

Cynulliad Cenedlaethol Cymru | National Assembly for Wales
Pwyllgor Plant, Pobl Ifanc ac Addysg | Children, Young People and
Education Committee
Y Bil Drafft Anghenion Dysgu Ychwanegol a'r Tribiwnlys Addysg
(Cymru) | The Draft Additional Learning Needs and Education Tribunal
(Wales) Bill

ALN 06

Ymateb gan : Estyn

Response from : Estyn

What are your views on the draft Bill? Please outline below any concerns you have, or areas that you think the Committee should explore further before the Bill is formally introduced.

Please see attached response which has been sent to the Welsh Government in regard to their consultation on Draft Additional Learning Needs and Education Tribunal (Wales) Bill.

Please highlight below your main concerns in relation to the Additional Learning Needs system. Let us know whether, in your view, the Bill addresses these concerns or if further work is needed.

Do you have any other comments or issues you wish to raise that have not been covered above?

Draft Additional Learning Needs and Education Tribunal (Wales) Bill

Consultation response form

Your name: Huw Davies

Organisation (if applicable): Estyn

Responses should be returned by **18 December 2015** to:

Additional Learning Needs Reform Branch
Support for Learners Division
Department for Education and Skills
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

Category of respondent	Schools	<input type="checkbox"/>
	Special schools	<input type="checkbox"/>
	Special Educational Needs Co-ordinators	<input type="checkbox"/>
	Further education sector	<input type="checkbox"/>
	Preschool organisations	<input type="checkbox"/>
	Education professionals	<input type="checkbox"/>
	Teaching Unions	<input type="checkbox"/>
	Local government	<input type="checkbox"/>
	Work Based Learning organisations	<input type="checkbox"/>
	Local Health Boards	<input type="checkbox"/>
	Health professionals	<input type="checkbox"/>
	Other public sector organisations	<input checked="" type="checkbox"/>
	Third sector organisations	<input type="checkbox"/>
	Individuals	<input type="checkbox"/>
Other	<input type="checkbox"/>	

Consultation questions

These questions should be read in conjunction with the draft Bill, draft Explanatory Notes and the draft Explanatory Memorandum.

Question 1 – The introduction of the term ALN and a 0–25 age range

Do you agree that the definitions of ALN and 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?

Agree	<input checked="" type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Supporting comments

The new definition of ALN is broadly in-line with the current definition for SEN. The definition 2 (2) (a) of the Bill, would be strengthened if it read "...has a significantly greater difficulty in learning, or **aspects of learning than...**" as opposed to "...has a significantly greater difficulty in learning..."

It is essential that providers should have a clear understanding of what is meant by ALN, particularly in light of the fact that the term ALN currently refers to a broader category of need. Guidance on this should be provided in the draft ALN Code.

NAfW Circular 47/2006 Inclusion and Pupil Support introduced the concept of additional learning needs as a broad umbrella term that covers many other groups of learners. There is a need to provide greater clarity around the future "classification" of these learners, many of whom are vulnerable groups. There is a risk that attention will be moved away from these learners. Will updated guidance be provided for schools and local authorities in relation to these other groups of learners?

In respect of providing a definition of ALN for children school age, it is not clear what part 2, 2 (3) of the Bill "...is likely to be..." means. Clarity on this is needed in the draft Bill. It also needs to be un-packed and included in the draft ALN Code.

The draft ALN Code very usefully highlights (para 105, p27) what "provision of any kind" means.

The bringing together of different legislation to cover the 0-25 age range appears largely appropriate. The move towards having a system that runs from 0 to 25 is welcomed, and should ensure a more joined-up approach at different phases of a child/young person's life.

Greater clarity is needed on the responsible body for children under statutory school age. The role of the local authority is unclear in relation to pre-school children and those in non-maintained settings. There are different arrangements and practices across Wales. It could be useful to suggest preferred models or principles in the supporting draft ALN Code.

The foundation phase profile will identify where pupils are not making progress. However, there is no single pathway of assessment for pupils who fail to make expected progress. The foundation phase profile guide book suggests that the ALNCo will be best placed to know which assessments are appropriate. Further guidance to ALNCOs is needed as this is not covered in relevant detail in the draft ALN Code.

