Research Briefing

Additional Learning Needs (ALN) in Wales

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National Assembly for Wales
Research Service

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Additional Learning Needs (ALN) in Wales

This Research Briefing updates a previous paper, published in June 2015 (SEN/ALN in Wales), and provides background information ahead of legislation the Welsh Government expects to introduce before the end of 2016. The anticipated Bill will replace the current Special Educational Needs (SEN) framework with a reformed system based on Additional Learning Needs (ALN).

This paper gives an overview of the current SEN framework, explains current provisions and processes, and charts the journey of review and reform that has taken place throughout much of the Assembly's lifetime, most recently the consultation on a draft Bill in 2015. Data on the numbers of learners with SEN/ALN and their academic achievement is also included, along with statistics on funding.

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Contents

01. Introduction 1

What are Special Educational Needs and what is the current position? 1

Proposed reform 2

Objectives of this paper 3

02. The current legal framework in Wales 4

Overview of key responsibilities 4

Graduated provision for SEN 6

Process of statutory assessments and statements 9

03. Numbers of learners with SEN 16

04. Funding SEN provision 20

Funding for local authorities from the Welsh Government 20

Arrangements between local authorities and schools 20

Statistics on funding 21

05. Achievement of learners with SEN 25

06. Previous reviews and proposed reforms 29

Three-part Committee inquiry in the Second Assembly 29

Developments in the Third Assembly 31

2012 consultation 32

Post-16 assessment/provision and the Education (Wales) Bill 33

2014 White Paper 34

Workforce planning 35

The decision to introduce a draft Bill 35

07. The draft Bill 37

Proposals for a single legal framework from age 0-25 (overarching objective) 38

Proposals for an integrated, collaborative process with early, timely and effective interventions (overarching objective) 39

Proposals for a fair and transparent system (overarching objective) 40

Cross-cutting core aims 41

CYPE Committee pre-legislative scrutiny 41

Responses to the Welsh Government's consultation 44

08. Reforms in England 48

What has changed? 48

What impact are the reforms having? 49

Lessons for Wales 49

09. Next steps for Additional Learning Needs in Wales 50

The Assembly's legislative process 51

1. Introduction

Policymakers in Wales have long intended to legislate to reform the current arrangements for identifying, and subsequently providing for, children and young people's Special Educational Needs (SEN) (or as they are increasingly, though not yet legally, referred to: Additional Learning Needs (ALN)).

Stakeholders, families and carers have also anticipated, and called for, reform. In the last Assembly (2011-2016), the Welsh Government held three consultations; firstly on outline proposals (2012), secondly on a White Paper (2014) and thirdly on a draft Bill (2015).

The Minister for Lifelong Learning and Welsh Language, Alun Davies AM, is responsible for ALN policy and bringing forward the legislation, although ultimate oversight rests with the Cabinet Secretary for Education, Kirsty Williams AM. In a statement on 14 July 2016, the Minister said he expects to **introduce the Bill before the end of 2016**. This followed an earlier statement on 1 July 2016 accompanying the publication of responses to the consultation on the Draft Additional Learning Needs and Education Tribunal Wales Bill, as well as a Welsh Government summary.

What are Special Educational Needs and what is the current position?

Section 312(1) of the Education Act 1996 states that children have Special Educational Needs (SEN) if '[they] have a learning difficulty which calls for special educational provision to be made for [them]',

Under section 312(2), a child has a **learning difficulty**[1] if they:

a) have a **significantly greater difficulty** in learning than the **majority** of children of the same age;

b) have a **disability** which either **prevents or hinders** them from making **use of educational facilities of a kind generally provided** for children of their age in schools within the area of the local authority; or

c) are **under compulsory school age and fall within the definition** at a) or b) or would if special educational provision was not made for them.

Section 312(4) states that **special educational provision** means:

a) for children **aged two or over**, educational provision that is **additional to, or otherwise different from**, the educational provision made **generally** for children of their age in maintained schools, other than special schools, in the area;

b) for children aged under two, educational provision of any kind.

[all my emphasis]

Approximately **one in five** learners in maintained schools in Wales have SEN. These needs are currently met through three graduated stages of intervention:

- Firstly, additional support provided by schools themselves (***School Action***);
- Secondly, additional support by schools together with the involvement of external agencies (***School Action Plus***); and

[1] A child is not regarded as having a learning difficulty solely because the language spoken at home is different to the language in which they will be taught.

– Thirdly, where deemed necessary, in accordance with a **local authority statement of SEN** which provides a legal entitlement to a specified package of support.

(Broadly equivalent programmes to *School Action* and *School Action Plus* exist within Early Years.)

In Wales, there are currently **105,000** learners officially recognised as having SEN, 12,000 of whom have statements (academic year 2015/16). **£362 million** is currently budgeted by local authorities for SEN provision (financial year 2015-16).

SEN usually fall into at least one of the following four broad areas:

– Communication and interaction;

– Cognition and learning;

– Behaviour, emotional and social development;

– Sensory and/or physical.

Proposed reform

For some years now, the Welsh Government has recognised that the current system is **'no longer fit for purpose'**.[2] It believes that a 'model introduced more than 30 years ago' should therefore be replaced with a '**more modern approach to multi-agency working** to the benefit of the child or young person, which will support them in the journey through education and their life choices'.[3]

As set out during its consultation on the draft Bill in 2015, the Welsh Government has **three overarching objectives** for the proposed new system:

– A **unified legislative framework** to support children and young people aged **0-25** with **ALN** in schools and further education *(as opposed to the current system for SEN up to age 16 and Learning Disabilities and/or Disabilities (LDD) for post-16, each of which are covered by separate legislation)*;

– An **integrated, collaborative process** of assessment, planning and monitoring with **early, timely and effective** interventions *(including duties on health boards and local authorities to collaborate with each other to meet a child or young person's ALN through an Individual Development Plan)*;

– 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 described by previous reviews as 'complex, bewildering and adversarial')*.[4]

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[2] Welsh Government, ***Legislative proposals for additional learning needs***, Ministerial Foreword (Huw Lewis, Minister for Education and Skills), May 2014, p2

[3] Welsh Government, ***Forward in partnership for children and young people with additional needs: Proposals for reform of the legislative framework for special educational needs***, June 2012, p4

[4] These objectives were listed at para 3.3 of the Explanatory Memorandum to the draft Bill and originally set out in the 2014 White Paper. Italics are this author's.

Objectives of this paper

This Research Briefing sets out how the **current arrangements** for identifying and meeting a child or young person's SEN/ALN[5] operate; provides **data** on numbers, levels of expenditure and academic achievement of learners with SEN; and explains the **previous reviews and reforms** that have taken place for much of the devolution era. In doing so, this paper intends to support and stimulate debate and preparations for the forthcoming Additional Learning Needs and Education Tribunal Wales Bill.

[5] The term 'Additional Learning Needs (ALN) has been adopted in practical and policy terms since the Welsh Government's revised *Inclusion and Pupil Support* guidance in 2006 sought to embed the ALN concept as an alternative to 'Special Educational Needs' (SEN). The terms are therefore used relatively interchangeably in this paper.

2. The current legal framework in Wales

The current arrangements for identifying and providing for SEN are rooted in the *Education Act 1996* (which consolidated the earlier *Education Act 1993*) and set out in more detail in the **SEN Code of Practice for Wales** (introduced in 2002 and updated in 2004).

A requirement of the legislation, the first Code of Practice was produced by the UK Government and came into effect in 1994. Following devolution, the then Minister for Education and Lifelong Learning, Jane Davidson, published the **first SEN Code of Practice specific to Wales** [hereafter 'the Code']. This took effect from **1 April 2002** and is **still in force today**.

The Code sets out the procedures which should be followed for assessing whether a learner has SEN and putting in place interventions to address them. However, there have been evolving changes to the way in which learners' needs are identified and provided for and the Code is **arguably out of date to an extent**. These changes include, for example, increasing use of the **wider concept of 'Additional Learning Needs' (ALN)**, which the forthcoming legislation is expected to give a legal foundation to, and a relative shift away from the use of statements.

Nevertheless, when explaining the reasons for delaying the introduction of legislation in summer 2015 to allow for further consultation, the then Minister for Education and Skills, Huw Lewis, asserted that the **existing legal requirements remained in place** and reminded local authorities of their responsibilities. He reiterated this in **correspondence to the Fourth Assembly's Children, Young People and Education Committee** in January 2016 (PDF 219KB).

Relevant agencies **must have regard** to the Code of Practice and, whilst they may choose exactly how to fulfil their statutory duties, must do so in light of the guidance it provides. The Code is founded on **five general principles**:

- A child with SEN should have their needs met;
- The SEN of children will normally be met in mainstream schools or settings;
- The views of the child should be sought and taken into account;
- Parents have a vital role to play in supporting the child's education;
- Children with SEN should be offered full access to a broad, balanced and relevant education.

Overview of key responsibilities

Paragraph 1.19 of the Code states that **local authorities**, in partnership with schools, should 'place the **highest priority** on their statutory duty to promote high standards of education for all children, including those with SEN'. Paragraph 1.20 says an essential function of local authorities is to ensure the needs of children and young people with SEN are 'identified and assessed **quickly** and matched by **appropriate** provision'.

Local authorities are obliged to publish their SEN policies and information on how they are 'promoting high standards of education' for learners with SEN and encouraging them to 'participate fully in their school and local community'.

Paragraph 1.24 of the Code advises that to fulfil their role effectively, local authorities should provide for the inclusion of SEN learners in mainstream schools. This is in line with the second general principle which **presumes mainstream provision**. Where a learner has SEN but no statement, they

must be educated in a mainstream school. Where they have a statement, they must still be educated in a mainstream schools unless parents wish otherwise or it is incompatible with 'the provision of efficient education for other children'.[6]

Schools and admission authorities **cannot refuse to admit a child solely because they have SEN**. For learners with SEN but no statement, the same admissions procedures must be followed as for other children. For learners with statements, a maintained school that is named in a statement must admit the child.

Maintained schools and early years settings must have a **written SEN policy**. Schools must have a **'responsible person'** (usually the head teacher although it may be a governor) who ensures all teachers know about a pupil's SEN. Paragraph 1.38 of the Code makes it clear that provision for learners with SEN is a matter for everyone in maintained schools and early years settings, not only the SEN Co-ordinator (SENCo).

The **SENCo** is the member of staff at a school who has responsibility for co-ordinating SEN provision within that school. In a small school, this may be the head teacher or deputy whilst, in a large school, there may be an SEN co-ordinating team. The SENCo has an instrumental role in working with the classroom teacher(s) in identifying a pupil's SEN and what form of intervention is required.

The **governing bodies** of maintained schools must 'use their **best endeavours**' to ensure the necessary provision is made for any pupil with SEN. Governing bodies must also report annually to parents on how the school's SEN policy is being implemented.[7]

Where a learner has a statement, the local authority is responsible for ensuring the provision set out in that statement is delivered. Where they do not have a statement, the school is responsible for deciding what is needed and making that provision.

Post-16 provision

Provision for learners aged over 16 who are not in school is set out in separate legislation, the **Learning and Skills Act 2000**, which deals with the planning and funding of post-16 education. The legislation uses the term **'Learning Difficulties and/or Disabilities (LDD)'** rather than SEN. LDD are defined in section 41(5) of the 2000 Act. The definition is essentially the same as for SEN; ie whether the learner has significantly greater difficulty in learning than the majority of their age group, or they have a disability that prevents or hinders them using the education and training generally on offer.

The Welsh Ministers currently have a general duty under the *Learning and Skills Act 2000* to secure **proper** (for those aged between 16 and 19) and **reasonable** (for those over the age of 19) facilities for education and training for learners. In particular, section 140 places a **duty** on the Welsh Government to make arrangements for **young people under the age of 19 who have a statement of SEN to be assessed**, where it believes they are **likely to leave school at the end of their last year of compulsory schooling** to go on to further or higher education or training. Assessment is carried out during the final year of compulsory education.

The Welsh Government also has a **power** under section 140 of the 2000 Act to arrange for an assessment to be conducted of **any person under the age of 25** where it appears they have learning difficulties and where they are receiving, or are likely to receive, further or higher education or

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[6] Section 316, *Education Act 1996*
[7] Section 317, *Education Act 1996*

training. This applies **even where they do not have a statement of SEN** and is designed to enable assessments to be carried out in cases where learning difficulties were developed shortly before or after leaving school, or where a learner had learning difficulties which did not result in a statement of SEN being issued.

The Welsh Government currently discharges its duties to assess learners by contracting with Careers Wales. An assessment by Careers Wales results in a report setting out a learner's educational and training needs, the post-16 education or training required to meet those needs and the provision required.

Where a learner's LDD can be met in a **mainstream setting**, the further education institution (FEI) absorbs the costs of this as part of its general budget. Prior to 2015-16 they could also apply to the Welsh Government for supplementary or exceptional funding to cover any additional costs incurred in meeting complex needs, although this budget was then transferred into allocations to FEIs under the new post-16 Planning and Funding Framework. Where a learner requires **specialist or residential accommodation**, Careers Wales prepares and submits an individual application to the Welsh Government which then makes a decision over funding, including any negotiation for joint funding with local authorities and/or health boards.

Arrangements for the LDD/ALN of post-16 learners is a complex area which has been the subject of considerable review in its own right. This is discussed later in chapter 6 of this paper.

Graduated provision for SEN

The Code advocates a **graduated approach** to help children with SEN, encompassing a range of strategies and interventions. The Code says this approach recognises there is a continuum of SEN and that schools should make full use of available classroom and school resources before calling upon outside resources and/or more specialist expertise.

The Code emphasises that 'the importance of early identification, assessment and provision for any child who may have SEN cannot be over-emphasised'; **'the earlier action is taken, the more responsive the child is likely to be'**.

