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Llywodraeth Cymru  
Welsh Government

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

## **Draft Explanatory Memorandum**

Incorporating the Draft Regulatory Impact Assessment  
and Draft Explanatory Notes

July 2015

## **Draft Explanatory Memorandum to the Draft Additional Learning Needs and Education Tribunal (Wales) Bill**

This draft Explanatory Memorandum has been prepared by the Department for Education and Skills of the Welsh Government and is published as part of the consultation on this draft Bill.

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ANNEX A – Explanatory Notes

# 1. Description

- 1.1 The draft Additional Learning Needs and Education Tribunal (Wales) Bill will make provision for a new statutory framework for supporting children and young people with additional learning needs (ALN). This will replace existing legislation surrounding special educational needs (SEN) and the assessment of children and young people with learning difficulties and/or disabilities (LDD) in post-16 education and training. The draft Bill also continues the existence of the Special Educational Needs Tribunal for Wales but renames it the Education Tribunal for Wales.

## 2. Legislative background

- 2.1 The National Assembly for Wales has the legislative competence to make the provisions set out in the draft Additional Learning Needs and Education Tribunal (Wales) Bill under Part 4 of the Government of Wales Act 2006 (GoWA 2006). The relevant provisions of GoWA 2006 are set out in section 108 and Schedule 7. Under Part 1 of Schedule 7 to GOWA 2006, paragraph 5 sets out the subjects on which the Assembly may legislate under the heading “education and training”; paragraph 9 sets out the subjects on which the Assembly may legislate under the heading “health and health services”; and paragraph 15 sets out the subjects on which the Assembly may legislate under the heading “social welfare”. This is reproduced below.

***Education and training***

*5. Education, vocational, social and physical training and the careers service. Promotion of advancement and application of knowledge.*

*Exception—*

*Research Councils.*

## **Health and health services**

9. *Promotion of health. Prevention, treatment and alleviation of disease, illness, injury, disability and mental disorder. Control of disease. Family planning. Provision of health services, including medical, dental, ophthalmic, pharmaceutical and ancillary services and facilities. Clinical governance and standards of health care. Organisation and funding of national health service.*

*Exceptions—*

*Abortion.*

*Human genetics, human fertilisation, human embryology, surrogacy arrangements.*

*Xenotransplantation.*

*Regulation of health professionals (including persons dispensing hearing aids).*

*Poisons.*

*Misuse of and dealing in drugs.*

*Human medicines and medicinal products, including authorisations for use and regulation of prices.*

*Standards for, and testing of, biological substances (that is, substances the purity or potency of which cannot be adequately tested by chemical means).*

*Vaccine damage payments.*

*Welfare foods.*

*. . . Health and Safety Executive and Employment Medical Advisory Service and provision made by health and safety regulations.*

## **Social welfare**

15. *Social welfare including social services. Protection and well-being of children (including adoption and fostering) [and of young adults]. Care of [children,] young adults, vulnerable persons and older persons, including care standards. Badges for display on motor vehicles used by disabled persons.*

*Exceptions—*

*Child support.*

*[Child trust funds, apart from subscriptions to such funds by—*

*(a) a county council or county borough council in Wales, or*

*(b) the Welsh Ministers.]*

*Tax credits.*

*Child benefit and guardian's allowance.*

*Social security.*

*[Independent Living Funds.*

*Motability.]*

*Intercountry adoption, apart from adoption agencies and their functions, and functions of “the Central Authority” under the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption.*

*The Children's Commissioner (established under the Children Act 2004 (c 31)).*

*Family law and proceedings, apart from—*

*(a) [welfare advice] to courts, representation and provision of information, advice and other support to children ordinarily resident in Wales and their families, and*

*(b) Welsh family proceedings officers.*

Section 108 of GOWA is reproduced below:

**Legislative competence**

(1) *Subject to the provisions of this Part, an Act of the Assembly may make any provision that could be made by an Act of Parliament.*

(2) *An Act of the Assembly is not law so far as any provision of the Act is outside the Assembly's legislative competence.*

(3) *A provision of an Act of the Assembly is within the Assembly's legislative competence only if it falls within subsection (4) or (5).*

(4) *A provision of an Act of the Assembly falls within this subsection if—*

(a) *it relates to one or more of the subjects listed under any of the headings in Part 1 of Schedule 7 and[, subject to subsection (4A),] does not fall within any of the exceptions specified in that Part of that Schedule (whether or not under that heading or any of those headings), and*

(b) *it neither applies otherwise than in relation to Wales nor confers, imposes, modifies or removes (or gives power to confer, impose, modify or remove) functions exercisable otherwise than in relation to Wales.*

*[(4A) Provision relating to a devolved tax (as listed under the heading "Taxation" in Part 1 of Schedule 7) is not outside the Assembly's legislative competence by reason only of the fact that it falls within an exception specified under another heading in that Part of that Schedule.]*

(5) *A provision of an Act of the Assembly falls within this subsection if—*

(a) *it provides for the enforcement of a provision (of that or any other Act of the Assembly) which falls within subsection (4) or a provision of an Assembly Measure or it is otherwise appropriate for making such a provision effective, or*

(b) *it is otherwise incidental to, or consequential on, such a provision.*



*(6) But a provision which falls within subsection (4) or (5) is outside the Assembly's legislative competence if—*

*(a) it breaches any of the restrictions in Part 2 of Schedule 7, having regard to any exception in Part 3 of that Schedule from those restrictions,*

*(b) it extends otherwise than only to England and Wales, or*

*(c) it is incompatible with the Convention rights or with [EU] law.*

*(7) For the purposes of this section the question whether a provision of an Act of the Assembly relates to one or more of the subjects listed in Part 1 of Schedule 7 (or falls within any of the exceptions specified in that Part of that Schedule) is to be determined by reference to the purpose of the provision, having regard (among other things) to its effect in all the circumstances.*

### 3. Purpose and intended effect of the legislation

3.1 The current legislative framework for supporting children and young people with special education needs (SEN) and learning difficulties and/or disabilities (LDD), 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 that they do not know where to turn for advice and information.

3.2 The White Paper '*Legislative Proposals for Additional Learning Needs*',<sup>1</sup> published for consultation in May 2014, set out the rationale behind the Welsh Government's proposals for legislative change in order to address the weaknesses in the current system. These weaknesses include:

- 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

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<sup>1</sup> The White Paper can be accessed on the Welsh Government's website at: <http://gov.wales/consultations/education/proposals-for-additional-learning-needs-white-paper/?skip=1&lang=en>

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.

3.3 The Welsh Government's overarching policy objectives in relation to the draft Bill are to create:

- a) a unified legislative framework to support children and young people aged 0 to 25 years with ALN in schools and further education;
- b) an integrated, collaborative process of assessment, planning and monitoring which facilitates early, timely and effective interventions; and
- c) a fair and transparent system for providing information and advice, and for resolving concerns and appeals.

3.4 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.

3.5 ***The introduction of the term Additional Learning Needs (ALN):*** The draft Bill replaces the terms 'special educational needs' (SEN) and 'learning difficulties and/or disabilities' (LDD) with the new term ALN. This will help to avoid some of the stigma associated with the existing terms and will mark a clear break from the current systems which we believe require fundamental reform. Using ALN as a single term which encompasses children and young people aged 0-25 years reflects the move to a more equitable system for supporting learners with ALN across early years, schools and further education settings.

- 3.6 **A 0-25 age range:** The draft Bill brings together the existing and different legislative systems for supporting:
- a) children and young people of compulsory school age who have SEN; and
  - b) young people in further education who have LDD.

This means that there will be a single legislative system relating to the support given to children and young people aged between 0-25 years who have ALN. As a result, transition of learners between school and post-16 education should be improved to allow greater equity in terms of support and rights for this group of learners.

- 3.7 **A unified plan:** The draft Bill creates a single statutory plan (the individual development plan (IDP)) to replace the existing variety of statutory and non-statutory SEN or LDD plans for learners in schools and further education (including statements of SEN, Individual Education Plans (IEPs) for learners supported through School/Early Years Action or School/Early Years Action Plus, and Learning and Skills Plans (LSP) carried out via assessments under section 140 of the Learning and Skills Act 2000 ('the 2000 Act')). This will ensure greater consistency and continuity and, unlike the current system, ensure that provision and rights are protected regardless of the severity or complexity of needs.
- 3.8 **Increased participation of children and young people:** The draft Bill requires that learners' views should always be considered as part of the planning process, along with those of their parents. It is imperative that children and young people see the planning process as something which is done with them rather than to them. To ensure this, children, young people and families will be supported to participate through the provision of clear and impartial information, advice and advocacy.
- 3.9 **High aspirations and improved outcomes:** The emphasis of IDPs will be on making provision that delivers tangible outcomes that contribute in a meaningful way to the child or young person's achievement of their full potential.
- 3.10 **A simpler and less adversarial system:** The process of producing and revising an IDP should be much simpler than is currently the case with statements of SEN and should avoid the adversarial nature of the existing, overly bureaucratic approach.
- 3.11 **Increased collaboration:** The new system should support a strong focus on collaboration. All services involved in working with children, young people and their families, including education, health and social services, will have a crucial role to play in working together to deliver efficient, effective, child-centred support for learners with ALN. In particular, Local Health Boards (LHBs) or NHS Trusts will be under a duty to deliver the additional learning provision (ALP) which they agree to secure as recorded in an IDP. The reforms will encourage improved collaboration and information sharing

between agencies, which are essential to ensuring that needs are identified early and the right support is put in place to enable children and young people to achieve positive outcomes.

- 3.12 ***Avoiding disagreements and earlier disagreement resolution:*** The new system will focus on ensuring that where disagreements occur about an IDP or the provision it contains, the matter is considered and resolved at the most local level possible.
- 3.13 ***Clear and consistent rights of appeal:*** Where disagreements about the contents of an IDP cannot be resolved at the local level, the draft Bill will ensure that children and young people entitled to an IDP (and their parents in the case of those that are under 16 years) will have a right of appeal to a tribunal. The draft Bill will extend the right to appeal to learners with ALN up to the age of 25 years.
- 3.14 ***A mandatory Code:*** Responding to calls for a far stronger Code that can be enforced, the provisions included in the draft Bill will be supported by a new statutory ALN Code, which will help to ensure a more consistent approach to supporting ALN. The Code will ensure that 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. It will also set out practical guidance on how we expect statutory duties to be carried out. The Code will therefore be a type of subordinate legislation, and confer duties and rights on those subject to it.

## **Background and context**

- 3.15 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; and
  - c) *Transition*, March 2007.
- 3.16 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.

- 3.17 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.
- 3.18 Evaluation of the pilot schemes on reform concluded that the introduction of a person-centred IDP would be welcomed by schools, most professionals and many families. However, there were concerns about the implications of person-centred practice (PCP) in relation to staff capacity and regarding the use of an online tool, where security and privacy were major concerns, especially for health colleagues. The principles underpinning a new quality assurance system were broadly supported. Strong views were expressed that for impact monitoring to be effective and efficient, there was a need to integrate it into the whole school agenda, rather than as a separate exercise for monitoring those with SEN. Reports of the findings are published on the Welsh Government's website and can be accessed at:  
<http://gov.wales/statistics-and-research/programme-action-research-additional-learning-needs-pilot/?lang=en>
- 3.19 Following the work of the pilot schemes on reform, the use of a person centred approach to plan support for children and young people with SEN has been increasing across Wales. The Welsh Government has supported this uptake by commissioning electronic resources specifically for Wales, to support the rollout of PCP in schools and colleges. Work is also underway to ensure that monitoring the impact of interventions is integrated into the wider school improvement processes.
- 3.20 The objective of the 'right of appeal for the child' pilot scheme was to pilot the provisions which had been included in the Education (Wales) Measure 2009 in relation to the right of children to appeal in respect of SEN and their right to make a claim of disability discrimination in schools. Following a positive evaluation of the pilots, regulations implemented the rights and duties conferred by the Measure across the whole of Wales from the 5 January 2015.
- 3.21 During the course of the pilots and, in recognition of the previously identified deficiencies in the current system of SEN, the Welsh Government included in its *Programme for Government*, published in July 2011, a commitment to 'reform the ALN process for the most vulnerable children and young people in either a school or further education setting'. In the light of this commitment, the Welsh Government published in June 2012 a pre-legislative consultation document, *Forward in Partnership for Children and Young People with Additional Needs*, which set out a broad vision of a reformed system. In

response to the consultation feedback, the then Minister for Education and Skills, Leighton Andrews AM, announced in September 2012<sup>2</sup> that legislative reform would take place later in the Assembly Term in order to allow time to work through the implications of the proposals in more detail with key partners. In July 2013, the Minister for Education and Skills published the summary of responses to the 2012 consultation and announced that officials would seek further views from stakeholders, to develop and reconsider the scope, impact and deliverability of the proposals<sup>3</sup>. To that end, a series of workshops was held in autumn 2013 with a range of external stakeholders and professional groups, in order to identify practicable and realistic ways in which effective reform could be taken forward. A summary of discussions is available on the Welsh Government's website:

<http://gov.wales/topics/educationandskills/schoolhome/pupilsupport/additoinal-learning-needs-reform/?lang=en>

- 3.22 Provisions relating to the registration and approval of independent schools, the assessment of the educational and training needs for post-16 learners with LDD, and specialist further education placements remained within the scope of the Education (Wales) Bill. However, in response to calls from the National Assembly for Wales' Children and Young Person's Committee to consider all SEN provisions in a single legislative vehicle, the provisions were removed from the Bill during Stage 2 proceedings in January 2014. At this time the Minister for Education and Skills announced that they would be incorporated into a separate Bill dealing with the full range of provisions relating to ALN.
- 3.23 During this period the Social Services and Well-being (Wales) Act 2014 was passed by the Welsh Assembly impacting on social care planning and also setting out core values shared by the ALN proposals. At the same time the previously shared legislative basis for SEN across England and Wales was fundamentally altered by the passing of the Children and Families Act 2014. This Act reformed SEN planning and provision in England providing some lessons for consideration as well as raising some new issues and cross-border implications.
- 3.24 Drawing on the outcome of the previous consultations and stakeholder engagements and taking into account the changed context, the Welsh Government published for consultation on 22 May 2014, a White Paper entitled *Legislative Proposals for Additional Learning Needs*. The nine week web-based consultation ran until 25 July 2014. A young person's version of the consultation was also produced and disseminated and a series of engagement events were held to gather a representative sample of views from children and young people.
- 3.25 A summary of responses to the consultation was published in October 2014. Broadly, the Welsh Government's proposals were welcomed by those who responded to the consultation. Stakeholders emphasised the importance of

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<sup>2</sup> <http://gov.wales/about/cabinet/cabinetstatements/2012/senframework/?lang=en>

<sup>3</sup> <http://gov.wales/about/cabinet/cabinetstatements/2013/sen/?lang=en>

underlying principles, such as the need to listen to children and young people and to adhere to the United Nations Convention on the Rights of the Child (UNCRC) when implementing a reformed system. In addition there was particular support for:

- the adoption of the proposed term Additional Learning Needs (ALN), considering it to be more inclusive;
- the introduction of IDPs, with respondents emphasising the importance of plans which were flexible, 'live' documents, capable of adaptation to meet learners' changing needs; and
- the proposal that all young people with ALN from 0 to 25 years should be entitled to a single statutory plan, citing the benefits that a unified system would bring in improving transition planning.

- 3.26 Over the period there have been a number of other, significant policy developments which will impact on the implementation of the proposed reforms and which are relevant when considering the proposed provisions.
- 3.27 In March 2014, the Minister for Education and Skills appointed Professor Graham Donaldson to lead a comprehensive, independent review of the curriculum and assessment arrangements in Wales. In February 2015, the Welsh Government published Professor Donaldson's report *Successful Futures: Independent Review of Curriculum and Assessment Arrangements in Wales*, which sets out firm foundations for a new approach to curriculum and assessment that is genuinely and fully inclusive. Such an approach recognises the importance of learner-centred approaches and teacher assessment that supports the learning needs of all learners. The report's recommendations are radical and wide-ranging and aim to provide a vision for what a successful young person leaving statutory education should look like. In response to the report, the Welsh Government is running a "Great Debate" on Welsh education; the first phase of this ended on 8 May 2015.
- 3.28 In March 2015, the Minister for Education and skills announced a 'New Deal for the Education Workforce'. The New Deal has been designed to support teachers, leaders and support staff with their professional development throughout their careers, and includes a focus on increasing the capability of teachers and schools to better meet the learning needs of all learners, including those with ALN.
- 3.29 In addition to the New Deal, the *Teaching Tomorrow's Teachers* report produced by Professor John Furlong, makes clear that the need for reforming teacher training in Wales is 'undeniable' if we are to raise standards and deliver Professor Graham Donaldson's vision of a curriculum for Wales. Professor Furlong was asked to look closely at the way current teacher training provision is organised in Wales, at the evidence to support change, and at the measures needed to support a Welsh, world class initial Teacher Training system that can compete with the best in the world.
- 3.30 Workforce capacity has been highlighted as a concern throughout consultation and stakeholder engagement. With this in mind the Minister agreed that early work should be done, ahead of legislation, to help support



workforce development. To this end the Welsh Government recently published a report *An Assessment of SEN Workforce Development Requirements*. The Welsh Government is now working with local authorities to develop the support required by practitioners over the coming years to meet those workforce development needs identified within the report, in order to meet the needs of learners with ALN.

- 3.31 Reflecting the need for workforce development and building on the successful pilot project, a decision was also made to work to implement the consistent use of the person-centred-practice (PCP). PCP underpins the proposed new planning process. The Welsh Government has contracted for the development of resources to support the wider use of PCP with children and young people with SEN and is working with local government to agree the best approach to implementation. Embedding PCP will support smooth implementation of the provisions in the draft Bill.

