

Cyflwynwyd yr ymateb hwn i ymchwiliad y [Pwyllgor Plant, Pobl Ifanc ac Addysg i weithredu diwygiadau addysg](#)

This response was submitted to the [Children, Young People and Education Committee](#) inquiry into [Implementation of education reforms](#)

IER 21

Ymateb gan: Comisiwn Cydraddoldeb a Hawliau Dynol

Response from: Equality and Human Rights Commission

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Nodwch eich barn mewn perthynas â chylch gorchwyl yr ymchwiliad. | Record your views against the inquiry's terms of reference.

The Equality and Human Rights Commission (the Commission) is a statutory body established under the Equality Act 2006. It operates independently to encourage equality and diversity, eliminate unlawful discrimination, and protect and promote human rights.

We welcome the opportunity to provide evidence to the Children, Young People and Education Committee's consultation on the implementation of education reforms.

This response follows [our submission](#) in December 2022 on the implementation of the Curriculum for Wales. This current submission focuses on Additional Learning Needs (ALN) and our report and recommendations to the United Nations Convention on the Rights of the Child.

### **Is Wales Fairer? 2018**

The Additional Learning Needs and Education Tribunal (Wales) Act 2018 aims ensure that all learners with ALN are supported to overcome barriers to learning and can achieve their full potential. Our state of the nation report [Is Wales Fairer? 2018](#) included a number of key findings on the education of children with ALN.

It found:

- Attainment gaps at school-leaving age persist for children with ALN. Only one in five pupils with SEN<sup>1</sup> (20.6%) achieved five GCSEs at grades A\*-C, including English or Welsh first language and mathematics. This compared with two-thirds of pupils without SEN (66.6%). Attainment was particularly low for pupils with social, emotional and behavioural impairments (16.6%), speech, language and communications needs (15.6%), general learning difficulties (14.9%), and moderate learning difficulties (9.7%).

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<sup>1</sup> The data used in Is Wales Fairer?2018 referenced children with Special Educational Needs as this was the term used within the sources and before the implementation of the Additional Learning Needs (Wales) Act 2018

- Children with ALN, have higher than average exclusion rates. The exclusion rate was particularly high for pupils with SEN, at 101.3 per 1,000, compared with 11.6 per 1,000 for pupils with no SEN.
- Children with ALN are more likely to be victims of bullying.

Our '[How Coronavirus has affected equality and human rights](#)' report found the response to the coronavirus pandemic has created gaps in the education of most children. The evidence also suggests that inequality in the home-learning environment, particularly access to technology, align with and potentially compound the inequality already being experienced in education for certain groups including pupils with Additional Learning Needs.

This evidence highlights the need for Welsh Government and schools to align implementation of both the Additional Learning Needs and Education (Wales) Act 2018 and Curriculum for Wales.

Later in the year we will be publishing an updated state of the nation report. It will report on education progress and in doing so use the indicators set out in our Measurement Framework, such as educational attainment, school exclusions and bullying. Early analysis is indicating that in Wales, in early year's attainment, children with ALN are falling behind children without ALN at a faster rate than in England and Scotland. We will share the full report and key findings with the Committee in due course.

**As with our submission on the curriculum reform, we would recommend scrutiny of the equality impacts of the implementation and effects of the Additional Learning Needs and Education (Wales) Act 2018. This should be completed in conjunction with scrutiny of the Curriculum and Assessment (Wales) Act 2021.**

**We would recommend a focused thematic check-in on equality and human rights and the impact of the Additional Learning Needs and Education (Wales) Act 2018 on protected groups.**

**We would suggest the Committee recommend the Welsh Government produces disaggregated data to allow intersectional analysis of outcomes for children and young people with ALN from protected characteristic groups. This should include disaggregated data by impairment.**

**We would recommend the Committee seek further information on how Welsh Government is ensuring the Additional Learning Needs and Education (Wales) Act 2018 act and the Curriculum and Assessment (Wales) Act 2021 are being used together to improve educational attainment in Wales.**

### **Children's rights in Great Britain: submission to the UN (2023)**

Our report [Children's rights in Great Britain: submission to the UN](#) looks at the state of children's rights in Great Britain and makes recommendations for change. It covers a range of topics including the right to education. We submitted our report to the United Nations as part of our work on monitoring the Convention on the Rights of the Child (CRC); the international human rights treaty that protects the rights of children in all areas of life.

Within our report we highlighted that the Welsh Government's education recovery plan recognises the particular impact of the pandemic on 'disadvantaged and vulnerable learners', including those with additional learning needs (ALN).<sup>2</sup> However, it is unclear how the Welsh Government's evaluation of the recovery plan's success will reflect children's rights and protected characteristics.

We noted the number of children in Wales with ALN has been decreasing since 2017/18. In February 2022 74,661 pupil with ALN were reported to be in maintained schools in Wales. This was down from 92,668 pupils in April 2021<sup>3</sup>. We know this is an issue you highlighted in your first 'check in' and scrutiny which led to a letter to the Minister for Education and Welsh Language from the

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<sup>2</sup> Welsh Government (2021), [Review and Reform: supporting learners' wellbeing and progression](#) [accessed: 22 February 2022], pp. 11-13.

<sup>3</sup> StatsWales, [Pupils with additional learning or special educational needs by sector and year](#) [accessed: 1 December 2022].