There is a need to recognise the importance of partnership working across the stated age range but particularly for those learners who are either pre or post-statutory school age. The role of, for example, Flying Start, Families First and Communities First needs to be made clearer. There are many different practices across the country – perhaps the draft ALN Code could provide case studies of exemplary practice? The draft ALN Code needs to be viewed as a manual for practitioners. It will be greatly enhanced by providing case studies, exemplar materials, time-lines and flow-charts.

There needs to be a recognition that additional responsibilities relating to learners above the age of 18/19 will significantly increase workloads for local authorities. It is essential that expectations are realistic and manageable.

Question 2 – A unified planning process with increased participation by children and young people

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

Agree	<input checked="" type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Supporting comments

Estyn welcomes the aim to standardise assessment and planning processes, including the use of a single statutory IDP. Overall, the draft Bill provides an appropriate legal framework for the preparation, maintenance and review of Individual Development Plans.

However, at this stage, it is not clear if personal education plans for looked-after children and health care plans will be subsumed into the IDP.

The requirement to review IDPs with the 12 month period of starting, is in-line with current requirements for statements of special educational needs.

Although timelines in respect of assessment and issuing IDPs are suggested in the draft ALN code, it may be helpful to include these in the Bill.

Greater clarity is needed on the process that a provider needs to take in order to conclude that a child or young person does or does not have ALN. There are no specific references to the role of educational psychology services or other specialist services in this assessment process within the draft ALN Code.

In order to align differing practices that currently exist in Wales, there is a need to provide unambiguous guidance as to when an IDP becomes the responsibility of the local authority. There is a risk that a lack of agreement over who should produce or maintain an IDP may result in a delay in providing appropriate support for children. What happens if a school and local authority fail to agree on whose responsibility it is?

Over recent years, many local authorities have worked hard to provide for pupils with SEN without the need for a statement. Where this has happened, provision has often been put in place more quickly. Will the new system of IDPs for all pupils with an ALN allow for prompt intervention?

It is essential that the amount of information required in IDPs varies according to the level of need and intervention for individual learners. Otherwise, there is a risk that the process will become over-bureaucratic and unmanageable.

It is not clear when statements of special educational needs come to an end or how this will be brought about. This will cause considerable concern for practitioners and anxiety for parents.

Further information and clarity is needed about what happens where a “young person” in schools or FEIs does not consent to decisions being made about their ALN or ALP.

There a new requirement for independent schools to register or apply for a material change to accommodate the needs of learners with ALN. The statutory responsibility for delivery of the ALP within an IDP rightly remains with the local authority but the Welsh Government should consider how it can strengthen the requirements for independent schools to deliver ALP in the IDPs of publicly-funded learners through the review of the Independent School Standards (Wales) Regulations which is ongoing.

S15 (4) (b) of the Bill, implies that LHBs and NHS Trusts cannot change ALP without an amendment to the IDP. Is this the case? If so, will this happen within the 12-month review period or on the date of the 12-month review?

The roll-out of and the requirement that the person-centred planning model is used as vehicle for capturing the views of children and young people is in keeping with the aim of increasing the voice of the child. However, it is not clear what impact this requirement will have in relation to capacity of providers to administer this process.

Will the draft ALN Code provide exemplar materials and further guidance to support providers in respect of assessing ALN, arranging for ALP and preparing, maintaining and reviewing IDPs? Current good practice sees reviews of learner progress on a termly basis – is this practice also to be included in the code of practice? The draft code of practice recognises that the timescales for completion of IDPs stated are based on assumptions. Reducing the timescale for local authorities from 26 weeks to 10 weeks is likely to place additional pressures on local authorities.

Estyn has some concerns around the capacity and capability of local authorities to extend the statutory duties further. Following inspections of local authority education services for children and young people (LAESCYP) in the current inspection framework, 5 local authorities remain in a follow-up category at the time of writing this response. Although, ALN services are generally found to be strong in local authority inspections across Wales, there will need to be strong leadership to ensure that strategic approach is taken towards planning and commissioning ALP for post-18 learners. There is no mention in the draft Bill, explanatory memorandum or draft ALN Code on the future role of regional consortia in relation to additional learning needs.