### **Legislative context**

- 3.32 Legislation in relation to SEN is currently set out in Part IV of the Education Act 1996. Although the definition of SEN applies to children and young people with a wide range of needs, the legislation focuses primarily on those children and young people with more complex needs who are entitled to a statement of SEN issued by the local authority. At January 2014, 105,303 pupils at maintained schools in Wales had some form of SEN, which is around 22 per cent of all pupils. However only 12,530 pupils with SEN had a statement, which is 2.7 percent of all pupils.
- 3.33 Statutory guidance on SEN is provided in the SEN Code of Practice for Wales. For children with SEN who do not have a statement, the Code sets out guidance in relation to interventions that are additional to, or different from, those provided as part of the school's or early years setting's usual, differentiated curriculum strategies. This is known as 'School Action' or 'Early Years Action.' Where a school or early years setting seeks the help of external support services, this is known as 'School Action Plus' or 'Early Years Action Plus.' There is no published guidance in relation to learners with LDD.
- 3.34 The legislation relating to post-16 learners in FE with LDD is included in the 2000 Act. The Welsh Ministers currently have a general duty under sections 31 and 32 of the 2000 Act to secure 'proper provision' for the education and training of learners aged between 16 and 19 years, and 'reasonable facilities' for those over the age of 19 years. The 2000 Act also requires the Welsh Ministers to secure the provision of boarding accommodation for children and young people with LDD if they cannot otherwise secure provision of facilities for education and training which are sufficient in quantity and adequate in quality for 16-19 year olds or reasonable facilities for those aged 19-25 years. Section 140 of the 2000 Act places a duty on the Welsh Ministers to make arrangements for the assessment of young people who have statements of SEN, where they are likely to leave school at the end of the last year of compulsory schooling to receive post-16 education or training or higher

education. It also gives the Welsh Ministers a power to do so in relation to those aged up to 25 years who do not have a statement of SEN but who appear to have a learning difficulty.

- 3.35 Under section 160 of the Education Act 2002 independent schools must be registered and an application to enter an independent school onto the register must contain information about whether the school admits pupils with SEN. The Independent Schools Standards (Wales) Regulations 2003 set out the standards to which an independent school will be inspected.
- 3.36 In addition to the registration process, under section 347 of the Education Act 1996, Welsh Ministers may approve an independent school to admit children with a statement of SEN generally; or give individual consent to admit a child with a statement of SEN, where a school has not been approved. The Education (Special Educational Needs) Approval of Independent Schools Regulations 1994 prescribe the requirements to be complied with by an independent school as a condition of its approval as a school suitable for the admission of children for whom statements of SEN are maintained. In order for a child with a statement of SEN to be admitted into an independent school, the school must be registered under section 160 of the Education (Wales) Act 2002 and approved under section 347 of the Education Act 1996.
- 3.37 The Social Services and Well-being (Wales) Act 2014 ('the 2014 Act') offers opportunities to improve the connection between ALN and social care planning for looked after children and formerly looked after children. The 2014 Act places a duty on local authorities to provide and to keep under review, care and support plans for children and adults who have 'eligible needs' or fall into one of the 'passport' categories e.g. looked after child.
- 3.38 Section 83(8) of the 2014 Act provides that where a child becomes looked after by a local authority, the local authority may:
- a) prepare, review or revise a care and support plan at the same time as it or another body is preparing, reviewing or revising another document in the case of the person concerned; and
  - b) include the other document in the plan.
- 3.39 This provides for integrated planning to ensure that the individual needs of children and young people are met. In addition, the 2014 Act places a duty on those exercising functions to seek to promote the well-being of people who need care and support. Section 2(2) of the 2014 Act defines "well-being" as well-being in relation to education, training and recreation (amongst others). In addition, under section 2(3), "well-being" in relation to a child (defined as a person under 18 years of age) also includes physical, intellectual, emotional, social and behavioural development. Section 78(2)(a) of the 2014 Act states that the duty of a local authority to safeguard and promote the well-being of a child looked after by it includes a duty to promote the child's educational achievement.

## **Who is affected by the draft Bill?**

- 3.40 Children and young people with ALN will be the direct beneficiaries of the draft Bill's provisions. It will provide them with a system that is designed to ensure that their needs are assessed, and the provision necessary to meet those needs is planned for in a more collaborative, consistent and equitable way.
- 3.41 Local authorities, governing bodies of maintained schools and further education institutions (FEIs) in Wales will be required to operate in accordance with a new statutory framework. This replaces the statutory frameworks established by the 1996 Act in relation to school and pre-school education, and by the 2000 Act in relation to further education.
- 3.42 Relevant practitioners, teachers and teaching assistants will be involved in the identification of ALN and the provisions for supporting the learner's education. In addition, the draft Bill requires that all maintained schools (including maintained nurseries and pupil referral units (PRUs)) and FEIs designate an Additional Learning Needs Co-ordinator (ALNCO).
- 3.43 Other bodies having functions under the new legislative framework include LHBs and NHS trusts, Youth Offending Teams and the Education Tribunal for Wales (the latter of which is the current Special Educational Needs Tribunal for Wales but will be renamed by the draft Bill). Most of these functions will be the same or similar to functions exercised by these bodies under existing legislation. Independent schools and special post-16 institutions will be affected by new provision or amended provision relating to their registration or approval. An element of Careers Wales' work in relation to the conduct of post-16 education and training assessments on behalf of the Welsh Ministers will cease as consequence of changes introduced by the draft Bill. Finally, local authorities, school governing bodies and NHS bodies in England will have a conditional duty to help a local authority in Wales in relation to the discharge of the latter's functions under this draft Bill.

## **Implementation and delivery plan**

- 3.44 The key components of the new statutory framework are set out on the face of the draft Bill and will be commenced either on Royal Assent or in accordance with the commencement orders made by the Welsh Ministers.
- 3.45 The draft Bill requires the Welsh Ministers to prepare, consult on and publish a Code on ALN. The Code will contain provisions about the exercise of functions made under the draft Bill. This Code must be laid before the National Assembly for Wales. The Welsh Government will lay a final draft of the Code should the draft Bill become an Act.
- 3.46 The Welsh Government intends to adopt a phased approach to implement the new statutory framework in order for institutions and practitioners to understand the new system and effectively manage and transfer learners from the existing system to the new system. The Welsh Government intends to

work with key delivery partners on developing an implementation plan and support partners through implementation.

- 3.47 The Welsh Government is committed to the principle that no child or young person should lose their statutory protection or provision required to meet their needs as they are transferred from the existing system to the new system.

## **Territorial extent**

- 3.48 This draft Bill applies in relation to Wales and to children and young people aged 0-25 years ordinarily resident in Wales who are receiving education in England. Officials from the Welsh Government's Department for Education and Skills are working with officials from the UK Government's Department of Education to produce guidance on supporting Welsh children and young people who attend an education institution in England and vice-versa.
- 3.49 The Code will set out practical guidelines on how the educational needs of learners who are being educated in England but live in Wales, and vice versa, should be met.

## **Overview of the draft Bill**

- 3.50 The remainder of this chapter explains the components of the new statutory framework and the provisions of the draft Bill in more detail. These are set out by reference to the core aims outlined at paragraph 3.3 – 3.14.

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

- 3.51 The draft Bill (section 1) 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.
- 3.52 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.
- 3.53 The draft Bill (section 3) also uses the term 'additional learning provision' (ALP) to replace the term 'special educational provision' (SEP), although it retains much the same definition that SEP currently has – that is, provision which is additional to, or otherwise different from, the educational or training provision made generally for children or young persons of the same age other than in special schools.

### **A 0-25 age range**

- 3.54 The draft Bill replaces Part 4 of the 1996 Act, which established the current SEN system for schools and pre-16 education in general. It also (at section 28) amends section 41 and repeals section 140 of the 2000 Act, both of which make provision in relation to LDD and further education. In their place, the draft Bill (sections 8-12) 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.
- 3.55 The draft Bill's provisions will require local authorities to secure specialist post-16 education or training for a child or young person where the IDP indicates that this is necessary to meet their needs. This responsibility is transferred from the Welsh Ministers and will improve the transition process by encouraging local authorities and post-16 providers to work together to plan for, and to secure support and to improve local provision relevant to the individual needs of children and young people with ALN. It will also 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. Funding is likely to be transferred from the Welsh Government to the Revenue Support Grant (RSG) to support local authorities in their duty to secure specialist post-16 provision. The detail of the quantum of funding and the transfer arrangements are subject to negotiation through the Distribution Sub-group (DSG). All transfers to RSG are subject to negotiation through this group, which includes representation from the Welsh Local Government Association (WLGA) and the Welsh Government in addition to four independent members.

### **A unified plan**

- 3.56 The draft Bill introduces statutory IDPs (sections 8-13) for all children and young people with ALN. Statements, IEPs and LSPs will cease to exist.
- 3.57 The IDP will describe the child or young person's ALN and the ALP required to meet those needs (section 8). IDPs will normally be prepared, maintained and reviewed by the school or FEI that the child or young person attends following a determination by that body that the child or young person has ALN (sections 9-10). 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, 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 (section 12).
- 3.58 Local authorities will also have powers and duties, in some circumstances, in relation to the reconsideration of decisions about ALN taken by schools, taking over responsibility for IDPs previously maintained by a school or FEI,

and directing a school to prepare and/or maintain an IDP (sections 17-19). 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 (section 15). We expect the interventions set out in the IDP action plan to include clear and specific milestones which will trigger a review of their effectiveness.

- 3.59 The draft Bill (section 17, 18 and 21) enables a child, young person or a child's parent to request:
- a) that a local authority reconsiders a decision made by a school about whether he/she has additional learning needs;
  - b) that his/her IDP is reviewed;
  - c) that a local authority considers taking over a IDP maintained by a school or FEI; or
  - d) that a local authority reconsiders a school's decision to cease to maintain an IDP.
- 3.60 Where a local authority does not comply with the request, the draft Bill requires that they give notice in writing of that fact to the child or young person and the child's parent. The notice must also inform the child/young person/parent of their right to appeal.
- 3.61 The draft Bill permits (section 26) a local authority to name a maintained school in Wales in the IDP for the purposes of securing admission to that school, where it is satisfied that the child's interest requires the ALP identified in the IDP to be delivered at that school, and places a concomitant duty on schools to admit pupils in these circumstances. The draft Bill (section 30) also empowers local authorities to arrange for ALP to be made otherwise than in a school or make such arrangements (section 36) as they think fit to enable a child or young person for whom they are responsible to attend an institution outside of Wales or England which specialises in making the ALP necessary to meet the child or young persons needs.
- 3.62 Where a pupil or student with an IDP maintained by local authority is registered or enrolled at a school or FEI, the draft Bill (section 25) 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.
- 3.63 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 (section 20); or transfer it to another body (section 23) where that was appropriate (for example, where a child or young person changed schools or transferred from school to further education).
- 3.64 When a child or young person is detained within a relevant youth accommodation and they are identified as having ALN, the draft Bill (sections 58 and 61) provides that their home local authority will be required to secure an IDP and make necessary ALP in accordance with an IDP on their release

from detention. If a child or young person has an ALN and is subject to detention, the draft Bill (section 60) provides that the home local authority must keep the IDP while the person is detained in relevant youth accommodation and arrange for whatever ALP is appropriate for them whilst they are detained.

- 3.65 The effect of these provisions will be to remove the inconsistencies and the unfairness which arise from the existing statutory and non-statutory categories of SEN, and the different systems for learners in schools and FEIs. By introducing a single plan to cover a wide spectrum of need, the new system will be more flexible and responsive as IDPs will be able to be more easily adapted over time to take account of changes in needs or circumstances. Furthermore, it will end the uncertainty about when and for whom a statement should be made and the inconsistency that results. It will also ensure continuity for learners across the school/further education divide.

### **Increased participation of children and young people**

- 3.66 The draft Bill (section 6) 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.
- 3.67 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 (section 7) 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.
- 3.68 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 (section 38) requires local authorities to provide them with access to independent advocacy services. These are services providing advice and assistance to a child or young person who is making, or intending to make, an appeal to the Education Tribunal for Wales ("the Tribunal"), considering whether to appeal to the Tribunal under that section, or taking part in, or intending to take part in, dispute resolution arrangements.
- 3.69 The draft Bill (section 39) 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 exercise on their behalf the child or young person's person behalf, their rights to make an appeal to the Tribunal.

### **High aspirations and improved outcomes**

- 3.70 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 (section 46) requires that all maintained schools (which will include maintained nurseries, and pupils referral units) and FEIs designate an Additional Learning Needs Co-ordinator (ALNCO). This replaces the existing non-statutory SENCO role which is interpreted differently across settings and authorities. It also extends the role to education settings which did not previously have a SENCO.
- 3.71 Furthermore, the draft Bill will enable the IDP to be created so that the ALP it contains has a strong outcome focus rather than the making of provision being an end in itself.
- 3.72 The draft Bill permits local authorities to place children and young people at independent schools or independent post-16 specialist colleges where it is necessary and appropriate in the light of the individual's ALN.
- 3.73 However local authorities (section 32) will be prohibited from placing a learner with ALN at an independent school that is not registered to cater for the ALP required to meet the ALN, as set out in the learner's IDP. Repealing section 347 (section 35 of the draft Bill) of the Education Act 1996 and strengthening the way that independent schools register to admit learners, under section 160 of the Education Act 2002 (section 31) will remove the unnecessary duplication and confusion between the two regimes and enable a clear single system of registration. Section 160 will be amended so that an independent school wishing to admit learners identified as having ALN, will be required to have demonstrated as part of its registration that it can provide the required type of ALP. In addition we will publish the independent school register, which combined with the above strengthening of the registration process will clearly set out for LAs and parents, of learners with ALN, the ALP an independent school can cater for. 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.
- 3.74 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 (section 33). Currently, minimum criteria are set via a funding contract between independent specialist colleges and the Welsh Ministers.



The provisions in this draft Bill will ensure any independent setting that is funded by local authorities to provide additional learning provision will continue to meet minimum criteria which will be transparent and set out in regulations. Furthermore it will provide the necessary assurance that when a child or young person with ALN is placed in this type of education setting, their needs will be met. Local authorities will be required to pay any fees arising from the placement of the child or young person at an independent school or college (section 27). These provisions should smooth the path of transition, enable better coordination with social services' support in particular, and encourage the provision of local packages of support. Annual monitoring of independent specialist colleges is also undertaken by Estyn.

- 3.75 The draft Bill replicates the existing legislative presumption in favour of those with ALN being educated in mainstream schools wherever possible (section 29). 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.
- 3.76 To ensure that high standards are universal, the Welsh Government will work with local authorities to enable them to put in place arrangements to monitor and review the operation of the new system within and by maintained schools. In addition, to ensure that the overall learning provision the local authority makes continues to meet the needs of children and young people in their area, the draft Bill requires local authorities to keep under review the arrangements made by them for ALP (section 45). Local authorities may also supply goods and services to governing bodies to help them meet the needs of the child or young person (section 51).

### **A simpler and less adversarial system**

- 3.77 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 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 young people, and the parents of children 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**

- 3.78 The draft Bill (section 49) provides that where a local authority requests help or information from another local authority, an NHS body, or an FEI 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.
- 3.79 The duty to share information is new and will address some of the current issues around the failure of bodies to share information as effectively as they should. It will be underpinned by clear guidance. The duty to help is similar to that which appears in the existing SEN legislation and will form the basis for ensuring the appropriate involvement of professionals in the development and review of IDPs for those with more severe and complex needs. Where input is required from other agencies to support the child or young person to overcome barriers to learning, the draft Bill will enable the IDP to include ALP agreed by health, social services and other services as well as education. IDPs will contain an action plan that is clear about which agency is responsible for delivering the individual elements.
- 3.80 The draft Bill (section 16) provides for IDPs and other plans relating to the same learner to be prepared, reviewed or revised at the same time. Other plans may also be included in the IDP; this mirrors the provisions included under section 58 of the Social Services and Well-being (Wales) Act 2014. This provision 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 (section 56) 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.
- 3.81 The draft Bill (section 14) includes a new duty on health bodies 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.
- 3.82 The draft Bill (section 47) also includes a new duty on LHBs to appoint a designated medical or clinical officer (DMO). The role of this officer will be to seek to ensure there are appropriate service models within the LHB; provide leadership within the LHB in support of meeting the relevant duties; liaise with partners and serve as a primary point of contact for LAs; and prompt and facilitate effective inter-professional working for the benefit of children with ALN. We do not envisage the DMO being routinely involved in the assessment and reviews of individual IDPs except in the course of their usual clinical practice, but they would be responsible for ensuring the appropriate LHB input is provided. Overall, DMOs will play a pivotal role in improving the extent and effectiveness of collaboration between LHBs and local authorities in the delivery of services for children and young people with ALN.
- 3.83 Additionally, where a LHB 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 (section 48) will provide them

with the discretion to bring 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**

- 3.84 The draft Bill (section 37) requires local authorities to make arrangements for avoiding and resolving disagreements between children, young people and parents, and schools, local authorities and others. 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 Code will then be used to emphasise that local authorities' first priority should be to avoid disagreements arising by developing ways of ensuring that children, young people and parents are supported to understand and participate in the decisions which are taken that affect them, provided with appropriate reassurance, and offered opportunities to raise concerns and have their questions answered. However, where disagreements do arise, arrangements should focus on ensuring that these are resolved at the earliest opportunity and at the most local level possible. 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.

