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Consultation Document

Forward in partnership for children and young people with additional needs

Proposals for reform of the legislative framework for
special educational needs

Date of issue: **26 June 2012**

Action required: Responses by **19 October 2012**

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Forward in partnership for children and young people with additional needs

- Overview** This consultation document seeks views on the proposals contained herein to reform the legislation surrounding the special educational needs (SEN) framework.
- How to respond** Response forms should be e-mailed/posted to the address below to arrive by **19 October 2012** at the latest. Please insert your principal interest in this consultation in the subject line of your e-mail (i.e. Health, Social Services, Education) when you respond.
- Further information and related documents** Large print, Braille and alternative language versions of this document are available on request.
- The consultation documents can be accessed from the Welsh Government's website at www.wales.gov.uk/consultations
- The *Special Educational Needs: Code of Practice for Wales* can be accessed from our website at www.wales.gov.uk/topics/educationandskills/publications/guidance/specialedneedscof/?lang=en
- Both *Programme of Action Research to Inform the Evaluation of the Additional Learning Needs Pilot: summary interim report on the costs of the statutory reform of special educational needs provision* and *Programme of Action Research to Inform the Evaluation of the Additional Learning Needs Pilot Developmental Phase: summary final report* can be accessed from our website at www.wales.gov.uk/about/aboutresearch/social/latestresearch/?lang=en
- Contact details** For further information:
Additional Needs Branch
Support for Learners Division
Department for Education and Skills
Welsh Government
Cathays Park
Cardiff
CF10 3NQ
- e-mail: SENReforms@wales.gsi.gov.uk
Tel: 029 2082 6044
Fax: 029 2080 1044

Data protection

How the views and information you give us will be used

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

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Ministerial foreword

The legislation surrounding the special educational needs (SEN) framework is over 30 years old and there is plenty of evidence across Wales to prove it needs reforming.

In 2007, the then Welsh Assembly Government indicated its intention to bring forward legislation in this area following the review by the former Education, Lifelong Learning and Skills (ELLS) Committee. There was a consensus that the existing system was too bureaucratic and not sufficiently child-centred or user-friendly.

However, while the current system has shortcomings, there is also good practice and we want to build on this with evolutionary rather than revolutionary change. We are also conscious the financial climate has changed radically since the beginning of this exercise.

A preliminary consultation was conducted in 2007 following the Committee review, following which a number of pilots were set up to develop new systems and approaches to shape new policy and legislation.

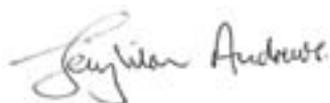
The development phase of the pilots is now complete and we are ready to share our proposals more widely. We are moving away from an approach where the education service is in the lead to one of full partnership between education, health and social services. The voluntary sector also has a key role to play, such as the work SNAP Cymru has done in supporting parents/carers taking part in the pilots.

We propose to underpin this multi-agency working with person-centred planning for the individual. This will be based on integrated assessment and the individual plan will either replace or integrate all the existing individual plans relating to children and young people, simplifying procedures for families and professionals alike. As befits a twenty-first century solution, we envisage the plan will be web-based.

It is important the proposals in this document are not viewed in isolation. They are closely linked on the one hand to the school improvement agenda and on the other to the proposals being brought forward in the Social Services (Wales) Bill. If the multi-agency approach outlined is to yield its full benefits then local authorities and their partners will need to work together, in consortia, to provide services close to the homes of children and young people rather than distant and often expensive placements.

The changes are part of our Programme for Government and support its strong emphasis on delivery. We believe they will bring about a reduction in duplication of plans, improved sharing of relevant information, earlier intervention, better information and dispute resolution for parents/carers, clear quality-assurance measures and, most importantly, improved outcomes for the child or young person themselves. The overall impact of these reforms will be to make our system in Wales more inclusive and improve outcomes for our most vulnerable children and young people.

We welcome your views.



Leighton Andrews AM
Minister for Education and Skills



Lesley Griffiths AM
Minister for Health and
Social Services

Executive summary

1. The following summary of each section of this pre-legislative consultation document should enable you to gain a quick insight to the changes proposed.

Proposed reforms

2. We propose that new legislation will:

- give a statutory footing to the concept of additional needs (AN);
- replace SEN statements with new integrated Individual Development Plans (IDP) for children and young people;
- set out how integrated plans will cover those aged 0–25 years who fall within different categories of need;
- set out the duties to be imposed on relevant bodies (such as local authorities and the NHS);
- set out the resolution process for any disputes;
- impose a duty on the Welsh Ministers to issue a code of practice in relation to the new statutory framework for AN; and
- impose a duty on relevant bodies to collaborate in respect of AN provision.

3. We intend to replace the framework for the assessment and planning of provision for children and young people with SEN with a simpler more person-centred system. The changes build on existing good practice, and will be introduced on a phased basis.

AN rather than SEN

4. While the existing system has many strengths, we now propose a more modern approach to multi-agency working to the benefit of the child or young person, which will support them in the journey through education and their life choices.

5. The document *Inclusion and Pupil Support* National Assembly for Wales Circular No: 47/2006 referred to the concept of additional learning needs (ALN) and listed categories of children and young people who might be considered to have ALN. The way in which the proposed legislative framework will affect children and young people in these groups, and others, will depend on their individual assessed

need. Some, such as those who are more able or talented, will need no more than good differentiated teaching. Others, such as some of those currently designated as having SEN, will have needs that will entitle them to protection of their agreed provision from health, education and social services.

6. We intend to move away from education services being perceived as in the lead, to one of full partnership between education, health and social services. This will be reflected in a change of terminology to refer to children and young people with “additional needs”, in view of the fact that these needs might be met by social services or the health service as well as education.

Integrated planning

7. We are determined that children, young people and their parents/carers should no longer have to tell their stories to a multitude of agencies and professionals. We therefore propose to replace the existing framework with integrated assessment and planning for those with the greatest needs. This should make the system more streamlined, to the benefit of the learner, their parent/ carer, and the agencies involved.

8. Following assessment, an IDP will be produced, which will be based on a person-centred planning approach. It will reflect the needs of the child/young person; set out who in the various agencies are involved in the plan; and identify which agencies are to deliver the input required to meet needs. Crucially, it will be the one plan that replaces or integrates all of the other individual plans to which children and young people might be subject.

