

Cynulliad Cenedlaethol Cymru | National Assembly for Wales
Y Pwyllgor Plant, Pobl Ifanc ac Addysg | Children, Young People and
Education Committee
Bil Anghenion Dysgu Ychwanegol a'r Tribiwnlys Addysg (Cymru)|
Additional Learning Needs and Education Tribunal (Wales) Bill

ALN 04

Ymateb gan | Response from: The National Association of Independent
Schools and Non-Maintained Special Schools (NASS)

Introduction

The National Association of Independent Schools and Non-Maintained Special Schools (NASS) is a membership organisation for special schools which cater for over 10,000 very vulnerable children and young people. It provides information, support and training to its members in order to benefit and advance the education of children and young people with SEND.

NASS is the only national organisation representing special schools in the voluntary and private sectors. NASS works in partnership with key national and regional organisations and acts as the voice for Non-Maintained and Independent Special Schools (NMIS). NASS has 288 members, with seven located in Wales. NMIS cater for around 13,000 of the most vulnerable children in the UK, with wide ranging but complex needs. Over 99 per cent of places in NMIS are funded indirectly by the public purse, through Local Authorities (LA) making placements.

The Additional Learning Needs and Education Tribunal (Wales) Bill

We broadly approve of the Bill's general principles. The move to an integrated system supporting children and young people (CYP) to the age of 25 is particularly welcome. We are also satisfied that the language contained within the Bill presents a clear outline of the duties and responsibilities of schools, FE institutions, local authorities and Local Health Boards/NHS Trusts with regards to the preparation, execution and review of IDPs.

NASS also notes that since the publication of the draft Bill, the Bill has been modified to include measures supporting looked after children. Whilst we recognise that overall policy intent has not changed, we support the use of primary legislation to clearly codify the responsibilities of those tasked with supporting looked after children with ALN in the wider context of the planned reforms. The high proportion of looked after children with ALN

means that integration of the support provided to them is vital to ensure efficient delivery.

However, we remain concerned about certain provisions which we believe will act as a barrier to full implementation. We wish to both highlight these issues and note some of our experiences of the SEND provisions of the *Children and Families Act 2014* – legislation that was designed to perform a similar task to this Bill in England.

The role of independent provisions

As an association for schools outside of LA control, we are concerned that the Bill does not set out registered independent provision as being covered by the Code of Practice. This is a significant departure from other UK legislation and we believe this must be covered. It is also unhelpful not to include independent schools in the section on different types of provision and their role in IDPs. In English legislation, there has been recognition of the role of independent provision within the ‘continuum of provision’ and this is reflected across the *Children and Families Act 2014* and secondary legislation. We think it is unhelpful to deal with independent provision in the Act as separate to all other types of provision. We are extremely disappointed to see the choice of independent provision appearing to rest solely with the LA, rather than being an actively supported parental choice. We are keen to see further details on how schools are registered to appear on the list of independent provision that might be considered for a child.

Additionally, NASS is concerned by the provision within the Bill that abolishes the power of Welsh Ministers to approve the creation of non-maintained special schools (NMSS) in Wales. Although we are aware that there are currently no NMSS in Wales, removing the ability of ministers to approve their opening appears to limit the scope for new provisions to be created at a time of increasing demand. Many Welsh authorities purchase placements from English NMSS and it is unclear why it was felt necessary to make this change.

Cross-border issues

Many Welsh children and young people – particularly those with low-incidence, high-needs support requirements – attend schools across the border in England. NASS supports the revised Bill's clarification of the responsibilities of local authorities in England and Wales with respect to placing children in each other's countries. NASS is also in favour of the provision of the Bill which allows Welsh local authorities to place pupils in schools in England if the school in question is registered as an independent school in England (and the local authority is satisfied that the institution can make the ALP described in the person's IDP).

We are aware that Welsh officials are working with their English counterparts to produce guidance to support Welsh children and young people who attend an education institution in England, and that the Code of Practice will provide further practical information. As noted above, the treatment of independent provisions as separate from other forms of support is counterproductive, and this issue is likely to be made worse when these schools are located in England. NASS wishes to see placements at these schools made available with minimal additional bureaucracy in order to best support parental choice and outcomes for young people with ALN.

We also have concerns surrounding the registration arrangements for post-16 institutions. Unlike schools, the Bill requires these bodies to register with the Welsh Government as well as the relevant UK authorities and, presumably, abide by a second set of regulations that this Bill makes provisions for. This represents an administrative burden that we believe is unnecessary, given that such institutions are already approved under section 41 of the *Children and Families Act 2014*. By holding post-16 independent specialist colleges in England to a different standard to independent special schools, the Bill is undermining the intent to create a fully integrated 0-25 system.

Individual Development Plans

As an organisation that supports children during their transition to adult services, NASS is in favour of the unification of the system of assessing CYP and providing them with an Individual Development Plan (IDPs) up to the age of 25. We believe this will create the potential for a greater degree of

continuity in providing appropriate support as young people move into adulthood, and ultimately lead to better outcomes for disabled adults.

We are also satisfied that the language contained within the draft Bill presents a broadly clear outline of the duties and responsibilities of schools, Further Education (FE) institutions, LAs and Local Health Boards/NHS Trusts with regards to the preparation, execution and review of IDPs. However, our experience in England of the transition from statements of SEND to Education, Health and Care Plans (EHCP) illustrates that LAs often lack the resources to support both the transition to and sustainment of the new, more comprehensive system. In practice, the responsibility for managing transitions has fallen mainly to schools. We would also note that the vast majority of EHCPs are focused only on a child's education, as opposed to wider needs.

NASS welcomes the clear legal responsibilities for the delivery of services for children and young people with ALN set out in the draft Code. We would strongly support the incorporation of this approach into the final ALN Code. However, adequate resources must also be provided to ensure that legal responsibilities are deliverable on a practical level. The lack of staff resource in LAs, schools, colleges, and health and care teams to coordinate, contribute to and deliver the support in EHC Plans has been a major stumbling block in implementing the new English SEND system. For example, our experience in England leaves us unsure whether it will be possible to field sufficient numbers of suitably qualified ALN Coordinators (ALNCOs) in an acceptable timeframe.

It is vital that adequate resources are allocated for these sound theoretical plans to be transformed into tangible results.

Child and parental preference

We are concerned that the language in the Bill relating to how CYP participate in the formulation and review of their IDP is not sufficiently robust. Every effort must be made to ensure that the Bill and its accompanying Code of Practice make clear the requirement to facilitate the participation of CYP in the formulation and review of their IDPs. This must include granting the ability of CYP (and their parents/carers) to – where

necessary – offer input into decisions regarding which school or other institution the CYP will attend.

Our experience with EHCPs in England has shown that it is very rare for our members to see evidence of the LA engaging with the child's views and preferences, then promoting them in the EHCP transfer process. We see engagement as essential in helping young people to progress, both within school and when they make a transition to further/higher education or work. Many of the young people attending our schools will require care and support as adults, and there have been specific challenges in planning transition for these young people in the absence of LA engagement and the subsequent lack of linkage between childrens' and adults' services.

Conclusion

The *Additional Learning Needs and Education Tribunal (Wales) Bill* will shape the SEND provisions in Wales for decades to come, and will have a significant impact on the lives of thousands of the country's most vulnerable people. Removing choice from families about which school best meets their child's needs seems a regressive step, and as such we are keen for the committee to look at this part of the legislation again. It is imperative that the Bill is subject to the highest standard of scrutiny, and that the lessons of similar reforms in England are taken into account in its legislative passage and practical implementation.