### **Clear and consistent rights of appeal**

- 3.85 The draft Bill (section 63) renames and expands the remit of the existing Special Educational Needs Tribunal Wales (SENTW). The tribunal will be renamed the Education Tribunal for Wales ("the Tribunal"). The draft Bill makes provision for the continuation of the Tribunal's constitution, membership and remuneration and expenses (section 63 to 65). The new name reflects not only its role in determining appeals in relation to ALN but also the role currently undertaken by the SENTW in determining disability discrimination claims relating to schools, a function which the Tribunal will continue. Currently, only children and young people registered at maintained schools have the right to appeal to the SENTW 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.
- 3.86 The draft Bill (section 40) enables a child or young person up to the age of 25 years, or a child's parent, to appeal to the Tribunal against:
- a) a decision as to whether a person has ALN;
  - 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 ALN in an IDP;
  - d) the ALP specified in an IDP;
  - e) the school named in an IDP 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 IDP, that fact;
- g) a decision not to take over responsibility for an IDP following a request to consider doing so;
- h) a decision to not revise an IDP; and
- i) a decision to cease to maintain an IDP.

3.87 Although use of the Tribunal should be a last resort, the right of appeal to an independent tribunal whose decisions are binding (section 42) will ensure the new system for supporting ALN is robust and has the confidence of children, young people and parents. 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.

3.88 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.

3.89 The draft Bill (section 40) allows for the Welsh Ministers to make regulations about the proceedings of the Tribunal on an ALN appeal and the initiation of such an appeal. Requirements can be imposed in relation to disclosure of documents and attendance at tribunal. If the Tribunal makes an order the local authority concerned must comply with the order before the end of the period prescribed in regulations and beginning with the date on which it is made.

3.90 The draft Bill (section 44) also allows that a party to any proceedings about ALN before the Tribunal may appeal to the Upper Tribunal on any point of law arising from a decision made by the Tribunal in those proceedings.

### **A mandatory Code**

3.91 The draft Bill requires the Welsh Ministers to issue a Code on ALN (section 4). 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.

3.92 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.

3.93 In particular, the draft Bill will enable the Code to provide detailed requirements about how IDPs are to be prepared, maintained and reviewed. This will include requiring the plan to be in a specified form and contain specified things and requiring specified persons to undertake certain roles

and/or actions in relation to the preparation, maintenance and reviewing of IDPs within set time limits. The draft Bill will also enable the Code to set out the functions of ALNCOs and impose requirements in relation to the provision independent advocacy services arrangements.

- 3.94 The draft Bill (section 5) requires that the Code is subject to consultation with local authorities, schools, FEIs, Estyn and others. In addition, the Code (and any subsequent revisions) will have to be laid before the National Assembly for 40 days. If, before the end of the 40 day period, the National Assembly resolves not to approve the draft of the Code, the Welsh Minister will not be permitted to issue the proposed Code in the form of that draft. The Welsh Government will endeavour to ensure appropriate compliance with Code takes place through Estyn or its own roles.

## 4. Consultation

- 4.1 The First Minister in his legislative statement of July 2011 made a commitment to consult appropriately and engage meaningfully with our partners when developing legislation. In keeping with this statement the Department for Education and Skills issued a White Paper on 22 May 2014 on the proposals for the Additional Learning Needs Bill. The White Paper invited comments on the proposals for the Bill and was published on the Welsh Government website. The full consultation document is available at: <http://wales.gov.uk/consultations/education/proposals-for-additional-learning-needs-white-paper/?lang=en>.
- 4.2 The White Paper followed on from an earlier pre-legislative consultation document published in June 2012, 'Forward in Partnership for Children and Young People with Additional Needs', which set out a broad vision of a reformed system. This consultation document is available at: <http://gov.wales/consultations/education/senframeworkconsultation/?lang=en>
- 4.3 As part of the Welsh Government's compliance with the United Nations' Convention on the Rights of the Child a consultation specifically tailored to young people was undertaken at the same time as the White Paper consultation. The consultation for young people involved ten questions which covered the issues the Welsh Government was seeking the views of young people on. The young person's version of the consultation document is also available on the Welsh Government website at: <http://gov.wales/consultations/education/proposals-for-additional-learning-needs-white-paper/?lang=en>
- 4.4 The White Paper consulted on proposals to:
- Introduce the terms 'additional learning needs' (ALN) and 'additional learning provision' (ALP) to replace the existing terms 'special educational needs' and 'special educational provision'.
  - Introduce IDPs to replace statements of SEN, post 16 assessments (under section 140 of the 2000 Act) and non-statutory IEPs and post-16 plans.
  - Require the Welsh Ministers to consult on and issue a Code of Practice on ALN which may include:
    - mandatory requirements in accordance with which relevant bodies (likely to be local authorities, maintained schools, FEIs, PRUs, LHBs and the Special Educational Needs Tribunal for Wales) must act; and
    - guidance to which those bodies and other providers of education and training must have due regard.

- Set out the minimum requirements for information that must be included in an IDP, and require the Code to set out detailed mandatory requirements to underpin this.
- Require local authorities to prepare an IDP and ensure that any agreed ALP set out in the IDP Action Plan is put in place for all children and young people aged 0-25 years who have been determined as having ALN and who are receiving or wish to receive education or training.
- Require maintained schools, FEIs, and PRUs to use their best endeavours to secure that the ALP set out in a child or young person's IDP is provided.
- Require local authorities to secure specialist education provision for post-16 learners where the IDP indicates that this is necessary to meet a child or young person's needs.
- Prohibit the placement of any child or young person into an independent school that has not been registered to provide the type of ALP identified in their IDP.
- Require local authorities to ensure that children, young people and their parents are involved, consulted with, and have their views taken into account from the outset of and throughout the IDP assessment and planning process.
- Require, as a minimum, IDPs to be reviewed on an annual basis but permit reviews to be conducted earlier or more often where this is appropriate.
- Require the Code of Practice to provide guidance to professionals on the early identification of children with ALN including those aged below compulsory school age.
- Require local authorities, LHBs and FEIs to co-operate and share information in assessing, planning and delivering provision to meet the additional learning needs of children and young people up to the age of 25 years.
- Require the Code of Practice to provide guidance to support effective multiagency working practices.
- Require mainstream schools to designate an ALNCO.
- Enable IDPs to replace or serve the function of Personal Education Plans (PEPs) for children and young people who are looked after by a local authority.

- Require local authorities to put in place arrangements to give information and advice and require the Welsh Government to set out guidance (to authorities), including mandatory requirements where necessary.
- Require local authorities to put in place disagreement resolution arrangements and require the use of local complaints processes prior to appeal to the Education Tribunal.
- Require local authorities to appoint an independent person to facilitate the resolution of disagreements.
- Enable a right of appeal to the Education Tribunal against:
  - a decision not to put an IDP in place;
  - a refusal of a request to review an IDP;
  - the content of an IDP, including the description of the child or young person's needs or the educational provision required to meet those needs;
  - a failure to make available the provision identified through the IDP; and
  - a decision to cease to continue an IDP.
- Provide a right of appeal to any child or young person of school age or below who has an IDP (or their parent) or believes they should have one.
- Extend the right of appeal to post-16 learners with ALN, up to the age of 25 years, who are receiving or wish to receive education or training.
- Restate the existing provisions in relation to independent advocacy services and case friends, but require the Welsh Government to set out guidance on this, including mandatory requirements where necessary.

4.5 The consultation ran for over nine weeks and concluded on 25 July 2014. A total of 215 responses to the consultation were received by the Welsh Government. Four of the responses were completed using the young people's version of the questionnaire. Eleven responses were received from UK-wide organisations that are not based in Wales. The comments submitted in these responses were related to the proposals as they affect Welsh learners.

4.6 **Table 1** below summarises the distribution of responses from various sectors.

**Table 1: Summary of responses to the White Paper**

<b>Sector</b>	<b>Responses received</b>
Local Government	40
Schools	27
Special schools	4
Special Educational Needs Co-ordinators	9
Further Education sector	5
Work Based Learning organisations	3
Pre school organisations	2



Education professionals	8
Teaching Unions	3
Local Health Boards	16
Health professionals	12
Other public sector organisations	7
Third sector organisations	39
Individuals	40
<b>Total</b>	<b>215</b>

- 4.7 In addition to the written consultation, workshops were held for children and young people and their parents. These were attended by 174 children and 55 parents and carers. A contractor was commissioned by the Welsh Government to deliver the workshops. The contractor used inclusive, participative methods to ensure good understanding and encourage children, young people and their parents/carers to address these questions. The contractor worked with:
- fourteen groups of children and young people with additional learning needs - 174 children and young people with additional learning needs took part in total; and
  - six groups of parents/carers - 55 parents/carers took part in this consultation in total.
- 4.8 The children and young people were aged between 8 and 20+ and came from a variety of education settings from primary, secondary and further education, including mainstream and special schools. All were registered with SEN or ALN and on plans such as School Action, School Action Plus or had statements of SEN and had a broad range of learning support needs. The groups were situated across Wales. All of the groups were given the choice between workshops delivered through Welsh and English and Welsh language groups were specifically invited to take part. Two Welsh language special educational schools took up the opportunity to have the workshops delivered in Welsh.
- 4.9 The workshops focused on the three broad goals outlined in the White Paper:
- a single law about how to support children and young people aged 0-25 years who need help with learning;
  - one system of working together so that all services can step in early with the right support for children and young people who need help with learning; and
  - clear information, advice and support which is fair to everyone if things go wrong or if they don't like a decision.

- 4.10 The workshops looked at a series of questions associated with each of these goals. The questions asked in the consultation were taken from the Welsh Government's easy-read version of the White Paper which was called 'Plans for Additional Learning Needs – a consultation for young people'.
- 4.11 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>.
- 4.12 In an accompanying Written Ministerial Statement, the Minister for Education and Skills explained how some important points raised in the consultation were being addressed. This included:
- Emphasising that IDPs would give all learners aged 0-25 years with ALN the same statutory protection as the current statements of SEN;
  - Explaining that the term 'best endeavours' was the current legislative term used in relation to schools, which we proposed to extend to FEIs;
  - Reassuring that all those with ALN, including those with the highest level of need, would have their needs met;
  - The bringing into force of the reforms and a new Code would be accompanied by a programme of promotion and training for professionals from across the relevant agencies who work with children and young people with ALN; and
  - Outlining the intention to issue a Code with mandatory requirements and statutory guidance to ensure that learners receive the support they need.
- 4.13 The full Written Ministerial Statement is available on the Welsh Government website: <http://wales.gov.uk/about/cabinet/cabinetstatements/2014/additionallearningneeds/?lang=en>

## Summary of responses

- 4.14 The key themes which emerged from the consultation responses are summarised below.

### Key messages

- 4.15 Broadly, the Welsh Government's proposals were welcomed by those who responded to the consultation. Stakeholders emphasised the importance of underlying principles, such as the need to listen to children and young people and to adhere to the United Nations Convention on the Rights of the Child (UNCRC) when implementing a reformed system.

### Use of the term Additional Learning Needs

- 4.16 The proposed term Additional Learning Needs (ALN) was welcomed by a wide range of respondents and only a small number advocated an alternative.

Most also agreed with the notion that the system should meet the needs of children and young people from birth to age 25. Their main concern was that funding and resources should be adequate and that the system should operate effectively. In order for it to do so, respondents believed that there was a need to ensure that it was led and coordinated effectively and provided for continuity of provision, especially at key transition points in the young people's lives.

### **Individual Development Plans**

- 4.17 Most respondents supported the proposal that all young people with ALN should be entitled to an Individual Development Plan (IDP). Respondents were keen that the IDP should address the individual needs of children and young people. Many respondents agreed with proposals that the system needed to be designed so as to minimise bureaucracy and reduce the number of separate assessments. There was widespread agreement that multi-disciplinary/inter-professional approaches should be used when developing IDPs. In addition, some suggested that the content of IDPs should be prescribed to ensure comprehensive coverage in a way that was proportionate with need, with clear guidelines about the type and amount of information to be included. The importance that IDPs were flexible, 'live' documents, capable of adaptation to meet learners' needs was also emphasised.
- 4.18 While most respondents agreed that children and young people on School Action or School Action Plus should be entitled to an IDP, concern was raised that this could place pressure on capacity and resources. This would suggest that clarity should be provided that needs outlined in IDPs could be addressed through universal as well as specialist provision. There was concern that the proposed introduction of statutory plans for learners with a wider range of need than those who currently have statements of SEN, would mean there will be less resource to support those with the highest level of need. However, children and young people in schools with a wide range of needs already receive assessments and support which is recorded and reviewed in a range of different statutory and non-statutory plans. The proposals were intended to unify the legislative structure by replacing all such plans with a single plan which has the same statutory rights, regardless of the complexity of need or the education setting. The Code would provide clarity on the new definition of ALN to ensure that learners who meet this definition have their ALN met through statutory IDPs.

- 4.19 Local government respondents in particular were concerned that local authorities would be ultimately responsible for preparing an IDP and ensuring that the requirements were met. While most (though not all) favoured the proposal that this should be a function for the local authorities, there was concern that they might be held accountable for the delivery of services by bodies over which they had no control, such as FEIs and, particularly, health services. Some felt that there was a need to strengthen what was stipulated: for example, a duty of collaboration should become a requirement to take joint responsibility.

### **Code of practice**

- 4.20 There was widespread support for the introduction of a Code of Practice underpinned by mandatory requirements that would apply to local authorities, schools, FEIs, LHBs and SENTW. Respondents also agreed that this should guide the work of other bodies/providers as that would provide greater consistency in the way IDPs were implemented.

### **Requirement on further education institutions to use their best endeavours**

- 4.21 While there was general agreement with the principle that FEIs should be required to meet the needs of young people with ALN, concern was expressed that the term 'best endeavours', though used in current legislation, was too loose and broad to be a basis on which providers would be held to account. Some respondents also drew attention to the importance of the Work Based Learning (WBL) sector and the role they had to play in meeting the needs of young people with ALN.

### **Access to specialist provision**

- 4.22 While most respondents agreed with the proposal that local authorities should be required to secure specialist education provision for post-16 learners outside of FE where this was required, it was suggested that more detail was needed about what this would mean in practice. The need for continuity of provision was emphasised.
- 4.23 Similar points were made in relation to placements at independent schools which had not been registered to provide the type of provision identified in the IDP. Many respondents believed that the proposal was reasonable in terms of quality assurance and what was expected of providers but others emphasised the need to be able to respond to very specialist, individual needs. The implications in terms of monitoring and inspection requirements were also highlighted, particularly by local government and by Estyn.

### **Requirement to collaborate and share information**

- 4.24 There was widespread agreement with these proposals. Respondents suggested ways in which processes to share information could be made

easier. However, several references were made to weaknesses in the way services had worked together in the past. The need for robust requirements to ensure different providers worked together to deliver a genuine multidisciplinary/inter-professional response to the needs of learners with ALN was an important theme in the responses.

### **Proposal to replace Personal Education Plans with IDPs**

- 4.25 While this proposal was welcomed there was some concern about the details of how any reformed system would work. Not all respondents were convinced that looked after children would require IDPs. However, many recognised that the amount of bureaucracy and duplication of assessment could be reduced if Personal Education Plans (PEPs) were replaced by IDPs.

### **Disagreement resolution**

- 4.26 Most respondents agreed with the notion that local authorities should maintain local disagreement resolution arrangements although a minority felt that this could create an additional step for families/carers to negotiate. This point was reiterated when respondents were asked whether the use of local complaints processes should be a requirement before appeals were made to the Tribunal. Suggestions were made that a set timescale should be stipulated to avoid prolonged delays in addressing issues locally.
- 4.27 While most respondents agreed with the proposals in relation to extending the right of appeal to Tribunal, some wanted greater detail especially around issues such as the range of matters that could be addressed by the Tribunal. For example, there was a view among local government respondents that the Tribunal should be able to address issues beyond those under the jurisdiction of local authorities. At the same time the need to have a right to appeal when an IDP was refused was noted by the Tribunal. Several respondents believed that children and young people should be able to initiate an appeal alongside parents/carers.

### **Other issues**

- 4.28 There was a strong view among educational professionals, particularly education psychologists, which supported the arguments made by their national association that the role of education psychologists should be integral to the way services for learners with ALN should be assessed and delivered.
- 4.29 Some suggested considering alternative delivery structures, among them those who advocated a greater role for the Regional Consortia and others who thought that processes should be led by bodies independent of the local authorities.
- 4.30 Several bodies including the Welsh Language Commissioner, were concerned that the proposals did not specifically refer to the rights of children, young people and parents/carers to services through the medium of Welsh

and that they should be guaranteed their right to access all processes such as assessment, negotiation and appeals, in Welsh.

## **Additional engagement**

- 4.31 There has been sustained engagement with stakeholders on the matters contained within the White Paper both before its publication and since its publication. The engagement has focused on the proposed provisions in the draft Bill as well as the wording within the draft Code. Engagement since the White Paper has included, but is not limited to, meetings, presentations and workshops with:
- The Third Sector Additional Needs Alliance (TSANA) – via a Task and Finish Group which has met on a monthly basis since December 2014;
  - 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 (SWASSH and NWASSH); Union Partnership Group;
  - Estyn; and
  - The Children’s Commissioner for Wales.
- 4.32 Discussions have taken place with the UK Government’s Department for Education about cross-border issues arising from the proposed changes. This includes supporting Welsh children and young people who attend an education institution in England and vice-versa. There have also been discussions on supporting Welsh young people with ALN detained in relevant youth accommodation in England and vice-versa.

