



Llywodraeth Cymru
Welsh Government

ADDITIONAL LEARNING NEEDS AND EDUCATION TRIBUNAL (WALES) ACT

Explanatory Memorandum
Incorporating the Regulatory Impact Assessment
and Explanatory Notes

January 2018

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PART 1 – EXPLANATORY MEMORANDUM

1. Description

- 1.1 The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (The 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) and the assessment of children and young people with learning difficulties and/or disabilities (LDD) in post-16 education and training. The Act also continues the existence of the Special Educational Needs Tribunal for Wales, which provides for children, their parents and young people to appeal against decisions made by the local authority in relation to their or their child's ALN, but renames it the Education Tribunal for Wales.

2. Legislative competence

- 2.1 The National Assembly for Wales ('the National Assembly') has the legislative competence to make the provisions in the Additional Learning Needs and Education Tribunal (Wales) Act ('the Act') pursuant to Part 4 of the Government of Wales Act 2006 ('GoWA 2006'). The relevant provisions of GoWA 2006 are set out in section 108 and Schedule 7.
- 2.2 Paragraphs 5, 9 and 15 of Schedule 7 set out the following subjects on which the Assembly may legislate.

Education and training

5. Education, vocational, social and physical training and the careers service. Promotion of advancement and application of knowledge.

*Exception—
Research Councils*

Health and health services

9. *Promotion of health. Prevention, treatment and alleviation of disease, illness, injury, disability and mental disorder. Control of disease. Family planning. Provision of health services, including medical, dental, ophthalmic, pharmaceutical and ancillary services and facilities. Clinical governance and standards of health care. Organisation and funding of national health service.*

Exceptions—

Abortion.

Human genetics, human fertilisation, human embryology, surrogacy arrangements.

Xenotransplantation.

Regulation of health professionals (including persons dispensing hearing aids).

Poisons.

Misuse of and dealing in drugs.

Human medicines and medicinal products, including authorisations for use and regulation of prices.

Standards for, and testing of, biological substances (that is, substances the purity or potency of which cannot be adequately tested by chemical means).

Vaccine damage payments.

Welfare foods.

. . . Health and Safety Executive and Employment Medical Advisory Service and provision made by health and safety regulations.

Social welfare

15. *Social welfare including social services. Protection and well-being of children (including adoption and fostering) [and of young adults]. Care of [children,] young adults, vulnerable persons and older persons, including care standards. Badges for display on motor vehicles used by disabled persons.*

Exceptions—

Child support.

[Child trust funds, apart from subscriptions to such funds by—

(a) a county council or county borough council in Wales, or

(b) the Welsh Ministers.]

Tax credits.

Child benefit and guardian's allowance.

Social security.

[Independent Living Funds.

Motability.]

Intercountry adoption, apart from adoption agencies and their functions, and functions of “the Central Authority” under the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption.

The Children's Commissioner (established under the Children Act 2004 (c 31)).

Family law and proceedings, apart from—

(a) [welfare advice] to courts, representation and provision of information, advice and other support to children ordinarily resident in Wales and their families, and

(b) Welsh family proceedings officers.

3. Purpose and intended effect of the legislation

- 3.1 The current legislative framework for supporting children and young people with special educational needs (SEN) and learning difficulties and/or disabilities (LDD), is based on a model introduced more than 30 years ago and is no longer fit for purpose. A series of enquiries and reviews of SEN provision in Wales by Estyn, the Wales Audit Office and the National Assembly's former Education, Lifelong Learning and Skills Committee have highlighted that the current system is complex, bewildering and adversarial. The evidence points to an assessment process that is inefficient, bureaucratic and costly, as well as being insufficiently child-centred and user-friendly. Needs are sometimes identified late and interventions are not planned or implemented in a timely or effective way. Families say they feel they have to battle at each stage of the process to get the right support for their child, and that they do not know where to turn for advice and information.
- 3.2 The White Paper Legislative Proposals for Additional Learning Needs,¹ published in May 2014, set out the rationale behind the Welsh Government's proposals for legislative change in order to address the weaknesses in the current system. These weaknesses include:
- The current terminology stigmatises children and young people and is associated with a system that needs fundamental reform.
 - There is an unclear divide between those requiring statements of SEN and those who do not.
 - The existing SEN Code of Practice is not always applied rigorously or is interpreted differently by different local authorities.
 - It is unfair that the provision necessary to address more complex needs is protected through the issuing of a statement but the provision required to address less complex needs is not statutorily protected.
 - Trust between parents and local authorities or schools, is often undermined and this leads to dispute.

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

- It is difficult to adopt a flexible approach to the delivery of special educational provision.
- The current arrangements for children and young people with LDD potentially disrupt their smooth transition between school and post-16 education and may make the system of post-16 provision less efficient than it should be.
- Some parents and families feel excluded from the processes around statements of SEN, which they see as impenetrable, bureaucratic and inefficient.
- Parents also say that even when their child has a statement, if their needs change, or if a condition worsens or improves, the system can be too slow to adapt.
- For looked after children, the SEN statutory assessment is just one of many assessments, and the separate processes are not well integrated.
- The current arrangements for disagreement resolution are insufficiently robust to ensure that disagreements are resolved quickly or avoided altogether.

3.3 The Act creates:

- 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.

3.4 In order to achieve these three overarching objectives, eleven core aims have been established, within which the Act's provisions have been developed.

3.5 ***The introduction of the term Additional Learning Needs (ALN):*** The Act replaces the terms 'special educational needs' (SEN) and 'learning difficulties and/or disabilities' (LDD) with the new term ALN. This will help to avoid some

of the stigma associated with the existing terms and will mark a clear break from the current systems, which is no longer fit for purpose. Using ALN as a single term which encompasses children and young people aged 0 to 25 reflects the move to a more equitable system for supporting learners with ALN across early years, schools and FE settings.

- 3.6 ***A 0 to 25 age range:*** The Act brings together the existing and different legislative systems for supporting:
1. children and young people of compulsory school age who have SEN; and
 2. young people in FE who have LDD.
- 3.7 There will be a single legislative system relating to the support given to children and young people aged 0 to 25 who have ALN. As a result, transition of learners between school and post-16 education will be improved to allow greater equity in terms of support and rights for this group of learners.
- 3.8 ***A unified plan:*** The Act creates a single statutory plan (the individual development plan (IDP)) to replace the existing variety of statutory and non-statutory SEN and LDD plans for learners in schools and FE - including statements of SEN, individual education plans for learners supported through school/early years action or school/early years action plus, and learning and skills plans carried out via assessments under section 140 of the Learning and Skills Act 2000. This will ensure greater consistency and continuity and, unlike the current system, ensure that provision and rights are protected regardless of the severity or complexity of needs. For most children with ALN who are looked after, the Act will require their IDP to be incorporated into the personal education plans (PEPs) made for these learners as part of their care and support plans (CSP). This will eliminate duplication of effort and ensure that the educational needs of a child who is looked after are considered in a holistic way.
- 3.9 ***Increased participation of children and young people:*** The Act requires that the views of children, their parents and young people should always be considered as part of the planning process, along with those of their parents.

It is imperative that children and young people see the planning process as something which is done with them rather than to them. They and their families will, therefore, be supported to participate through the provision of clear and impartial information, advice and advocacy. The Act provides children and young people with various rights to receive information in relation to ALN and decisions being taken about them, and to make their own decisions in certain circumstances. For children who lack sufficient understanding to make their own decisions, these rights can be exercised by their parent or through the use of a 'case friend' appointed by the Education Tribunal.

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

agencies, which are essential to ensuring that needs are identified early and the right support is put in place to enable children and young people to achieve the best possible outcomes.

- 3.13 To support improved collaboration, the Act places a new duty on health boards to appoint a Designated Education Clinical Lead Officer (DECLO). DECLOs will play a pivotal role in improving the extent and effectiveness of collaboration between health, education and social care in the delivery of services for children and young people with ALN. Maintained schools, including maintained nurseries, pupil referral units and further education institutions (FEIs), will be required to have a designated Additional Learning Needs Co-ordinator (ALNCo). And local authorities will be required to appoint an Early Years ALN Lead Officer to coordinate its functions in relation to children under compulsory school age who are not yet in a maintained setting. These roles will help to facilitate effective multi-agency collaboration to improve services for learners.
- 3.14 ***Avoiding disagreements and earlier disagreement resolution:*** The new system will focus on ensuring that where disagreements occur about an IDP or the provision it contains, the matter is considered and resolved at the most local level possible.
- 3.15 ***Clear and consistent rights of appeal:*** Where disagreements about the contents or provision of an IDP cannot be resolved at the local level, the Act ensures that children and young people entitled to an IDP, or those who believe that they should have an IDP (and their parents in the case of those under 16) have a right of appeal to the Education Tribunal for Wales, currently the Special Educational Needs Tribunal for Wales (SENTW) but which is renamed by the Act. The Act extends the right of appeal to young people with ALN up to the age of 25 who are pursuing FE. Children who lack sufficient understanding to make their own decisions, will be able to exercise their right of appeal through the use of a 'case friend' appointed by the Tribunal (as well as by a parent).

- 3.16 **A mandatory Code:** Responding to calls for a stronger Code that can be enforced, the provisions included in the Act will be supported by a new statutory ALN Code. The Code will facilitate national consistency by ensuring that the new ALN system has a set of clear, legally enforceable parameters within which local authorities and those other organisations responsible for the delivery of services for children and young people with ALN, must act. It will, therefore, be a type of subordinate legislation, and confer duties and rights on those subject to it. The Code will also set out practical guidance on how the statutory duties will be carried out, which will be supported by best practice illustrations.
- 3.17 **A bilingual system:** Services will be required to consider whether the child or young person needs ALP in Welsh; this duty will be an ongoing one, rather than a one-off decision. If they do, this must be documented in the IDP and 'all reasonable steps' must be taken to secure the provision in Welsh. A mechanism is included in the Act to remove by regulations the 'all reasonable steps' test, so that the duties to provide ALP through the medium of Welsh become absolute over time. A series of strategic duties are also aimed at driving progress towards a truly bilingual ALN system.

Background and context

- 3.18 Between 2003 and 2007, a three-part review of SEN was undertaken by the National Assembly's Education, Lifelong Learning and Skills Committee and associated reports were published in the following order:
- a) Early Identification and Intervention, November 2004;
 - b) Statutory Assessment Framework (Statementing), May 2006; and
 - c) Transition, March 2007.
- 3.19 The Committee's evidence was informed by earlier reports from the Audit Commission (*Special educational needs: A mainstream issue*, 2002) and Estyn (*Support for Children with Special Educational Needs: An Estyn Overview*, 2003). Taken together, these reports concluded that in relation to the current system of SEN:

- the assessment process associated with statements is inefficient, bureaucratic, costly, and insufficiently child-centred or user-friendly;
- needs are often identified late and interventions are not sufficiently timely or effective; and
- families say that they often have to battle to get the right support for their child and do not know where to turn for information and advice.

3.20 The Welsh Assembly Government conducted a wide-ranging preliminary consultation on possible reforms to the system of support for SEN and LDD (*Statements or Something Better*, 2007). Subsequently, a number of action research projects were set up to develop and trial new systems and approaches to help shape future policy and legislation. These included:

- four reform projects involving eight local authorities aimed at developing and trialling a person-centred approach to planning (using an IDP) for children and young people with SEN together with a new quality assurance system and an online planning and assessment tool; and
- a 'right of appeal for the child' pilot scheme involving two local authorities.

3.21 Evaluation of the action research projects concluded that² the introduction of a person-centred IDP would be largely welcomed by schools, professionals and families. However, there were concerns about the implications of person-centred practice (PCP) in relation to staff capacity and security and privacy concerns were raised about the use of an online tool. The principles underpinning a new quality assurance system were broadly supported. Strong views were expressed that for impact monitoring to be effective and efficient, there was a need to integrate it into the whole school agenda, rather than as a separate exercise for monitoring those with SEN.

² Reports of the findings are published on the Welsh Government's website: <http://gov.wales/statistics-and-research/programme-action-research-additional-learning-needs-pilot/?lang=en>

- 3.22 The use of a person-centred approach to plan support for children and young people with SEN has been increased across Wales following the action research projects. The Welsh Government has commissioned electronic resources specifically for Wales and funded training with £600,000 over two years. Work is also underway to ensure that monitoring the impact of interventions is integrated into the wider school improvement processes, with guidance on the subject planned as part of the wider ALN Transformation Programme.
- 3.23 The ‘right of appeal for the child’ pilot project was designed to test the provisions included in the Education (Wales) Measure 2009 in relation to the right of children to appeal in respect of SEN and their right to make a claim of disability discrimination in schools. Following a positive evaluation, regulations implemented the rights and duties conferred by the Measure across the whole of Wales from the 5 January 2015.
- 3.24 The last Welsh Government included in its *Programme for Government*, published in July 2011, a commitment to ‘reform the ALN process for the most vulnerable children and young people in either a school or FE setting’. In June 2012 it published a pre-legislative consultation document, *Forward in Partnership for Children and Young People with Additional Needs*³, which set out a broad vision of a reformed system. In response to the consultation feedback, the Minister for Education and Skills announced in September 2012 that legislative reform would take place later in the Assembly Term, following work with key partners to sift through the implications of the proposals in more detail. In July 2013, the Minister for Education and Skills published the summary of responses to the 2012 consultation and announced that officials would seek further views from stakeholders, to develop and reconsider the scope, impact and deliverability of the proposals⁴. To that end, a series of workshops was held in autumn 2013 with a range of external

³<http://webarchive.nationalarchives.gov.uk/20140406073301/http://wales.gov.uk/consultations/education/senframeworkconsultation/?status=closed&lang=en>

⁴<http://gov.wales/about/cabinet/cabinetstatements/2013/sen/?lang=en>

stakeholders and professional groups, in order to identify practicable and realistic ways in which effective reform could be taken forward⁵.

- 3.25 Provisions relating to the registration and approval of independent schools, the assessment of the educational and training needs for post-16 learners with LDD, and specialist FE placements were included within the Education (Wales) Act 2016. However, during the National Assembly's Scrutiny stages of the Bill the then Children and Young People's Committee recommended all the SEN provisions be considered in a single legislative vehicle. This recommendation was accepted and the then 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.
- 3.26 During this period, the Social Services and Well-being (Wales) Act 2014 was passed by the National Assembly, reforming social care planning and also setting out core values shared by the ALN proposals. At the same time, the previously shared legislative basis for SEN across England and Wales was fundamentally altered by the passing of the Children and Families Act 2014. This Act reformed SEN planning and provision in England. It provided important lessons for consideration as well as raising some challenges and cross-border implications.
- 3.27 Drawing on the outcome of the previous consultations and stakeholder engagements and taking into account the changed context, the Welsh Government published for consultation on 22 May 2014, a White Paper entitled *Legislative Proposals for Additional Learning Needs*⁶. The nine week consultation ran until 25 July 2014. A young person's version of the consultation was produced and disseminated, and a series of engagement events were held to gather views from children and young people.

