



**Children's Rights Impact Assessment (CRIA)**

<b>Title / Piece of work:</b>	Draft Additional Learning Needs and Education Tribunal (Wales) Bill
<b>Name of Branch:</b>	Additional Learning Needs Legislation Branch, Support for Learners Division
<b>Department:</b>	Department for Education and Skills, Welsh Government
<b>Date:</b>	July 2015

## Six Steps to Due Regard



### **Step 1. What's the piece of work and its objectives?**

The Welsh Government is publishing a draft Bill for consultation which would create a new statutory framework for children and young people aged 0 – 25 with Additional Learning Needs (ALN). This new framework would replace the existing statutory special educational needs (SEN) framework and the assessment and planning for young people with learning difficulties and/or disabilities (LDD) in post 16 education and training.

The objectives are to achieve:

- A unified legislative framework to support children and young people aged 0 to 25 with additional learning needs;
- An integrated, collaborative process of assessment and planning which facilitates early, timely and effective interventions;
- A fair and transparent system for providing information and advice, and resolving concerns and appeals.

To fulfil these objectives, the draft Bill includes the following elements.

#### The introduction of the term Additional Learning Needs (ALN)

The draft Bill provides for the term 'Additional Learning Needs' (ALN) to replace the existing terms 'special educational needs' (SEN), 'learning difficulties and/or disabilities' (LDD) and allows for its use in relation children or young people of any age. For the purposes of the draft Bill, a child is a person not over compulsory school age while a young person is a person over compulsory school age but under the age of 25.

The use of a single term across the 0 to 25 age range will underline the new system's coherence and provide greater equity for learners. It will also help to avoid some of the stigma associated with the existing terms and will mark a clear break from the current systems.

#### A 0-25 age range

The draft Bill provides for the same statutory plan to be given to learners with ALN irrespective of whether they are in, or are likely to enter, school-based or further education.

It will therefore place the systems for supporting learners with ALN in schools and further education on a more equal footing and should improve transition between school and post-16 education.

The draft Bill's provisions will require local authorities in Wales to secure specialist post-16 education or training where the Individual Development Plan ("IDP") indicates that this is necessary to meet their needs. This responsibility is transferred from the Welsh Ministers. This will improve the transition process by encouraging local authorities and post-16 providers to work together to plan for, secure support for, and improve local provision relevant to the individual needs of children and young people with ALN. This would provide a greater incentive for local authorities to make the connections between education and social services departments that are needed for a child or young person's effective transition into further education.

#### A unified plan

The draft Bill introduces statutory IDPs for all children and young people with ALN. The IDP will describe the child or young person's ALN and the Additional Learning Provision ("ALP") required to meet those needs. IDPs will normally be prepared, maintained and reviewed by the school or institution in the further education sector ("FEI") that the child or young person attends following a determination by that body that the child or young person has ALN. The ALP set out in the IDP will normally be delivered by the school or FEI. In those cases where determining whether the child or young person has ALN is beyond the school or FEI's capability, or where it would not be possible for them to secure the ALP which is required, or the child or young person is not attending such a setting, the local authority would be responsible for determining ALN, preparing and reviewing the IDP and securing the ALP within it.

As a minimum, IDPs would have to be reviewed every 12 months but in practice should be reviewed when necessary, or on request, which in many cases will be more frequent than every 12 months.

Where a pupil or student with an IDP maintained by local authority is registered or enrolled at a maintained school or FEI in Wales, the draft Bill requires that the school or FEI takes all reasonable steps to secure the ALP included in the IDP – but ultimate responsibility for securing that provision would rest with the local authority that maintains the IDP.

Those bodies responsible for maintaining an IDP for a child or young person would be able to cease to maintain that IDP where it was no longer necessary for them to maintain it or transfer it to another body where that was appropriate (for example, where a child or young person changed schools or transferred from school to further education).

When a child or young person is detained in relevant youth accommodation, the draft Bill provides that where it is brought to the attention of the local authority or otherwise appears to the home local authority that he or she may have ALN and an IDP is not already in place for him or her the authority must decide if the child or young person has ALN and if so, whether it may be necessary for an IDP to be maintained for him or her on release from detention.

If a child or young person detained in relevant youth accommodation has an IDP when they enter detention, or an IDP is prepared for them during detention, the home local authority must keep the IDP for him or her and secure appropriate ALP. Appropriate ALP

might differ from the ALP in the IDP due to the circumstances of their detention.

When a child or young person with an IDP that has been kept for them during detention is released from relevant youth accommodation and a local authority in Wales is responsible for him or her on release, the authority will become responsible for the maintenance of the IDP.

#### Increased participation of children and young people

The draft Bill provides for the views, wishes and feelings of children and young people to form a core element of the new system and emphasises the importance of children and young people, and their parents participating as fully as possible in the decisions that are taken in relation to their ALN and the ALP that is provided for them.

This will give statutory underpinning to the Welsh Government's existing policy of promoting a much more person-centred approach to identifying needs and appropriate actions to meet those needs and help to ensure that IDPs are developed in accordance with the principles of person-centred thinking and planning. To facilitate this, the draft Bill requires local authorities to make arrangements to provide children, young people and others with information and advice about ALN and the system set out in the draft Bill. It further requires local authorities to make known those arrangements to the affected parties thus ensuring that this information and advice is disseminated as appropriate and is accessible for all those who need it.

In order that children and young people are able to fully exercise their right to appeal under this draft Bill, or to engage in disagreement resolution procedures required by it, the draft Bill requires local authorities to provide them and their case friends with access to independent advocacy services. These are services providing advice and assistance to a child or young person and their case friend who is making, or intending to make, an appeal to the Education Tribunal, considering whether to appeal to the Education Tribunal under that section, or taking part in, or intending to take part in, disagreement resolution arrangements.

The draft Bill also allows for regulations to make provision for case friends who might make representations on behalf of a child or young person with a view to avoiding or resolving disagreements about the exercise by local authorities of their ALN functions, or might exercise the rights of the child or young person to appeal to the Tribunal on that child or young person's behalf.

#### High aspirations and improved outcomes

Critical to the development of culture of high aspirations and improved outcomes is the designation of an individual (or group of individuals) within each setting whose role is to co-ordinate planning and interventions around ALN and ensure that standards around planning, target setting, and outcome focus are consistently applied and driven upwards. To this effect, the draft Bill requires that all maintained schools (which will include maintained nurseries, and pupils referral units) and FEIs in Wales designate an Additional Learning Needs Co-ordinator (ALNCO).

Local authorities will be prohibited from placing a learner with ALN at an independent school that is not registered to cater for the additional learning provision required to meet the ALN, as set out in the learner's IDP. This will reduce the risk of inappropriate

placements of learners with ALN into an independent school. Annual monitoring of independent schools is undertaken by Estyn who will also have a role in ensuring that independent schools are able to deliver the ALP they are registered to deliver.

Similarly, local authorities will be prohibited from placing a learner at an independent specialist college in Wales or England unless the college is entered on a list of such colleges established under provisions set out in this draft Bill.

The draft Bill replicates the existing legislative presumption in favour of those with ALN being educated in mainstream schools wherever possible. This not only supports the Welsh Government's general policy on inclusiveness but underlines our view that expectations of, and aspirations for, those with ALN should be as high as possible.

#### A simpler and less adversarial system

In removing the current artificial and contentious divide between children and young people who receive a statement of SEN and the statutory protection that affords, and those who have needs that are not considered severe or complex enough to receive a statutory plan with statutory protection, the draft Bill provisions which introduce IDPs will eliminate one of the principle causes of adversarial tension. Furthermore, the draft Bill's emphasis on the participation of children and their parents and young people in the decisions which affect them and the development of IDPs, will result in a more consensual approach to planning. Finally, the draft Bill's provisions on IDPs will pave the way for a less bureaucratic and time-consuming process for planning provision which should prove simpler to understand and less confrontational.

#### Increased collaboration

The draft Bill provides that where a local authority in Wales requests help or information from another local authority, a governing body of a maintained school or an FEI, an academy, a youth offending team, the person in charge of relevant youth accommodation, an NHS Trust, Local Health Board, National Health Service Commissioning Board, a Clinical Commissioning Group or an NHS Foundation trust in the exercise of any of their ALN functions that body must comply with the request unless it considers that doing so would:

- a) be incompatible with that body's own duties; or
- b) otherwise have an adverse effect on the exercise of its functions.

The draft Bill provides for IDPs and other plans relating to the same learner to be prepared, reviewed or revised at the same time. This provides a clear legislative basis for avoiding the duplication of effort and confusion which arise where multiple plans are produced for the same individual, and enabling the much closer alignment and integration of otherwise separate planning processes. In relation to looked after children in particular, and in recognition of the fact that a very significant proportion of such children are likely to have ALN, the draft Bill provides for regulations to be made that would allow, amongst other things, the formal integration of IDPs into the educational plans that they will have under the Social Services and Well-being (Wales) Act 2014.

The draft Bill includes a new duty on health bodies in Wales to deliver any ALP contained in the IDP that they have agreed to provide. This duty represents a significant step forward in ensuring that there is greater clarity and certainty around who will be delivering what

within an IDP than is currently the case with statements of SEN.