## 5. Power to make subordinate legislation

- 5.1 The draft Bill contains provisions to make subordinate legislation.
- 5.2 The Welsh Government will consult on the content of the subordinate legislation where it is considered appropriate to do so. The precise nature of consultation will be decided when the proposals are formalised.
- 5.3 **Table 2** below sets out in relation to each provision:
- the person upon whom, or the body upon which, the power is conferred;
  - the form in which the power is to be exercised;
  - the appropriateness of the delegated power; and
  - the applied procedure, if any, together with the reasons why it is considered appropriate.
- 5.4 Guidance issued by the Counsel General for Wales has been applied when identifying the procedures. In January 2012 the Counsel General published guidance on the factors which would tend to indicate whether the affirmative or negative procedure should be applied.
- 5.5 The affirmative procedure would be indicated in respect of –
- a. powers that enable provision to be made that may substantially affect provisions of Acts of Parliament, Assembly Measures or Acts of the Assembly;
  - b. powers, the main purpose of which is, to enable the Welsh Ministers, First Minister or Counsel General to confer further significant powers on themselves;
  - c. powers to apply in Wales provisions of, for example, Acts of Parliament that in England, Scotland or Northern Ireland are contained in the Act itself (whether with or without modifications);
  - d. powers to impose or increase taxation or other significant financial burdens on the public;
  - e. provision involving substantial Government expenditure;
  - f. powers to create unusual criminal provisions or unusual civil penalties;
  - g. powers to confer unusual powers of entry, examination or inspection, or provide for collection of information under powers of compulsion;
  - h. powers that impose onerous duties on the public (e.g. a requirement to lodge sums by way of security, or very short time limits to comply with an obligation).
  - i. powers involving considerations of special importance not falling under the headings above (e.g. where only the purpose is fixed by the enabling Act and the principal substance of the legislative scheme will be set out in subordinate legislation made in exercise of the power).
- 5.6 The negative procedure would be indicated where –

- a. the subject-matter of the subordinate legislation is relatively minor detail in an overall legislative scheme or is technical;
- b. it may be appropriate to update the subject-matter of the subordinate legislation on a regular basis;
- c. it may be appropriate to legislate swiftly (e.g. to avoid infraction proceedings or for the protection of human or animal health or of the environment);
- d. the discretion of the Welsh Government over the content of the subordinate legislation is limited (e.g. legislation that gives effect to some provisions of EU law);
- e. it would be appropriate to combine provision to be made under the power with provision that can be made under another power where the latter may be subject to negative procedure.



**Table 2: Summary of powers to make subordinate legislation for provisions in the draft Bill.**

<b>Section:</b>	<b>Power Conferred on</b>	<b>Form</b>	<b>Appropriateness for delegated power</b>	<b>Procedure</b>	<b>Reason for procedure</b>
3(4): Additional learning provision	Welsh Ministers	Regulations	The definition of ALP included in the draft Bill has been made by reference to a child's age. Regulations under this section would allow the Welsh Ministers to replace the current references to the age of three with references to a different age, in response to changes in early years policy or evidence based practice. Therefore delegated powers would be appropriate.	Affirmative procedure	Enables provision to be made that may substantially affect provisions of Acts of Parliament, Assembly Measures or Acts of the Assembly.
4(4): Additional Learning Needs Code and 5: sets out the procedure	Welsh Ministers	Code	The ALN Code will be the principal document used by those responsible for delivering the new system as the operational level, especially local authorities and the staff of schools and FEIs. The requirement making powers which may be exercised through the Code relate to the technical detail around the discharge by local authorities and staff members of their duties in relation to IDPs, advice and information giving and independent advocacy services. It seems appropriate that these detailed operational requirements should be made in the document which is in effect an operational handbook. Setting out requirements in a Code rather than on the face of the draft Bill or in regulations will enable the use of language more easily understood by	Statutory Procedure as set out in section 5 of the Act.	It is considered appropriate that provisions included in the Code and in accordance with which affected bodies must act, should be laid before the National Assembly. The procedure is set out on the face of the Bill and mirrors that in

			interested parties.		laying the Codes on School Admissions and School Organisation
5(4)(b): Sets outs when the code will come into force	Welsh Ministers	Order	The draft Bill enables the ALN Code to come into force on a day appointed by the Welsh Ministers in an order. This delegated power is necessary in order to ensure that the appointed day ties in with the detailed transitional arrangements agreed with stakeholders after the draft Bill has been passed	None	Prescribes a technical and administrative matter which is unlikely to be controversial.
12(3)(c)(ii): Individual development plans: local authorities	Welsh Ministers	Regulations	The draft Bill requires that local authorities require decide in accordance with regulations whether it is necessary for them to prepare and maintain a plan for a young person. The setting of criteria for determining when it is necessary for them to do so is suitable for delegated powers as this will provide the Welsh Ministers with flexibility to amend over time the criteria that should be applied in response to evidence based need and practice.	Affirmative procedure	The principal substance of the subject-matter will be set out in subordinate legislation made in exercise of the power.
12(6)(b) Individual development plans: local authorities	Welsh Ministers	Regulations	The draft Bill requires local authorities to secure provision other than ALP in certain instances. It enables the Welsh Ministers to prescribe in regulations other forms of provision which must be secured by a local authority. This might change over time in response to evidence based practice. Therefore, delegated powers are appropriate.	Negative procedure	Prescribes technical and administrative matters, which may be updated from time to time.
21(1)(b):	Welsh	Regulations	The draft Bill places a duty on local authorities,	Negative	Prescribes a

Reconsideration by local authorities of decisions under section	Ministers		if requested to do so, to reconsider a governing body's decision to cease to maintain an IDP. The delegated powers will enable the Welsh Minister's to prescribe a period within which a child, the child's parent or the young person may make a request to a local authority in relation to such reconsideration. Therefore delegated powers would be appropriate	procedure	technical and administrative matter which is unlikely to be controversial.
23: Regulations about transfer of individual development plans	Welsh Ministers	Regulations	This enables the Welsh Ministers to set out details as to how IDPs should be transferred when a child or young person with an IDP transfers to a different education institution and/or a different local authority. There may be a need to amend this detail over time and on a regular basis in response to evidence based practice. Therefore delegated powers would be appropriate	Affirmative procedure	Although partly technical in nature, regulations made under the power will prescribe important elements in relation to the way in which the new ALN ensures consistency and continuity where learners transition from one stage of education to another.
29(4): Duty to favour education for children at	Welsh Ministers	Regulations	Regulations under this section would allow Welsh Ministers to set out the temporary and exceptional circumstances when it would not be under a duty to favour mainstream	Negative procedure	The subject-matter of the subordinate legislation is

mainstream maintained schools			education for a child with additional learning needs. There may be a need to amend these circumstances over time in response to evidence based practice or need therefore delegated powers are appropriate		relatively minor detail and unlikely to be controversial.
33(5): List of independent special post-16 institutions	Welsh Ministers	Regulations	Local authorities, when exercising their duties under this draft Bill, can only secure education or training for a child or young person at an independent special post-16 institution in Wales or England if the institution is on the list maintained by the Welsh Ministers under section 33. This is suitable for delegated powers as it provides the Welsh Ministers with flexibility to add and amend what information must be collated as part of the list; set requirements that must be complied with to be placed on the list; removal from the list; and institutions' rights of appeal to against decisions. The main duties are set out on the face of the draft Bill but there will be a need to amend the detailed requirements over time.	Negative procedure	Prescribes technical and administrative matters, which may be updated from time to time.
39(1): Case friends	Welsh Ministers	Regulations	The draft Bill allows that case friends might be used to support the child or young person. The detail of this is suitable for delegated powers because it will allow the Welsh Ministers to amend over time and in response to changing circumstances how case friends might be used to support the rights of the child/young person.	Affirmative procedure	The principal substance of the subject-matter will be set out in subordinate legislation made in exercise of the power.
40(4): Appeals	Welsh Ministers	Regulations	The draft Bill entitles children, parents and young people to appeal against a decision made, including the ALP which the child or	Affirmative procedure	The principal substance of the subject-matter

			young person receives, where it is felt that the child or young person's needs are not being met. The detail of how such appeals can be made is liable to change from time to time in response to changing practical considerations.		will be set out in subordinate legislation made in exercise of the power.
41(1): Procedure on appeals	Welsh Ministers	Regulations	The detailed appeal procedures may need to change from time to time in response to changing practical considerations.	Affirmative procedure	The principal substance of the subject-matter will be set out in subordinate legislation made in exercise of the power.
42 Compliance with orders	Welsh Ministers	Regulations	The draft Bill enables the Welsh Ministers to prescribe in regulations the period within which the governing body or local authority concerned must comply with an order of the Education Tribunal for Wales, beginning with the date on which it is made. This may need to change from time to time to reflect evidenced based practice. It is therefore suitable for delegated powers.	Negative Procedure	Prescribes technical and administrative matters, which may be updated from time to time.
46(3): Additional Learning Needs Co-ordinator	Welsh Ministers	Regulations	The draft Bill places a duty that all governing bodies of a maintained schools and an institution in the further education sector in Wales must designate a member of staff to be known as the 'additional learning needs co-ordinators' (ALNCO.) The proposed delegated powers will provide the Welsh Ministers with flexibility to specify what prescribed qualifications or prescribed experiences an ALNCO must have, as well as conferring any	Negative procedure	Prescribes technical and administrative matters, which may be updated from time to time.

			other functions relating to an ALNCO seen as necessary to undertake their duties. These may require updating from time to time in response to evidence based practice and needs.		
49(5): Duties of certain public bodies to provide information and other help	Welsh Ministers	Regulations	The draft Bill places duties on public bodies to provide information and help to local authorities. Delegated powers enable Welsh Ministers to specify a prescribed timescale within which a body or person must comply with a request under this duty. The timescales are liable to be changed from time to time in the light of evidence based need	Negative procedure	Prescribe a technical and administrative matter which is unlikely to be controversial.
51(1). Provision of goods or services in relation to additional learning provision	Welsh Ministers	Regulations	The draft Bill provides for regulations to enable a local authority to supply goods and services in relation to ALP. This is suitable for delegated powers as it enable the Welsh Ministers to set out technical detail about terms and conditions which may need to change from time to time.	Negative procedure	Prescribes technical and administrative matters, which may be updated from time to time.
52(1): Regulations about disclosure and use of information	Welsh Ministers	Regulations	Delegated powers will enable the Welsh Ministers to specify who needs to be provided with written copies of a plan; make provision about disclosure of plans; and make provision about the use of information gathered in preparing and maintaining a plan. These will be technical in nature and are likely to change from time to time to reflect changing practical considerations	Affirmative procedure	The principal substance of the subject-matter will be set out in subordinate legislation made in exercise of the power.
53(1): Parents lacking capacity	Welsh Ministers	Regulations	The draft Bill provides for regulations to be made to ensure that parents who are lacking mental capacity at a time where they are	Affirmative procedure	Enables provision to be made that may

			required to make a decision or represent their views, are sufficiently legally represented by an appropriate person.		substantially affect provisions of Acts of Parliament, Assembly Measures or Acts of the Assembly.
55(3): Persons for whom a local authority is responsible	Welsh Ministers	Regulations	This section provides the Welsh Ministers with delegated powers which enable them to make further provision about the persons for whom a local authority in Wales is responsible. The main duties are set out on the face of the draft Bill. There may be a need to amend the technical detail over time.	Negative procedure	The subject-matter of the subordinate legislation is relatively minor detail in an overall legislative scheme.
56(1): Regulations about looked after children and persons formerly looked after	Welsh Ministers	Regulations	Delegated powers will enable the Welsh Ministers to make provision about support by local authorities to promote the educational attainment of looked after children and young people, and provision about those who have ALN.	Affirmative procedure if amending primary legislation. Otherwise negative.	Affirmative where they enable provision to be made that may substantially affect provisions of Acts of Parliament, Assembly Measures or Acts of the Assembly. Negative where they prescribe a

					technical and administrative matter which is unlikely to be controversial.
57(2): Meaning of “detained person” and other key terms	Welsh Ministers	Regulations	Regulations under this section would provide the Welsh Ministers with the flexibility to make a very technical amendment to the meaning of ‘home authority;’ in relation to a detained young person who is also a looked after child should future policy require it	Negative procedure	The subject-matter of the subordinate legislation is relatively minor detail in an overall legislative scheme and is technical.
58(2)(b): Preparing individual development plans for detained persons	Welsh Ministers	Regulations	The draft Bill requires that local authorities to decide in accordance with regulations whether it is necessary for them to maintain a plan for a young person when they are released from detention. The setting of criteria for determining when it is necessary for them to do so is suitable for delegated powers as this will provide the Welsh Ministers with flexibility to amend over time the criteria that should be applied in response to evidence based need and practice.	Negative Procedure	Prescribe a technical and administrative matter which is unlikely to be controversial.
62(4): Appeals	Welsh Ministers	Regulations	The draft Bill provides for appeals to be made to the Tribunal in relation to detained persons. Delegated powers enable Welsh Ministers to make provision about making and determining appeals, conferring further powers of the Tribunal on determining an appeal and for	Affirmative procedure	Principal elements of the subject-matter will be set out in subordinate legislation made



			unopposed appeals. The detail of how such appeals can be made is liable to change from time to time in response to changing practical considerations.		in exercise of the power.
63(6): Constitution of the Education Tribunal for Wales	Welsh Ministers	Regulations	The draft Bill sets out the constitution of the Education Tribunal for Wales. Delegated powers allow Welsh Ministers, with the agreement of the Secretary of State, to: (a) provide for the jurisdiction of the Tribunal to be exercised by such number of tribunals as the President may determine from time to time, and (b) make any other provision in connection with the establishment and continuation of the Tribunal which are considered necessary or desirable. Regulations made under this section will provide technical detail that may need to be updated from time to time in response to changing practical requirements	Negative procedure	Prescribes technical matters, which may be updated from time to time.
64(2): The President and members of the panels	Welsh Ministers	Regulations	The draft Bill sets out provisions for appointing a person as president, and appointing a person as member of the legal chair panel or lay panel. Delegated powers enable the Welsh Ministers to prescribe the requirements that a person must satisfy to be appointed as a member of the lay panel. These would be technical in nature and may be updated from time to time to take account of new considerations	Negative procedure	Prescribes technical and administrative matters, which may be updated from time to time.
66(1): Power to make consequential	Welsh Ministers	Regulations	Delegated powers are suitable for giving Welsh Ministers the flexibility of making any supplementary, incidental or consequential	Affirmative procedure if	Affirmative where they enable provision

and transitional provision etc.			provision and any transitory, transitional or saving provision, if they consider it necessary. This enables Welsh Ministers to amend, repeal or revoke any enactment.	amending primary legislation. Otherwise negative.	to be made that may substantially affect provisions of Acts of Parliament, Assembly Measures or Acts of the Assembly. Negative where they prescribe a technical and administrative matter which is unlikely to be controversial.
69(2) Coming into force	Welsh Ministers	Order	Aside from sections 1, 67, 68 and 70, the draft Bill is enabled to come into force on a day appointed by the Welsh Ministers in an order made by statutory instrument. This delegated power is necessary in order to ensure that the appointed day ties in with the detailed transitional arrangements agreed with stakeholders after the draft Bill has been passed.	None	Prescribes a technical and administrative matter which is unlikely to be controversial.



## **PART 2 - REGULATORY IMPACT ASSESSMENT**

A regulatory impact assessment has been completed for the draft Bill and follows in Part 2.

## 6. Options

6.1 Three options are outlined below and the advantages and disadvantages of each are briefly considered. An analysis of the costs and benefits of each follows in chapter 7.

### **Option 1: Do nothing – maintain the current legislative arrangements for children and young people with Special Educational Needs (SEN) or Learning Difficulties and/or Disabilities (LDD)**

6.2 The ‘do nothing’ option would not change the current legislative arrangement. This option would retain the existing legislative frameworks around SEN and LDD. In particular it would retain:

- the existing distinction between statemented and non-statemented learners with SEN;
- the processes associated with the assessment for and issuing of a statement of SEN; and
- the duties of the Welsh Ministers in respect of:
  - the assessment of post-16 learners’ and the arrangement of a LSP;
  - the funding of specialist post-16 provision; and
  - the approval of independent schools for the placement of learners at those schools in respect to SEN.

#### **Advantages**

- Option 1 would incur no additional transitional/implementation costs as there would be no requirement for training or professional development associated with implementing new systems or processes.

#### **Disadvantages**

- The inadequacies and inefficiencies of the current system for the assessment and provision of support for learners with SEN and LDD would remain.
- This option does not provide a prudent policy option for an effective long-term approach for supporting learners with SEN or LDD. There has been a consensus of opinion, since 2003, through the former Education, Lifelong Learning and Skills (ELLS) Committee; the Wales Audit Office;

the Audit Commission; and Estyn that the existing system is too bureaucratic and not sufficiently child-centred or user friendly.

- This option maintains an outdated system which does not reflect current Welsh Government approach to giving children, young people and parents a voice and empowering them to make decisions which affect them, such as the approach set out in the Social Services and Wellbeing (Wales) Act.
- Welsh Government would remain responsible for planning and funding post-16 specialist provision. This is a system based on individual need for which specialist provision can be costly. Costs for funding post-16 specialist provision have increased year on year.

## **Option 2: 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.**

6.3 Option 2 would involve introducing a Bill to the National Assembly for Wales to replace the existing legislative frameworks for SEN and LDD. The Bill would be based on those proposals included in the two Welsh Government consultations undertaken in 2012, *'Forward in partnership for children and young people with additional needs'*<sup>4</sup> and *'Reform of the registration and approval of independent schools in respect of special education needs'*<sup>5</sup>.