⁵ A summary of discussions is available on the Welsh Government's website: <http://gov.wales/topics/educationandskills/schoolshome/pupilsupport/additoinal-learning-needs-reform/?lang=en>

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

- 3.28 A summary of responses to the consultation was published in October 2014. Broadly, the proposals for reforming the system were welcomed. Stakeholders emphasised the importance of underlying principles, such as the need to listen to children and young people and to adhere to the United Nations Convention on the Rights of the Child (UNCRC) when implementing a reformed system. In addition, there was particular support for the:
- adoption of the proposed term Additional Learning Needs (ALN), considering it to be more inclusive;
 - introduction of IDPs, with respondents emphasising the importance of plans which were flexible, ‘live’ documents, capable of adaptation to meet learners’ changing needs; and
 - proposal that all young people with ALN from 0 to 25 years should be entitled to a single statutory plan, citing the benefits that a unified system would bring in improving transition planning.
- 3.29 During the period of development and engagement there have been a number of other, significant advances in policy that will impact on the implementation of the proposed reforms and are relevant when considering the proposed provisions.
- 3.30 In March 2014, the then Minister for Education and Skills appointed Professor Graham Donaldson to lead a comprehensive, independent review of the curriculum and assessment arrangements in Wales. In February 2015, Professor Donaldson’s report, *Successful Futures: Independent Review of Curriculum and Assessment Arrangements in Wales*, was published. The report set out firm foundations for a new approach to curriculum and assessment that is genuinely and fully inclusive, and recognises the importance of learner-centred approaches and teacher assessment that supports the learning needs of all learners. The recommendations provide a vision for what a successful young person leaving statutory education should look like. The Welsh Government accepted the 68 recommendations in June 2015.

- 3.31 *A curriculum for Wales – a curriculum for life*, which sets out the steps that will be taken to deliver the recommendations in *Successful Futures*, was published in October 2015. It will see the design, development and realisation of an entirely new curriculum within six years. It will involve changes to initial teacher education and training, professional development of existing teachers, changes to Estyn's inspection framework, and changes to data collection procedures. It will be underpinned by new legislation and will be available for first teaching in settings and schools by September 2021.
- 3.32 These changes will have radical and wide-ranging implications for the education system in Wales, with a new curriculum focussed on four overarching principles, which aim to create an education system where children and young people will develop as:
- ambitious, capable learners, ready to learn throughout their lives;
 - enterprising, creative contributors, ready to play a full part in life and work;
 - ethical, informed citizens, ready to be citizens of Wales and the world; and
 - healthy, confident individuals, ready to lead fulfilling lives as valued members of society.
- 3.33 To support these principles and prevent the narrowing of the curriculum, there will be reformed assessment and accountability arrangements.
- 3.34 The new curriculum and assessment arrangements are being developed through an innovative and collaborative way of working – a practitioner network of Pioneer Schools, funded and facilitated by the Welsh Government and supported by an all-Wales partnership of education bodies from across Wales and national and international expertise. This approach places practitioners at the heart of the curriculum design process. This will ensure that the benefits of the new curriculum and assessment arrangements and changes to the accountability system are realised and owned by the profession.

- 3.35 Pioneer Schools have also been appointed to lead the development of a national Professional Learning Offer in preparing for the new curriculum. This will ensure that all practitioners have access to the highest quality development opportunities at all stages of their career. The Professional Learning Offer will focus on a number of fast track strands including digital, leadership, assessment and ALN.
- 3.36 In addition, reform of initial teacher education (ITE) in Wales arising from the *Teaching Tomorrow's Teachers* report is a fundamental part of Professional Learning Offer. The Teacher Education Accreditation Group, chaired by Professor Furlong, was tasked with developing new criteria for accrediting ITE in Wales to improve the quality and consistency of ITE provision and introduce a new approach. The Teacher Education Accreditation Group developed draft criteria that have been shared with stakeholders, formal consultation on revised criteria was launched on 29 September 2016. It is anticipated that in the future all ITE programmes will be led by a 'partnership', that is a University working in close collaboration with a number of 'lead partnership schools'. It is this partnership that will bring forward the programme for accreditation. In the future, accreditation will depend on the ITE partnership embodying the vision and meeting the criteria to support a Welsh, world class ITE system that can compete with the best in the world.
- 3.37 Workforce capacity and capability specifically in relation to SEN has been highlighted as a concern throughout consultations and stakeholder engagement. Early work was put in train, ahead of the legislation, to support workforce planning and development. In 2015 the Welsh Government published two reports: *An Assessment of SEN Workforce Development Requirements* and *Workforce Planning for SEN Specialist Services*. The findings of these two studies have led to the development of a three tier approach to meeting the existing and future workforce development needs in order to better support learners with ALN.
- 3.38 The three-tier approach is focused on core skills (for all teaching practitioners), advanced skills (in particular for the ALNCo) and specialist

skills (for specific individuals across a school cluster, or within a specialist support service) and is a fundamental aspect of the ALN Transformation Programme, which the Act also forms part of. The focus on core skills is specifically linked to our wider approach for the Professional Learning Offer and the Pioneer Schools programme, which will ensure our entire workforce develops ALN knowledge and skills. To support teaching practitioners within education settings, a masters level qualification for use by existing SENCos (and future ALNCos) will be developed. This will ensure every teaching practitioner has access to an individual within their setting who can provide both specific SEN advice and professional development to staff.

- 3.39 Ensuring our workforce has the necessary tools, and confidence to use those tools, will reduce the need to refer to specialist support services. This in turn, will also improve the capacity of specialist services to focus on those learners with more complex needs. In addition, the Welsh Government is working with key stakeholders to develop a national workforce planning system for ALN specialist services to ensure a sustainable approach to developing the capacity of specialist support services to meet learners' needs.
- 3.40 Reflecting on the immediate need for workforce development and building on the success of previous projects, the Welsh Government has funded the development of two bespoke training programmes: raising awareness of Autism Spectrum Disorder in primary and secondary schools, with the requirements for roll out within FEIs being scoped over the coming year; and the consistent use of person-centred-practice (PCP), which includes the publication of PCP resources to support the wider use of the approach. PCP underpins the new planning process and embedding this approach will support the smooth implementation of the Act.
- 3.41 As a result of the fundamental and connected aspects of the Welsh Government's education change programme, and the importance both of ensuring alignment and consistency in respect of the ALN Transformation Programme and of ensuring the reforms were workable and supported, the former Minister for Education and Skills took the decision on 6 July 2015 to

publish a draft of the Additional Learning Needs and Education Tribunal (Wales) Bill for consultation.

- 3.42 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 learners with ALN, especially across the education and health sectors.
- 3.43 The consultation ran until 18 December 2015, and included two major multi-agency events in North and South Wales, a series of workshops specifically with children, young people and their carers and a programme of informal, targeted sessions with key stakeholders from across the public services and third sector.
- 3.44 During the consultation period, the National Assembly's former Children, Young People and Education Committee undertook pre-legislative scrutiny of the draft Bill. The Committee wrote to the then Minister for Education and Skills and the then Minister for Health and Social Services to report on their findings. Much of the Committee's findings reflected the comments and feedback received in the responses to the consultation⁷.
- 3.45 In September 2016, the Welsh Government reaffirmed in its new Programme for Government, *Taking Wales Forward 2016-2021*⁸, its commitment to legislate for a new system of ALN support.

Legislative context

- 3.46 SEN legislation is currently set out in Part IV of the Education Act 1996. Although the definition of SEN applies to children and young people with a wide range of needs, the legislation focuses primarily on those children and

⁷The Committee's letter and Welsh Government's response are available on the National Assembly's website: <http://www.senedd.assembly.wales/mgIssueHistoryHome.aspx?IIId=12991>

⁸ <http://gov.wales/about/programme-for-government/?lang=en>

young people with more complex needs who are entitled to a statement of SEN issued by the local authority. At July 2015, 104,957 pupils at maintained schools in Wales had some form of SEN, which is around 22% of all pupils. However only 12,437 pupils with SEN had a statement, which is 2.7% of all pupils.

- 3.47 Statutory guidance on SEN is provided in the SEN Code of Practice for Wales. For children with SEN who do not have a statement, the Code sets out guidance in relation to interventions that are additional to, or different from, those provided as part of the school's or early years setting's usual, differentiated curriculum strategies. These differentiated strategies are known as 'school action' or 'early years action'. Where a school or early years setting seeks the help of external support services, this is known as 'school action plus' or 'early years action plus'. There is no published guidance in relation to post-16 learners with LDD.
- 3.48 The legislation relating to post-16 learners in FE with LDD is included in the Learning and Skills Act 2000. The Welsh Ministers currently have a general duty under sections 31 and 32 of this Act to secure 'proper provision' for the education and training of learners aged between 16 and 19, and 'reasonable facilities' for those over the age of 19. This Act also requires the Welsh Ministers to secure the provision of boarding accommodation for children and 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. Section 140 of the Learning and Skills Act 2000 places a duty on the 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 to receive post-16 education or training or higher education (HE). 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 appear to have a learning difficulty.

- 3.49 Under section 160 of the Education Act 2002 independent schools must be registered and an application to enter an independent school onto the register must contain information about whether the school admits pupils with SEN. The Independent School Standards (Wales) Regulations 2003 set out the standards to which an independent school will be inspected.
- 3.50 In addition to the registration process, under section 347 of the Education Act 1996, the Welsh Ministers may approve an independent school to admit children with a statement of SEN generally; or give individual consent to admit a child with a statement of SEN, where a school has not been approved. The Education (Special Educational Needs) Approval of Independent Schools Regulations 1994 prescribe the requirements to be complied with by an independent school as a condition of its approval as a school suitable for the admission of children for whom statements of SEN are maintained. In order for a child with a statement of SEN to be admitted into an independent school, the school must be registered under section 160 of the Education (Wales) Act 2002 and approved under section 347 of the Education Act 1996.
- 3.51 The Social Services and Well-being (Wales) Act 2014 offers opportunities to improve the connection between ALN and social care planning for children and young people, including children who are looked after. It places a duty on local authorities to provide and to keep under review, CSPs for children and adults who have 'eligible needs' or fall into one of the 'passported' categories e.g. looked after child.
- 3.52 Section 54(8) of the Social Services and Well-being (Wales) Act provides that a local authority may:
- a) prepare, review or revise a Care and Support Plan (CSP) under that section at the same time as it or another body is preparing, reviewing or revising another document in the case of the person concerned; and
 - b) include the other document in the plan.

- 3.53 Section 83(8) of the 2014 Act makes similar provision in relation to CSP for children who are looked after by a local authority.
- 3.54 This provides scope for integrated planning to ensure that the individual needs of children and young people are met. In addition, the 2014 Act places a duty on those exercising functions under that Act to seek to promote the well-being of people who need care and support. Section 2(2) of the 2014 Act defines “well-being” as in relation to education, training and recreation (amongst others). In addition, under section 2(3), “well-being” in relation to a child (defined for the purposes of that Act as a person under 18 years of age) also includes physical, intellectual, emotional, social and behavioural development. Section 78(2)(a) of the Act states that the duty of a local authority to safeguard and promote the well-being of a child looked after by it includes a duty to promote the child’s educational achievement.
- 3.55 The Well-being of Future Generations (Wales) Act 2015 came into force in April 2016. It requires specified Welsh public bodies, including the Welsh Government, local authorities and health boards, to think more about the long-term, to work better with people, communities and each other, look to prevent problems and take a more joined up approach – helping to create a Wales we all want to live in, now and in the future.
- 3.56 The well-being goals and principles provided in the Act connect directly to the objectives of the ALN Transformation Programme. Specifically, the ALN reforms will contribute to a more equal, healthier, prosperous and resilient Wales.
- 3.57 *Equal* in so far as the reforms directly address the inequality of rights and protections currently afforded to learners with ALN, including by providing the right to a statutory plan to all learners with ALN regardless of the severity of need. The reforms also aim to enhance equality between ALN and non-ALN learners, by focussing on inclusion and driving up standards so that all learners are supported to reach their full potential. This also links to *prosperous* and *resilient*, with learners being encouraged to have high

aspirations and supported to achieve educationally. The reforms aim to support learners to go on to live fulfilling lives and make a full contribution to society, including through employment. Priority placed within the reforms on early intervention, ensuring the right provision to meet learners' needs and multi-agency working to support learners and deliver effective and prudent interventions also support the *healthier* goal.

- 3.58 The sustainable development principles – in particular long term prevention, collaboration and involvement – reflect the approach that has been taken to develop the reforms and the approach that will need to be followed to implement and effectively embed the new system.

Who is affected by the Act?

- 3.59 Children and young people with ALN are the direct beneficiaries of the Act's provisions. It provides them with a system that puts them at the centre of everything and is designed to ensure that their needs are determined, and the provision necessary to meet those needs is planned for in a more timely, collaborative, consistent and equitable way. Children, their parents and young people have a right under the Act to have their views, wishes and feelings regarded by those exercising functions under the Act. This will lead to more consensual approach to decision-making and planning to address the learner's ALN, moving away from the adversarial nature of the current system.
- 3.60 Local authorities and governing bodies of maintained schools and FEIs in Wales are required to operate in accordance with a new statutory framework. This new framework replaces the statutory frameworks established by the Education Act 1996 in relation to school and pre-school education, and by the Learning and Skills Act 2000 in relation to FE. Local authorities will also be required to have regard to the United Nations Conventions on the Rights of the Child and Rights of Persons with Disabilities when making strategic decisions in relation to their ALN functions under the Act.

- 3.61 Relevant practitioners, teachers and teaching assistants will be involved in the identification of ALN and the provisions for supporting the learner's education. In addition, the Act requires that all maintained schools (including maintained nurseries and pupil referral units, but excluding maintained special schools as they are specifically established to deliver ALP) and FEIs have a designated ALNCo.
- 3.62 The Act's provisions that apply to health boards and NHS Trusts (NHS bodies) represent a significant step forward. In particular (in the minority of cases where the learner's ALN are health related) the provisions require NHS bodies, when asked, to consider whether there is a treatment or service that is likely to be of benefit to addressing the learner's ALN and, if so, secure that treatment or service. Moreover, the creation of the DECLO role will ensure that, for the first time, ALN will be on the strategic agenda of every health board – with a senior, strategic lead in each health board area overseeing the board's responsibilities, acting as a single point of contact for other agencies on ALN matters and providing strategic oversight of the coordination of day-to-day health input. Health boards will also be required to have regard, in the context of their strategic decision making, to the United Nations Conventions on the Rights of the Child and Rights of Persons with Disabilities.
- 3.63 Other public bodies with functions under the new legislative framework include persons in charge of relevant youth accommodation and the Education Tribunal for Wales.
- 3.64 Providers of nursery education that are in the voluntary or private sector, where they are in receipt of state funding for nursery places, will be required to have regard to the ALN Code. Local authorities will also be required to have Early Years ALN Lead Officers to coordinate arrangements in respect of children under compulsory school age who are not yet in a maintained setting.
- 3.65 Independent schools and specialist post-16 institutions will be affected by new provision or amended provision relating to their registration or approval.

An element of Careers Wales' work in relation to the conduct of post-16 education and training assessments on behalf of the Welsh Ministers will cease as a consequence of changes introduced by the Act.

- 3.66 Finally, various bodies, including some in England (such as local authorities, maintained school governing bodies and health bodies) will have a conditional duty to help a local authority in Wales in relation to the discharge of the latter's functions under this Act.