The draft Bill also includes a new duty on LHBs in Wales to appoint a designated medical or clinical officer. The role of this officer will be to co-ordinate the Board's functions in relation to children and young people with ALN, which might include, for example, seeking ensure there are appropriate service models within the LHB; providing leadership within the LHB in support of meeting the relevant duties; liaising with partners and serving as a primary point of contact for LAs; and prompting and facilitating effective inter-professional working for the benefit of children with ALN.

Additionally, where a health body in England and Wales in the course of exercising any of their functions in relation to a child who is under compulsory school age, form the opinion that he/she has (or probably has) ALN, the draft Bill will provide them with the discretion to bring it this to the attention of the appropriate local authority if they believe that to be in the child's best interests (and inform the child's parent that they are doing so).

#### Avoiding disagreements and earlier disagreement resolution

The draft Bill requires local authorities to make arrangements for avoiding and resolving disagreements which might arise between children, their parents and young people on the one hand, and educational bodies on the other (including governing bodies and local authorities). This includes providing access to help in resolving a disagreement from an independent person. Local authorities will also be required to ensure that children, young people and parents are made aware of these arrangements. The development and implementation of effective disagreement avoidance and resolution arrangements is key to improving the trust that children, young people and parents have in the system and minimising the extent to which they feel the need to exercise their rights of appeal at Tribunal level.

#### Clear and consistent rights of appeal

The draft Bill renames and expands the remit of the existing Special Educational Needs Tribunal Wales to deal with young people up to 25. The Tribunal will be renamed the Education Tribunal for Wales. The draft Bill makes provision for the continuation of the Tribunal's constitution, membership and remuneration and expenses. The new name reflects not only its role in determining appeals in relation to ALN but also the role currently undertaken by SENTW in determining disability discrimination claims relating to schools, a function which the Education Tribunal will continue. Currently, only children and young people registered at maintained schools have the right to appeal to the existing Special Educational Needs Tribunal Wales in relation to their ALN. The draft Bill will introduce more equitable rights of appeal by extending this right to children and young people up to the age of 25 years who attend FEIs or specialist post-16 institutions.

The draft Bill enables a child or young person up to the age of 25 years, or a child's parent, to appeal to the Education Tribunal against:

- a. a decision as to whether a person has additional learning needs;
- b. a decision by a local authority whether it is necessary to prepare and maintain an IDP for a young person;
- c. the description of a person's additional learning needs in an individual development plan;
- d. the additional learning provision specified in an individual development plan or the

- fact that additional learning provision is not in a plan ;
- e. the school named in an individual development plan for the purpose of admission or the type of school or institution specified in the plan;
  - f. if no school or institution is named in an individual development, that fact;
  - g. a decision not to take over responsibility for an individual development plan following a request to consider doing so;
  - h. a decision to not revise an individual development plan; and
  - i. a decision to cease to maintain an individual development plan.

Although use of the Education Tribunal should be a last resort, the right of appeal to an independent tribunal whose decisions are binding will ensure the new system for supporting ALN is robust and has the confidence of children and their parents and young people. It will also help to ensure that the duties in respect of learners with ALN are properly discharged; this will safeguard the rights of children and young people and will provide for greater equity.

The extension of appeal rights to include post-16 learners who are pursuing further education or training will help to underpin the new system's 0-25 age range and deliver on our core aim of a more equitable approach.

#### A mandatory Code

The draft Bill requires the Welsh Ministers to issue a Code on ALN. The Code will apply to those with functions under this draft Bill and will be able to impose:

- (where specified in the draft Bill) mandatory requirements in accordance with which relevant bodies must act; and
- guidance to which those bodies and other providers of education and training must have due regard.

The creation of a Code of this nature will ensure the new ALN system has a set of clear, legally enforceable parameters within which local authorities and those other organisations responsible for the delivery of services for children and young people with ALN must act. The Code will be targeted towards practitioners so they understand and can implement the new ALN system.

### **Step 2. Analysing the impact**

We believe the draft Bill will deliver the following positive impacts for learners from birth to 25 years:

- **provide a unified, equitable system** across the 0 – 25 age range, different education providers and varying levels of need, thereby removing inconsistency and unfairness; (articles 1 & 3)
- **introduce a more flexible, responsive process** of ongoing assessment, enabling provision for the individual learner to evolve over time in accordance with their changing needs; (articles 28 & 29)
- **ensure a more person-centred approach**, placing the child or young person's views at the heart of the process and involving them and their families in the planning, intervention, and review process from the onset; (article 12)

- **provide better support and access to information and advice** for children, young people and their families to understand the ALN process and make informed choices; (article 13)
- **avoid duplication** arising from plans which do substantially the same thing and integrate where possible existing plans and interventions delivered for children and young people; (article 3)
- **improve collaborative working** between agencies to plan their interventions, agree priorities, and ensure appropriate resources are made available in time to make a difference;
- **reduce the likelihood of disputes arising** by developing stronger partnership working with parents and promoting a culture of transparency which should encourage greater trust between parents, education providers and local authorities;(articles 12 & 13)
- **minimise the number of appeals** by ensuring that disagreements are resolved at the earliest possible opportunity;
- **retain and extend the right of appeal** to the Tribunal as an ultimate safeguard in relation to the adequacy of the support provided to every child and young person who has ALN, not just those who have complex needs. (article 3 & 4)

A series of engagement events was held for children and young people (and their families) in the summer of 2014 to gain their views, feelings and opinions on the proposals. The workshops used a variety of engagement methods including play, discussion sessions and debates using the 'easy read' consultation paper. The easy read paper was also used by children and young people in schools and colleges to submit their views. The outcomes of this consultation exercise have been used to inform the policy development process. Summaries of both the White Paper responses and the workshops were published on 14 October 2014 and are available at:

<http://wales.gov.uk/consultations/education/proposals-for-additional-learning-needs-white-paper/?lang=en>.

This impact assessment will be published alongside a draft version of the Bill. A draft version of the Code will be published in Autumn. The publication of these documents will provide stakeholders an opportunity to provide feedback and comments. Any feedback on the draft Bill, draft Code and accompanying documents will be considered and will be used to inform policy development.

Our proposals support the Child Poverty Strategy for Wales 2015. Objective 3 of the strategy is: *Reducing the inequalities which exist in the health, education and economic outcomes of children and families living in poverty, by improving the outcomes of the poorest.* Our proposals aim to remove education inequalities by ensuring that all children and young people are able to achieve their educational potential. The Welsh Government's recent publication 'Rewriting the future' states that an eFSM (eligible for free school meals) learner in Wales is twice as likely to have a special educational need (SEN). By improving the system it will have a disproportionately positive effect on those from a low income household.

Using ALN as a single term which encompasses children and young people aged 0-25 years will help to avoid some of the stigma associated with the existing terms 'special educational needs' (SEN) and 'learning difficulties and/or disabilities' (LDD), and will mark a clear break from the current systems which we believe require fundamental reform.

We have identified no negative impacts of these proposals on children and young people.

### **Step 3. How does your piece of work support and promote children's rights?**

This work supports the following UNCRC articles:

#### **Article 1 - Everyone under 18 years of age has all the rights in this Convention.**

The proposals will introduce an equitable system to meet the needs of children and young people in Wales with additional learning needs aged 0 – 25 years.

#### **Article 2 - The Convention applies to everyone whatever their race, religion, abilities, whatever they think or say and whatever type of family they come from.**

The key proposals will apply to children and young people ordinarily resident in Wales, who are aged 0-25, have been determined as having additional learning needs and are in a maintained school or further education.

The draft Bill will ensure that every child and young person with ALN who is the responsibility of a Welsh Local Authority in a maintained school or further education will be entitled to a statutory IDP to support their learning. This will ensure greater consistency and continuity, and ensure that provisions and rights are protected regardless of the severity or complexity of needs.

#### **Article 3 - All organisations concerned with children should work towards what is best for each child.**

The existing system for supporting children with SEN is based on a model introduced more than 30 years ago that is no longer fit for purpose. Enquiries and reviews of SEN provision in Wales by Estyn, the Wales Audit Office and the National Assembly's former Education, Lifelong Learning and Skills Committee have identified that the current system is 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 for advice and information.

Our work will support early identification and timely intervention to ensure that every child and young person can achieve their potential. To ensure that organisations work towards what is best for each child, where a local authority requests help or information from another specified body – including another local authority, the governing body of a maintained school, an NHS body, the governing body of an FEI, a youth offending team or a person in charge of any relevant youth accommodation – in the exercise of their ALN functions that body must comply with the request, unless specified circumstances apply. The Code which will accompany and support the draft Bill will provide further guidance to professionals to support effective multi-agency working.

#### **Article 4 - Governments should make these rights available to children.**

The Education (Wales) Measure 2009 amended the Education Act 1996 and the Equality Act 2010 to give a child of compulsory school age a concurrent right with their parents to make an appeal to the SENTW in respect of decisions made by the relevant local authority

regarding the child's special education needs. The 2009 Measure's provisions were implemented by way of an initial pilot scheme in 2 local authority areas in Wales (Carmarthen and Wrexham). These provisions were rolled out across the whole of Wales in January 2015, following a positive evaluation of the pilot programmes.

The draft Bill continues to provide rights for children and their parents to appeal to the Education Tribunal against a decision of the local authority in relation to various decisions about whether the child has ALN and about their IDP.

The provisions of the draft Bill will further support and promote children's and young people's rights by extending these appeal rights to all individuals up to the age of 25.

