Research Briefing

Additional Learning Needs and Education Tribunal (Wales) Bill

- Bill Summary
- Welsh Glossary

National Assembly for Wales
Research Service

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Research Briefing

Additional Learning Needs and Education Tribunal (Wales) Bill

The Additional Learning Needs and Education Tribunal (Wales) Bill proposes to replace the current Special Educational Needs (SEN) framework with a reformed system based on Additional Learning Needs (ALN).

The Bill makes provision for universal, statutory Individual Development Plans for all children and young people with ALN. This would bring an end to the current distinction between school-led interventions and local authority issued statements and integrate the separate legislative arrangements that exist for pupils in schools and post-16 students in colleges.

The Bill also seeks to improve collaboration between local authorities and health boards, as well as establishing a fairer and more transparent system with greater emphasis on disagreement avoidance and dispute resolution.

This paper summarises the Bill's provisions and the background to its introduction. It also gives an overview of the working draft Code, which the Welsh Government has made available to assist scrutiny, highlighting key points to understanding the Bill.

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1. Introduction

A 'complete overhaul' of a system 'no longer fit for purpose'

On 12 December 2016, the Minister for Lifelong Learning and Welsh Language, Alun Davies introduced the ***Additional Learning Needs and Education Tribunal (Wales) Bill*** into the Assembly. He issued a written statement alongside the publication of the Bill and then gave a **statement in Plenary the following day**. The introduction of the Bill followed a **series of reviews**, committee inquiries, policy proposals, pilots, consultations, a White Paper and a draft Bill.[1] For many years, stakeholders and families have called for reform, which is now considered **long overdue**.

The previous Minister for Education and Skills, Huw Lewis, decided in June 2015 to **consult on a draft Bill**, therefore delaying the introduction of the legislation. However, it was apparent from stakeholders' responses to this decision that what they were most concerned about was making the right reforms and implementing them effectively, rather than the length of time this took. The Welsh Government's approach continues to be reflected in the current Minister, Alun Davies' comment that he wants a **'good Act, not a quick Bill'**.

The Welsh Government is unequivocal about the need for change. It has long recognised that the current Special Educational Needs (SEN) system is 'based on a **model introduced more than 30 years ago**' and is **'no longer fit for purpose'**. The Welsh Government describes the Bill as an 'ambitious law to create a bold new approach' and a **'complete overhaul'** of the way children and young people's learning needs are met in Wales.

Brief overview of the Bill

The Bill provides for a **new statutory framework** for supporting children and young people with Additional Learning Needs (ALN), from birth; whilst they are in school; and, if they are over compulsory school age, while they are in further education. The Bill, and the new framework it creates, will **replace the separate legislation and arrangements** which currently exist for Special Educational Needs **(SEN) up to age 16**, and Learning Difficulties and/or Disabilities **(LDD) post-16**.[2]

The **new term, Additional Learning Needs (ALN)** will be applied within a single legislative framework for all children and young people up to the age of 25 who are identified as having those needs. The definition which the Bill uses for ALN is materially the **same as the current legal definition of SEN**.

The Bill requires the Welsh Government to produce an **ALN Code**. This will provide most of the detail for the way assessments and decisions about provision will be carried out, with the Bill setting the overall framework. The **Welsh Government provided the Committee** with a **working draft of the Code** (PDF 2.95MB) on 14 February 2017, which the Committee published to assist stakeholders' input into Stage 1 scrutiny.

The Minister for Lifelong Learning and Welsh Language, Alun Davies has emphasised that the draft Code is 'very much a work in progress' and that he has made the working draft available **'solely for illustrative purposes'** to support scrutiny of the Bill. He has said the draft Code itself is not subject to

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[1] The Research Briefing, ***Additional Learning Needs in Wales*** (November 2016), provides a summary of this history of review and reform, which dates back to 2002.

[2] ***Additional Learning Needs in Wales*** also includes an overview of the current Special Educational Needs framework, along with some data on numbers of learners, funding and attainment.

scrutiny at this point but will be fully consulted on when a formal version is prepared following the Act receiving Royal Assent. Chapter 7 of this paper provides more information on the ALN Code.

2. Structure of the Bill

There are 4 Parts to the Bill, which consist of 88 sections, and 1 Schedule.

- **Part 1** (section 1) is an **overview of the provisions** of the Bill.
- **Part 2** contains 5 Chapters and is the **substantial part** of the Bill.
    - **Chapter 1** (sections 2-7) **defines** the **key terms** of Additional Learning Needs (ALN) and Additional Learning Provision (ALP), sets out the requirement and procedure for producing a **Code**, and establishes a duty to **involve and provide information** to children, young people and parents.
    - **Chapter 2** (sections 8-40) contains the provisions for **identifying ALN**, and preparing and maintaining **Individual Development Plans**.
    - **Chapter 3** (sections 41-60) is made up of **supplementary functions**, including those relating to the registration of independent schools to offer ALP to pupils with ALN and the new statutory co-ordinator roles within schools/colleges and health boards.
    - **Chapter 4** (sections 61-72) places duties on local authorities to make arrangements for **avoiding and resolving disagreements**, and for access to independent advocacy services. It also makes provision for **appeals and applications** to the Education Tribunal for Wales.
    - **Chapter 5** (sections 73-78) makes general provision for regulations to be made about **disclosure and use of information**, and in relation to parents and young people **lacking capacity**.
- **Part 3** (sections 79-81) **renames** the Special Educational Needs Tribunal for Wales (SENTW) as the **'Education Tribunal for Wales'** and sets out its membership and expenses arrangements.
- **Part 4** (sections 82-88) makes **Miscellaneous and General** provision including powers for the Welsh Ministers to make consequential and transitional provision, procedures for making subordinate legislation, an index of defined terms and arrangements for the legislation coming into force.
- **Schedule 1** provides for minor and consequential **amendments and repeals**.

Documentation accompanying the Bill

The Welsh Government published an Explanatory Memorandum (PDF 2.81MB) alongside the Bill. This includes a Regulatory Impact Assessment (RIA), which details the policy options the Welsh Government considered and the associated costs and benefits of making the legislation, and Explanatory Notes for each section of the Bill. On 7 February 2017, the Minister provided the Children, Young People and Education Committee with a note (PDF 1.82MB) detailing revisions to the RIA resulting from the identification of some minor errors in the original.

The Welsh Government has also published a **Statement of Policy Intent for subordinate legislation to be made under the Bill** (PDF 410KB).

On 15 December 2016, the Assembly's Research Service posted a **blog article** giving an overview of the Bill and relevant background information.

As stated above, the Welsh Government provided the Children, Young People and Education Committee with a **draft version of the ALN Code** (PDF 2.95MB), which the Committee has published to inform scrutiny of the Bill.

3. Purpose and intended effect of the Bill

The Welsh Government frames the purpose and intended effect of the Bill within the context of three overarching objectives and ten core aims. Information in its Explanatory Memorandum (EM) regarding the purpose and intended effect of the Bill is therefore structured around the ten core aims (paras 3.5-3.16 and 3.79-3.136 of the version published upon introduction of the Bill).

Three overarching objectives

The Welsh Government's three overarching objectives are as follows (the comments in italics are this author's and intended to provide further explanation):

- 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) *(rather than two separate systems of SEN up to age 16 and LDD for post-16, both of which are currently covered by separate legislation)*;
- b) An **integrated, collaborative** process of assessment, planning and monitoring which facilitates **early, timely and effective** interventions *(including duties on health boards and local authorities to collaborate with each other through a statutory Individual Development Plan for each learner with ALN)*;
- c) A **fair and transparent system** for providing information and advice, and for resolving concerns and appeals *(including requiring local authorities to make arrangements for avoiding and resolving disagreements, revising a system found by previous reviews to be 'complex, bewildering and adversarial')*.

Overarching objective A: A unified legislative framework

This briefing presents the ten aims below by allocating them to a 'parent' objective as a means of explaining the purpose and intended effect of the Bill. (Note that the numbering of the core aims 1-10 is this author's own sequence to structure them within the three overarching objectives. They are not listed in this order in the Welsh Government's Explanatory Memorandum.)

Core aim 1: The introduction of the term Additional Learning Needs (ALN)

The Bill **replaces the existing terms**, Special Educational Needs (SEN) and Learning Difficulties and/or Disabilities (LDD), with Additional Learning Needs (ALN). To a large extent in the case of SEN, this would **establish in law an approach already relatively common** across Wales. The term ALN has already been used in practical and policy terms since the Welsh Government issued revised *Inclusion and Pupil Support* guidance in November 2006, which followed an Assembly Committee's recommendation in the Second Assembly.

The **same definition as currently used for SEN is retained in the Bill for ALN**. This definition is also materially the same as the current definition of LDD at post-16.

The Bill actually sets out a two-step definition; firstly does the child or young person have a learning difficulty or disability, and secondly does that learning difficulty or disability call for Additional Learning Provision (ALP)? If so, then the child or young person has ALN.

Under section 2 of the Bill, a child or young person[3] has a learning difficulty or disability if he/she:

- a) has a **significantly greater difficulty** in learning than the **majority** of others of the same age; or
- b) has a disability for the purposes of the *Equality Act 2010* (c. 15)[4] which **prevents or hinders** him or her from **making use of facilities** for education or training of a kind generally provided for others of the same age in mainstream maintained schools or mainstream institutions in the further education sector. [my emphasis]

As at present, a person will not be considered as having a learning difficulty solely because the **language spoken at home** is different to the language in which they are taught. Neither will they be deemed as having ALN if their lack of progress or difficulties could be addressed through **regular differentiated teaching**.

In addition, the definition in the Bill **does not encompass medical needs** such as diabetes, unless they cause the learner to have a significantly greater difficulty in learning or hinder their access to the education or training generally on offer. Chapter 6 of the draft Code provides guidance to governing bodies and local authorities about the definition of ALN and the importance of differentiated teaching. (See chapter 7 of this paper for further discussion.) The Welsh Government is due to publish new guidance on managing healthcare needs in schools in March 2017.[5]

The next step to identifying ALN will be to determine whether the child or young person's learning difficulty or disability requires Additional Learning Provision. Section 3 defines **Additional Learning Provision (ALP)** in the same terms as currently used for Special Educational Provision:

- For a person aged three or over, educational or training provision that is **additional to, or different from**, that made generally for others of the same age in mainstream maintained schools or colleges, or in nursery education;
- For a child aged under 3, educational provision of any kind [because a child of this age would not normally access educational provision] [my emphasis]

The Welsh Government envisages the **same number of learners** would be deemed as having ALN as those with SEN and LDD at present, as a result of using the same definitions. However, it believes using the same term for all learners aged under 25 would provide **greater equity** and underline the **coherence** of the new system. It also believes the newly established term, ALN, would reduce stigma and mark a **clear break** from a system in need of fundamental reform.