Implementation and delivery plan

- 3.67 The key components of the new statutory framework are set out on the face of the Act and will be commenced either on Royal Assent or in accordance with the commencement orders made by the Welsh Ministers.
- 3.68 The Act requires the Welsh Ministers to prepare, consult on and publish a Code on ALN. The Code will contain provisions about the exercise of functions made under the Act. It must be laid before the Assembly for its approval. The Welsh Government will undertake a public consultation on and lay a final draft of the Code during 2018.
- 3.69 The Welsh Government intends to adopt a phased approach to implement the new statutory framework, which will run alongside delivery of the wider ALN Transformation Programme, in order for institutions and practitioners to understand the new system and effectively manage and transfer learners from the existing to the new system. A full public consultation on the options for phasing in the new system took place between March and June 2017. Feedback from this consultation is being used to develop a detailed implementation and transition plan to be published in due course. A summary of the consultation responses and statement on implementation plans was published in December 2017.⁹

⁹ <http://gov.wales/about/cabinet/cabinetstatements/2017/implementingnewalnsytem/?lang=en>

- 3.70 The Welsh Government is committed to the principle that no child or young person should lose their statutory protection or provision required to meet their needs as they are transferred from the existing to the new system.
- 3.71 A £20 million package of support for the ALN Transformation Programme was announced in February 2017. This will include the provision of grant funding to partners to facilitate the implementation of the provisions set out in the Act. This funding will be allocated to local authorities, FEIs, the Tribunal, health boards and Estyn. This will build on the grant funding already established through the ALN Innovation Fund (over £1m in 2016-17) supporting local authorities and their partners to develop and improve multi-agency working arrangements to support the delivery of services for learners with ALN.
- 3.72 In addition, the Welsh Government will support the transition phase and ensure a smooth transfer from the current framework to the new statutory regime, through the appointment of ALN Transformation Leads to provide advice, support and challenge to local authorities, FEIs and other delivery partners in preparing for, and managing transition to, the new ALN system.
- 3.73 The Welsh Government will deliver resources and awareness-raising activities to support the implementation of the Act. This will include a suite of interactive materials to improve understanding and expectations about effective interventions and the role of key players. Awareness-raising activities will also focus on engaging stakeholders about their new legislative duties, and explaining and promoting the system and the rights it confers to children, their parents and young people.
- 3.74 The Welsh Government has convened an Additional Learning Needs Strategic Implementation Group (ALN-SIG) comprising of key delivery partners. It will assist with the development of the implementation plan to support local authorities, education providers and others to shape and prepare for roll-out of the ALN Transformation Programme and, in particular, the statutory provisions outlined within the Act. The ALN-SIG will play a crucial role in raising awareness around the reforms and developing

evidence-based practice. The Group will continue to have a role in monitoring and reviewing implementation arrangements during the transition period that will follow Royal Assent.

3.75 The monitoring and evaluation model will consider implementation in stages, specifically:

- readiness – to assess the extent to which delivery agents are prepared for the changes;
- compliance – to monitor how effectively organisations are adhering to the new legislative requirements once they take effect; and
- impact – to evaluate the extent to which the legislative and wider policy changes are being embedded and making an impact on outcomes for learners.

3.76 The compliance, impact monitoring and evaluation approach will form the basis of a post implementation review. This will be further supported through ongoing inspection and review arrangements led by Estyn.

Territorial application

3.77 This Act applies in relation to Wales. Local authorities have responsibilities in relation to children and young people aged 0 to 25 in their area, including where they are receiving education in England. The governing bodies of maintained schools and FEIs in Wales also have responsibilities for children and young people who are resident in England but attend the school or FEI. If they are identified as having ALN, the governing body must prepare and maintain an IDP or they may refer their case to the home local authority (the local authority in England in whose area the child or young person is resident). The English local authority is subject to duties under the Children and Families Act 2014, which might result in it preparing and maintaining an education, health and care plan (EHCP). The school or FEI in Wales which the child attends will not then be under a duty to prepare an IDP for the child, but is under a duty to take all reasonable steps to secure that the ALP called for by the person's needs is made. Ultimate responsibility for delivering the

special educational provision set out in an EHCP will lie with the English local authority.

- 3.78 Officials from the Welsh Government's Education and Public Services Group continue to work with officials from the UK Government's Department for Education to produce guidance to support Welsh children and young people who attend an education institution in England and vice-versa.
- 3.79 The Code will set out practical guidelines on how the educational needs of learners who are being educated in England but live in Wales, and vice versa, should be met.

Overview of the Act

- 3.80 The remainder of this chapter explains the components of the new statutory framework and the provisions of the Act in more detail.

The introduction of the term Additional Learning Needs (ALN)

- 3.81 The Act (section 2) provides for the term 'additional learning needs' (ALN) to replace the existing terms 'special educational needs' (SEN) and 'learning difficulties and/or disabilities' (LDD) and allows for its use in relation to children or young people of any age. The section makes clear that a medical condition which causes or contributes to ALN falls within scope of the definition. For the purposes of the Act, a child is a person not over compulsory school age, while a young person is a person over compulsory school age but under the age of 25.
- 3.82 The use of a single term across the 0 to 25 age range underlines the new system's coherence and provides greater equity for learners. It will also help to avoid some of the stigma associated with the existing terms, in particular special educational needs, and marks a clear break from the current systems.
- 3.83 The Act (section 3) uses the term 'additional learning provision' (ALP) to replace the term 'special educational provision' (SEP), although it retains much the same definition that SEP currently has – that is, ALP is provision

which is additional to, or different from, the educational or training provision made generally for children or young persons of the same age in maintained schools other than in special schools and mainstream FEIs. It has a slightly different meaning for children under the age of three.

A 0 to 25 age range

- 3.84 If a local authority is made aware that a child or young person within this age range has or may have ALN, or if a governing body of a maintained school or FEI is made aware that a registered learner has or may have ALN, the local authority or governing body must determine whether or not the individual has ALN. There is some similarity with a determination of needs made under section 323 of the Education Act 1996, but that is generally for learners with more severe and complex needs. If it decides that the learner does have ALN, and the learner is a child, or is a young person in a maintained school or FEI in Wales, or in other cases, the local authority decides (in accordance with regulations) that it is necessary to prepare and maintain a plan for the young person to meet the person's reasonable needs for education or training, it must ensure that an IDP is put in place for that learner. The Act replaces Part 4 of the 1996 Act, which established the current SEN system for schools and pre-16 education in general. It also (at section 50) amends section 41 and repeals section 140 of the Learning and Skills Act 2000, which make provision in relation to LDD and FE. In their place, Part 2 of the Act provides for the same statutory plan (the IDP) to be given to learners with ALN irrespective of whether they are in, or are likely to enter, nursery, school or an FEI. This is unlike a statement of SEN set up by the current system (under section 324 of the Education Act 1996), which generally only applies to those with the most severe and complex needs. The Act therefore places support for learners with ALN in schools and FE on a more equal footing and will, therefore, improve transition between school and post-16 education.
- 3.85 In some cases local authorities will need to secure specialist post-16 education or training for a young person to meet their reasonable needs for additional learning provision. This responsibility will no longer be a function of the Welsh Ministers and will improve the transition process by encouraging

local authorities and post-16 providers to work together to plan for and secure support, and to improve local provision relevant to the individual needs of children and young people with ALN. It also provides a greater incentive for local authorities to make the connections between education and social services departments, which are needed for a child's or young person's effective transition into FE and ultimately into adulthood.

A unified plan

- 3.86 The Act introduces statutory IDPs (sections 10 -19) for children and young people with ALN. Statements, individual education plans and learning and skills plans will cease to exist.
- 3.87 The IDP will describe the child's or young person's ALN and the ALP required to meet those needs (section 10). It will also specify whether a child or young person should receive ALP through the medium of Welsh; if it is specified, all reasonable steps must be taken to secure that the specified ALP is provided to the young person in Welsh. IDPs will normally be prepared, maintained and reviewed by the school or FEI that the child or young person attends, following a determination by that body that the child or young person has ALN (sections 11 -12). The ALP set out in an IDP maintained by a governing body, must be secured by the school or FEI (section 12). In cases where determining the nature of the child or young person's ALN, or the ALP which is required, is beyond the school or FEI's capability, or where it would not be possible for them to secure the ALP required, the matter can be referred to the local authority. The local authority would then be responsible for determining ALN, preparing and reviewing the IDP and securing the ALP within it (sections 13 and 13). In the case of a young person who is not attending an FEI or a school, the local authority is responsible for determining ALN and preparing and maintaining an IDP (and securing the ALP within it) for that young person if it considers it necessary.
- 3.88 Local authorities have powers and duties, in some circumstances, in relation to the reconsideration of decisions about ALN taken by schools, taking over responsibility for IDPs previously maintained by a school or FEI, and directing

a school to prepare and/or maintain an IDP (sections 26 - 28). As a minimum, IDPs would have to be reviewed every 12 months, but in practice should be reviewed when necessary or on request, which in many cases will be more frequent than every 12 months (sections 23 and 24). Interventions set out in the IDP action plan should include clear and specific milestones and outcomes, which will trigger a review of their effectiveness.

- 3.89 The Act (section 29) relieves a local authority of its duty to reconsider decisions taken in relation to a child's or young person's ALN if the local authority has previously considered it and is satisfied the position has not changed.
- 3.90 This will prevent a local authority from being required to consider repeat or vexatious requests. The Act (sections 26, 27 and 32) enables a child, young person or a child's parent to request that a local authority:
- a) reconsiders a decision made by a school about whether he/she has ALN;
 - b) reviews his/her IDP;
 - c) considers taking over an IDP maintained by a school or FEI; or
 - d) reconsiders a school's decision to cease to maintain an IDP.
- 3.91 The Act permits a local authority to name a maintained school in Wales in the IDP for the purposes of securing admission to that school, where it is satisfied that the child's interest requires the ALP identified in the IDP to be delivered at that school, and places a concomitant duty on a school named in the IDP to admit pupils in these circumstances (section 48). The Act (section 53) also empowers local authorities to arrange for ALP to be made otherwise than in a school; or make such arrangements to enable a child or young person for whom they are responsible to attend an institution outside of Wales or England which specialises in making the ALP described in the child's or young person's IDP (section 59).
- 3.92 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

Act (section 47) 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.

- 3.93 Local authorities will be responsible for maintaining an IDP for a child who is educated at a non-maintained school (regardless of whether the local authority or the parent funds their place at that school) and for a child who is educated at home by their parents. This is similar to the current system for maintaining statements of SEN. Local authorities will be responsible for maintaining IDPs for young children who attend non-maintained nursery education settings. However, where such settings receive state funding to provide nursery places they will be required to have regard to the guidance set out in the ALN Code (section 4). The Code will set out an expectation that non-maintained nursery education providers should refer to the local authority any child they suspect has ALN.
- 3.94 A governing body may cease to maintain a plan for a child or young person if they no longer have ALN, are no longer registered or enrolled at the school or FEI, or if the plan is transferred to the local authority (section 31). A local authority may cease to maintain an IDP for a child or young person where it ceases to be responsible for that learner (for example if a child who is not looked after by the local authority moved to a different local authority), if the learner no longer has ALN, or if the learner is a child who is no longer looked after by the local authority. Before making a decision to cease to maintain a plan because it believes the learner no longer has ALN, the local authority is required to notify the child, their parent or the young person about that proposed decision.
- 3.95 The Act provides a framework for the transfer of IDPs between governing bodies, FEIs and local authorities (section 35). It makes clear the circumstances in which a transfer would take place and where the duties to maintain the plan fall. There are mechanisms for ensuring the resolution of disagreements between local authorities and FEIs about the maintenance of IDPs of students enrolled at a FEI (section 36). Regulations may also provide

further details on how transfers can take place (section 37). We expect these regulations to place duties and powers around the sending and receiving of IDPs and other relevant information, the transfer of responsibility, and the inclusion of future provision in an IDP. This framework aims to provide a coherent way of ensuring children and young people with IDPs who move to another institution or another local authority area receive continuous support for their ALN.

- 3.96 When a child or young person is detained within relevant youth accommodation and is identified as having ALN, the Act (sections 40 and 42) provides that their home local authority will be required to secure an IDP, and make necessary ALP in accordance with that IDP, on their release from detention. Relevant youth accommodation for the purposes of these sections would normally be a young offender institution or a secure children's home.
- 3.97 If a child or young person has ALN and is subject to detention, the Act (section 42) provides that their home local authority must keep the IDP while the person is detained in relevant youth accommodation and arrange for appropriate ALP to be made for them whilst they are detained. This might be the ALP set out in the IDP, provision corresponding as closely as possible to that ALP, or any ALP that the home local authority considers appropriate.
- 3.98 The effect of these provisions will be to remove the inconsistencies and the unfairness which arise from the existing statutory and non-statutory categories of SEN, and the different systems for learners in schools and FEIs. By introducing a single plan to cover a wide spectrum of need, the new system will be more flexible and responsive, as IDPs will be able to be more easily adapted over time to take account of changes in needs or circumstances. Furthermore, it will end the uncertainty about when and for whom a statement should be made and the inconsistency that results. It will also ensure continuity for learners across the school/FE divide.

Increased participation of children and young people

- 3.99 The Act (section 6) provides for the views, wishes and feelings of children and young people to form a central element of the new system and emphasises the importance of children, their parents and young people participating as fully as possible in the decisions that are taken in relation to their ALN and the ALP provided.
- 3.100 This will give statutory underpinning to the Welsh Government's existing policy of promoting a much more person-centred approach to identifying needs and appropriate actions to meet those needs and help to ensure that IDPs are developed in accordance with the principles of person-centred thinking and planning. The embedding of PCP is being supported by the Welsh Government, including through the commissioning of Wales-specific resources for use in education settings from early years to FE, and through the provision of £600,000 funding over two years for training in person-centred approaches.
- 3.101 The Act (section 9) requires local authorities to make arrangements to provide children, young people and others with information and advice about ALN and the system set out in the Act. In doing so, they must pay due regard to this information and advice being provided in an impartial manner. It also requires local authorities to make known those arrangements to the affected parties, thus ensuring that this information and advice is disseminated and is accessible for all those who need it.
- 3.102 For children and young people to be able to fully exercise their right to appeal under the Act, or to engage in disagreement resolution procedures, the Act (section 69) places a duty on local authorities to provide them with access to independent advocacy services. These are services providing advice and assistance to a child or young person who is making, or intending to make, an appeal to the Education Tribunal for Wales ('the Tribunal'), considering whether to appeal to the Tribunal under that section, or taking part in, or intending to take part in, dispute resolution arrangements. The Act is clear

that there can be no charge for advocacy or any other services provided under the Act.

- 3.103 Parents will ordinarily help children who lack capacity to understand their IDP and other documents and information presented to them, as well as the decisions being made in relation to their ALN. In order to cover situations where this may not happen, the Act (section 85) provides for such learners to have a 'case friend' where appropriate. A 'case friend' may represent and support the child and take decisions on the child's behalf in relation to matters concerning their ALN and ALP. Children who lack sufficient understanding will be able to use a 'case friend', as appointed by the Education Tribunal, to exercise their rights under the Act. The purpose is to ensure that the rights of these children can be exercised even where a parent is not acting in the best interests of the child.
- 3.104 The Act (section 75(2)(e)) also enables regulations to make provision for a person to support a child or young person who does not lack capacity. It is intended that the person supporting such children or young people may not make decisions on their behalf, but can support them and appear on their behalf when dealing with disagreements and appeals.

High aspirations and improved outcomes

- 3.105 Critical to the development of a culture of high aspirations and improved outcomes is the designation of an individual (or group of individuals) for each setting (or group of settings), whose role is to strategically co-ordinate planning and interventions around ALN and ensure that standards in respect of planning, target setting, and outcome focus are consistently applied and driven upwards. To this end, the Act (section 60) requires that mainstream maintained schools, including maintained nurseries and pupil referral units, but excluding maintained special schools where every staff member will have a focus on ALN, and FEIs have a designated ALNCo.
- 3.106 The ALNCo role will replace the existing non-statutory SENCo role, which is currently interpreted differently across settings and authorities. It also extends

the role to some education settings that may not currently have a SENCo or equivalent role.