6.4 The proposals in the 2012 consultation documents were to introduce legislation which would:

- give a statutory footing to the concept of 'Additional Needs' (AN) which would encompass difficulties relating to physical, sensory or mental health needs; communication needs; ability to learn; or social and emotional development. This could include children and young people who fall under the listed categories referred to in the *'Inclusion and Pupil Support'* guidance<sup>6</sup>. Although the way in which they would be supported would depend on their individual assessed need, under the proposed 2012 system the children and young people eligible for an IDP could include:
  - children of families in difficult circumstances;
  - pupils with SEN;
  - pupils with a physical disability, developmental disorder or mental illness;
  - pupils learning English or Welsh as an additional language (EAL/WAL);

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<sup>4</sup> <http://gov.wales/consultations/education/senframeworkconsultation/?lang=en>

<sup>5</sup> <http://gov.wales/consultations/education/senregistration/?lang=en>

<sup>6</sup>

<http://gov.wales/topics/educationandskills/schoolshome/pupilsupport/inclusionpupilsupportguidance/?lang=en>

- 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 or sensory deficit;
- young parents and pregnant young women;
- young people who offend;
- young carers;
- lesbian, gay, bisexual and transgender pupils;
- children with school refusers and school phobia;
- pupils who perform or who have employment;
- replace current statutory plans (e.g. Statements of SEN) and non-statutory plans (e.g. individual education plans for learners currently supported through Early Years/School Action and Early Years/School Action Plus, and LSPs for post-16 learners) with new integrated Individual Development Plans (IDPs) for learners with AN;
- create different types of IDPs using a person centred approach (PCP); some with statutory 'entitlement protection' for education, health and social care provision; some covered by guidance in the Code of Practice; and some as a matter of good practice for different age groups who fall within different categories of need under AN;
- extend the IDP age range from birth to 25 for those learners with severe and/or complex needs;
- implement a web-based IDP to which other plans can be attached, or replaced;
- introduce the 'Support Coordinator' role who would be the individual most involved in coordinating services for the learner with AN;
- introduce local multi-agency panels called 'Support Panels' to assess and agree the package of specialist service provision to be provided from education, social and health services, that the learner with AN requires;
- introduce regional 'Support Panels' to facilitate joint strategic planning and commissioning;
- impose duties on relevant bodies (such as local authorities and the NHS);
- introduce a dispute resolution and mediation process with a general responsibility on all agencies and organisations to collaborate to reach a final decision;
- extend the current rights of appeal to the Tribunal to cover the new age range but with a requirement that disputes go through the dispute resolution process in the first instance;

- broaden the remit of the current Tribunal to include health and social care, subject to appropriate safeguards for issues of clinical judgement of need;
- extend current arrangements for Parent Partnership Services to include learners with AN and their parents/carers;
- impose a duty on the Welsh Ministers to issue a code of practice in relation to the new statutory framework for AN;
- introduce a quality assurance system to monitor outcomes for learners with ALN;
- make local authorities responsible for assessing need, and securing and funding specialist further education provision for learners with LDD; and
- reform the system for the registration and approval of independent schools in respect of SEN.

### **Advantages**

- Option 2 would provide for a far greater number of learners to be entitled to an IDP compared to those under the current SEN/ LDD legislative frameworks.
- The IDP would seek to replace or integrate all other individual plans that a learner might be subject to including health and social care plans. Current statutory and non-statutory plans would be replaced with a single plan, the IDP, developed through a person-centred approach which would also include where relevant statutory entitlement protection for those with complex and/or severe needs.
- It would introduce a single set of arrangements from birth to 25 for those learners with severe and/or complex needs.
- It would address the deficiency of the current system being confrontational, adversarial and time consuming for those involved in the process. It would also seek to improve the way that concerns and disagreements are addressed.
- Quality assurance processes would be improved through a system which would track outcomes for learners, the related resources allocated, relevant feedback from parties involved and performance indicators.
- Implementing a web-based IDP would allow professionals to access and contribute to a learners IDP electronically.
- Through the regional Support Panels, joint strategic planning and commissioning would ensure provision of appropriate aged community based services in the region for those learners with complex/severe AN and the associated joint funding arrangements. Including budget holders from each agency in the membership would enable flexible funding responses for learners with complex and/or severe AN who require a supported placement in the region or a specialist placement in/out of the regional area.



- It would reform the process of placing a young person in a specialist post-16 institution, which is ineffective and inefficient. Local authorities would be responsible for securing and funding specialist further education placements, improving the transition process and encouraging local authorities and post-16 providers to work together more effectively.

## **Disadvantages**

- The proposed definition of AN would be widened from the current category of SEN to include those listed in the Welsh Government's Inclusion and Pupil Support guidance. This would mean that the number of children requiring a statutory plan would be significantly increased from the current number of children entitled to a Statement of SEN. The process and administrative implications for a greater number of learners who come under a new definition of AN could be very burdensome to practitioners and costly to schools, FEIs, local authorities and Welsh Government.
- The proposal would introduce an unclear and bureaucratic system of statutory IDPs and non-statutory IDPs. This would replicate the existing problems in the current Statementing system. The proposal would also not deal with the current perceived unfairness in that only some learners would have the statutory protection of agreed provision whilst others did not.
- The proposal would also introduce a requirement to review statutory IDPs every 6 months. This would place a heavy burden on all stakeholders required to be involved. Feedback from the ALN Pilot projects which trialled 6-monthly reviews was that this created an unmanageable workload.
- The model for a graduated response (in terms of age and level of need) in the consultation document is confusing as it includes categories for those with significant needs and those with severe and/or complex needs. This option would reinvent the current 'fight for a statement' to a 'fight for an assessment/diagnosis of complex needs' in order to ensure multi-agency provision.
- If the IDP were to replace or integrate other plans, there would be potential for education services to then be leading on or have perceived responsibility for non-education areas, e.g. where a child may have a health care plan or personal care plan.
- This option proposed that IDPs would be extended to all other learners as a matter of good practice. Taking forward IDPs for all learners would be hugely time-consuming to practitioners and would have costly implications for the school/FEI and would likely be in practice, unsustainable.
- Possible financial implications for local authorities, FEIs and LHBs in the additional functions required and/or the extended age range covered. These are described further under Chapter 7.
- Introducing mediation into the dispute process could have large cost implications for each of the local authorities in Wales and could be

perceived by parents to be legally impeding an appeal going to the Tribunal.

- Broadening the remit of the Tribunal to include health and social care would be very costly due to the need to appoint clinically qualified/medical professionals. It would also create inequity in the system as those who have associated health needs would have two avenues in which to take forward a complaint. Some stakeholders suggested that this could undermine core NHS principles of providing and prioritising health services based on clinical need.
- Implementing a web-based IDP would require the highest levels of security to ensure confidential information is not shared inappropriately. This would be very costly system to develop and introduce. The ALN Pilot projects faced barriers to achieving take-up of an online system from all agencies, notably health services which declined to use the web-based IDP; there is therefore a real risk that such a system would not be used by all agencies.
- There would be potential for an initial increase in the administrative burden arising from the transition from the current separate legislative systems to a single system. However this could be minimised through effective communication and a phased implementation.

**Option 3: Replace the current legislative arrangements for children and young people with SEN or LDD with a single unified system based on ALN in accordance with the Welsh Government White Paper ‘Legislative Proposals for Additional Learning Needs’ (2014). This is the preferred option.**

6.5 Further consideration of the proposals set out in option 2, and the feedback from respondents to the consultations in 2012, led to the development of a White Paper ‘*Legislative Proposals for Additional Learning Needs*’ which was published for consultation in May 2014. The proposals in the 2014 White Paper sought to address the concerns raised by stakeholders about various aspects of the 2012 proposals, and took account of a range of other factors such as the outcomes of the ALN pilot projects, the Social Services and Well-being (Wales) Act 2014, and the Children and Families Act 2014. Since then, we have reflected further on the responses to the White Paper consultation and have developed these proposals into the draft Additional Learning Needs and Education Tribunal (Wales) Bill, set out here as option 3.

6.6 Option 3 involves introducing a Bill to the National Assembly for Wales to implement a new legislative framework for supporting children and young people with additional learning needs. The draft Bill’s main provisions are outlined in Chapter 3. The proposals in option 3 build on those identified in option 2, in some cases refining them to better achieve the original policy intentions of option 2 and in other cases reformulating these significantly so that, while still bold and radical, they provide workable solutions to the

deficiencies in the current system and take account of changes in the wider policy and legislative context.

6.7 Like option 2, option 3 would:

- Replace the current statutory and non-statutory plans for learners with SEN and LDD with a statutory IDP;
- Create a single plan to cover learners from birth to 25;
- impose duties on relevant bodies (such as local authorities and the NHS);
- extend the right of appeal to the tribunal to cover the new age range;
- impose a duty on the Welsh Ministers to issue a Code;
- make local authorities responsible for assessing need, and securing and funding specialist further education provision for learners with LDD; and
- reform the system for the registration and approval of independent schools in respect of SEN

However 3 would not:

- extend the scope of IDPs to the very wide group of children and young people captured by the term 'AN' (instead option 3 would focus on 'ALN' which is broadly comparable to the current definitions of SEN and LDD)
- Differentiate between children and young people with an IDP, providing some with statutory protection but not others;
- Implement a web based IDP on a statutory basis;
- Introduce a support co-ordinator role;
- introduce multi-agency panels;
- introduce regional support panels;
- require dispute resolution procedures to take place before an appeal can be made; or
- broaden the remit of the Tribunal to include health and social care;

6.8 The proposals in option 3 are designed to achieve three broad objectives, to create:

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

## **Advantages**

- All learners with ALN would have equitable rights to have their needs identified and receive the provision they require to support their learning, regardless of the complexity of their needs. All learners who have ALN would be entitled to a statutory plan, the IDP, in which the provision agreed in the action plan would be statutorily protected.
- This would have the effect that all learners with an IDP would have equitable rights of appeal regardless of the complexity of their needs.
- As opposed to the wide scope of learners to be captured under option 2, the proposed definition of ALN would retain a focus on those most in need of support. As a result, the number of learners who come under this new definition of ALN should be no greater than those currently captured under the SEN definition in schools or the LDD definition in post-16 education.
- It would create consistent arrangements from birth to 25 for those learners with ALN.
- Option 3 would remove the inflexibility of the current statutory process and the distinction which is drawn between special educational provision that is statutorily protected and that which is not. The flexibility which would be created by the proposed system would mean that provision of support could best be matched to the child or young person's needs as they change over time, whilst still ensuring that it is statutorily protected if the child has ALN.
- There would be a single plan, the IDP, which would cover learners in school and FEIs. This would ensure greater coherence and continuity and would encourage local authorities and education providers to plan for transition at an earlier stage, enabling a smoother transition between institutions and enabling any provision that a young person requires at an FEI to be identified before the learner starts their course.
- The process should be less confrontational and adversarial which would reduce the mistrust and frustration which parents/carers currently report. The statementing process, which some perceive as being 'done to' them, would be replaced by an IDP that is developed through a person-centred approach which would involve the learner and parent/carer. This would enable the learner to be involved in any decision that involves them. The process would also reduce the level of confrontation and facilitate early resolution of disagreements.
- There would be a more effective and efficient process for placing a learner in specialist post-16 provision. Local authorities would be responsible for securing and funding specialist further education placements, where this was necessary to meet the needs of the young person. This would help facilitate better connections between local authority education and social services departments and LHBs which are needed to support a learners' effective transition into post-16 specialist provision.
- Improving the registration process for independent schools and putting a prohibition on local authorities placing a learner in an independent school that is not registered to cater for particular types of ALN would provide for a more effective system for placing learners with ALN in the independent

sector. This would also provide clearer information and assurance to both the local authority and the parent that an independent school can meet the needs of the learner, as identified within their IDP.

- The systems for providing information and advice, would be improved, and should lead to earlier resolution of disagreements.

### **Disadvantages**

- There is potential for an initial increase in the administrative burden arising from the transition from the current separate legislative systems to a unified system. This could be minimised through effective communication and a phased implementation.
- There are possible financial implications for local authorities, FEIs and LHBs in the additional functions required and/or the extended age range covered. These are described further under Chapter 7.

## 7 Costs and benefits

7.1 This chapter analyses the costs and benefits of the options of chapter 6. The assessment of the additional costs associated with Options 2 and 3 is based on Welsh Government analysis and input from the SENTW president, Estyn and Careers Wales. When Deloitte undertook an independent review (see below), this involved close engagement with local authorities, local health boards, a range of different schools (nurseries, primary, secondary, special and pupil referral unit) and FEIs. Costs have been given a financial value where available. Attaching market values to benefits is extremely difficult and a description of benefits is therefore provided.

### **An examination of the provision of funding for learners with special educational needs or learning difficulties and/or disabilities (Deloitte, 2015)**

7.2 In 2014, the Welsh Government commissioned Deloitte to undertake an independent review to investigate and analyse all aspects of the costs associated with supporting learners with SEN or LDD under the current legislative frameworks across Wales. This included consideration of the costs in their totality and in four key areas:

- assessment of need;
- provision of support;
- reviews; and
- disputes and appeals.

7.3 The approach followed by Deloitte involved analysing publicly available statistics such as LA Revenue Outturn expenditure, Section 52 outturn statements, PLASC<sup>7</sup>/LLWR<sup>8</sup> data, SENTW Annual Reports<sup>9</sup>; collecting and analysing survey data of key stakeholders such as local authorities, FEIs, schools, Careers Wales; and where possible making assumptions where it was not possible to collect the necessary financial information. The Deloitte report is available from the Welsh Government website:  
<http://gov.wales/topics/educationandskills/schoolshome/pupilsupport/additoinal-learning-needs-reform/?lang=en>

7.4 We have used the findings in the Deloitte report to inform our cost benefit analysis. However as Deloitte note in their report: *'It was apparent ... that the information needed ... is simply not recorded at the present time, including a lack of records on how much is spent meeting SEN/LDD needs as well as cost information at a process level. For example schools record how much*

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<sup>7</sup> <http://gov.wales/topics/educationandskills/schoolshome/schooldata/ims/datacollections/pupillevelannualschoolcensus/?lang=en>

<sup>8</sup> <http://gov.wales/topics/educationandskills/learningproviders/datacollection/llwr09/?lang=en>

<sup>9</sup> <http://sentw.gov.wales/about/areports/?lang=en>

*they spend on salaries, equipment...but they do not analyse their spending into particular functions.'*

7.5 Therefore, all costs within this RIA should be considered as best estimates based on the findings of the Deloitte report and the available evidence.

## Option 1: Do nothing – maintain the current arrangements

7.6 If the current system to support learners with SEN or LDD is maintained there would be no transition/implementation costs associated with continuing this approach. As the table below indicates the cost of the system is not static, it changes in line with the needs of those with SEN and LDD. There is a risk that post-16 specialist placements would increase in cost, given the lack of joint working, good transition and forward planning. Under the 'Do Nothing' option, costs are expected to remain broadly constant over the short-term. The table below estimates the totality of funding provision by public bodies in relation to SEN / LDD annually between 2011 and 2014 in Wales. In 2013-14, Deloitte estimated that £354.1m was spent in total across Wales on SEN / LDD provision.

**Table 1: Funding provision for the three years 2011 to 2014**

	2011-12 (£m)	2012-13 (£m)	2013-14 (£m)
<b>Welsh Government (Post-16 Specialist Placements)</b>	8.9	9.7	10.4
<b>LA Education Services</b>	167.5	155.7	138.4
<b>LA Social Services</b>	5.6	5.8	6.1
<b>Schools</b>	157.1	178.3	176.2
<b>FEIs</b>	7.3	7.4	7.5
<b>LHBs</b>	13.7	14.1	14.7
<b>Careers Wales</b>	0.8	0.7	0.7
<b>SENTW</b>	0.1	0.2	0.1
<b>Total</b>	<b>361.0</b>	<b>371.9</b>	<b>354.1</b>

Source: Deloitte Report March 2015

7.7 In 2013-14, there were 107,842 learners<sup>10</sup> classified as having SEN in Wales. This includes those categorised as Early Years/School Action, Early

<sup>10</sup> <https://stats.wales.gov.uk/Catalogue/Education-and-Skills/Schools-and-Teachers/Schools-Census/Pupil-Level-Annual-School-Census/Special-Educational-Needs/pupilssen-by-localauthorityregion-provision>

Years/School Action Plus and having a Statement of SEN. The table below highlights the number of learners with SEN between 2011-12 and 2013-14.

**Table 2: Number of children with SEN**

	<b>2011-12</b>	<b>2012-13</b>	<b>2013-14</b>
<b>MAINTAINED</b>			
Total number of pupils in a maintained setting	465,943	464,868	465,081
Early Years (EY)/School Action (SA) & EY/SA Plus	89,940	91,053	92,773
Statemented	13,098	12,738	12,530
Maintained Total	103,038	103,791	105,303
<b>INDEPENDENT</b>			
Total number of pupils in an independent setting	8,929	8,862	8,603
School Action (SA) & SA Plus	1009	1043	1092
Statemented	343	386	388
Independent Total	1352	1429	1480
<b>Education Other Than At School (EOTAS)</b>			
Total number of EOTAS pupils	2,577	2,577	2,367
School Action (SA) & SA Plus	557	589	635
Statemented	365	443	424
EOTAS Total	922	1032	1059
<b>Total number of pupils</b>	<b>477,449</b>	<b>476,307</b>	<b>476,051</b>
Total SA & SA Plus	91,506	92,685	94,500
Total Statemented	13,806	13,567	13,342
<b>Total SEN Provision</b>	<b>105,312</b>	<b>106,252</b>	<b>107,842</b>

Source: StatsWales

7.8 The table below sets out the number of young people aged between 16 and 25 in post-16 provision in Wales who have identified themselves as having a disability annually between 2011 and 2014. This includes both a learning difficulty/disability and those who have a physical disability. It should be noted that those entering FE do not have to identify themselves as having a disability. In 2013-14, 8408 learners in post-16 provision in Wales aged 16-25 identified themselves as having LDD and/or a physical disability.



7.9 A young person might be placed at a specialist independent college where their needs require it. These young people would have a Learning Difficulty and/or Disability that requires specialist provision to meet their needs.