Committee. The response from Welsh Government explained this is likely to be due to the new ALN system and changes in the way that ALN are identified.<sup>4</sup>

In September 2021, the Welsh Government began a three-year phased implementation of a new statutory framework to support children with ALN<sup>5</sup>. Our report highlighted that funding uncertainty remains and, following significant delays, there are concerns about implementation. Since we published our report the Minister has announced extending the implementation of the ALN Act from three years to four years.

We also reported on the consistent increase in the percentage of children with ALN being educated outside mainstream schools. Article 24 of the UN Convention on the Rights of Persons with Disabilities (CRPD) enshrines the right of disabled people to access inclusive, quality and free primary and secondary education on an equal basis.

The UN Committee on the Rights of Persons with Disabilities has stated that the duty to progressively realise this right is incompatible with the maintenance of two systems of education: one mainstream system and one special or segregated system.<sup>6</sup> However, the UK is one of only two signatories to retain a reservation and an interpretive declaration to Article 24 (2) (a) and (b) of the CRPD, and trends point to a system that may be becoming less inclusive.

In Wales, the percentage of children with ALN attending special schools has increased every year since 2013/14, rising from 4.1% of pupils to 7.3% of pupils in 2021/22.<sup>7</sup>

Some of the recommendations we made for Welsh Government within the report included:

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<sup>4</sup> Welsh Parliament, Senedd Research (2022), [Identifying additional learning needs: has the bar been raised or was it previously too low?](#) [accessed: 1 December 2022].

<sup>5</sup> [Additional Learning Needs and Education Tribunal \(Wales\) Act 2018](#).

<sup>6</sup> United Nations Committee on the Rights of Persons with Disabilities (2016), [General comment No. 4 \(2016\) – Article 24: Right to inclusive education](#), para.39.

<sup>7</sup> StatsWales (2022), [Pupils with additional learning or special educational needs by sector and year](#).

- Ensure that the education recovery programme takes into account the particular challenges faced by different groups of children during, and as a result of, the pandemic, including disabled children and those with additional learning needs.
- Ensure the long-term sustainability of SEND or ALN provision, including by ensuring that teachers and other school staff are equipped to support the needs of children with SEND or ALN.
- Monitor implementation of the Additional Learning Needs and Education Tribunal (Wales) Act for any disproportionate impacts on particular groups.

**We would recommend the Children, Young People and Education Committee use these recommendations when scrutinising Welsh Government.**

**In addition, we would recommend the Children, Young People and Education Committee keep under close and active scrutiny the decline in the number of children identified with Additional Learning Needs, reasons for it and the implications.**

### **Public Sector Equality Duty**

The PSED requires schools (and other public bodies) to eliminate discrimination, advance equality of opportunity and foster good relations between people. It is made up of general and specific duties.

Schools can use the PSED to improve education attainment and reduce the attainment gaps of children with ALN.

We are concerned about the low number of schools in Wales that are effectively using the PSED and have a published Strategic Equality Plan. Having a strategic equality plan and equality objectives are both legal requirements of the PSED which enables schools to set out the steps they will take to promote equality.

Last year we commissioned [desk based research](#) to review the Strategic Equality Plans published by secondary schools, special schools and Pupil Referral Units (PRUs) in Wales. We found the overall proportion of schools with a strategic equality plan accessible on their website currently stands at about a quarter. Just over half of this number were out of date, having expired and not being reviewed from the autumn term 2021 onwards. Therefore, in total 33 schools, 12.4% of the total appear to have a current Strategic Plan accessible on their website.

In response to this we have recently published [PSED guidance for schools in Wales](#) to support schools.

**Within our earlier evidence we recommend the Children, Young People and Education Committee explore how schools have used the PSED in designing and implementing the Curriculum for Wales. We would suggest this recommendation is extended to look at how schools are also using the PSED in regards to the ALN Act 2018 and ensuring all children can achieve their full potential.**

**We would recommend the Children, Young People and Education Committee explore why there appears to be low numbers of schools using the PSED and scrutinise the effectiveness of the Welsh Government's guidance and support for local government and schools to understand their obligations under the Public Sector Equality Duty.**

## **Evaluation**

Equality impact assessments are a legal requirement under the Equality Act 2010. Any equality impact assessment the Welsh Government completed prior to the implementation of the Additional Learning Needs Act 2018 should have set out any anticipated likely effects of the legislation on people with protected characteristics.

Assessing for impact on the Welsh Government's ability to comply with the general duty does not end with the introduction of the legislation. The legal

requirement of the PSED includes a requirement to monitor impact. It is necessary to use monitoring, evaluation and review processes to ensure that the actual impact matches with the impact which was anticipated, and that relevant actions have been implemented. To do this the Welsh Government needs to gather, disaggregate, use and embed equality related evidence into its work. This is critical to Welsh Government complying with their own legal requirements of the PSED and to ensure the needs of diverse learners are being met.

**We would recommend the Children, Young People and Education Committee seek clarification from the Welsh Government as to how they are monitoring the impact of the Additional Learning Needs Act on learners from protected groups and building this information into any evaluation of the legislation.**

#### **Human Rights Tracker**

Our Human Rights Tracker provides an assessment of Welsh Government's progress on human rights education, training and awareness raising. For education it looks at educational attainment, harassment and bullying in schools, inclusive education and schools exclusions and managing challenging behaviour. The status for Welsh Government on these areas ranges from limited progress, no progress as well as regression.

**We would recommend the Children, Young People and Education Committee use the evidence within the Tracker when scrutinising Welsh Government on education reform.**