The draft Bill also places a duty on persons exercising functions under it to involve and support children and their parents, and young people in the decisions made under the draft Bill, including in the development of the IDP.

**Article 12 - Children have the right to say what they think should happen, when adults are making decisions that affect them, and to have their opinions taken into account.**

The draft Bill will ensure that the child's and young person's voice is at the heart of decisions made about them and the planning that will ensure their additional learning needs are met.

It builds on previous work to ensure the voice of the child is respected, such as the Education (Wales) Measure 2009 referred to above. As noted, the provisions of the draft Bill extend appeal rights given under that Measure to children and young people up the age of 25 years

This draft Bill bolsters those rights by providing that the views, wishes and feelings of children and young people are taken into account when establishing an IDP and when reviewing it. The Code will provide further details on the use of a person-centred planning approach. The draft Bill also gives Local Authorities a duty to refer children and young people to an Independent advocacy service on request.

When consulting on its proposals, the Welsh Government published a child's version of the white paper and also held workshops for children and young people and their parents. These were attended by 174 children and 55 parents and carers. These have been considered when developing the draft Bill.

**Article 13 - Children have the right to get and to share information as long as the information is not damaging to them or to others.**

The draft Bill provides that local authorities will be required to make arrangements for providing children, young people and others with information and advice about ALN and the system set out in the draft Bill. Local authorities will be required to make known these arrangements to affected parties and ensure this information and advice is disseminated as appropriate and is accessible for all those who need it.

This information service will support children and young people to have a say what they think should happen (see article 12)

**Article 23 - Children who have any kind of disability should have special care and support so that they can lead full and independent lives.**

Under the provisions of the draft Bill, a person will have additional learning needs if he or she has a learning difficulty or disability which calls for additional learning provision.

The draft Bill provides that a child of compulsory school age or person over that age has a learning difficulty or disability if he or she:

- has a significantly greater difficulty in learning than the majority of others of the same age, or
- has a disability which prevents or hinders him or her from making use of facilities for education or training of a kind generally provided for others of the same age in mainstream schools or mainstream institutions in the further education sector.

Those children and young people who have ALN will be entitled to receive an IDP and any additional learning provision required to achieve their potential.

Where a child's or young person's needs can not be met at a maintained school or mainstream FEI (this could be because of a child or young person having a disability and severe and/or complex ALN) the local authority will be able to place them in an independent setting where this is necessary and appropriate.

The draft Bill will strengthen the current registration regime to provide the necessary assurance that a child or young person with ALN is placed in an appropriate setting.

**Article 28 - Children have a right to an education. Discipline in schools should respect children's human dignity. Primary education should be free. Wealthy countries should help poorer countries achieve this.**

These proposals will apply to all learners ordinarily resident in Wales aged 0 – 25 to enable those with additional learning needs to achieve their educational potential in the same way as learners with no additional learning needs. The proposals represent a conscious shift away from an out of date system of SEN and towards a more inclusive approach which better reflects the diversity of learning need.

**Article 29 – Education should develop each child's personality and talents to the full. It should encourage children to respect their parents, and their own and other cultures.**

These proposals are based on the idea that every child and young person should achieve their education potential. The statutory IDP will help to ensure that every child/young person with ALN will receive the provision they require to achieve their education potential.

**Step 4. Advising the Minister and Ministerial decision**

The advice to the Minister for Education and Skills confirms that this CRIA has been completed. No conflict with UNCRC articles has been identified.

### Step 5. Recording and communicating the outcome

This CRIA will be published alongside the draft Bill.

### Step 6. Revisiting the piece of work as and when needed

As the policy is developed there will be further consideration on the impact of the UNCRC. This will include a formal Impact Assessment being used to capture the possible effects/impacts of the policy in due course.

### Budgets

<b>As a result of completing the CRIA, has there been any impact on budgets?</b>	<b>No</b>
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#### **Please give any details:**

There has not been any impact on the budget as a result of this CRIA. A comprehensive consideration of the costs associated with these proposals forms part of a draft regulatory impact assessment to be published alongside the draft Bill.

### Monitoring & Review

<b>Do we need to monitor / review the proposal?</b>	<b>Yes</b>
<b>If applicable: set the review date</b>	<b>2016</b>



**See next page for a  
Summary List of the  
UNCRC articles**

# THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD

[www.uncrcletsgetitright.co.uk](http://www.uncrcletsgetitright.co.uk)

The United Nations Convention on the Rights of the Child is an international agreement that protects the human rights of the children under the age of 18. On 16 December 1991, the United Kingdom of Great Britain and Northern Ireland formally agreed to make sure that every child in the UK has all the rights as listed in the convention. The Welsh Government has shown its commitment to the convention by adopting it as the basis for policy making for children in Wales.

Altogether there are 54 articles in the convention. Articles 43-54 are about how adults and governments should work together to make sure all children are entitled to their rights. The information contained here is about articles 1-42 which set out how children should be treated.

## Article 1

Everyone under 18 years of age has all the rights in this Convention.

## Article 2

The Convention applies to everyone whatever their race, religion, abilities, whatever they think or say and whatever type of family they come from.

## Article 3

All organisations concerned with children should work towards what is best for each child.

## Article 4

Governments should make these rights available to children.

## Article 5

Governments should respect the rights and responsibilities of families to direct and guide their children so that, as they grow, they learn to use their rights properly.

## Article 6

All children have the right to life. Governments should ensure that children survive and develop healthily.

## Article 7

All children have the right to a legally registered name, the right to a nationality and the right to know and, as far as possible, to be cared for by their parents.

## Article 8

Governments should respect children's right to a name, a nationality and family ties.

## Article 9

Children should not be separated from their parents unless it is for their own good, for example if a parent is mistreating or neglecting a child. Children whose parents have separated have the right to stay in contact with both parents, unless this might hurt the child.

## Article 10

Families who live in different countries should be allowed to move between those countries so that parents and children can stay in contact or get back together as a family.

## Article 11

Governments should take steps to stop children being taken out of their own country illegally.

## Article 12

Children have the right to say what they think should happen, when adults are making

decisions that affect them, and to have their opinions taken into account.

## Article 13

Children have the right to get and to share information as long as the information is not damaging to them or to others.

## Article 14

Children have the right to think and believe what they want and to practise their religion, as long as they are not stopping other people from enjoying their rights. Parents should guide their children on these matters.

## Article 15

Children have the right to meet together and to join groups and organisations, as long as this does not stop other people from enjoying their rights.

## Article 16

Children have a right to privacy. The law should protect them from attacks against their way of life, their good name, their families and their homes.

## Article 17

Children have the right to reliable information from the mass media. Television, radio and newspapers should provide information that children can understand, and should not promote materials that could harm children.

## Article 18

Both parents share responsibility for bringing up their children, and should always consider what is best for each child. Governments should help parents by providing services to support them, especially if both parents work.

## Article 19

Governments should ensure that children are properly cared for, and protect them from violence, abuse and neglect by their parents or anyone else who looks after them.

## Article 20

Children who cannot be looked after by their own family must be looked after properly, by people who respect their religion, culture and language.

## Article 21

When children are adopted the first concern must be what is best for them. The same rules should apply whether the children are adopted in the country where they were born or taken to live in another country.

## Article 22

Children who come into a country as refugees should have the same rights as children born in that country.

## Article 23

Children who have any kind of disability should have special care and support so that they can lead full and independent lives.

## Article 24

Children have the right to good quality health care and to clean water, nutritious food and a clean environment so that they will stay healthy. Rich countries should help poorer countries achieve this.

## Article 25

Children who are looked after by their local authority rather than their parents should have their situation reviewed regularly.

## Article 26

The Government should provide extra money for the children of families in need.

## Article 27

Children have a right to a standard of living that is good enough to meet their physical and mental needs. The Government should help families who cannot afford to provide this.

## Article 28

Children have a right to an education. Discipline in schools should respect children's human dignity. Primary education should be free. Wealthy countries should help poorer countries achieve this.

## Article 29

Education should develop each child's personality and talents to the full. It should encourage children to respect their parents, and their own and other cultures.

## Article 30

Children have a right to learn and use the language and customs of their families, whether these are shared by the majority of people in the country or not.

## Article 31

All children have a right to relax and play, and to join in a wide range of activities.

## Article 32

The Government should protect children from work that is dangerous or might harm their health or their education.



Llywodraeth Cymru  
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[www.cymru.gov.uk](http://www.cymru.gov.uk)

## Article 33

The Government should provide ways of protecting children from dangerous drugs.

## Article 34

The Government should protect children from sexual abuse.

## Article 35

The Government should make sure that children are not abducted or sold.

## Article 36

Children should be protected from any activities that could harm their development.

## Article 37

Children who break the law should not be treated cruelly. They should not be put in prison with adults and should be able to keep in contact with their families.

## Article 38

Governments should not allow children under 15 to join the army. Children in war zones should receive special protection.

## Article 39

Children who have been neglected or abused should receive special help to restore their self respect.

## Article 40

Children who are accused of breaking the law should receive legal help. Prison sentences for children should only be used for the most serious offences.

## Article 41

If the laws of a particular country protect children better than the articles of the Convention, then those laws should stay.

## Article 42

The Government should make the Convention known to all parents and children.