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[3] The Bill uses the term 'child' to mean someone who is at or under compulsory school age and 'young person' as someone who is over compulsory school age but under 25.

[4] Since the draft Bill, the Welsh Government has inserted 'for the purposes of the Equality Act 2010 (c.15)' after the reference to disability within the definition for ALN. The definition for disability was updated by the 2010 Act and this addition is likely to be in the interests of having a clear definition for disability within the Bill.

[5] For background information, see the blog article, ***Meeting the healthcare needs of children and young people in school. Does the law need changing in Wales?***, January 2017.

Core aim 2: A 0 to 25 age range

The Bill provides for a new **single system for ALN** for both pre-16 and post-16, replacing the current SEN and LDD systems. Section 9 sets out the same duty on governing bodies of both schools and Further Education Institutions (FEIs) to decide whether pupils/students have ALN 'where it is brought to [their] attention or otherwise appears to [them]' that they 'may have ALN'. Where a governing body of a school or FEI decides that a pupil/student does have ALN, section 10 of the Bill requires them to prepare and maintain an Individual Development Plan (IDP) for them. Therefore, all learners with ALN would have the **same type of statutory plan irrespective of their age** or whether they are in a school, a school sixth form or an FEI.

The Welsh Government says this will place learners in FE who currently have separate Learning and Skills Plans (LSPs) on a **more equal** footing with their school-based counterparts. It also says it will **improve transition** between school and post-16 education.

Another significant change under the Bill, which is intended to facilitate more effective transition is the **transfer of the responsibility for specialist post-16 provision from the Welsh Ministers to local authorities**. The Welsh Government believes this will encourage local authorities and post-16 providers to work together to plan and make provision, as well as incentivising local authorities to plan for the individual beyond the age of 16 in a way they do not necessarily have to at present.

Core aim 3: A unified plan

Just as the Bill provides for the same type of plan (an IDP) for all ages of learner under 25, it also provides for the **same type of plan for all learners with ALN regardless of their severity**. Under the Bill, the current distinction between statements, and *School Action* or *School Action Plus,* would no longer exist. Instead all learners with ALN would have a statutory IDP, as would all learners with ALN aged 0-25 (where 16-25 year olds are in school sixth forms or further education).

Section 8 defines an IDP as a **document which describes a person's ALN and the ALP** required to meet them. Chapter 10 of the draft Code provides statutory guidance to schools, colleges and local authorities on preparing an IDP, whilst chapter 11 sets out its mandatory content.

In the EM, the Welsh Government sums up the anticipated benefits of a unified plan for all degrees of ALN as follows:

> *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. (para 3.97) [my emphasis]*

Some stakeholders have raised concerns about a **potential dilution of support** for the most severe and complex needs (usually those who have statements) if every learner with ALN has the same type of statutory plan. The Bill provides for a **distinction** between the **more severe and complex cases**, where **local authorities will be responsible** for maintaining the IDP, and the majority of cases where the IDP is the responsibility of the school or FEI. During pre-legislative scrutiny of the draft Bill, the

Welsh Government said (PDF 262KB) it expected the **balance** between the number of learners whose IDPs would be maintained by schools and local authorities respectively to be **'very similar'** to the existing balance between learners supported through either *School Action* or *School Action Plus* (88%), and those with a statement (12%).

Whose responsibility: Governing bodies or local authorities?

The duty imposed by section 10 on schools and FEIs to prepare and maintain an IDP for a learner with ALN does not apply if the governing body considers that the learner's ALN are **beyond its capability to adequately assess or provide for** ('cannot adequately determine') or it **would not be reasonable** for them to do so. If so, the school or FEI may **refer the case to the local authority** to assess the learner's ALN and subsequently secure any necessary ALP.

Sections 11 and 12 contain similar requirements on local authorities to decide if a learner has ALN and then prepare and maintain an IDP, as the requirements on governing bodies of schools and FEIs under sections 9 and 10. The relevant provision is that governing bodies and local authorities must do so 'where it is brought to [their] attention or otherwise appears to [them]' that a learner 'may have ALN'. **Exceptions** are where:

- The learner is above compulsory school age (and is therefore classed as a **'young person'** and not a 'child') and **does not give their consent**;
- The governing body/local authority has **previously assessed** the child or young person and they are satisfied their needs have not changed materially since and there is no new information that materially affects the decision;
- For a governing body, where it considers it needs to **refer the case to the local authority**; or
- For a local authority, where it is satisfied that the case **can and is being considered by a governing body**.

Stakeholders, and subsequently the previous Committee in its pre-legislative scrutiny of the draft Bill, highlighted the potential for **ambiguity and contention** over the circumstances when assessment and provision is deemed to be the responsibility of a governing body or a local authority. Paragraph 9.29 of the draft Code provides some examples of circumstances when it would not be reasonable for a school or college governing body to secure provision. (See chapter 7 of this paper for more detail.)

Families' rights to ask local authorities to intervene

The Bill provides for a child, young person, or parent (in the case of a child not above compulsory school age) to **ask a local authority to intervene and reconsider** decisions taken and provision made by schools or FEIs concerning ALN. The local authority **must comply** with such a request unless it has already considered the learner's case and **nothing material has changed** and there is no new information that would affect its decision. Below is a summary of the ways a learner or their parent can ask a local authority to intervene:

- Section 24 enables local authorities to reconsider decisions by schools **whether a learner has ALN** (section 9). However, this does not extend to decisions taken by FEIs.
- Under section 25, local authorities can reconsider the **content of an IDP** a school governing body has put in place (section 10). This does not cover learners in FEIs who have ALN.

– Under section 26, local authorities may also decide to t**ake over responsibility for an IDP** that is currently being maintained by a school or FEI's governing body. In addition to families, a governing body itself can also ask a local authority to consider taking over an IDP (the beyond capability and reasonable test discussed above).

– Section 24 provides for a local authority to prepare an IDP for a learner and **direct a school governing body** to maintain that plan.

– Section 30 enables local authorities to reconsider a school governing body's decision to **cease to maintain** a learner's IDP.

Overarching objective B: An integrated, collaborative process with early, timely and effective interventions

Core aim 4: Increased collaboration

This is one of the most important aims of the Bill and seeks to ensure that local authorities and health bodies work together in the best interests of the learner. It is also one of the areas that **generated the most concern** in the Welsh Government's consultation on the draft Bill and the previous Committee's pre-legislative scrutiny.

Duty on health bodies to make provision

The **draft Bill** (PDF 258KB) imposed a duty on local health boards and NHS Trusts to secure ALN provision for a learner if that provision is stipulated in their Individual Development Plan (IDP). However, the provision would only have been included in the IDP if a health body **'agreed'** to this.

This received considerable criticism with stakeholders, and subsequently the Children, Young People and Education Committee, concluding that this **did not sufficiently bind the health sector** to offer provision that is necessary. The counter-argument was that health professionals' **clinical judgement** should be the deciding factor on what NHS provision is appropriate and necessary for a learner with ALN.

The Welsh Government has changed the wording of the relevant section in the **Bill** (now section 18) so that:

– Where asked to by a local authority, a **health body** '**must consider whether there is a relevant treatment or service** that is likely to be of **benefit** in addressing the child's or young person's ALN'.

– If the health body identifies such a relevant treatment or service, it **'must secure'** it for the child or young person.

It is widely recognised that effective collaboration from the outset in identifying ALN and developing an IDP is crucial to improving the system.

The EM states:

> *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. (para 3.120)*
>
> *IDPs will contain an action plan that is '****clear about which agency is responsible*** *for delivering the individual elements'. (para 3.116)*

Chapter 12 of the draft Code sets out mandatory duties and provides guidance on how this multi-agency working should take place when preparing an IDP.

Duties to provide information and other help

Section 58 provides that where a **local authority requests information or other help** from other bodies (such as health boards) in carrying out any of their ALN functions, for example assessing a learner's needs or preparing a IDP to meet the learners' ALN, **the body must comply** with that request unless doing so would:

– be incompatible with their own duties; or

– otherwise have an adverse effect on how the exercise of their functions.

The duty to help is similar to the current requirements regarding SEN at present. However, the **duty to comply with requests for information is new** and is designed to address current 'issues around the failure of bodies to share information as effectively as they should'. The Welsh Government says it will be underpinned by clear guidance in the Code.

Children under compulsory school age

The Bill gives health bodies a particular responsibility regarding children under compulsory school age. Section 57 **requires them to notify the child's parents** where they form the opinion that the child has, or probably has, ALN. Health bodies will have the **discretion to bring this to the attention of the relevant local authority** if they are satisfied this is in the child's best interests. Local authorities must then decide whether the child has ALN unless the exceptions apply. The draft Code (para 7.1.33) states that health bodies may provide diagnostic services and other help if an IDP is subsequently prepared.

Links with other provision

The Welsh Government says the Bill 'provides a clear legislative basis for **avoiding the duplication** of effort and confusion which arise where multiple plans are produced for the same individual'. Section 23 provides for IDPs and **other plans relating to the same person to be prepared, reviewed or revised at the same time**, which the EM says will enable the 'much closer alignment and integration of otherwise separate planning processes'. The Welsh Government says this mirrors the approach of the **Social Services and Well-being (Wales) Act 2014,** enabling, for example, the inclusion of the IDPs of Looked After Children into the educational plans they have under the 2014 Act.

DECLO role within health boards

Section 55 of the Bill imposes a **new duty on health boards to appoint a Designated Education Clinical Lead Officer (DECLO)**. This new role must be undertaken by a member of staff who is a registered medical practitioner, or a registered nurse or other heath professional.

The EM explains that the DECLO 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** on 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 will be responsible for **ensuring the appropriate health board input is provided**. Chapter 12 of the draft Code provides more information on the intended role of the DECLO and its main responsibilities. (See chapter 7 of this paper.)

Core aim 5: High aspirations and improved outcomes

Section 56 requires local authorities to **keep under review the arrangements** for supporting learners with ALN within their area and **consider whether these are sufficient**. In doing so, they must have regard to the ALP that may reasonably be arranged by other bodies, such as health boards. The Welsh Government says this is to 'ensure that high standards are universal'.

ALNCo role within educational settings

The EM notes that the **designation of an individual** (or group of individuals) within each setting (or group of settings) is **crucial to ensuring consistency and high standards** through effective co-ordination and planning. Section 54 of the Bill requires all mainstream maintained schools, including maintained nurseries and Pupil Referral Units, to have a designated **Additional Learning Needs Co-ordinator (ALNCo)**. Special schools are exempt from this requirement as every staff member is expected to have a focus on ALN.

The ALNCo position will **replace the existing non-statutory SENCo role**, which the Welsh Government says is interpreted differently across settings and authorities. Section 54 also confers a power on the Welsh Ministers to make regulations prescribing the required qualfiications and/or experience a person must have to be an ALNCo.

Chapter 5 of the draft Code contains further details.

Placing of learners in independent schools

Sections 48-52 of the Bill **amend the existing legislative processes** for local authorities to place learners with SEN (now ALN) in independent schools. This was initially proposed in the **Education (Wales) Bill** in 2013 but was removed by amendment at Stage 2, along with the post-16 SEN reforms contained in that Bill.

The *Additional Learning Needs and Education Tribunal (Wales) Bill* **repeals** section 347 of the *Education Act 1996* under which the Welsh Government, advised by Estyn, has to **consent to each individual placement**. This is currently one of two legal routes for placing/admitting a learner with SEN in an independent school. The other is section 160 of the *Education Act 2002*, under which schools register as an independent school, where they can also apply to admit learners with SEN.

The Welsh Government wants to '**remove the unnecessary duplication** and confusion between the two regimes and enable a clear single system of registration'. The Bill repeals section 347 and amends the section 160 process so that **independent schools will need to demonstrate that they can cater for certain types of ALP**. The Bill requires the Welsh Government to publish an **independent school register**, which will include details of what ALP an independent school can offer. The Welsh Government says this will reduce the risk of inappropriate placements. The Welsh Government will also be required to publish a list of independent special post-16 institutions, all of which will have to meet criteria and conditions to be specified by regulations.

Overarching objective C: A fair and transparent system

Core aim 6: A simpler and less adversarial system

As the EM acknowledges, previous reviews have concluded that the current system of statutorily backed local authority statements and non-statutory school-led provision is **'complex, bewildering and adversarial'**. In the Second Assembly, in 2006, the Education, Skills and Lifelong Learning Committee found (PDF 262KB) 'the process can be adversarial, frustrating, stressful and complicated for parents' and 'it can be an unequal system' where 'more vocal and able parents are able to utilise the system more than others'.

The Welsh Government intends that **introducing statutory IDPs for all learners with ALN** will remove the 'current artificial and contentious divide' and **'eliminate one of the principal causes of adversarial tension'** (para 3.114, EM).

Section 7 **requires local authorities** to **make arrangements to provide information and advice** about ALN and the ALN system. They must make their information and advice arrangements known to a list of persons specified in section 7(2).

Section 76 provides for a child **lacking capacity** to understand information or documents given to them, or how to exercise their rights, to have a person to support them, known as a **'case friend'**. Case friends will be **appointed by the Tribunal** on the application of any person or on the Tribunal's own initiative and may represent and support the child, and **take decisions and act on their behalf**. The Welsh Ministers will have powers to make regulations about the role of case friends under section 39.

Core aim 7: Avoiding disagreements and earlier disagreement resolution

The EM anticipates:

> *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****. (para 3.14) [my emphasis]*

The draft Code says:

> *Schools, FEIs and local authorities' focus should be on providing the parties with the opportunity to raise concerns or questions at every stage of the process and* ***prevent problems from escalating****.* (para 18.3) [my emphasis]

Section 61 of the Bill requires **local authorities to make arrangements for both avoiding and resolving disagreements** between the child/young person and/or parent, and the school/college or local authority. This includes providing access to help in resolving a disagreement from an **independent person**. Local authorities must promote the use of the arrangements they put in place and explain to the child/young person and/or parent that any arrangements they participate in do not affect their right to appeal to the Education Tribunal for Wales.

Furthermore, section 62 requires local authorities to make arrangements for **independent advocacy services**, in order to provide advice and assistance to a child or young person for whom they are responsible, including the option of representation. The Welsh Government plans to place a requirement in the Code on local authorities to take reasonable steps to **make the availability of**

independent advocacy known to families and others involved. This was **on the face of the draft Bill** but the Welsh Government has decided it 'could be better dealt with' through the Code.

Chapter 18 of the draft Code contains provisional guidance to local authorities on how they should meet their duties under sections 61 and 62. (See chapter 8 of this paper for more details.)

Core aim 8: Clear and consistent rights of appeal

Section 79 **renames** the existing Special Educational Needs Tribunal for Wales (SENTW) as the **Education Tribunal for Wales**. The Welsh Government says this **better reflects the Tribunal's role** as it hears disability discrimination claims relating to schools as well as SEN/ALN cases. Sections 79-81 **largely retain the current practical arrangements for the Tribunal** and the Bill **does not make any significant changes** to the way in which the Tribunal will hear appeals.

There are other sections of the Bill which relate to the Tribunal. The most important is probably section 69, which states that if the **Tribunal makes an order**, a governing body or local authority concerned must comply with that order. This **does not extend to health bodies** (section 19(8)) and the 'lack of teeth' for the Tribunal in relation to directing health bodies was criticised during consultation and pre-legislative scrutiny on the draft Bill.

Section 63 contains the provision for a **child and/or their parent, or young person, to appeal to the Tribunal** about the way a local authority or an FEI governing body has responded (or failed to respond) to their ALN. (They would not be appealing against a school governing body as this would have already escalated to the local authority level through a request that the local authority reconsider decisions taken by the school.)

In January 2015, the right of parents/carers to appeal was given to children and young people (in maintained schools) themselves. The Bill extends this to children and young people with ALN up to the age of 25, who are in FE, thereby establishing **greater parity** between those in **further education** and those in **school sixth forms**.

Chapter 19 of the draft Code provides more detail of the processes for appeals and applications to the Tribunal.

Cross-cutting core aims

Two of the Welsh Government's core aims support all three overarching objectives.

Core aim 9: A mandatory Code

Section 4 of the Bill **requires the Welsh Ministers to issue a Code on ALN**. The Welsh Government would need to consult on a draft of the Code first and then **lay it before the Assembly as subordinate legislation**. This is a similar process as for the Codes on School Admissions and School Organisation.

The new Code will consist of a greater degree of prescription than the current SEN Code of Practice, which was produced in 2002 and revised in 2004. The **current Code** provides **practical advice** to the relevant agencies in carrying out their functions and they must have regard to it. However, its Foreword states that it is up to the relevant agencies to decide how exactly they fulfil their statutory duties **in the light of** [rather than strict adherence to] the **guidance**.

Stakeholders have previously expressed **support for a mandatory code** rather than one that is merely voluntary or discretionary. 89% of respondents advocated such an approach in the White Paper consultation in 2014.

The EM explains that the new Code:

> *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 within ALN* ***must act****. The Code will be* ***targeted towards practitioners*** *so they understand can implement the new system. [my emphasis] (para 3.133)*

Much of the detail about the way assessments are carried out and decisions about what provision is needed to meet a learner's ALN will be **set out in the Code rather than on the face of the Bill**. The EM says that the Bill enables the Code to 'provide detailed requirements about how IDPs are to be prepared, maintained and reviewed'.

The Welsh Government published an **early working draft of the new ALN Code** (PDF 986KB) in September 2015 to give a sign of the policy intentions of the draft Bill and to inform consultation. The Welsh Government has now provided an **updated draft** (PDF 2.95MB), although this is again only for 'illustrative purposes' to inform scrutiny of the Bill itself.

Core aim 10: Increased participation of children and young people

Section 6 of the draft Bill requires that anyone exercising functions **must have regard** to:

- a) The **views, wishes and feelings** of the child and the child's parent or the young person;
- b) The importance of the child and the child's parent of the young person **participating as fully as possible** in the decision-making process;
- c) The importance of the child and the child's parent or the young person being **provided with the information and support necessary** to enable participation in decisions.

Section 7 requires local authorities to make arrangements to provide children and young people with **information and advice about ALN and Additional Learning Provision (ALP)** (in addition to parents and school leaders). Both these provisions are part of what the Welsh Government calls a **'person-centred'** approach. The draft Code requires that 'anyone exercising functions under the Act or this Code will need to **involve children and young people at every stage** of the process, with their views, wishes and feelings listened to' (para 22). The draft Code is also underpinned by several 'general principles', including that 'all those involved in providing support to children and young people with ALN should work together in the **best interests of the child or young person**'.

Section 62 requires local authorities to provide **independent advocacy services** which will give advice and assistance to any child/young person considering an appeal to the Education Tribunal for Wales or participating in dispute resolution.

The Welsh Government says the provision in section 76 for a **case friend** to represent and support a child with ALN who lacks capacity, including taking decisions on their behalf, will cover situations where it may not be possible for children with ALN to be assisted by their parents in this way.

The draft Code reaffirms the importance the Welsh Government seeks to place on involving children and young people. Three of its eight principles are:

- All those involved in providing support to children and young people with ALN should **work together in the best interests** of the child or young person;
- The **views, wishes and feelings** of the child, child's parent or young person should be at the **heart of all decision making** processes;
- The child, child's parent or young person should be **enabled to participate as fully as possible** in decision making processes. [my emphasis]

4. The 2015 draft Bill

Committee pre-legislative scrutiny in the Fourth Assembly

In its pre-legislative scrutiny of the draft Bill, the Fourth Assembly's Children, Young People and Education Committee 'very much welcome[d] the intention' to reform the system but found that 'there [was] **much work to be done**' to address **'many areas of uncertainty'** before a Bill was formally introduced into the Assembly's legislative process.

Evidence received by the previous Committee was generally positive about the aims and objectives of the draft Bill. However, all those who submitted evidence raised some concerns about the practicalities of the proposed reforms.

In its resultant letter to the then Minister for Education and Skills (PDF 330KB), the Committee highlighted **four areas** for the Welsh Government to strengthen the legislation, in addition to some transitional challenges such as finances and workforce capacity.

- inadequate provision for **collaboration between local authorities and health boards**, with the Committee believing firmer duties on health bodies were needed;
- a call for the universal Individual Development Plans (IDPs) to retain the benefits of the current three-tier approach, enabling the **levels of intervention to be graduated** so that more intensive support is available for more complex and severe needs, and for greater clarity over where **responsibilities for plans** will lie;
- a need for the **Education Tribunal for Wales** to have **stronger powers** when considering appeals from families against local authorities and **health boards**; and
- **insufficient detail** on provision at either end of the 0-25 age spectrum, ie what will be in place in **early years** and at **post-16**.

Welsh Government consultation

The Welsh Government's summary of the 263 consultation responses to its consultation on the draft Bill showed that, despite **general support for the principles** and direction of travel, **stakeholders had concerns** about the legislative proposals in their draft form. The consultation included five closed questions asking participants if they agreed or disagreed that an aspect of the draft Bill would be effective, or if they neither agreed nor disagreed. **In all five of the questions, more respondents disagreed than agreed.**

- **41% of respondents disagreed** that the **proposed definitions** for ALN and Additional Learning Provision (ALP) appropriately reflected the Welsh Government's intended focus on educational needs and that the **draft Bill dealt properly with the 0-25 age range** it set out to capture. Only 34% agreed.