There are separate chapters in the Code on identifying, assessing and providing for SEN in each of the early years, primary and secondary sectors. The information provided below is a summary of the guidance in relation to primary schools (chapter 5 of the Code). However, the guidance is broadly the same as for early years (chapter 4) and secondary schools (chapter 6).

Paragraph 5.39 describes the start of the process for identifying that a child may have SEN:

> *A school's **system for observing and assessing** the progress of individual children should provide information about areas where a child is **not progressing satisfactorily even though the teaching style has been differentiated**. These observations should be **enhanced by knowledge built up over time** of an individual child's strengths and weaknesses. Using this evidence, class teachers may come to feel that the strategies they are currently using with the child are **not resulting in the child learning as effectively as possible**. Under these circumstances, they will need to consult the SENCo to consider what else might be done. The starting point will always be a **review of the strategies currently being used** and the way in which these might be developed. The review **may lead to the conclusion** that the pupil requires **help over and above** that which is normally available within the particular class or*

subject. Consideration should then be given to ***helping the pupil through School Action****. [my emphasis]*

The key test of the need for action that schools should use is evidence that current rates of progress are inadequate. This does not necessarily mean simply being behind other pupils as children cannot be assumed to progress at the same rate and the Code (para 5.42) gives guidance on how adequate progress may be defined. It is also important to note that a child will not necessarily have SEN if their difficulties in learning could be addressed simply through differentiated teaching.

School Action

School Action is the first of the three tiers of intervention under the graduated approach advocated by the Code. Each tier should **not** be taken to be a **stepping stone** to the next, particularly from *School Action Plus* to statements.

Pupils receive support under *School Action* when they are not making adequate progress and this cannot be addressed through regular differentiated teaching. *School Action* consists of 'interventions that are **additional to** or **different from** those provided as part of the school's usual differentiated curriculum offer and strategies'.

Paragraph 5.44 explains that the **basis for intervention through *School Action*** could be concern, supported by evidence, that a child, despite receiving differentiated learning opportunities:

- makes **little or no progress** even when teaching approaches are **targeted** particularly in a child's identified area of weakness;
- shows signs of **difficulty in developing literacy or mathematics skills** which result in poor attainment in some curriculum areas;
- presents **persistent emotional or behavioural difficulties** which are not ameliorated by the behavioural management techniques usually employed in the school;
- has **sensory or physical problems**, and continues to make little or no progress despite the provision of specialist equipment;
- has **communication and/or interaction difficulties**, and continues to make little or no progress despite the provision of a differentiated curriculum.

The **SENCo** has an important role in working with the child's teacher(s) to decide on the action needed to help the child progress. The Code suggests that different learning materials or special equipment could be among the interventions made. The additional strategies used should be recorded within an **Individual Education Plan (IEP)**, which should also include information about short-term targets, outcomes and success/exit criteria. Paragraph 5.53 says IEPs should be **reviewed** at least twice a year and ideally, termly.

School Action Plus

If the interventions under *School Action* are not delivering adequate results, the SENCo and the teacher(s) may decide in consultation with parents and specialists to involve **external support** services.

Paragraph 5.56 describes the **basis for *School Action Plus*** as being that, despite receiving an individualised programme and/or concentrated support under *School Action*, the child:

– **continues** to make **little or no progress** in specific areas over a **long period**;

– **continues** working at National Curriculum levels **substantially below** that expected of children of a similar age;

– **continues** to have **difficulty** in developing **literacy and numeracy** skills;

– has **emotional or behavioural difficulties** which substantially and regularly **interfere** with the child's own learning or that of the class group, **despite** having an **individualised behaviour management programme**;

– has **sensory or physical needs**, and requires **additional specialist equipment** or regular advice or visits by a specialist service;

– has **ongoing communication or interaction difficulties** that impede the development of social relationships and cause **substantial barriers to learning**.

Services may be provided by the local authority as well as outside agencies, including advice on new IEPs with fresh targets and strategies, more specialist assessments and advice on new specialist strategies or materials. Although developed with the help of external specialists, strategies should usually be implemented as far as possible in the normal classroom setting and their **delivery remain the responsibility of the classroom teacher**.

Statutory assessments and statements

Where *School Action* and *School Action Plus* have not led to sufficient improvement, or where it is immediately obvious the learner's needs are sufficiently serious, a statutory assessment may be undertaken by the local authority. This may in turn lead to the local authority issuing a statement of the child's SEN.

The significance of statements is that the **local authority assumes legal responsibility** for making provision to meet specified needs. It has a duty under section 324 of the *Education Act 1996* to arrange the special educational provision in a child's statement. The wording of the Code when it was produced early in the last decade demonstrates an expectation that statements be issued as a **last resort or in the most serious** of cases:

> *For the **vast majority** of children their mainstream setting will meet all their SEN. (…) A **very small minority** of children will have SEN of a severity and complexity that requires the [local authority] to determine and arrange for the special educational provision their learning difficulties call for. (para 1.2) [my emphasis]*

However, parents have tended to view **statements as the best way** to secure intervention for their child, probably **reassured by the legal certainty** of provision that they offer. This has arguably led the system of statements to become **confrontational and protracted** between local authority and parent. Indeed, the previous Minister for Education and Skills, Huw Lewis, recognised views that the system has become **'complex, bewildering and adversarial'**.[8] This is one of the reasons the Welsh Government proposes to replace the system of school-led intervention versus statutory local authority statements with a holistic system where all learners with SEN have an Individual Development Plan (IDP).

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[8] Welsh Government, ***Legislative proposals for additional learning needs***, Ministerial Foreword (Huw Lewis, Minister for Education and Skills), May 2014, p2

There are **rules and procedures** laid out in legislation and the Code over matters such as when a local authority is obliged to **undertake an assessment**, the **timescale** it has to do so and **what factors** it must consider.

Process of statutory assessments and statements

Chapter 7 of the Code of Practice sets out the procedures which local authorities should follow in relation to learners whose SEN are sufficiently serious that they **require a statutory assessment and potentially a statement**. These procedures include scenarios where the local authority receives a request to carry out a statutory assessment.

The Code describes requirements on local authorities under sections 321 and 323 of the *Education Act 1996* as:

> *[Local authorities] must identify and make a statutory assessment of those children for whom they are responsible who have special educational needs and who probably need a statement. (page 73)*

There are therefore **two main decision-making steps** for local authorities.

- Firstly, they must decide **whether there is a need to undertake a statutory assessment**.
- Secondly, if an assessment is undertaken, they must decide **whether to issue a learner with a statement of their SEN**.

Deciding whether to make an assessment

Paragraph 7.7 of the Code sets out **three possible routes** for a child being referred for an assessment:

- A request by the child's **school** or setting;
- A referral by **another agency** (for example health authorities or social services departments);
- A request by a **parent**.

If an assessment has not already been made within the previous six months, the local authority must comply with a request from either the school or the parent unless it concludes, upon examining all the evidence, that a statutory assessment is not necessary (paras 7.11 and 7.21). Even where referral is by a health or social services professional, the local authority is not automatically required to carry out an assessment, although they need to collect evidence before considering whether it is necessary (para 7.15).

Effectively, this means it is **up to the local authority to decide** whether it undertakes the assessment although the Code gives guidance on what **factors the local authority should consider and who it should consult**. Paragraph 7.35 of the Code says:

In considering whether a statutory assessment is necessary, [local authorities] should pay particular attention to:

- *Evidence that the **school has responded appropriately** to the requirements of the National Curriculum;*
- *Evidence provided by the child's school, parents and other professionals where they have been involved with the child, as to the **nature, extent and cause** of the child's learning difficulties;*
- *Evidence of **action already taken** by the child's school to meet and overcome these difficulties;*
- *Evidence of the rate and style of the child's **progress**;*
- *Evidence that where some progress has been made, it has only been as the result of much additional effort and instruction at a **sustained level not usually commensurate** with provision through School Action Plus. [my emphasis]*

The **key question** the local authority faces is whether, despite action taken by the school with the help of external specialists, **the child's learning difficulties have not been sufficiently remedied** and there may be a need for the local authority to determine the child's SEN. However, the local authority may decide that, even where the child requires some form of intervention or additional assistance, there is no need for a statutory assessment. As the Code states at paragraph 7.46, the local authority 'may be able to identify immediate remedies that would mean a statutory assessment was not necessary', which may include support through *School Action* or *School Action Plus*.

Whilst the Code says 'academic **attainment** is not in itself sufficient for local authorities to conclude that statutory assessment is or is not necessary', it describes it as the 'essential **starting point**'. Local authorities should therefore consider **'significant discrepancies'** between the child's attainment and that of the **majority** of their classroom peers and children of the same age, as well as in their own attainment within or between core national curriculum subjects.

In addition, paragraphs 7.42–7.45 cite factors other than attainment, which should also be considered, including:

- Clear, recorded evidence of **clumsiness**; significant difficulties of sequencing or visual perception; deficiencies in working memory; or significant delays in language functioning;
- Any evidence of **impaired social interaction or communication** or a significantly restricted repertoire of activities, interests and imaginative development;
- Evidence of significant **emotional or behavioural difficulties**, as indicated by clear recorded examples of withdrawn or disruptive behaviour; a marked and persistent inability to concentrate; signs that the child experiences considerable frustration or distress in relation to his or her learning difficulties; difficulties in establishing and maintaining balanced relationships with his or her fellow pupils or with adults; and any other evidence of a significant delay in the development of life and social skills.

Other factors relating to the child's **home environment or school attendance** may also contribute towards under-attainment but may not always be indicators of SEN. The Code therefore states that

local authorities should seek evidence of any such identifiable factors that could impact on learning outcomes including:

– Any evidence that the child's performance is different in different environments;

– Evidence of contributory medical problems;

– Evidence from assessments or interventions by child health or social services.

With regard to reaching its decision, paragraph 7.29 of the Code states:

> *The [local authority] should react* ***consistently*** *to requests from parents, schools and settings for assessments and should subsequently make* ***open and objective*** *judgements as to whether a statement should be issued. [my emphasis]*

Paragraph 7.40 adds:

> *Where the* ***balance of evidence*** *presented to and assessed by the [local authority] suggests that the child's learning difficulties:*
> – ***have not responded*** *to relevant and purposeful measures taken by the school or setting and external specialists; and*
> – *may call for special educational provision which* ***cannot reasonably be provided within the resources normally available*** *to mainstream maintained schools and setting in the area,*
>
> *the [local authority] should* ***consider very carefully the case for a statutory assessment*** *of the child's special educational needs. [my emphasis]*

Communication with families

Before deciding whether to make an assessment, the local authority must issue a notice under section 323(1) or 329A(3) of the *Education Act 1996,* **advising the parents and giving certain information** about the process.

The Code sets out the steps a local authority must take to communicate its decision whether or not to make an assessment. Paragraph 7.69 states:

> *If the LEA decides it is not necessary to carry out a statutory assessment they* ***must*** *inform the parents and explain the reasons; they should also set out the provision that they consider would meet the child's needs appropriately. The decision not to make a statutory assessment may be a severe disappointment to the child's parents and may also be unwelcome to the child's school. Regardless of whether the initiative for a possible assessment came from the [local authority] or a request from the parents or school,* ***the [local authority] should write*** *to the school,* ***as well as the child's parents, giving full reasons for their decision****. [other than 'must', bold is my emphasis]*

Local authorities must inform parents (or the school if it made the request) of its decision whether to carry out a statutory assessment within **six weeks** of receiving a request.

The Code suggests that it may be helpful for the local authority to meet the parents to explain the position in detail. It also says that the local authority may consider inviting a representative of the school to be present, highlighting that 'a meeting of this kind will be particularly useful where it is clear that there is disagreement between the parents and the school'.

Appeals

Under paragraph 7.71, where parents have formally requested a statutory assessment or where their child's school or setting has made such a request, **the parents may appeal to the SEN Tribunal for Wales** against a decision not to make an assessment. **Local authorities must inform parents of the right to appeal** and the time limits for appeal, the availability of disagreement resolution services and the fact that these do not affect parents' right of appeal.

As of 5 January 2015, **children themselves also have the right of appeal** to the SENTW regarding local authorities' decisions about SEN.[9]

Deciding whether to make a statement

In accordance with paragraphs 7.74 and 7.82 of the Code, after deciding to make a statutory assessment, the local authority **must seek the following advice**:

- Parental advice;
- Educational advice;
- Medical advice;
- Psychological advice;
- Social services advice.

Under paragraph 7.85, local authorities should also seek to ascertain **the views of children and young people** who are being assessed. The learner's views about their needs and aspirations should, wherever possible be recorded as part of the statutory assessment process.

Local authorities must also seek any **other advice** they consider appropriate and, where reasonable, should consult those whom the parents have named. They must give copies of any representations or evidence submitted by the parents to those requested for advice.

At this point, parents must be informed that, as part of the process of putting together all the relevant advice, their child may be called in for an examination or assessment.

When requesting advice, the local authority should ask **all concerned to respond within six weeks**. Health and social services must normally respond within this six week timeframe, although they are under no obligation to do so where they have no prior knowledge of the child.

Local authorities should make clear that regulations require **that advice must relate to the educational, medical, psychological or other features that appear relevant** to a child's current and future educational needs. The advice must also set out how those features could affect the

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[9] Welsh Government, Huw Lewis (Minister for Education and Skills), *Children's Right to Make Special Educational Needs Appeals and Claims of Disability Discrimination to the Special Educational Needs Tribunal for Wales*, Cabinet Written Statement, 15 December 2014

child's current and future educational needs and the provision that is considered appropriate in light of those features.

Paragraph 7.86 states that, having received all the advice, the local authority must decide whether it needs to make a statement or amend an existing statement. It must make tha**t decision within ten weeks** of serving notice that it is undertaking a statutory assessment. (This includes the six week period for seeking advice.)