- 3.107 The Act enables the IDP to be created so the ALP it contains has a strong focus on outcomes rather than the making of provision being an end in itself.
- 3.108 It permits local authorities to place children and young people at independent schools or independent post-16 specialist colleges where it is necessary and appropriate in the light of the individual's ALN (section 51).
- 3.109 However, local authorities will be prohibited from placing a learner with ALN at an independent school unless they are satisfied that the school is able to provide the ALP required to meet the ALN, as set out in the learner's IDP (section 55). Repealing section 347 of the Education Act 1996 (section 58) and strengthening the way in which independent schools register to admit learners, under section 160 of the Education Act 2002 will remove the unnecessary duplication and confusion between the two regimes and enable a clear single system of registration (section 54). Section 160 will be amended so that an independent school wishing to admit learners identified as having ALN, will be required to have demonstrated as part of its registration that it can provide the required type of ALP. In addition, the Welsh Ministers will publish the independent school register which, combined with the above strengthening of the registration process, will clearly set out for local authorities and parents of learners with ALN the ALP an independent school can cater for. This will reduce the risk of inappropriate placements of learners with ALN into an independent school. Annual monitoring of independent schools is undertaken by Estyn, which will also have a role in ensuring that independent schools are able to deliver the ALP they are registered to deliver.
- 3.110 Similarly, local authorities will be prohibited from placing a learner at an independent specialist college in Wales or England unless the college is entered on a list of such colleges established under provisions set out in this Act (section 56). Currently, minimum criteria are set via a funding contract

between independent specialist colleges and the Welsh Ministers. The provisions in this Act will ensure any independent setting that is funded by a local authority to provide ALP will continue to meet minimum criteria that will be transparent and set out in regulations. Furthermore, it will provide the necessary assurance that when a child or young person with ALN is placed in this type of education setting, their needs will be met. Local authorities will be required to pay any fees arising from the placement of the child or young person at an independent school or college (section 49). These provisions should smooth the path of transition, enable better coordination with social services' support in particular, and encourage the provision of local packages of support. Annual monitoring of independent specialist colleges is also undertaken by Estyn.

- 3.111 The Act largely replicates the existing legislative presumption in favour of those with ALN being educated in mainstream schools wherever possible (section 51). This not only supports the Welsh Government's general policy on inclusiveness, but underlines our view that expectations of and aspirations for those with ALN should be as high as possible. However, the Act promotes a person-centred approach and acknowledges that in some instances attending a mainstream school may not be appropriate or in the child's best interests. Section 51, therefore, enables a local authority to place a child outside of the mainstream education sector in such circumstances.
- 3.112 To ensure that high standards are universal, the Welsh Government will, during the transitional period and after the legislation comes into force, work with local authorities to enable them to put in place arrangements to monitor and review the operation of the new system within and by maintained schools. The ALN-SIG will support this work in the lead up to enactment of the legislation and beyond.
- 3.113 To ensure that the overall learning provision the local authority makes continues to meet the needs of children and young people in their area, the Act requires local authorities to keep under review the arrangements made by them for ALP, including in terms of their workforce (section 63). The duty

includes a specific requirement on local authorities to consider the sufficiency of ALP in Welsh. Local authorities will be required to take all reasonable steps to address any deficiencies identified through their reviews.

- 3.114 Local authorities may also supply goods and services to governing bodies to help them meet the needs of the child or young person (section 67).

A simpler and less adversarial system

- 3.115 In removing the current artificial and contentious divide between children and young people who receive a statement of SEN, as well as the divide between those whose needs are not considered sufficiently severe or complex to receive a statutory plan with statutory protection, the Act seeks to eliminate one of the principle causes of adversarial tension. Its emphasis on the participation of children, their parents and young people in the decisions that affect them and in the development of IDPs, will result in a more consensual approach to planning. The Act's provisions on IDPs also pave the way for a less bureaucratic and time-consuming process for planning provision, which will be simpler to understand and less confrontational.

Increased collaboration

- 3.116 To foster better working relationships and practices, the Act (section 65) provides that where a local authority requests help or information from other bodies, including another local authority, an NHS body or an FEI (amongst others), in the exercise of any of their ALN functions, that body must comply with the request unless it considers that doing so would:
- a) be incompatible with that body's own duties; or
 - b) otherwise have an adverse effect on the exercise of its functions.
- 3.117 The duty to share information is new and will address some of the current issues around the failure of bodies to share information as effectively as they should. It will be underpinned by clear guidance in the Code. The duty to help is similar to that which appears in the existing SEN legislation and will form the basis for ensuring the appropriate involvement of professionals in the development and review of IDPs for those with more severe and complex

needs. Where input is required from other agencies to support the child or young person to overcome barriers to learning, the Act will enable the IDP to include ALP made by health (section 21), as well as education. IDPs will contain an action plan that is clear about which agency is responsible for delivering the individual elements.

- 3.118 The Act (section 25) provides for IDPs and other plans relating to the same learner to be prepared, reviewed or revised at the same time. Other plans may also be included in the IDP; this mirrors the provisions included under section 58 of the Social Services and Well-being (Wales) Act 2014. This provision provides a clear legislative basis for avoiding the duplication of effort and confusion that arise where multiple plans are produced for the same individual, and enabling the much closer alignment and integration of otherwise separate planning processes.
- 3.119 In relation to looked after children, and in recognition of the fact that a significant proportion of this group of children are likely to have ALN, section 14 also provides for the IDP to be included in the PEP of a child who is looked after. The PEP is prepared for them as part of their CSP under the Social Services and Well-being (Wales) Act 2014. For the purposes of the Act a child with ALN who is looked after is defined as being of compulsory school age or under (section 15). These provisions will ensure that planning for the educational needs of this vulnerable group of learners are streamlined and better co-ordinated.
- 3.120 The Act (section 17) requires governing bodies of maintained schools to refer to a local authority any child that it looks after who they believe may have ALN. The local authority must then decide whether the child has ALN (section 18); if it decides the child does have ALN, it must prepare and maintain an IDP (section 19). Local authorities will be responsible for preparing, maintaining and reviewing IDPs for all children with ALN who are looked after by them.

- 3.121 In response to concerns around the status of the early years within the ALN system, the Act establishes a new role of Early Years ALN Lead Officer within local authorities. Authorities will be required to designate an individual to coordinate its functions under the Act in relation to children under compulsory school age who are not yet in a maintained setting. It is anticipated that this role will also have a preventative function, for instance by identifying young children with developmental delay, which could escalate to ALN if they do not receive appropriate early intervention. The role will have key links with the other roles created by the Act, helping facilitate improved multi-agency working and connections between service provision.
- 3.122 Responding to consultation feedback and calls from stakeholders to strengthen the responsibilities of health practitioners in relation to children and young people with ALN, the Act (section 20) includes a new duty on NHS bodies in relation to the minority of learners whose ALN may be health related. When asked, these bodies must consider whether there is a treatment or service that is likely to be of benefit to addressing the learner's ALN and, if so, secure that treatment or service. A description of the treatment or service must then be included in the learner's IDP. The duty represents a significant step forward in ensuring that there is greater clarity and certainty around which service will be delivering the ALP within an IDP than is currently the case with statements of SEN.
- 3.123 If an NHS body identifies that a child or young person requires ALP through the medium of Welsh, the Act requires the NHS body to take all reasonable steps to provide that service or treatment. It must also notify the governing body or local authority that is required to maintain the IDP.
- 3.124 The Act (section 61) includes a new duty on health boards to appoint a Designated Education Clinical Lead Officer (DECLO). This role will ensure there are appropriate service models within each health board; provide leadership within the health board to support compliance with relevant duties; liaise with partners and serve as a primary point of contact for local authorities; and prompt and facilitate effective inter-professional working for

the benefit of children and young people with ALN. The DECLO will not be routinely involved in the assessment and reviews of specific IDPs, except in the course of their usual clinical practice, but they would be responsible for ensuring the appropriate health board input is provided. Day-to-day operational functions will be undertaken by health professionals in contact with the child or young person, acting as a 'health co-ordinator' at a local level, and ensuring the role of the NHS in the ALN system is mainstreamed. DECLOs will play a pivotal strategic leadership role in improving the extent and effectiveness of collaboration between health, education and social care in the delivery of services for children and young people with ALN. The DECLO, ALNCo and Early Years ALN Lead Officer roles will help to facilitate effective collaboration between the education and health to improve services for learners.

- 3.125 Where an NHS body in the course of exercising any of their functions in relation to a child who is under compulsory school age, forms the opinion that he/she has (or probably has) ALN, the Act (section 64) requires them to bring this to the attention of the appropriate local authority if they believe that to be in the child's best interests (having discussed the matter with the child's parent before doing so). The Act also provides that if an NHS body believes that a child who is looked after has ALN, it may bring this to the attention of the local authority that looks after that child (section 64).

Avoiding disagreements and earlier disagreement resolution

- 3.126 The Act (section 68) requires local authorities to make arrangements for avoiding and resolving disagreements between children, their parents and young people on the one hand, and schools, local authorities and others on the other hand. This includes providing access to help in resolving a disagreement from an independent person. Local authorities will also be required to ensure that children, young people and parents are made aware of these arrangements. The Code will be used to emphasise that local authorities' first priority will be to try and avoid disagreements arising by developing ways of ensuring that children, their parents and young people are supported to understand and participate fully in the decisions that affect them;

provided with appropriate reassurance; and offered opportunities to raise concerns and have their questions answered. However, where disagreements do arise, arrangements should focus on ensuring that these are resolved at the earliest opportunity and at the most local level possible.

- 3.127 The development and implementation of effective disagreement avoidance and resolution arrangements is key to improving the trust that children, their parents and young people have in the system, and minimising the extent to which they feel the need to exercise their rights of appeal. Local authorities must, however, make children, their parents and young people aware that these arrangements do not affect their rights to appeal to the Education Tribunal for Wales.

Clear and consistent rights of appeal

- 3.128 The Act (section 91) renames and expands the remit of the existing Special Educational Needs Tribunal Wales (SENTW), which will be renamed the Education Tribunal for Wales ('the Tribunal'). The Act makes provision for the continuation of the Tribunal's constitution, membership and remuneration and expenses (section 91 to 94). It also creates a new Deputy President of the Education Tribunal role (section 93).
- 3.129 The new name reflects not only the Tribunal's role in determining appeals in relation to ALN but also the role currently undertaken by the SENTW in determining disability discrimination claims relating to schools, a function that the Tribunal will continue to undertake. In addition, the Act (section 85) provides for a 'case friend' to be appointed by order of the Tribunal where the child lacks capacity. Whilst it is recognised that for the most part, claims will be brought on behalf of children by their parents, where this is not the case, a case friend will still allow the child to exercise appeal rights and other rights under the Act.
- 3.130 Currently, only children and young people registered at maintained schools have the right to appeal to SENTW in relation to their SEN. The Act introduces more equitable rights of appeal by extending this right to children

and young people up to the age of 25 who are pursuing FE. This extension of appeal rights will help to underpin the new system's 0 to 25 age range and deliver on the core aim of a more equitable approach.

- 3.131 The Act (section 70) enables a child, child's parent or young person to appeal to the Tribunal where a local authority or FEI governing body takes a decision in relation to an individual's ALN, or maintains an IDP for that individual. In the case of a local authority, this would include reconsiderations about school governing body decisions or plans maintained by a school governing body.
- 3.132 Orders of the Tribunal are binding on local authorities and FEI governing bodies. Moreover, local authorities and FEI governing bodies are required to report back to the Tribunal on action taken to comply with an order (section 77). Where appropriate, there will be a role for the NHS in preparing the report to the Tribunal. The section 65 duty to provide information and help will facilitate this.
- 3.133 Section 76 makes clear that NHS bodies can be required to provide evidence to the Tribunal and will be subject to recommendations made by the Tribunal. NHS bodies will be required to report back to the Tribunal on compliance with recommendations, ensuring careful consideration of recommendations and an explanation of any decision to take no action in response to recommendations. These provisions ensure the NHS has a role to play at every stage of the process, including during and following an appeal to the Tribunal.
- 3.134 The Act gives the Tribunal the power to share with Welsh Ministers information on compliance with orders and action taken by health boards to respond to Tribunal recommendations (section 78). This will enable the Welsh Government to monitor what happens following appeals to the Tribunal and take action where necessary.
- 3.135 Although use of the Tribunal should be a last resort, the right of appeal to an independent tribunal whose decisions are binding (section 77) will ensure the

new system for supporting learners with ALN is robust and has the confidence of children, their parents and young people. It will also help to ensure that the duties in respect of learners with ALN are properly discharged; this will safeguard the rights of children and young people and will provide for greater equity.

- 3.136 The Act (sections 74 and 75) allows for the Welsh Ministers to make regulations about the proceedings of the Tribunal on an ALN appeal and the initiation of such an appeal. Requirements can be imposed in relation to disclosure of documents and attendance at tribunal. If the Tribunal makes an order, the local authority concerned must comply with it before the end of the period prescribed in regulations and beginning with the date on which it is made.
- 3.137 The Act (section 81) also allows that a party to any proceedings about ALN before the Tribunal may appeal to the Upper Tribunal on any point of law arising from a decision made by the Tribunal in those proceedings.

A mandatory Code

- 3.138 The Act requires the Welsh Ministers to issue a Code on ALN (section 4). The Code will apply to those with functions under this Act and will be able to impose:
- mandatory requirements (where specified in the Act) in accordance with which relevant bodies must act; and
 - guidance to which those bodies and other providers of education and training must have regard.
- 3.139 The creation of a Code of this nature will ensure the new ALN system has a set of clear, legally enforceable parameters within which local authorities and those other organisations responsible for the delivery of services for children and young people with ALN must act. The Code will be targeted towards practitioners so they understand and can implement the new ALN system.

- 3.140 In particular, the Act enables the Code to provide detailed requirements about how IDPs are to be prepared, maintained and reviewed. This will include requiring the plan to be in a specified form, which the Act requires the Code to provide, and contain specified information and requiring specified persons to undertake certain roles and/or actions in relation to the preparation, maintenance and reviewing of IDPs within set time limits. The Act also enables the Code to set out the functions of ALNCos and impose requirements in relation to the provision of independent advocacy arrangements.
- 3.141 The Code will provide guidance to local authorities and health boards on the discharge of their duties to have regard, when making strategic decisions about their ALN services, to the United Nations Conventions on the Rights of the Child and Rights of Persons with Disabilities (sections 7(4) and 8(4)).
- 3.142 The Act (section 5) requires that the Code is subject to consultation with local authorities, schools, FEIs, Estyn, the Welsh Language Commissioner, the Children's Commissioner for Wales, the relevant Committee of the National Assembly and other appropriate persons. In addition, the Code (and any subsequent revisions) will have to be laid before the National Assembly. The Code cannot be issued unless approved by the National Assembly.
- 3.143 As part of plans in respect of implementation and monitoring and evaluation, the Welsh Government is giving full consideration to ways for ensuring appropriate compliance with the Code, including through Estyn or its own roles.

A bilingual system

- 3.144 The Welsh Government's aim is a bilingual ALN system. The provisions of the Act are intended to drive progress towards achieving this aim.
- 3.145 The section 6 duty to involve and support children, their parents and young people underpins the operation of the ALN system in terms of the Welsh language. Regard must be had to the views, wishes and feelings of the child,

child's parent or young person and language will be critical to this. This duty applies to the operation of the new system in its entirety.

- 3.146 The Act includes specific duties in relation to ALP through the medium of Welsh. It places requirements on school and FEI governing bodies, local authorities and NHS bodies to consider – on an ongoing basis, rather than as a one-off decision – whether a child or young person needs ALP in Welsh. If they do, this must be documented in the IDP and services must take ‘all reasonable steps’ to secure the provision in Welsh. (Sections 12, 14, 19, 20 and 21).
- 3.147 A mechanism to remove by regulations the ‘all reasonable steps’ test is provided for by section 90. The removal of ‘all reasonable steps’ will mean that the duties to provide ALP through the medium of Welsh become absolute. The regulations will work in a comparable way to the Welsh Language Standards so that particular geographical challenges can be reflected. The use of regulations under section 90 will be informed in large part by a new duty on the Welsh Ministers to review the sufficiency of Welsh language provision every 5 years and publish reports following these reviews (section 89). These elements of the Act will ensure that the legal requirements it contains keep pace with the developments in the ability of services to deliver bilingually and also that they drive and encourage those developments.
- 3.148 These requirements are supported by other strategic duties in the Act around the Welsh language. Including a duty on local authorities to keep under review the sufficiency of ALP in Welsh in its area and take all reasonable steps to remedy any deficiencies identified (section 63). These duties, taken alongside wider initiatives, are intended to drive progress towards a truly bilingual ALN system.