For further information on the United Nations Convention on the Rights of the Child please visit: The Welsh Government's UNCRC Website: [www.uncrcletsgetitright.co.uk/](http://www.uncrcletsgetitright.co.uk/)

Cic - The National Information and Advice Service for Young People [www.ciconline.co.uk/news/](http://www.ciconline.co.uk/news/)

## Equality Impact Assessment (EIA)

Policy title and purpose (brief outline):	<b>Draft Additional Learning Needs and Education Tribunal (Wales) Bill</b>
Department:	<b>Department for Education and Skills</b>
Date:	<b>July 2015</b>

**1. Please provide a brief description of the policy/decision.**

**For example what is the overall objective of the policy/decision, what are the stated aims (including who the intended beneficiaries are), a broad description of how this will be achieved, what the measure of success will be, and the time frame for achieving this?**

The Welsh Government is publishing a draft Bill for consultation which would create a new statutory framework for children and young people aged 0 – 25 with Additional Learning Needs (ALN). This new framework would replace the existing statutory special educational needs (SEN) framework and the assessment and planning for young people with learning difficulties and/or disabilities (LDD) in post 16 education and training.

The objectives are to achieve:

- A unified legislative framework to support children and young people aged 0 to 25 with additional learning needs;
- An integrated, collaborative process of assessment and planning which facilitates early, timely and effective interventions;
- A fair and transparent system for providing information and advice, and resolving concerns and appeals.

In order to achieve these three overarching objectives, the Welsh Government has established ten core aims within which the draft Bill's provisions have been developed. These aims are as follows:

- The introduction of the term ALN
- A 0-25 age range
- A unified plan
- Increased participation of children and young people
- High aspirations and improved outcomes
- A simpler and less adversarial system
- Increased collaboration
- Avoiding disagreements and earlier disagreement resolution
- Clear and consistent rights of appeal
- A mandatory Code

**2. We have a legal duty to engage with people with protected characteristics under the Equality Act 2010 (please refer to Annex A of the EIA guidance) identified as being relevant to the policy. What steps have you taken to engage with stakeholders, both internally and externally?**

There has been continued engagement with all key stakeholders, including children, parents/carers, young people, professionals and the third sector in the development of the policies underlying the draft Bill. A wide-ranging preliminary consultation was conducted by the National Assembly for Wales' Education, Lifelong Learning and Skills (ELLS) Committee in 2007, following their review of Special Education Needs.

In June 2012, the Welsh Government consulted publically on a broad vision of a reformed system in our document *Forward in Partnership for Children and Young People with Additional Needs*. A summary of responses to the consultation was published in 2013. The consultation and summary of responses can be accessed here:

<http://wales.gov.uk/consultations/education/senframeworkconsultation/?lang=en>

The Welsh Government also held a series of workshops in autumn 2013 and has continued to exchange ideas with a range of external stakeholders and professional groups, in order to identify practicable and realistic ways in which effective and lasting reform can be taken forward.

A summary of the workshop discussions can be accessed on the Welsh Government website:

<http://wales.gov.uk/topics/educationandskills/schoolshome/curriculuminwales/additionaleducationalneeds/additional-learning-needs-reform/?lang=en>

Building on the outcome of previous consultation, the Welsh Government issued a White Paper in May 2014 outlining legislative proposals for additional learning needs. In addition, a series of engagement events for children and young people (including those with SEN/ LDD) were held during the consultation period to ensure that their views were captured. An easy read version of the consultation document was published for children, young people and those with learning difficulties.

The consultation closed on 25 July 2014.

Summary of consultation responses was published on 14 October and can be accessed on the Welsh Government website, alongside a summary of the outcome of the events for children and young people:

<http://gov.wales/consultations/education/proposals-for-additional-learning-needs-white-paper/?lang=en>

In January 2015 workshops on the proposed Individual Development Plan (which the draft Bill seeks to introduce as a statutory plan) and impact monitoring were held for a wide range of professionals involved in supporting learners with ALN. The feedback has been used to inform the draft rafting of the proposed ALN Code.

The Third Sector Additional Needs Alliance (TSANA) and the Welsh Government have formed a Task and Finish Group specifically to support the development of the ALN reforms. These meetings have been used to inform policy and provide further clarity and details on our proposals. TSANA are a collection of Third Sector groups who represent/support children/young people with a range of ALN.

In addition, the Support for Learners Division has carried out a series of meetings with a wide range of stakeholders who are responsible for children and young people with ALN or who represent their interests, including:

- The Association of Educational Psychologists – including via a day-long workshop with educational psychologists from across local authorities in Wales
- The Welsh Local Government Association (WLGA)
- The Association of Directors of Education in Wales (ADEW) and its sub-group on Inclusion
- NATSPEC (the association of independent specialist colleges)
- Learning Disability Advisory Group
- School Practitioner Panel
- Colegau Cymru Colleges Wales – including via a workshop with its network of LDD practitioners
- SENCO Groups
- British Association of Teachers of the Deaf
- The South and North Wales Associations of Special School Headteachers (National conference of SWASSH and NWASSH) members Specialist Schools
- Union Partnership Group
- Estyn
- The Children’s Commissioner for Wales

This impact assessment will be published alongside a draft version of the Bill. A draft version of the Code will be published in autumn. The publication of these documents will provide stakeholders an opportunity to provide feedback and comments. Any feedback on the draft Bill, draft Code and accompanying documents will be considered and will be used to inform policy development.

**3. Your decisions must be based on robust evidence. What evidence base have you used? Please list the source of this evidence e.g. National Survey for Wales. Do you consider the evidence to be strong, satisfactory or weak and are there any gaps in evidence?**

The Decision to reform the current SEN system is based on a wide range of evidence from a series of reports and reviews as well as previous consultation and engagement with stakeholders outlined under question 2 of this impact assessment.

Between 2003 and 2007, a three-part review of SEN was undertaken by the former Education, Lifelong Learning and Skills (ELLS) Committee of the National Assembly for Wales and associated reports were published in the following order:

- a) *Early Identification and Intervention*, November 2004;
- b) *Statutory Assessment Framework (Statementing)*, May 2006;
- c) *Transitions*, March 2007.

The evidence presented in the Committee's reports was informed by earlier reports from the Audit Commission (Special educational needs: A mainstream issue, 2002) and Estyn (Support for Children with Special Educational Needs: An Estyn Overview, 2003). Taken together, these reports concluded that in relation to the current system of SEN:

- the assessment process associated with statements is inefficient, bureaucratic, costly, and insufficiently child-centred or user-friendly;
- needs are often identified late and interventions are not sufficiently timely or effective; and
- families say that they often have to battle to get the right support for their child and do not know where to turn for information and advice.

In response to the Committee's report, the then Welsh Assembly Government conducted a wide-ranging preliminary consultation on possible reforms to the existing system of support for SEN and LDD (Statements or Something Better, 2007). Subsequently, a number of projects were set up to develop and trial new systems and approaches to help shape future policy and legislation. These included:

- four reform pilot schemes involving eight local authorities aimed at developing and trialling a person-centred approach to planning (using an IDP) for children and young people with SEN together with a new quality assurance system and an on-line planning and assessment tool; and
- a 'right of appeal for the child' pilot scheme involving two local authorities.

The evaluation of the pilot schemes can be accessed on the Welsh Government website:

<http://wales.gov.uk/statistics-and-research/programme-action-research-additional-learning-needs-pilot/?lang=en>

The responses to the Welsh Government's consultations on the *Forward in Partnership for Children and Young People with Additional Needs* (2012) and the White Paper (2014), as well as working with a wide range of stakeholders as outlined above in question 2, have supported the development of the proposed draft Bill.

**4.1 Do you think this policy / decision / practice will have a positive or negative impact on people because of their age?**

Age	Positive	Negative	None / Negligible	Reasons for your decision (including evidence) / How might it impact?
Younger people <i>(Children and young people, up to 18)</i>	Positive			<p>The ALN draft Bill focuses on early and timely identification of ALN, planning and delivering additional learning provision necessary to meet the child or young person's ALN.</p> <p>The draft Bill applies to those with ALN from birth to the age of 25 years, and applies to pre-school, school and FE settings. Using ALN as a single term which encompasses this wider age range reflects the move to a more equitable system for supporting learners with ALN across early years, schools and further education settings.</p> <p>The draft Bill will help children and young people with ALN attain their educational potential</p>
People 18- 50	Positive			<p>This draft Bill applies to young people up to the age of 25 years when they are attending a, school or FE setting.</p> <p>Currently young people being educated in FE settings are not entitled to statutory development plans to support them with their ALN.</p>
Older people (50+)			None	<p>Our proposals support those between aged between 0 -25 years with ALN to achieve their potential. It does not apply to older people.</p>

**4.2 Do you think this policy / decision / practice will have a positive or negative impact on people because they are disabled?**

<b>Impairment</b>	<b>Positive</b>	<b>Negative</b>	<b>None / Negligible</b>	<b>Reason for your decision (including evidence) / How might it impact?</b>
Visual impairment	Positive			<p>The ALN draft Bill is based upon ensuring that all children and young people who have ALN have their needs meet. A person has ALN if they have a learning difficulty or disability which calls for additional learning provision. Whilst not all children and young people with the impairments listed opposite would have ALN, where they have ALN as a result of, or in addition to their impairment, the proposals would have a positive effect.</p> <p>The proposals provide statutory protection for a wider range of learners. Currently those with less severe or complex needs receive a non-statutory plan. Those in FE classified as having a LDD also receive a non-statutory Plan. The ALN draft Bill will ensure that all learners with ALN will be entitled to a statutory Plan, the Individual Development Plan (IDP), irrespective of the severity or complexity of their needs.</p>
Hearing impairment	Positive			
Physically disabled	Positive			
Learning disability	Positive			
Mental health problem	Positive			
Other impairments issues	Positive			

**4.3 Do you think this policy / decision / practice will have a positive or negative impact on people because of their gender (man or woman)?**

Gender	Positive	Negative	None / Negligible	Reason for your decision (including evidence)/ How might it impact?
Male			None	The ALN draft Bill is not gender specific. The draft Bill is intended to help children and young people with ALN to achieve their potential.
Female			None	

**4.4 Because they are transgender?**

Transgender	Positive	Negative	None / Negligible	Reason for your decision (including evidence) / How might it impact?
			None	Our proposals are based on helping all children and young people with ALN to achieve their educational potential, including people who are transgender. The proposals are not gender specific.