**Table 3: Number of young people in post-16 provision who have LDD and/or a physical disability**

	<b>2011-12</b>	<b>2012-13</b>	<b>2013-14</b>
Total Mainstream FE enrolled	80,660	80,690	79,805
Mainstream FE LDD (includes physical disability)	8,255	7,515	8,130
Independent Specialist College	254	250	278
<b>Total Learner with LDD / Disability</b>	<b>8,509</b>	<b>7,765</b>	<b>8,408</b>

Source: Lifelong Learning Wales Record / Welsh Government

## Costs by Sector

### Welsh Government

#### Post-16 independent specialist placements

7.10 The Welsh Ministers have a duty in respect of the funding of post-16 specialist provision. This funding is in relation to the provision of support. Post-16 learners with LDD whose needs can not be met within mainstream FEIs can access education at Independent Specialist Colleges (ISCs). The Welsh Government funds the provision on a case by case basis, and where appropriate a contribution is made towards an individual placement by the relevant local authority social services department and/or LHB. This funding is for programmes of study that have a two or three year duration.

7.11 Table 4 shows the total funded cost for placements at ISCs over the last three years. In 2013-14, £16.7m was provided for 278 learners to receive education at ISCs. Each learner has a specific set of needs which requires a unique package of support, with some learners' needs being significantly more costly than others.

**Table 4: Cost of Learners in ISC**

	<b>2011/12</b>	<b>2012/13</b>	<b>2013/14</b>

Welsh Government Contribution	£8.9m	£9.7m	£10.4m
LHB Contribution	£0.6m	£0.7m	£0.8m
LA (social services) Contribution	£5.1m	£5.3m	£5.5m
<b>Total cost</b>	<b>£14.6m</b>	<b>£15.7m</b>	<b>£16.7m</b>

Source: Welsh Government

7.12 The Welsh Government employs six staff members to manage the application, approval and funding process for specialist placements. However, only four staff members have a specific full-time role in funding specialist placements, whilst the manager also spends approximately 12 weeks each year on this aspect of their role. The gross annual salary cost inclusive of a three year average travel and subsistence, is £179,000.

### **Approval and individual consent for independent schools**

7.13 The Welsh Ministers have a duty in respect of the approval of independent schools to admit learners with statements of SEN. Currently the SEN approval process for independent schools is an integrated part of the overall independent schools registration process. An independent school's registration includes whether the independent school would admit pupils with SEN and what provision it can cater for. It is therefore not possible to quantify a specific cost associated with only the SEN approval part of the registration process.

7.14 The Welsh Ministers also provide consent on an individual basis for the placement by a local authority of a learner with a statement of SEN into an independent school that has not been approved. There were 27 applications received from local authorities in 2013-14 seeking consent from the Welsh Ministers to place a learner with a statement of SEN into an independent school. To gain consent for the admission of an individual pupil to an independent school, a local authority must write to the Welsh Government enclosing a copy of a child's statement of SEN, a recommendation for that child to be placed in that independent school and confirmation that it is content to admit the learner. The Welsh Government seeks advice from Estyn that the placement is suitable. Based on this, the Welsh Ministers decide whether or not to grant consent to the placement and informs the local authority of this decision. This process takes an average of 4 to 6 weeks and creates a period of uncertainty for the learners and parents. Local authority, Welsh Government and Estyn officials spend time exchanging paperwork, estimated at approximately 2.5hrs per application. The Welsh Government currently employs 1 member of staff who spends less than 1 week per annum on this aspect of their role.

## Local authorities

- 7.15 Local authorities provide two services which plays a role in the current SEN/LDD system: education services and social services. Deloitte estimated that in 2013-14 local authority education services costs in relation to SEN/LDD were £138.4m and local authority social services £6.1m. In total this would suggest that local authorities spend approximately £144.5m on SEN/LDD provision (not including delegated school funding).

### Local Authority Education Services

- 7.16 Deloitte estimated local authority education services' total three year investment in SEN (2011 to 2014) as £461.6 m combined. This includes gross education expenditure relating to additional learning needs and provision of a special education needs nature; the funding of places for under-5s not in nursery with SEN and SEN inter-authority payments. The total 3 year investment in SEN, includes an estimated 17%, by Deloitte, of which could not be disaggregated across the four key areas. Therefore the percentage figures estimated by Deloitte below could be significantly higher.
- 7.17 Local authorities have different processes for the planning of provision, these differences include the number of staff, the grade of staff and the time involved in the process. Deloitte estimate that local authority education services spend approximately 6% of their total combined three year investment in SEN on assessment.
- 7.18 Deloitte have estimated that the time taken to review requests for statutory assessments (to determine whether a Statement of SEN is required) ranges from 1 to 2.25 hours and the time taken to perform statutory assessments ranges from 24 to 65 hours. This would suggest that the planning process of the current system for statements of SEN ranges from 25 hours to 67.25 hours per statutory assessment for local authorities.
- 7.19 The current statutory assessment system can take up to 26 weeks. This has been set out under current regulations and the SEN Code of Practice for Wales.
- 7.20 Deloitte estimate that local authority education services spend 2% of their total combined three year investment in SEN on reviews. Local authorities have different processes for the reviewing of plans with differences in the number of staff, the grade of staff and the time involved in the process. Deloitte have estimated that the time taken to support the statutory annual review process for learners with Statements of SEN ranges from 4 to 16 hours. Local authority social services are also involved in reviews, but it has not been possible to estimate their involvement.
- 7.21 Deloitte have estimated that local authority education services spend 75% of their total combined three year investment in SEN on the provision of support,

although the figure is likely to be higher. This is because Deloitte have also stated that a proportion of the overall investment spent on under 5s with a SEN not in a maintained nursery and SEN inter-authority recoupment payments is also likely to be on provision of support.

- 7.22 Local authority education services also spend money on disputes and appeals in relation to SEN, which includes the provision of advocacy and/or information services that are generally contracted to third party organisations to provide. However Deloitte has been unable to disaggregate an exact or estimated proportion of the total combined three year investment in SEN in respect to this.

### **Local Authority Social Services**

- 7.23 Deloitte estimate that in 2013-14, local authority social services spent approximately £6.1m on SEN. Across the 3 years (2011 to 2014) Deloitte estimated their total three year investment in SEN as £17.5 million (see table 1). This includes expenditure relating to the education for looked-after children with SEN and the social services contribution to funding placements for post-16 learners with LDD. However Deloitte have been unable to disaggregate an exact or estimated proportion of the social services total SEN/LDD spend in respect of each of the four key themes (see page 9) as data is not recorded in this way. Therefore these costs are unknown.
- 7.24 Local authority social services may be involved in the assessment and/or review process for SEN, however it is not possible to estimate their involvement or disaggregate the time taken to undertake this activity. Therefore these costs are unknown.
- 7.25 No financial data is available on the expenditure of educating looked-after children with SEN relating specifically to SEN provision. In 2013-14 64% of looked after children in compulsory school were classified as having a SEN. Deloitte have estimated, based on this figure that approximately £600,000 of the gross expenditure for educating looked after children in 2013-14 was related to SEN provision.
- 7.26 Local authority social services also contribute to the funding of ISC placements. In 2013-14, local authority social services contributed £5.5m towards the placement of 278 learners at ISCs (see table 4).

### **Schools**

- 7.27 Deloitte estimate that schools in Wales, including special schools, received a total of £176.2m in 2013-14 through the local authority delegated schools budget for supporting learners with SEN (see table 1). This is based on the local authority Revenue Outturn reports.
- 7.28 Deloitte have estimated the total expenditure on SEN by schools between 2011 and 2014 was £511.6m in total. Deloitte have estimated an average

spend between the four key areas (below), however spend on SEN could be higher or lower within schools in different local authorities due to the varying levels of delegated funding that schools receive.

- 7.29 Deloitte have estimated that 2% of schools' three year aggregated investment in SEN (2011 to 2014) is spent on the assessment of needs. This includes the money schools spend on non-statutory plans, such as those for pupils supported under Early Years/School Action and Early Years/School Action Plus, and statutory statements of SEN. There are significant variations in the estimation of time spent on statutory assessments from 90 minutes to 12 hours per assessment. There are also variations in the estimation of time spent on the planning of non-statutory plans from 1 to 3 hours.
- 7.30 Deloitte have estimated that 3% of schools' 3 year aggregated investment in SEN (2011 to 2014) is spent on reviewing statutory and non-statutory plans. There are significant variations in the estimation of time spent on reviewing statutory plans from an average of one hour to 10 hours. There are also variations in the estimate of time spent on the reviewing of non-statutory plans from 10 minutes to 2 hours.
- 7.31 Deloitte have estimated that 95% of the schools three year aggregated investment in SEN (2011 to 2014) is spent on provision of support. That is a total of £485.9 m over the three years.
- 7.32 Deloitte have estimated that less than 1% of the schools three year aggregated investment in SEN (2011 to 2014) is spent on disputes and appeals.

## **Mainstream Further Education Institutions**

- 7.33 FEIs received discrete and mainstream funding totalling £7.5m in 2013-2014 for LDD provision (see table 1). This funding comes from the Welsh Government and might be used, for example, for one-to-one support for learners and communication support workers. The total discrete and mainstream funding received by FEIs between 2011 and 2014 is in total £22.2m. Deloitte suggest that a small proportion of funding may relate to assessment of need and annual reviews, but Deloitte was unable to disaggregate the funding between these two key areas. Therefore, these costs are unknown. FEIs also required (as a condition of their funding from the Welsh Government) to carry out an essential skills assessment for new entrants which is likely to identify learners with LDD,

## **Local Health Boards**

- 7.34 Deloitte estimate that LHBs investment in SEN/LDD was £14.7m in 2013-14. Deloitte have also estimated the total investment by LHBs (in 2011 to 2014) on SEN/LDD was £42.5m. This includes the LHBs' programme budget expenditure for Learning Disability Problems and the LHBs' contribution to

post-16 specialist placements, in 2013-14, LHBs contributed £800,000 towards the placement of 278 learners at ISCs (see table 4 above).

- 7.35 It was not possible for Deloitte to disaggregate an exact or estimated proportion of LHBs spend on SEN/LDD in respect of each of the four key themes as LHBs do not record data in this way. Therefore, these costs are unknown.
- 7.36 Under the Education (Special Educational Needs) (Wales) Regulations 2002, a local authority must seek medical advice when making a statutory assessment. In 2013/2014 there were 12,530 learners identified as having statements of SEN, (see table 1), although it has not been possible for Deloitte to identify how many new statutory assessments were undertaken each year. There would also have been a number of statutory assessments which did not result in a statement of SEN but which would nevertheless have involved the input of health professionals; and therefore the number of statutory assessments which LHBs became involved in would therefore have been higher than the number of final statements. However, it was not possible for Deloitte to collect data on this. Therefore, these costs are unknown.
- 7.37 Under the Education Act 1996, LHBs are also under a duty to help when a local authority requests it to deliver its more general SEN functions, which could include being involved with learners with SEN who do not have a statement. This could include when a child with a medical need is recognised as having SEN but not a statement. Consequently, LHBs are sometimes involved in the development of non-statutory plans (such as Early Years/School Action Plus).
- 7.38 LHBs are currently required to be involved in the annual review process for children with a statement of SEN. LHBs can also be involved with the review process for children on non-statutory plans (i.e. Individual Education Plans for a learner on School Action Plus) where their input is requested. In 2013-14 there were 34,627 children on School Action Plus (see table 1), but it is not possible to identify how many of these reviews involve staff from LHBs. Therefore, this cost is unknown.
- 7.39 There is currently no statutory duty for LHBs to be involved in the planning aspect of educational plans for those in mainstream FEIs. However, FEIs have a duty of care to young people, which can include signposting or referring them to support from LHBs where they become aware of any health problems. Similarly, there is no statutory duty for LHBs to be involved in reviews of educational plans within FEIs.
- 7.40 LHBs are currently not required to be involved in appeals that are received by SENTW. A separate process exists for complaints about NHS provision. The NHS complaint procedure 'Putting Things Right' (under the NHS (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011) allows children, parents and young people to make formal complaints about the LHB.

## Other Bodies

### Careers Wales

- 7.41 Deloitte estimates that Careers Wales' investment in SEN/LDD in 2013/14 was £0.7m (see table 1). The total estimated 3 year investment by Career's Wales in SEN/LDD from 2011 to 2014 is £2.2m. Deloitte estimate that on average 64% of the total expenditure on supporting learners with SEN/LDD over the three years has been on assessment. This includes the assessment of the education and training needs of young people required under the Learning and Skills Act 2000, as well as making applications to the Welsh Government for placements at ISCs.
- 7.42 In 2013-14, Careers Wales supported 1,103 learners with LSPs, which on average take about 10 hours of staff time to develop. Of these 119 were applications for funding at an ISC. This requires an additional 35 hours staff time. Careers Wales provided the gross average rate for staff members as £27.55 per hour. This equates to approximately £147,530 per annum in staff costs.
- 7.43 Deloitte estimate the remaining 34% of their total expenditure of SEN over the three years has been on annual reviews for learners with a statement as part of the transition process into FE. Deloitte have estimated that each review takes on average two hours. The number of reviews Careers Wales undertook were as follows:

**Table 5: Number of reviews undertaken by Careers Wales**

Year	Number of Reviews
2011-12	5,234
2012-13	4,298
2013-14	4,668

- 7.44 The 4,668 reviews that Careers Wales undertook in 2013-14 equate to approximately £257,210 in staff costs for 2013-14.

### Special Educational Needs Tribunal for Wales

- 7.45 Parents of learners with SEN, and learners themselves, have the right to make an appeal to SENTW regarding decisions made by local authorities about the learners' Special Educational Provision. The latest SENTW annual report highlights that the Tribunal registered 78 appeals and discharged a total of 84 appeals during 2013-14.
- 7.46 The SENTW is funded by the Welsh Government. In 2013-14, SENTW expenditure was £128,488. This expenditure relates to members fees and expenses for tribunal proceedings, and Tribunal events (hearing costs).
- 7.47 The Tribunal provides induction for new members, this usually involves the following:

- induction training at Tribunal Office – 1 day
- hearing observations – 1 day
- hearing sitting with observer present – 2 days

7.48 Any induction undertaken for new members would be at a cost of £1,410 per member plus additional fees for travel and subsistence, and administrative costs to the Tribunal for preparing the arrangements.

7.49 The SENTW is not involved in any other aspect of the SEN system, i.e. the assessment of need; provision of support; or reviews.

## **Estyn**

7.50 Estyn is currently involved in the registration process for independent schools who wish to admit learners with SEN. Although it is not possible to disaggregate the cost of registration between those independent schools who wish to admit learners with SEN and those who do not, it is possible to identify the cost of undertaking a request for a material change to a school's registration in respect of SEN. The cost of undertaking a material change request depends on a number of factors such as the size and nature of the independent school and the inspection evidence already held. However, Estyn has identified that on average it takes 3.5 inspector days per change request. In 2013-14, there was 1 request for material change. Based on a daily rate of £880, which incorporates on costs including publication, this equates to an average cost to Estyn of £3,080 per annum.

7.51 Estyn is also involved in the process whereby a local authority education service seeks Welsh Ministers' consent to place a learner with a statement of SEN into an independent school. The overall process can take on average a total of 4 to 6 weeks. For Estyn, specific activity involves Estyn inspectors assessing the application and making a recommendation to the Welsh Government. Estyn has identified that on average it takes 1 inspector day per application. In 2013-14, there were 27 applications by local authorities to place a learner with a statement of SEN into an independent school, with 20 applications based in Wales. Estyn is only required to assess those applications to place a learner in Wales. Therefore in 2013-14, based on the daily rate for an inspector, it costs Estyn approximately £17,550 to assess 20 applications for placements into independent schools based in Wales.

7.52 In addition Estyn undertakes annual monitoring of independent schools that are approved to admit learners with SEN generally, and of ISCs that are based in Wales. On average an annual monitoring visit takes 6.33 inspector days in either setting. In 2013-14 there were 21 annual monitoring visits to an independent school and 6 annual monitoring visits to ISCs. Based on the daily rate for an inspector this equates to an approximate cost of £150,070 to Estyn to undertake annual monitoring visits to independent schools and ISCs in 2013-14.



## Benefits

7.53 The principle benefit of this option is the avoidance of any implementation and transitional costs in a new system.

### **Option 2: 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.**

7.54 This option places greater focus on the process of planning and reviewing provision being undertaken in accordance with the principles of person-centred practice (PCP). The Welsh Government wants to promote the use of PCP more widely and ensure it is applied consistently. Costs arising from this have been excluded from the Regulatory Impact Assessment because this is general policy work related to the promotion of PCP and can be undertaken independently of any legislative developments. Once established it would provide a way of working that would put the child at the centre of the process, regardless of which legislative framework is in place.

## Costs by Sector

### **The Welsh Government**

#### **Code of Practice**

7.55 Under this option the Welsh Government would be responsible for developing a new Code of Practice that would support the new system. The Code of Practice would include information on how the new system works and would provide guidance to key stakeholders on how to undertake their responsibilities. The staffing cost of producing a Code of Practice would be £43,790. This is based on one full-time MB2 for a year and two weeks of a Grade 7. The Code of Practice would also require consultation, translation and promotion at an approximate cost of £30,000. The total cost of producing a Code of Practice would be approximately £73,790. This would be a one off transition cost.

#### **Individual Development Plan**

7.56 The Welsh Government would create a web-based IDP under this option. To do this, it would need to have the highest levels of security to ensure confidential information is not shared inappropriately and have the necessary safeguards to adhere to data protection. No web-based system has been developed, however a system was considered within one of the local authorities involved in the pilots. It was estimated that a system that provided access to families, schools and local authorities staff, health and third sector professionals would cost in the region of £135,000 to establish over a three year period. This would include design, development, testing, training,

hardware, and system software (which would require relicensing every 3 years) for use within up to 8 local authority areas.