Question 3 – High aspirations and improved outcomes

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

Agree	<input checked="" type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Supporting comments

The draft Bill introduces a number of significant changes to the current system, with the desire to introduce an ALN system that is fairer to learners and affords them greater protection. Overall, the provisions in the Bill will help to ensure that the interests of children and young people would be protected and promoted.

The proposed emphasis on involving the learner in the development and review of their IDP is a positive step, and should ensure that their views are sought appropriately.

Estyn welcomes the extension of the role of Education Tribunal Wales. Estyn also welcomes the statutory role of ALNCo. The draft ALN Code sets out the expected roles and responsibilities clearly. Further information on the qualification requirements for the role of ALNCo needs to be provided.

The measures to ensure protection are weaker in relation to ALP specified in a plan as provision a LHB or NHS trust has agreed to secure, particularly in any case where the Education Tribunal Wales orders a revision of an IDP.

The LHB or NHS trust is not required to secure the revised additional learning provision unless the Board or trust agrees to do so.

The requirement to make all IDPs statutory will afford greater levels of protection than is currently the case. However, protection for post-18 learners until the age of 25 only cover learners in FEIs or specialist independent colleges. Will learners following higher education courses in further education colleges be entitled to IDPs and therefore protection? There is no such protection for learners with an ALN in higher education, or those on training schemes.

Advocacy services and pre-Education Tribunal Wales support does not extend beyond the age of 18. This is a weakness and conflicts with the aim of extending protection for learners with ALN 0-25.

The draft ALN Code very helpfully provides advice about duties in relation to engaging and empowering learners. The person-centred planning model too will help to ensure that the voice of learners is heard.

Greater clarity is needed in respect of accountability of IDPs, particularly in respect of any referrals to the tribunal. In essence who is taken to tribunal, providers or the local authority?

One of the central tenets is on improved learner outcomes. The explanatory memorandum articulates this rationale clearly. However, further guidance and materials for key agencies, their partners and providers is needed to achieve this aim.

It is not clear how findings from the two reports by the People and Work Unit are going to be incorporated into the Bill or the draft ALN Code. Improving educational outcomes of learners with ALN will be greatly assisted by improving the knowledge and understanding of all teachers and support staff. Currently just under a quarter of pupils in schools are on the SEN register.

The workforce planning of special educational needs (SEN) specialist services report, clearly indicates that the demand for services has increased in the past five years and this is likely to continue; and that there have been reductions in the capacity to provide services, particularly on the part of the NHS. However, there is no indication that the Bill or draft ALN Code recognise or respond to these findings.

The draft ALN Code (p13) recognises that “teaching practitioners have responsibility for their own professional learning”. The section goes on to state that schools should be using their school development plans to perform this function. This needs to be strengthened to reflect the changing profile of pupils’ special educational needs in Wales. Around 23% of pupils in schools in Wales are on the SEN register and this has remained reasonably constant over the past few years. However, there have been noticeable increases in pupils being identified with autistic spectrum disorders, general learning difficulties and attention deficit hyperactivity disorder.

Pupils with special educational needs are more likely not to attend school. Twelve per cent of pupils with SEN are persistently absent (source: Absenteeism by pupil characteristics March 2015). Pupils with a statement of SEN had the highest rate of fixed term exclusion of 5 days or fewer (132.6 per thousand, compared to 19 per thousand for pupils with no SEN) (source: Exclusions from schools in Wales March 2015). High aspirations and improved outcomes for learners with ALN cannot be achieved if pupils fail to attend, are disproportionately excluded or where approaches used in teaching are not sufficiently tailored to the needs of learners. There is limited guidance in the draft code of practice to respond to this aspect.

The draft ALN Code (p 105, para 509) [relating to the education of learners educated otherwise than at school (EOTAS)], articulates the role of local authorities in relation to the provision of "...suitable education...this education must be full time..." Estyn is of the view that the requirement that the LA must provide full time education needs to be made stronger.