If the local authority decides a statement or amended statement is necessary, it must send a copy of the **proposed statement** to the child's parents **within a further two weeks**. The advice received should also be attached.

If the local authority decides that a statement or amended statement is not necessary, it must notify the parents and give reasons, preferably providing a **note in lieu** of the statement, also within two weeks.

Parents must normally receive formal notification of the outcome of the assessment within **12 weeks of the start of the statutory assessment**. Where this is a proposed statement, the local authority has a **further 8 weeks to finalise** the statement.

This means that the **total process** from referral or request for a statutory assessment to having a final statement should be completed **within 26 weeks**. (This is made up of the original six week period to decide whether to undertake an assessment and 20 weeks for the process of deciding whether a statement is necessary and producing that statement.)

Data from the My Local Council website shows that in 2015-16, 68% of SEN statements were issued within the 26 week target and 94% where there were no special circumstances.

As with decisions whether to carry out the assessment, parents and children have a right to appeal to the SENTW against the decision.

Content of statements

The form and content of a statement issued by a local authority must comply with paragraph 8.29 of the Code. A statement should consist of:

- **Part 1, Introduction**: The child's name, address and date of birth; the child's home language and religion; the names and address(es) of the child's parents.
- **Part 2, Special Educational Needs**: Details of each and every one of the child's SEN as identified by the local authority during the statutory assessment; details of the advice received and attached as appendices to the statement.
- **Part 3, Special Educational Provision**: The special educational provision that the local authority considers necessary to meet the child's SEN, including the objectives of the provision, the provision itself and the arrangements for monitoring progress.
- **Part 4, Placement**: The type and name of school where the provision is to be made or the local authority's arrangements for provision where this is to be otherwise than in school. (This part must be left blank when the proposed statement is issued so as not to pre-empt any parental preference.)
- **Part 5, Non-Educational Needs**: All relevant non-educational needs of the child as agreed between the health services, social services or other agencies and the local authority.

– **Part 6, Non-Educational Provision**: Details of relevant non-educational provision required as agreed, including the agreed arrangements for provision.

All the advice obtained and taken into consideration during the assessment must be attached as appendices to the statement.

Parents may express a preference for the maintained school (but not a Pupil Referral Unit or hospital special school) they wish their child to attend, or make representations for a placement in any other school. **Local authorities must comply with a parental preference unless the school is unsuitable** to the child's age, ability, aptitude or SEN, or where the placement would be **incompatible with** the efficient education of other children or with the **efficient use of resources**.

Local authorities must ensure that a child is educated in a **mainstream school** unless a parent indicates that they do not want their child educated in a mainstream school or it is incompatible with the efficient education of other children.

Residential placements

The Code explains that:

> In general [local authorities] are likely to consider that there is a **need for residential provision** where there is multi-agency agreement that:
> – the child has severe or multiple SEN that **cannot** be met in **local day provision**;
> – the child has severe or multiple SEN that require a **consistent programme both during and after school hours** that cannot be provided by parents with support from other agencies;
> – the child is **looked after** by the local authority and has **complex social and learning needs** and placement is joint funded with the social services department;
> – the child has **complex medical needs** as well as learning needs that cannot be managed in local day provision and the placement is joint-funded with the health authority. (para 8.74) [my emphasis]

Paragraph 8.75 adds 'if these conditions apply, a multi-agency plan should be put into place that enables tri-partite funding'.

Ceasing, amending or reviewing statements

The Code provides guidance on procedures that should be followed when ceasing to maintain a statement (paras 8.117–8.124), amending an existing statement (paras 8.125–8.133) and reviewing statements (chapter 9).

It should not be assumed that once a local authority has made a statement, it should maintain that statement until it is no longer responsible for the young person. The Code advises **'statements should be maintained only when necessary'** but that the local authority may cease to maintain a statement 'only if they believe that it is no longer necessary to maintain it' (para 8.118). **Statements**

lapse when a young person moves into further or higher education or leaves school at age 16; there is no need to cease a statement when it is going to lapse anyway.

A local authority can only **amend a statement** following an order from the SENTW, if it is directed to do so by the Welsh Ministers or in accordance with Schedule 27 of the *Education Act 1996*. Schedule 27 sets out the process local authorities must follow if seeking to amend a statement. If, for example, a local authority wishes to do this after a learner's annual review, it must write to the parents and give them the opportunity to make representations. For amendments to a statement following a re-assessment, the procedure is the same as when making a new statement.

Paragraph 9.1 of the Code requires all statements (other than those for children aged under two) to be **reviewed annually**. This is so the local authority, the school, the pupil and the parents, and all professionals involved consider the pupil's progress in the previous 12 months and whether any amendments are needed. The Code highlights the **particular importance of the annual review which is held in year 9** in preparing for the pupil's transition to further education, work-based training, employment and adult life. Paragraph 9.46 therefore states that the annual review in year 9 **must involve Careers Wales**.

3. Numbers of learners with SEN

Tables 1-4 provide some statistics on SEN provision in maintained schools in Wales.

Table 1 presents the numbers of learners in Wales with SEN and how many receive support under each of the three tiers of intervention, over recent years. **Table 2** breaks this data down by local authority for the latest year, 2015/16.

Table 3 shows the number of learners with SEN as a proportion of total pupils, as well as how many have a statement as a proportion of total pupils, and of pupils with SEN. **Table 4** breaks the 2015/16 data down by local authority, which enables some analysis of their comparative use of statements.

From these tables, the following can be observed:

- In 2015/16, there were **105,143 pupils with SEN** in maintained schools, which is **22.5% of all pupils**.
- The large majority (88.2%) of pupils with SEN did not have a statement. **11.8%** of pupils with SEN did **have a statement**.
- The **proportion** of learners with SEN who have a **statement** has reduced year-on-year from 13.9% in 2009/10 to 11.8% in 2014/15 and 2015/16. Over the same period, the overall proportion who have SEN has risen from 21.2% to 22.5%.
- The relative issuing of statements to learners with SEN **varies amongst local authorities**. Whilst the average across Wales in 2015/16 was 11.8%, four local authorities made statements for over 15% of their learners with SEN yet four local authorities used statements for less than 8%.
- Monmouthshire had the lowest proportion of learners with SEN (16.7%) but issued one of the highest proportions of statements amongst the SEN cohort (15.1%). Conversely, Ceredigion (28.7%) and Merthyr Tydfil (28.5%) had the highest proportion of learners with SEN but issued two of the lowest proportions of statements (5.9% and 7.8% respectively).
- This suggests local authorities are using **different means of meeting the SEN/ALN** of their pupils, with some retaining the established system of statements and others shifting away from this approach. It should be noted that Estyn has reported that 'there is **not necessarily a correlation** between the percentage of statements and the quality of ALN services being provided'.[10]

[10] National Assembly for Wales, Children and Young People Committee, *CYP(4)-24-13: Paper 6 – Estyn* (PDF 380KB), 2 October 2013

Table 1: Number of pupils with SEN in maintained schools in Wales

number

	School Action	School Action Plus	Total pupils with SEN but without statement	Statements	All pupils with SEN
2015/16	**59,502**	**33,207**	**92,709**	**12,434**	**105,143**
2014/15	59,245	33,275	92,520	12,437	104,957
2013/14	58,146	34,627	92,773	12,530	105,303
2012/13	56,000	35,053	91,053	12,738	103,791
2011/12	56,511	33,429	89,940	13,098	103,038
2010/11	54,468	32,055	86,523	13,407	99,930
2009/10	54,256	30,981	85,237	13,767	99,004

Source: Welsh Government, StatsWales, Pupils with special educational needs by local authority, region and type of provision

Table 2: Number of pupils with SEN in maintained schools, by local authority, 2015/16

number

	School Action	School Action Plus	Total pupils with SEN but without statement	Statements	All pupils with SEN
Isle of Anglesey	1,053	846	1,899	300	2,199
Gwynedd	1,646	1,668	3,314	519	3,833
Conwy	1,571	1,691	3,262	324	3,586
Denbighshire	1,757	1,797	3,554	390	3,944
Flintshire	2,730	1,156	3,886	532	4,418
Wrexham	2,046	991	3,037	529	3,566
Powys	2,186	1,307	3,493	451	3,944
Ceredigion	1,968	610	2,578	161	2,739
Pembrokeshire	2,521	1,409	3,930	401	4,331
Carmarthenshire	4,312	2,408	6,720	910	7,630
Swansea	5,228	2,310	7,538	1,433	8,971
Neath Port Talbot	2,831	1,721	4,552	766	5,318
Bridgend	3,181	1,280	4,461	363	4,824
Vale of Glamorgan	2,780	1,023	3,803	391	4,194
Cardiff	6,778	3,031	9,809	1,596	11,405
Rhondda Cynon Taf	6,494	2,367	8,861	824	9,685
Merthyr Tydfil	1,440	858	2,298	195	2,493
Caerphilly	3,002	2,203	5,205	698	5,903
Blaenau Gwent	810	840	1,650	293	1,943
Torfaen	1,487	1,355	2,842	224	3,066
Monmouthshire	1,021	617	1,638	292	1,930
Newport	2,660	1,719	4,379	842	5,221
Wales	**59,502**	**33,207**	**92,709**	**12,434**	**105,143**

Source: Welsh Government, StatsWales, Pupils with special educational needs by local authority, region and type of provision

Table 3: Proportions of pupils with SEN and proportions of pupils with statements of SEN in maintained schools in Wales

	Total pupils	Total pupils with SEN	Total pupils with SEN statements	Percentage of total pupils who have SEN	Percentage of total pupils who have statements of SEN	Percentage of pupils with SEN who have statements
2015/16	**466,555**	**105,143**	**12,434**	**22.5%**	**2.7%**	**11.8%**
2014/15	465,704	104,957	12,437	22.5%	2.7%	11.8%
2013/14	465,081	105,303	12,530	22.6%	2.7%	11.9%
2012/13	464,868	103,791	12,738	22.3%	2.7%	12.3%
2011/12	465,943	103,038	13,098	22.1%	2.8%	12.7%
2010/11	466,172	99,930	13,407	21.4%	2.9%	13.4%
2009/10	467,141	99,004	13,767	21.2%	3.0%	13.9%

Source: Research Service calculations from Welsh Government, StatsWales, *Pupils with special educational needs by local authority, region and type of provision*, and *Pupils by local authority, region and age group*

Table 4: Proportions of pupils with SEN and proportions of pupils with statements of SEN in maintained schools, by local authority, 2015/16

	Total pupils	Total pupils with SEN	Total pupils with SEN statements	Percentage of total pupils who have SEN	Percentage of total pupils who have statements of SEN	Percentage of pupils with SEN who have statements
Isle of Anglesey	9,665	2,199	300	22.8%	3.1%	13.6%
Gwynedd	17,039	3,833	519	22.5%	3.0%	13.5%
Conwy	15,916	3,586	324	22.5%	2.0%	9.0%
Denbighshire	15,655	3,944	390	25.2%	2.5%	9.9%
Flintshire	23,649	4,418	532	18.7%	2.2%	12.0%
Wrexham	19,676	3,566	529	18.1%	2.7%	14.8%
Powys	17,997	3,944	451	21.9%	2.5%	11.4%
Ceredigion	9,539	2,739	161	28.7%	1.7%	5.9%
Pembrokeshire	17,716	4,331	401	24.4%	2.3%	9.3%
Carmarthenshire	27,108	7,630	910	28.1%	3.4%	11.9%
Swansea	35,818	8,971	1,433	25.0%	4.0%	16.0%
Neath Port Talbot	20,751	5,318	766	25.6%	3.7%	14.4%
Bridgend	22,932	4,824	363	21.0%	1.6%	7.5%
Vale of Glamorgan	22,184	4,194	391	18.9%	1.8%	9.3%
Cardiff	53,774	11,405	1,596	21.2%	3.0%	14.0%
Rhondda Cynon Taf	38,808	9,685	824	25.0%	2.1%	8.5%
Merthyr Tydfil	8,749	2,493	195	28.5%	2.2%	7.8%
Caerphilly	28,532	5,903	698	20.7%	2.4%	11.8%
Blaenau Gwent	9,318	1,943	293	20.9%	3.1%	15.1%
Torfaen	15,013	3,066	224	20.4%	1.5%	7.3%
Monmouthshire	11,547	1,930	292	16.7%	2.5%	15.1%
Newport	25,169	5,221	842	20.7%	3.3%	16.1%
Wales	**466,555**	**105,143**	**12,434**	**22.5%**	**2.7%**	**11.8%**

Source: Research Service calculations from Welsh Government, StatsWales, *Pupils with special educational needs by local authority, region and type of provision*, and *Pupils by local authority, region and age group*

Special schools

There were **39 maintained special schools** in Wales in **2015/16**[11] with **4,542** pupils in these schools[12]. The 2015/16 position is broken down across the four regional consortia areas as follows:

- Central South Wales: 1,821 pupils in 15 maintained special schools
- South West and Mid Wales: 956 pupils in 10 maintained special schools
- South East Wales: 530 pupils in 5 maintained special schools
- North Wales: 1,235 pupils in 9 maintained special schools.

[11] Welsh Government, StatsWales, *Schools by local authority, region and type of school*
[12] Welsh Government, StatsWales, *Pupils by local authority, region and type of school*

4. Funding SEN provision

Funding for local authorities from the Welsh Government

Local authorities in Wales use money they receive within the **Revenue Support Grant (RSG)** from the Welsh Government to fund education for pupils with SEN. The amount of RSG each local authority receives to provide services across all of their areas of responsibility is announced annually in the Local Government Settlement.

In 2016-17, the Welsh Government has given local authorities a total of £4.102 billion through the RSG to deliver all of their services. This is a **1.3% decrease** (£54 million) from 2015-16, after adjusting for transfers into the settlement.