9. We are currently piloting a web-based tool for the IDP, to which other plans can be attached if necessary, or even replaced altogether. This will remove duplication and should reduce the number of different meetings which a range of professionals have to attend. The IDP will be a living document that can be updated frequently and easily. Importantly, the child or young person, and their parents/carers, will be able to contribute to it themselves.

10. The web-based IDP would, of course, require certain levels of security to ensure confidential information is not shared and development work is ongoing to ensure it will have the necessary safeguards. Data protection law and parental agreement will be

adhered to but this innovative approach offers the real prospect to the individual child or young person to feel the plan is about their needs and not those of their parents/carers. It will also avoid unnecessary delays in conveying information to all parties involved in the process.

Multi-agency working

11. For children with the highest levels of need, which currently justify a statement of SEN, we shall require multi-agency panels, called Support Panels, to assess and agree the package of services that will be provided from education, social and health services. The outcome of the agreed package will be recorded in the IDP. Membership of the Support Panel is likely to vary according to the magnitude of the services to be provided, but the key is that those present should have the authority to commit their organisations.

12. The group of children with severe and/or complex needs is likely to have a large overlap with those currently dealt with under arrangements for continuing care and/or children in need and those receiving Integrated Family Support Services (IFSS). The intention is to work towards an integrated approach to the assessment of need to be used in this context. The approach will build on the new arrangements to be introduced under the Social Services (Wales) Bill. Existing teams around the family will need to link in with the IDP process, to ensure integration of effort.

13. In order to benefit from multi-agency working, local authorities and their partners will need to work in regional consortia. This could take the form of a joint strategic planning and commissioning process to ensure the provision of an appropriate range of community-based services to meet the needs of children and young people with severe and/or complex needs and associated joint funding arrangements. A consortium-wide Support Panel, consisting of budget holders from each agency, would allocate flexible funding responses to meet the needs of identified children and young people, either on the basis of a supported placement in the consortium area or a specialist placement in, or out of, the consortium area.

Extended age range

14. The multi-agency arrangements set out above will extend from birth to the twenty-fifth birthday for those with severe and/or complex needs in respect of services from the local authority, the NHS or specialist further education (FE). We intend that legislation should allow for widening of this category of entitlement as resources allow.

15. The Early Support model, using the IDP, should in future be adopted by all agencies for children identified in these ways. The Early Support Programme is a Welsh Government-funded programme to improve the delivery of services to disabled children under the age of five and their families. The Early Support model is a family-focused approach to ensure joined-up practice between agencies at a local level.

16. At the other end of the age range, the extension of the IDP to those aged 19–25 will offer the prospect of improved transition arrangements into further or higher education, work-based learning and/or adult services. The current arrangements for the transition to adulthood of young people with the greatest needs are often disjointed and ineffective and many vulnerable young people are consequently left without adequate support. This undermines the benefits gained through specialised education, health and social care support during their childhood.

Dealing with concerns and disagreements

17. These reforms are intended to shift the emphasis away from dealing with disputes and complaints towards a strategy of prevention and early resolution of concerns and disagreements.

18. The intention is to include parents/carers throughout the process; to replace the current statutory systems of time limits and appeals with a simpler system of dealing with disagreements and complaints; to introduce a dispute resolution and mediation process with a general responsibility on all agencies and organisations to collaborate in reaching the final decision.

Appeal to Tribunal

19. We propose that there should be a continued right of appeal to Tribunal, but with the requirement to go through a dispute resolution process in the first instance. To ensure the process is not a barrier to progression of an appeal, a maximum of four weeks is proposed to resolve disagreements, which would require all parties to formally agree to the outcome before it became binding.

20. We intend to explore the possibility of broadening the remit of the present Special Educational Needs Tribunal for Wales (SENTW) to include health and social care, subject to appropriate safeguards for issues of clinical judgement of need. The right of the child or young person to make their own appeal, currently under trial in two authorities, will be carried forward into the new legislation.

Family Partnership Services

21. We propose to reconstitute current arrangements in relation to Parent Partnership Services by extending them to children and young people with AN and their parents/carers. Again the purpose of this is to shift the emphasis towards prevention of disagreement and disputes.

22. In cases where, in spite of good-quality information and support, there are unresolved disagreements, then we want to ensure a quick resolution of the concerns of a young person and their parents/carers.

Quality assurance

23. We propose that a duty is imposed on the Welsh Ministers to produce the AN Code of Practice and for procedures to be put in place to ensure that each relevant body is appropriately following the new Code. We intend to significantly improve the quality-assurance processes relating to children and young people with AN by introducing a provision-mapping system which tracks outcomes for the learners; resources allocated to meet their assessed needs; feedback from the learner and their parent/carers; and performance indicators.

Post-16 specialist placements

24. We propose that local authorities should be responsible for assessing the need for, securing and funding specialist further education provision, including residential accommodation, for learners with learning difficulties and/or disabilities. This should smooth the path of transition, enable better coordination with social services' support in particular, and encourage the provision of local packages of support.

1. Proposed reforms

What is the current position?

1.1 The current statutory framework relating to the education of children and young people of school age with SEN is set out in the Education Act 1996. This in turn is based upon legislation originally enacted in 1981, implementing many of the recommendations of the Warnock Report (1978). The *Special Educational Needs Code of Practice for Wales* (2002) provides guidance on the application of this legislation. The role of social services is set out primarily in the Children Act 1989.

1.2 The current legislation is informed by the following essential key principles.

- 'Whatever the origin, nature and seriousness of their handicaps and disabilities, disabled people have the same fundamental rights as their fellow citizens of the same age.' (The United Nations, 1975 Declaration on the Rights of Disabled Persons.)
- 'The purpose of education for all children is the same; the goals are the same but the help that individual children need in progressing towards them will be different.' (Warnock Report, 1978.)
- 'All schools should recognise and respond to the diverse needs of their students while also having a continuum of support and services to match those needs.' (The UNESCO Salamanca Statement, 1994.)
- 'Regular schools with this inclusive orientation are the most effective means of combating discriminatory attitudes, creating welcoming communities, building an inclusive society and achieving education for all; moreover, they provide an effective education to the majority of children and improve the efficiency and ultimately the cost-effectiveness of the entire education system.' (The UNESCO Salamanca Statement, 1994.)

1.3 Key legislation post-16 is the Learning and Skills Act 2000, which addresses the planning and funding of post-16 education and training. For the whole age group, the Equality Act 2010 addresses discrimination on grounds of disability.

Why are we proposing changes?

1.4 In 2007, the then Welsh Assembly Government set out its commitment to legislate in relation to ALN. The planned reform followed the three-part review of SEN undertaken by the former Education, Lifelong Learning and Skills (ELLS) Committee:

- i) Early Identification and Intervention, November 2004
- ii) Statutory Assessment Framework (Statementing), May 2006
- iii) Transitions, March 2007.

Work was also informed by reports from the Audit Commission (*Special educational needs: A mainstream issue*, 2002) and *Support for Children with Special Educational Needs: An Estyn Overview* (Estyn, 2003) which, in relation to the statutory framework, concluded that the current system of 'statementing' was:

- an inefficient process that was too complex, bureaucratic and costly; and
- insufficiently child-centred or user-friendly.

1.5 The existing statutory framework is based upon legislation that is over 30 years old and, while subsequent amendments and improvements have been made, there have been a number of other important legislative and policy developments in recent years. It is now time to reframe the legislation to reflect these changes, while affirming the principles underpinning the current arrangements. We propose to reform the framework, beginning with a Bill, to produce a system that is simpler, less adversarial, more reassuring for parents/carers and based on effective multi-agency working.

1.6 There has been a commitment to secure a consensus through continued engagement with all key stakeholders, including parents/carers, young people, professionals and the third sector before any changes are implemented. A wide-ranging preliminary consultation was conducted in 2007, following the Committee review. After that preliminary consultation a number of pilots were set up to develop new systems and approaches to shape new policy and legislation. These included:

- four statutory reform pilot schemes involving eight local authorities;
- a transition key working pilot scheme involving seven local authorities;

- the development of the Early Support Programme throughout Wales; and
- the right of appeal for the child pilot scheme involving two local authorities.

Principles

1.7 Our work for children and young people is based on the United Nations Convention on the Rights of the Child (UNCRC), which is now incorporated in the Rights of Children and Young Persons (Wales) Measure 2011. That Measure strengthened the existing rights-based approach of the Welsh Government.

1.8 In order to exercise and benefit from these rights, children and young people with AN should:

- be able to make good progress towards achieving their potential and an independent life;
- have assessments and planning of provision based upon an holistic view of individual needs;
- have individual learning, health or social care needs identified and assessed early and appropriate provision made promptly;
- have their ethnic and cultural backgrounds taken into account in the identification and assessment of their needs; and
- in the case of those looked after by local authorities, benefit from effective corporate parenting.

1.9 Overall this reform agenda is consistent with the duties in relation to Welsh Ministers promoting knowledge and understanding of the UNCRC in line with the Rights of Children and Young Persons (Wales) Measure 2011 (Section 5) giving balanced consideration to the rights in the UNCRC when formulating or reviewing policy and legislation. A young person's version of the consultation document is available.

What improvements will we make?

1.10 The Welsh Government is committed to developing an inclusive system and to tackling inequality and barriers to inclusion, participation and achievement. There is a need to ensure that this is effectively reflected in an improved statutory framework fit for the twenty-first century. Our reforms aim to achieve this by ensuring that:

- children with AN can participate much more actively in helping to shape and review their own individual plans;
- there is a much simpler, more accessible and flexible individual planning process for parents/carers and professionals to use;
- there is better partnership working between agencies to reduce the number of planning meetings for parents/carers and professionals to attend and to ensure better coordination of services for the child and family;
- there is a fairer and more transparent system for resolving disagreements and appeals;
- unnecessary bureaucracy is removed; and
- there is a much smoother transition between phases of a child or young person's life, such as between primary and secondary school, from secondary school to further education or the world of work, and from children's to adults' services.

1.11 The existing system, in which Welsh Ministers secure and fund specialist further education provision for those aged 16–25, including residential accommodation, for young people whose needs cannot be provided without it, is also unnecessarily complicated. A system which clearly locates responsibility for securing and funding specialist provision, including residential accommodation, with the local authority would enable authorities to make the connections between education and social services departments that are needed for effective transition to further education. Such a system would also encourage authorities and colleges to work together to facilitate more, improved local provision relevant to the individual needs of young people with severe and/or complex needs.

What specific changes are we proposing?

1.12 Some of the changes we propose will require new legislation but others will not. Part IV of the Education Act 1996 currently sets out the statutory framework for those with SEN. We propose to replace Part IV with new legislation. We propose that new legislation will:

- give a statutory footing to the concept of AN;
- replace SEN statements with new integrated IDPs for children and young people;

- set out how integrated plans will cover those aged 0–25 years who fall within different categories of need;
- set out the duties to be imposed on relevant bodies (such as local authorities);
- set out the resolution process for any disputes;
- impose a duty on the Welsh Ministers to issue a code of practice in relation to the new statutory framework for AN; and
- impose a duty on relevant bodies to collaborate in respect of AN provision.

1.13 We intend to replace the framework for the assessment and planning of provision for children and young people with SEN with a simpler more person-centred system. The changes are evolutionary rather than revolutionary, building on existing good practice, and will be introduced on a phased basis.

1.14 This consultation paper provides further detail about those legislative proposals. It also provides contextual information about our proposals which do not require legislation.

Costs and impact assessments

1.15 Many of these changes are expected to be either cost neutral or generate net cost savings: they will require local partners to reallocate existing resources to meet new needs and should enable them to reallocate resources from less to more cost-effective provision. Training in the new systems will be required and there will be other start-up costs. The Welsh Government will be providing funds for implementation.

1.16 Formal impact assessments will be produced and published as our proposals are refined in the light of the outcome of this consultation exercise.

2. AN rather than SEN

2.1 The current definition of SEN emanates from the 1978 Warnock Report, which recommended an approach to defining children with SEN to replace 'categories' of children with handicaps. Subsequently, the guidance *Inclusion and Pupil Support* introduced the term 'additional learning needs' (ALN) to cover those learners whose needs are greater than the majority of their peers. That guidance suggests that children and young people in the following groups may have ALN:

- children of families in difficult circumstances;
- pupils with SEN;
- pupils with a disability;
- pupils learning English as an additional language (EAL);
- asylum-seeking/refugee children;
- Gypsies and Travellers;
- children of migrant workers;
- more able and talented pupils;
- children looked after by the local authority;
- pupils with medical needs;
- young parents and pregnant young women;
- young people who offend;
- young carers;
- lesbian, gay, bisexual and transgender pupils;
- school refusers and school phobics;
- pupils who perform or who have employment.

