella term that covers other groups of vulnerable learners such as those with mental health needs, a medical condition or a disability. It also identifies a range of groups of vulnerable learners who may be at risk of having additional learning needs, including those who are looked-after or those who have English as an additional language. Many schools currently employ ALNCoS who oversee the work of both pupils with SEN and also those who fall under the other groups of vulnerable learners. The change in terminology is likely to cause confusion for schools and lead to inconsistency between schools and local authorities. Will current ALNCoS lose part of their current role? If so, who will take on these responsibilities? There is a risk that attention will be moved away from these learners. It is essential that guidance should be provided for schools, FEIs and local authorities in relation to these other groups of vulnerable learners.
5. There needs to be a recognition that additional responsibilities relating to learners above the age of 18/19 are likely to increase workloads for local authorities. This is at a time when local authority central services are diminishing. Expectations should be realistic and manageable. Again, this is something that should be considered in more detail through the ALN code, innovation programme and implementation schedule.
6. Estyn has serious concerns around the capacity and capability of local authorities to extend their statutory duties further. Although ALN services are generally found to be strong in local authority inspections across Wales, there will need to be strong leadership, specialist staff and funding to ensure that a strategic approach is taken towards planning and commissioning of additional learning provision (ALP) for all learners.

Overarching objective (b) an integrated, collaborative process of assessment, planning and monitoring which facilitates early, timely and effective interventions; and

Response:

7. Estyn welcomes the creation of the statutory and recently renamed: Designated Education Clinical Lead Officer (DECLO) and the clarity around the broad functions of the role. The explanatory memorandum (December 2016), para 3.120 makes clear the duty on local health boards or NHS trusts to consider treatments or services that are likely to benefit learners and the need to include

such provision in the IDP. Paragraphs 3.121 – 3.123 (inc) provide greater clarity on the role of the DECLO, including provision of services in Welsh and the discretion to inform local authorities regarding children under compulsory school age who have an ALN. The draft ALN code makes it clear that the DECLO's role has a strategic and co-ordinating function. In addition, the DECLO will be responsible for monitoring compliance with the duty to co-operate and measuring the outcomes of health board interventions.

8. We already know that statements of special educational needs include phrases such as “have access to”. The impact of these phrases is that both local authorities and schools are protected from non-compliance. However, this can result in children and young people not being able to access services provided by the local health boards with the frequency or intensity needed to meet their needs. This is particularly the case for high incidence needs, such as speech and language therapy and CAMHS. There is a concern that the DECLO will have limited impact in improving service availability.
9. The DECLO role is currently being piloted in two local health boards. An evaluation of this pilot will inform the development of the role across Wales. Estyn welcomes this approach.
10. Paragraph 3.123 of the explanatory memorandum states that it is only discretionary for the local health board to inform the local authority, if they are of the view that a child who is under compulsory school age has an ALN. Local authorities are better placed to plan provision when they have all available information and it would be helpful that there is strong guidance that this information should be shared.
11. Estyn welcomes the aim to standardise assessment and planning processes, including the use of a single statutory individual development plan (IDP). Overall, the draft Bill provides an appropriate legal framework for the preparation, maintenance and review of IDPs.
12. The final version of the ALN code must provide definitive guidance and support materials such as: exemplar materials including templates, time-lines and flowcharts to practitioners in local authorities, schools and FEIs. The draft ALN code provides overly simplistic flowcharts for schools and FEIs to follow. For example, in considering whether a child or young person has an ALN, no information is provided regarding the role of other services or timeframes that must be adhered to at each stage of the process. The decision to include good practice examples in the draft ALN code is welcomed. However, these would be strengthened considerably by, where possible, providing real-life examples and by adopting a standardised format that focussed on the issues, process followed and outcome.
13. Estyn is encouraged to see the progress being made by Welsh Government in relation to many of the issues raised during the consultation process. For example, we understand that Welsh Government is actively seeking to ensure that personal education plans for looked-after children and health care plans will be subsumed into the IDP.