Question 4 – Increased collaboration

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?

Agree	<input checked="" type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Supporting comments

Estyn welcomes the creation of the statutory designated medical officer role. The code of practice provides an outline of the function of the designated medical officer. Greater clarity is needed, on the detail of the role and how the officer will work with the local authority. Will the role extend to supporting providers for learners with less complex needs such as those with IDPs that are the responsibility of schools, rather than the local authority?

The draft Bill certainly places a requirement for closer collaboration and working between agencies and providers. The explanatory memorandum goes some way in articulating the advantages for learners, that closer working with partners will bring and outlines the respective duties on key agencies. However, the detail as to how these arrangements should work is unclear.

The role of the local authority in commissioning post-16 provision will be enhanced. This should bring about a more strategic approach to planning. However, there is a need for further guidance on protocols, commissioning strategies etc that are needed to ensure effective working partnerships. These do not feature in the draft code of practice and further guidance should be provided.

Paragraph 3.83 of the explanatory memorandum states that it is only discretionary for the local health board to inform the local authority, if they are of the view that a learner has an ALN. This should be made a requirement and articulated strongly in the code of practice. It is not contained in the draft ALN Code.

Opportunities for divergent working practices by local authorities and other partners should be minimised. There is no mention in documentation on the role of regional consortia in preparing for and implementing the proposed changes.

Question 5 – Avoiding disagreements, earlier disagreement resolution and clear and consistent rights of appeal

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?

Agree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input checked="" type="checkbox"/>
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Supporting comments

Estyn welcomes extending of the right of appeal to all learners age 0-25 with ALN.

Education Tribunal Wales orders will not apply to LHB or NHS trusts, this is a potentially a significant shortcoming, as children and young people may not be able to access ALP that has been deemed appropriate.

Paragraph 3.84, (page 27) of the explanatory memorandum focusses on the arrangements that local authorities need to make to avoid and/or resolve disagreements, specifically in providing an “independent person”. Further information on the responsibilities of local authorities is included on page 25 of the draft code of practice. However, the relevant paragraphs shy away from using the term advocate, even though this is stated clearly in the draft Bill. It is important that the “independent person” is appropriately trained and qualified to provide such advice. This should include detailed knowledge of the legislation and processes around additional learning needs. Failure to provide this may be counter-productive.

There needs to be clarity around whether independent advocacy services cover post-16 learners. The draft Bill para 37 (4) page 21 states that “...the local authority must take steps which it considers appropriate for making the [advocacy] arrangements to: children and young people for whom it [the local authority] is responsible... As a result, post-16 learners with IDPs that are not maintained by the local authority would not be afforded access to this level of service. This would compromise the concept of protection.

Question 6 – Supporting documents

Please provide any feedback you think would be useful in relation to the supporting documents published alongside this consultation, i.e. draft Explanatory Memorandum (including the Regulatory Impact Assessment), all Impact Assessments and the draft ALN Code (which will be published in the autumn).

The draft ALN Code provides a very useful starting point. The code of practice will be used by practitioners in local authorities, schools and FEIs as a first and on-going reference point. As such, it will be greatly improved by providing case materials, exemplar documents including timescales and flow-diagrams.

The draft code of practice recognises that it does not yet include guidance for vulnerable groups of learners including those that are home educated and those in youth custody.

The draft Bill is very much in the domain of education. Whilst there are new statutory duties on LHBs and NHS trusts, it is not clear if there is a shared philosophy or understanding between local authorities and LHBs/NHS trusts.

A number of other relevant points which could improve the draft code of practice are provided throughout this response.

Question 7

We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

LHB and NHSTrusts – where either are in agreement of the ALN and subsequent ALP being made by the LHB, the responsible body of schools/FEI or the local authority are not responsible for ensuring that the ALP is made by the LHB / NHTrust. Where there is a failure to assess or provide what recourse is there and for whom? The remit of the tribunal will not extend to ensuring compliance from LHB or NHS Trusts

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here: