

**Children, Young People and Education Committee  
Inquiry into the Additional Learning Needs and Education Tribunal  
(Wales) Bill  
3 March 2017**

1. The NASUWT welcomes the opportunity to submit written evidence to the Children, Young People and Education Committee (CYPEC) Inquiry into the Additional Learning Needs and Education Tribunal (Wales) Bill (the Inquiry)
2. The NASUWT is the largest teachers' union in Wales representing teachers and school leaders.

**GENERAL COMMENTS**

3. The NASUWT submitted detailed and comprehensive responses to the various consultations that stemmed from *Forward in partnership for children and young people with additional needs* issued in June 2012 and which led to the publication of the Additional Learning Needs and Education Tribunal (Wales) Bill (the Bill). A copy of the latest response to the consultation on the Bill is attached as Annex A to this response and can be accessed on the NASUWT website at <http://www.nasuwt.org.uk/specialadditionalneeds>.
4. In providing this written evidence, the NASUWT has considered the specific issues raised by the Bill, as particularised in the CYPEC letter of 15 December 2016 (the Letter), in the context of the terms of reference set for the Inquiry, rather than focusing on the terms of reference themselves.
5. The Union notes that the Welsh Government published a draft Code of Practice (the draft Code) in February 2017 to assist both the CYPEC and the respondents to the Inquiry in their consideration of the ways in which the provisions of the Bill might be implemented in practice.

6. Whereas, the draft Code has proved helpful and is referenced in this evidence, the NASUWT looks forward to responding formally to the separate consultation on the draft Code, required under the provisions of the Bill.
7. In addition, although the mandatory nature of the Code is acknowledged, the NASUWT has some concerns about it being targeted towards practitioners so that 'they understand and can implement the new Additional Learning Needs (ALN) system'. The Union will need to be assured that the Code will assist and support practitioners in providing for children and young people with ALN rather than becoming an accountability tool.

### **SPECIFIC COMMENTS**

8. As referred to previously, the NASUWT offers the comments and observations which follow on the specific issues identified in the Letter to assist CYPEC in scrutinising the Bill in the context of the terms of reference for the Inquiry.

#### ***The Welsh Government's three overarching objectives***

9. The NASUWT does not object in principle to these objectives and recognises that they have the potential to form the basis of an effective package of reforms when viewed in the context of the ten core aims which have underpinned the development of the Bill.
10. The Union recognises that the effective introduction of the reforms, as described in the Explanatory Memorandum, will require the amendments to existing legislation as set out in the Bill, but maintains that detailed scrutiny of the draft Code will be essential as this will be the key document for providing guidance to relevant bodies on the implementation of this legislation.

#### ***The Welsh Government's ten core aims for the Bill***

11. The NASUWT believes that a hallmark of an effective and equitable education system is the extent to which it seeks to remove the barriers to achievement faced by children and young people with ALN.
12. The Union has identified in previous consultation responses that such a system must:
  - ensure that ALN provision is an integral and coherent part of the funding arrangements for all schools;

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- establish an approach to the early identification of ALN that makes effective use of the distinctive skills, talents and expertise of the children and young people's workforce and focuses on identifying and removing barriers to pupils' educational achievement and wellbeing;
  - assess pupils' ALN and the settings within which their needs are best met on the basis of clear and objective criteria;
  - support parents in becoming constructive and informed partners in supporting their children's progress;
  - support teachers and school leaders in their work with pupils with ALN through approaches that avoid excessive workload and allow them to focus on their core responsibilities for teaching and leading teaching and learning;
  - give local authorities the powers and resources necessary to enable them to play an effective strategic role in the provision of ALN services and in co-ordinating the work of schools and other agencies within the children's services sector;
  - adopt an approach to school accountability, curriculum and qualifications that supports the ability of teachers and school leaders to provide a broad and balanced learning offer for pupils with ALN; and
  - give children and young people with ALN the support and resources they need to progress with as much economic and social independence as possible into adulthood.
13. The NASUWT urges the CYPEC to consider the ten core aims for, and the provisions of, the Bill and the accompanying draft Code against these requirements.

***The provisions for collaboration and multi-agency working***

14. The NASUWT notes that the Bill and the accompanying documentation places particular emphasis on the need for other children and young people's services, particularly those located within the NHS, to collaborate with schools and local authorities in meeting the needs of pupils with ALN.
15. The NASUWT maintains that the development of more effective arrangements for multi-disciplinary planning and working is central to the successful delivery of a holistic service focused on promoting the educational and wider wellbeing of children and young people with ALN.

16. The Union acknowledges that the Bill has been strengthened to refocus the duty on NHS bodies to secure the provision of a relevant treatment or service that would address a learner's ALN if it is available, rather than merely enabling local authorities to request help from NHS bodies.
17. In addition, the NASUWT notes that the Bill places a new duty on health boards to appoint a Designated Education Clinical Lead Officer (DECLO) to play a pivotal role improving the extent and effectiveness of collaboration between health, education and social care in the delivery of services for children and young people with ALN.
18. However, the Union remains concerned that the Bill fails to identify effectively the barriers to enhancing multi-disciplinary working and how these barriers might best be addressed. In particular, without a more robust requirement on these bodies to co-operate, there could be no assurance that local authorities would receive positive responses to their requests for help.
19. The NASUWT asserts that this dimension of policy development will need to consider the extent to which policy priorities established for different services for children with ALN are coherent and that the frameworks for multi-agency working should be based on a recognition of the related, but distinct, roles of individual children's services and how effective collaboration can be secured in ways that do not add to the workload burdens of staff within the children's services sector and that avoid unnecessary bureaucracy.
20. The lack of any meaningful consideration of these issues by the Welsh Government in terms of its proposed legislative framework remains a matter of serious and legitimate concern.
21. Consequently, the NASUWT seeks the support of the CYPEC in recognising that the provisions of Chapter 4 should not be implemented until the Welsh Government, in consultation with the Union and other relevant stakeholders, has reviewed and assessed the effectiveness of the strategy for multi-agency working presented in the Bill.

***The process for developing and maintaining individual development plans (IDPs) and whose responsibility this will be***

22. The NASUWT notes that the Bill would create a single statutory plan, the individual development plan (IDP), to replace the existing variety of plans for learners in schools and further education (FE).
23. It is clear that the Welsh Government's intention is to ensure that the IDP details specific outcomes to be achieved and the necessary adjustments and interventions required to ensure that children and young people with an IDP make appropriate progress.
24. The NASUWT does not object in principle to the intended focus of the IDP on outcomes and recognises that moves to replace existing systems provide an opportunity to ensure that systems for documenting, monitoring and reviewing actions are streamlined so that they minimise bureaucracy and workload for teachers.
25. In noting that the Bill confirms the significant responsibilities that governing bodies would have in relation to provision for pupils with ALN, the NASUWT maintains that, in practice, these duties and responsibilities will fall on the school workforce rather than on school governing bodies. The Union is concerned specifically in this respect with the workload implication associated with the management of transfers of pupils onto the IDP system, not least since schools will be held to account for the capacity and support provided to the workforce and for engaging with parents and carers.
26. The NASUWT maintains, therefore, that the CYPEC should encourage the Welsh Government to work with the Union and other relevant stakeholders to develop effective proposals for the IDP and to establish clarity about the ways in which their introduction can address the shortcomings inherent in current systems.

***A genuinely age 0-25 system***

27. The NASUWT recognises that the Bill will introduce a single legislative system relating to the support given to children and young people aged 0 to 25 who have ALN, and acknowledges the intention to improve the transition of learners between school and post-16 education to allow greater equity in terms of support and the rights for this group of learners.

28. However, the Union would need to consider the draft Code in detail to ensure that the concerns identified in the response to the consultation in 2015 on the Draft Additional Learning Needs and Education Tribunal (Wales) Bill (Annex A) that, despite the assurances that both non-statutory and statutory provision for children and young people with special educational needs (SEN) and learning difficulties and/or disabilities (LDD) will fall within the scope of an IPD, fewer children and young people may benefit from additional learning provision (ALP) than is the case under the current system.
29. The NASUWT remains concerned that the presumption in favour of mainstream maintained schooling and the promotion of an inclusive education system which has underpinned the Bill could have the unintended consequence of denying children and young people access to the specialist help they require.
30. The NASUWT urges the CYPEC to seek assurances from the Welsh Government that access to ALN provision for 0 to 25 year olds will not be determined by reference to current costs.

***The capacity of the workforce to deliver the new arrangements***

31. The NASUWT notes that the Bill makes provision for the Additional Learning Needs Coordinator (ALNCO) to replace the current, non-statutory special educational needs co-ordinator (SENCO) role.
32. The NASUWT agrees that it is appropriate in principle to place the ALNCO role on a statutory footing, as it would allow for the establishment of common expectations in respect of the functions of the post and the support that an ALNCO would be entitled to expect.
33. However, the Union is aware that the SENCO role currently faces many challenges. These include a lack of appropriate training, insufficient time to carry out the role effectively and low status within the school. The Union is clear that, to a large extent, these issues arise because the SENCO is often required to undertake tasks that do not make the best possible use of the skills, talents and expertise of qualified teachers. In particular, SENCOs are often obliged to undertake administrative tasks related to preparing and monitoring mandatory assessments that could be carried out by appropriate support staff.
34. Whilst it is accepted that the introduction of the ALNCO role will address some of these concerns, the NASUWT remains concerned that the Welsh Government

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appears to have given insufficient regard to the workload burdens faced currently by SENCOs

35. Consequently, the Union maintains that Section 54 of the Bill, which provides Welsh Ministers with the power to confer functions on the ALNCO, could have the unintended consequence of compounding the workload issues currently faced by SENCOs, which would undoubtedly overburden the ALNCO role.
36. The NASUWT expects the exercise of this power by Welsh Ministers to be subject to a workload impact assessment before any additional functions are placed on ALNCOs.
37. The NASUWT recognises that the three-tier approach to meeting the existing and future development needs of the workforce in order to better support learners with ALN which focuses on: i) core skills, for all teaching practitioners; ii) advanced skills, in particular for the ALNCO; and iii) specialist skills, for specific individuals across a school cluster or within a specialist support service, coupled to the commitment to develop a masters level qualification for existing SENCOs and future ALNCOs, and the development of a national workforce planning system for ALN specialist support services, demonstrate the Welsh Government's endeavour to ensure that policy has been developed alongside the Bill.
38. However, the NASUWT maintains that the future workforce will be insufficient to implement the new provisions set out in the Bill. The latest NASUWT comparison for 2014/15 between the on-average per-pupil funding for maintained schools in Wales and those in England shows that the school funding gap between Wales and England now stands at £607 and teacher number have dropped by 1,051 since 2010 whereas the pupil numbers are down by just 586.
39. The NASUWT suggests that the CYPEC would do well to reflect on the fact that the £607 gap presents a shortfall of £283 million in the funding going into the schools each year, when considering the capacity of the workforce to deliver the new arrangements.
40. The NASUWT asserts that it will be necessary to address the years of under-investment in schools, even on a gradual basis, to enable the employment of sufficient staff to ensure that children and young people benefit from the new arrangements and to protect the wellbeing of the workforce.

***The proposed new arrangements for dispute resolution and avoidance***

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41. In noting that the provisions of Chapter 4 confirm the right of children of compulsory school age to make, in their own right, an appeal against a decision of their local authority to the Education Tribunal for Wales (the Right), the NASUWT maintains that this provision adds weight to the view expressed previously in this written evidence that the implementation of the provisions of Chapter 4 should be delayed.
42. The NASUWT suggests that the duty to involve and support children, their parents and young people enshrined in Chapter 1, Section 6 of the Bill is adequate for the purpose of listening to and considering the views and opinions of children and young people with ALN in the context of dispute resolution and avoidance; not least, since children and young people with ALN are entitled to attend Tribunal hearings and express their views about issues that impact upon them directly.
43. Whilst acknowledging that the Right was introduced in March 2015, following the evaluation of a pilot project arising out of the Education (Wales) Measure 2009, the NASUWT suggests that the CYPEC should seek to establish if the Right and the existing entitlement to attend Tribunals has given cause for concern in relation to: children being used to advance the views of adults, including parents, inappropriately; parental pressure being put on children with ALN to exercise this right in the expectation this would enhance the prospects of a more successful outcome; the views of children being manipulated to serve and add legitimacy to arguments supportive of the interests of particular groups of adults within a school, especially but not exclusively; instances where children with ALN may be less able to articulate their views or to resist manipulation; and circumstances where a child or young person holds a different view on the merits of appealing than their parents.
44. The NASUWT notes that Chapter 5, Section 76 provides for children who lack capacity to have a 'case friend' appointed to assist them where appropriate. The Explanatory Memorandum suggests that case friends could be appointed if parents refuse to support their children's appeals. This provision does not appear to take account of the fact that the parent in such circumstances may not support their child's appeal on entirely legitimate grounds.
45. The NASUWT suggests, therefore, that the CYPEC should consider whether case friends should only be deployed to support parents who may experience difficulty in pursuing an appeal rather supporting children in circumstances where parents have legitimate grounds for not wishing to appeal.



Rex Phillips

**National Official for Wales**

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## Annex A

### Welsh Government

### Draft Additional Learning Needs and Education Tribunal (Wales) Bill

18 December 2015

1. The NASUWT welcomes the opportunity to comment on the draft Additional Learning Needs and Education Tribunal (Wales) Bill (the draft Bill).
2. The NASUWT is the largest teachers' union in Wales and the UK representing teachers and school leaders.

### GENERAL COMMENTS

3. The NASUWT notes that although the consultation document is brief and the response form asks just seven questions, the accompanying documents are extremely detailed and lengthy. It is, however, recognised that the Easy Read explanation of the draft Bill presents an extremely helpful oversight of the proposals.
4. In addition, the NASUWT recognises that the draft Additional Learning Needs Code (the draft Code) provides the most accessible means of understanding the purpose of the Bill.
5. The NASUWT submitted a detailed response to the 2014 White Paper, *Legislative Proposals for Additional Learning Needs*, which was broadly positive of the changes that were being proffered (a copy of the NASUWT response is attached as Annex A, including the annexes to that response).
6. However, the Union identified three important areas that would need to be addressed in the Bill, in order to protect those charged with the responsibility of implementation, namely:
  - workload impact assessment;
  - access to professional development;
  - sufficiency of funding.

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7. The NASUWT is disappointed to note that the draft Explanatory Memorandum, accompanying the draft Bill, does not include a specific impact assessment of the workload implication associated with the draft Bill.
8. Likewise, apart from stating that teaching practitioners have responsibility for their own professional learning and development, and that they should undertake professional learning in relation to additional learning needs (ALN), neither the draft Explanatory Memorandum, nor the draft Code, provide any confidence that the training and development needs of the education workforce have been given careful consideration.
9. The NASUWT maintains that references to teaching practitioners being able to access information guidance, tools and/training materials, and suggestions that there are a range of organisations able to offer support and professional learning in relation to ALN, demonstrate a woeful lack of understanding of teachers' contractual rights and entitlements, especially, but not exclusively, the right to a work/life balance.
10. The NASUWT is concerned that the failure to undertake an assessment of the workload and of the training and development implications associated with the draft Bill, casts grave doubt on the credibility of the costs attributed to options 2 and 3 in the draft Explanatory Memorandum.
11. The NASUWT believes that the funding requirements of the person-centred approach, the enhanced duties and responsibilities placed on the Additional Learning Needs Coordinator (ALNCo) and all teaching practitioners, and the introduction of the individual development plan (IDP) envisaged in the draft Bill, have been seriously underestimated.
12. The NASUWT maintains that the draft Bill must make provision to:
  - protect teaching practitioners, and others, from excessive workload and unnecessary bureaucracy;
  - require the identification of the provision of time within the timetabled teaching week for the ALNCo to fulfil the duties and responsibilities associated with the role, including access to professional development;

- require the identification of time within the timetabled teaching week to enable teaching practitioners to adopt the person-centred approach, including access to professional development;
- place a duty on the Welsh Government to assess and provide annually sufficient funding to support, fully and transparently, the requirements of the Bill;
- place a duty on the Welsh Government to establish a formula for restricting class and group size, and identifying the number of teachers and support staff required, in relation to the number of pupils in receipt of an IDP.

### SPECIFIC COMMENTS

13. The NASUWT offers the observations and comments that follow in relation to the questions posed on the consultation response form.

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

Do you agree that the definitions of additional learning need 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?

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

Although it is accepted that the draft Bill reflects appropriately the Welsh Government’s intended focus on educational needs, it is clear from the draft Explanatory Memorandum, where the advantages and disadvantages of Option 3 (the option on which the draft Bill and the draft Code has been progressed) are considered, that the draft Bill will limit the scope of learners to be captured by the proposed definition of ALN to those most in need of support.

Indeed, it is suggested that the number of learners who would come under the new definition of ALN should be no greater than those currently captured under the

special educational needs (SEN) definition in schools or the learning difficulties and/or disabilities (LDD) definition in post-16 education. The NASUWT is concerned that, despite assurances that both non-statutory and statutory provision for children and young people with SEN and LDD will fall within the scope of an IPD, this could imply that fewer children and young people will benefit from additional learning provision (ALP) than is the case under the current system.

Consequently, the NASUWT reserves judgement on whether the draft Bill will deal properly with the age range it sets out to capture.

**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)?

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

The NASUWT has identified several deficiencies in terms of the robustness of the legal framework for the preparation, maintenance and review of an IDP as set out in paragraphs 6 to 12 of this response.

Further, the NASUWT notes that the draft Code provides Health Boards (HBs) and National Health Service Trusts (NHS Trusts) with the option to disagree with requirements, which must be made by a school, further education institution (FEI) or local authority (LA) in IDPs that seek the input of health professionals. The draft Code is silent on how such decisions by HBs and NHS Trusts can be challenged.

The NASUWT is concerned that a school, FEI or LA could be left to provide for the requirements of an IDP and ALP where a HB or NHS Trust does not agree to provide the support requested.

### 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?

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

<p>The NASUWT recognises that the draft Bill could help to ensure that the interests of children and young people with ALN are protected and promoted but maintains that the issues raised in this response must be addressed, if high aspirations are to result in improved outcomes.</p> <p>Investment in, and the protection of, the education workforce will be vital to the successful implementation of the provisions of the draft Bill.</p>
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### 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?

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

<p>Regrettably, the NASUWT must disagree here, as it appears that the burden of delivery will fall mainly on schools and FEIs (especially, but not exclusively on the ALNCo) and on LAs.</p> <p>The concerns of the Union are compounded by the provision in the draft Code that allows HBs and NHS Trusts to decide if they agree to collaborate with the requirements of an IDP or ALP, as referred to in answer to question 2.</p>
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**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?

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

In noting, with concern, the extent of the responsibilities placed on LAs in relation to making arrangements for both avoiding and resolving disagreements in relation to ALP, the NASUWT acknowledges the appropriateness of the proposed framework and recognises that the draft Explanatory Memorandum makes it clear that Option 3 (the option on which the draft Bill and the draft Code has been progressed) would not require dispute resolution procedures to take place before an appeal can be made.

**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).

As stated previously, the NASUWT felt that the Easy Read explanation of the draft Bill provided a helpful oversight to the proposals and that the draft Code provided the most accessible means of understanding the purpose of the draft Bill.

In addition, the draft Explanatory Memorandum proved useful for carrying out specific word searches, such as ‘funding’, ‘workload’, and ‘professional learning’ (this is, of course, not possible with a hard copy) and the draft Explanatory Notes at Annex A, in particular the commentary on sections of the draft Bill, provided a good synopsis of the provisions of the Bill.

As referred to elsewhere in this response, the NASUWT found the impact assessments to be deficient in relation to workload, professional development and funding.

### **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.

The NASUWT notes, from the Ministerial Foreword to the consultation document, the desire of the Welsh Government to introduce the Bill as early as possible in the next assembly term.

The Union expects due regard to be given to the raft of changes that the schools, in particular, are currently coping with, and that the New Deal on professional learning and development is in its early stages, when considering the date of enactment of the Bill.

In addition, the NASUWT maintains that the timescale, of one year, for transferring learners with statements of SEN to an IDP is far too short and will place those involved in the process of developing or contributing to the IDP under pressure, which could be alleviated by extending the transfer period.



Chris Keates (Ms)

**General Secretary**

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