14. The roll-out of and the requirement that the person-centred planning model is used as vehicle for capturing the views of children and young people is in keeping with the aim of increasing learner participation in the process. However, it is not clear what impact this requirement will have in relation to capacity of providers to administer this process.
15. The requirement to review IDPs within the 12-month period of starting is in line with current requirements for reviewing statements of special educational needs annually. The Bill places no emphasis on the importance of regular monitoring of IDPs within the 12 month period. The existing SEN code of practice requires that individual education plans (to be replaced by the IDP) are reviewed three times a year.
16. The draft ALN code recognises that the timescales for completion of IDPs stated are based on assumptions, are not fixed and are subject to ongoing discussions. Reducing the timescale for local authorities to assess referrals, including determining whether an ALN exists, from 26 weeks to 10 weeks is likely to place significant additional pressures on local authorities. In the absence of criteria that clearly distinguishes when referrals should be made to a local authority, there is a risk that local authorities will exercise their right under S 12 (2)(b)(ii) of the Act to request that a school prepares an IDP within 5 weeks. This may result in provision being made that is not in the best interest of the child. Alternatively IDPs will be completed within time constraints yet lack the required detail to best support the learner.
17. Although timelines in respect of assessment and issuing IDPs are suggested in the draft ALN code, it may be helpful to include these in the Bill, therefore ensuring that timely provision arising from any identification of need is made.
18. Greater clarity is needed on the assessment process that a provider needs to follow in order to identify whether or not a child or young person has ALN. Currently, schools and between local authorities apply different thresholds regarding when a child should be placed on a particular stage of the current SEN code of practice. This is an opportunity to improve consistency. It would be helpful to have case studies in the ALN code to show when a pupil should have an IDP or not.
19. The draft ALN code states that both schools and FEIs should “consider consulting an educational psychologist” when they are considering making a referral to the local authority. However, there is no recognition of the role that other specialist support services could have in assisting the school or FEI in identifying appropriate strategies or adaptations that the school or FEI could make to meet the need of the child or young person. Making available the services of educational psychology and/or other specialist support services to the further education sector is likely to put additional resource pressures on local authorities.
20. In order to align differing practices that currently exist in Wales, there is a need to provide unambiguous guidance as to when an IDP becomes the responsibility

of the local authority. There is a risk that a lack of agreement over who should produce or maintain an IDP will put pressure on all involved and may result in a delay in making appropriate provision.

21. It is essential that the amount of information required in IDPs is proportionate to the level of need and intervention needed for individual learners. Otherwise, there is a risk that the process will become over-bureaucratic and unmanageable. The draft ALN code provides examples of IDPs. However, it is not clear if these have been provided as a result of proven best practice.
22. Over recent years, there has been a move towards providing for children with a range of needs without producing a statement. This has allowed schools to be more flexible in their use of learning support assistants. It has enabled them to use available resources more effectively, by providing support when it is needed. This has also helped pupils to become less dependent on one individual adult. There is a risk that, if IDPs are too prescriptive about the additional learning provision required, this flexibility will be lost.
23. It is not clear when statements of SEN come to an end or how this will be brought about. This has the potential to cause confusion and anxiety for practitioners and parents.
24. With the removal of statements, there will need to be clear criteria for special schools and, where relevant, local authority specialist classes. There is a risk that places in special schools and specialist classes may be sought for lower levels of ALN than previously. This could be damaging to the work that has been done over many years to promote inclusion.
25. Further information and clarity is needed about what happens where young people in schools or FEIs do not consent to decisions being made in respect of their additional learning need or provision. Under current legislation (The Equality Act 2010), providers have an anticipatory duty to ensure that there is provision and support (reasonable adjustments) made for and available to disabled learners.
26. The draft Bill places a requirement for closer collaboration and working between agencies and providers. The explanatory memorandum goes some way to articulating the advantages for learners that closer working with partners will bring and outlines the respective duties on key agencies. However, the detail as to how these arrangements should work is unclear. There is no mention in the draft Bill or explanatory memorandum and very little detail in the draft ALN Code on the future role of regional consortia in relation to additional learning needs. This is surprising considering the Welsh Government have provided £2.1m over two years to support the ALN Innovation Fund. The aim of the fund is for regional partnerships to collaborate to devise creative delivery models that improve systems, arrangements and relationships.
27. Currently, 30% of all pupils with SEN in maintained schools are also eligible to free school meals. The educational performance of this group of learners is significantly lower than those pupils with SEN who are not eligible to free school

meals. The important role that parents play in supporting the education of their child should not be underestimated. The Bill and draft code do not make specific reference to the importance of supporting families and how best to do this.

28. There is a need to recognise the importance of partnership working across the stated age range but particularly for those learners who are either pre- or post-statutory school age. The role of, for example, Flying Start and Families First need to be made clearer.
29. The role of the local authority in commissioning post-16 provision will be enhanced. This should bring about a more strategic approach to planning. However, there is a need for further guidance on protocols and commissioning strategies that are needed to ensure effective working partnerships. There is a risk that local authorities will opt for least cost solutions in securing appropriate provision, rather than those that are most appropriate based on cost, quality and match to learners' needs.
30. There is a new requirement for independent schools to register or apply for a material change to accommodate the needs of learners with ALN. The statutory responsibility for delivery of the ALP within an IDP rightly remains with the local authority but the Welsh Government should consider how it can strengthen the requirements for independent schools to deliver ALP in the IDPs of publicly-funded learners through the review of the Independent School Standards (Wales) Regulations which is ongoing.
31. The foundation phase profile will identify where pupils are not making progress. However, there is no single pathway of assessment for pupils who fail to make expected progress. The foundation phase profile guide book suggests that the additional learning needs co-ordinator (ALNCo) will be best placed to know which assessments are appropriate. In general, the draft ALN code needs to provide ALNCos with guidance on appropriate assessments for the range of ALN they will encounter.

Overarching objective (c) a fair and transparent system for providing information and advice, and for resolving concerns and appeals.

Response:

32. Estyn welcomes extending of the right of appeal to all learners age 0-25 with ALN. However, it notes that Education Tribunal Wales orders will not apply to LHB or NHS trusts. This is a potentially a significant shortcoming, as children and young people may not be able to access the additional learning provision that has been deemed appropriate. This shortcoming exists in the present system and causes frustration for families and local authorities.
33. The Bill maintains the requirement for local authorities to provide independent disagreement resolution. It is important that the 'independent person' is appropriately trained and qualified to provide such advice. This should include

detailed knowledge of the legislation and processes around additional learning needs. Failure to provide this may be counter-productive.

34. The Bill is unclear regarding independent disagreement resolution for learners in further education. The draft Bill para 37 (4) page 21 states that "...the local authority must take steps which it considers appropriate for making the [advocacy] arrangements to: children and young people for whom it [the local authority] is responsible... As a result, post-16 learners with IDPs that are not maintained by the local authority would not be afforded access to this level of service. This would compromise the concept of protection.

Whether the Welsh Government's ten core aims for the Bill (listed at paras 3.5 3.16 of the Explanatory Memorandum) are the right aims to have and if the Bill is sufficient to achieve these;

Response:

35. The ten core aims appear appropriate in supporting the overarching objectives. The responses contained in this paper address many of the core aims. For ease of reference, these are repeated where relevant below with any additional comments.

Core aim one: The introduction of the term Additional Learning Needs (ALN):

36. The new definition of ALN is broadly in-line with the current definition for SEN. The definition 2 (2) (a) of the draft Bill, would be strengthened if it read "...has a significantly greater difficulty in learning, or **aspects of learning than...**" as opposed to "...has a significantly greater difficulty in learning..."
37. It is essential that providers should have a clear understanding of what is meant by ALN, particularly as the term ALN currently refers to a broader group of vulnerable learners. Guidance on this should be provided in the ALN Code.

Core aim five: High aspirations and improved outcomes

38. Of the 221 inspections undertaken during 2015-2016, all of the pupil referral units (4 inspected), half of maintained special schools (6 inspected), just under a fifth of secondary schools (33 inspected) and very few primary schools (178 inspected) were judged adequate or less for the care, support and guidance they provided. In these schools, the identification of pupils' needs was poor. Individual education plans (IEPs) were vague and parents were not well informed on targets for improvement. Teachers and support staff did not sufficiently meet the needs of learners in class as a result there was little impact on pupil standards. In addition there was a lack of leadership provided by the SENCO/ALNCo and a lack of clarity in working with partners. Our inspections suggest that there is a need for improved outcomes.
39. During the period 2015-present, independent living skills (ILS) departments have been inspected in four FEIs. ILS departments provide learning opportunities for

learners with a variety of learning needs, including pupils with profound and multiple learning disabilities, speech, communication and language needs and learners with autism. The inspection outcomes for ILS departments in the FEIs inspected is shown below.

FEI	Key Question One: Standards	Key Question Two: Provision	Key Question Three: Leadership
Bridgend College	Adequate	Adequate	Unsatisfactory
Cardiff and the Vale College	Adequate	Adequate	Adequate
Coleg Cambria	Adequate	Adequate	Unsatisfactory
Merthyr Tydfil College	Published in March	Published in March	Published in March

40. The main shortcomings identified include: initial assessments that do not reflect the full range of learners' needs and abilities, targets for learners do not reflect sufficiently their needs and abilities and systems to track learner progress are underdeveloped. Overall, learning experiences do not meet individuals' needs well enough. Learners have a limited range of classroom experiences with few opportunities for them to develop practical or vocational skills. Where leadership is unsatisfactory, there is no clear vision that is based on current and future needs of learners and there is a lack of opportunities for staff to develop their understanding of the specific needs of learners.
41. The paragraphs above outline the challenges faced by FEIs in meeting the needs of the most vulnerable learners. As budgets for S140 learners are delegated to local authorities, it is likely that FEIs will be expected to provide for a broader range of ALN needs and higher level of challenge from learners than they currently face. Estyn is concerned around the capacity of FEIs to meet this challenge to meet the needs of learners with the most complex needs.
42. High aspirations and improved outcomes for learners with ALN cannot be achieved if pupils fail to attend, are disproportionately excluded or where approaches used in teaching are not sufficiently tailored to the needs of learners. Pupils with special educational needs are more likely not to attend school. Persistent absence for primary pupils with SEN is 12 times greater than pupils without a SEN and 8 times greater in secondary schools. The permanent exclusion rate for pupils with SEN is 10 higher than pupils without an SEN and 10 to 15 times higher for pupils with SEN who have a fixed term exclusion.
43. The performance of pupils with SEN, at key stage 2, 3 and 4 has improved year on year for the past seven years and the gap in performance of pupils with SEN has also been reducing. However, there remain significant difference in performance of pupils with SEN at Level 2 (inclusive), compared to pupils with no SEN. In 2015, 23.3% of pupils with a SEN attained the Level 2 (inclusive), compared with 58.9% of pupils without an SEN. Estyn recognises that it highly

unlikely and an unreasonable expectation that pupils with certain SEN types attain expected levels at the end of key stage. However, there are significant differences in the performance of pupils with SEN between the Level 2 and Level 2 (inclusive) measure.

44. Many pupils who attend education other than at school (EOTAS) currently have a special educational need and around 31% have statements of special educational needs. Attainments and meeting the SEN needs of these pupils have been generally poor. Changes to the curriculum and performance measures are likely to make it more difficult for the attainments of pupils with SEN to be visible.
45. Standards by SEN need and phase of education, % attaining L2 and L2+ at key stage 4 – 2015 (source: Academic Achievement by pupil characteristics, 2015):

	KS4	
	L2	L2+
Cognition and Learning		
SplDs		
Dyslexia	80.6	38.3
Dyscalculia	*	*
Dyspraxia	81.4	52.5
ADHD	58.5	21.5
MLD	66	13.8
GLD	71.8	23.4
SLD	*	*
PMLD	9.3	*
BESD	61.1	26.1
Communication and Interaction		
SCLD	*	*
ASD	64.6	41.7
Sensory/Physical		
HI	97.4	63.1
VI	*	*
MSI	*	*
PMed	83.1	51.7

The provisions for collaboration and multi-agency working, and to what extent these are adequate;

46. The draft Bill certainly places a requirement for closer collaboration and working between agencies and providers and the explanatory memorandum goes some way in articulating the advantages for learners that closer working with partners will bring and outlines the respective duties on key agencies. However, the detail as to how these arrangements should work is unclear. There is no mention in the draft Bill or explanatory memorandum and very little detail in the draft ALN code on the future role of regional consortia in relation to additional learning needs.
47. There is a need to recognise the importance of partnership working across the stated age range but particularly for those learners who are either pre-statutory or post-statutory school age. The role of, for example, Flying Start and Families First needs to be made clearer.
48. The important role that parents play in supporting the education of their child should not be underestimated. The Bill and draft code does not make specific reference to the importance of supporting families and how best to do this. Currently 30% of all pupils with SEN in maintained schools are also eligible to free school meals. The educational performance of this group of learners is significantly lower than those pupils with SEN who are not eligible to free school meals.
49. The role of the local authority in commissioning post-16 provision will be enhanced. This should bring about a more strategic approach to planning. However, there is a need for further guidance on protocols and commissioning strategies that are needed to ensure effective working partnerships. There is a risk that local authorities will opt for least cost solutions in securing appropriate provision, rather than those that are most appropriate based on cost, quality and match to learners' needs.

Whether there is enough clarity about the process for developing and maintaining Individual Development Plans (IDPs) and whose responsibility this will be;

50. Estyn welcomes the aim to standardise assessment and planning processes, including the use of a single statutory individual development plan (IDP). Overall, the draft Bill provides an appropriate legal framework for the preparation, maintenance and review of IDPs.
51. In order to align differing practices that currently exist in Wales, there is a need to provide unambiguous guidance as to when an IDP becomes the responsibility of the local authority. There is a risk that a lack of agreement over who should produce or maintain an IDP will put pressure on all involved and may result in a delay in making appropriate learning provision.
52. The draft ALN code recognises that the timescales for completion of IDPs stated are based on assumptions, are not fixed and are subject to ongoing discussions. It may be helpful to include these in the Bill, therefore ensuring that timely provision arising from any identification of need is made. The draft ALN code

provides overly simplistic flowcharts for schools and FEIs to follow which do not provide any more detail than the definition of ALN in the Bill. It would be helpful to have case studies in the ALN code to exemplify when a pupil should have an IDP or not.

53. The requirement to review IDPs within the 12-month period of starting is in line with current requirements for reviewing statements of special educational needs annually. The Bill places no emphasis on the importance of regular monitoring of IDPs within the 12 month period.
54. Over recent years, there has been a move towards providing for children with a range of needs without the need for a statement. This has allowed schools to be more flexible in their use of learning support assistants. It has enabled them to use available resources more effectively, by providing support when it is needed. This has also helped pupils to become less dependent on one individual adult. There is a risk that, if IDPs are too prescriptive about the additional learning provision required, this flexibility will be lost.
55. It is essential that the amount of information required in IDPs varies according to the level of need and intervention for individual learners. Otherwise, there is a risk that the process will become over-bureaucratic and unmanageable. The draft ALN code provides examples of IDPs. However, it is not clear if these have been provided as a result of proven best practice.
56. It is not clear when statements of special educational needs come to an end or how this will be brought about. This will cause considerable concern for practitioners and anxiety for parents, particularly where parents are being advised that the current SEN legislation no longer applies.

Whether Bill will establish a genuinely age 0-25 system;

57. The bringing together of different legislation to cover the 0-25 age range appears largely appropriate. The move towards having a system that runs from 0 to 25 is welcomed, and should ensure a more joined-up approach at different phases of a child/young person's life. However, it is slightly misleading to state the legislation will cover young people up to 25 years of age, when this extends to learners in further education only and excludes those in work-based learning (including apprenticeships), adult community-based learning and those in higher education. Learners in further education are only around a fifth of the population of 16-25 year olds.
58. There needs to be a recognition that additional responsibilities relating to learners above the age of 18/19 are likely to increase workloads for local authorities. This is at a time when local authority central services are diminishing. It is essential that expectations are realistic and manageable. Again, this is something that should be considered in the ALN code, innovation programme and implementation schedule.
59. Estyn has serious concerns around the capacity and capability of local authorities to extend their statutory duties further. Although ALN services are

generally found to be strong in local authority inspections across Wales, there will need to be strong leadership, specialist staff and funding to ensure that a strategic approach is taken towards planning and commissioning of additional learning provision (ALP) for all learners.

The capacity of the workforce to deliver the new arrangements;

60. Around 23% of pupils in schools in Wales are on the SEN register and this has remained reasonably constant over the past few years. However, there have been noticeable increases in pupils being identified with autistic spectrum disorders, general learning difficulties and attention deficit hyperactivity disorder.
61. The Welsh Government commissioned and published two reports: (a) “An assessment of SEN workforce development requirements”, and (b) “Workforce planning for SEN specialist services”. Amongst other issues, the reports noted that:
- There are gaps in staff SEN knowledge and skills, particularly in relation to assessment and differentiation.
 - Initial teacher training may not equip staff with the skills that are needed.
 - Specialist services may need to change their focus from assessment to capacity building.
 - Initiatives such as Flying start and Communities First are increasingly being used to support pupils with SEN
 - Succession management is not strong with little spare capacity across services. Resources have been either frozen or cut despite increasing demand.
 - The ability to provide services through the medium of Welsh is variable.
 - There are different workforce planning frameworks in LA and NHS and neither is particularly effective.
 - Regional solutions, including provision may generate efficiencies and reduce demand on individual service areas.
62. Paragraphs 3.36 to 3.41 of the explanatory memorandum outline the measures taken by Welsh Government to address a majority of the issues identified in the reports. This includes developing a three-tier model to develop the knowledge, understanding and skills for all teaching practitioners. This development is being aligned to wider school improvement and staff development strategies and includes the intention to develop a Masters level qualification for ALNCOs. Estyn welcomes these developments and the bespoke training programmes that raise the awareness of autistic spectrum disorders. However, Estyn understands that local authority commitment to implement such training is variable across Wales.
63. The draft ALN code recognises the importance of adapting teaching methods and resources to the needs of pupils. However, it offers no specific guidance or signposting on how this can be achieved to accommodate the range of additional learning needs that teaching professionals will encounter. Estyn welcomes that

assertion that training and development opportunities for staff need to be identified as part of the provider's planning processes.

64. Other than the creation of two new statutory roles, the Designated Education Clinical Lead Officer (DECLO) and the ALNCo, the draft Bill makes no direct references to capacity of workforce matters. A growing concern of practitioners relates directly to administering the process of IDPs in addition to current workload.

The proposed new arrangements for dispute resolution and avoidance.

65. Estyn welcomes extending of the right of appeal to all learners age 0-25 with ALN. However, it notes that Education Tribunal Wales orders will not apply to LHB or NHS trusts. The Bill maintains the requirement for local authorities to provide independent disagreement resolution. Estyn is of the view that the "independent person" is appropriately trained and qualified.
66. The Bill is unclear regarding independent disagreement resolution for learners in further education. Clarification is needed on whether post-16 learners with IDPs that are not maintained by the local authority will be afforded the same level of service.

Eitem 5.1

Cynulliad Cenedlaethol Cymru
Comisiwn y Cynulliad

National Assembly for Wales
Assembly Commission

DATGANIAD YSGRIFENEDIG

Teitl: Senedd Ieuenctid

Dyddiad: 2 Mawrth 2017

Gan: Elin Jones AC, y Llywydd, fel Cadeirydd Comisiwn y Cynulliad

Mae Comisiwn y Cynulliad yn awyddus i bobl ifanc Cymru hawlio eu llais a chyfrannogi fel dinasyddion cyflawn yn nemocratiaeth Cymru gan helpu liwio ei ddyfodol. Mae'r Cynulliad eisoes ar flaen y gad o ran ymgysylltu â phobl ifanc, ac ar Hydref 19eg 2016 fe bleidleisodd y Cynulliad yn unfrydol i sefydlu senedd ieuenctid. Mae'r gwaith cynllunio ar gyfer y datblygiad cyffrous hwn bellach yn mynd rhagddo.

Bydd y fenter yn adeiladu ar y gwaith da a wnaed gan dîm Addysg ac Ymgysylltu Pobl Ifanc y Cynulliad, sydd â pherthynas hirsefydlog â phlant a phobl ifanc Cymru. Bob blwyddyn, mae dros 20,000 o bobl ifanc yn ymweld â Siambr Hywel—adnodd penodol y Cynulliad ar gyfer pobl ifanc—neu'n cwrdd ag Aelodau'r Cynulliad a'n swyddogion.

Ers hynny, mae'r Cynulliad wedi sefydlu rhaglen gwaith ieuenctid sydd wedi cynnwys dros 200 o grwpiau ieuenctid ac ystod eang o safbwyntiau yng ngwaith y Cynulliad, gan gynnwys y rheini sy'n aml heb lais megis plant mewn gofal, plant anabl a gofalwyr ifanc.

Mae'r Comisiwn a minnau am sicrhau bod y gwaith o ddatblygu Senedd Ieuenctid newydd yn cael ei lywio yn bennaf gan blant a phobl ifanc Cymru, a bod y fenter hefyd yn cael ei chefnogi gan weithwyr proffesiynol sy'n gweithredu yn y sector.

Felly, roeddwn yn falch o gael copi o adroddiad ymgynghori Ymgyrch dros Cynulliad Plant a Phobl Ifanc Cymru (CYPAW), sef Ymgynnull am Gymru:

Adroddiad ar yr Ymgynghoriad Cyhoeddus i Gynulliad Plant a Phobl Ifanc Cymru



Cynulliad Cenedlaethol Cymru
Bae Caerdydd, Caerdydd, CF99 1NA
Cysylltu@cynulliad.cymru
www.cynulliad.cymru
0300 200 6565

National Assembly for Wales
Cardiff Bay, Cardiff, CF99 1NA
Contact@assembly.wales
www.assembly.wales
0300 200 6565

ar 8 Chwefror. Mae'r Ymgyrch dros Cynulliad Plant a Phobl Ifanc Cymru wedi gweithio'n ddiflino i sicrhau bod y mater hwn yn parhau i fod ar agenda'r Cynulliad.

Cafodd argymhellion yr adroddiad eu trafod gan Grŵp Llywio'r Senedd Ieuenctid, sydd newydd gael ei sefydlu gan y Comisiwn ac a gynhaliodd ei gyfarfod cyntaf ar 13 Chwefror. Mae'r grŵp llywio, y bŵm yn ei gadeirio, yn cynnwys cynrychiolwyr o'r cyrff cenedlaethol a ganlyn:

Comisiynydd Plant Cymru; Ieuenctid Cymru; yr Urdd; Plant yng Nghymru; Undeb Cenedlaethol Myfyrwyr Cymru; Arsyllfa Cymru ar Hawliau Dynol Plant a Phobl Ifanc; Cyngor Cymreig Gwasanaethau Ieuenctid Cymru (CWVYS); Sgowntiaid Cymru; Geidiaid Cymru; Ffermwyr Ifanc Cymru; Cadeirydd Grŵp Prif Swyddogion Ieuenctid Cymru; CYPAW; a Laura Elliott, cynrychiolydd y Cynulliad yn 8fed Senedd Ieuenctid y Gymanwlad yng Nghanada.

Rwyf wrth fy modd bod ystod mor eang o sefydliadau â chymaint o brofiad wedi cytuno i weithio gyda ni ar y prosiect hwn. Byddwn yn parhau i ddatblygu ein model ar gyfer y Senedd Ieuenctid dros yr wythnosau nesaf, ac rydym yn bwriadu lansio ymgynghoriad cyhoeddus llawn gyda phlant a phobl ifanc yng Nghymru yn dilyn toriad y Pasg.

Bydd cyfarfod nesaf y Grŵp Llywio yn cael ei gynnal ar 13 Mawrth. Bydd yn cynnwys cynrychiolwyr Ieuenctid o'r sefydliadau partner a nodir uchod. Bydd y Grŵp Llywio yn rhoi cyngor ar themâu, fformat a dulliau gweithredu'r ymgynghoriad.





Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA – P/KS/0349/17
Lynne Neagle AC
Cadeirydd – Pwyllgor Plant, Pobl Ifanc ac Addysg
Cynulliad Cenedlaethol Cymru
Ty Hywel
Bae Caerdydd
Caerdydd
CF99 1NA

lynne.neagle@assembly.wales

27 Chwefror 2017

Annwyl Lynne,

Diolch am eich llythyr dyddiedig 24 Ionawr 2017 ynghylch y cynllun FyNgherdynTeithio.

Rwy'n parhau i fod yn awyddus i adeiladu ar lwyddiant y cynllun, sy'n gynllun peilot sy'n cael ei ariannu rhwng Medi 2015 a Mawrth 2017.

Gofynnais felly i Gydffederasiwn Cludiant Teithwyr Cymru – sy'n cynrychioli'r diwydiant bysiau –ychydig yn ôl am gynnig manwl am gynllun etifeddol fforddiadwy o'r 1 Ebrill 2017. Heb hynny, rwyf wedi ystyried amrywiol opsiynau a ddatblygwyd gan swyddogion.

Mae'r posibilïadau am gynllun etifeddol fforddiadwy wedi cael eu trafod ers hynny gyda'r Cydffederasiwn a chynrychiolwyr yr awdurdodau lleol. Roedd y trafodaethau yn galonogol, ac fe welwch o'm cyhoeddiad ar 21 Chwefror y bydd y trefniadau presennol i bobl ifanc 16, 17 ac 18 oed deithio'n rhatach ar fysiau yn parhau i fod ar gael o 1 Ebrill 2017. Rwyf hefyd wedi gofyn i'r Cydffederasiwn Cludiant Teithwyr wneud cynigion ar gyfer ymgyrch farchnata newydd. Ni fydd unrhyw berson ifanc rhwng 16 ac 18 mlwydd oed sy'n parhau i fod yn gymwys yn gweld unrhyw wahaniaeth.

Yn yr hirdymor, rwy'n bwriadu lansio Pas Teithio i Bobl Ifanc o 2018. Byddaf yn cynnal ymgynghoriad am yr hyn rwy'n gobeithio fydd yn gynllun deniadol a fforddiadwy fydd yn cefnogi pobl ifanc gyda'u bywydau, eu gwaith a'u hastudiaethau, ac ar yr un pryd, eu hannog i newid eu ffordd o deithio.

Cofion gorau,

Ken Skates AC/AM

Ysgrifennydd y Cabinet dros yr Economi a'r Seilwaith
Cabinet Secretary for Economy and Infrastructure

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Gohebiaeth.Ken.Skates@llyw.cymru
Correspondence.Ken.Skates@gov.wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

3 Mawrth 2017

Datblygiad Proffesiynol Parhaus ar gyfer Pwyllgorau

Annwyl Gadeiryddion

Un o'r eitemau a oedd ar yr agenda yn Fforwm y Cadeiryddion ar 7 Rhagfyr oedd y cymorth Datblygiad Proffesiynol Parhaus (DPP) sydd ar waith i helpu Pwyllgorau a Chadeiryddion, sy'n cynnwys sesiynau cynllunio strategol a gynhaliwyd gan bob Pwyllgor yn ystod yr hydref, technegau holi a hyfforddiant i Gadeiryddion.

Yn y cyfarfod roedd Cadeiryddion yn awyddus bod rhagor o gymorth o ran gofyn cwestiynau a chasglu tystiolaeth ar gael i Aelodau, i sicrhau bod amser a dreulir yn holi tystion mewn pwyllgorau mor effeithiol â phosibl. Gellir darparu cymorth o'r fath drwy bwyllgorau. Fel arall, gallai Aelodau ddewis mynd i gyfres o ddsbarthiadau meistr ar holi. Cynhelir y dosbarth cyntaf ar **9 Mawrth 12.30 – 13.30**. Yn dilyn y dosbarthiadau meistr bydd cymorthfeydd un-i-un er mwyn cael cyngor personol.

Trafododd Cadeiryddion brofiad y Pwyllgor Cyfrifon Cyhoeddus, a gafodd adborth ar sesiynau craffu a gynhaliwyd ers cael cymorth ar holi. Gwnaeth Cadeiryddion gais i ragor o wybodaeth gael ei rhannu yn ysgrifenedig.

Profiad y Pwyllgor Cyfrifon Cyhoeddus

Ar ddechrau mis Medi 2016, cynhaliodd y Pwyllgor Cyfrifon Cyhoeddus sesiwn strategaeth gyda Kate Faragher o Bespoke Skills. Cafodd y sesiwn ei chynllunio gan dîm integredig y Pwyllgor, y tîm DPP ac ein hwylusydd allanol, gan ystyried anghenion a dewisiadau y Pwyllgor. Trafododd y Pwyllgor:

- dulliau o weithio
- diben
- etifeddiaeth bosibl



- cyfathrebu; a
- thechnegau holi.

Cytunodd y Pwyllgor i gynnal sesiwn ddilynol i fonitro'r gwaith o weithredu'r camau y cytunwyd arnynt yn y sesiwn. Cynhaliwyd yr adolygiad hwnnw ym mis Tachwedd 2016 gan ddefnyddio clipiau o'r Pwyllgor mewn sesiwn i ddarparu adborth penodol ar dechnegau holi. Cyflwynwyd technegau holi ychwanegol hefyd.

Yn ôl yr adborth, roedd Aelodau yn teimlo bod y sesiwn yn heriol ond yn ddefnyddiol iawn. Gofynnwyd am sesiynau dilynol pellach, i'w darparu yn rheolaidd er mwyn helpu'r Pwyllgor i gyfuno arfer gorau a nodwyd yn eu gwaith, ac i barhau i geisio anelu at ragoriaeth yn eu rôl craffu. Mae sawl Pwyllgor arall wedi achub ar y cyfle i adeiladu a myfyrio ar eu trafodaethau yn ystod eu sesiynau cynllunio strategol, gan integreiddio hyn i'w ffyrdd o weithio yn y dyfodol.

Cymorth pwrpasol

Mae gennym fynediad at ystod o arbenigwyr a all gynnig amrywiaeth eang o gymorth yn unol â gofynion y Cadeirydd a'r Pwyllgor:

- Dull Strategol y Pwyllgor: nodi diben a methodoleg
- Casglu Tystiolaeth: canfod y bwloch gwybodaeth a chanfod a phwyso'r ffeithiau neu'r safbwyntiau allweddol
- Holi: cael y gorau allan o dystion, gofyn y cwestiynau iawn a chael yr atebion sydd eu hangen arnoch
- Craffu Deddfwriaethol: o'r cyffredinol i'r penodol, egwyddorion i weithdrefn, cymorth pwrpasol yn dibynnu ar y Bil a phrofiad a dewisiadau'r Pwyllgor.

Mae'r cymorth sy'n cael ei ddarparu wedi'i gynllunio i ddiwallu anghenion a dewisiadau pob Pwyllgor. Er enghraifft, fel rhan o'r rhaglen hon, cafodd y Pwyllgor Cyllid sesiwn friffio ar Fil Treth Dirlenwi (Cymru) gan Daniel Greenberg, cyfreithiwr yn arbenigo mewn deddfwriaeth gyda phrofiad drafftio helaeth. Cynhaliodd y Pwyllgor Deisebau sesiwn ar strategaeth y cyfryngau ac mae rhai Cadeiryddion Pwyllgorau wedi cael hyfforddiant ar effaith bersonol, presenoldeb yn y cyfryngau a chyflwyno areithiau.



Mae swyddogion yn gweithio'n agos gyda chyflenwyr i sicrhau eu bod yn deall cyd-destun gwleidyddol Cymru, profiad y Pwyllgor a ffyrdd o weithio cyn datblygu opsiynau i'r Cadeirydd a'r pwyllgor ehangach i'w hystyried. Darperir yr hyfforddiant mewn ffordd ac amser sy'n addas i'r Pwyllgor.

Os hoffech gael rhagor o wybodaeth am y cymorth y gellid ei ddarparu i'ch Pwyllgor, cysylltwch â'ch Clerc, neu gyda mi ar 0300 200 6332.

Yn gywir

Abigail Phillips

Rheolwr Prosiect Datblygiad Proffesiynol

Cc: Jayne Bryant AC, Russell George AC, John Griffiths AC, Mike Hedges AC, Huw Irranca-Davies AC, Bethan Jenkins AC, Dai Lloyd AC, Lynne Neagle AC, Nick Ramsay AC, Mark Reckless AC, David Rees AC, Simon Thomas AC

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