4. Consultation

White Paper – Proposals for the Additional Learning Needs Bill

- 4.1 The First Minister in his legislative statement of July 2011 made a commitment to consult appropriately and engage meaningfully with our partners when developing legislation. The Department for Education and Skills (which is now part of the Education and Public Services Group) issued a White Paper on 22 May 2014 on the proposals for an Additional Learning Needs Bill. This followed an earlier pre-legislative consultation document published in June 2012, *Forward in Partnership for Children and Young People with Additional Needs*, which set out a broad vision of a reformed system¹⁰.
- 4.2 The 2014 White Paper invited comments on the proposals for the Bill and was published on the Welsh Government website. As part of the Welsh Government's compliance with the UNCRC, a consultation specifically tailored to young people was undertaken at the same time. This involved ten questions which covered the issues the Welsh Government was seeking the views of young people on.
- 4.3 The consultation ran for nine weeks from 22 May to 25 July 2014. A total of 215 responses were received by the Welsh Government, four of which were completed using the young people's version of the questionnaire.
- 4.4 The Welsh Government also undertook workshops for children and young people and their parents. The children and young people were aged between 8 and 20 plus and came from a variety of education settings from primary, secondary and FE across Wales, including mainstream and special schools. Inclusive, participative methods to ensure good understanding and encourage

¹⁰ This 2012 consultation document and a summary of responses is available at: <http://webarchive.nationalarchives.gov.uk/20140406073301/http://wales.gov.uk/consultations/education/senframeworkconsultation/?status=closed&lang=en>

children, young people and their parents/carers to address these questions.

The contractor worked with:

- fourteen groups of children and young people with a broad range of ALN – 174 children and young people took part in total; and
- six groups of parents/carers – 55 parents/carers took part in total.

4.5 Broadly, the proposals set out in the White Paper were welcomed by those who responded to the consultation. Stakeholders emphasised the importance of underlying principles, such as the need to listen to children and young people and to adhere to the UNCRC when implementing a reformed system. The outcomes of this consultation exercise were used to inform the policy development process and the production of a draft Bill.

4.6 In a Written Ministerial Statement¹¹ that accompanied the summary of consultation responses¹², the Minister for Education and Skills explained how some important points raised in the consultation were being addressed. This included:

- emphasising that IDPs would give all learners aged 0-25 years with ALN the same statutory protection as the current statements of SEN;
- explaining that the term 'best endeavours' was the current legislative term used in relation to schools, which we proposed to extend to FEIs;
- reassuring that all those with ALN, including those with the highest level of need, would have their needs met;
- the bringing into force of the reforms and a new Code would be accompanied by a programme of promotion and training for professionals from across the relevant agencies who work with children and young people with ALN; and

¹¹ <http://wales.gov.uk/about/cabinet/cabinetstatements/2014/additionallearningneeds/?lang=en>

¹² <http://gov.wales/consultations/education/proposals-for-additional-learning-needs-white-paper/?lang=en>

- outlining the intention to issue a Code with mandatory requirements and statutory guidance to ensure that learners receive the support they need.

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

- 4.7 On 18 June 2015 the Minister for Education and Skills announced that a draft Additional Learning Needs and Education Tribunal (Wales) Bill would be published for consultation.
- 4.8 The consultation ran from 6 July to 18 December 2015. To support the consultation, the then Minister published in September 2015 a draft ALN Code and an outline of the possible timescales for implementation of the proposed new system. 263 written responses were received.
- 4.9 A consultation document for children and young people was published along with an easy read explanation of the draft Bill. These documents supported the delivery of bespoke participation workshops with children, young people and their parents/carers. A total of 23 workshops took place.
- 4.10 During the workshops the views of children and young people were elicited separately from those of their parents/carers to ensure that their views were accurately recorded. There were 19 workshops for children and young people, held at 16 settings, with a total of 222 participants. Workshops took place at special schools, primary schools, secondary schools, FE settings and a pupil referral unit, as well as with a group of looked after children and home educated children. The overall level of support for the proposals was very high; the main criticism raised by children and young people was the lack of focus on the role of the health service within the proposed reforms.
- 4.11 There were four workshops for adults with a direct interest in the legislation; a total of 45 adults participated. The sessions included a group of foster carers, a support group consisting of parents with statemented children, an early years group and a group of home educating parents. Overall, there was a

high level support for the proposed changes; the main criticism was in relation to the resources available to deliver the proposed system.

- 4.12 Each workshop was structured to provide participants with the information and understanding to allow them to make empowered decisions when responding to the ten set consultation questions, which reflected the ten core aims of the reform proposals. While there was an overall high level of support, there was a difference between the responses of the children/young people, and the adults.
- 4.13 In addition to the series of workshops with children, young people and their carers, the Welsh Government hosted two national events in North and South Wales, which were attended by 158 people; and delivered a programme of informal, targeted sessions with key stakeholders from across the public services and third sector.
- 4.14 Feedback received during the consultation period indicated general support for the main objectives and ambitions of the legislative reforms and the key principles of the draft Bill; this support was reflected in the written responses to the consultation. Whilst some concerns were expressed with the legislative proposition outlined in the draft Bill, the vast majority of concerns related to the implementation and operation of the new statutory framework rather than the framework itself. Specific provisions within draft Bill received criticism, particularly in relation to the perceived lack of provisions specifically for early years providers, the level of duties placed on NHS bodies in respect of their role in delivering ALP and the absence of provisions dealing with support for Welsh speaking learners.

Changes made to the draft Bill following consultation

- 4.15 The responses to the consultation, along with feedback gathered from wider stakeholder engagement, including from children and young people, and the findings of the National Assembly's Children, Young People and Education Committee's pre-legislative scrutiny of the draft Bill, were used to inform the

refinement of the Bill and development of the wider ALN Transformation Programme.

- 4.16 The table below sets out the changes made to the draft Bill following consultation and prior to introduction. It indicates which of these changes were made as a direct consequence of comments received during the consultation, and which resulted from further consideration given to the drafting of the Bill. The section numbers below refer to the sections in the Bill as introduced, unless otherwise stated.
- 4.17 Changes that are minor or technical, which do not significantly alter the core framework provided for within the Bill, have not been included in the table.

Changes made to the draft Bill

| Changes made | Reason |
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| <p>Children who are looked after (sections 13, 14, 15, 16, 17, 22, 57 and other sections throughout Part 2 of the Bill)</p> <p>Section 56 of the draft Bill proposed a significant regulation making power that would have enabled a different system of legislative support for looked after children and care leavers and ALP for them to have been developed through secondary legislation.</p> <p>The Bill contains particular provisions for the application of the ALN system in relation to children who are looked after. Generally, the Bill places responsibility for ALN matters on the local authority that looks after the child, rather than the maintained school attended by the child or (if different) the local authority in whose area the child is.</p> <p>Those governing bodies and local authorities are required to refer to the looking after local authority any children who are looked after who they suspect may have ALN. The local authority must then decide whether the child has ALN and if it decides that the child does have ALN, it must prepare and</p> | <p>This was an existing policy intention which was not realised in the draft Bill.</p> <p>It was considered more appropriate to replace the regulation making powers set out in the draft Bill with a comprehensive framework of primary legislative provision that applies in the case of children who are looked after.</p> <p>This has been developed in light of the implementation of the Social Services and Well-being (Wales) Act 2014, which came into</p> |

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| <p>maintain an IDP.</p> <p>If the child already has an IDP maintained by a governing body or local authority, the looking after local authority becomes responsible for maintaining it.</p> <p>The Bill requires for the IDP to be incorporated into the personal education plan (PEP) of the child who is looked after. The PEP is prepared for them as part of their CSP (made under the Social Services and Well-being (Wales) Act 2014).</p> <p>The provisions relating to children who are looked after apply to those that are of compulsory school age or below compulsory school age (section 13), and are not detained. The further categories of children who are looked after may be excluded from these provisions by regulations. Duties on the looking after local authority are switched off if the child is placed in England.</p> <p>The Bill also requires that the independent reviewing officer of a child who is looked after must be informed about decisions made in relation to the child's ALN, including a proposed decision by a local authority to cease to maintain a plan; and must be given a copy of the child's IDP (including a revised IDP).</p> <p>Other amendments flow from these provisions throughout the Bill (e.g. appeals).</p> | <p>force in April 2016.</p> |
| <p>Duty on NHS bodies to deliver provision (section 18)</p> <p>Section 14 of the draft Bill proposed that if a health board or NHS Trust agreed, an IDP may specify that ALP described in the plan is to be secured by that health board or Trust. The health board or Trust would then secure the ALP specified in an IDP, and any corresponding duties of governing bodies or local authorities to secure that element of ALP would be switched off.</p> | <p>Raised during consultation</p> <p>Section 14 of the draft Bill was considered to be too weak by some respondents to the consultation and by the National Assembly's Children, Young People and Education</p> |

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| <p>The duty on NHS bodies is now refocused in the Bill, so that the link between this duty and the principle of clinical need is more apparent. The Bill makes clear that local authorities and FEIs can refer a matter to an NHS body and request the NHS body to consider whether there is a relevant treatment or service that is likely to be of benefit in addressing the learner's ALN (in the minority of cases where a learner's ALN is health related). If it identifies that there is a treatment or service that would address the learner's ALN, it must secure the provision. This provision will be included in the learner's IDP.</p> <p>These amendments strengthen the duties on NHS bodies.</p> | <p>Committee in its pre-legislative scrutiny of the draft Bill.</p> |
| <p>Changing DMO/DCO to DECLO (section 55)</p> <p>Section 47 of the draft Bill proposed that a duty be placed on health boards to designate an officer to have responsibility for co-ordinating the board's functions in relation to children and young people with ALN. The officer was to be known as a Designated Medical Officer (DMO) or Designated Clinical Officer (DCO).</p> <p>The Bill changes the title of these officers to designated educational clinical lead officers (DECLO). The amendment has no effect on the nature of the role but clarifies the purpose of the role; makes clear its education focus; and may avoid unhelpful comparisons being made between differently qualified professionals.</p> | <p>Raised during consultation</p> <p>There were calls for clarity about the role particularly in terms of education and the dual title.</p> |
| <p>Ceasing to maintain an IDP (section 29)</p> <p>Section 20 of the draft Bill enabled governing bodies and local authorities to cease to maintain an IDP for a learner if it was no longer necessary to maintain it.</p> <p>The Bill (section 29) builds on that provision to make clear the various circumstances in which the duties on governing bodies of maintained schools,</p> | <p>Identified during drafting process to provide greater clarity about when duties to maintain an IDP cease and when a body may cease to maintain one.</p> |

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| <p>governing bodies of FEIs and local authorities to maintain an IDP for a learner will cease to apply. The Bill also includes specific provision for ceasing to maintain an IDP for a child who is looked after.</p> | |
| <p>Duty to favour education at mainstream maintained schools (section 45)</p> <p>Section 29 of the draft Bill required local authorities to exercise their functions so that children with ALN are educated in mainstream schools unless certain exceptions apply. The exceptions were that educating them in this way would be incompatible with the wishes of the child's parent, or the provision of efficient education for other children.</p> <p>The Bill now includes, as an additional exception to this duty, instances where educating the child at a mainstream maintained school would not be appropriate in the best interests of the child and is compatible with the provision of efficient education for other children. This reflects the person centred nature of the reforms and ensures that the learner's interests are placed at the heart of all decisions. The overall presumption in favour of mainstream schooling would be retained however, as this provides a key underpinning to an inclusive education system.</p> <p>The Bill makes clear that a local authority is not required to secure provision in a non-maintained mainstream school if the parent expresses a wish for their child to be educated otherwise than at a mainstream school.</p> | <p>Raised during consultation</p> <p>Some respondents to the consultation felt that the current exceptions did not pay sufficient account to the needs of the individual child.</p> |

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| <p>Children with ALN in mainstream maintained schools (section 46)</p> <p>A new provision is included in the Bill to ensure that a child with ALN who attends a mainstream maintained school usually engages in school activities with children who do not have ALN.</p> | <p>Identified during drafting process to support the presumption in favour of mainstream maintained schooling and promote an inclusive education system.</p> |
| <p>Appeal rights for children and young people residing in England (sections 63 and 77)</p> <p>The Bill provides children and young people residing in England but attending a school or FEI in Wales with a right to challenge decisions about ALN. The provisions for local authorities to reconsider school governing body decisions and plans apply in a modified way so that, for example, the local authority in Wales which maintains the school has to consider these matters. Those decisions may then be appealed. English resident students at an FEI in Wales may also appeal to the Tribunal against the FEI's decisions (section 41(1) of the draft Bill prevented this).</p> <p>For learners with more severe and complex needs, the governing body or local authority would request the English local authority to secure an education, health and care needs assessment under the Children and Families Act 2014. If an education, health and care plan is put in place by the local authority in England, there is no duty on the governing body to prepare and maintain an IDP.</p> | <p>Identified during drafting process to ensure equitable rights of appeal for children and young people residing in England but attending a maintained school/FEI in Wales</p> |
| <p>Non-maintained institutions and appeal rights (sections 12, 17 and 63)</p> <p>The Bill enables non-maintained institutions to be named by a local authority as a type of provision which may need to be secured in order to meet the learner's needs for ALP. If such provision is included in the IDP, the local authority must include that provision in the IDP and secure it. The Bill</p> | <p>Raised during consultation</p> <p>There were concerns the draft Bill did not include an appeal right in relation to non-maintained schools.</p> |

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| provides for an appeal right in relation to this new provision. | |
| <p>Non-maintained providers of nursery education (section 4)</p> <p>The draft Bill placed duties on maintained nursery schools in relation to the planning and making of ALP but placed no duties on the non-maintained early years sector.</p> <p>The Bill requires providers of nursery education in the voluntary or private sector, who are in receipt of state funding for nursery places, to have regard to the ALN Code. The Code will set out guidance on how such providers will be expected to support young children with ALN.</p> | <p>Raised during consultation</p> <p>There were concerns the draft Bill did not include specific duties on early years education providers.</p> |
| <p>Parents and young people lacking capacity (section 74)</p> <p>The Bill amends what was section 53 of the draft Bill to require Welsh Ministers to make regulations in relation to parents and young people who lack capacity under the Mental Capacity Act 2005.</p> | <p>Identified during drafting process</p> |
| <p>Capacity of children and case friends (section 75 and 76)</p> <p>The Bill provides for instances where a child does not have the capacity to sufficiently understand the information and documents that local authorities, governing bodies and NHS bodies are under a duty to provide them with or sufficient understanding to challenge decisions made in relation to their ALN. A local authority will decide if the child has sufficient understanding, with a right of appeal to the tribunal on this issue if there is a disagreement about the child's ability to understand. When such cases arise, the Bill exempts local authorities, governing bodies and NHS bodies of their duties to provide information and documents to such children.</p> <p>The Tribunal will be able to declare whether or not a child has the capacity to understand documents and</p> | <p>Identified during drafting process to enable this group of learners to exercise their rights under the Bill and to strike a balance between the rights of the child and the rights of the parents, who also have a right to appeal to the Tribunal.</p> <p>Original case friend provision has been expanded to include more detail on the face of the Bill.</p> |