The RSG is **un-hypothecated**, which means that local authorities decide themselves how much money to spend on a particular service area such as education, and subsequently on SEN provision for example. However, the RSG settlement does include an **Indicator-Based Assessment (IBA)** for each service area, which is a notional calculation of what each Council needs to spend to provide a standard level of service.[13] This is not a spending target and local authorities can decide how much they spend on SEN provision for example, as long as they meet any statutory requirements on them.

In 2016-17, the **notional IBA for 'Special Education' is £215 million**, which is similar to 2015-16. In addition, some funding that is intended for use on SEN provision will also have been included in the 'Nursery and Primary' and 'Secondary' teaching IBAs. Indeed, the **total budgeted gross expenditure on SEN provision in 2016-17 is £362 million**.[14]

Although the vast majority of local government resource funding is un-hypothecated, there remain some specific grants[15] which the Welsh Government pays to local authorities for a specific purpose. These have reduced in number over recent years as part of an agreed approach between the Welsh Government and Welsh Local Government Association (WLGA) of a general move towards less hypothecation and greater local decision-making over use of resources. There are currently **no specific grants relating to SEN.**

Further information on how schools in Wales are funded is available in our separate Research Briefing, *A quick guide to school funding* (July 2016).

Arrangements between local authorities and schools

Local authorities fund SEN provision through the following means:

- The **delegated budgets** they provide to schools. This means delegated budgets to special schools where all expenditure is assumed to be on SEN and **notional allocations for SEN** within the delegated budgets for mainstream schools (notional because it is for each school to determine how much they actually spend on SEN). Delegated funding makes up **73%** of total budgeted SEN expenditure in 2016-17.

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[13] The notional IBAs for 2016-17 are listed in table 4d of the Local Government Settlement Excel tables available on the Welsh Government's website.

[14] Welsh Government, Statistical First Release: *Budgeted expenditure on Special Educational Needs (SEN) provision: 2016-17*, 30 June 2016, p1

[15] Specific grants are listed in Table 9 of the Local Government Settlement Excel tables available on the Welsh Government's website.

– Through funds they **retain centrally** within the Local Authority Education Budget[16] or the Schools Budget. 27% of SEN expenditure is retained centrally by local authorities in 2016-17.

Under the provisions of the ***School Standards and Framework Act 1998***, the Welsh Government sets the legal framework within which local authorities allocate their education expenditure to schools. The framework is set out in the ***School Funding (Wales) Regulations 2010***. The regulations require local authorities to allocate expenditure to three budgets, the Local Authority Budget, the Schools Budget and the Individual Schools Budget (ISB).

The 2010 regulations specify that the ISB must be allocated amongst schools maintained by the authority in the form of budget shares, using a locally determined funding formula. **70% of the funding must be distributed on the basis of pupil numbers**. In their formula, local authorities may weight pupil numbers according to a number of **factors including SEN**.

The SEN Code of Practice says the following in relation to funding:

> *8.3 Maintained schools, other than special schools, should have within their delegated budget some funding that reflects the additional needs of pupils with special educational needs. They receive this through a funding formula that reflects the incidence of SEN measured in various ways. (…)*
>
> *8.4 [Local authorities] are required under the Special Educational Needs (Provision of Information by Local Education Authorities) (Wales) Regulations 2002 to publish from April 2002, details of the kinds of support arrangements maintained* ***schools*** *in their area might* ***normally provide from their budgets under School Action and School Action Plus****. They are also required to publish their own plans for providing appropriate SEN support – particularly under School Action Plus.*
>
> *8.5 Where* ***extra resources*** *are required to enable a school to make the provision specified in* ***statements****, the [local authority] can provide those resources directly from central provision, devolve them to schools on an earmarked basis or delegate them.*
>
> *8.6 However resources are provided, schools and [local authorities] have specific duties in relation to children with special educational needs which funding for SEN should support. [my emphasis]*

Statistics on funding

The Welsh Government publishes **annual statistics on budgeted expenditure on SEN provision.** Tables 5-7 below provide some information on how much money is allocated for SEN in Wales.

Table 5 shows how much in total was budgeted by local authorities for SEN provision and the amount budgeted per pupil (calculated per total pupils on roll not just those with SEN). It also shows the delegation rate, ie how much of local authorities' SEN budgets was passed directly to schools.

Table 6 breaks this data down by local authority, for the latest year, 2016-17. **Table 7** shows how much each local authority has budgeted for SEN in each of the last seven financial years.

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[16] The actual term in legislation is 'Non-schools Education Budget', as it refers to funding that is not delegated directly to schools. However, it is commonly known as the Local Authority Budget and was formerly called the LEA Budget. The term 'local authority' has been **used instead** of 'local education authority' since 5 May 2010.

From these tables, the following can be observed:

- **Total budgeted expenditure** on SEN in 2016-17 across Wales is **£361.737 million**. This is a 1.5% rise on 2015-16.
- **£800** is budgeted for SEN **per pupil** (total pupils not SEN cohort).
- Blaenau Gwent (£1,004), Anglesey (£975) and Swansea (£944) budgeted the most for SEN per pupil in 2016-17. Vale of Glamorgan (£597), Torfaen (£610) and Rhondda Cynon Taf (£629) budgeted the least.
- The **delegation rate** for SEN expenditure across Wales in 2016-17 **is 73%.** This means that £73 of every £100 budgeted for SEN was passed by local authorities to schools themselves. The delegation rate has risen year-on-year in each of the last six years.
- Denbighshire (91%) delegated the largest proportion of its SEN budget to schools in 2016-17. Caerphilly (54%) had the lowest delegation rate.

Table 5: Gross budgeted expenditure on SEN provision by local authorities in Wales

	£ Million Budgeted gross expenditure on SEN provision	£ Per pupil budgeted gross expenditure on SEN provision	% delegated to individual schools' budgets
2016-17	**361.737**	**800**	**73%**
2015-16	356.306	789	72%
2014-15	357.099	792	70%
2013-14	(r) 359.217	796	69%
2012-13	346.862	769	67%
2011-12	(r) 347.100	770	60%
2010-11	341.755	754	55%

Source: Welsh Government, Statistical First Releases: ***Budgeted expenditure on SEN provision*** (several editions)

Notes:

a) Includes notional allocations to schools for SEN provision as part of local authorities' formulae for distributing funds to schools. As it is for each school to determine how much of its delegated budget to spend on SEN, the actual expenditure within schools may vary from these notional allocations.

b) The £ per pupil expenditure is based on the whole cohort of pupils on roll rather than only pupils with SEN.

r) These are the revised 2013-14 and 2011-12 budgeted gross expenditure figures that were published in the subsequent year's release. Updated £ per pupil and delegation rates were not published, hence some caution is advised in comparing these two fields with gross budgets for these years.

Table 6: Local authorities' gross budgeted expenditure on SEN provision, 2016-17

	£ Million Budgeted gross expenditure on SEN provision	£ Per pupil budgeted gross expenditure on SEN provision	% delegated to individual schools' budgets
Isle of Anglesey	9.059	975	64%
Gwynedd	13.663	830	76%
Conwy	12.436	804	84%
Denbighshire	11.748	773	91%
Flintshire	19.607	858	65%
Wrexham	16.580	881	76%
Powys	15.390	870	73%
Ceredigion	7.618	812	69%
Pembrokeshire	15.231	886	77%
Carmarthenshire	20.431	759	78%
Swansea	32.493	944	67%
Neath Port Talbot	15.696	796	72%
Bridgend	19.236	838	72%
Vale of Glamorgan	12.904	597	83%
Cardiff	46.416	902	83%
Rhondda Cynon Taf	24.233	629	65%
Merthyr Tydfil	7.648	896	74%
Caerphilly	18.407	674	54%
Blaenau Gwent	8.770	1,004	72%
Torfaen	8.758	610	78%
Monmouthshire	8.329	736	71%
Newport	17.083	711	68%
Wales	**361.737**	**800**	**73%**

Source: Welsh Government, Statistical First Release: ***Budgeted expenditure on SEN provision 2016-17,*** 30 June 2016

Notes:

a) Includes notional allocations to schools for SEN provision as part of local authorities' formulae for distributing funds to schools. As it is for each school to determine how much of its delegated budget to spend on SEN, the actual expenditure within schools may vary from these notional allocations.

b) The £ per pupil expenditure is based on the whole cohort of pupils on roll rather than only pupils with SEN.

Table 7: Local authorities' gross budgeted expenditure on SEN provision

£ Million

	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17
Isle of Anglesey	9.259	9.500	8.675	(r) 9.775	10.069	9.811	9.059
Gwynedd	13.197	13.359	14.032	13.938	13.776	13.494	13.663
Conwy	12.459	13.536	13.200	12.838	12.484	12.324	12.436
Denbighshire	10.057	10.310	10.025	11.843	12.128	11.625	11.748
Flintshire	19.785	20.666	20.000	21.030	20.419	19.043	19.607
Wrexham	15.002	14.721	14.601	15.467	15.462	15.563	16.580
Powys	15.647	16.735	16.410	17.167	15.468	16.279	15.390
Ceredigion	7.877	8.511	8.962	8.614	8.520	7.834	7.618
Pembrokeshire	15.269	15.893	15.541	14.576	14.348	14.644	15.231
Carmarthenshire	20.778	21.424	21.090	22.179	21.720	21.275	20.431
Swansea	30.658	29.981	29.577	30.448	31.322	31.828	32.493
Neath Port Talbot	16.342	15.127	15.305	14.562	14.603	14.450	15.696
Bridgend	16.753	16.516	16.542	18.787	18.626	18.722	19.236
Vale of Glamorgan	11.785	11.612	11.662	12.425	12.599	12.775	12.904
Cardiff	35.348	37.269	39.444	41.903	42.343	44.734	46.416
Rhondda Cynon Taf	23.522	24.408	27.730	24.250	24.203	23.449	24.233
Merthyr Tydfil	7.357	(r) 7.401	7.455	7.525	7.261	7.273	7.648
Caerphilly	18.808	18.364	18.311	18.949	19.370	19.029	18.407
Blaenau Gwent	8.795	8.776	9.196	9.541	9.171	8.998	8.770
Torfaen	8.650	8.428	8.194	8.118	7.908	8.345	8.758
Monmouthshire	7.954	8.584	8.601	8.593	8.327	8.439	8.329
Newport	16.453	15.979	16.308	16.688	16.973	16.372	17.083
Wales	**341.755**	**(r) 347.1**	**346.862**	**(r) 359.217**	**357.099**	**356.306**	**361.737**

Source: Welsh Government, Statistical First Releases: ***Budgeted expenditure on SEN provision*** (several editions)

Notes:

a) These figures include notional allocations to schools for SEN provision as part of local authorities' formulae for distributing funds to schools. As it is for each school to determine how much of its delegated budget to spend on SEN, the actual expenditure within schools may vary from these notional allocations.

r) These are the revised 2013-14 and 2011-12 budgeted gross expenditure figures that were published in the subsequent year's release.

5. Achievement of learners with SEN

Tables 8-10 provide some information on the achievement of learners in Wales with SEN. **Tables 8 and 9** present statistics on the percentage of all pupils with SEN achieving the expected level at Key Stages 2 and 3 respectively, as well as breaking these down for each of the three levels of intervention. **Table 10** presents statistics on achievement at Key Stage 4.

Statistics for all pupils are also given, enabling some comparisons to be made between the achievements of pupils with SEN with that of their peers. The data covers the last five years.

From these tables, the following can be observed:

- In 2015, at **Key Stage 2**, **61.2% of all pupils with SEN achieved the Core Subject Indicator** (CSI), which is the expected level in English/Welsh, Mathematics and Science combined. This **compares to 87.8% of all pupils**, meaning there is a 26.6 percentage point gap. This **gap has narrowed** since 2011 when it was 37.7 percentage points.
- At **Key Stage 3**, **55.2% of all pupils with SEN achieved the CSI** in 2015, compared with **84.1% of all pupils**. This **gap has also narrowed** from 41.5 percentage points in 2011 to 28.9 percentage points in 2015.
- At **Key Stage 4**, in 2015, **23.3% of all pupils with SEN achieved the Level 2 threshold inclusive** (5 or more GCSEs at grades A*-C including English/Welsh and Mathematics, or equivalent). This compares with **58.9% of all pupils**. The gap of 35.6 percentage points is broadly the same as in 2011 when it was 35.0 percentage points.
- As would probably be expected, **fewer pupils with statements achieve** either the CSI at Key Stages 2 and 3, or the Level 2 threshold inclusive at Key Stage 4, than other learners who have their SEN supported through *School Action Plus* or *School Action*. Similarly, fewer pupils requiring support through *School Action Plus* achieve these measures than those only receiving *School Action*. **12.5% of pupils with statements achieved 5 or more GCSEs at grades A*-C** including English/Welsh and Mathematics, or equivalent. This compares to 21.0% at *School Action Plus* and 27.2% at *School Action*.
- At each of Key Stages 2, 3 and 4, the **cohort of pupils with SEN** receiving any of the three levels of intervention **achieved higher in 2015 than in any year** during the five year period examined for this analysis (dating back to 2011 and using the two measures of CSI and Level 2 threshold inclusive).

The Welsh Government is due to publish the 2016 data regarding the academic achievement of pupils with SEN on 28 January 2017.