- 7.57 It should be noted that in modelling this development, the specification was for a system that could accommodate a few hundred records, increasing the number of records would be likely to have an effect on the security requirements and thus the cost. In addition, developing a system from scratch for an on-going live installation would require full time developers and some level of on-going support and maintenance provision. Therefore to implement a system that covered all of Wales, the costs are likely to be far higher, possibly around £400,000 based on a comparison with other Welsh Government web-based systems, but no detailed financial modelling has been done to establish this.

### **Communication and Awareness Raising**

- 7.58 The Welsh Government would be responsible for communicating the new system. It is essential that all those involved in delivering and monitoring the new system (including staff and practitioners from local authorities, further education institutions, schools, the Tribunal, LHBs, the Third Sector, Estyn and others) understand it. The Welsh Government would ensure the current training for school governors is adapted to take account of the new system and awareness raising of the system would be provided to practitioners and stakeholders across Wales. The cost for the Welsh Government of revising governor training materials and providing awareness sessions across Wales would be approximately £23,600. This is based on 20 weeks' work of a MB1. This would be a one off transition cost.

### **Registration for independent schools**

- 7.59 Under this option independent schools would need to register the type of AN they could cater for using the registration process under s160 of the Education Act 2002. The requirement to register would mean that an independent school would need to submit an application for material change to its registration. The Welsh Government already employs two members of staff to manage the independent schools registration process. Therefore there would be no additional costs for staff time to process applications under this option.
- 7.60 The Welsh Government would also amend current guidance for independent schools to ensure information on the new registration process was clear, the cost of which is estimated at £4,790 This is based on 4 weeks work of a MB1. This would be a one off transition cost.

### **Post-16 independent specialist placements**

- 7.61 The Welsh Government would no longer be required to assess, secure or fund a placement at a specialist further education provider. As highlighted in option 1 (paragraphs 7.10-7.12) the Welsh Government spent £10.4m on this function in 2013-2014. This function would instead transfer to local

authorities. Funding for this function would no longer be ring-fenced; it is likely to be funded via the RSG. The distribution of this funding within the RSG is a matter for the Distribution Sub-Group (a sub-group of the Partnership Council for Wales) and the Minister for Public Services. This recurrent transfer of funding would commence in sufficient time to allow for systems to be developed and applications to be decided upon.

- 7.62 The Welsh Government would also no longer be required to approve individual specialist placements because independent providers would need to be registered. The Welsh Government currently has a team of 6 people in place to process these applications; this currently costs the Welsh Government £179, 000 per annum.
- 7.63 Guidance will be produced for local authority education services on the process of securing placements within ISCs. This would explain to local authorities the process of assessing learners' needs and securing post-16 specialist provision. The cost for the Welsh Government of producing this guidance would be approximately £4,720. This is based on 4 weeks work of a MB1. This would be a one off transition cost.
- 7.64 The Welsh Government would also provide awareness training to local authority education services to explain the new system for securing post-16 specialist provision. The training is expected to be delivered at a local education consortia level. The cost of developing and delivering awareness training would be approximately £4,720. This is based on 4 weeks work of an MB1. This would be a one off transition cost.

## **Local Authorities**

### **Local Authority Education Services**

- 7.65 Local authority education services would maintain responsibility for planning the assessment of need and reviewing statutory plans. It is already a statutory requirement for local authority education services staff to be involved in discussions related to assessment and review and under this option this requirement would continue. Those learners who would be entitled to a statutory plan would be those learners with the most complex and/or severe needs or those who have significant needs. This would be broadly similar in number to those who currently receive a statutory plan. Therefore costs would remain as they are at present.
- 7.66 Local authority education services would be responsible for providing provision to meet the needs of learners with AN. This would be for those learners entitled to a statutory IDP. As local authorities would only be involved with those learners with a statutory IDP, it is expected that this will be broadly the same number of learners who currently have Statements of SEN.
- 7.67 Local authority education services would not be responsible for post-16 learners who attend mainstream FEIs.

- 7.68 Local authority education services would be responsible for appointing a Support Coordinator, as highlighted in Chapter 6. Guidance on this role would be developed as part of the new Code of Practice. We would not anticipate a new post to be created to undertake this role, but it would be for the local authority to decide on how best to take forward this function. Where a new post is created, this would be a recurrent cost.
- 7.69 In addition 'Support Panels' would be established at a local and regional level. These would be multi-agency panels used to assess and agree the package of specialist service provision to be provided from education, social and health services. At a regional level these would be used to facilitate joint strategic planning and commissioning. It is not possible to identify costs associated with attending regional 'Support Panels' as it would depend on the level of need in each regional area. However membership would need to include those at the appropriate level to make funding decisions. This would be a new and recurrent cost.
- 7.70 Local authorities would continue to be required to make arrangements to provide people with information and advice; making arrangements about the system known; prevent appeals and be subject to appeals. Local authorities are already under a duty to resolve disagreements and provide information and advice. Local authorities usually fulfil this duty by Parent Partnership Services delivering these services. The current SEN Code of Practice refers to the term 'Parent Partnership Service.' Similarly, local authorities are already under a duty to provide advocacy services which can also provide information and advice. As highlighted in option 1 (see paragraph 7.22), the majority of local authorities use third sector organisations to provide these services. Under this option the Parent Partnership Service would be extended to include learners with AN and their parents/carers. We would not anticipate an increase in the use of either of these services in the long-term, however, there may be an initial increase in the use of these services by learners and parents seeking to access information and advice, or take forward disputes as a result of uncertainty about the new system. It is not possible to quantify what any possible increase in the short-term would be so therefore these possible costs are unknown.
- 7.71 Under this option, local authority education services would be involved in mediation before a dispute goes to the Tribunal. This would be a cost to the local authority, however this cost could be off-set against the potential cost savings arising from disputes being resolved through mediation, which could reduce the number of appeals that a local authority have to be involved in. However, mediation in itself might not reduce the number of disputes reaching Tribunal. This is due to the fact that by the time that the learner and/or parents of a learner are in dispute with the local authority and are required to attend mediation it is likely that neither party would be entering these discussions in the right mind-set for compromise and negotiation. Therefore the potential cost savings might not be realised.

- 7.72 Utilising a PCP approach within the new system, we do not expect the overall number of appeals on education matters to significantly increase but to potentially reduce over time, as learners and parents would be more involved in the decision-making process. We recognise that there is the possibility of an increase in the number of appeals in the short term, due to the changes in relation to rights of appeal for those in post-16 education settings and the potential for the legislation to be tested.
- 7.73 Careers Wales currently develop the LSPs (as highlighted under option 1 – paragraphs 7.41-7.43) for those learners with LDD entering into FE. The LSP will be replaced by the IDP. This option would require this function (the development of the IDP) and associated costs to be taken on by the 22 local authority education services. Careers Wales spent £147,530 in 2013-14 on staff costs for those involved in the development of LSPs. This would be a recurrent cost incurred across the 22 local authority education services in Wales. However, as there would be no requirement to create a new plan equivalent to the LSP, this function would be subsumed into the IDP review process and should therefore lead to savings in time and cost.
- 7.74 Local authorities would also take on responsibility for funding placements at specialist colleges; this is currently funded by the Welsh Government (see 7.10-7.12 and 7.62). There is no reason to believe that the number of placements would increase or that the funding required would need to increase under this option. However because specialist placements are based on need, there is a potential risk of increased costs to the local authority for the number of specialist placements and/or specialist provision required. Local authorities would take on the current funding provided by Welsh Government (currently £10.4m annually), funding for this function would no longer be ring-fenced; it is likely to be funded via the RSG. The distribution of this funding within the RSG is a matter for the Distribution Sub-Group (a sub-group of the Partnership Council for Wales) and the Minister for Public Services. Through better joint working across local authority education services and social services departments the local authority would have a stronger position from which to negotiate specific costs. The ability of local authorities to better plan for effective transitions into suitable post-16 education could also lead to reductions in costs.
- 7.75 There would be an administrative cost to local authority education services for taking on the responsibility for securing a placement and funding applications for those who require post-16 specialist provision. As highlighted in option 1, the Welsh Government administrative costs for this function are £179,000 per annum. Based on current Welsh Government costs, we estimate it would cost the 22 local authorities across Wales a maximum of £179,000 per annum to complete funding applications for post-16 specialist placements. This would be need to be considered in the transfer of funds from the Welsh Government to local authorities.
- 7.76 In addition, local authority education services would be expected to attend a one-off awareness session for the post-16 specialist placements process,

provided through Welsh Government (see above) on the new system. The cost of one member of staff at the appropriate level to attend one day of training has been estimated at £300 per authority. This equates to a total cost of £6,600 across all 22 local authorities. This is a one-off transition cost incurred by local authorities.

### **Local Authority Social Services**

- 7.77 When undertaking an assessment of need and reviewing statutory plans for those learners with complex and/or severe needs aged between birth and 25, staff from local authorities' social services would be statutorily required to be involved in the discussions. Under this option social services would be in equal partnership with education and health services and therefore would be involved in the assessment and reviewing of any statutory plan.
- 7.78 Under this option, the proposal would be to create a single plan, the IDP, which would replace or integrate all other individual plans that a learner might be subject to, although it would not supplant a Care and Treatment Plan which is a mental health law requirement. This could provide social services with a potential saving as the process might be more streamlined compared to the status quo, i.e. use of separate plans for the same learner. However, under this option it would not reduce the time needed by professionals from social services to be involved in the assessment of need required for the statutory plan. As with option 1 we expect that the variation of time spent on assessment would remain, to take account of the individual needs of the learner.
- 7.79 One review meeting to discuss different plans could provide social services with a potential saving as this would be more efficient than participating in separate reviews which exists for different plans (as is currently the case). However, this option proposes that the IDP must be reviewed at a minimum of 6 months rather than the 1 year minimum (as is currently the case under option 1). This would increase the burden on social services as they would be required to attend the multi-agency meetings on a more frequent basis, and other plans might not have the same requirements in relation to the frequency of reviews meaning that the potential benefits of coordinating the timing of reviews might not be realised.
- 7.80 Local authorities would continue to be responsible for ensuring the educational needs of looked after children are met. Under this option, the IDP would be able to replace or integrate the planning and review process of the Personal Education Plan (PEP). As social services would be involved in statutory IDPs there could be a potential saving for local authority social services if they were to join up in this way, as they would be able to assess and review the plans at the same time.
- 7.81 As highlighted above, the introduction of Support Panels would require local authority social services to attend. They are already involved in multi-disciplinary discussions regarding learners' severe and/or complex needs and

we anticipate the number of these discussions would be broadly similar to current levels. It is not possible to identify costs associated with attending regional 'Support Panels' as it would depend on the level of need in each regional area. However membership would need to include those at the appropriate level to make funding decisions. This would be a new recurrent cost but the amount is unknown.

- 7.82 Local authority social services would continue to be responsible for contributing towards post-16 specialist placements. Local authority social services spent £5.5m on this function in 2013-2014. As discussed above (in relation to local authority education services) we do not expect the numbers of learners attending ISCs to increase.

## Schools

- 7.83 As identified within option 1 (paragraph 7.31), Deloitte have estimated that schools (including special schools and PRUs) spend 95% of their SEN expenditure on the provision of support. Introducing quality assurance processes through a system to monitor outcomes for learners with ALN, and to track the related resources allocated would help ensure that the money spent on provision could be better targeted through interventions which are known to be most effective.
- 7.84 We expect that the variation of time spent on planning and reviewing statutory and non-statutory plans would remain as it is under option 1 (paragraph 7.30). Those who under option 1 receive a statutory plan would be learners with the most severe and/ or complex needs. We do not expect the number of these learners to change under this option, however with a wider definition there is some potential for an increase.
- 7.85 The number of children who could receive a non-statutory plan is expected to increase significantly under this option. For example, the number of learners on Early Years/School Action and Early Years/School Action Plus (who may receive non-statutory plans) in 2013-14 was 92,773 (see table 1). In addition, looked after children would account for about 1% of total pupils, those with English or Welsh as an additional language for perhaps 3%, and Gypsy/Travellers for 0.2%. These would also be entitled to a non-statutory plan. The total number of school children who were enrolled in a maintained school as of 2013-14 was 465,081 (see table 1). It is not possible to quantify the number of learners who would qualify for a non-statutory plan (under the wider category of AN) as this data is not collected, however it would potentially be a high proportion of the total number of pupils. As highlighted in Option 1 if non-statutory plans continued to take on average 2 hours to assess their need as well as taking between 10 minutes to 2 hours to review these plans, this would be a significant administrative cost to schools on a recurrent basis.
- 7.86 The Welsh Government would be responsible for communicating the new system of AN. As highlighted above, a Code for Practice would be developed

which would provide guidance and information to schools on how to undertake their responsibilities. Local authority education services would be responsible for ensuring that school governing bodies were clear on their responsibilities and the Welsh Government would ensure the current training for school governors was adapted to take account of the new AN system. The Welsh Government and local authority education services would also ensure through the relevant AN networks that school coordinators were clear on their responsibilities. It is expected that the school AN coordinator would support staff as needed to ensure all staff were aware of their responsibilities. No additional costs are expected to be incurred by the school as awareness raising would be expected to take place during INSET days for all practitioners.

## **Mainstream Further Education Institutions**

- 7.87 FEIs would be required to make provision for the same number of learners; this would not increase the costs to FEIs. FEIs would continue to be responsible for assessing the needs of learners and reviewing education plans. Those who would be entitled to a statutory IDP would be broadly the same numbers who are entitled to a Learning and Skills Plan under the current system. FEIs would be responsible for reviewing the plans every 6 months at a minimum. This new requirement would carry an additional cost for the FEI. In addition, those learners who fall under the widened category of AN in FEIs could receive a non-statutory IDP as a matter of good practice. This could also greatly increase the administrative burden for those in FEIs.
- 7.88 The Welsh Government would be responsible for communicating the new system of AN. As highlighted above, a Code for Practice would be developed which would provide guidance and information on the new system. It would be for FEIs to determine how to ensure awareness of the new system is raised with its staff. No costs would be incurred by the FEI as awareness raising would be expected to be incorporated into current staff training and development processes.

## **Local Health Boards**

- 7.89 LHBs currently fund the NHS related SEN/LDD provision which they agree to provide. This comes from within existing budgets. The NHS already has pathways / frameworks established to help prioritise provision based on clinical need and these would continue to be used. It is not anticipated that the current cost of NHS provision of support would change under this option, however there is a potential risk that additional needs will be identified through the provision of non-statutory plans to a wider category of learners or the expanded age range (under this option) which could impact on costs to LHBs.
- 7.90 LHBs would be included in all IDPs with statutory protection for those who are 19-25. This could potentially carry an additional new cost to LHBs as health professionals would be required to be involved in statutory plans and provide the provision required.



- 7.91 As highlighted in option 1 (paragraph 7.36 -7.38), LHBs currently contribute to statutory and non-statutory plans for school-based learners. The involvement of LHBs in assessing need and reviewing statutory plans for school-based learners with AN and the costs associated with these processes is unlikely to change.
- 7.92 As with the current system, professional advice would be a mandatory element of the process of drawing up a statutory IDP and reviewing it. Therefore, the number of cases in which LHBs are required to become involved would be likely to stay the same. There are currently 12,520 learners who have a statement of SEN; we would expect broadly the same number of learners would be entitled to receive a statutory IDP.
- 7.93 As highlighted earlier, health services staff would be required to attend Support Panels. They are already involved in multi-disciplinary discussions regarding learners' severe and/or complex needs and we anticipate local Support Panel discussions would mirror those multi-agency discussions that take place under the current system. The involvement in statutory plans for the 19-25 age range, could potentially increase the number of local support panel discussions which could have a cost impact for health professionals to attend. It is not possible to identify costs associated with attending regional 'Support Panels' as it would depend on the level of need in each regional area across the age range. However membership would need to include those at the appropriate level to make funding decisions. This would be a new recurrent cost but the amount is unknown.
- 7.94 LHBs would continue to be under a duty to comply with a request for help by a local authority, including in relation to learners with non-statutory plans. Under the current system of SEN, LHBs are generally involved with learners within Early Years/School Action Plus only, i.e. where specialist advice and support is required. There are currently 34,627 children on School Action Plus.<sup>11</sup> It is not possible to quantify the cost to LHBs associated with supporting School Action Plus. Therefore, these costs are unknown. Although the category of AN would be broader than the current SEN category of learners, there is potential for a much larger group of learners to have non-statutory plans. Although it is not expected that children's health needs would be any different to current levels, there is the potential for additional health needs to be identified under the wider category of learners. We do not expect a significant or long-term increase in costs for LHBs arising from this.
- 7.95 As highlighted above, this option proposes to create a single plan, the IDP, which would also replace or integrate all other individual plans that a learner might be subject to, although it would not supplant a Care and Treatment Plan which is a mental health law requirement. This could provide health services

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<sup>11</sup> <https://stats.wales.gov.uk/Catalogue/Education-and-Skills/Schools-and-Teachers/Schools-Census/Pupil-Level-Annual-School-Census/Special-Educational-Needs/pupilssen-by-localauthorityregion-provision>

with a potential saving as the process might be more streamlined compared to the status quo, i.e. use of separate plans for the same learner.