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| <p>information presented to them and what it means to exercise their rights under the Bill. The Tribunal will be able to do this either following an application or of its own volition.</p> <p>Where children are considered to lack sufficient understanding, the Bill includes a power to make regulations to provide for the appointment and removal of case friends by order of the Tribunal. These regulations will also make provision for these children to take forward an appeal through the case friend.</p> | |
| <p>Cross border responsibilities (section 82 and various other provisions e.g. 9 and 10)</p> <p>The draft Bill required schools and FEIs to prepare and maintain IDPs for children and young people with ALN unless the needs of the learner were beyond the capacity of the school or FEI to address, in which case they could refer the matter on to the responsible local authority, i.e. the authority in whose area they are. However, in the case of an England resident child or young person educated in Wales, this power of referral was not exercisable because the draft Bill placed no duties on English local authorities to prepare and maintain IDPs. English local authorities may, however, decide to put in place an education, health and care plan for the child or young person under the legislation that applies in England.</p> <p>The Bill provides that if the English resident learner's ALN can be addressed at school level or FEI level, the relevant school or FEI in Wales is required to prepare and maintain an IDP for that learner under section 10. If a school or FEI in Wales considers that an English resident learner's ALN is too severe or complex to be addressed by that body and the Welsh local authority agrees, the Welsh local authority may refer this to the learner's home local authority (in England) and ask them to consider whether that learner requires an EHCP. If</p> | <p>Identified during drafting process to ensure that where a Welsh local authority places a child for the purposes of their education in England, the Welsh local authority maintains the learner's IDP, and vice versa.</p> |

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| <p>the home local authority decides to put an EHCP in place for that learner, the Welsh local authority is relieved of its duty to prepare and maintain an IDP for them. However, at the same time, the school or FEI has a duty to do what it can to plan for and meet the needs of that learner. This will ensure that the interests of these children continue to be protected.</p> <p>Section 82 of the Bill amends the meaning of “in the area” of a local authority in the Education Act 1996 and the Children and Families Act 2014. References to a person who is “in the area” of a local authority in England in Education Acts, would not include a person who would be wholly or mainly resident in the area of a local authority in Wales, were it not for provision secured under this Bill. Similarly, a reference to a person who is in the area of a local authority in Wales in the Education Acts, would not include a person who would be wholly or mainly resident in a local authority area in England, were it not for provision secured under Part 3 of the Children and Families Act 2014. This is to ensure that if a person is placed at a residential institution across the Wales/England border specifically to meet their additional learning needs, or in the case of a person from England, their special educational needs, the placing local authority continues to be responsible for that person under the relevant regime.</p> | |
| <p>Dual registered learners (section 28)</p> <p>Where a child or young person with ALN is registered or enrolled at more than one school or FEI in Wales, the draft Bill would have required each institution to prepare and maintain a separate IDP for them.</p> <p>The Bill has been changed to require schools and FEIs whose learners have ALN and are also registered or enrolled elsewhere, to refer those cases to the local authority so that they may prepare and maintain the IDP for the individual, ensuring coordinated and holistic support.</p> | <p>Identified during drafting process to ensure that the ALP for these individuals is properly co-ordinated and consistent across the different settings.</p> |

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| <p>Transfer of IDPs (sections 33 and 34)</p> <p>Section 23 of the draft Bill provided regulation-making powers in relation the transfer of IDPs between governing bodies, FEIs and local authorities.</p> <p>The Bill has been amended to provide a framework for the transfer of IDPs between governing bodies, FEIs and local authorities (section 33). It makes clear the circumstances in which a transfer would take place and where the duties to maintain the plan fall.</p> <p>The regulation making power on transfers is retained to enable further detail to be provided.</p> | <p>Identified during drafting process to provide clarity on the transfer of IDPs.</p> |
| <p>Independent advocacy services (section 62)</p> <p>The Bill replicates section 38 of the draft Bill but removes the duty on local authorities to take reasonable steps to make the arrangements for independent advocacy known to children, their parents and young people; head teachers and governing bodies of maintained schools; case friends; and others it considers appropriate.</p> | <p>Identified during the drafting process</p> <p>The provisions have been removed as it was considered that these could be better dealt with through the ALN Code.</p> |
| <p>ALNCoS (section 54)</p> <p>Section 46 of the draft Bill required the governing body of a maintained school (including a special school) or FEI to designate a member of staff as an ALNCo.</p> <p>The Bill has been changed in two ways. Firstly, the wording of section 54 has been changed so that whilst it still requires all schools and FEIs to have an ALNCo, they would have greater flexibility in deciding whether to share one with other schools or appoint more than one person if necessary. Special schools are removed from the list of schools to which this duty would apply, on the basis that all staff at such schools are specialist ALN teachers and co-ordinators of ALP.</p> | <p>Raised during consultation</p> <p>The draft Bill was criticised for not enabling small schools to share an ALNCo, or for large schools or FEIs on multiple sites to designate more than one ALNCo.</p> <p>Identified during drafting process – the updated list in 54 is intended to provide</p> |

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| <p>The Bill now lists community, foundation and voluntary schools and pupil referral units as being under a duty to designate an ALNCo.</p> | <p>clarity; the effect of the Bill is unchanged.</p> |
| <p>Additional learning provision through the medium of Welsh (section 5, 10, 17, 12, 44, 65, 56, 37)</p> <p>To address stakeholder concerns regarding the provision of ALN services through the medium of Welsh, the Bill now includes duties on local authorities and governing bodies of schools and FEIs when preparing IDPs to consider whether a child or young person should receive ALP in Welsh, and specify in the IDP what ALP should be delivered in Welsh. There is a further duty to take all reasonable steps to secure that the specified ALP is provided to the child or young person in Welsh. This also applies to children and young people with ALN who are detained.</p> <p>In addition, where NHS bodies deliver ALP, they must decide whether the treatment or service should be provided to the child or young person in Welsh, and if so, take all reasonable steps to secure the treatment or service is provided in Welsh. If the NHS body identifies that a child or young person requires ALP through the medium of Welsh this must be recorded on the IDP.</p> <p>There is an additional duty on local authorities to have regard to the desirability of ensuring that ALP is available in Welsh when reviewing the arrangements for ALP in their respective areas (section 56).</p> <p>Furthermore, the Bill (section 44) makes further amendments to the Learning and Skills Act 2000 (building on section 28 of the draft Bill), so that when planning the provision of post-16 education, the Welsh Ministers take into account the capacity of the FE workforce to deliver ALP in Welsh and availability of facilities for assessing through the</p> | <p>Raised during consultation</p> <p>Some stakeholders called for the Bill to make provision for improving ALN services through the medium of Welsh.</p> |

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| medium of Welsh. | |
| <p>Duty to take all reasonable steps to secure additional learning provision (section 41)</p> <p>Section 25 of the draft Bill placed a duty on governing bodies of maintained schools and FEIs to take all reasonable steps to help a local authority secure the ALP that a child or young person's ALN called for, if that individual had a local authority maintained plan but was registered at the school or FEI.</p> <p>The Bill (section 41) replicates this provision and expands the duties to include children and young people who do not yet have an IDP, for example, if the local authority has not yet finalised the plan. If a child or young person is registered at a maintained school or FEI, the relevant governing body must take all reasonable steps to secure the ALP called for by the individual's ALN while the IDP is being prepared by the local authority.</p> | <p>Identified during drafting process to help ensure that provision is put in place for learners at the earliest possible opportunity and that there are no gaps in the requirement to secure provision.</p> |
| <p>Procedure for making the Code (section 5)</p> <p>Section 5 of the draft Bill included a list of persons that the Welsh Ministers must consult with before issuing or revising an ALN Code.</p> <p>The Bill now includes the Children's Commissioner and the Welsh Language Commissioner in the list of persons to be consulted. This change was made due to the implications of the Bill for children and ALN services through the medium of Welsh.</p> | <p>Raised during consultation</p> <p>Calls were made to add the Welsh Language Commissioner and Children's Commissioner to the list in section 5 of the draft Bill.</p> |
| <p>Minor and consequential amendments (section 83)</p> <p>The Bill includes Schedule 1 which provides for minor and consequential amendments and repeals to be made by the Bill.</p> | <p>Identified during drafting process -</p> <p>Schedule 1 was not included in the draft Bill as these amendments had not yet been determined.</p> |

- 4.18 In addition to the specific amendments made to the draft Bill, the responses and feedback received during the consultation have been, and continue to be, used to inform development of the wider ALN Transformation Programme, for example, in respect of the development of the education workforce. More information about the Transformation Programme is included in the ‘implementation and delivery plan’ section (pages 24-26) and stakeholders will be kept informed as the Programme develops.
- 4.19 All documents relating to the consultation, including summaries of responses to the written consultation, the workshops for children, young people and their carers, and the formal stakeholder engagement events, are available on the Welsh Government website¹³.

Additional engagement

- 4.20 There has been sustained engagement with stakeholders on the matters contained within the White Paper and on the consultation on the draft Bill. This engagement commenced prior to the publication of the White Paper and continued through and beyond the consultation period of the draft Bill. The engagement focused on the proposed provisions in the draft Bill, the content of the draft Code and plans for implementation of the new system and on the wider ALN Transformation Programme.
- 4.21 Engagement following publication of the White Paper included, but was not limited to, meetings, presentations and workshops with:
- The Third Sector Additional Needs Alliance (TSANA) – via a Task and Finish Group which met on a monthly basis from December 2014 until July 2015 and submitted a report to the Welsh Government in autumn 2015 that has informed development of the reforms;
 - The Association of Educational Psychologists – including a day-long workshop with educational psychologists from across local authorities in Wales;
 - The Welsh Local Government Association (WLGA);

¹³ <http://gov.wales/consultations/education/draft-aln-and-education-tribunal-wales-bill/?lang=en>

- The Association of Directors of Education in Wales (ADEW) and its sub-group on Inclusion;
- NATSPEC (the association of independent specialist colleges);
- Learning Disability Advisory Group;
- School Practitioner Panel;
- Colegau Cymru Colleges Wales – including a workshop with its network of LDD practitioners;
- SENCO Groups;
- British Association of Teachers of the Deaf;
- The South and North Wales Associations of Special School Headteachers (SWASSH and NWASSH);
- Union Partnership Group;
- Estyn;
- The Children’s Commissioner for Wales; and
- The UK Government’s Department for Education.

4.22 As outlined above, an extensive programme of engagement was undertaken during the period of consultation on the draft Bill and has continued beyond the consultation period. This involved informal targeted sessions (meetings, presentations workshops) with key stakeholders from across the public services and third sector including, but not limited to:

- TSANA;
- SENTW – including attendance at two user-group sessions and the SENTW annual members’ training conference;
- The Association of Transport Coordination Officers (ATCO);
- Children in Wales;
- SWASSH;
- Wales’ Youth Justice Panel;
- Colegau Cymru’s Learning Difficulty and/or Disability Network;
- Care Coordination Forum, Serennu Centre;
- WLGA;
- ADEW’s inclusion sub group;
- The Welsh Language Commissioner’s office;

- The Education and Skills Ministerial Advisory Group;
- The UK Government's Department for Education.

4.23 Further stakeholder engagement took place in relation to the development of the draft ALN Code, including:

- A two-day workshop with a specific focus on identification of ALN, the process around IDPs and implementation of the proposed legislative reforms – this comprised representatives from the therapy profession, Association of Educational Psychologists, FE sector, ALNCOs/SENCOs, SENTW and head teachers.
- A day read through of the draft ALN Code by a group of key partners including representatives for the Children's Commissioner's Office, Educational Psychologists, local authorities, the WLGA, Colegau Cymru, ALNCOs/SENCOs, speech and language therapists, special schools head teachers and TSANA.
- Establishment of an ALN Code Content Development Group (CDG), which ran from October 2015 until April 2016 and comprised representatives for key specialist groups and professionals with a direct interest in the legislative reforms and implementation of the proposed new system.

Implementation planning

4.24 An ALN Strategic Implementation Group (ALN-SIG) has been established by the Welsh Government as part of arrangements for the on-going development of implementation planning to support local authorities, education providers, and others to prepare for the ALN Transformation Programme and, in particular, the statutory provisions within the Act. The ALN-SIG is a strategic partnership group with members from local authority education and social services departments, health boards, FE, the Welsh Government and others.

4.25 The ALN-SIG is considering practical solutions and will provide advice and recommendations to the Welsh Government to support implementation design and planning. Members of the ALN-SIG will also be expected to be

champions for change; promoting and embedding the new system within their organisations and supporting others to do the same.

- 4.26 It is envisaged that the ALN-SIG, which was convened in March 2016, will continue to have a role in monitoring and reviewing implementation arrangements during the transition period that will follow the enactment of the Bill.

Cross-border issues

- 4.27 There has been sustained engagement between the Education and Public Services Group and the UK Department for Education in relation to the potential cross border implications arising from the future interaction of the Children and Families Act 2014 and the Act.
- 4.28 This work has included two jointly hosted cross-border events comprising local authorities and representatives from early years settings, schools, FEIs and health settings working along the border. The purpose of the workshops was to:
- explore the implications of supporting children and young people with SEN who are attending education settings over the border from their home local authority;
 - discuss the issues that emerge from having two separate legislative systems in operation in England and Wales; and
 - identify potential cross-border implications arising from the future interaction of the Children and Families Act 2014 and the introduction of ALN legislation in Wales.
- 4.29 The workshops were intended to inform advice or guidance that the Welsh Government and the Department for Education expect to jointly produce to facilitate and encourage a consistent policy approach to dealing with issues that arise when children or young people are resident in one country but are educated in the other. Joint guidance is expected to be produced in due course.

5. Power to make subordinate legislation

- 5.1 The Act contains provisions to make subordinate legislation.
- 5.2 The Welsh Government will consult on the content of the subordinate legislation where it is considered appropriate to do so. The precise nature of consultation will be decided when the proposals are formalised.
- 5.3 The table below sets out, in relation to each provision, the:
- person upon whom, or the body upon which, the power is conferred;
 - form in which the power is to be exercised;
 - appropriateness of the delegated power; and
 - applied procedure, if any, together with the reasons why it is considered appropriate.