Table 8: Key Stage 2 achievement by level of SEN provision (percentage of pupils achieving at least the expected level (Level 4) in teacher assessments)

			English	Maths	Science	CSI (a)	Welsh First Language	
	SEN provision	Cohort	%	%	%	%	Cohort	%
2015	Total pupils on SEN register	8,924	66.1	68.6	72.0	61.2	1,836	69.3
	Statemented	966	23.4	24.4	26.4	19.0	98	22.4
	School Action Plus	3,050	58.6	62.8	66.5	53.9	662	59.4
	School Action	4,908	79.2	80.9	84.5	74.1	1,076	79.7
	All pupils (b)	**32,159**	**89.7**	**90.3**	**91.5**	**87.8**	**6,522**	**90.5**
2014	Total pupils on SEN register	8,933	63.5	65.8	69.7	57.7	1,816	63.9
	Statemented	986	22.9	24.4	24.1	19.7	131	27.5
	School Action Plus	3,181	55.5	59.6	63.9	49.5	672	52.5
	School Action	4,766	77.2	78.5	83.0	71.0	1,013	76.1
	All pupils (b)	**31,670**	**88.5**	**89.0**	**90.5**	**86.2**	**6,400**	**88.2**
2013	Total pupils on SEN register	8,787	59.7	62.3	67.8	53.1	1,730	59.6
	Statemented	950	21.1	22.1	24.1	17.3	108	23.1
	School Action Plus	3,260	53.0	57.6	63.6	46.8	686	45.3
	School Action	4,577	72.5	74.0	79.8	65.1	936	74.3
	All pupils (b)	**30,896**	**87.2**	**87.6**	**89.8**	**84.4**	**6,188**	**86.7**
2012	Total pupils on SEN register	8,997	54.5	60.6	65.0	49.0	1,855	55.6
	Statemented	992	21.0	24.8	25.3	17.4	118	25.4
	School Action Plus	3,231	46.9	54.9	59.6	42.0	696	47.8
	School Action	4,774	66.5	72.0	76.9	60.3	1,041	64.2
	All pupils (b)	**31,807**	**85.3**	**86.9**	**88.7**	**82.7**	**6,451**	**84.1**
2011	Total pupils on SEN register	8,845	49.2	55.4	60.6	42.4	1,762	50.8
	Statemented	1,066	20.0	22.3	24.0	16.4	157	18.5
	School Action Plus	3,006	42.6	51.6	57.2	36.8	603	40.1
	School Action	4,773	59.9	65.2	70.9	51.7	1,002	62.3
	All pupils (b)	**32,388**	**83.5**	**85.0**	**87.2**	**80.1**	**6,349**	**82.1**

Source: Welsh Government, **Academic achievement by pupil characteristics,** 28 January 2016, Table 14

Notes:

a) The Core Subject Indicator (CSI) represents the percentage of pupils achieving the expected level or above in English or Welsh (First Language), Mathematics and Science in combination.

b) 'All pupils' represents the attainment of all pupils in maintained primary, secondary, special schools or PRUs whose Pupil Level Annual School Census or Education Otherwise Than At School collection and attainment data were successfully matched within the National Pupil Database.

Table 9: Key Stage 3 achievement by level of SEN provision (percentage of pupils achieving at least the expected level (Level 5) in teacher assessments)

			English	Maths	Science	CSI (a)	Welsh First Language	
	SEN provision	Cohort	%	%	%	%	Cohort	%
2015	Total pupils on SEN register	8,444	64.2	66.8	75.2	55.2	1,332	71.1
	Statemented	1,119	27.6	29.4	36.9	21.4	90	41.1
	School Action Plus	2,455	61.3	64.2	72.8	51.6	311	61.7
	School Action	4,870	74.1	76.6	85.2	64.8	931	77.1
	All pupils (b)	**31,547**	**88.1**	**88.9**	**92.0**	**84.1**	**5,635**	**90.9**
2014	Total pupils on SEN register	8,518	59.2	61.8	71.2	49.2	1,294	68.4
	Statemented	1,236	24.0	27.6	32.1	19.2	101	27.7
	School Action Plus	2,523	54.3	58.3	68.7	44.7	328	61.9
	School Action	4,759	70.9	72.5	82.7	59.4	865	75.6
	All pupils (b)	**32,162**	**86.1**	**86.7**	**90.6**	**81.3**	**5,537**	**90.1**
2013	Total pupils on SEN register	8,230	50.6	53.9	61.3	39.7	1,120	57.9
	Statemented	1,287	20.4	25.1	29.7	16.2	119	31.1
	School Action Plus	2,526	46.1	51.4	57.6	36.2	321	53.9
	School Action	4,417	61.9	63.6	72.7	48.6	680	64.6
	All pupils (b)	**33,193**	**83.0**	**84.0**	**87.2**	**77.2**	**5,667**	**87.6**
2012	Total pupils on SEN register	8,192	43.8	48.5	53.9	33.3	1,150	49.9
	Statemented	1,311	18.0	21.4	24.9	13.3	111	25.2
	School Action Plus	2,599	41.1	48.2	51.4	31.3	365	43.6
	School Action	4,282	53.3	56.9	64.3	40.7	674	57.4
	All pupils (b)	**34,289**	**79.5**	**81.3**	**83.9**	**72.8**	**5,783**	**84.2**
2011	Total pupils on SEN register	8,319	37.2	42.8	48.2	26.6	1,147	44.4
	Statemented	1,482	17.1	20.8	24.1	11.9	124	28.2
	School Action Plus	2,572	33.8	41.2	45.3	23.7	329	32.5
	School Action	4,265	46.1	51.3	58.4	33.4	694	52.9
	All pupils (b)	**35,724**	**76.1**	**78.0**	**80.4**	**68.1**	**5,858**	**81.4**

Source: Welsh Government, ***Academic achievement by pupil characteristics***, 28 January 2016, Table 15

Notes:

a) The Core Subject Indicator (CSI) represents the percentage of pupils achieving the expected level or above in English or Welsh (First Language), Mathematics and Science in combination.

b) 'All pupils' represents the attainment of all pupils in maintained primary, secondary, special schools or PRUs whose Pupil Level Annual School Census or Education Otherwise Than At School collection and attainment data were successfully matched within the National Pupil Database.

Table 10: Key Stage 4 achievement by level of SEN provision (percentage of pupils aged 15 at the start of the academic year)

			Percentage of pupils achieving:			
	SEN provision	Cohort	Level 1 threshold (a)	Level 2 threshold (a)	Level 2 threshold inclusive (a)	CSI (b)
2015	Total pupils on SEN register	7,469	88.0	64.9	23.3	22.0
	Statemented	1,086	61.5	35.5	12.5	12.2
	School Action Plus	2,183	86.1	59.8	21.0	19.7
	School Action	4,200	95.8	75.2	27.2	25.8
	All pupils (c)	**32,580**	**96.3**	**85.8**	**58.9**	**56.2**
2014	Total pupils on SEN register	7,576	86.4	60.4	19.7	18.4
	Statemented	1,118	61.4	35.2	9.3	8.6
	School Action Plus	2,450	83.3	55.8	17.3	15.8
	School Action	4,008	95.3	70.3	24.1	22.8
	All pupils (c)	**33,708**	**95.8**	**83.9**	**56.2**	**53.9**
2013	Total pupils on SEN register	7,583	82.7	50.6	16.8	15.3
	Statemented	1,239	60.5	29.0	10.6	10.2
	School Action Plus	2,461	77.9	46.0	15.5	14.1
	School Action	3,883	92.8	60.4	19.6	17.8
	All pupils (c)	**35,154**	**94.7**	**78.9**	**53.2**	**50.1**
2012	Total pupils on SEN register	7,059	79.4	41.6	16.5	15.5
	Statemented	1,173	55.8	24.2	8.4	8.4
	School Action Plus	2,108	74.3	37.3	13.9	13.1
	School Action	3,778	89.5	49.4	20.5	19.0
	All pupils (c)	**33,770**	**93.6**	**73.8**	**51.5**	**49.7**
2011	Total pupils on SEN register	6,952	75.4	33.2	15.5	14.9
	Statemented	1,221	52.9	19.7	8.7	8.5
	School Action Plus	2,040	68.1	28.4	14.3	13.9
	School Action	3,691	86.9	40.3	18.4	17.6
	All pupils (c)	**34,345**	**92.4**	**68.4**	**50.5**	**49.0**

Source: Welsh Government, ***Academic achievement by pupil characteristics***, 28 January 2016, Table 16

Notes:

a) Level thresholds represent a volume, or 'size', of qualifications at a specific level on the National Qualifications Framework (NQF). Three thresholds have been established: Level 1 – a volume of qualifications at Level 1 equivalent to the volume of 5 GCSEs at grade D-G; Level 2 – a volume of qualifications at Level 2 equivalent to the volume of 5 GCSEs at grade A*-C; Level 2 inclusive – a volume of qualifications at Level 2 equivalent to the volume of 5 GCSEs at grade A*-C including English/Welsh first language and Mathematics.

b) The Core Subject Indicator (CSI) represents the percentage of pupils achieving the expected level or above in English or Welsh (First Language), Mathematics and Science in combination.

c) 'All pupils' represents the attainment of all pupils in maintained primary, secondary, special schools or PRUs whose Pupil Level Annual School Census or Education Otherwise Than At School collection and attainment data were successfully matched within the National Pupil Database.

6. Previous reviews and proposed reforms

Reform of the legal framework for SEN has been on the agenda for a long time in Wales through a number of previous reviews, consultations, policy developments and pilots. Most recently, in 2015, the Welsh Government consulted on the Draft Additional Learning Needs and Education Tribunal Wales Bill and published a draft Code of Practice. Details of this are provided in chapter 7.

During the **Fourth Assembly** (2011-2016) and the **opening months of the Fifth Assembly** (May 2016 onwards), the Welsh Government:

- Undertook a consultation on proposals to reform the legislative framework (June – October 2012);
- Included changes to SEN at **post-16 within the** Education (Wales) Bill (2013-3014) before later agreeing to these being **removed** from the Bill (following an Assembly Committee's recommendation that these be instead taken forward in a single SEN/ALN Bill);
- **Consulted on a** White Paper (May – July 2014) which built on the consultation two years earlier;
- **Published a** draft Bill **for consultation** (July – December 2015), on which the Children, Young People and Education Committee undertook pre-legislative scrutiny;
- Published a consultation summary and all individual responses, alongside a Ministerial statement on 1 July 2016;
- Issued a further statement on 14 July 2016 on the timescale for introduction of the Bill (expected before the end of 2016).

However, the journey of review dates back much earlier with two reports, published not long after the Assembly was established, highlighting the need for change. In 2002 the Audit Commission published *Special educational needs: A mainstream issue*, which was followed by ***Support for Children with Special Educational Needs: An Estyn Overview*** (PDF 268KB) in 2003. This chapter provides an overview of developments since.

Three-part Committee inquiry in the Second Assembly

Improving the way SEN are managed in Wales was the subject of a three-part inquiry carried out by the Education, Lifelong Learning and Skills (ELLS) Committee in the Second Assembly between 2003 and 2007.

The **first part** of the inquiry, which reported in November 2004 (PDF 925KB), focused on ***Early Identification and Intervention***, and highlighted issues such as late diagnosis, an acute shortage of specialist therapists and a need for multi-agency working. The ELLS Committee made 28 recommendations which were responded to by the then Minister, Jane Davidson, in a written statement on 25 January 2005 and subsequently in a Plenary debate on 1 February 2005 (PDF 588KB).

The **second part** of the ELLS Committee's inquiry, ***Statutory Assessment Framework (Statementing)*** found **general dissatisfaction** with the statements process but, at that time, did not advocate the abolition of the statements system. The Committee acknowledged that 'the

majority of those consulted [were] in favour of keeping some sort of statementing process'[17] but suggested this may have reflected a **preference for the status quo over the uncertainty of something new.**[18].

The ELLS Committee reported on statementing in May 2006 (PDF 262KB), making 28 recommendations. Jane Davidson responded on behalf of the Welsh Government in a written statement on 28 June 2016 before a Plenary debate on 5 July 2006 (PDF 660KB).

Some of the conclusions and recommendations the ELLS Committee reached in 2006 remain highly relevant today. The Committee found that 'the statementing process is **costly and complex** and can **create barriers** between parents, teachers and other professionals'. It also concluded that, due to the greater recognition of a wider range of disorders, 'statements [were] being asked to do a job – of assessing the needs of a very broad group of children with very different types of needs – for which they were never intended or designed'.

The Committee therefore recommended that **statements should be limited** to children with the '**most severe and complex** of needs' and 'should be gradually replaced for most children'. It also recommended a move away from the 'Special Educational Needs' term and the **adoption of 'Additional Educational Needs'** as a replacement.

Even back in 2006, **inconsistency in local authorities' use of statements** was an issue and the Committee said there needed to be a 'more consistent application of … statementing arrangements'. The Committee also recommended a move towards a **'continuously assessed record of need'**, which can now be seen in what the Welsh Government proposed in its 2012 consultation, 2014 White Paper and subsequent draft Bill. Jane Davidson welcomed the report, telling Members it had provided her with 'an evidence-based platform to take forward further work on changes to the current statutory assessment framework'.

Inclusion and Pupil Support guidance, which the Welsh Government issued several months later in November 2006, sought to **embed the concept of 'Additional Learning Needs'** by adopting this term 'to cover those learners whose needs are greater than the majority of their peers'. The focus on 'Additional Learning Needs (ALN)' rather than 'Special Educational Needs (SEN)' is therefore relatively well established in practical and policy terms, if not yet in law.

The **third part** of the ELLS Committee's inquiry looked at ***Transition*** and the particular needs of young people with SEN as they leave secondary education and move into further or higher education, training or employment. The Committee made 47 recommendations when it reported in March 2007 (PDF 2.90MB). It expressed concern about a '**lack of co-ordination** between agencies', despite a considerable amount of guidance. The Committee recommended that **'key workers'** be appointed to help strengthen the support available and **'independent advocacy services'** help ensure young people are fully informed and understand the choices facing them.

Jane Davidson responded on behalf of the Welsh Government in a written statement on 21 March 2007, accepting all the recommendations in full, in part, or in principle.

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[17] National Assembly for Wales, Education, Lifelong Learning and Skills Committee, *Policy Review of Special Educational Needs Part 2: Statutory Assessment Framework (Statementing)* (PDF 262KB), May 2006, Chair's Foreword
[18] *Ibid* (PDF 262KB), p7

Developments in the Third Assembly

Early in the Third Assembly, in the summer and autumn of 2007, the Welsh Government undertook a **consultation with parents and stakeholders called *Statements or something better?*** This preliminary consultation sought views on possible reform of the legislative framework and aimed to build confidence and consensus about the way forward. It was based on a document (also called 'Statements or something better?') produced by a Welsh Government Task Group. Three options for change were set out.

A document produced by the Welsh Government's Additional Needs and Inclusion Division in September 2007 summarised parental views on each option. This reported that 'many parents expressed **anxieties about potential changes**', although '**malcontent expressed about the current situation** relates not only to the statutory processes of producing and amending the statement, but also to the provision … in mainstream schools'.[19]

The **dilemma facing policymakers** is evident from the Welsh Government document summarising progress to date and next steps (May 2008). It was clear the existing system was flawed and people were dissatisfied yet there was a nervousness about losing what was good about it and caution over what should come in its place:

> *The general consensus was that the **current framework offers most of what is desirable** in a statutory framework for children and young people with SEN and with some improvements it could be made to be "fit for purpose" and less bureaucratic and less "medical" in its approach. There was general agreement that a less bureaucratic approach could be adapted for the wider group of learners with additional needs.*
>
> *However, there is an overwhelming and very strong belief throughout Wales that the **current system is not working as it should** and there are major inconsistencies in its implementation within [local authorities] and mainstream schools. Those parents and carers who attended the consultation events had generally low levels of trust that they will be dealt with fairly and that their children's needs will be appropriately met.*
>
> *(…)*
>
> *Overall, given the clarity emerging from this consultation, it is **difficult to envisage either making no change** or not tackling any of the key issues identified. It would also seem **difficult to embark on wholesale radical change** before making the current system work more effectively and building the trust of parents and carers.*[20]

The Welsh Government subsequently established **four ALN pilot projects** in 2009 to **develop and test alternatives** to the current statutory framework of SEN statements. The aspects piloted included an **Individual Development Plan (IDP)** setting out a person's needs and actions to support them within a **whole system (age 0-25) approach**.

Each of the four pilots involved two local authorities, focusing on the following:

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[19] Welsh Government Additional Needs and Inclusion Division, *Statements or something better? Preliminary consultation on options for change to the framework for statutory assessment and statements of SEN: Summary of parental views*, September 2007

[20] Welsh Government, *Statements or something better: Summary of progress to date and the next steps*, May 2008, p4

- **Pilot A** was contracted to develop a model for the **quality assurance** of provision made for children and young people with ALN. The work included three core strands which were the development of **outcome measures**; a provision mapping tool for **linking data on inputs and outcomes**; and a **self-evaluation toolkit** for schools. (Caerphilly and Flintshire)
- **Pilot B** was contracted to develop and pilot a framework for the identification, assessment, planning and review of provision for **severe and complex** ALN. This included the development of an **IDP**; structures and processes for **multi-agency working and funding decisions**; and **family information** and support services and **dispute resolution** mechanisms. (Carmarthenshire and Torfaen)
- **Pilot C** was contracted to develop and pilot an identification, assessment, planning and review framework for ALN that are **not severe or complex**. As with Pilot B, this included the development of an **IDP**, **family information** and support services and **dispute resolution** mechanisms. In addition, a system was also piloted for facilitating the **improvement** of schools' ALN provision. (Bridgend and Pembrokeshire plus some involvement of Torfaen)
- **Pilot D** was contracted to develop and define the **role of the Additional Learning Needs Co-ordinator** (ALNCos) and to develop and pilot an **accredited course** for ALNCos. (Cardiff and Newport)

Further information on the pilots can be found in documents available on **the Welsh Government website**, which were published as part of the research to inform the evaluation of the pilots.

The summary report of the research noted:

> *There remain substantial concerns amongst parents and carers about the legal status of IDPs, and whether they will lose the* ***legal protection*** *they feel a Statement of SEN provides.*[21]

The report also observed:

> *However, at the heart of the reforms there is a* ***tension between the desire*** *to prescribe what should be done and how it should be done in order to* ***ensure quality and increase consistency****, and the* ***need to empower practitioners and give them the flexibility*** *to respond to individual needs and interests.*[22] *[all my emphasis]*

2012 consultation

A consultation entitled ***'Forward in partnership for children and young people with additional needs: Proposals for reform of the legislative framework for special educational needs'*** was undertaken by the Welsh Government between 26 July and 19 October 2012. This proposed **moving away from a legal framework which bases provision on statements of SEN and towards a wider concept of 'Additional Learning Needs' (ALN)** founded in legislation.

Under such a system, **statements** would cease to be the important determinant of level of provision and would be **replaced by Individual Development Plans (IDP)**. Whereas currently, only pupils with SEN who have statements have a statutory right to additional provision, the proposed changes would give **all children with SEN a statutory right to an IDP**.

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[21] The People and Work Unit (Research for and published by Welsh Government Social Research), ***Research on the IDP Expanded Testing Phase Summary Report***, 2014, p14

[22] ***Ibid***, p18

This is intended in part to **address the reliance on statements as the only perceived way** of securing provision. As the Welsh Government noted from the *Statements or something better?* consultation with parents:

> *There was a strong feeling that the **most valued aspect** of the current arrangements is the **legal protection afforded by a statement**. Those parents whose children were protected by a statement wanted to keep it and those whose children don't currently have a statement wanted one.*[23] *[my emphasis]*

Overall, the 2012 consultation set out the Welsh Government's plans to legislate to:

- Give a **statutory footing** to the concept of **additional needs** (AN);[24]
- **Replace SEN statements** with new **integrated Individual Development Plans** (IDPs) for children and young people;
- Set out how integrated plans will cover those **aged 0-25 years** who fall within different categories of need;
- Set out the **duties to be imposed on relevant bodies** (such as local authorities and the NHS);
- Set out the **resolution process** for any disputes;
- Impose a duty on the Welsh Ministers to issue a **code of practice** for the new statutory framework;
- Impose a duty on relevant bodies to **collaborate** in respect of AN provision;
- Transfer **responsibility for post-16 assessment** and provision for learners with learning difficulties and/or disabilities (LDD) to **local authorities** (currently duties rest with the Welsh Ministers). The term LDD for 16-25 year olds would be **encompassed within the single 0-25 ALN approach**.

In a **Cabinet statement on 17 July 2013**, the then Minister for Education and Skills, Huw Lewis, recognised that whilst the **majority of respondents agreed** with the principles of the proposals, many of those who responded **asked for further details**. He added that his officials would be seeking views from stakeholders before producing another consultation document, which in 2014 subsequently came in the form of a White Paper.

Post-16 assessment/provision and the Education (Wales) Bill

The findings of the third part of the ELLS Committee on ***Transition*** (PDF 2.90MB) included the **need for a more learner–centred approach** and **better information sharing and collaboration** between agencies. The Committee reported that the system was overly complex and not sufficiently learner focused.

In the Third Assembly, the **Enterprise and Learning Committee considered two petitions in 2009** that related to post-19 students with additional learning needs and also highlighted shortcomings in transition between stages of education. In its subsequent ***report*** (PDF 68.8KB), the Committee

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[23] Welsh Government, ***Statements or something better: Summary of progress to date and the next steps***, May 2008 (p4) [accessed 19 May 2015]

[24] The Welsh Government later reverted back to proposing the term 'Additional Learning Needs' following concerns that 'Additional Needs' was not sufficiently education focused.

referred to a 'convincing body of evidence on the **need for transition planning to happen earlier** than currently appears to be the case in most instances'.

In 2010, a **Ministerial Task and Finish Group** found that **the present system could not continue** and that the **separation of the funding and management decisions was not sustainable**. In its ***report,*** the Group recommended that local authorities should take over responsibilities in these areas. The Welsh Government later said 'ultimately, it was a clear message from the group that the learner could achieve benefits if better planning of provision took place'.[25]

The ***Education (Wales) Bill,*** which was introduced in July 2013, provided **for local authorities to be given the duty for the assessmen**t of post-16 learners' needs. They would be responsible for provision where this required specialist and/or residential provision. As at present, further education colleges would be responsible where they could meet the learner's needs.

The Welsh Government argued that these arrangements would achieve greater continuity as local authorities already have responsibility for learners up to the age of 16, which would mean that **the same agency had responsibility for both assessing needs and the subsequent provision** to meet these.

Evidence received by the Children and Young People Committee during its scrutiny of the Bill suggested that the changes to SEN provision at post-16 level would **be better placed as part of an overall Bill** reforming SEN/ALN provision. The Committee recommended that the SEN reforms be removed from the *Education (Wales) Bill* and instead be taken forward in a single holistic piece of legislation. The then Minister for Education and Skills accepted this recommendation and the ***Education (Wales) Bill* was amended to delete the SEN provisions**. He said in ***a Cabinet statement on 6 January 2014*** that the post-16 provisions would now be taken forward in **'cohesive and holistic'** legislation.[26]

2014 White Paper

On 22 May 2014, the Welsh Government published a **White Paper setting out its plans for new legislation** on meeting ALN in Wales.

Broadly, the proposals were to:

- **Replace** the existing statutory definition of **Special Educational Needs** (SEN) with a more flexible and inclusive legal concept of **Additional Learning Needs** (ALN); and
- **Replace statements** of SEN with **Individual Development Plans** (IDPs) as the basis for meeting a child or young person's ALN.

Through the reforms outlined in the White Paper, the Welsh Government said it wanted to **bring together the legislation and statutory definitions** for children **under 16**, who are classed as having SEN, and **post-16** learners in further education, who are considered as having 'Learning Difficulties and/or Disabilities (LDD)'. An ALN Bill would therefore seek to bring about **greater co-operation** between education, health and social services and **improve families' rights and experiences** when applying for interventions.

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[25] ***Explanatory Memorandum (as introduced)***, *Education (Wales) Bill*, p26

[26] For more information on this matter, see the Research Service's blog article ***Special Educational Needs (SEN) proposals to be removed from the Education (Wales) Bill***, 7 January 2014

In his Foreword to the White Paper, the then Minister for Education and Skills, Huw Lewis, was unequivocal about the need for comprehensive change, describing the current system as **'no longer fit for purpose'** and acknowledging that it could be seen as **'complex, bewildering and adversarial'**:

> *The evidence points to an assessment process which is inefficient, bureaucratic and costly, as well as insufficiently child-centred or user-friendly. Needs are sometimes identified late and interventions are not planned or implemented in a timely or effective way. Families tell us that they feel they have to battle at each stage of the system to get the right support for their child, and they don't know where to turn to for advice and information.*[27]

The Welsh Government said that it had reflected carefully on the responses received to its 2012 consultation. The then Minister stressed that whilst the proposals were bold and radical, they would still build on existing good practice. Huw Lewis said:

> *In some instances, proposed legislative provisions would constitute a radical break with the current statutory framework. Elsewhere, they will simply build upon existing strengths. Our approach is based on the principle that* ***what works should be retained and strengthened; that which doesn't work should be adapted or replaced****.*[28] *[my emphasis]*

Workforce planning

In November 2013, the Welsh Government commissioned the People and Work Unit to undertake ***An assessment of special educational needs workforce development requirements***, which was published in March 2015. The aim of the assessment was both to establish the current skills base of the education workforce to support children and young people with SEN and to identify and prioritise development needs.

The People and Work Unit were also commissioned in May 2014 to consider ***Workforce planning of special educational needs specialist services*** (published September 2015). The aim of the study was to establish current and future capacity requirements for local authority and NHS specialist services and to consider workforce planning priorities.

The decision to introduce a draft Bill

The Welsh Government planned to introduce a Bill in the summer of 2015. The then Minister decided to **defer this to allow a further exercise of consultation**, this time on a **draft** Bill. Huw Lewis said 'it is vital we design change with the profession and do not impose it upon them' which led him to decide 'we need to build in an important additional step in our reform journey'[29]. On **23 June 2015**, he told Assembly Members ALN reform needed to be taken forward in the **context of substantial changes** to the curriculum, initial teacher training and the professional development of the education workforce. Huw Lewis said:

> *Consequently, our proposed reform of the system for supporting children and young people with additional learning needs cannot be seen in isolation. It is part and parcel of that much wider reform agenda. (…)*

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[27] Welsh Government, ***Legislative proposals for Additional Learning Needs – White paper***, May 2014, p2

[28] ***Ibid***

[29] See Research Service Blog, ***Minister to explain delay in ALN Bill to Members***, 19 June 2015

One of the consistent themes running through this whole agenda is that we need to ensure that we bring the workforce with us as we roll out reform. (…)

I want more than just legislative compliance for our children and young people with additional learning needs. I want professionals working in our schools and colleges to embrace their needs in a meaningful and holistic way, not just within the confines of what is legally required.

7. The draft Bill

The Welsh Government published the **Draft Additional Learning Needs and Education Tribunal Wales Bill** on 6 July 2015. It was accompanied by a **Cabinet statement** by the then Minister for Education and Skills, Huw Lewis. A consultation period ran until 18 December 2015

The draft Bill set out a **new legal framework** for 'Additional Learning Needs (ALN)' with Individual Development Plans for all learners with ALN up to the age of 25. This would replace the current system of 'Special Educational Needs (SEN)', which provides graduated support through school-led interventions or through local authority-issued statements (as described in chapter 2 of this paper).

The Welsh Government said the draft legislation had three overarching policy objectives, which were to create:

- A **unified legislative framework** to support children and young people aged **0-25** with **ALN** in schools and further education *(as opposed to the current system for SEN up to age 16 and Learning Disabilities and/or Disabilities (LDD) for post-16, each of which are covered by separate legislation)*;
- An **integrated, collaborative process** of assessment, planning and monitoring with **early, timely and effective** interventions *(including duties on health boards and local authorities to collaborate with each other to meet a child or young person's ALN through an Individual Development Plan)*;
- 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 described by previous reviews as 'complex, bewildering and adversarial')*.[30]

In October 2015, the Welsh Government also published a **working draft of the new ALN Code** (PDF 987KB) for 'illustrative purposes', which was intended to inform the consultation and provide for a better understanding of the draft Bill.

The **draft Explanatory Memorandum (EM)** (PDF 1.08MB) to the Bill explained the current legislative framework is 'based on a model introduced more than 30 years ago that is no longer fit for purpose'. Paragraph 3.2 listed **19 identified weaknesses of the current system**, some of which were highlighted in 2014 in the Welsh Government's White Paper consultation. These weaknesses include: stigma of current terminology; inconsistency and confusion over use of statements; problems of transition to post-16; weaknesses in multi-agency working; needlessly late interventions; and an adversarial process facing parents (author's list not exhaustive).

The Welsh Government framed its approach to the draft Bill within **ten core aims**. Information in the draft EM regarding the purpose and effect of the draft Bill was therefore structured around these ten core aims (paras 3.4-3.14 and 3.50-3.94). Below, this paper sets out the ten core aims within the three overarching objectives.

[30] These objectives were listed at para 3.3 of the Explanatory Memorandum to the draft Bill and originally set out in the 2014 White Paper. Italics are this author's.

Proposals for a single legal framework from age 0-25 (overarching objective)

The introduction of the term Additional Learning Needs (ALN) (core aim)

The draft Bill would **replace 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 common** across Wales. The term ALN has already been used in practical and policy terms since the *Inclusion and Pupil Support* guidance, issued in November 2006, and the pilots established in 2009.

The **same definition as currently used for SEN is retained in the draft Bill for ALN**; ie whether a learner has a significantly greater difficulty in learning than the majority of their age group, or if they have a disability which prevents or hinders them from using the education generally on offer. This is **also materially the same as the current definition of LDD at post-16**.

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

A 0-25 age range (core aim)

The draft Bill provided for a new **single system for ALN** for both pre-16 and post-16, replacing the current SEN and LDD systems. It set out similar processes which schools and further education Institutions (FEIs) must follow in assessing whether pupils/students have ALN and creating an Individual Development Plan (IDP) for them. This means that all learners with ALN would have the **same type of statutory plan irrespective of their age** or whether they are in a school sixth form or an FEI.

The Welsh Government says this would 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 said it should **improve transition** between school and post-16 education. Another significant change proposed in the interests of transition was the **transfer of the responsibility for specialist post-16 provision from the Welsh Ministers to local authorities**. The Welsh Government believed this would encourage local authorities and post-16 providers to work together to plan for and provide 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.

A unified plan (core aim)

Just as the draft Bill required the same type of plan (an IDP) for all ages of learner under 25, it also required the **same type of plan for all learners with ALN regardless of their severity**. Under such a system, the distinction between statements, and *School Action* or *School Action Plus*, would no longer exist. Instead all learners with ALN would have an IDP, as would all learners with ALN aged 16-25. However, there would **still be a distinction** between some (more severe and complex) cases where local authorities would be responsible for maintaining the IDP, whilst in the majority of cases it would be the school or FEI.

The Welsh Government expects 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*, and those with a statement. This was confirmed by the Minister for Education and Skills in a letter to the Children, Young People and Education Committee (PDF 262KB), during its pre-legislative scrutiny in late 2015. However, the evidence the Committee received from stakeholders suggested a **lack of clarity** over the circumstances in which the local authority, rather than the school or FEI, would be **responsible for a learner's IDP** (see later section of this chapter).

In the draft EM, the Welsh Government summed 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/further education divide. (para 3.65) [my emphasis]*

Proposals for an integrated, collaborative process with early, timely and effective interventions (overarching objective)

Increased collaboration (core aim)

The draft Bill included a **new duty on health bodies** to deliver any Additional Learning Provision (ALP) that is specified in an IDP, which they have **agreed** to provide. This would mean that where an IDP states a health board is responsible for some aspect of ALP, the school, college or local authority would no longer be under a duty to secure that provision. However**, health boards would need to have agreed** as part of the process of drawing up the IDP that it would make that provision; local authorities could not bind the NHS to provide something to a learner with ALN that health boards had not agreed to.

The placing of **ultimate responsibility on a health body for ALP that it agreed to provide** when developing the IDP is significant. There were concerns expressed during the 2014 White Paper consultation (PDF 730KB) about the **viability of local authorities** (through ultimate responsibility for the IDP) **being held accountable for the delivery of services by bodies over which they had no control**. As Estyn commented, 'local authorities cannot be ultimately responsible for preparing, delivering or reviewing provision or support that is the responsibility of the health service'.

It is widely recognised that effective collaboration from the outset of identifying ALN and developing an IDP is crucial to improving the system. The draft EM states that IDPs will contain an action plan that is 'clear about which agency is responsible for delivering the individual elements'. **Chapter 13 of the draft Code** sets out mandatory duties and provides guidance on how this multi-agency working should take place when preparing an IDP.

The draft Bill placed a new duty on health bodies to comply with a local authority's request for information and was designed to address current problems with bodies failing to share information as well as they could.

Despite the Welsh Government's stated emphasis on increased collaboration between local government and health, evidence received during the Committee's pre-legislative scrutiny indicated the proposed measures would be inadequate as they place insufficient duties placed on health bodies (see later section).

High aspirations and improved outcomes (core aim)

The draft Bill included a duty on local authorities to **keep under review the arrangements for ALP** within their area and consider whether these are sufficient. In doing so, they would need to have regard to the ALP that may reasonably be arranged by other bodies, such as health boards. The Welsh Government said this would be to 'ensure that high standards are universal'.

The draft Bill also provided for two new statutory roles: an **Additional Learning Needs Coordinator (ALNCo)** in maintained schools and FEIs, and a **Designated Medical Officer (DMO)** or Designated Clinical Officer (DCO) within health boards.

Proposals for a fair and transparent system (overarching objective)

A simpler and less adversarial system (core aim)

The draft EM acknowledged that previous reviews 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, the Education, Skills and Lifelong Learning Committee found (PDF 262KB) 'the process can be adversarial, frustrating, stressful and complicated for parents and that 'it can be an unequal system' where 'more vocal and able parents are able to utilise the system more than others'.

The draft EM said that **introducing statutory IDPs for all learners with ALN** would remove the 'current artificial and contentious divide' and **'eliminate one of the principal causes of adversarial tension'** (para 3.77).

Avoiding disagreements and earlier disagreement resolution (core aim)

The draft EM anticipated that:

> *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 3.12) [my emphasis]*

The draft Code said:

> *Local authorities' focus should be on providing the parties with the opportunity to raise concerns at every stage of the process and* ***prevent problems from escalating****. (para 454) [my emphasis]*

The draft Bill required **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. Local authorities would have to provide **access to an independent person** to help resolve the disagreement, as well as explain to the child/young person and/or parent that any arrangements they participate in do not affect their right to appeal to the (renamed) Education Tribunal for Wales.

The draft Bill also required 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 provision of that advocacy service would also extend to **'case friends'** representing the child/young person, whose role the Welsh Ministers would have powers to make regulations about.

Clear and consistent rights of appeal (core aim)

The draft Bill provided for the renaming of the existing Special Educational Needs Tribunal for Wales (SENTW) as the **Education Tribunal for Wales**. The proposals largely retain the current practical arrangements for the Tribunal and the draft Bill did not propose any significant changes to the way in which the Tribunal hears appeals. However, the **right of appeal** which was given to children and young people in maintained schools in January 2015 would be **extended to all** children and young people with ALN **up to the age of 25**.

Cross-cutting core aims

Two of the Welsh Government's ten core aims were relevant to all three of its overarching objectives.

A mandatory Code (core aim)

Under the draft Bill, the Welsh Ministers would be required to issue a Code on ALN. This would need to be **laid before the National Assembly** under a similar process to the Codes on School Admissions and School Organisation. The Welsh Government would need to consult on a draft of the Code first.

The status of the Code under the proposed arrangements would differ from 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**.

The approach of the new Code, as set out in the draft version (PDF 987KB) the Welsh Government published to complement the consultation, appeared to be **more prescriptive**. The draft Code's introduction explained that it would **impose some absolute requirements** and relevant agencies would be obliged to comply with any of the **mandatory provisions**; equally they must not do something which the Code prohibits.

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.

Increased participation of children and young people (core aim)

The Welsh Government wants the new system to adopt a more **'person-centred approach'** leading to the greater involvement of learners themselves.

The draft Bill required any person or organisation exercising functions under the legislation to have regard to the views, wishes and feelings of the child or young person and their parents; their participation in the decision-making process; and their access to the information and support necessary to enable that participation.

CYPE Committee pre-legislative scrutiny

The Fourth Assembly's Children, Young People and Education Committee undertook pre-legislative scrutiny of the draft Bill. This included hearing from stakeholders working with children and families affected by SEN/ALN and from local government and health representatives involved in

implementing any changes. The Committee also questioned the then Minister for Education and Skills, based on the evidence it had received.[31]

Overall, the Committee 'very much welcome[d]the intention' to reform the system but found that 'there is **much work to be done**' to address **'many areas of uncertainty'** before a Bill is formally introduced into the Assembly's legislative process.

Evidence received by the 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 the key issues and points arising from its scrutiny and urged the Welsh Government to strengthen the legislation in a number of areas listed below. The Committee also wrote to the then Minister for Health and Social Services (PDF 210KB) regarding the specific issue of multi-agency working. The then Ministers issued a joint response on 19 January 2016 (PDF 219KB).

Multi-agency working

- Evidence suggested there was **inadequate** provision in the draft Bill for collaboration between local authorities and health boards. The Committee highlighted a **perceived imbalance** between the responsibilities on local government and health respectively and concluded that firmer duties on health bodies were needed.
- The Welsh Government 'recognis[ed] how vital ... partnership working is, especially between education and health, if the improvements sought are to be attained'. It said it would consider what else could be put in place, either in the legislation itself or through other means, to facilitate such partnership working, including how any disagreements between local authorities and health bodies might be approached.

Benefits and challenges of a graduated system of support

- Whilst there was general agreement that universally available Individual Development Plans (IDP) could help ensure greater consistency, there was a **call to retain the benefits of a graduated approach**, which is currently provided by the three-tier approach to intervention. This is to ensure that more intensive support continues to be available to those with more complex and severe needs and to alleviate concerns of any dilution of provision.
- Stakeholders felt **greater clarity is needed over where exactly responsibility for identifying needs, producing and maintaining an IDP will lie**, ie when this falls to the school and in what circumstances it can be referred to the local authority.
- The substantial **demands** that are likely to be placed on the new statutory **ALN Co-ordinator role** were also identified as a potential problem, as was the **need for a template for IDPs** to ensure they are consistent, transparent and portable.
- The Welsh Government highlighted that the current graduated system of support is not provided for in primary legislation but in the current Code of Practice. It said the new Code will be able to impose mandatory requirements and will address this issue.

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[31] See transcripts of the Committee meetings of 18 and 26 November 2015 for more information.

- The Welsh Government also said it would consider the comments about uncertainties about division of responsibilities, the need for an IDP template and the role of the ALN Co-ordinator. It added that further detail would be provided in the new Code.

Dispute resolution and creating a fairer, more transparent system

- Evidence suggested more could be done to **strengthen the role and powers of the Tribunal** (currently called the SEN Tribunal for Wales but proposed to be renamed as the Educational Tribunal for Wales). This included the ability to deal with persistent offenders and inaction after tribunal decisions, and to address failures or lack of compliance by health bodies.
- The Welsh Government said it would explore how the new Code can require and promote improved disagreement resolution and has asked the group of external partners involved in developing the Code to consider this.

Establishing an age 0-25 system

- The Committee found that despite the intention of the draft Bill to establish a 0-25 age system, its **focus was actually very much on statutory school age**. Evidence from stakeholders suggested that detail on specific provision at either end of the age spectrum seemed to be missing in the draft Bill and the draft ALN Code.
- For **early years**, there were calls for the 'threshold' for the definition of ALN to be more holistic and **widened to focus on development and play**. For **post-16**, the lack of reference to how ALN would be provided for in a non-college setting, for example the lack of reference to **work based learning such as apprenticeships**, was considered an omission.
- The Welsh Government **disputed the Committee's conclusion** that the focus of the draft Bill was predominantly on schools. It said that 'where required, there is specific provision in the draft Bill for early years and post-16 education' but that 'many of the provisions apply to all without any reference to age group or setting'. The Welsh Government will, however, consider the Committee's comments in developing the legislation before its introduction.

Challenges of transition to the new system

- In addition to the four areas outlined above, the Committee also identified some potential challenges of transition to the new system. These included the **financial implications** of the reforms, which the Committee believed 'need to be made clearer' when a Bill is formally brought forward.
- Other issues raised were the **capacity of the workforce** to implement the changes, staff training requirements, and the draft Bill's consideration of the Welsh language.
- The Welsh Government responded that these matters do not pertain directly to the provisions of the Bill itself but agreed 'they are clearly critical to the successful implementation of the proposed legislative framework'.
- In terms of costs, the Welsh Government recognised that the transition phase will be challenging and has committed to providing financial support to the organisations implementing the new system.

Responses to the Welsh Government's consultation

The Welsh Government published a summary of the responses to its consultation on the draft Bill on 1 July 2016. It also published each of the individual responses. **263 responses** were received in total, although 31 and 73 identical submissions related to **two 'campaign responses'** on the **Welsh language**, and issues affecting **deaf and blind** learners, respectively.