**4.5 Do you think this policy / decision / practice will have a positive or negative impact on people because of their marriage or civil partnership?**

<b>Marriage and Civil Partnership</b>	<b>Positive</b>	<b>Negative</b>	<b>None / Negligible</b>	<b>Reason for your decision (including evidence)/ How might it impact?</b>
Marriage			None	Our proposals are based on helping all children and young people with ALN to achieve their potential. This will not affect the institution of marriage or civil partnership or positively/negatively effect those who are married/ in a civil partnership.
Civil Partnership			None	

**4.6 Do you think this policy / decision / practice will have a positive or negative impact on people Because of their pregnancy or maternity?**

<b>Pregnancy and Maternity</b>	<b>Positive</b>	<b>Negative</b>	<b>None / Negligible</b>	<b>Reason for your decision (including evidence) / How might it impact?</b>
Pregnancy			None	Our proposals are based on helping all children and young people with ALN to achieve their potential. This will not affect those that are pregnant or who have recently given birth.
Maternity (the period after birth)			None	

**4.7 Do you think this policy / decision / practice will have a positive or negative impact on people because of their race?**

<b>Race</b>	<b>Positive</b>	<b>Negative</b>	<b>None / Negligible</b>	<b>Reason for your decision (including evidence) / How might it impact?</b>
Ethnic minority people e.g. Asian, Black,			None	The ALN draft Bill is not race specific. The draft Bill is based on helping all children and young people with ALN to achieve their potential.
National Origin (e.g. Welsh, English)			None	
Asylum Seeker and Refugees			None	
Gypsies and Travellers			None	
Migrants			None	
Others			None	

**4.8 Do you think this policy / decision / practice will have a positive or negative impact on people because of their religion and belief or non-belief?**

Religion and belief or non – belief	Positive	Negative	None / Negligible	Reason for your decision (including evidence)/ How might it impact?
Different religious groups including Muslims, Jews, Christians, Sikhs, Buddhists, Hindus, Others (please specify)			None	The draft Bill is based on helping all children and young people with ALN to achieve their potential. There is no evidence it will have an impact on children and young people because of their religion and belief or non-belief
Belief e.g. Humanists			None	
Non-belief			None	

**4.9 Do you think this policy / decision / practice will have a positive or negative impact on people because of their sexual orientation?**

Sexual Orientation	Positive	Negative	None / Negligible	Reason for your decision (including evidence)/ How might it impact?
Gay men			None	The draft ALN Bill is based on helping all children and young people with ALN to achieve their potential. There is no evidence it will have an impact on children and young people because of their sexual orientation.
Lesbians			None	
Bi-sexual			None	

**4.10 Do you think that this policy will have a positive or negative impact on people's human rights?**

Human Rights	Positive	Negative	None / Negligible	Reason for your decision (including evidence) / How might it impact?
Human Rights including Human Rights Act and UN Conventions	Positive			<p>The draft Bill is based upon every child and young person with ALN achieving their potential. A separate Children's Rights Impact Assessment has been completed and has found that these proposals will have a positive impact.</p> <p>The Children's Rights Impact Assessment will be published alongside this assessment and the draft Bill on the Welsh Government's website.</p> <p><u>Human rights</u></p> <p>Article 2, protocol 1 is engaged. It is considered that the right not to be denied education is properly incorporated into the draft bill. The draft bill will allow for extra help to be provided for those with additional learning needs. It is noted that in the second sentence of A2 P1 that the rights given to parents includes a right to have their religious/philosophical convictions respected by the state. We consider that this parental right (which is secondary to the child's right to education above) is reflected the proposed draft Bill regime.</p> <p>Article 6 is engaged. There is a right to appeal to an impartial tribunal established in the draft Bill. In the determination of his civil rights, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. The right to have an appropriate IDP in place (for example) is one of the rights protected under the draft bill. It affords a right of appeal to children, their parents and young</p>

				people. Where it is considered that any parental article 2, protocol 1 right is engaged it is properly respected by the appeal system that the draft Bill establishes. Parents and children's views can be communicated to the independent tribunal. This strikes the correct balance between article 2, protocol 1 and article 8.
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## Equality Impact Assessment – Part 2

### **1. Building on the evidence you gathered and considered in Part 1, please consider the following:**

#### **1.1 How could, or does, the policy help advance / promote equality of opportunity?**

The draft Bill aims to ensure that every child or young person with ALN achieves their potential. This is based on a wider policy within DfES that every child or young person should be able to achieve their potential and have equality of opportunity no matter what the challenges and barriers to that might be.

The draft legislative framework should support children and young people with ALN to take full advantage of the educational opportunities available to them.

Furthermore, the proposals support children, young people and their parents taking a more active participation in any decisions which affect them. This includes when a child, young person or parent faces particular barriers in expressing their opinions. For instance the draft Bill proposes to place a duty on local authorities to make arrangements to provide people with information and advice about ALN and the ALN system, local authorities would also be required to make arrangements for the provision of independent advocacy services for the children and young people for whom it is responsible.

#### **1.2 How could / does the policy / decision help to eliminate unlawful discrimination, harassment or victimisation?**

Unlike the current system, the draft Bill will ensure that every child and young person with ALN is entitled to a statutory IDP. This will ensure greater consistency and continuity, and ensure that additional learning provision and rights are protected regardless of the severity or complexity of needs. As the draft Bill will apply to children and young people aged 0-25 years with ALN in relevant education institutions, the transition of learners between school and post-16 education should be improved allowing greater equity in terms of support and rights for this group of learners. Furthermore, the draft Bill ensures that children, children's parents, and young people are provided with a right of appeal if they feel their needs are not being met.

Using ALN as a single term which encompasses children and young people aged 0-25 years will help to avoid some of the stigma associated with the existing terms 'special educational needs' and 'learning difficulties and/or disabilities'

The draft Bill will help to eliminate unlawful discrimination against children and young people who have ALN by supporting that every child or young person with ALN have their needs met.

### **1.3 How could/does the policy impact on advancing / promoting good relations and wider community cohesion?**

Our proposals support children and young people with ALN having their needs met in an education setting. The proposals create a unified system which will support children and young people moving between different educational settings (such as school and FEI). It also supports children and young people making a smooth transition into adulthood – this could include independent living and supporting young people making a smooth transition into the wider community.

As the child/young person with ALN will be supported to achieve their educational potential, this should enable them to become an active member of the community which will enhance wider community cohesion.

## **2. Strengthening the policy**

**2.1 If the policy is likely to have a negative effect ('adverse impact') on any of the protected groups or good relations, what are the reasons for this?  
What practical changes/actions could help reduce or remove any negative impacts identified in Part 1?**

No negative impacts have been identified.

**2.2 If no action is to be taken to remove or mitigate negative / adverse impact, please justify why.  
(Please remember that if you have identified unlawful discrimination (immediate or potential) as a result of the policy, the policy must be changed or revised.)**

Not applicable

### 3. Monitoring, evaluating and reviewing

#### **How will you monitor the impact and effectiveness of the policy?**

List details of any follow-up work that will be undertaken in relation to the policy (e.g. consultations, specific monitoring etc).

As the policy is developed there will be further consideration on the impact of Equality. This will include a formal Impact Assessment being used to capture the possible effects/impacts of the policy in due course.

This impact assessment will be published alongside a draft version of the Bill. A draft version of the Code will be published in Autumn. The publication of these documents will provide stakeholders an opportunity to provide feedback and comments. Any feedback on the draft Bill, draft Code and accompanying documents will be considered and will be used to inform policy development.