Summary of powers to make subordinate legislation for provisions in the Act.

| Section: | Power Conferred on | Form | Appropriateness for delegated power | Procedure | Reason for procedure |
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| 3(4): Additional learning provision | Welsh Ministers | Regulations | The definition of ALP included in the Act has been made by reference to a child's age. Regulations under this section would allow the Welsh Ministers to replace the current references to the age of three with references to a different age, in response to changes in early years policy or evidence based practice. Therefore, delegated powers are appropriate. | Affirmative procedure | Enables provision to be made that may substantially affect provisions of Acts of Parliament, Assembly Measures or Acts of the Assembly. |
| 4(5): Additional Learning Needs Code | Welsh Ministers | Code | The ALN Code will be the principal document used by those responsible for delivering the new system at the operational level, especially local authorities and the staff of schools and FEIs. The power for the Code to impose requirements is intended to cover detail around the discharge by local authorities and governing bodies of their duties in relation to ALN decisions and IDPs, advice and | Affirmative procedure as set out in section 5 of the Act. | It is considered appropriate that provisions included in the Code and in accordance with which affected bodies must act, should be laid |

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| | | | information giving, disagreement avoidance/resolution and independent advocacy services. It is appropriate that these detailed operational requirements should be made in the document, which is in effect an operational handbook. Setting out requirements in a Code rather than on the face of the Act or in regulations provides a practical and easily accessible tool. | | before the National Assembly and it be required to approve them before the Code can be issued. The Assembly procedure is set out on the face of the Act. |
| 4(6): Additional Learning Needs Code | Welsh Ministers | Code | The ALN Code will be the principal document used by those responsible for delivering the new system at the operational level, especially local authorities and the staff of schools and FEIs. Under 4(6) the Code must impose requirements in relation to the notification of decisions that a person does not have ALN within a prescribed period of time (subject to exceptions); the preparation and giving of an IDP within a prescribed period of time (subject to exceptions); and the use of appropriate standard form or forms of IDP, as described in the Code. It is appropriate that these detailed | Affirmative procedure | It is considered appropriate that provisions included in the Code and in accordance with which affected bodies must act, should be laid before the National Assembly and it |

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| | | | operational requirements should be made in the document, which is in effect an operational handbook. Setting out requirements in a Code rather than on the face of the Act or in regulations provides a practical and easily accessible tool. | | be required to approve them before the Code can be issued. The Assembly procedure is set out on the face of the Act. |
| 5(4)(b): Sets out when the Code will come into force | Welsh Ministers | Order | The Act enables the ALN Code to come into force on a day appointed by the Welsh Ministers in an order. This delegated power is necessary to ensure that the appointed day ties in with the detailed transition arrangements following the passing of the Act. | None | Prescribes a technical and administrative matter that is unlikely to be controversial. |
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| 15(2): Key terms in relation to looked after children | Welsh Ministers | Regulations | The Act provides a framework for supporting looked after children with ALN. It also enables the Welsh Minister's to prescribe in regulations categories of looked after children (within the meaning given by Part 6 of the Social Services and Well-being Act 2014) who are not looked after by a local authority for the purposes of the Act. This power will allow categories to be | Affirmative procedure, with negative procedure for any subsequent exercise | Prescribes technical and administrative matters, which may be updated from time to time. Children who fell within |

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| | | | excluded where it may not be necessary or appropriate to include certain groups of looked after child within the specific duties applicable to looked after children (e.g. because they do not have a personal education plan into which an IDP could be incorporated – see the power inserted into section 83 of the Social Services and Well-being Act 2014 by section 16). This delegated power provides the Welsh Ministers with flexibility to amend over time according to evolving policies. | of power. | any new category of exclusion would not be deprived of support for their ALN. Rather, they would be supported via the usual IDP process. |
| 16(2): Amendments to the Social Services and Well-being (Wales) Act | Welsh Ministers | Regulations | Currently there is a regulation power in section 83 of the Social Services and Well-being (Wales) Act 2014 to prescribe the contents of a care and support plan under that Act. The new subsection (2A) makes a PEP a required part of such a care and support plan. However, the new regulation making power in 2B preserves the flexibility to make exceptions as in some cases a PEP might not be necessary or appropriate (such as children who are looked after for occasional short-term breaks, rather than on a continuing basis) and it might be appropriate to change exceptions in light of | Affirmative procedure with negative procedure for any subsequent exercise of power | The subsequent negative procedure is appropriate in order to align with the existing procedure set out in the Social Services and Well-being (Wales) Act 2014. |

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| | | | changing circumstances. | | |
| 21(10) | Welsh Ministers | Regulations | The Act places a duty on NHS bodies, having identified a relevant treatment or service or not identifying such a treatment or service to inform the body that maintains the IDP. The delegated powers will enable the Welsh Ministers, in respect of NHS bodies under a duty to inform, to prescribe a period within which the NHS body must do so. There might also be a need to change the period over time. Therefore, delegated powers are be appropriate | Negative procedure | Prescribes a technical and administrative matter which is unlikely to be controversial. The period prescribed might need to change from time to time. |
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| 32(1)(b): Reconsideration by local authorities of decisions under section 31 | Welsh Ministers | Regulations | The Act places a duty on local authorities, if requested to do so, to reconsider a school governing body's decision to cease to maintain an IDP. The delegated powers will enable the Welsh Minister's to prescribe a period within which a child, the child's parent or the young person may make a request to a local authority in relation to such reconsideration. There might also be a need to change the period over time. Therefore, delegated powers are would be | Negative procedure | Prescribes a technical and administrative matter which that is unlikely to be controversial. The period prescribed might need to change from time to |

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| | | | appropriate | | time. |
| 36(3) Request to transfer plan to governing body of further education institution | Welsh Ministers | Regulations | The Act enables local authorities to request that the governing body of an FEI becomes responsible for an IDP. If the governing body fails to agree to the request within a period of time prescribed by the Welsh Ministers under this power, the local authority may refer the matter to the Welsh Ministers. There might be a need to change the prescribed period over time. Therefore, delegated powers are would be appropriate. | Negative procedure | Prescribes a technical and administrative matter which that is unlikely to be controversial. The period prescribed might need to change from time to time. |
| 37: Regulations about transfer of individual development plans | Welsh Ministers | Regulations | Section 35 deals with the main situations of children and young people moving between educational institutions and provides for the transfer of duties to maintain an IDP accordingly. This power enables further provision and details to be made in connection with transfers. There may be a need to amend this detail over time and on a regular basis in response to evidence based practice. Therefore, delegated powers are appropriate | Negative procedure | Prescribes minor or ancillary matters, which may be updated from time to time. The regulations will provide technical detail to support the principles of |

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| | | | | | transfer set out in the Act. |
| 39(2): Meaning of “detained persons” and other key terms | Welsh Ministers | Regulations | The Act allows for regulations to modify, for the purpose of Part 2 of the Act, the definition (in wider education law) of home authority in relation to looked after children and to apply other modifications to the definition which may be made under another power. This gives flexibility to allow for a different meaning in the context of ALN matters and to take into account whether, in the exercise of the other power, the same or different provision should be made for the ALN context. Delegated powers, therefore, are appropriate to enable this to happen. | Affirmative procedure | Prescribes minor or ancillary matters, which may be updated from time to time. The regulations will provide technical detail to support the principles set out in the Act. |
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| 45: Detention under Part 3 of the Mental | Welsh Ministers | Regulations | For children and young people civilly detained under the 1983 Act, the Act applies in the same way as it generally applies. But that is not the case in respect of detentions under | Affirmative procedure | As the provisions affect the rights of |

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| Health Act 1983 | | | that Act for those within the criminal justice system. Section 45 gives a regulation power to apply local authority and governing body duties in the Act, which would otherwise be switched off, in respect of children and young people subject to a detention order and detained in hospital under Part 3 of the 1983 Act. It may apply the duties with or without modification. Section 45 allows for duties in the Act to be applied appropriately in respect of children and young people who are detained in hospital under Part 3 of the Mental Health Act 1983. This is a complicated area which needs careful consideration. Having a regulation making power will enable that consideration to take place and for suitable provision to be made. It is, therefore, suitable for delegated powers. | | young persons under the Bill, a higher level of scrutiny is appropriate. |
| 46: Regulations about deciding whether an individual development plan is necessary | Welsh Ministers | Regulations | <p>Section 46 enables the Welsh Ministers to make provision in regulations about whether it is necessary to prepare or to maintain an IDP for a young person under 14(1)(c)(ii) or 31(6)(b), or prepare a plan for a detained person under section 40(2)(b). In particular, the regulations may include provision on any of the matters listed in subsection (2).</p> <p>For cases where a young person is not</p> | Affirmative procedure | As the provisions affect the rights of young persons under the Act, a higher level of scrutiny is appropriate. |

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| | | | <p>attending a maintained school or FEI in Wales, the Act requires that local authorities decide in accordance with regulations whether it is necessary for them to prepare and maintain a plan for a young person. The setting of criteria for determining when it is necessary for them to do so is suitable for delegated powers as this provides the Welsh Ministers with flexibility to amend over time the criteria that should be applied in response to evidence based need and practice. It is, therefore, suitable for delegated powers.</p> <p>Regulations will determine, in the case of a young person, when it is no longer necessary to maintain an IDP to meet the young person's reasonable needs for education or training.</p> | | |
| 56(5): List of independent special post-16 institutions | Welsh Ministers | Regulations | Local authorities, when exercising their duties under this Act, can only secure education or training for a child or young person at an independent special post-16 institution in Wales or England if the institution is on the list maintained by the Welsh Ministers under section 54. This is suitable for delegated | Negative procedure | Prescribes technical and administrative matters, which may be updated from time to time. |

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| | | | <p>powers as it provides the Welsh Ministers with flexibility for example, to add and amend what information must be collated as part of the list; set requirements that must be complied with to be placed on the list; criteria in respect of removal from the list; and provide for rights of appeal against decisions. There may be a need to amend the detailed requirements over time in light of evidence-based practice. It is, therefore, suitable for delegated powers.</p> | | |
| 60(4): Additional Learning Needs Co-ordinator | Welsh Ministers | Regulations | <p>The Act requires governing bodies of maintained schools and of FEIs in Wales to designate an ‘additional learning needs co-ordinator’ (ALNCo.) The proposed delegated powers will provide the Welsh Ministers with flexibility to specify what prescribed qualifications and experience an ALNCo must have, as well as conferring any other functions relating to an ALNCo considered necessary to undertake their duties. These may require updating from time to time in response to evidence based practice and needs and, therefore, are appropriate for delegated</p> | Affirmative procedure | Prescribes technical and administrative matters, which may be updated from time to time. |

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| | | | powers. | | |
| 65(5): Duties to provide information and other help | Welsh Ministers | Regulations | The Act places duties on particular public bodies to provide information and help to local authorities upon request. Delegated powers will enable Welsh Ministers to specify a timescale (and exceptions) within which a body or person must comply (subject to the exception in subsection (2)) with a request under this duty. The timescales may need to change from time to time in the light of evidence based practice and changing practical considerations. Delegated powers, therefore, are appropriate. | Negative procedure | Prescribe an administrative matter, which is unlikely to be controversial. |
| 67(1): Provision of goods or services in relation to additional learning provision | Welsh Ministers | Regulations | The Act provides for regulations to enable a local authority to supply goods and services in relation to ALP. This is suitable for delegated powers as it enables the Welsh Ministers to set out technical detail about terms and conditions, which may need to change from time to time. | Negative procedure | Prescribes administrative matters affecting public bodies, which may be updated from time to time. |
| 74(1): Regulations about appeals | Welsh Ministers | Regulations | The Act entitles children, their parents and young people to appeal against certain matters. The detail of how such appeals can | Affirmative procedure | The principal substance of the subject-matter |

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| and applications | | | be made and determined could change from time to time in response to changing practical considerations and changing policies. It is, therefore, suitable for delegated powers. | | will be set out in subordinate legislation made in exercise of the power. The affirmative procedure is appropriate in light of this being about bringing appeals and applications to enforce rights and challenge decisions. |
| 75(1): regulations about procedure | Welsh Ministers | Regulations | The detailed appeal procedures may need to change from time to time in response to changing practical considerations. For example changes in policies with regard to the award of costs or expenses, which need to be consistent across the Tribunal system as a whole. Therefore, delegated powers are appropriate. | Affirmative procedure | The principal substance of the subject-matter will be set out in subordinate legislation made in exercise of the power. The affirmative |

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| | | | | | procedure is appropriate in light of this being about bringing appeals and applications to enforce rights and challenge. |
| 75(2): Regulations about procedure | Welsh Ministers | Regulations | The detailed appeal procedures may need to change from time to time in response to changing practical considerations. These might include the circumstances in which it would be appropriate for the Tribunal's proceedings to be held in public, perhaps in response to changing practices in respect of tribunals more generally. Therefore, delegated powers are appropriate. | Affirmative procedure | The principal substance of the subject-matter will be set out in subordinate legislation made in exercise of the power. The affirmative procedure is appropriate in light of this being about the conduct of appeals and applications to |

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| | | | | | enforce rights and challenge. |
| 75(4): Regulations about procedure | Welsh Ministers | Regulations | The detailed appeal procedures may need to change from time to time in response to changing practical considerations. This might include the making of provision which corresponds to Part 1 of the Arbitration Act 1996, perhaps in response to changing practices in respect of tribunals more generally. Therefore, delegated powers are appropriate. | Affirmative procedure | The principal substance of the subject-matter will be set out in subordinate legislation made in exercise of the power. The affirmative procedure is appropriate in light of this being about bringing appeals and applications to enforce rights and challenge. |
| 76(3) NHS Bodies: evidence and Tribunal | Welsh Ministers | Regulations | The Act provides the Education Tribunal with the power to make a recommendation an to an NHS Body and requires the NHS body to report back to the Tribunal in relation to that | Negative procedure | Prescribes a technical and administrative matter which |

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| recommendations | | | recommendation. The Welsh Ministers have a delegated power to prescribe the period of time within which a report must be submitted. There might be a need to change the prescribed period over time. Therefore, delegated powers are would be appropriate. | | that is unlikely to be controversial. The period prescribed might need to change from time to time. |
| 77: Compliance with orders | Welsh Ministers | Regulations | The Act enables the Welsh Ministers to prescribe in regulations a period within which the governing body or local authority concerned must comply with an order of the Education Tribunal for Wales, beginning with the date on which it is made. This may need to change from time to time to reflect evidenced based practice. It is, therefore, suitable for delegated powers. | Negative Procedure | Prescribes technical and administrative matters, which may be updated from time to time. |
| 82(1): Regulations about disclosure and use of information | Welsh Ministers | Regulations | This power allows for the disclosure and use of information for the purposes of this Part of the Act or other purposes related to the education of a child or young person. This includes, for example, disclosure of an IDP without consent of the person to whom it relates. Provisions about disclosure are likely to need change | Affirmative procedure | The principal substance of the subject-matter will be set out in subordinate legislation made in exercise of |

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| | | | from time to time to reflect changing practical considerations such as developments in case law. Delegated powers, therefore, are appropriate. | | the power. These regulations may involve the use of information without consent, therefore the higher level of scrutiny is appropriate. |
| 83(1): Parents and young people lacking capacity | Welsh Ministers | Regulations | The Act requires the Welsh Ministers to make regulations to ensure that parents who are lacking mental capacity, at a time where they have a right to make a decision or represent their views, are sufficiently represented by an appropriate person. These provisions may need to be amended from time to time to reflect evidence based practice and, therefore, are suitable for delegated powers. An equivalent power has been inserted into the Equality Act 2010 by virtue of Schedule 1 to the Act, in relation to disability discrimination claims under that Act. | Affirmative procedure | Enables provision to be made which relates to the application of legislation (including Acts of Parliament and Acts and Measures of the Assembly) and therefore the higher level of scrutiny is |

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| | | | | | appropriate. |
| 85(8): Case friends | Welsh Ministers | Regulations | Case friends may be appointed for children who lack sufficient understanding to exercise rights conferred on them by the Act and understand information and documents which must be presented to them under the Act. The Act sets out the main provisions on case friends – what they are, may do and how they are appointed and removed. This power is to make further provision about case friends. This detail is suitable for delegated powers as the Welsh Ministers may need to amend over time, including in response to changing circumstances in relation to how case friends might be used to support the rights of the child/young person. Therefore, delegated powers are appropriate. | Affirmative procedure | The principal substance of the subject-matter is set out in the Act but nevertheless regulations made under this section will affect how the rights of children are exercised. Therefore a higher level of scrutiny is appropriate. |
| 90:Power to amend duties to secure additional learning provision in | Welsh Ministers | Regulations | The Act includes six sections under which bodies have a duty to take all reasonable steps to secure additional learning provision in Welsh. This section provides the Welsh Ministers with the power to make regulations that omit the words “take all reasonable steps | Affirmative Procedure | Enables provision to be made that may substantially affect provisions of Acts of |