The consultation included **five closed questions asking participants if they agreed or disagreed with a statement about whether an aspect of the draft Bill will be effective**, or if they neither agreed nor disagreed. The results in the Welsh Government's summary, which also include the proportion who did not answer the question, show that in all five of the closed questions, **more respondents disagreed with the statements than agreed**. The tables below shows a breakdown of the Welsh Government's analysis of the responses. The Research Service has added extra columns showing the breakdown amongst those who stated they either agreed or disagreed.

Table 11: Responses to consultation question 1

Do you agree that the definitions of Additional Learning Needs (ALN) and Additional Learning Provision (ALP) set out in the draft Bill appropriately reflect our intended focus on educational needs and do you agree that the draft Bill would deal properly with the age range it sets out to capture?

% of total responses				% of those who stated 'agree' or 'disagree'	
Agreed	Disagreed	Neither agreed or disagreed	Did not answer	Agreed	Disagreed
34%	41%	19%	6%	45%	55%

Table 12: Responses to consultation question 2

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

% of total responses				% of those who stated 'agree' or 'disagree'	
Agreed	Disagreed	Neither agreed or disagreed	Did not answer	Agreed	Disagreed
23%	53%	17%	7%	30%	70%

Table 13: Responses to consultation question 3

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

% of total responses				% of those who stated 'agree' or 'disagree'	
Agreed	Disagreed	Neither agreed or disagreed	Did not answer	Agreed	Disagreed
30%	47%	16%	7%	39%	61%

Table 14: Responses to consultation question 4

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

% of total responses				% of those who stated 'agree' or 'disagree'	
Agreed	Disagreed	Neither agreed or disagreed	Did not answer	Agreed	Disagreed
22%	49%	22%	7%	31%	69%

Table 15: Responses to consultation question 5

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

% of total responses				% of those who stated 'agree' or 'disagree'	
Agreed	Disagreed	Neither agreed or disagreed	Did not answer	Agreed	Disagreed
20%	46%	24%	10%	30%	70%

Source for Tables 11-15: Welsh Government, *Consultation – Summary of responses, Draft Additional Learning Needs and Education Tribunal (Wales) Bill*, July 2016, pp 8-20

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**, accompanying the publication of the outcome of the consultation, the Minister for Lifelong Learning and Welsh Language, Alun Davies, said:

> *The responses to the consultation and feedback from the extensive engagement programme that ran alongside it were **strongly supportive of the principles** of our reforms. However, some concerns were of course also raised. Some of these reflected a desire by respondents to access a greater level of detail, others **reflected misunderstandings of our intentions** or the anticipated practical impact of our proposals, and some expressed **direct concerns about specific aspects** of the proposals. All feedback has been carefully considered and used to inform development of the legislation itself, the draft ALN Code and, crucially, the wider ALN Transformation Programme. [my emphasis]*

Many issues highlighted in the Welsh Government's consultation are the same as those arising from the Children, Young People and Education Committee's own pre-legislative scrutiny and subsequent submission to the Welsh Government. Below is a brief summary of points raised in the Welsh Government's consultation on the draft Bill.

- The **terms** 'Additional Learning Needs (ALN)' and 'Additional Learning Provision (ALP) were **generally welcomed**. There were some concerns that they may be open to interpretation and could be applied inconsistently (although they are the same definitions as currently used for SEN and SEP).
- The principle of a **single framework spanning ages 0-25** was generally welcomed and viewed as aiding effective transition between key milestones. However, respondents generally **sought more detail and clarification**, particularly how arrangements would work at the 0-3 and 16-25 age ranges, and questioned why the proposed framework does not seem to apply to work-based learning and apprenticeships, or higher education.
- There was **general support** for the principle of having a **unified planning process**, although there was a **call for further clarity** and detail.
- Respondents had conflicting views over whether the draft Bill would deliver a clear and robust legal framework to support the process of IDPs. Stakeholders called for **clear definitions and criteria** for preparing, maintaining and reviewing IDPs to ensure consistency.
- Respondents advocated the development of a **template for IDPs** to support their consistent delivery across Wales.
- Some **unintended consequences** were highlighted of moving away from legally-backed statements of SEN for [12,000] learners with the most severe and complex needs to a system where all [105,000] learners with SEN/ALN have the right to a statutory plan. The SENTW warned of a **potential watering down of provision for learners with severe and complex needs** by trying to ensure the system is flexible and caters for learners with less severe needs.

- Respondents raised concerns around **access to specialist services** and whether schools would know when to involve these, particularly for learners with complex and/or low incidence needs such as sensory impairment.
- The introduction of the **statutory ALNCo role** was generally welcomed, although consultees highlighted the importance of appropriate qualifications and training. Some respondents were concerned about the **administrative burdens** on the role and whether these may affect an ALNCo's teaching capacity.
- There were calls for the Code to give clearer guidance on how greater **collaboration between health and education services** would be achieved. There were **'strong representations' for a duty on health agencies** to assess and deliver provision when necessary and/or required, and for the Tribunal to have jurisdiction to hold them to account.
- Respondents welcomed the emphasis on **early disagreement avoidance and resolution** but sought reassurances that advocacy services would remain **independent** and run separately from local authorities.
- The majority of respondents raised the importance of having the **necessary resources and capacity** to implement the new system, and the notion that the reforms would be **cost-neutral was disputed**. Some respondents believe the Welsh Government has underestimated the impact on workload and finance of making the changes.

As stated above, there were **two 'campaign responses'** on the **Welsh language**, and issues affecting **deaf and blind** learners, respectively.

- Welsh language responses pointed to a **lack of reference in the draft Bill** to the principles of the ***Welsh Language (Wales) Measure 2011***, which states that Welsh should not be treated less favourably than English. Stakeholders called for a statutory requirement on the face of the Bill to ensure each stage in the process is **available in either Welsh of English**.
- The campaign run by the National Deaf Children's Society (NDCS) and Sense Cymru expressed concern that parts of the draft Bill and the draft Code would **undermine the system and the rights of children and young people**. The responses said that the new arrangements for assessing and planning support **must work effectively for deaf and blind learners**, which stakeholders are concerned might not happen as their needs are low incidence and specialist in nature.

8. Reforms in England

The ***Children and Families Act 2014*** made changes to SEN provision in England. A revised **Special Educational Needs and Disability (SEND) Code of Practice: 0-25 years** was published in January 2014 and took effect from 1 September 2014.

The changes in England **bring together educational interventions with health and care**, so that these are provided for within one plan. They also integrate the two previous systems of pre-16 and post-16 into a **0-25 age approach**. **Local authorities and health bodies are obliged to work together** to meet young people's needs. The UK Government said that **parents and children would be much more involved** in the decision-making process.

A House of Commons Library Briefing Paper, published in March 2016, ***Special Educational Needs: support in England***, provides a useful overview of the changes in England from September 2014, the accountability regime put in place to inspect the new arrangements, and some early research on their effectiveness.

The **UK Government's website** also has information on SEND in England.

What has changed?

Statements of SEN, which can cover learners up to the age of 19, are **being replaced in England by Education, Health and Care (EHC) plans**, which may be maintained up the age of 25 if the young person is still in education or training. From 1 September 2014, no new learners are being issued with a statement and those who already have a statement will gradually be transferred on to an EHC by 31 March 2018. EHC plans place **statutory obligations on local authorities and health bodies to collaborate** to meet the young person's needs. Many of the legal requirements for EHC assessments and plans are the same or **similar** to those required for statements.

School Action and ***School Action Plus*** are being **replaced** by a graduated school-based support system for learners whose needs do not require them to have an EHC plan. The new system is known as **'SEN support'**. This is a **different approach to what is proposed in Wales** which would provide all learners with ALN with the same type of plan: the Individual Development Plan (IDP). The Welsh Government says that having an IDP for all learners with ALN will 'eliminate one of the principal causes of tension'[32] (between those who have statutorily backed provision and those who do not).

Anecdotal evidence received by the Fourth Assembly's Children, Young People and Education Committee during pre-legislative scrutiny of the draft Bill, as well as **media coverage**, suggests that there have been considerable **financial implications in England** of providing EHC plans for all learners who previously had statements. The Welsh Government proposes to provide statutory plans to all 105,000 learners with ALN, not just the 12,000 who currently have statements.

Local authorities are now under an obligation to develop and publish a **'Local Offer'**, setting out in one place information about **provision they expect to be available across education, health and social care** for children and young people in their area who have SEN or are disabled. This includes those who do not have EHC plans but who receive SEN Support. Local authorities must involve and engage young people in preparing their Local Offer.

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[32] Welsh Government, ***Draft Explanatory Memorandum, Draft Additional Learning Needs and Education Tribunal Wales Bill***, 2015, para 3.77

What impact are the reforms having?

The **House of Commons Library's Briefing Paper** (March 2016) summarised some of the early research on the effectiveness of the reformed system.

This included a report from the Driver Youth Trust in October 2015, ***Joining the Dots***, which analysed the impact of the reforms in the year since their introduction. The report stated that:

> *Many examples of high-quality provision have emerged in response [to the reforms]. These are often driven by strong partnerships, well-managed change and skilled, impassioned leadership. However, at present provision is 'fragmented' leading to difficulties in sharing information and knowledge. As a result, many children and young people do not receive the support they deserve and gaps in the system lead to wasted resources as well as disconnected or duplicated services. Ultimately students, parents, schools and sector organisations are finding it difficult to navigate the new system and this is standing in the way of the reforms' success. [my emphasis]*

Another source cited by the House of Commons Library was the National Autistic Society whose **School report 2015** (PDF 543KB) said:

> *[Parents] believe **services are deteriorating** and are increasingly locked in lengthy and traumatic legal action to get their children's needs met. The new SEN system promises to make things better, but one year on, the process itself is taking too long and facing **clear challenges in the transition process**s between the two systems. Promisingly, parents and young people who have received EHC plans are more satisfied, although the number of plans being issued is lower, meaning we could see an even bigger increase in tribunal figures. [my emphasis]*

Lessons for Wales

Given England has already initiated its reforms of the SEN system, Wales has the opportunity to learn lessons from the implementation there to inform its own transformation. On 1 November 2016, the UK Government published **former 'Special Needs TSAR', Lee Scott's report** which reviews the experiences of children and young people with SEND in the school and college system. The **National Association for Special Educational Needs (NASEN) highlighted** five main findings in Lee Scott's report:

- Effective communication with families is critical, as is effective communication between agencies.
- There should be greater consistency across the country in how the SEND system operates.
- Schools and colleges should provide support for basic health needs, such as medication.
- There should be more transparency over how SEND funding is used.
- More could be done locally to support young people with SEND into training and work.

9. Next steps for Additional Learning Needs in Wales

On **14 July 2016**, the Minister for Lifelong Learning and Welsh Language, Alun Davies, said he 'expect[ed] to **introduce the Bill before the Christmas recess** and intend[ed] to make available the next iteration of the ALN Code as early as possible during the scrutiny process'. This follows the work of the ALN Code Content Development Group which ran until April 2016.

The Minister also referred to a wider **ALN Transformation Programme** which will 'support delivery partners to effectively move from the existing system to the new approach'. The Welsh Government has established an ALN Strategic Implementation Group, which is tasked with planning for transition.

Stakeholders await with considerable interest the introduction of the Bill and will be looking at how the Welsh Government revises (if at all) the proposals set out in the draft Bill, following its own **consultation** and the Assembly's **pre-legislative scrutiny.**

SNAP Cymru, a charity which works with families of children and young people with ALN, report that the current system is not at all inclusive. They say families often feel excluded from processes which they see as 'impenetrable, bureaucratic and inefficient'. SNAP welcome the new reform and transformation agenda. Its Chief Executive, Denise Inger, said:

> *We need this new Bill to provide a statutory legislative framework which will enable the delivery of effective multi-agency provision within education and we are optimistic for a new Code of Practice which will be mandatory. It is the* ***collective interpretation, implementation and robust monitoring*** *that will make the difference for children and young people in Wales.*
>
> *Families need independent and expert advice, information and explanation to participate and engage in making informed choices. Now, more than ever, there is a need for this to be more than arm's length away from local authority, health board and education and training providers. The Bill needs to be stronger than its draft form in making sure that not only do local authorities make arrangements for this to be available but that* ***disagreement avoidance and dispute resolution services are independent****.*

The Third Sector Additional Needs Alliance (TSANA) believes the ethos of the draft Bill was 'positive' but 'much work is still required to secure legislation that is effective in practice'. Catherine Lewis, who is TSANA's Chair and Development Officer for Children in Wales, outlined the following key priorities:

> *A* ***wide ranging definition of learning should be adopted that spans the whole 0-25 age*** *range which recognises the role of play in learning and the importance of learning skills for life. Learning begins from birth and there should be more detail on how the needs of children in their early years (age 0-3) are to be supported. Clarity is also needed on how the new system will work in further education colleges. We are disappointed that the reforms do not include young people undertaking work based learning such as apprenticeships. The duty placed on health under the draft Bill was weak.* ***Multi-agency working*** *should be underpinned by local protocols between health, social services and education. Finally, a* ***mandatory template for Individual Development Plans*** *(IDPs) would ensure that the IDP is consistent and portable, legally accountable and transparent across Wales.*

The Assembly's legislative process

Following its introduction, the Bill will be scrutinised by an Assembly Committee which will report on the general principles of the legislation It will also receive oversight from the Constitutional and Legislative Affairs Committee and Finance Committee. The Bill will then be subject to amendment at a further Committee stage and subsequently by all Assembly Members in Plenary before a final vote on whether to pass the legislation.

The Minister has said he hopes it will complete its passage through the Assembly and receive **Royal Assent by autumn 2017**. The Welsh Government published an **outline of planned timescales for implementation** in July 2015 at the same time as the draft Additional Learning Needs and Education Tribunal Wales Bill. This suggested the Welsh Government expected all new arrangements would be **fully implemented within three academic years of Royal Assent** being given to the legislation.