#### 4. Declaration

**The policy does have a significant impact upon equality issues**

<b>Official completing the EIA</b>
Department:
<b>Additional Learning Needs Legislation Branch, Department for Education and Skills</b>
Date:
<b>June 2015</b>
<b>Head of Division (Sign-off)</b>
Job title and department:
<b>Deputy Director, Support for Learners Division</b>
Date:
<b>June 2015</b>

## Welsh Language Impact Assessment

<b>Title:</b> Draft Additional Learning Needs and Education Tribunal (Wales) Bill	<b>WLIA Reference No</b> <i>(completed by WLU): 15/03/01</i>				
<b>Date:</b>	Last reviewed June 2015				
<b>Contact details:</b>	<a href="mailto:SENReforms@Wales.GSI.Gov.UK">SENReforms@Wales.GSI.Gov.UK</a>				
<b>Programme/Project Type</b> <input type="checkbox"/> Policy <span style="margin-left: 200px;"><input type="checkbox"/> Project or programme</span> <input checked="" type="checkbox"/> Legislation <span style="margin-left: 150px;"><input type="checkbox"/> Research, evaluation</span> <input type="checkbox"/> Grant <span style="margin-left: 180px;"><input type="checkbox"/> Services</span> <input type="checkbox"/> Business change <span style="margin-left: 150px;"><input type="checkbox"/> Contracts, tenders</span> <input type="checkbox"/> Infrastructure <input type="checkbox"/> Construction, Capital <input type="checkbox"/> ICT <input type="checkbox"/> Other (Please specify below)					
<b>Costs: How much is the projected whole life cost for the programme/project?</b> If below £25k, then a full WLIA is not always required (see guidance).					
Under £25k	£25k - £49k	£50 - £249K	£250K - £1m	Over £1m	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	✓	<input type="checkbox"/>	
<b>Of the above, please provide details if there are any identified costs directly associated with the Welsh language?</b>  A comprehensive consideration of the costs associated with these proposals forms part of a draft regulatory impact assessment to be published alongside the draft Bill.					
<b>How long is the programme/project expected to run?</b>					
Up to 1 yr	Up to 2yrs	Up to 5yrs	Up to 10yrs	More than 10 yrs	Unknown
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>Key milestone dates for the programme/ project:</b> July 2015 – Draft Bill and accompanying documents published Autumn 2015 – Draft Code published					
<b>STAGE 1: PLANNING</b>					
<b>What are the aims and objectives of the policy?</b> <b>What are the desired outcomes/ what constitutes ‘success’?</b>					
The Welsh Government is publishing a draft Bill for consultation which would create a new statutory framework for children and young people aged 0 – 25 with Additional Learning Needs (ALN). This new framework would replace the existing statutory special educational needs (SEN) framework and the assessment and planning for young people with learning difficulties and/or disabilities (LDD) in post 16 education and training.					

The objectives are to achieve:

- A unified legislative framework to support children and young people aged 0 to 25 with additional learning needs;
- An integrated, collaborative process of assessment and planning which facilitates early, timely and effective interventions;
- A fair and transparent system for providing information and advice, and resolving concerns and appeals.

To fulfil these objectives, the Draft Bill includes the following elements.

#### The introduction of the term Additional Learning Needs (ALN)

The Draft Bill provides for the term 'Additional Learning Needs' (ALN) to replace the existing terms 'special educational needs' (SEN), 'learning difficulties and/or disabilities' (LDD) and allows for its use in relation children or young people of any age. For the purposes of the Draft Bill, a child is a person not over compulsory school age while a young person is a person over compulsory school age but under the age of 25.

The use of a single term across the 0 to 25 age range will underline the new system's coherence and provide greater equity for learners. It will also help to avoid some of the stigma associated with the existing terms and will mark a clear break from the current systems.

#### A 0-25 age range

The Draft Bill provides for the same statutory plan to be given to learners with ALN irrespective of whether they are in, or are likely to enter, school-based or further education. It will therefore place the systems for supporting learners with ALN in schools and further education on a more equal footing and should improve transition between school and post-16 education.

The Draft Bill's provisions will require local authorities in Wales to secure specialist post-16 education or training where the Individual Development Plan ("IDP") indicates that this is necessary to meet their needs. This responsibility is transferred from the Welsh Ministers. This will improve the transition process by encouraging local authorities and post-16 providers to work together to plan for, secure support for, and improve local provision relevant to the individual needs of children and young people with ALN. This would provide a greater incentive for local authorities to make the connections between education and social services departments that are needed for a child or young person's effective transition into further education.

#### A unified plan

The Draft Bill introduces statutory IDPs for all children and young people with ALN. The IDP will describe the child or young person's ALN and the Additional Learning Provision ("ALP") required to meet those needs. IDPs will normally be prepared, maintained and reviewed by the school or institution in the further education sector ("FEI") that the child or young person attends following a determination by that body that the child or young person has ALN. The ALP set out in the IDP will normally be delivered by the school or FEI. In those cases where determining whether the child or

young person has ALN is beyond the school or FEI's capability, or where it would not be possible for them to secure the ALP which is required, or the child or young person is not attending such a setting, the local authority would be responsible for determining ALN, preparing and reviewing the IDP and securing the ALP within it.

As a minimum, IDPs would have to be reviewed every 12 months but in practice should be reviewed when necessary, or on request, which in many cases will be more frequent than every 12 months.

Where a pupil or student with an IDP maintained by local authority is registered or enrolled at a maintained school or FEI in Wales, the Draft Bill requires that the school or FEI takes all reasonable steps to secure the ALP included in the IDP – but ultimate responsibility for securing that provision would rest with the local authority that maintains the IDP.

Those bodies responsible for maintaining an IDP for a child or young person would be able to cease to maintain that IDP where it was no longer necessary for them to maintain it or transfer it to another body where that was appropriate (for example, where a child or young person changed schools or transferred from school to further education).

When a child or young person is detained in relevant youth accommodation, the draft Bill provides that where it is brought to the attention of the local authority or otherwise appears to the home local authority that he or she may have ALN and an IDP is not already in place for him or her the authority must decide if the child or young person has ALN and if so, whether it may be necessary for an IDP to be maintained for him or her on release from detention.

If a child or young person detained in relevant youth accommodation has an IDP when they enter detention, or an IDP is prepared for them during detention, the home local authority must keep the IDP for him or her and secure appropriate ALP. Appropriate ALP might differ from the ALP in the IDP due to the circumstances of their detention.

When a child or young person with an IDP that has been kept for them during detention is released from relevant youth accommodation and a local authority in Wales is responsible for him or her on release, the authority will become responsible for the maintenance of the IDP.

#### Increased participation of children and young people

The Draft Bill provides for the views, wishes and feelings of children and young people to form a core element of the new system and emphasises the importance of children and young people, and their parents participating as fully as possible in the decisions that are taken in relation to their ALN and the ALP that is provided for them.

This will give statutory underpinning to the Welsh Government's existing policy of promoting a much more person-centred approach to identifying needs and appropriate actions to meet those needs and help to ensure that IDPs are developed in accordance with the principles of person-centred thinking and planning. To facilitate this, the Draft Bill requires local authorities to make arrangements to provide children, young people and others with information and advice about ALN and the

system set out in the Draft Bill. It further requires local authorities to make known those arrangements to the affected parties thus ensuring that this information and advice is disseminated as appropriate and is accessible for all those who need it.

In order that children and young people are able to fully exercise their right to appeal under this Draft Bill, or to engage in disagreement resolution procedures required by it, the Draft Bill requires local authorities to provide them and their case friends with access to independent advocacy services. These are services providing advice and assistance to a child or young person and their case friend who is making, or intending to make, an appeal to the Education Tribunal, considering whether to appeal to the Education Tribunal under that section, or taking part in, or intending to take part in, disagreement resolution arrangements.

The Draft Bill also allows for regulations to make provision for case friends who might make representations on behalf of a child or young person with a view to avoiding or resolving disagreements about the exercise by local authorities of their ALN functions, or might exercise the rights of the child or young person to appeal to the Tribunal on that child or young person's behalf.

#### High aspirations and improved outcomes

Critical to the development of culture of high aspirations and improved outcomes is the designation of an individual (or group of individuals) within each setting whose role is to co-ordinate planning and interventions around ALN and ensure that standards around planning, target setting, and outcome focus are consistently applied and driven upwards. To this effect, the Draft Bill requires that all maintained schools (which will include maintained nurseries, and pupils referral units) and FEIs in Wales designate an Additional Learning Needs Co-ordinator (ALNCO).

Local authorities will be prohibited from placing a learner with ALN at an independent school that is not registered to cater for the additional learning provision required to meet the ALN, as set out in the learner's IDP. This will reduce the risk of inappropriate placements of learners with ALN into an independent school. Annual monitoring of independent schools is undertaken by Estyn who will also have a role in ensuring that independent schools are able to deliver the ALP they are registered to deliver.

Similarly, local authorities will be prohibited from placing a learner at an independent specialist college in Wales or England unless the college is entered on a list of such colleges established under provisions set out in this Draft Bill.

The Draft Bill replicates the existing legislative presumption in favour of those with ALN being educated in mainstream schools wherever possible. This not only supports the Welsh Government's general policy on inclusiveness but underlines our view that expectations of, and aspirations for, those with ALN should be as high as possible.

#### A simpler and less adversarial system

In removing the current artificial and contentious divide between children and young people who receive a statement of SEN and the statutory protection that affords, and those who have needs that are not considered severe or complex enough to receive

a statutory plan with statutory protection, the Draft Bill provisions which introduce IDPs will eliminate one of the principle causes of adversarial tension. Furthermore, the Draft Bill's emphasis on the participation of children and their parents and young people in the decisions which affect them and the development of IDPs, will result in a more consensual approach to planning. Finally, the Draft Bill's provisions on IDPs will pave the way for a less bureaucratic and time-consuming process for planning provision which should prove simpler to understand and less confrontational.