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| Welsh | | | to” from any or all of these provisions, or provide that a provision has effect as if those words were omitted for a prescribed purpose; in relation to a prescribed body; or for a prescribed purpose in relation to a prescribed body. Furthermore, if the words “take all reasonable steps to” omitted from every relevant section, section 90 provides for the Welsh Ministers to make regulations that omit section 89 of the Act (Review of additional learning provision in Welsh). These powers will allow the Welsh Ministers to ensure that the requirements the Act places on bodies in relation to provision made through the medium of Welsh are progressively strengthened to take account of improvements in the availability of Welsh language provision made over time. Therefore, delegated powers are Act. | | Parliament, Assembly Measures or Acts of the Assembly. |
| 91(6): Constitution of the Education Tribunal for | Welsh Ministers (with the agreement of the Secretary of | Regulations | The Bill sets out how the Education Tribunal for Wales is constituted. Delegated powers will allow Welsh Ministers, with the agreement of the Secretary of State, to: | Negative procedure | Prescribes administrative matters, which may be updated from time to |

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| Wales | State) | | <p>(a) provide for the jurisdiction of the Tribunal to be exercised by such number of tribunals as the President may determine from time to time, and</p> <p>(b) make any other provision in connection with the establishment and continuation of the Tribunal which are considered necessary or desirable. Regulations made under this section will provide administrative detail that may need to be updated from time to time in response to changing policies in relation to the tribunals more generally operate. Therefore, delegated powers are appropriate.</p> | | time. |
| 92(2): The President and members of the panels | Welsh Ministers (with the agreement of the Secretary of State) | Regulations | The Act sets out provisions for appointing a person as President, and appointing a person as member of the legal chair panel or lay panel. Delegated powers enable the Welsh Ministers to prescribe requirements that a person must satisfy to be appointed as a member of the lay panel. These would be technical in nature and may be updated from time to time to take account of new considerations. Therefore, delegated powers | Negative procedure | Prescribes technical and administrative matters, which may be updated from time to time. |

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| | | | are appropriate. | | |
| 95: Meaning of “in the area” of a local authority – inserting subsection (3C) into section 579 of the Education Act 1996 | Welsh Ministers | Regulations | Section 95 of the B Act ill inserts a regulation making power into section 579 of the Education Act 1996 which will allow the Welsh Ministers to make further provision about the meaning of “in the area” of a local authority in Wales. This gives flexibility to make further provision, for example, in light of any uncertain situations which may arise. | Affirmative procedure | The main provision is set out in the Act and this power allows for further detail to be made which is likely to be administrative, dealing with which local authority is responsible for a person. |
| 97(1): Power to make consequential and transitional provision etc. | Welsh Ministers | Regulations | Delegated powers are suitable for giving Welsh Ministers the flexibility of making any supplementary, incidental or consequential provision and any transitory, transitional or saving provision, if they consider it necessary or expedient for the purposes of, in consequence of, or for giving full effect to any provision of the Act. This enables Welsh | Affirmative procedure if amending primary legislation. Otherwise negative. | Affirmative where they enable provision to be made that amends provisions of Acts of Parliament, |

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| | | | Ministers to amend, repeal or revoke any enactment and statutory documents. | | Assembly Measures or Acts of the Assembly, in which case the higher level of scrutiny is appropriate. Otherwise, the negative procedure applies – these changes are confined to being consequential etc., and linked to the purposes of the Act. |
| 99(8): General interpretation | Welsh Ministers | Regulations | This power is to amend the definition of “NHS body” used in the Act so that it includes a special health authority established under section 22 of the National Health Service (Wales) Act 2006 (c.42). This would result in | Affirmative procedure | The regulation making power allows only a very restricted administrative |

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| | | | the duties under sections 20 and 21 (about additional learning provision) applying to such authorities. No such authorities currently exist in Wales, but if they did in future this regulation making power provides scope for including them in the duties if appropriate. | | change. |
| 100(3): Coming into force | Welsh Ministers | Order | Aside from sections 1 and 91 - 94, provisions of the Act come into force on a day appointed by the Welsh Ministers in an order made by statutory instrument. This delegated power is necessary in order to ensure that the appointed day ties in with the detailed transition and implementation arrangements following the passing of the legislation. | None | Prescribes a technical and administrative matter. |
| Schedule 1, para 19(5)(f) (inserting replacement paragraph 6A(7) into Schedule 17 to the Equality Act 2010) | Welsh Ministers | Regulations | Case friends may be appointed for children who lack sufficient understanding to exercise the right to make a disability discrimination claim conferred on them by the Equality Act 2010. The Equality 2010 Act as amended by the Act, sets out the main provisions on case friends – what they are, may do and how they are appointed and removed. This power (which is similar to, but extends the existing | Affirmative procedure | The principal substance of the subject-matter is set out in the Act as amended by the Act, but nevertheless regulations made under this |

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| | | | <p>regulation making power in paragraph 6A of Schedule 17 to the Equality Act) is to make further provision about case friends. This detail is suitable for delegated powers as the Welsh Ministers may need to amend over time, including in response to changing circumstances in relation to how case friends might be used to support the rights of the child. Therefore, delegated powers are appropriate. An equivalent power has been included at section 85(8) of the Act in relation to appeals made under the Act.</p> | | <p>section will affect how the rights of children are exercised. Therefore, a higher level of scrutiny is appropriate.</p> |
| <p>Schedule 1, para 19(5)(h) (inserting new paragraph 6F(1) into Schedule 17 of Equality Act 2010)</p> | <p>Welsh Ministers</p> | <p>Regulations</p> | <p>This power, inserted into the Equality Act 2010 by the Act, requires the Welsh Ministers to make regulations to ensure that parents who are lacking mental capacity, at a time where they have a right to make a disability discrimination claim on behalf of their child, are sufficiently represented by an appropriate person. It also requires the Welsh Ministers to make regulations to ensure persons over compulsory school age that lack capacity are sufficiently represented. These provisions may need to be amended from time to time to</p> | <p>Affirmative procedure</p> | <p>Enables provision to be made that relates to the application of legislation (including Acts of Parliament and Acts and Measures of the Assembly) and, therefore, the</p> |

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| | | | reflect evidence based practice and, therefore, are suitable for delegated powers. An equivalent power has been included at section 85 of the Act in relation to appeals made under the Act. | | higher level of scrutiny is appropriate. |
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NB: At section 16(5) of the Act an amendment is made to section 83(5)(a) of the Social Services and Well-being (Wales) Act 2014 in effect limiting what may be done in those regulations, so that it must be consistent with the provisions of the Act. However, this is not a new power so has not been included in the table above.

In addition, section 50 amends section 160 of the Education Act 2002 so as to add to the list of matters which must be covered in regulations under that section (prescribing information to be included in an application to enter an independent school in the register). This is related to the repeal of section 347 of the Education Act 1996 in section 54.

Existing regulation making powers under the Equality Act 2010 relating to disability discrimination claims that will be heard by the Education Tribunal, have been changed from negative to affirmative procedure.

6. Regulatory Impact Assessment

Whilst other parts of the Explanatory Memorandum have been updated to explain the Act, this section on the Regulatory Impact Assessment (RIA) and sections 7 and 8 refer to the Additional Learning Needs and Education Tribunal (Wales) Bill ‘the Bill’ throughout. This is because the analysis of the cost and benefits of the new system have been used for the purpose of aiding scrutiny of the Bill during the legislative process. This RIA was last updated following agreement of a number of Stage 2 amendments that had financial implications. The RIA was not updated after Stage 3 as none of the amendments agreed had any resulting financial implications. Further analysis of the costs and benefits of the new system will continue to be refined in the Regulatory Impact Assessments that will be produced for all secondary legislation from the Act including regulations that will be developed over the course of the new few years as the new system is implemented.

- 6.1 A regulatory impact assessment has been completed for the Bill and follows in Part 2.
- 6.2 The regulatory impact assessment is not set out to mirror the structure of the Bill. Rather, the regulatory impact assessment presents the costs as they relate to the main changes brought about by the Bill, bringing together the relevant provisions.
- 6.3 Whilst standard practice is to set out estimated cost projections over a five year period, the approach taken in this regulatory impact assessment is to set out the costs over a four year period to coincide with the term of the current National Assembly for Wales.

Summary – regulatory impact assessment

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| Additional Learning Needs and Educational Tribunal (Wales) Bill |
| Preferred option: introduce legislation to improve the current special educational needs (SEN) system to reduce existing conflict in the system and |

improve outcomes for young people with additional learning needs (ALN). The specific options include introducing:

- statutory individual development plans (IDPs) for young people with ALN. See pages 97 and 142
- a requirement for local authorities to avoid *and* resolve disagreements. See pages 104 and 225
- a responsibility for local authorities to assess need post-16 and to secure specialist further education provision. See pages 107 and 240
- changes to the registration and approval of independent schools in respect of special educational needs. See pages 111 and 254
- changes to the statutory basis of special educational needs co-ordinators in education. See pages 114 and 274
- changes to the statutory basis of special educational needs co-ordinators in health. See pages 119 and 286
- Requirement for local authorities to appoint an early years ALN lead officer. See pages 123 and 293
- The power for Welsh Ministers to determine where responsibility lies to maintain an IDP where a disagreement exists between a local authority and an FEI. See pages 129 and 301
- The requirement for Welsh Ministers to undertake a five yearly review to assess the demand for, and supply of, additional learning provision delivered through the medium of Welsh. See pages 126 and 297

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|--|--|---|
| Stage: stage 3 | Appraisal period: 2017-18 to 2020-21 | Price base year: 2016-17 |
| Total cost Total: £7,821,560 Present value: £7,221,660 | Total benefits Total: £4,272,740 Present value: £3,923,530 | Net present value (NPV): £3,298,130 |

Administrative costs

Costs

Ongoing costs: Overall, the Bill is expected to result in cost savings. There are, however, four organisations which are likely to incur additional ongoing costs:

Further education institutions (FEIs): £92,800 (£23,200 per year)

Estyn: £172,000 (£43,000 per year)

Welsh Government: £1,240 (£310 per year).

Transition costs: it is likely nine public sector organisations will incur transition costs. This includes: local authority education services, local authority social services, SENTW, mainstream schools, health boards, FEIs, Estyn, pupil referral units and the Welsh Government. The total transition costs are £11,655,160. Welsh Government transition costs are £1,972,510, leaving £9,682,650 transition costs which fall to the remaining public sector organisations.

The Welsh Government is supporting the implementation of the Bill through transition grants.

| | | | |
|--------------------|-------------------|---------------|------------------------|
| Transition: | Recurrent: | Total: | PV: £10,986,140 |
| £11,655,160 | £266,040 | £ 11,921,200 | |

Cost savings:

Overall, there is potential for the Bill to achieve estimated ongoing savings of £4,766,340 over the four year period 2017-18 to 2020-21. This is an estimated saving of £1,191,585 per year.

There is potential for local authority education services to save an estimated £2,750,740 over the four year period, with Careers Wales potentially saving and estimated £1,954,400 and SENTW potentially saving £61,200 over the four year period.

The estimated savings are expected to be achieved from provisions in the Bill which aim to remove the current adversarial nature of the statement process.

As well as recognising the potential savings which could be realised from the introduction of the preferred options, the regulatory impact assessment acknowledges it is unknown the extent to which the potential savings will be achieved. Thus, when calculating the savings, mid-range savings have generally been used to avoid overstating the potential savings.

In addition, where it has not been possible to identify the potential savings due to diverse practices likely to be put in place when implementing provisions

within the Bill, illustrative savings are presented within the text, but are not then included in summary Table 70 and Table 71.

| | | | |
|-----------------------|---------------------------------|-----------------------------|-----------------------|
| Transition: £0 | Recurrent: £4,766,340 | Total: £4,766,340 | PV: £4,376,790 |
|-----------------------|---------------------------------|-----------------------------|-----------------------|

Net administrative cost: £7,154,860

Compliance costs

Independent schools, parents and providers of dispute resolution services will incur additional costs over the four year period. There are, however, net benefits for parents and service providers when the benefits set out below are taken into account.

Independent schools will incur additional estimated costs of £17,300 over the four year period. This consists of £2,100 transition costs and £15,200 ongoing costs. The estimated additional ongoing cost per year is £3,800.

There will be an additional cost to parents of £592,400 over the four year period due to extended rights of appeal, this is equal to £148,100 per annum.

Providers of dispute resolution services will incur additional costs of £57,000 over the four year period due to extended rights of appeal, this is equal to £14,250 per annum.

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|------------------------------|-------------------------------|------------------------|--------------------|
| Transition: £2,100 | Recurrent: £664,600 | Total: £666,700 | PV: 612,310 |
|------------------------------|-------------------------------|------------------------|--------------------|

Other costs

The regulatory impact analysis has identified no economic, social or environmental costs associated with introducing the preferred options.

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|--------------------------|-------------------------|---------------------|------------------|
| Transition: £0 | Recurrent: £0 | Total: £0 | PV: £0 |
|--------------------------|-------------------------|---------------------|------------------|

Unquantified costs and dis-benefits

There are a number of costs, dis-benefits and risks associated with introducing the Bill, which it has not been possible to quantify and the costs

are unknown. These include:

Cost to public administration

- ongoing current and future costs to schools of complaints about plans and provision
- ongoing current and future costs to further education institutions of complaints about plans and provision
- costs associated with staff turnover in relation to the ALNCo minimum qualification
- costs associated with developing the ALNCo minimum qualification
- current ongoing cost to LHBS of co-ordinating health provision for children and young people with ALN

These are set out by provision and by organisation throughout the regulatory impact assessment.

Benefits

The regulatory impact analysis has identified potential estimated savings of £3,921,900 over the four year period to parents of young people with additional learning needs. This is a potential estimated saving of £980,475 a year.

There is potential for providers of dispute resolutions services to make savings of £350,840 over the four year period. This is a potential estimated saving of £87,710 a year.

The unquantified benefits are set out in the options section.

| Transition: | Recurrent: | Total: | PV: |
|--------------------|-------------------|---------------|------------|
| £0 | £4,272,740 | £4,272,740 | £3,923,530 |

Unquantified benefits

There are a number of benefits associated with introducing the Bill, which it has not been possible to quantify. These include:

Benefits to public administration

- potential savings to further education institutions as a result of not having to maintain college-based plans for all young people with ALN as a result of the provision to introduce local authority maintained IDPs for some young people with ALN who attend further education
- potential savings to local authorities associated with any reduction in the number of disagreements as a result of the provision requiring local authorities to avoid *and* resolve disputes
- potential savings to social services and health services arising from the removal of the current requirement for them to provide advice in all statutory assessment cases, irrespective of its relevance

Benefits to other organisations

- potential savings to providers of dispute resolution services as a result of the provision requiring local authorities to avoid *and* resolve disputes

Benefits to children, young people and parents

- potential savings to parents associated with any reduction in the number of disagreements as a result of the provision requiring local authorities to avoid and resolve disputes

Social benefits

- social benefits associated with children and young people with ALN achieving their full potential including increased attainment, college attendance, independent living and future employment.
- These are set out by provision and by organisation throughout the regulatory impact assessment.

Key evidence, assumptions and uncertainties

The key evidence, assumptions and uncertainties are set out in the introduction. More detail can be found in the discussions on the costs and benefits of the individual proposals.

PART 2 - IMPACT ASSESSMENT

7. Options

- 7.1 This chapter outlines the options associated with each of the following provisions set out in the Bill:
- Plans to support children and young people with additional learning needs
 - Dispute resolution
 - Responsibility for assessing need post-16 and for securing specialist further education provision
 - Registration and approval of independent schools in respect of special educational needs
 - Statutory basis of the special educational needs co-ordinators in education
 - Statutory basis of special educational needs strategic co-ordinators in health
 - Requirement for local authorities to appoint an early years ALN lead officer
 - Reviews of additional learning provision through the medium of Welsh
 - The power for Welsh Ministers to determine where responsible lies for maintaining an IDP.