2.2 This list is not intended to be exhaustive as there are many circumstances in which children and young people may have ALN, which may be either short or long term. The way in which the proposed legislative framework will affect children and young people in these groups, and others, will depend on their individual assessed need. Some, such as those who are more able or talented, will have their needs met through appropriate differentiated teaching. Others, such as some of those currently designated as having SEN, will have significant needs that will entitle them to protection of their agreed provision from health, education and social services.

2.3 The proposals represent a major step forward in that, for the first time, they involve health and social services as equal partners alongside education services. To reflect this, we are now proposing a description of AN. We are proposing that a child or young person would be deemed to have an additional need if they have a greater difficulty than the majority of persons of the same age, which can encompass significant problems due to their:

- physical or sensory needs;
- communication needs;
- ability to learn; or
- social and emotional development.

2.4 We recognise that all children have individual needs but that some children will require more help and support to achieve and develop towards their potential. We also recognise that there is a wide spectrum of individual need, ranging from children and young people whose needs can and should be met by 'universal services' to those with severe and/or complex needs who require an integrated multi-agency response. This spectrum of need requires a continuum of provision as illustrated by the 'rainbow' diagram provided in paragraph 3.5 (page 20).

2.5 Children and young people can, of course, move between the different levels of need illustrated in the sectors of the diagram. They can also have different levels of need for different aspects of their lives. Effective schools provide appropriately for a greater proportion of children's and young people's individual needs through good classroom practice – within the Universal Services segment of the rainbow model. We envisage that through these reforms we will achieve greater consistency of effective practice across Wales leading, over time, to a smaller proportion of children and young people being regarded as having AN.

2.6 It is recognised that **all children and young people** have individual needs and that for the vast majority these needs should be met routinely by **universal services**. In the classroom, good-quality teaching will ensure a range of teaching approaches are deployed to meet the diverse range of pupils' needs.

2.7 Children and young people who continue to fail to make progress or who experience problems accessing the curriculum due to their **identified and assessed needs**, will need to have a more individualised approach but their needs should be met by the school or other provider.

2.8 A small number of children and young people with more **significant needs** who require the input of specialist services (e.g. a teacher of the sensory impaired or a speech and language specialist) or who need an alternative placement (e.g. in a special school) will need the additional support of the local authority and/or local health board to provide appropriately for their needs. This is the group of young people who may currently have a statement of SEN.

2.9 The very small proportion of children and young people with **severe and/or complex** needs and their families require a **multi-agency approach** to meeting their needs.

3. Integrated planning

3.1 We propose to replace the system of framework of provision for SEN with a process of integrated assessment and planning, for children and young people (aged 0–25 inclusive) identified as having AN, such that they need support that is additional to or different from that provided as part of universal service provision or a normal school curriculum. We intend that the format of the IDP will be standardised across Wales.

3.2 It is proposed that the IDP will be developed from a flexible person-centred approach, an overview of a child or young person's needs and the actions that have been agreed to address them. It will be:

- the plan that either replaces or integrates other individual planning and review processes for all needs (e.g. the Continuing Care process for assessing and providing services for children and young people with severe and/or complex needs, the 'Children in Need Plan', the 'Individual Education Plan (IEP)', the 'Individual Behaviour Plan (IBP)', the 'Personal Education Plan (PEP)');
- developed and used by education, health and social care agencies;
- easy to use and administer; and
- used to actively promote the engagement and participation of the child, young person and their parents/carers.

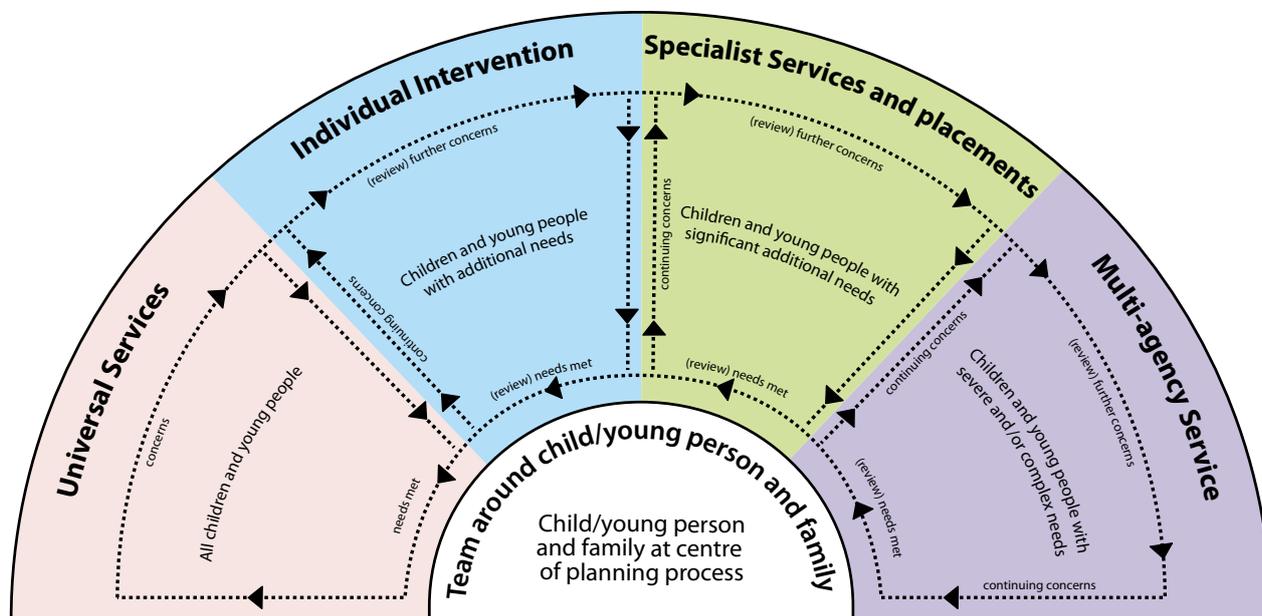
3.3 The IDP will be regularly reviewed and updated to ensure it remains central to all planning processes relating to the child or young person, including those who are in need and have a care and support plan for social care services¹. We propose that the IDPs will include:

- basic information, such as biographical information about the child or young person, contact details and information about those working with them;
- contributions from children and young people, parents/carers and professionals about 'what is important to' and 'what is important for' – how best to support the child/young person now and in the future and what is working well and what is not working so well for them;
- an action plan (to be reviewed at least six monthly) outlining how the child's/young person's needs will be met, by whom and by when and how this will be reviewed in the future.

¹ See consultation on the Social Service's (Wales) Bill – Section 2.4 – Management and review of care plans.

3.4 It is proposed that the age range of the IDP will extend from birth to the twenty-fifth birthday for those with severe and/or complex needs. One of the key principles is that those children and young people who would currently have a statement of SEN would continue to have a right to an integrated IDP, which could be the subject of an appeal to the SENTW. While there will be a single format for the plan, this document uses the phrase 'entitlement protection' to describe those IDPs that will have the same legal protection as a statement. The proposed application in terms of age range and levels of need (referring to the 'rainbow' diagram on the following page) is as follows:

- 0–18 child or young person diagnosed with **severe and/or complex** needs to have an IDP with entitlement protection, which would involve the budget holders from health, social services and education, as appropriate, agreeing in a multi-agency Support Panel to provide the component parts of the provision;
- 2–18 children and young people with **significant needs** to have an IDP with entitlement protection, with the package of support agreed by the Support Panel;
- 2–18 children and young people with **AN** to have an IDP covered by the code of practice;
- 2–18 children and young people in receipt of **universal services** to have an IDP as a matter of good practice in relation to short-term educational interventions;
- 19–25 young adults who have **severe and/or complex** needs such that specialist FE placements are being considered or provided, to have an IDP with entitlement protection, which would involve the budget holders from health, social services and education, as appropriate, agreeing in a multi-agency Support Panel to provide the component parts of the provision. Currently these placements are funded by the Welsh Government, with joint funding negotiated with health and social services where appropriate, and are running at the rate of about 130 a year;
- 19–25 young adults with **other levels of need** to have a plan as a matter of good practice to aid their transition to further or higher education, the world of work or adult social services.



3.5 In order to ensure consistency, we shall issue national guidance on the levels of need that fall within each category and in relation to the entitlement protection. The rainbow diagram below is a visual illustration of how such a system could work in practice.

3.6 We propose that the IDP process will be coordinated by the **Support Coordinator**. The **Support Coordinator** will normally be the person who is most involved in coordinating services for the child or young person. Guidance will be issued on the roles and responsibilities of the Support Coordinator. They will pull together the relevant material and arrange discussions involving the child or young person, their parents/carers and all the professionals working with them or involved in meeting the child's or young person's needs.

3.7 The date for a review of the IDP will be agreed as part of the action plan and will be within a maximum of six months, but can be more frequent if the need arises. There will be a requirement for a review prior to any key changes in the child's or young person's life (e.g. prior to transfer from primary to secondary school). If the assessed and agreed needs of the child or young person are met and they no longer require the assessed intervention due to satisfactory progress, the review will identify that also. Should another intervention be required further along the child's or young person's education/life journey that information should be easily recalled

through the proposed web-based planning (see below). This will ensure that the onus is not on the learner or the parents/carers to provide the information and will enable any future additional assessment to be carried out in a much timelier manner than at present.

3.8 We believe that our proposed IDP process will lead to significant improvements in all aspects of the planning process and to effective partnership working between agencies and between parents/carers and those agencies. We believe that, together, these changes will facilitate improved learner outcomes and increased trust and confidence of parents/carers.

3.9 The proposed IDP process uses **person-centred** methodology, which is similar to current best practice in individual planning and is widely used in relation to transition planning. The key aspects of a person-centred approach are:

- it considers the 'whole person' and not just their diagnosis or what they cannot do; it considers all aspects of their lives;
- children and their parent/carers are partners in the planning process;
- it identifies issues and what action is needed to address them, by whom and by when;
- planning and review are active processes, involving all key people;
- it is based upon the following key questions:
 - what is important **to** the child or young person? (For example, it may be important that they have something with them that provides them comfort – a favourite pencil case or activity);
 - what is important **for** the child or young person? (For example, it may be important for them to be reminded to wear their hearing aid in class – things that will keep the child or young person safe and healthy such as medication would be included here);
 - what is working well? (For example, this may include a particular intervention, a particular relationship or simply the timing of the intervention);
 - what is not working? (For example, what is hampering progress?);
 - what are the child's or young person's strengths? (For example, it is important to be aware of individuals' strengths and to build on them to ensure, via differentiated learning perhaps, that these are utilised to best effect;

- what challenges does the child or young person face?
(This may be a challenge with regards to, for example, a parent/carer being hospitalised, and the child being unable to get to school on time. The challenges are not ‘within the child’ but are due to circumstances around the child.)

3.10 The proposed format of the IDP means that it will be used as a mechanism to integrate or replace other plans. The unified approach to assessment and planning should bring considerable simplification to parents/carers, children and young people, and professionals alike.

3.11 The plan will belong to the child or young person and the responsibility for support coordination will change according to the context in which the child’s or young person’s AN are supported. The support coordinator will be the person best placed to undertake the role for a particular child, although local authorities will have the overall responsibility of ensuring that a plan is in place where appropriate. Where a child or young person ceases to have an AN the IDP will remain archived in case it needs to be reactivated at a later stage.

3.12 Over the last two years a user-friendly and secure web-based tool has been developed and continues to be tested. The key principle is that it can be accessed by the young person, parents/carers and key professionals at any time, subject to strict confidentiality procedures. Subject to further development, and adherence to data protection and obtaining the parent’s/carer’s or young person’s approval, it is intended that this will facilitate a simple, open and genuinely person-centred process and provide immediate access to all those involved, thereby promoting better communication. Trials have demonstrated that it is more efficient and effective than a paper-based IDP because it enables:

- the IDP to be linked to existing databases, such as SIMS (school information management system), so that information can be directly uploaded (and therefore not retyped);
- information to be shared more easily and swiftly (once permissions have been given by involved parties); and
- plans to be written, seen, discussed and agreed in ‘real time’ during planning meetings.

3.13 Nevertheless, where required, it will be possible for contributions to be made to the IDP on paper and for a paper copy to be made.

3.14 We are confident the proposed IDP process will lead to significant improvements in all aspects of planning and to effective partnership working between agencies and between parents/carers and those agencies. Taken together, these changes will facilitate improved outcomes and increased trust and confidence of parents/carers by having a single comprehensive plan.

4. Multi-agency working

4.1 We recognise that there is a group of children and young people who have **significant or severe and/or complex needs** (broadly equivalent to those who currently receive a statement of SEN), for whom it is important to preserve a legal entitlement to an integrated plan developed and resourced by the statutory agencies.

4.2 For children and young people with **significant** AN, local authorities should establish a Support Panel to agree specialist service provision and any placement (e.g. a special school). Specialist service provision will include services provided by health, education and social care agencies and third sector organisations, such as services for the visually impaired and those with speech and language difficulties. The NHS should cooperate with local authorities on these Support Panels; it is for consideration whether this should be a statutory requirement. This will not involve a significant additional commitment by the Health Service since similar arrangements already exist in most areas. It is envisaged that attendance will involve personnel who are responsible for the deployment of specialist services.

4.3 Children and young people with **severe and/or complex** needs, aged 0–25 should also have their needs considered by multi-agency Support Panels. Children and young people will be deemed to have severe and/or complex needs if they require intensive and/or specialist interventions in relation to their health needs, their disabilities or their social and emotional needs, and require more than one service to provide for their needs. It may be that the representation on the Support Panels will be more senior when these children and young people are discussed as the commitment of resources will generally be higher. The people who attend should be sufficiently senior to commit their organisations. These joint arrangements will replace rather than add to existing SEN panels for 0–18; while joint working exists for 19 to 25-year-olds it is generally not so formalised. The use of pooled budgets between the NHS and the local authorities will help to maximise their effectiveness.

4.4 The group of children with severe and/or complex needs is likely to have a large overlap with those currently dealt with under arrangements for Continuing Care and/or Children in Need and those receiving IFSS. The intention is to work towards an integrated approach to the assessment of need to be used in this context. The approach will build on the new arrangements to be introduced under the Social Services (Wales) Bill. Existing teams around the family will need to link in with the IDP process, to ensure integration of effort.

4.5 The aim of the multi-agency system for severe and/or complex needs will be to ensure that children and young people are provided with a seamless approach to meeting their individual needs, relating to all aspects of their lives, throughout the year and, wherever possible within their local community. We anticipate that, in order to maximise the benefit from these arrangements, there will increasingly be cooperation on a regional basis to provide for this group. This could take the following form:

- a joint strategic planning and commissioning process to ensure the provision of an appropriate range of community-based services to meet the needs of children and young people with severe and/or complex needs and associated joint funding arrangements;
- a consortium-wide Support Panel consisting of budget holders from each agency to allocate flexible and adaptive funding responses to meet the needs of identified children and young people, which could either fund a supported placement in the consortium area or a specialist placement in, or out of, the consortium area.

4.6 We intend to issue guidance on the criteria for those children and young people requiring support by these panels and on the range of services to be covered by them.

4.7 There is a marked lack of consistency across Wales in the proportion of children and young people who are subject to a statement of SEN. Almost all local authorities have panels that meet regularly to approve decisions to statutorily assess children or young people, issue statements of SEN, to allocate additional resources and decide about specialist education placements. The composition and remit of these panels and the criteria used to make these decisions, however, varies considerably. Where it is managed well, there is a transparency about procedures and decisions, which are taken in partnership with other agencies and parents/carers. However, too often there is a lack of transparency and inadequate partnership working.

4.8 The Audit Commission has estimated that approximately 0.5 per cent of children and young people are likely to have severe and/or complex needs requiring intensive support and intervention. Almost all of these are likely to be supported with a diverse network of services, which may include several child health services, education and social care services as well as services relating to play and leisure, housing and benefits, adult health and social care services and services supplied by voluntary sector organisations.

4.9 Progress towards effective multi-agency partnerships to provide for these most vulnerable of children and young people has been weak in most areas of Wales. Estyn has identified in a series of reports (2003, 2010 and 2011) significant areas for improvement in multi-agency working, including:

- poor communication and information sharing;
- under-developed planning and evaluation; and
- multi-disciplinary assessments, which are often completed in isolation from one another.

4.10 We believe there is now a need to make multi-agency working the standard approach in respect of those with the greatest needs and to ensure structures are established based upon existing good practice. This will involve decision making by the Support Panels referred to previously and a range of services being provided around the child or young person and their families. These proposals are consistent with the following existing policies.

- Families First, which is an innovation programme that promotes the development by local authorities of effective multi-agency systems and support, with a clear emphasis on prevention and early intervention for families, particularly those living in poverty.
- The *Children and Young People's Continuing Care Guidance* (2011) consultation, which establishes processes for assessing, deciding and agreeing bespoke packages of continuing care, provided by all agencies, for children and young people who have continuing care needs arising from disability, accident or illness that cannot be met by available universal and specialist services.
- IFSS, which are statutory services to provide targeted support through multi-agency teams of highly skilled professionals for children and their families who have complex and multiple needs, to a level where the State has decided to intervene because there is some risk or welfare concern for the child.
- Flying Start, which aims to identify early children with poor language, cognitive or social and emotional development, or problems with their physical health.

5. Extended age range

5.1 The multi-agency arrangements set out above will extend from birth to the twenty-fifth birthday for those with severe and/or complex needs in respect of services from the local authority, the NHS or specialist further education (FE).

5.2 Currently, the AN of pre-school children are most often identified by a paediatrician, a health visitor or social worker. Referrals are made to the Child Development Team, a multi-agency team, if the child has significant developmental delay. It is proposed that the Early Support Programme model using the IDP is in future adopted by all agencies for children identified in these ways.

5.3 Early Support is a Welsh Government-funded programme to improve the delivery of services to disabled children under five years of age and their families. The Early Support model is a family-focused approach to ensuring joined-up practice between agencies at a local level. A key worker is appointed from within the 'team around the child/family' to ensure effective coordination and facilitate parents'/carers' participation. A multi-agency Family Service Plan is developed with the parents/carers. Early Support Wales is now adopting the IDP to replace the Family Service Plan.

5.4 At the other end of the age range, the extension of the IDP to those aged 19–25 will offer the prospect of improved transition arrangements into further or higher education, work-based learning and/or adult services. The current arrangements for the transition to adulthood of young people with the greatest needs are often disjointed and ineffective and many vulnerable young people are consequently left without adequate support. This undermines the benefits gained through specialised education, health and social care support during their childhood. For those at this level of need, provision will often be made in specialist FE placements (funding for which is transferring to local authorities – see paragraph 10.1 on page 35). Young people with lower levels of need will also benefit in terms of the use of an IDP as good practice in transition planning. This will build on the good practice that already exists in some areas in person-centred transition planning.

6. Dealing with concerns and disagreements

6.1 Those with the levels of need defined as significant (or above) will continue to have their entitlement to services protected. Improving early dispute resolution should mean that fewer cases have to be taken to the Tribunal.

6.2 Parents/carers will be closely involved throughout the IDP process and will have online access to all information and professionals involved with their child/young person in a collaborative process. They will also be able to easily access support from the proposed updated local Family Partnership Services, which will build on the service already in existence in all local authorities. We believe that in the vast majority of cases this process will lead to a consensus on how to meet the AN for the child or young person concerned.

6.3 We also intend to replace the current statutory systems of time limits and appeals relating to 'statements of SEN' with a simpler system of dealing with disagreements and complaints and shorter timescales relating to the IDP processes for those with significant AN. This will incorporate the right of children and young people, currently being piloted, to make their own appeals.

6.4 We intend to shift the emphasis away from dealing with disputes and complaints towards a preventive strategy of mediation and early resolution of concerns and disagreements. We believe that this, combined with improved quality assurance, will lead to improved outcomes for children and young people, and bring about improved trust and confidence of parents/carers and associated cost reductions.

6.5 Parents/carers will be closely involved throughout the IDP process and will have online access to information and professionals involved with their child/young person in a collaborative process. They will also be able to easily access support from the local Family Partnership Service. We believe that in the vast majority of cases this process will lead to a consensus on how to meet the AN for the child or young person concerned.

6.6 If the child, young person or their parents/carers disagree with the IDP then we propose that they will be able to formally register their disagreement with the local authority. Where this occurs, we intend to establish a general responsibility on all agencies and organisations (including schools) to positively collaborate with each other and with the child or young person and their parents/carers to resolve the disagreement. We intend to issue revised guidance on mediation and resolution of disagreement.

7. Appeal to Tribunal

7.1 Currently, there can be appeals in relation to:

- a decision by a local authority not to assess a child or young person in relation to the statutory assessment framework where no statement is maintained;
- a decision by a local authority not to issue a statement of SEN, following an assessment.

7.2 Where a statement has been issued or changed, there may be an appeal against:

- the SENs identified in the statement;
- the special educational provision designed to meet those needs;
- a local authority's refusal to:
 - name a school;
 - carry out a further assessment of a statemented child where an assessment has not been carried out within the previous six months;
 - reassess needs where a new assessment has not taken place within the preceding six months;
 - change the school named in the statement, where the statement is at least one year old;
- a local authority's decision to no longer maintain a statement.

7.3 We propose that, where a child or young person aged 2 to 18 falls into the group with significant or severe and/or complex needs (equivalent to the group currently entitled to a statement of SEN), there should be a continued right of appeal to Tribunal, but with a requirement to go through a dispute-resolution process in the first instance. The right of appeal will be extended in respect of those aged 0–2 and 19–25 (in respect of specialist FE) with severe and/or complex needs. SEN appeals are currently made to SENTW. We propose that further work should be done to explore the possibility of the Tribunal expanding both its remit and membership to consider appeals concerning health and social services' contributions to IDPs in a way which will safeguard clinical judgement of need. In line with Welsh Government policy we also intend that a child or young person should also have the right to appeal and are presently trialling how this system could operate to ensure we capture their voice also.

7.4 Currently appeals may be referred to the SENTW without any disagreement-resolution process at local level. Around half of the cases referred to SENTW are withdrawn or settled without a hearing. We propose to require parents/carers to engage in a disagreement-resolution process prior to referral to the Tribunal, in line with current practice in relation to other public tribunals. To ensure that access to the Tribunal is not unreasonably blocked, we propose a maximum of four weeks to resolve disagreements. The disagreement-resolution process would not be binding unless all parties agreed that it should be.

7.5 For children and young people with less significant AN, who do not have an IDP with entitlement protection, redress for where the IDP process and/or agreed actions have not been implemented appropriately would be the responsibility of the relevant complaints process.

7.6 We also intend to replace the current statutory systems of time limits and appeals relating to 'statements of SEN' with a simpler system of dealing with disagreements and complaints and shorter timescales relating to the IDP processes for those with the greatest additional need.

7.7 In cases where local authorities concede IDP appeals, or the SENTW uphold the parents'/carers' IDP appeal, local authorities and the other agencies involved will be required to hold an internal review. The purpose of the review is to ascertain:

- why was their first decision incorrect?
- what could have been done differently to achieve a better result?
- if any mistakes are identified, how can they ensure that the same mistakes are not repeated?

The results of the review should be retained for future reference.

8. Family Partnership Services

8.1 We propose to reconstitute current arrangements relating to Parent Partnership Services by extending them to all children and young people with AN and their parents/carers ("Family Partnership Services"). Our intention is to shift the emphasis towards the prevention of disagreement and disputes by ensuring there is a consistent approach to establishing empathetic partnership working with parents/carers, children and young people, and Family Partnership Services and other related voluntary sector organisations. We intend to ensure much better access to information and improved support for parents/carers, young people and families as soon as a child's or young person's needs are identified. In cases where in spite of good quality information and support there are unresolved disagreements we want to ensure a quick resolution of the concerns of a young person and their parents/carers.

8.2 In practice, the size and scope of Parent Partnership Services vary considerably and there has been no effective quality assurance of this aspect of local authorities' work across Wales. Our intention is to ensure consistent high-quality multi-agency local authority Family Partnership Services, able to provide information and support for young people and their parents/carers.

8.3 The SEN Code of Practice sets out detailed minimum standards for effective disagreement-resolution services. In practice, some local authorities have failed to reduce the number of cases referred to the SENTW. Referrals to the disagreement services established have been very low since their inception. We intend to ensure that a range of informal and formal disagreement-resolution services are used and deployed earlier to prevent escalating, costly disputes.

8.4 The Code also sets out the roles and responsibilities of local authorities, schools and the voluntary sector. We intend to review these roles and responsibilities and develop a charter of rights, roles and responsibilities that will apply to young people, parents/carers, local authorities, other agencies, voluntary sector organisations, education providers and all professionals engaged in supporting children and young people with AN.

9. Quality assurance

9.1 We propose that the Welsh Ministers will have the duty to issue an AN Code of Practice. This will replace the existing *Special Educational Needs Code of Practice for Wales*. We also propose that procedures are put in place to ensure that each relevant body is appropriately following the new Code.

9.2 We want to strengthen the guidance that will replace the current SEN Code of Practice in Wales. It is proposed that local authorities, schools and other providers, including the NHS, should be given clearer and more extensive guidance to ensure appropriate provision is made for children and young people with AN. Specific guidance will be made in relation to:

- local authority's strategic planning role;
- quality assurance;
- the role and qualifications for school AN coordinators;
- inclusion of provision for AN in Local Service Board plans; and
- Provision Pathways that outline roles and responsibilities.

9.3 We intend to significantly improve the quality-assurance processes relating to children and young people with AN by introducing an AN Provision Mapping system, which tracks:

- the outcomes of all children and young people with AN;
- resources allocated to meet their needs;
- feedback from young people with AN and their parents/carers; and
- the performance of the school against key indicators.

9.4 It will also establish with school leaders agreed improvement plans to address areas for improvement, and report on the outcomes annually to both the relevant local authority scrutiny committee and to the Welsh Government.

9.5 We also intend to ensure that schools:

- maintain the AN quality-assurance system;
- include in the Governing Body's Annual Report to Parents the outcomes of their AN self-evaluation and related plans for improvement; and
- comply with the revised AN Code of Practice.

9.6 We propose to introduce training for school AN Coordinators (ANCo) in Wales. The course will be at Master's level and integral to the new professional development framework in Wales. In addition, AN are to form part of the Master's in Educational Practice. To further support staff development, support for AN is one of the purposes for which the School Effectiveness Grant/Pupil Development Grant can be used.

9.7 We will also provide more specific guidance on the key leadership and management roles and responsibilities that relate to the effective in-school coordination of AN provision and how the AN Coordinator role should fit within the wider leadership and management of schools.

9.8 We intend to develop Provision Pathways as elements of good practice that will clearly define roles, responsibilities and minimum standards for service provision relating to each level of need. We will propose a generic Provision Pathway that provides an outline of what all providers should aspire to and supplementary pathways relating to specific groups of children and young people with AN.

9.9 Provision Pathways will:

- cover all aspects of provision made at each level of need by respective agencies;
- promote inclusive approaches;
- contain a strong emphasis on prevention, early intervention;
- include measures relating to:
 - building the capacity of providers, including workforce development;
 - assisting with identification and screening;
 - assisting with assessment;
 - helping identify specialist provision and services;
 - providing benchmarks for measuring the quality of service delivery;
 - helping protect entitlement.

9.10 Our proposals will ensure that additional specialist resources to meet the AN of those children and young people with the greatest need are allocated fairly, with transparency, and consistently across Wales.

10. Post-16 specialist placements

10.1 We propose that local authorities should be responsible for assessing the need for, securing and funding specialist further education provision, including residential accommodation, for learners with learning difficulties and/or disabilities. Existing funding will be transferred from the Welsh Government to Revenue Support Grant to support them in this duty.

10.2 In November 2010 a Post-16 Additional Learning Needs Task and Finish Group made recommendations aimed at improving the system of transition from school to college. The group was representative of special and mainstream schools, local authorities, specialist and mainstream colleges, health boards, learners and voluntary organisations. The group's recommendations were accepted by the Minister for Education and Skills and included:

- local authorities should take over the responsibility for funding FE specialist placements and exceptional support for learners in mainstream colleges who would otherwise attend specialist establishments;
- local authorities should take on the responsibility for arranging the assessments of the education and training needs of young people with AN under Section 140 of the Learning and Skills Act 2000.

10.3 Since more complex needs often require specialist support provided on an out-of-county or out-of-country basis, the Welsh Government proposes to assess the potential for central provision in a small number of specialist centres across Wales, utilising funding from within the existing post-16 budget.

10.4 Welsh Ministers have a duty to secure facilities for post-16 education and training in accordance with the requirements of the Learning and Skills Act 2000, which includes securing boarding accommodation for young people with learning difficulties whose educational needs cannot be met without it. Assessments carried out under Section 140 of the Act and related funding decisions are currently informed, in practice, by evidence emerging from transition arrangements which are part of the existing statutory framework for SEN. Weaknesses in these transition arrangements, which are often disjointed and ineffective, serve to complicate the specialist placement funding process resulting in delayed decisions.

10.5 If local authorities were responsible for securing and funding specialist provision emerging from the process of transition from school to further education, there would be a greater incentive for them to make the connections between education and social services departments that are needed for effective transition to further education. Such a system would also encourage local authorities and colleges to work together to secure support and improve local provision relevant to the individual needs of young people with complex learning difficulties/disabilities. The IDP should identify the need for a specialist placement as part of its updating, thereby removing the need for the equivalent of a Section 140 assessment.

11. Consultation questions

11.1 The reforms outlined in this document are designed to secure the following long-term benefits:

- improved outcomes and well-being for children and young people;
- improved participation of learners in individual assessment and planning processes;
- increased trust and confidence of parents/carers and young people in the system;
- greater consistency of outcomes and quality between schools and between local authorities;
- improved leadership and management in schools and local authorities;
- an increased proportion of resources reaching the child or young person;
- more effective and efficient partnership arrangements between agencies and 'third sector' organisations; and
- more effective and efficient communication and sharing of data with parents/carers and young people.

11.2 We anticipate that over time the combined effect of these outcomes will lead to a more fit-for-purpose and more inclusive system. We are conscious that there are many dedicated practitioners in the system working hard to do their best for children and young people. The system itself has many strengths, but various reviews over the past decade have pointed clearly to the need for an overhaul. That is why we are now proposing legislative change to keep what is best in the existing system and introduce better integration and modern technology.

11.3 Your views are invited on any of the proposals in this document. A consultation response form accompanies this document.