#### Increased collaboration

The Draft Bill provides that where a local authority in Wales requests help or information from another local authority, a governing body of a maintained school or an FEI, an academy, a youth offending team, the person in charge of relevant youth accommodation, an NHS Trust, Local Health Board, National Health Service Commissioning Board, a Clinical Commissioning Group or an NHS Foundation trust in the exercise of any of their ALN functions that body must comply with the request unless it considers that doing so would:

- a) be incompatible with that body's own duties; or
- b) otherwise have an adverse effect on the exercise of its functions.

The Draft Bill provides for IDPs and other plans relating to the same learner to be prepared, reviewed or revised at the same time. This provides a clear legislative basis for avoiding the duplication of effort and confusion which arise where multiple plans are produced for the same individual, and enabling the much closer alignment and integration of otherwise separate planning processes. In relation to looked after children in particular, and in recognition of the fact that a very significant proportion of such children are likely to have ALN, the Draft Bill provides for regulations to be made that would allow, amongst other things, the formal integration of IDPs into the educational plans that they will have under the Social Services and Well-being (Wales) Act 2014.

The Draft Bill includes a new duty on health bodies in Wales to deliver any ALP contained in the IDP that they have agreed to provide. This duty represents a significant step forward in ensuring that there is greater clarity and certainty around who will be delivering what within an IDP than is currently the case with statements of SEN.

The Draft Bill also includes a new duty on LHBs in Wales to appoint a designated medical or clinical officer. The role of this officer will be to co-ordinate the Board's functions in relation to children and young people with ALN, which might include, for example, seeking ensure there are appropriate service models within the LHB; providing leadership within the LHB in support of meeting the relevant duties; liaising with partners and serving as a primary point of contact for LAs; and prompting and facilitating effective inter-professional working for the benefit of children with ALN.

Additionally, where a health body in England and Wales in the course of exercising any of their functions in relation to a child who is under compulsory school age, form the opinion that he/she has (or probably has) ALN, the Draft Bill will provide them with the discretion to bring it this to the attention of the appropriate local authority if they believe that to be in the child's best interests (and inform the child's parent that they are doing so).

### Avoiding disagreements and earlier disagreement resolution

The Draft Bill requires local authorities to make arrangements for avoiding and resolving disagreements which might arise between children, their parents and young people on the one hand, and educational bodies on the other (including governing bodies and local authorities). This includes providing access to help in resolving a disagreement from an independent person. Local authorities will also be required to ensure that children, young people and parents are made aware of these arrangements. The development and implementation of effective disagreement avoidance and resolution arrangements is key to improving the trust that children, young people and parents have in the system and minimising the extent to which they feel the need to exercise their rights of appeal at Tribunal level.

### Clear and consistent rights of appeal

The Draft Bill renames and expands the remit of the existing Special Educational Needs Tribunal Wales to deal with young people up to 25. The Tribunal will be renamed the Education Tribunal for Wales. The Draft Bill makes provision for the continuation of the Tribunal's constitution, membership and remuneration and expenses. The new name reflects not only its role in determining appeals in relation to ALN but also the role currently undertaken by SENTW in determining disability discrimination claims relating to schools, a function which the Education Tribunal will continue. Currently, only children and young people registered at maintained schools have the right to appeal to the existing Special Educational Needs Tribunal Wales in relation to their ALN. The Draft Bill will introduce more equitable rights of appeal by extending this right to children and young people up to the age of 25 years who attend FEIs or specialist post-16 institutions.

The Draft Bill enables a child or young person up to the age of 25 years, or a child's parent, to appeal to the Education Tribunal against:

- a) a decision as to whether a person has additional learning needs;
- b) a decision by a local authority whether it is necessary to prepare and maintain an IDP for a young person;
- c) the description of a person's additional learning needs in an individual development plan;
- d) the additional learning provision specified in an individual development plan or the fact that additional learning provision is not in a plan ;
- e) the school named in an individual development plan for the purpose of admission or the type of school or institution specified in the plan;
- f) if no school or institution is named in an individual development, that fact;
- g) a decision not to take over responsibility for an individual development plan following a request to consider doing so;
- h) a decision to not revise an individual development plan; and
- i) a decision to cease to maintain an individual development plan.

Although use of the Education Tribunal should be a last resort, the right of appeal to an independent tribunal whose decisions are binding will ensure the new system for supporting ALN is robust and has the confidence of children and their parents and young people. It will also help to ensure that the duties in respect of learners with ALN are properly discharged; this will safeguard the rights of children and young people and will provide for greater equity.

The extension of appeal rights to include post-16 learners who are pursuing further education or training will help to underpin the new system's 0-25 age range and deliver on our core aim of a more equitable approach.

### A mandatory Code

The Draft Bill requires the Welsh Ministers to issue a Code on ALN. The Code will apply to those with functions under this Draft Bill and will be able to impose:

- (where specified in the Draft Bill) mandatory requirements in accordance with which relevant bodies must act; and
- guidance to which those bodies and other providers of education and training must have due regard.

The creation of a Code of this nature will ensure the new ALN system has a set of clear, legally enforceable parameters within which local authorities and those other organisations responsible for the delivery of services for children and young people with ALN must act. The Code will be targeted towards practitioners so they understand and can implement the new ALN system.

### **What policy options have been considered? and What impacts will there be if the policy is *not* implemented?**

Three basic options have been considered, These have been set out in detail in the draft Regulatory Impact Assessment which will be published alongside the Draft Bill. In summary, the three options are to:

- a) maintain the current legislative arrangements for children and young people with SEN or LDD;
- b) Replace the current legislative arrangements for children and young people with SEN or LDD with a system of ALN based on proposals consulted on in 2012.Undertake reform of the current legislative arrangements for children and young people with SEN or LDD (based on our 2012 consultation proposals).or
- c) replace the current legislative arrangements for children and young people with SEN or LDD with a single unified system based on ALN.

The third option is being pursued because it best addresses the deficiencies and disadvantages apparent in the existing systems. These can be summarised as follows:

- The current terminology stigmatises children and young people and is associated with a system which needs fundamental reform.
- There is an unclear divide between those requiring statements of SEN and those who do not.
- The lack of clear criteria about when and for whom a statement of SEN should be made results in an inconsistent approach between local authorities.
- There is a perception that the existing SEN Code of Practice is not always applied rigorously or is interpreted differently by different local authorities.
- It is unfair that the provision necessary to address more complex needs is protected through the issuing of a statement but the provision required to address

less complex needs is not statutorily protected.

- Trust between parents and local authorities or schools is often undermined and this leads to dispute.
- It is difficult to adopt a flexible approach to the delivery of special educational provision.
- The current arrangements for children and young people with LDD potentially disrupt their smooth transition between school and post-16 education and may make the system of post-16 provision less efficient than it should be.
- The current legislation to 'approve' and 'register' an independent school to admit pupils with an SEN does not provide an effective system for ensuring that appropriate provision is made available or to clarify whose responsibility it is to do so.
- Some parents and families feel excluded from the processes around statements of SEN which they see as impenetrable, bureaucratic and inefficient.
- Parents also say that even when their child has a statement, if their needs change, or if a condition worsens or improves, the system can be too slow to adapt.
- Evidence from Estyn reports and other reviews of SEN policy have identified that multi-agency working is sometimes weak and ineffective.
- Identification and intervention does not always happen at the earliest opportunity.
- The particular support that children and their families require may be put in place needlessly late.
- The important co-ordination role undertaken by SEN Co-ordinators (SENCOs) is not well-defined and varies considerably.
- For looked after children, the SEN statutory assessment is just one of many assessments, and the separate processes are not well integrated.
- Arrangements for information and advice giving vary across Wales, in terms of both their nature and their effectiveness.
- The current arrangements for disagreement resolution are insufficiently robust to ensure that disagreements are resolved quickly or avoided altogether.
- The current absence of any appeal process in relation to the support received by children and young people who have SEN but who do not have a statement, potentially places them at an unfair disadvantage

The impact of the Draft Bill not being implemented, is that these deficiencies and disadvantages would be allowed to remain.

**Does the programme demonstrate a clear link with the Welsh Government's strategy for the Welsh language - laith fyw: laith byw?**

The Welsh Government's (WG) strategy 'A living language: a language for living'

states: *'The strategy also emphasises the importance of our Welsh-medium Education Strategy as an essential component in producing the Welsh speakers of the future - alongside encouraging the use of the language in families.'*

The WG's 'Welsh Medium Education Strategy' sets out the ambition for a country where Welsh-medium education and training are integral parts of the education infrastructure. It aims to ensure that our education system makes it possible for more learners of all ages to acquire a wider range of language skills in Welsh. This will enable them to use the language in their personal lives, socially and in the workplace.

The first strategic objective which it seeks to advance is:

*To improve the planning of Welsh-medium provision in the pre-statutory and statutory phases of education, on the basis of proactive response to informed parental demand*

As part of this the WG will be seeking:

*To expect improved planning of Welsh-medium education provision and services for learners with additional learning needs (ALN) as an integral part of education provision at national, regional and local levels.*

This Draft Bill will ensure the needs of learners with ALN, included those in Welsh medium education, are better planned for and met, and that provision to meet a wider range of needs is statutorily protected.

Furthermore, since the passage of the School Standards and Organisation (Wales) Act 2013 all local authorities are now required to prepare a Welsh in Education Strategic Plan (WESP) for approval (or otherwise) by Welsh Ministers. These are 3-year Plans which local authorities are required to review each year. The current approved Plans cover the period 2014 to 2017.

In drawing up their Plans a local authority is required, by the Welsh in Education Strategic Plans and Assessing Demand for Welsh-medium Education (Wales) Regulations 2013, to include, among other things:

“a statement setting out the local authority’s strategy as to how it will improve Welsh-medium education for pupils who require additional learning support arising from any difficulty that pupil has in learning in relation to pupils of the same age who do not have any difficulty in learning”

Welsh Ministers have issued guidance to local authorities requiring them to focus on the following issues:

- regular audits of Welsh language ALN provision;
- the methodology for assessing demand for Welsh language ALN provision;
- arrangements for liaising with parents as part of the needs assessment arrangements; and
- plans for developing enhanced Welsh Language ALN provision on a collaborative basis with other local authorities/at consortium level

Where the audits and/or assessments of demand reveal gaps, local authorities are

expected to set out what action they propose to take to bridge them.

The WESP requirements establish a statutory framework within which local authorities can improve both the planning and delivery of the additional learning support for pupils in Welsh-medium education. As such they are entirely complementary to the objectives of the Draft Bill

**What are the impacts/ effects (both positive and/or adverse) on the Welsh language you have identified at the initial planning stage**

i.e. Welsh speakers, Welsh language communities, Welsh medium education, Welsh learners, services available in Welsh?

The Draft Bill will have a positive impact on learners with ALN in Welsh medium education. All those with ALN will have access to unified legislative framework from 0 to 25; an integrated, collaborative process of assessment, planning and monitoring which facilitates early, timely and effective interventions and a fair and transparent system for resolving concerns and appeals. The Draft Bill will have no identifiable, negative impacts on Welsh speakers, Welsh language communities, Welsh medium education, Welsh learners, or services available in Welsh.

**Who are the stakeholders? Are the needs of Welsh speakers and learners addressed? To what extent are Welsh language interest groups likely to respond positively to the proposals?**

The stakeholders are learners, parents, teachers, Special/Additional Educational Needs Co-ordinators, educational psychologists and health, social services and education providers, as well as third sector organisations assisting learners and their parents.

The learner will be placed at the heart of the system and this will benefit those who are educated in the medium of Welsh as well as those who are not.

The interests of Welsh speakers, and in particular those with ALN who are learning through the medium of Welsh, will be addressed in the Code. A draft version of the Code will be published in the Autumn. As the Code is refined it will be drawn up with full engagement from relevant stakeholders, including those who represent the interests of the Welsh medium sector and full consideration will be taken of their views. Whilst the text has not been finalised and agreed, the draft Code is likely to include the following key points:

- In their dealings with children, their parents and young people relevant bodies must fulfil their legislative duties. In the context of Additional Learning Needs (ALN) relevant bodies must ensure their services are delivered bilingually according to relevant Welsh Standards, which meets the needs and wishes of the pupil and the parent. Services must be organised to facilitate this, with services equal in terms of quality and coverage to Welsh and English speakers alike. Parity of language provision must be delivered in all services and relevant bodies must also ensure that they communicate with parents in the language of their choice.
- Welsh Language is supported by the Welsh Language (Wales) Measure 2011. The Measure restated the official status of Welsh in Wales, established the

principle that the Welsh language should be treated no less favourably than the English language, made provision for promoting and facilitating the use of Welsh, and makes provision about standards relating to the Welsh Language.

- Local authorities are required to outline the Welsh language aspects of provision for learners with Additional Learning Needs in their statutory, Welsh in Education Strategic Plans which are submitted to Welsh Ministers for approval.
- Local authorities must have regard to meeting the needs of children and young people, including those with ALN, in accordance with parental preference for Welsh medium or English medium educational and educational support provision. Parents who wish their children to receive their education through the medium of Welsh have the right to express that preference under the Education Act 1996. Local Authorities and Governing Bodies must have regard to that preference.
- In addition to the inclusion of these elements in the Code, the Welsh Government is currently engaged in separate work on workforce planning and capacity development in relation to the provision of educational services to children and young people with ALN/SEN. This includes Welsh language service provision. This work will help to support the implementation of the new system set out in the Draft Bill and ensure that its deliverability through the medium of Welsh is maximised. There is also separate work on the consideration of specialist teachers being able to provide specialist provision through the medium of Welsh.

**Where an assessment was not completed, or no impacts were identified, please provide a full account for record keeping purposes?**

(This could be used in the Welsh Language Tribunal in future)

An impact assessment has been fully completed.

**What actions/ further work has been identified at the initial planning stage?**

e.g. data requirements, need for peer review, external engagement with Welsh speaking groups, identify stakeholders or consultation list, need to contact Welsh Language Unit for advice)?

The publication of the draft Bill and draft Code will provide stakeholders an opportunity to comment on the likely impact on our proposals on the Welsh language.

## **STAGE 2: IDENTIFYING AND ASSESSING IMPACTS**

### **Impact Assessment Summary**

**Summarise the detailed impact assessment carried out together with the scores assigned.**

#### **Positive effects/ impacts:**

The legislative proposals will have a positive impact on learners with ALN studying through the medium of Welsh as it will ensure more timely and effective access to interventions that are planned with the learner and parent/carer at the centre.

#### **Adverse effects/ impacts:**

The legislative proposals will have no adverse impact on learners with ALN who are

studying through the medium of Welsh.	
<b>Opportunities to promote the Welsh language e.g. status, use of Welsh language services, use of Welsh in everyday life, Welsh at work increased?</b>	
The Code has the potential to help foster the availability of Welsh language services for learners with ALN	
<b>Evidence/ data used including demographic profile when considering the effects/ impacts:</b>	
Evidence used:	
<p>'Acknowledging need' Report by Bangor University, commissioned by the Welsh Language Board into Welsh medium and bilingual special educational needs.</p> <ul style="list-style-type: none"> <li>• Statistics on the number of learners with ALN studying through the medium of Welsh were used to determine the potential impact.</li> <li>• Statistics on the number of Welsh Language teachers in mainstream education, early years education and further education</li> <li>• Statistics on the number of SEN Co-ordinators in Welsh Medium education</li> </ul> <p>The Welsh Government's Action plan in response to the Welsh Language Board's 'Survey of Welsh Medium and Bilingual Provision for Pupils with Special Educational Needs in Wales'. This Action Plan was produced in 2006.</p> <p>The proportion of learners with SEN learning through the medium of Welsh is slightly lower than the proportion of learners with SEN studying through the medium of English.</p>	
<b>What is the overall anticipated likely impact on the Welsh language if this policy is taken forward based on the impact assessment/ risk assessment?</b>	Positive: <input checked="" type="checkbox"/> Adverse: <input type="checkbox"/> Neutral: <input type="checkbox"/> Unknown: <input type="checkbox"/>
<b>Decision following IA</b>	1. No major change <input checked="" type="checkbox"/> 2. Adjust the policy to improve impacts <input type="checkbox"/> 3. Continue the policy with mitigation measures <input type="checkbox"/> 4. Stop and remove the policy <input type="checkbox"/>
<b>If answered 2,3, or 4 above – then answer the following: How will you address these impacts in order to improve the outcomes for the Welsh language? Details of mitigation measures/ action points/ alternative options to reduce adverse impacts and increase positive outcomes:</b>	
<b>If engaging or consulting, what are your plans? What questions do you wish to ask stakeholders about the Welsh Language Impact Assessment and Welsh language related issues?</b>	
This impact assessment will be published alongside a draft version of the Bill. A draft version of the Code will be published in autumn.	

**STAGE 3: POST CONSULTATION AND PREPARING FOR PUBLICATION, MONITORING AND EVALUATION**

**Following consultation, what changes have you made to address any Welsh language issues that were raised?**

All of the responses to previous consultations were taken into account in the development of the Draft Bill. Any feedback on the draft Bill, draft Code and accompanying documents will be considered and will be used to inform policy development.

**How will you monitor the ongoing effects during the implementation of the policy?**

Detailed planning of implementation will be refined during policy development, this will include monitoring the ongoing effects during the implementation of the policy, including the impact on the Welsh Language.

**Please outline how you will continue to capture effects/ impacts in future monitoring and evaluation?**

As the policy is developed there will be further consideration on the impact of the Welsh Language. This will include a formal Impact Assessment being used to capture the possible effects/impacts of the policy in due course.

**Any other comments – ongoing results of evaluations, emerging impacts**

**4. Declaration**

**Policy lead:**

**The policy does have an impact upon the Welsh language. Where there were identified adverse impacts or missed opportunities, the appropriate amendments and actions have been put in place.**

Department:

Additional Learning Needs Legislation Branch, Department for Education and Skills

Date (s):

Last reviewed June 2015

Planned Review Dates:

March 2016

**SRO ENDORSEMENT and REVIEW**

I am satisfied that the WLIA is an accurate reflection of the programme/project at this stage of development. By signing, I am able to confirm that the Welsh Language Standards have been given the appropriate attention. I will re-assess the programme/project at key stages throughout the life of the programme/ project, including policy reviews.

Signed Senior Responsible Owner

Date June 2015

Signed  
(Senior Responsible Owner)

Review Date

Signed  
(Senior Responsible Owner)

Review Date

Signed  
(Senior Responsible Owner)

Review Date