

Distribution Sub-Group (2018) Paper 17 – Post-16 LDD Specialist Placements

This discussion paper has been written by officials of the Welsh Government. Ministers have not had an opportunity to comment on the contents. Exemplifications of changes are provided simply to inform discussion by DSG members. They are not Welsh Government proposals or statements of Government policy for or against changes.

Post-16 Specialist Placements for young people with additional learning needs

Summary

1. The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (*“the ALN Act”*) makes provision for a new statutory framework for supporting children and young people with additional learning needs (ALN). This replaces existing legislation surrounding special educational needs (SEN) in schools and the assessment of children and young people with learning difficulties and/or disabilities (LDD) in post-16 education and training. The ALN Act gained Royal Assent on 24 January 2018 and it is intended that implementation will begin in September 2020, over a three year period to summer 2023.
2. As a result of the ALN Act, the current legal duty on Welsh Ministers to secure specialist post-16 educational provision for young people with LDD will transfer to local authorities. Along with this transfer of responsibility will be the transfer of funding to support local authorities to deliver their duties.
3. This paper provides background information on the Welsh Government’s consideration of the provision and planning arrangements for young people with ALN in further education (FE). It gives consideration to the distributional issues associated with inclusion within the settlement of funding for post-16 LDD specialist placements on transfer of the responsibility from Welsh Ministers to local authorities.

Views sought

4. Members are asked to provide their thoughts on the distributional implications of the possible transfer and to consider how best to take this work forward, in preparation for the proposed implementation of the ALN Act from September 2020.

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Background

Current legislative position

5. The legislation relating to young people in FE with LDD is included in the Learning and Skills Act 2000 (“the 2000 Act”). Welsh Ministers currently have a general duty under sections 31 and 32 of the 2000 Act to secure ‘proper provision’ for the education and training of young people aged between 16 and 19, and ‘reasonable facilities’ for those over the age of 19. The 2000 Act also requires Welsh Ministers to secure the provision of boarding accommodation for young people with LDD if they cannot otherwise secure provision of facilities for education and training which are sufficient in quantity and adequate in quality for 16 to 19 year olds or reasonable facilities for those aged 19 to 25.
6. Section 140 of the 2000 Act places a duty on Welsh Ministers to make arrangements for the assessment of young people who have statements of SEN, where they are likely to leave school at the end of the last year of compulsory schooling and go on to receive post-16 education or training. It also gives the Welsh Ministers a power to do so in relation to those up to 25 who do not have a statement of SEN but who have a learning difficulty.

Additional Learning Needs and Education Tribunal (Wales) Act 2018

7. The Additional Learning Needs and Education Tribunal (Wales) Bill was introduced into the National Assembly for Wales on the 12 December 2016. Following a year long scrutiny by the Assembly and three of its committees (Children, Young People and Education; Finance; and Constitutional and Legislative Affairs), the Bill was unanimously passed in December 2017. It received Royal Assent on 24 January 2018 to become an Act of law. The ALN Act has three overarching objectives:
 - 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 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.
8. In order to achieve these objectives, 11 core aims have been established, within which the ALN Act’s provisions have been developed. These are outlined in annex C.
9. Provisions within the ALN Act will result in the following in relation to post-16 LDD specialist placements:
 - Where young people have a local authority maintained Individual Development Plan (IDP), responsibility for assessing need and securing post-16 specialist provision will be transferred to local authorities. The existing budget used by Welsh Ministers to plan and secure specialist post-16 provision will be transferred to local authorities when they take on these responsibilities; and
 - Welsh Ministers will be required to maintain, and publish, a list of independent specialist post-16 institutions (often currently referred to as specialist FE establishments). Section 56 of the ALN Act defines what an independent specialist post-16 institution is. It also prohibits local authorities from securing

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placements at these institutions unless they are on the list of independent specialist post-16 institutions as prescribed by in regulations.

10. Transferring responsibility to local authorities for securing post-16 specialist placements will enable local authority education departments and local authority social services departments to collaborate when negotiating the development of, and cost of, provision. In this way, the local authority is better positioned than Welsh Government officials to encourage the development of local packages of support. Local authorities are also better placed to understand the needs of learners for whom they are responsible who are entering into post-16 education.
11. In addition, taking on a direct role will allow the local authority to work with local FEIs in developing local provision for young people with complex needs. This has potential to reduce out-of-county placements and to make associated savings. Young people and their families would benefit from the option of having local provision.
12. The Welsh Ministers' list of independent specialist post-16 institutions will provide assurance to local authorities and to young people regarding the standards of provision available at these settings. The proposals for the criteria and requirements for inclusion on the list are currently being considered by Welsh Government officials, and will be subject to consultation later this year.

Timing and transition

13. In summer 2017 the Welsh Government issued a public consultation on the options for implementation of the ALN Bill. The consultation revealed strong support for mandating a phased approach towards implementing the new system. Following consideration of feedback to the consultation, the Cabinet Secretary for Education announced her intention that implementation of the new ALN system will go live from September 2020. The implementation period will run for 3 academic years, ending in July 2023.
14. Later this year, the Welsh Government intends to consult on the ALN Code (the statutory code that provides a set of legally enforceable parameters within which local authorities and others must act) and some of the regulations as a consequence of the ALN Act (including the list of independent specialist post-16 institutions).
15. Welsh Government officials are currently undertaking detailed work to identify the steps required for local authorities to deliver post-16 specialist placements. The aim of this study is to outline the timelines, critical dates and risks and dependencies associated with for the transfer of post-16 specialist placements funding.
16. This scoping work will inform considerations about for the timetable for transferring these responsibilities to local authorities. Decisions will also need to be taken about the arrangements for ongoing funding of those learners part-way through a placement at the time of the transfer of responsibilities to local authorities.
17. Welsh Government officials are keen to work with the DSG to ensure their views inform our considerations.

Policy history

18. The National Assembly for Wales has considered issues and concerns in relation to the provision and planning arrangements for young people with ALN in FE on a

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number of occasions, each time making the case for significant change. Details of the policy history can be found in annex A.

Current post-16 specialist placements process

19. The SEN Code of Practice for Wales¹ sets out the current transition process for pupils with SEN.
20. In the individual's final year of school, using the information arising from the transition process, Careers Wales will compile an assessment of the young person's needs and identify suitable provision available to meet those needs (known as the Learning and Skills Plan). Careers Wales do this assessment on behalf of Welsh Ministers under Section 140 of the Learning and Skills Act 2000.
21. Where an assessment identifies a need for provision at a specialist FE establishment, the assessment is submitted to the Welsh Government with an application form and supporting evidence. In order to secure funding, an application must demonstrate, through robust evidence that specialist provision is essential to enable the young person to participate in post-16 education. This necessitates full and prior consideration of all local options.
22. The Welsh Government does not act alone in securing specialist provision for young people with learning difficulties. It takes account of evidence from a range of agencies involved in meeting the young person's needs. In circumstances where there are medical, domestic or social care reasons leading to a recommendation for a placement at a specialist FE establishment, the Welsh Government will look to the appropriate agency to enter into an arrangement for joint funding.
23. The full cost of a placement can vary according to individual support requirements and ranges between c£4,095 to c£198,000² per year.

Review of Specialist Placements Process

24. In September 2015, the Welsh Government issued a policy document '*securing provision for young people with learning difficulties*' setting out the post-16 specialist placements policy. However, there have been challenges regarding the Welsh Government's expectations linked to requests for extensions to existing programmes of study and determination of whether a 2 or 3 year programmes of study is required for new applicants.
25. Subsequently, in 2016 a review of policy and practice was undertaken to examine existing systems and identify changes and improvements to the efficiency and effectiveness of the processes that support Welsh Ministers decisions. The review highlighted a number of concerns, including a significant deviation over time to the stated Welsh Government policy, resulting in the majority of programmes being funded for 3 years rather than it being an exceptional occurrence. The review report was published in September 2016.
26. Action has been taken forward to address the review recommendations, including strengthening the existing policy document, introducing a new non-statutory appeals mechanism, and developing technical guidance for Careers Wales and specialist FE

¹ <http://learning.gov.wales/docs/learningwales/publications/131016-sen-code-of-practice-for-wales-en.pdf>

² Based on funding agreed for new programmes of study in 2017/18.

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establishment on Welsh Government's expectations of their respective roles and responsibilities within the Section 140 assessment and any subsequent placement at a specialist FE establishment. The revised policy document and the technical guidance documents for Carers Wales and specialist FE establishments published in 2017³

Statistics

27. The table in Annex B shows the related activity Careers Wales undertook for the financial year 2016/17
28. The majority of young people with learning difficulties currently have their education and training needs met through colleges in the mainstream further education (FE) sector in Wales. This equates to approximately 13,390 young people⁴ currently accessing mainstream FEIs.
29. The Welsh Government secures provision for a significantly smaller number of young people than those supported through mainstream settings. In 2017/18 there were currently 291⁵ young people funded by the Welsh Government. Of this total:
 - 193 young people attend 8 specialist FE establishments in Wales;
 - 98 young people attend 16 specialist FE establishments in England.
30. For the financial year 2018/19, the Welsh Government budget for funding post-16 specialist placements is £12.481m.

Analysis

31. There are approximately 100 applications for funding specialist placements per year and approximately 300 currently funded learners at any time. Given the small numbers of learners involved, it is difficult to use historical data to predict a pattern or trend in numbers per local authority as it is a demand-led budget.
32. Consideration for a funding formula which looks at learner numbers in a local authority or a pre-existing formula rather than historical numbers of placements numbers alone will likely be a more reliable predictor of future demand.

Conclusion

33. Members are asked to provide their thoughts on the distributional implications of the possible transfer and to consider how best to take this work forward.

³ <https://gov.wales/topics/educationandskills/schoolshome/additional-learning-special-educational-needs/transformation-programme/supporting-policy/post-16-funding-for-learning-difficulties-at-specialist-colleges/?lang=en>

⁴ <https://stats.wales.gov.wales/Catalogue/Education-and-Skills/Post-16-Education-and-Training/Further-Education-and-Work-Based-Learning/Learners/Further-Education/uniquelearnersenrolledfurthereducationinstitutions-by-primarydisability-gender>

⁵ Based on Welsh Government figures for 2016/17

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**Local Government Finance & Performance
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Annex A

Policy history

The National Assembly for Wales has considered issues and concerns in relation to the provision and planning arrangements for young people with additional learning needs (ALN) in further education (FE) on a number of occasions, each time making the case for significant change. For example:

- a. Part 3 of the Education, Lifelong Learning and Skills Committee Policy Review of Special Education Needs (SEN), which reported in March 2007, highlighted concerns around transition planning, limited opportunities and lack of information about options and the need for better liaison between schools and FE institutions (FEIs). It also reported that the system was overly complex and bureaucratic and was not sufficiently focussed on the young person.
- b. In 2009 the Enterprise and Learning Committee considered two petitions in relation to young people (post-19) with ALN. Amongst their findings was a statement that “there is a convincing body of evidence on the need for transition planning to happen earlier than currently appears to be the case in most instances” and a recommendation relating to the need to make and communicate decisions regarding funding far earlier than often happens.
- c. In 2010 a Ministerial Task and Finish Group was set up to consider options in relation to the following areas:
 - establishing an improved and unified system of transition to educational provision in school or FE for young people with ALN above the age of 16;
 - achieving better value for money in expenditure on post-16 education for young people with ALN, specifically against the context of financial challenge over next 3 years;
 - sharing more widely expertise that is currently in special schools and FEIs in providing for ALN post-16;
 - use of out of county and out of country placements.

The group reached a general consensus very early on in discussions that the present system could not continue and that the separation of the funding and management decisions was not sustainable. Some of the key issues identified included the need for consistency of approach across Wales; to be clear on the definitions of need; to ensure that schools and FEIs worked together in a collaborative way post-16; and to ensure there was a value for money approach taken in the commissioning process. Ultimately it was a clear message from the group that a young person could achieve benefits if better planning of provision took place, including an increase in options available at a local level. However, it was also clear that, for a few young people, specialist placements will remain the right option.

- d. Provisions relating to the assessment of the educational and training needs for young person with learning difficulties and/or disabilities (LDD), and specialist FE placements were included within the Education (Wales) Bill. However, in response to calls from the then National Assembly’s Children and Young People’s Committee to consider all SEN provisions in a single legislative vehicle, the provisions were removed from the Bill during Stage 2 proceedings in January 2014. At this time the previous Minister for Education and Skills announced that they would be brought forward in a separate Bill dealing with the full range of provisions relating to ALN.

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Drawing on the outcome of previous consultations and stakeholder engagement events, the Welsh Government published for consultation in May 2014, a White Paper entitled *Legislative Proposals for Additional Learning Needs*⁶. A summary of responses to the consultation was published in October 2014.

In July 2015, the former Minister for Education and Skills took the decision to publish a draft of the Additional Learning Needs and Education Tribunal (Wales) Bill for consultation. The draft Bill built upon the White Paper *Legislative Proposals for Additional Learning Needs*. However, in addition to providing the legislative detail of how the proposals set out in the White Paper might be realised, the draft Bill also included some new provisions. In particular, it set out new provisions that have the potential to significantly improve multi-agency working around the planning and delivery of provision for young people with ALN, especially across the education and health sectors.

The Additional Learning Needs and Educational Tribunal (Wales) Bill⁷ was introduced into the National Assembly for Wales on the 12 December 2016. The Bill included provisions intended to address many of the recommendations set out by the Task and Finish group and the various Committee reports before it, as well as address the views of stakeholders arising from Welsh Government's previous consultations and engagement events.

The Additional Learning Needs and Educational Tribunal (Wales) Act 2018 became an act of law on 24 January 2018. Implementation of the ALN Act will commence from September 2020.

⁶ <http://gov.wales/consultations/education/proposals-for-additional-learning-needs-white-paper/?skip=1&lang=en>

⁷ <http://senedd.assembly.wales/mglIssueHistoryHome.aspx?lId=16496>

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Annex B

Related activity undertaken by Careers Wales, financial year 2016/17

Transition/Annual Reviews attended with pupils with statements of SEN	3173
Transition/Annual Reviews attended with non- statemented pupils	478
Number of reports prepared for Transitional/Annual reviews attended with statements of SEN	1540
Number of reports prepared for Transitional/Annual reviews attended with non-statemented pupils	202
Learning and Skills plans for pupils with statements of SEN	1021
Learning and Skills plans for pupils with equivalent needs undergoing a TR process	157

The 11 aims of the ALN Act

1. The introduction of the term ‘additional learning needs (ALN)’

The ALN Act replaces the terms ‘special educational needs (SEN)’ and ‘learning difficulties and/or disabilities (LDD)’ with the new term ‘additional learning needs (ALN)’.

2. A 0 to 25 age range

There will be a single legislative system relating to the support given to children and young people aged between 0 to 25 years who have ALN. This is instead of the two separate systems currently operating to support children and young people of compulsory school age who have SEN, and young people in further education who have LDD.

3. A unified plan

The ALN Act creates a single statutory plan (the individual development plan (IDP)) to replace the existing variety of statutory and non-statutory SEN or LDD plans for learners in schools and further education.

4. Increased participation of children and young people

The ALN Act requires that learners’ views should always be considered as part of the planning process, along with those of their parents/carers. It is imperative that children and young people see the planning process as something which is done with them rather than to them.

5. High aspirations and improved outcomes

The emphasis of IDPs will be on making provision that delivers tangible outcomes that contribute in a meaningful way to the child or young person’s achievement of their full potential.

6. A simpler and less adversarial system

The process of producing and revising an IDP should be much simpler than is currently the case with statements of SEN.

7. Increased collaboration

The new system encourages improved collaboration and information sharing between agencies, which are essential to ensuring that needs are identified early and the right support is put in place to enable children and young people to achieve positive outcomes.

8. Avoiding disagreements and earlier disagreement resolution

The new system focuses on ensuring that where disagreements occur about an IDP or the provision it contains, the matter is considered and resolved at the most local level possible.

9. Clear and consistent rights of appeal

Where disagreements about the contents of an IDP cannot be resolved at the local level, the ALN Act ensures that children and young people entitled to an IDP (and their parents/carers in the case of those that are under 16 years) have a right of appeal to a tribunal.

10. The ALN Code

The ALN Code will provide a set of clear, legally enforceable parameters within which local authorities and those other organisations responsible for the delivery of services for children and young people with ALN, must act.

11. A bilingual system

The ALN Act requires that services must consider whether a child or young person needs additional learning provision in Welsh. If they do, this must be documented in the IDP