- **53% disagreed** that the draft Bill created a **robust legal framework** for the preparation, maintenance and review of **IDPs**. Only 23% agreed.
- **47% disagreed** that the draft Bill ensured the **interests** of children and young people with ALN were **safeguarded and promoted**. Only 30% agreed.
- **49% disagreed** that the draft Bill provided the basis for **agencies to work together better** to deliver for children and young people with ALN. Only 22% agreed.
- **46% disagreed** that the draft Bill provided an **appropriate framework to support disagreement avoidance and resolution** and properly founded provisions for appeals. Only 20% agreed.

More analysis of the consultation results can be found in chapter 7 of the Research Briefing, Additional Learning Needs in Wales (November 2016).

The Welsh Government prefaced its summary of the responses to each of these questions by referring to the support for the general principles of the draft Bill. It also stated that the **narrative** provided by respondents in support of their answers to the closed questions **did not convey as high a level of disagreement** as the results suggest. In his statement on 1 July 2016, the Minister said that the concerns raised 'reflected a desire for a greater level of detail' or 'reflected **misunderstandings of our intentions** or the anticipated practical impact'.

Changes from the draft Bill

The Welsh Government has included in the Explanatory Memorandum (EM) (PDF 2.81MB) (paras 4.15-4.19) a **table listing the changes** made to the draft version of the Bill and the Welsh Government's rationale for each of these. Welsh Government officials highlighted five main changes. These are listed below along with a sixth area of change concerning parental choice over whether a learner with ALN is placed in a mainstream or special school.

Duties on health bodies

Arguably the most significant change is the attempt to **strengthen the duty on health bodies** to make provision to meet children and young people's ALN. This was criticised as being too weak in the draft Bill, with health bodies only required to make provision where they 'agree' to do so. There is **now a requirement for them to actively consider whether they could make a beneficial intervention** and, if so, they are under a **duty to secure that provision** (see earlier section in chapter 3 on core aim 4).

Welsh-medium provision:

The Welsh Government has strengthened the provisions for learners with ALN to receive support through the medium of Welsh if this is their chosen language. This responds to a perceived lack of attention to this in the draft Bill. Sections 10 and 12 which refer to the preparing and maintaining of an IDP by governing bodies or local authorities respectively now include a **requirement that they consider whether provision should be made in Welsh** and, if so, **state this in the IDP**. Governing bodies and local authorities have a duty to **take all reasonable steps to secure the provision of any Welsh-medium provision stated in an IDP**. Section 18 which contains the duty on health bodies places a parallel requirement to the one on governing bodies and local authorities to consider if provision should be made in Welsh and, if so, to take all reasonable steps to secure it.

When keeping ALP in their area under review, in accordance with section 56, local authorities must have regard to the desirability of ensuring it is available in Welsh.

Early years

The Welsh Government has **extended the duties** on maintained nursery schools regarding ALP to **non-maintained providers** as well but only where they are **in receipt of state funding for nursery places**. Such providers will be included within the reach of the ALN Code, which the Welsh Government says addresses concerns that the draft Bill did not sufficiently encompass early years provision.

Looked after children

There are new provisions (mainly sections 13-17) in the Bill for the application of the new ALN system particularly to looked after children. Generally, the Bill places **responsibility** for ALN matters, including the initial decision whether they have ALN, **on the local authority** that looks after the child. Governing bodies are required to refer cases involving looked after children to the local authority.

The Bill requires an **IDP to be incorporated into the Co-ordinated Support Plan (CSP)** which each looked after child has under the *Social Services and Well-being (Wales) Act 2014*.

The draft Bill included a power for these provisions to be made under subsequent Regulations. However, the Welsh Government has decided that it is **more appropriate** to include the way the new framework applies to looked after children **on the face of the Bill**.

ALNCos

The requirement on each school and FEI to designate a member of staff as their ALNCo has been adapted in the interests of **flexibility** so that smaller schools **may share an ALNCo** or larger schools and FEIs may appoint more than one if necessary. Section 54 has also been clarified so that the duty to have an ALNCo also applies to Pupil Referral Units, and voluntary and foundation schools.

Parental choice over whether a learner is ALN is placed in a mainstream or special school

The Welsh Government has also revised section 45 (section 29 in the draft Bill) which includes a duty to favour placing a learner with ALN in a mainstream school rather than a special school. This duty already applies and one of the **general principles** of the current system is that a child with SEN will normally have their **needs met in a mainstream school** or setting. The Welsh Government says this is a 'key underpinning' of an inclusive education system.

At present, local authorities must ensure that a **child with SEN/ALN is educated in a mainstream school or setting unless specified circumstances apply**. These include where a parent wishes otherwise, or it is incompatible with the efficient education for other children. Section 45 of the Bill adds a further expectation where it is in the **best interests of the child for them to be educated in somewhere other than a mainstream school** (which more often than not will mean a special school) and it is still compatible with the efficient education for other children. This responds to calls from stakeholders that the best interests of the child or young person should be the main consideration over where a learner with ALN is placed, which is in line with the Welsh Government's approach to person-centred planning.

However, there is a **further change between the draft Bill and the Bill** that has been introduced. A new sub-section (45(4)) is added:

> *Where a child's parent wishes his or her child to be educated otherwise than in a mainstream maintained school, subsection (2)(c) [which provides for the local authority to accommodate such a parental preference]* ***does not require a local authority*** *to secure that the child is educated otherwise than in a mainstream maintained school. [my emphasis]*

Therefore, whilst local authorities would be able to use a **parental request for special education** as a **reason for deviating from the duty to presume mainstream provision**, they would **not be obliged to do so just because a parent has asked them**.

At present, the ***Education Act 1996*** (Schedule 27) requires local authorities to comply with a parental preference for a particular school unless that school is unsuitable to the child's age, ability or aptitude or to their special educational needs, or this would be incompatible with the efficient education of other children or the efficient use of resources.

The table of changes in the EM says the Bill 'makes clear' that a local authority is not required to comply with a parent's preference for their child to be placed in a special, rather than a mainstream, school. This appears to be a **change from the existing law, rather than merely a clarification of the existing position**.

Calls for changes that have not been included

There are some areas of the Bill which remain the same despite stakeholders (and in some cases the previous Committee) recommending changes.

- There were many calls for a **template for the IDP** to be made available in the interests of consistency and portability. The Welsh Government includes in the draft Code (chapter 11) a list of mandatory content and says that 'consideration is being given to a standard template for IDPs as well as the possibility of electronic IDPs' before decisions are taken about the final Code.
- The same **definition for ALN** will be used as at present for SEN (see chapter 2 under core aim 1). The retention of the current definition was part of the proposals consulted on in the 2014 White Paper and the 2015 draft Bill. An earlier consultation in 2012 had proposed the term Additional Needs (AN) which would encompass a broader group of children and young people and focus on other, non-educational needs.
- The retention of the existing definition has implications for the call for the **management of medical needs** to be included. The Children, Young People and Education Committee received a relatively co-ordinated set of submissions to its **consultation in summer 2016 on Fifth Assembly priorities**, calling for statutory duties on schools to manage pupils' medical needs and for this to be potentially included in the ALN Bill. Under the Bill, medical needs such as diabetes are **not regarded as SEN/ALN** where they do not cause a significantly greater difficulty in learning, or where they do not constitute a disability that necessarily affects access to education or training generally on offer. Chapter 6 of the draft Code provides guidance on how healthcare needs should be considered when identifying ALN. (See chapter 8 of this paper for more discussion of this subject.) The Welsh Government is due to publish new guidance on managing healthcare needs in schools in March 2017.[6]

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[6] For background information, see the blog article, ***Meeting the healthcare needs of children and young people in school. Does the law need changing in Wales?***, January 2017.

– There has been no change to the **remit of the Tribunal**, which will have **no direction over health bodies** despite this generally giving rise to concern during consultation/pre-legislative scrutiny on the draft Bill.

– There has been no extension of the applicability of the system to **post-16 learners who are not in further education**. Therefore, young people who are undertaking apprenticeships or other forms of work-based learning and who may have ALN will **not be covered under the new framework**. On the contrary, the Welsh Government has actually replaced the reference to age 0-25 with 'further education' in its first overarching objective stated in the EM, which is 'a unified legislative framework'.

5. Powers to make subordinate legislation

The Bill gives the Welsh Ministers **32 powers** to make subordinate legislation. These are listed in a table in chapter 5 of the Explanatory Memorandum.

– **12** of these powers are to be used by the Welsh Ministers under the **Affirmative** procedure, which means that the statutory instrument (SI) must be approved by the Assembly.

– **1** power will be subject to the **Affirmative** procedure **if amending primary legislation**, otherwise it will only require the Negative procedure.

– In **17** cases, the **Negative** procedure is to be used, which means that the Assembly has 40 days (excluding recess) to disapprove the SI, otherwise it will come into force. This **includes the ALN Code**, the procedure for which is set out in section 5 of the Bill. The Welsh Ministers must consult on a draft of the Code, although this will then be subject to the Negative rather than the Affirmative procedure.

– The Welsh Ministers may exercise **2** powers **without the need for an Assembly procedure**. These are for the coming into force of both the Code (after the section 5 process is satisfied) and the Act itself.

6. Consideration of other options and financial implications

Options appraisal

The Explanatory Memorandum (EM) includes a Regulatory Impact Assessment (RIA) which identifies **two options**. These are **'do nothing'** and a **'preferred option'**, which is to:

– 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 Welsh Government presents **no alternative option** unlike in the draft EM which accompanied the draft Bill. The draft EM included the option of revising the current system based on the model consulted on in 2012. The preferred option in both the draft EM and the EM accompanying the Bill introduced is based on the 2014 White Paper proposals.

The RIA (paras 7.1-7.116) contains the Welsh Government's summary of the advantages, disadvantages and risks of the 'do nothing' option and the preferred option, broken down by six areas of the Bill.

Financial implications

The Minister for Lifelong Learning and Welsh Language, Alun Davies, has said during Stage 1 scrutiny that the Welsh Government will be revising the RIA later in legislative process to address errors and new information regarding the costs of the Bill.

The Welsh Government's **original RIA** (pages 86-87) provided a summary estimating that, over the **four year period** 2018-18 to 2020-21, there would be a **net administrative cost saving of £2.2 million**. This figure included transitional costs, but did not include 'sunk costs' (costs already incurred prior to implementing the Bill).

Following the identification of **errors in the original RIA**, the Minister of Lifelong Learning and Welsh Language issued an **update including detailed tables** (PDF 1.82MB) to replace those in the RIA directly affected by these errors.

The Welsh Government has not recalculated the administrative cost summary referred to above. The Minister for Lifelong Learning and Welsh Language, Alun Davies, said he intends to incorporate these and any other changes into the EM/RIA when it is revised after Stage 2 proceedings. It appears **following these amendments**, the net administrative costs savings over the four-year period 2017-18 to 2020-21 would be **£809,630** (an average of £202,408 per year).

Transitional costs required to implement the new system, are calculated over the four-year period 2017-18 to 2020-21 as **£12 million** (an average of £3 million per year). £9.4 million of this will be funded by the Welsh Government:

– £7.0 million through transition grants to the organisations affected.

– £2.4 million in Welsh Government transition costs.

The Welsh Government initially envisaged that the remaining £2.6 million transitional costs would be met by public bodies other than the Welsh Government. However, since the introduction of the Bill and publication of the RIA, **the Minister has announced a £20 million funding package** to support the implementation of the Bill and the wider ALN Transformation programme. He told the **Finance Committee on 8 February 2017** (PDF 515KB) that this 'supersedes' the £2.6 million cost allocation to other public bodies.

A **letter from the Minister to the Finance Committee, dated 8 March 2017**, (PDF 362KB) provides more information on the £20 million funding.

Costs

Overall, the new system is estimated to cost £532.9 million over the four-year implementation period (excluding transition costs).

Compared to the previous system four organisations are expected to have increased ongoing costs over the four-year period covered by the RIA, they are:

– Local Health Boards (£825,600)

– Further Education Institutions (£92,800)

– Estyn (£172,000)

– Welsh Government (£680)

As stated, transition costs are expected to be £12 million over the four-year period.

The largest expenditure over the four-year transition period is associated with the funding and opportunity costs associated with the **Masters level qualification** which the Welsh Government intends that Additional Learning Needs Co-ordinators will be required to undertake. The total cost of this will be **£9.3 million**.

The Welsh Government also estimates it will have incurred **£1.8 million in 'sunk costs'**, prior to the Bill receiving Royal Assent. The RIA identifies sunk costs as "focusing on supporting delivery agents to plan and manage their transition to the new system". The Welsh Government has not included sunk costs in its overall assessment of cost and benefit.

Savings/Benefits

In terms of ongoing costs (excluding transitional costs), the Welsh Government estimates that the new system will **cost £12.8 million less** than the current system (£3.2 million less per year) over the **four-year period**.

Three sectors are estimated to see a reduction in their net ongoing costs because of moving to the new process, these are:

- Local authorities (£11.8 million)
- Careers Wales (£2 million)
- SENTW (£61,200)

In terms of the savings generated by the new system, the **largest cost reduction** is associated with introducing the new Individual Development Plan process. This is estimated to save approximately **£3.3 million a year** over the four-year period.

Summary tables

Table 1 below provides a summary of information within the EM (Table 69, para 8.582) which presents costs of the Bill by the six areas of provision. The following should be noted:

- 'Total Transition costs', £12 million, comprise all costs associated with moving to the new system, including; £2.4 million Welsh Government transition costs, £7 million Welsh Government transition grants, and £2.6 million transitional costs for other public bodies.
- 'Total Overall Cost excluding Welsh Government grants and transition costs', £7.8 million saving, comprises; Total ongoing costs of -£12.8 million, plus net transition costs of £5 million (which takes into account the £2.6 million transitional costs to other bodies and Welsh Government Transition costs of £2.4 million), but not Welsh Government transition grants.
- 'Total Overall Cost including Welsh Government costs', -£3.4 million, equates to the Total ongoing costs (-£12.8 million) plus £2.4 million Welsh Government transition costs and £7 million Welsh Government transition grants. It does not take into account the £2.6 million costs to other bodies.
- This matches how figures are presented in Table 69 and Table 70 of the EM.
- The below tables take account of the corrections made by the Welsh Government which were outlined in the Minister's **letter to the Children, Young People and Education Committee on 7 February 2017** (PDF 192KB).

Table 1: Costs of the preferred option estimated in the RIA (the Bill) by area of provision (2016-17 to 2020-21)

	Do nothing		Introduce preferred option					
	2016-17	Total 4 yrs - do nothing	2017-18	2018-19	2019-20	2020-21	Total 4 years - preferred option	Cost difference
Individual development plans								
Ongoing cost	37,575,400	**150,301,600**	34,268,700	34,268,700	34,268,700	34,268,700	**137,074,800**	**-13,226,800**
Transition cost			237,900	0	0	0	**237,900**	**237,900**
Dispute resolution								
Ongoing cost	12,140,700	**48,562,800**	12,140,700	12,140,700	12,140,700	12,140,700	**48,562,800**	**0**
Transition cost			0	0	0	0	**0**	**0**
Post-16 special education provision								
Ongoing cost	19,249,734	**76,998,936**	19,116,114	19,116,114	19,116,114	19,116,114	**76,464,456**	**-534,480**
Transition cost			9,200	0	0	0	**9,200**	**9,200**
Registration independent schools								
Ongoing cost	415,095	**1,660,380**	457,985	457,985	457,985	457,985	**1,831,940**	**171,560**
Transition cost			53,300	0	0	0	**53,300**	**53,300**
ALNCo								
Ongoing cost	67,022,700	**268,090,800**	67,022,700	67,022,700	67,022,700	67,022,700	**268,090,800**	**0**
Transition cost			1,542,554	3,085,106	3,085,106	1,542,554	**9,255,320**	**9,255,320**
DECLO								
Ongoing cost	0	**0**	206,400	206,400	206,400	206,400	**825,600**	**825,600**
Transition cost			330	0	0	0	**330**	**330**
Total - ongoing costs	**136,403,629**	**545,614,516**	**133,212,599**	**133,212,599**	**133,212,599**	**133,212,599**	**532,850,396**	**-12,764,120**
Welsh Government Transition costs - costs			**553,140**	**812,400**	**667,800**	**365,100**	**2,398,440**	**2,398,440**
Total - Transition costs			**2,396,424**	**3,897,506**	**3,752,906**	**1,907,654**	**11,954,490**	**11,954,490**
Welsh Government Transition costs - grants			**1,544,000**	**1,660,000**	**1,860,000**	**1,892,000**	**6,956,000**	**6,956,000**
Net transition costs			**852,424**	**2,237,506**	**1,892,906**	**15,654**	**4,998,490**	**4,998,490**
TOTAL OVERALL COST - excluding Welsh Government grants and transition costs	**136,403,629**	**545,614,516**	**134,065,023**	**135,450,105**	**135,105,505**	**133,228,253**	**537,848,886**	**-7,765,630**
TOTAL OVERALL COST - including Welsh Government costs	**136,403,629**	**545,614,516**	**135,309,739**	**135,684,999**	**135,740,399**	**135,469,699**	**542,204,836**	**-3,409,680**

Source: Extracted from Welsh Government, Explanatory Memorandum to the Additional Learning Needs and Education Tribunal (Wales) Bill (PDF 2.81MB) Table 69, updated to include Welsh Government corrections (PDF 1.82MB), 7 February 2017

Table 2 presents the estimated costs by organisation.

Table 2: Costs of the preferred option estimated in the RIA (the Bill) by organisation (2016-17 to 2020-21)

	Do nothing		Introduce preferred option					
	2016-17	Total 4 yrs - do nothing	2017-18	2018-19	2019-20	2020-21	Total 4 years - preferred option	Cost difference
Local authority education services								
Ongoing costs	36,286,360	**145,145,440**	33,326,460	33,326,460	33,326,460	33,326,460	**133,305,840**	**-11,839,600**
Transition costs			18,200	0	0	0	**18,200**	**18,200**
Local authority social services								
Ongoing costs	6,212,438	**24,849,752**	6,212,438	6,212,438	6,212,438	6,212,438	**24,849,752**	**0**
Transition costs			118,700	0	0	0	**118,700**	**118,700**
Mainstream schools								
Ongoing costs	73,366,400	**293,465,600**	73,366,400	73,366,400	73,366,400	73,366,400	**293,465,600**	**0**
Transition costs			1,503,170	3,006,340	3,006,340	1,503,170	**9,019,020**	**9,019,020**
Special schools								
Ongoing costs	938,700	**3,754,800**	938,700	938,700	938,700	938,700	**3,754,800**	**0**
Transition costs			0	0	0	0	**0**	**0**
Local health boards								
Ongoing costs	3,815,593	**15,262,372**	4,021,993	4,021,993	4,021,993	4,021,993	**16,087,972**	**825,600**
Transition costs			330	0	0	0	**330**	**330**
Careers Wales								
Ongoing costs	763,400	**3,053,600**	274,800	274,800	274,800	274,800	**1,099,200**	**-1,954,400**
Transition costs			0	0	0	0	**0**	**0**
SENTW								
Ongoing costs	152,000	**608,000**	136,700	136,700	136,700	136,700	**546,800**	**-61,200**
Transition costs			101,000	0	0	0	**0**	**101,000**
Further education Institutions								
Ongoing costs	746,700	**2,986,800**	769,900	769,900	769,900	769,900	**3,079,600**	**92,800**
Transition costs			12,177	24,353	24,353	12,177	**73,060**	**73,060**
Estyn								
Ongoing costs	463,250	**1,853,000**	506,250	506,250	506,250	506,250	**2,025,000**	**172,000**
Transition costs			53,300	0	0	0	**53,300**	**53,300**
PRUs								
Ongoing costs	1,217,900	**4,871,600**	1,217,900	1,217,900	1,217,900	1,217,900	**4,871,600**	**0**
Transition costs			27,207	54,413	54,413	27,207	**163,240**	**163,240**
Welsh Government								
Ongoing costs	12,440,888	**49,763,552**	12,441,058	12,441,058	12,441,058	12,441,058	**49,764,232**	**680**
Transition costs			2,097,140	2,472,400	2,527,800	2,257,100	**9,354,440**	**9,354,440**
Total ongoing costs	**136,403,629**	**545,614,516**	**133,212,599**	**133,212,599**	**133,212,599**	**133,212,599**	**532,850,396**	**-12,764,120**
Total transition costs			**2,396,424**	**3,897,506**	**3,752,906**	**1,907,654**	**11,954,490**	**11,954,490**
Net transition costs			**852,424**	**2,237,506**	**1,892,906**	**15,654**	**4,998,490**	**4,998,490**
Total costs - excluding Welsh Government grants and transition costs	**136,403,629**	**545,614,516**	**134,065,023**	**135,450,105**	**135,105,505**	**133,228,253**	**537,848,886**	**-7,765,630**
Total costs - including Welsh Government costs	**136,403,629**	**545,614,516**	**135,309,739**	**135,684,999**	**135,740,399**	**135,469,699**	**542,204,836**	**-3,409,680**

Source: Extracted from Welsh Government, **Explanatory Memorandum to the Additional Learning Needs and Education Tribunal (Wales) Bill** PDF 2.81MB) Table 70, updated to include **Welsh Government corrections** (PDF 1.82MB), 7 February 2017

7. The Additional Learning Needs Code

Section 4 of the Bill requires the Welsh Government to produce an **Additional Learning Needs Code**. This will provide most of the detail for the way assessments and decisions about provision will be carried out, with the Bill setting the overall framework. The **Welsh Government provided the Children, Young People and Education Committee** with a working draft of the Code (PDF 2.95MB) on 14 February 2017, which the Committee published to assist stakeholders' input into Stage 1 scrutiny.

The draft Code provided by the Welsh Government is only intended to be an information document to assist scrutiny of the Bill. The Minister for Lifelong Learning and Welsh Language, Alun Davies has emphasised that the draft Code is 'very much a work in progress' and that he has made the working draft available **'solely for illustrative purposes'** to support scrutiny of the Bill. As far as the Minister is concerned, the draft Code itself is not subject to scrutiny at this point.

In the event of the Bill being passed by the Assembly and subsequently receiving Royal Assent, section 5 **requires the Welsh Government to consult** on a more formal version of the Code. It is expected that the Children, Young People and Education Committee would scrutinise the draft version consulted on at this later date. After consultation, the Welsh Government would lay the Code before the Assembly and it would then be subject to the procedures for scrutinising **subordinate legislation**. Under the Bill in its present form, this would be in accordance with the **Negative procedure**.

Once it is made, the Code will **replace the existing** SEN Code of Practice for Wales (2002). The **greater level of mandatory provision and absolute requirements** is a particular feature of the draft ALN Code, whereas the current SEN Code predominantly provides practical advice and guidance. At present, it is up to the relevant bodies how exactly they fulfil their statutory duties in the light of (rather than strict adherence to) the Code.

Paragraph 1.4 of the draft Code lists 'relevant persons' who **must** (Welsh Government's emphasis) have regard to it when exercising functions under the Act. Relevant persons (relevant bodies) **must comply with any requirements** the Code sets and **must not do anything that is prohibited** by the Code. Where the Code provides guidance on good practice, relevant bodies should follow this unless they can demonstrate that they are justified in not doing do.

Failure to comply with any of the requirements in the Code could result in a decision being overturned by the Education Tribunal for Wales, a successful complaint to the Welsh Ministers, the exercise of local authority or Welsh Ministers' intervention powers, a complaint to the Public Services Ombudsman or a successful judicial review claim (para 1.8).

Section 56 places a **duty on local authorities to keep under review** ALN provision in its area. Paragraph 2.38 of the draft Code clarifies that this is not intended as a method for measuring and monitoring the quality of individual Additional Learning Provision (ALP). Instead, local authorities should review arrangements to establish **whether or not the *overall* ALP delivered in their area meets the *overall* need**. Local authorities' reviews should support their strategic decision making on whether or not they have the correct type and capacity of provision to meet the needs of their population with ALN (para 2.39).

Relevant provisions within the Bill

The draft Code imposes additional requirements on local authorities to those within the following provisions within the Bill:

– Providing **advice and information** (section 7);

– Making arrangements for **avoidance and resolution of disagreements** (section 61); and

– Making arrangements for **independent advocacy** (section 62).

The draft Code imposes requirements on governing bodies of maintained schools, further education institutions, and local authorities that are additional to those within the Bill in the following areas:

– **Deciding** whether a child or young person has **ALN** (sections 9 and 11);

– **Preparing IDPs** (sections 10 and 12);

– **Reviewing** and **revising IDPs** (sections 21-22); and

– **Ceasing** to maintain **IDPs** (section 29).

The draft Code states that relevant bodies must and should act in a certain way in respect of other sections within the Bill other than those listed above, for example those that relate to multi-agency working. However, those listed above are the main sections, which the draft Code applies to.

The draft Code's eight principles

The Welsh Government says the draft Code has been developed with due regard to the United Nations Convention on the Rights of the Child (UNCRC). Paragraph 2.3 lists a further eight principles upon which the Code has been based:

– identification and intervention in relation to ALN should take place at the **earliest possible** opportunity;

– all those involved in providing support to children and young people with ALN should work together in the **best interests of the child or young person**;

– **transitions should be planned in advance** and consideration given to supporting transition into adulthood;

– the views, wishes and **feelings of the child**, child's parent or young person should be at the **heart of all decision making** processes;

– the child, child's parent or young person should be enabled to **participate as fully as possible** in decision making processes;

– meeting the needs of learners with ALN should be part of a **whole school approach** to school improvement;

– learners **must** be supported to participate in **mainstream education** and in the National Curriculum as fully as possible wherever this is feasible; and,

– where a child or young person has a need for **ALP in Welsh**, all reasonable steps **must** be taken to provide it. [emphasis in bold is in the draft Code]

Role of the ALNCo

Chapter 5 of the draft Code provides provisional guidance and prescription on the role of the Additional Learning Needs Co-ordinator (ALNCo). Paragraph 5.4 emphasises the intended strategic and senior nature of the post:

> *The ALNCo will be the individual who at a strategic level will ensure the needs of all learners with ALN within the education setting are met. The role* ***ought to be seen as a strategic on****e within the education setting, as significant as roles such as head teachers, principals, deputy head teachers etc. ALNCos should, therefore, form* ***part of the senior leadership team*** *or have a clear line of communication to the senior leadership team.*

The draft Code also says that ALNCos will need to be '**actively involved in decisions around budgets** and resources to help plan appropriate provision' (para 5.5). ALNCos are 'not expected to be directly involved with the day to day process of supporting every learner with ALN' as their **role is to co-ordinate rather than actually deliver provision**, which remains the responsibility of the class teacher (para 5/6).

Details of qualification requirements will be specified in regulations. The draft Code specifies only that '**ALNCOs will be highly qualified** and should have expertise in dealing with a broad spectrum of ALN'. The EM indicates the role will require a Master's level qualification (para 3.37).

A list of bullet points at paragraph 5.13 of the draft Code details the proposed role and responsibilities of the ALNCo.

Definition of ALN

Guidance and prescription on how to interpret and apply the Bill's definition of ALN is provided in chapter 6 of the draft Code, which explains that there is a **two-step process**. Firstly, does the learner have a **learning difficulty or disability** covered by the definition in section 2. Secondly, does it **call for ALP** as defined by section 3? If so, then the learner will be deemed to have ALN.

Learners will not need ALP if their needs could be addressed through differentiated teaching (para 6.12). ALN processes should not be used to compensate for lack of good quality, proper differentiated teaching (para 6.24).

The draft Code advises that practitioners involved in identifying ALN should always refer back to the definition in section 2 of the Bill, consider the guidance in chapter 6 of the draft Code and apply both to the individual circumstances of the learner.

Other considerations which the draft Code says should be factored into the identification of ALN, alongside the definition and guidance, include:

- **Disabilities** (para 6.29-6.31): There is not a direct correlation between having a disability and having ALN. However, there will be some forms of disability where the learner is more likely to have ALN. The critical factor is **whether the disability prevents or hinders** the learner from making use of education or training that is generally provided.
- **Welsh or English as an additional language** (paras 6.32-6.35): The draft Code reaffirms section 2(4) of the Bill which states that a person does not have a learning difficulty and/or disability solely because they are taught in a language different from the language spoken at home. These pupils might need extra support but not necessarily in relation to any ALN. Practitioners should carefully

consider whether any difficulty or lack of progress is because of learning Welsh or English as an additional language or if it arises from ALN.

– **More Able and Talented** (para 6.36-6.37): Learners who are more able across the curriculum or show talent in one or more specific areas may be considered 'more able and talented' pupils. The draft Code says they should not be considered as having ALN solely on the basis of their enhanced ability or talent. They should instead be supported to reach their full potential through differentiated learning. However, practitioners should be aware that a learner may be more able and talented in one aspect of their learning but still have significantly greater difficulty in learning in other aspects. They could, therefore, still have ALN in this regard.

Paragraph 6.43 of the draft Code lists those who **can** help with identification/assessment. It does not state that any must be consulted, other than Educational Psychologists which are referred to in other parts of the draft Code.

Healthcare needs

Paragraphs 6.38–6.42 of the draft Code provides guidance on how practitioners should consider a learner's healthcare needs/medical condition as part of deliberations about identifying ALN.

The draft Code states that **not all learners with a medical or healthcare need will have ALN** and refers to 'Continuing NHS Healthcare, which is a package of care provided by the NHS for those individuals with complex and primarily health-based needs'. Under the definition of ALN established in the Bill, medical conditions, for example diabetes, epilepsy, or anaphylaxis **will not be regarded as ALN** where they do not cause a **significantly greater difficulty in learning**, or where they do not constitute a **disability that necessarily affects access** to education or training generally on offer.

However, the draft Code recognises that **healthcare needs may impact on pupils' capacity to learn and should be a factor to consider** when determining if a learner has ALN:

> *In some cases, healthcare needs/medical conditions may have a* ***significant impact*** *on the child or young person's experiences and the way they* ***function in school or further education****. The impact* ***may be a direct one****, in that the healthcare need/medical condition may affect their cognitive abilities, physical abilities, behaviour or their emotional state. The impact could also, or alternatively, be* ***indirect****, for example by disrupting their access to education through unwanted effects of treatment or through the psychological effects that serious or chronic illness or disability can have on a child or young person and their family. [my emphasis] (para 6.40)*

The draft Code indicates that where a learner has ALN and a healthcare need, that the planning of provision for both can be joined up:

> *Schools, FEIs and local authorities are able to prepare, review or revise an IDP at the same time as it, or another body, is preparing, reviewing or revising another document in relation to the individual. The* ***local authority can also include that plan within the IDP****. This ensures that, for example, where a child or young person has an* ***individual health care or a continuing healthcare plan and an IDP****, provision can be planned and* ***delivered in a co-ordinated way****: the IDP and the individual health care or a continuing health care package should be reviewed at the same time, ensuring*

integration of plans and/or provision where this is appropriate. *[my emphasis] (para 6.42)*

The inference from the draft Code, therefore, is that **healthcare needs would only be considered in the context of deciding whether a learner had ALN**. The draft Code does not provide for support with healthcare needs where there are no concerns a learner has ALN.

Identifying / assessing for ALN

Chapter 7 of the draft Code consists of three sub-chapters: the identification of ALN amongst children and young people in pre-school, school and further education (FE) settings respectively. Much of the guidance is **generic** to each sector.

Paragraph 7.1.3 reiterates the advice for practitioners involved that they should refer back to the definition in section 2 of the Bill, consider the guidance in chapter 6 of the draft Code and apply both to the individual circumstances of the learner. As with the current Code, the **importance of early identification** to the effectiveness of provision is highlighted.

The draft Code lists some **observations that might alert a practitioner** working with children or young people that a learner might have ALN (paragraphs 7.1.11 and 7.1.12 for pre-school, 7.2.15 and 7.2.16 for school and 7.3.12 and 7.3.13 for FE). These are generally the same for each of the three age-groups and similar to what is in the current SEN Code of Practice.

Pre-school

The draft Code discusses the **importance of health professionals** to the identification of ALN in young children who are not yet attending school. Section 57 of the Bill requires health bodies to notify the parents of a child under compulsory school age they suspect has ALN and a **discretionary power to bring it to the attention of the local authority** where it believes this is in the child's best interests. Paragraph 7.1.30 lists some examples of when it would be in the child's best interest for a health body to inform a local authority. The draft Code **does not give any examples of when it would not be in their best interest**.

Schools

The draft Code says schools should have a 'clear, robust and transparent approach to identifying and responding to ALN' (para 7.2.1) and a **school policy** on how they will do this (para 7.2.5).

Schools should **assess each child's attainment upon entry**, which 'should ensure that the potential existence of ALN is identified early' (para 7.2.18). Paragraphs 7.2.19-7.2.23 describe what schools can use to measure progress. These should inform assessments of whether progress:

– is **significantly slower** than that of their peers starting from the same baseline;

– fails to match or better the child's or young person's **previous rate of progress**; or,

– fails to close, or widens, the **attainment gap** between the child or young person and their peers. [my emphasis]

Class teachers should firstly try to address a learner's less than expected progress through **differentiated teaching** (para 7.2.24) and consider notifying the school's ALNCo if they continue to have concerns. 'Depending on the circumstances, external advice might also need to be sought' (para 7.2.26)

Further education institutions

Like schools, all FEIs should have a 'clear, robust and transparent approach to identifying and responding to ALN' (para 7.3.2) and a **clear policy** in place (para 7.3.5).

FEIs should **assess the attainment of its students on entry** and make full use of any information passed to them by schools, including and IDPs which are transferred to them (para 7.3.15).

Most learners will have already had ALN identified by the time they enter FE. The issue for FEIs is therefore more likely to be one of **managing transition from school** rather than identification (para 7.3.6). However, the draft Code says they should be alert to the fact ALN can change or develop at any time (para 7.3.7).

As in the guidance for schools, the draft Code highlights that problems should initially be addressed through **differentiated teaching first** (para 7.3.20) and staff should consider notifying the college's ALNCo if they continue to have concerns. 'Depending on the circumstances, external advice might also need to be sought' (para 7.3.22).

An important difference in respect of learners aged 16 and over is that they **may decline support** with any ALN they might have.[7] Paragraph 7.3.24 refers to the duty under section 6 of the Bill to have regard to the child or young person's views and says **FEIs need to seek and record a young person's views**, particularly if they do not consent to an assessment or offer of provision. Elsewhere (para 3.17), the draft Code states that the requirement for a young person's consent 'reflects the presumption that the young person has the capacity to provide consent'. The Bill makes provisions for circumstances where a FEI governing body or a local authority decide that a young person does not have capacity to understand the subject matter (sections 74-76).

The role of educational psychologists

The draft Code sets out a particular role for educational psychologists in **informing the decision** whether an IDP should be the **responsibility of the school or the local authority**:

- Schools should consider consulting an educational psychologist before referring a learner's case to the local authority because they believe it is beyond their capability (para 9.2.10).
- After receiving a referral from a school, the local authority must engage with an educational psychologist.
- Where a local authority is considering taking over a learner's IDP, the local authority must consult an educational psychologist.

In December 2016, the Welsh Government published guidance giving an overview of the responsibilities of educational psychologists and the services they provide.

Decision that a learners does not have ALN

Chapter 8 of the draft Code deals with the consequences and actions which follow a decision that a child or young person does not have ALN.

A school or FEI **must formally notify** the child and the child's parent, or the young person over compulsory school age of its decision and the **reasons** behind it (section 9(4) of the Bill).

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[7] Section 86 defines a young person as a person over compulsory school age but under 25. Sections 9(d) and 11(d) enable young people to decline an assessment for ALN, whilst sections 10(2)(c) and 12(3) enable them to decline an IDP.

Paragraphs 8.5 and 8.23 respectively outline what the notification **must contain**. A school's notification must include details of how to access the local authority's arrangements for **information and advice**, as well as the right to **request the local authority reconsiders** the school's decision. The school's notification should also say how the school is proposing to help the learner (despite the absence of identification of any ALN) which may include aspects of differentiated classroom teaching.

The requirements of a notification from an FEI are similar, although the young person must be informed of their **right to appeal to the Education Tribunal for Wales**. This is because a local authority cannot be requested to reconsider a decision by an FEI and their next route of appeal is directly to the Tribunal. Similarly, a notification by a local authority that a child or young person does not have ALN must include information about the right to appeal to the Tribunal.

Responsibility for an IDP

The Bill places responsibility for assessing a learner's ALN and putting in place any subsequent IDP on the governing bodies of schools and FEIs, unless a governing body **'cannot adequately determine'** this or it **'would not be reasonable'** for them to do so (section 10(2) of the Bill).

Sub-chapters 9.1, 9.2 and 9.3 provide guidance and prescription on the duties on local authorities and governing bodies respectively, regarding preparing an IDP.

The draft Code provides some further detail to the distinction between those IDPs that are expected to be the responsibility of the governing body and those likely to be the responsibility of the local authority. Paragraphs 1.20 and 1.22 say that governing bodies will be 'directly meeting the needs of the majority' of learners with ALN and local authorities will be 'directly responsible for meeting the needs … of those with the **most complex and/or severe needs**'.

Some further indications on when a school or an FEI 'might consider that it would not be reasonable for it to secure the Additional Learning Provision (ALP), depending on the circumstance of the school/college (ie its location, size, budget etc.)' are given in paragraphs 9.2.9 and 9.3.8. Examples are where the child or young person:

- has a **low incidence condition / rare condition**[8] which requires specialism that the school or FEI cannot reasonably[9] provide;
- requires **regular advice and support from external agencies** which is over and above that which can be reasonably arranged and accessed by the school or FEI;
- **requires equipment** which can only be used by one child or young person / cannot be reused / is beyond the reasonable resources of the school/FEI; or
- requires **very intensive daily support** which cannot be reasonably funded or secured by the school or FEI's budget. [my emphasis]

[8] The words 'rare condition' are not included in the section relating to FEIs (para 9.3.8), although it is included in the section on schools (para 9.2.9). This may be an oversight rather than a conscious distinction

[9] The word 'reasonably' is not included in the section relating to schools (para 9.2.9), although it is included in the section on FEIs. This may be an oversight rather than a conscious distinction.

Timescales

The draft Code (paras 10.28–10.51) provides some indicative timescales for assessments and the outcomes from referrals. The Welsh Government says these timescales have been developed with the input of stakeholders but are **subject to ongoing discussions and not fixed at this stage**. They will be mandatory in the final version of the Code. Under the draft, indicative timescales are that:

- Once a referral is made to a **school or college**, they have either **2 weeks to refer the case on to the local authority** (because the ALN are sufficiently complex) **or 7 weeks to assess** the learner's ALN and produce an IDP if they believe this is necessary.
- If a **local authority receives a referral**, including from a school or college, they have **2 weeks** to decide if the case is within the school or college's capability and **direct them to produce an IDP or 10 weeks** following the referral to **produce an IDP themselves** if they believe this to be necessary. A school has 5 weeks to produce an IDP, if they are directed to do so by the local authority.
- The consequence of these timescales is that **families should have to wait a maximum of 12 weeks for the outcome of their request for an assessment and IDP. This compares to 26 weeks under the current SEN framework.**

Content of IDPs

Chapter 11 provides details of what content is mandatory in an IDP. It does not go as far as providing a template but is arguably not far short. The Welsh Government says '**consideration is being given to a standard template for IDPs** as well as the possibility of electronic IDPs.

The draft Code says an IDP is intended to be a flexible document but it is important that **all IDPs contain key elements**. An IDP will have to record what ALN the learner has and what ALP they require.

The **mandatory headings and content in IDPs**, which are required by the draft Code are:

- Responsibility for the IDP;
- Basic biographical information;
- The views, wishes and feelings of the child, child's parent or young person;
- Record of information used to develop the IDP;
- Description of the child or young person's ALN;
- Description and delivery of the child or young person's ALP;
- Intended outcomes;
- A section to record any arrangements for transition;
- Reasons for decisions made;
- Timeline of key events in the learner's life
- Signatures of the child or young person and/or their parent(s), as well as the person responsible for co-ordinating the IDP.

Multi-agency working

Chapter 12 of the draft Code mainly provides **guidance to organisations and services working together** in the context of preparing an IDP. It also imposes some further requirements in addition to those in the Bill. The main provisions within the Bill that the chapter applies to are:

- Sections 18 and 19, which places **duties on health bodies** in respect of **making provision**;
- Section 58, which places **a duty on organisations to help and share information** with local authorities;
- Section 55, which places a **duty on health boards to appoint a Designated Education Clinical Lead Officer (DECLO)**.

Arguably, the chapter on multi-agency working contains many references to 'should' and relatively few to 'must'. This chapter of the draft Code appears to be **largely guidance rather than prescription**.

Paragraphs 12.43-12.61 contain information on the **role and responsibilities of the DECLO**. The DECLO should have **'oversight'** of the heath board's services provided to children and young people aged 0-24 who have ALN. This will include:

- Assisting the health board to discharge its **duty to co-operate** with other services to promote better outcomes for learners with ALN;
- Operating strategically to **champion ALN within the health board** and promoting new ways of working and sharing best practice;
- Ensuring a **consistent strategic approach** to identification, assessment, planning, implementation and monitoring of IDPs;
- Managing and **monitoring compliance** with the health board's ALN duties; and
- **Measuring success** of the health board's interventions.

Local authorities' arrangements for a fairer and more transparent system

Chapter 18 of the draft Code provides more detail on how local authorities should meet their duties to:

- Make arrangements for **avoiding and resolving disagreements**, including the availability of help from an independent source (section 61 of the Bill);
- Make arrangements for the **provision of independent advocacy** to children and young people (section 62)

Disagreement avoidance/resolution

Paragraph 18.4 of the draft Code list a number of **standards** which local authorities are expected to reach in their arrangements for disagreement avoidance and resolution.

Local authority staff involved in delivering these arrangements **must have a detailed understanding** of the ALN system and **should have no vested interest** in the outcome of any potential disagreements (para 18.5). The independent help which local authorities are required to arrange should be from an experienced, knowledgeable and qualified source with no vested interest and **no prior involvement** with the learner (para 18.29).

Should a learner and/or their family decide not to use the disagreement resolution procedures arranged by the local authority, their **rights to appeal to the Education Tribunal for Wales are unaffected**. The draft Code states:

> *No inference will be drawn by the Tribunal if the child, child's parent or young person involved in the disagreement has not used the disagreement resolution arrangement. (para 18.40)*

Independent advocacy

Under section 62 of the Bill, local authorities must **refer any child or young person** for whom they are responsible, who requests independent advocacy services, **to an independent advocacy service provider**. Paragraph 18.45 of the draft Code sets out the ways in which advocate can help a child or young person in that position. Local authorities are responsible for ensuring that the advocacy services are **appropriate and of suitable quality**. Paragraph 18.46 lists what a local authority should do to ensure this.

The draft Code emphasises the **importance of the independence of the advocate** and states:

> *Services providing advocacy should, as far as possible, be funded and managed in a way that ensures independence from the commissioning organisation.*

Currently, local authorities ensure independence by commissioning advocacy services from an external provider. The draft Code advises that, to preserve the independence and integrity of the relationship between commissioning local authorities and external providers, any issues of challenge and conflict should be **transparent and robust** and addressed in any service level agreement.

Information and advice

Under section 7 of the Bill, local authorities must make arrangements to provide people with information and advice about ALN and the ALN system. Paragraph 4.9 of the draft Code gives guidance on the intended effect of the information and advice, in addition to being 'accurate' and 'neutral'.

Unlike disagreement resolution and advocacy, the provision of information and advice **does not need to be independent**. However, where local authorities decide to commission advice and information to be provided by external parties, the draft Code sets out some **commissioning principles** (para 4.19). For example, local authorities will remain responsible for the overall standard of the service and should establish robust quality assurance arrangements.

Other chapters within the draft Code

The draft Code provides further information on the following other aspects of the Bill:

- Chapter 13 gives guidance to local authorities on **placements of learners** with ALN, including the duty in section 45 to favour mainstream provision.
- Chapter 14 covers the **review and revision of IDPs**, including the requirement that a school, FEI or local authority reviews an IDP within every 12 months (sections 21-22 of the Bill).
- Chapter 15 refers to **ceasing IDPs** (section 29).
- Chapter 16 refers to **transferring IDPs** between schools or between local authorities.

– Chapter 17 covers arrangements for **transition** and **preparing for adulthood**.

– Chapter 19 provides information on **appeals to the Tribunal**, the decisions of which the draft Code says are 'legally binding' (although not on health bodies). Regulations will prescribe timescales within which appeals must be made and provisions for ensuring compliance from governing bodies and local authorities.

– Chapter 20 provides guidance on groups of children and young people in **specific circumstances,** including looked after children, those detained, home educated or educated otherwise than at school (EOTAS).

8. Implementation

The Minister for Lifelong Learning and Welsh Language, Alun Davies, has stressed that the **Bill is part of a wider programme** to 'transform' the ALN system. The Welsh Government has said it is minded to adopt a phased approach to implement the new statutory framework alongside its broader ALN Transformation Programme which seeks to support delivery partners to effectively move from the existing system to the new approach.

An **ALN Strategic Implementation Group** has been tasked with planning for transition and an **ALN Innovation Fund** established to support local authorities and their partners in developing and improving multi-agency working arrangements to deliver the new system.

Consultation on transition arrangements

On 28 February 2017, the Welsh Government launched a consultation on options for phasing in the new system, which will run until 9 June 2017. The consultation document assumes that all new entrants to the ALN system, following commencement of the Act's provisions, would be provided with an IDP under the new arrangements. The question is therefore how to transition learners who already have statements or receive support under School Action or School Action Plus to the new system. The consultation includes options for **either a 'big bang' approach** where everyone would move to the new system at a single date, or **various models for phasing** in the new system.

The options for phasing consist of tranches based on either:

– the type of provision learners receive at present (ie children with statements first);

– their age and setting (primary, secondary, or post-16 etc);

– key stages of education; or

– by local authority (with those authorities involved in the previous pilots and already familiar with aspects of arrangements for IDPs transitioning first).

The Welsh Government says that, following the consultation, it will '**develop detailed plans and arrangements**' for transition to the new system.

Additional funding

On 8 February 2017, the Minister announced a **£20 million funding package** to support ALN learners **over the next five years**, including helping the education sector transfer to the new system encouraging organisations to work closely together, developing the workforce and raising awareness of ALN.

A letter from the Minister to the Finance Committee, dated 8 March 2017, (PDF 362KB) showed that £10.1 million of the £20 million is funded from the £100 million pledged during this Assembly for raising school standards and the remainder is based on existing ALN budget provision and assumptions on future budget allocations.

9. Assembly scrutiny processes

The Minister for Lifelong Learning and Welsh Language, Alun Davies, made a statement in Plenary on 6 December 2016, the day after the *Additional Learning Needs and Education Tribunal (Wales) Bill* was introduced.

Stage 1

On 29 November 2016, the Assembly's Business Committee referred the Bill to the Children, Young People and Education Committee and set a deadline of 12 May 2016 for it to report on the general principles of the Bill (Stage 1 scrutiny).

The Committee held its first session with the Minister on 12 January 2017 (PDF 53KB).The Committee also held an event with stakeholders on 26 January 2017 to gain their input and views (PDF 79KB).

Further information on the Committee's scrutiny at Stage 1 is available on the Bill webpage.

The Bill is also receiving oversight and scrutiny from the Constitutional and Legislative Affairs Committee and Finance Committee, which will also report from their own perspectives.

Stage 2 and beyond

Should the Bill proceed past its Stage 1 debate and Assembly Members the support the general principles, it will be subject to amendment by the Children, Young People and Education Committee at Stage 2. The Business Committee set a deadline of 14 July 2017 for this stage to be completed.

The Bill will then be subject to further amendment by all Assembly Members in Plenary (Stage 3) before a final vote on whether to pass the legislation (Stage 4).

10.Welsh glossary

Termau penodol i'r Bil

- Additional Learning Needs (ALN) – **Anghenion Dysgu Ychwanegol (ADY)**
- Additional Learning Needs Code – **Cod Anghenion Dysgu Ychwanegol**
- Additional Learning Needs Coordinator (ALNCo) – **Cydlynydd Anghenion Dysgu Ychwanegol (Cydlynydd ADY)**
- Additional learning provision (ALP) – **darpariaeth ddysgu ychwanegol**
- ALN Transformation Programme – **rhaglen i drawsnewid y system ADY**
- Case friend – **cyfaill achos**
- Designated Education Clinical Lead Officer (DECLO) – **Swyddog Arweiniol Clinigol Addysg Dynodedig**
- Education Tribunal for Wales – **Tribiwnlys Addysg Cymru**
- Governing bodies – **cyrff llywodraethu**
- Independent advocacy services – **gwasanaethau eirioli annibynnol**
- Independent school – **ysgol annibynnol**
- Individual development plan (IDP) – **cynllun datblygu unigol (CDU)**
- Learning and Skills Plan – **Cynllun Dysgu a Sgiliau**
- Learning difficulty and/or disability (LDD) – **anhawster a / neu anabledd dysgu**
- Mainstream school – **ysgol prif ffrwd**
- Maintained school – **ysgol a gynhelir**
- Multi-agency – **aml-asiantaeth(ol)**
- Person-centred practice – **ymarfer sy'n canolbwyntio ar yr unigolyn**
- Personal Education Plan – **cynllun addysg personol**
- Placement **- lleoliad**
- Relevant treatment or service – **triniaeth berthnasol neu wasanaeth perthnasol**
- Right of appeal – **hawl i apelio**
- School Action – **gweithredu gan yr ysgol**
- School Action Plus – **gweithredu gan yr ysgol a mwy**
- Special Educational Needs (SEN) – **Anghenion Addysgol Arbennig (AAA)**
- Special Educational Needs Coordinator (SENCo) – **Cydlynydd Anghenion Addysgol Arbennig (AAA)**
- Special Educational Needs Tribunal for Wales (SENTW) – **Tribiwnlys Anghenion Addysgol Arbennig Cymru (TAAAC)**

– Special education provision – **darpariaeth addysgol arbennig**

– Special school **– ysgol arbennig**

– Statements (of SEN) – **Datganiadau o (o AAA)**

– Third Sector Additional Needs Alliance – **Cynghrair Anghenion Ychwanegol y Trydydd Sector (TSANA)**

– Working draft Code – **cod drafft gweithredol**

Y tri amcan cyffredinol

– A unified legislative framework – **fframwaith deddfwriaethol unedig**

– An integrated, collaborative Process – **proses integredig a chydweithredol**

– A fair and transparent system – **system deg a thryloyw**

Y deg nod craidd

– The introduction of the term Additional Learning Needs (ALN) - **Cyflwyno'r term Anghenion Dysgu Ychwanegol (ADY)**

– A 0 to 25 age range – **ystod oedran 0 i 25**

– A unified plan – **cynllun unedig**

– Increased collaboration – **rhagor o gydweithredu**

– High aspirations and improved outcomes – **dyheadau uchel a gwell deilliannau**

– A simpler and less adversarial system - **system symlach sy'n achosi llai o wrthdaro**

– Avoiding disagreements and earlier disagreement resolution – **osgoi anghytundebau a'u datrys yn gynharach**

– Clear and consistent rights of appeal – **hawliau clir a chyson i apelio**

– A mandatory Code – **cod gorfodol**

– Increased participation of children and young people – **cynnwys plant a phobl ifanc yn fwy**

Termau cyffredinol

– Consultation - **ymgynghoriad**

– Draft Bill – **Bil drafft**

– Explanatory Memorandum - **Memorandwm Esboniadol**

– Further Education – **Addysg Bellach**

– Further Education Institution – **Sefydliad Addysg Bellach**

– Financial resolution – **Penderfyniad ariannol**

– Local Health Boards (LHB) – **Byrddau Iechyd Lleol (BILI)**

– NHS Trusts - **Ymddiriedolaethau'r GIG**

– Revenue Support Grant (RSG) – **Grant Cynnal Refeniw**

– Welsh Local Government Association (WLGA) – **Cymdeithas Llywodraeth Leol Cymru (CLILC)**

– General principles – **Egwyddorion cyffredinol**

– Government of Wales Act 2006 (GOWA) - **Deddf Llywodraeth Cymru 2006**

– Guidance – **Canllawiau**

– Legislative competence – **Cymhwysedd deddfwriaethol**

– Legislative framework – **fframwaith deddfwriaethol**

– Looked after children – **plant sy'n derbyn gofal**

– Member in charge (of the Bill) – **Aelod sy'n gyfrifol (am y Bil)**

– Ongoing costs – **costau rheolaidd**

– Pre-legislative scrutiny – **craffu cyn y broses ddeddfu**

– Regulatory Impact Assessment (RIA) - **Asesiad Effaith Rheoleiddiol**

– Royal Assent – **Cydsyniad Brenhinol**

– Short title – **Enw byr**

– Stage 1 – **Cyfnod 1**

– Statutory framework – **fframwaith statudol**

– Statutory requirement – **Gofyniad statudol**

– Subordinate legislation – **is-ddeddfwriaeth**

– Transitional costs – **costau pontio**

– United Nations Convention on the Rights of the Child (UNCRC) - **Confensiwn y Cenhedloedd Unedig ar Hawliau'r Plentyn (CCUHP)**

– White Paper – **Papur Gwyn**

Rhagor o wybodaeth

I gael rhagor o wybodaeth am Fil Anghenion Dysgu Ychwanegol a'r Tribiwnlys Addysg (Cymru) , cysylltwch â Michael Dauncey (**michael.dauncey@assembly.wales**), y Gwasanaeth Ymchwil.