- 7.96 Under this option statutory IDPs cover those up to the age of 25. LHBs would be required to be involved in the assessment and review of any learner entering or attending an FEI where they are entitled to receive a statutory IDP. Where a learner does have a statutory IDP this would require someone from the LHB to attend every time the IDP is reviewed. This would likely increase the cost to LHBs to be involved with those learners aged 19-25.
- 7.97 LHBs would continue to be responsible for contributing to the funding of post-16 specialist placements for those learners whose needs require a placement there. This is a continued cost. As highlighted in option 1 LHBs spent £0.8m on this function in 2013-2014, it is anticipated that the numbers of learners entering post-16 specialist provision would remain relatively similar to current levels. The IDP would be the equal responsibility of local authority education services, local authority social services and LHBs. Although we do not anticipate LHBs to have any additional involvement to review statutory plans in relation to post-16 specialist placements, the frequency of reviews (under this option, i.e. every 6 months) would be an increase in burden for the LHBs who would have to attend these reviews. This would be an additional cost to the LHBs.
- 7.98 LHBs would be subject to appeal concerning their input into statutory IDPs which could lead to a cost to the LHB. In 2012-13 SENTW discharged a total of 102 appeals, however these appeals only focused on education matters. It is likely that there would be a number of appeals on matters related to the functions of LHBs that would go to SENTW under this option. There is an existing NHS complaints process under 'Putting Things Right.' The guidance on Putting Things Right would need to be reviewed to clarify how it relates to the system of appeal under this option. There will be a risk of increased use of Putting Things Right by learners with statutory plans in post-16 education which would carry a cost to the LHB. There is also a potential risk of increased involvement of the Ombudsman. It is not possible to estimate how many appeals on statutory IDPs would relate to the functions of LHBs. Therefore, it is not possible to quantify a cost; however, it would be a new and recurrent cost to the LHB.

## **Other Bodies**

### **Careers Wales**

- 7.99 Careers Wales would continue to support assessment of need and reviewing statutory plans and non-statutory plans as part of the transition planning process.
- 7.100 Careers Wales would no longer be involved in producing LSP for learners with LDD. This would result in an estimated overall saving of £147,530 per annum.

7.101 Careers Wales would also no longer be required to support learners in applying to the Welsh Government for funding post-16 specialist placements. This would result in an estimated overall saving of £32,600 per annum.

## **SENTW**

7.102 Under this option, the current rights of appeal to the Tribunal would be extended to include the wider age range, however the perceived unfairness of only some learners receiving statutory plans would continue and the main source of contention would remain. In addition, the remit of SENTW would be broadened to include health and social care, subject to appropriate safeguards for issues of clinical judgement of need. Therefore, it is likely that there would be a number of new appeals related to the functions of LHBs and local authority social services. This would potentially increase the number of appeals heard by SENTW. We anticipate this would increase the administrative costs to SENTW as there would potentially be more hearings and there would also be a need to appoint qualified clinicians medics to the Tribunal. It is not possible to quantify the increase in appeals or the number of qualified clinicians that would need to be appointed under this option, however, it would be likely to significantly increase the costs for SENTW.

7.103 In addition any increase in appeals to SENTW could also potentially increase the number of ongoing appeals to the Upper Tribunal. As above, it is not possible to quantify the number of appeals to SENTW or the potential number for the Upper Tribunal. However it is anticipated that the number of ongoing appeals would be relatively low.

7.104 Through utilising the PCP approach within the new system, it is possible that this could potentially reduce the range of appeals over time. In Carmarthenshire there were 12 appeals in 2010-2011, this figure has fallen to 0 appeals in 2013-14. The use of the PCP approach and the discussion of concerns between a family and a school and/or a local authority has been credited for this decline in appeals. This has brought financial savings to the council.

7.105 SENTW members would need to undertake training to understand the new unified system. The cost of one day's training is estimated to be approximately £10,270 based on a daily rate and travel costs for 13 members. It also includes an allocation for speaker and venue costs. It is expected that 3 days training would be required and/or include legal involvement. It is therefore anticipated that cost of training would cost £30,710. This is a one-off transition cost.

## **Estyn**

7.106 Independent schools would need to update their registration to include any AN it can cater for. This could potentially apply to all independent schools in Wales. Estyn would therefore need to be involved in the process to assess

the request for a material change (as it currently does). The cost of undertaking a material change request depends on the size and nature of the independent school, however Estyn has identified that on average it takes 3.5 inspector days per change request. Based on a daily rate of £877.60 this equates to an average cost to Estyn of £215,000. This is a one-off transition cost.

- 7.107 Under this option all independent schools providing for learners with AN would be subject to an annual monitoring visit. The anticipated increased monitoring regime would mean that Estyn would incur the cost of carrying out an increased number of monitoring visits to schools. In order for independent schools to have sufficient time to update their registration, costs for Estyn in relation to annual monitoring would not be incurred immediately. As identified in option 1, Estyn currently undertakes annual monitoring visits to 21 independent schools, however under this option it is expected that would increase to 59 (based on all 70 independent schools providing for learners with AN but with 11 subject to full inspection and not requiring an annual monitoring visit). This would be a recurrent cost to Estyn of £327,780 (373.5 inspector days x inspector daily rate) per annum.
- 7.108 Under this option, local authority education services would no longer be required to seek the Welsh Ministers consent to place a learner with a statement of SEN into an independent school. There is no specific trend for the number of applications for consent received each year. On average there are approximately 13 applications per year. This equates to an average continuing saving for Estyn of £11,400 per annum.
- 7.109 Estyn would also continue to undertake annual monitoring visits to independent specialist colleges based in Wales. As set out in option 1, (see paragraph 7.52), on average an annual monitoring visit takes 6.33 inspector days and in 2013-14 there were 6 annual monitoring visits to ISCs. Based on the daily rate for an inspector this equates to an approximate cost of £33,350 to Estyn to undertake annual monitoring visits to ISCs in 2013-14. No additional costs are expected for Estyn to continue with this activity.

### **Independent Schools**

- 7.110 Independent schools in Wales currently admitting individuals with a statement of SEN under the current section 347 regime are subject to periodic inspection. Under option 2 these schools would be required to apply for a material change under section 162 of the Education Act 2002 and be subject to annual monitoring by Estyn. It would be likely that all independent schools would have learners with AN and be required to have annual monitoring visits. Applying for a material change to their registration is estimated at less than 1 hour per school and the total administrative cost for all schools is estimated at less than £500. This is a one-off transition cost to independent schools. In terms of the increased monitoring, there is estimated to be no additional cost as schools are prepared for monitoring visits at any time.

## **Benefits**

7.111 Option 2 provides for a greater number of learners to have an IDP compared to those under the current SEN/LDD legislative frameworks. It recognises that children and young people have individual needs for a number of reasons and that some children and young people would require more help and support to achieve and develop towards their potential.

### **Putting the child at the centre**

7.112 As this option is focused on using the method of PCP it places greater emphasis on the needs of the learner. This should assist in the timely identification of support which the learner requires. Implementing timely intervention can reduce the need for more expensive interventions at a later date and help the learner both potentially manage their needs in the long term and help them to achieve their educational potential.

7.113 PCP encourages greater active participation by the learner and their families as well as seeking a greater understanding of decisions made. This should help learners and their families to understand the process and enable a greater feeling of ownership of those decisions made. This should help reduce the level of confrontation, the number of disagreements and stop the level of animosity, which prevents disagreements being resolved before they reach Tribunal. A reduction in cases reaching Tribunal would have the benefit of removing stress and uncertainty for learners and their families as well as reducing costs for local authorities.

### **The Individual Development Plan**

7.114 Option 2 would allow the development of a single plan, the IDP, developed through a person centred approach which would include where relevant statutory entitlement protection for those learners with severe and/or complex needs from birth to the age of 25.

7.115 The IDP would replace or integrate all other individual plans (statutory or non-statutory plans) that a learner might be subject to. This might help improve the outcomes for the learner as a more holistic approach could be undertaken which considers their educational and social needs. It could also reduce the time required by the child, young person and parents to attend meetings. It could also provide efficiency savings for education, health and social services as they would be able to conduct assessments at the same time.

### **Meeting learners' needs**

7.116 Extending the age range from birth to 25 for those with severe and/or complex needs would enable a greater focus on early intervention and provision of support. It would also improve transition between key stages of the learners' educational journey to ensure that the benefits gained by the learner during their childhood are not undermined when entering adulthood. These benefits

are opportunity in nature and thus cannot be costed but could potentially enable long-term savings for all key stakeholders involved in AN provision.

- 7.117 The IDP would replace or integrate all other individual plans that a learner might be subject to including health and social care plans. This would enable a more holistic approach being taking with the child or young person as their needs are considered at the same time. This would allow multiple reviews of different plans to take place at the same time.
- 7.118 Those learners with severe and/or complex needs would be assessed by Regional Support Panels with responsibility for joint strategic planning and commissioning. This would improve the outcomes of these learners as they would be able to access appropriate community-based services in the region and associated joint funding when necessary. Through budget holders from each agency being involved, flexible funding responses for these learners would be possible to place a child or young person in a supported placement in the region or a specialist placement in/out of the region area. This should improve the outcomes for learners with severe and/or complex needs as they would be able to access the services best suited to their needs.
- 7.119 The improvement of quality assurances processes would improve the provision for learners by tracking outcomes, the resources allocated and performance indicators. This would allow for provision of support to be targeted, making it more cost-effective and would allow for provision to be evaluated for its effectiveness.
- 7.120 Local authority education services would also be able to utilise data on learners within the authority and plan in advance the provision required, including identifying learners who might require placement at a mainstream FEI or specialist post-16 institution. Local authority education services would be able to work more effectively with post-16 education providers to secure the necessary support and provision to meet young people's needs. This provides an opportunity for better outcomes for learners as well as some potential efficiency savings for Welsh Government, local authorities and Careers Wales. Careers Wales' role would be reduced as described above.

### **Post-16 independent specialist placements**

- 7.121 Under this option, the process of placing a learner in post-16 specialist provision would be reformed. Local authority education services would be responsible for securing and funding specialist further education placements, which would improve the transition process and encourage local authorities and post-16 specialist providers to work together more effectively.

### **Approval and individual consent for independent schools**

- 7.122 The Welsh Ministers would no longer be required to provide consent for individual placements in an independent school not approved to admit learners with a statement of SEN because individual schools would now

register to admit learners with a statutory plan as part of the Welsh Government's registration system. This would result in considerable time saved in the process of placing a child with a statutory plan into an independent school. The amendment to the registration process would mean that there would be more up to date information about the SEN provision that the independent school has to offer in the public domain. This would assist local authorities in the process of placing a learner with a statutory plan into a suitable independent school which is registered through the Welsh Government's registration system to cater for the learner's AN.

### **Option 3: Replace the current legislative arrangements for children and young people with SEN or LDD with a single unified system based on ALN.**

7.123 The proposals in option 3 build on those identified in option 2, in some cases refining them to better achieve the original policy intentions of option 2 and in other cases reformulating these significantly so that, while still bold and radical, they provide workable solutions to the deficiencies in the current system and take account of changes in the wider policy and legislative context and respond to the views of stakeholders.

7.124 The proposals set out under this option have also been designed to create a more effective and efficient system to ensure better uses of current resources and deliver savings which can be realised in the long-term. Where proposals have been refined, these are described below along with the relevant costs. However where costs are the same, the calculation for that cost can be found in option 2.

7.125 This option also places greater focus on the process of planning and reviewing provision being undertaken in a person-centred way and as highlighted under option 2, associated costs, including promotion of PCP, have been excluded from the Regulatory Impact Assessment due to ongoing Welsh Government work to disseminate guidance and training on PCP. Further information on the PCP approach can be found in Chapter 3.

## **Costs by Sector**

### **The Welsh Government**

7.126 The proposals and associated costs that affect the Welsh Government would be broadly similar to that which is set out under option 2. The key difference between the two options for the Welsh Government would be the removal of the proposal under option 2 to develop and implement a statutory web-based IDP. This would not prevent further consideration of a non-statutory IT-based system being explored in future; should this be the case, a separate cost/benefit analysis would be undertaken.

## **Code**

7.127 The Welsh Government is responsible for developing a new Code that would support the new system and provide guidance to key stakeholders on how to undertake their responsibilities. The staff cost to develop the Code and undertake consultation, translation and promotion would be the same as in option 2. The total cost of producing a Code would be approximately £73,790. This would be a one off transition cost.

## **Communication and Awareness Raising**

7.128 It would be essential that local authorities and school staff understand the new system of ALN. Welsh Government would undertake activity, broadly similar to option 2 and at the same cost. The cost for Welsh Government to revise governor training materials and providing awareness sessions to local authorities and Additional Learning Needs Coordinator networks would be approximately £23,600 the same as in option 2. This would be a one off transition cost.

## **Registration for independent schools**

7.129 Independent schools would need to register the type of ALN they could cater for using the registration process under section 160 of the Education Act 2002. The Welsh Government already employs two members of staff to manage the independent school registration process. Therefore there would be no additional costs for staff time to process applications under this option.

7.130 The Welsh Government would also amend current guidance for independent schools to ensure that information on the new registration process was clear, the cost of which is estimated at £4,720 the same as in option 2. This would be a one off transition cost.

## **Post-16 independent specialist placements**

7.131 As in option 2, the Welsh Government would no longer be required to assess, secure or fund a placement at a specialist further education provider (this currently costs the Welsh Government £10.4m as highlighted in option 1 – see paragraphs 7.10-7.12). This function would transfer to local authorities. Funding for this function would no longer be ring-fenced; it is likely to be funded via the RSG. The distribution of this funding within the RSG is a matter for the Distribution Sub-Group (a sub-group of the Partnership Council for Wales) and the Minister for Public Services. This recurrent transfer of funding would commence in sufficient time to allow for systems to be developed and applications to be decided upon.

7.132 The Welsh Government would also no longer be required to approve individual specialist placements because independent providers would need to be registered. The Welsh Government currently has a team of 6 people in place to process these applications; this currently costs the Welsh Government £179, 000 per annum.



7.133 Guidance would be produced for local authority education services on the process of securing placements within ISCs. The cost for Welsh Government of producing this guidance would be approximately £4,720, the same as in option 2. This would be a one off transition cost.

7.134 The Welsh Government would also provide awareness training to local authority education services to explain the new system for securing post-16 specialist provision. The cost of developing and delivering awareness training would be the same as in option 2, approximately £4,720. This would be a one off transition cost.

## **Local authorities**

7.135 The role of the local authority, under this option, in the four key areas of assessment, review, provision of support and disputes for learners with severe and/or complex needs remains generally similar to current responsibilities, with a few exceptions which have been described below. However there are some significant differences between the proposals highlighted under option 2 and what is proposed in option 3. Under option 3 we would not be:

- requiring local authority education services to appoint a Support Coordinator or establish Support Panels at a local and regional level. Local authorities already have individuals involved in the coordination of statutory provision and multi-agency discussions are an established part of the current process. We are seeking to strengthen existing processes through a more flexible arrangement for multi-agency involvement in developing / reviewing an IDP and place specific responsibilities on health and social services to deliver the provision that they have agreed to in an IDP. In addition, under option 3 we will also remove the requirement to undertake reviews of statutory plans every 6 months, instead reviews will be required annually or more regularly following a request to do so or should circumstances change. In addition, by utilising impact monitoring, progress against interventions will be more routinely assessed;
- requiring local authorities to be involved in mediation services before a dispute goes to Tribunal. After consideration of a similar system introduced in England, whereby potential appellants are required to attend a meeting to be informed about mediation and must receive a certificate before proceeding to an appeal, this is a costly burden on local authorities which is not in itself likely to reduce appeals. It also unduly holds up someone's right of appeal. Under option 3 the Code would provide better guidance on the range of dispute resolution methods local authorities should make available, but without compelling those entrenched in disputes to go through an additional formal process pre-tribunal. However, under option 3 we are proposing to strengthen the process for avoiding and resolving disagreements, which would be likely to reduce the number of disputes.

## Local Authority Education Services

- 7.136 The term ALN would apply to broadly the same group of learners as those who fall into the current category of 'special educational needs' or 'learning difficulties and/or disabilities' and would apply across the age range from birth to 25. In the majority of cases we expect learners' needs would be met through provision provided by schools or FEIs, the local authority would only need to provide additional learning provision where learners' needs could not be reasonably met by the school or the FEI alone. We expect the number of school learners who would receive additional learning provision through the local authority education service to remain similar to current levels (see table 2). Therefore we do not expect costs, as explored in option 1 (paragraphs 7.16-7.22) under the SEN system to increase. In addition, impact monitoring, through its focus on assessing the impact that an intervention has had on the educational outcomes for a learner, would help to ensure that provision is better targeted through interventions which are known to be the most effective.
- 7.137 For the majority of learners within schools, local authorities would not need to be involved in the assessment or reviewing of an IDP. Local authorities would only be required to be involved in the assessment or review of an IDP where the learner's needs could not reasonably be met by the school, or where there is a need to reconsider a decision taken by a school on a learner's additional learning provision. Local authority education services are currently involved with statements of SEN and requests for statutory assessments, and so we expect they would continue to be involved with a similar number of learners. However, the change to a PCP model to develop an IDP means that the process would be far less bureaucratic than the current statutory system. The current system includes mandatory steps and mandatory involvement of professionals who must be consulted even when there is no clear benefit to the learner. As referred to in option 1, this can take 26 weeks.
- 7.138 The proposed new system would be more flexible to allow a tailored approach depending on the complexity of need/number of agencies or professionals which are required in order to benefit the learner. Therefore there would be a variation in the time and cost to local authorities based on the complexity of need of the individual.
- 7.139 Local authority education services would only be required to be involved in the assessment and review of IDPs for those in FEIs where the FEI was unable to meet the needs of the learner, or where there was a need to reconsider a decision taken by an FEI on a learner's additional learning provision. For the majority of learners who are in an FEI, their needs are currently being met by the FEI. We expect this to remain the same under this option.
- 7.140 Where a learner has needs that cannot reasonably be met by the FEI this should, for the majority of learners, have been identified prior to transition into FE in their IDP. Careers Wales currently develop the Learning and Skills Plans (as highlighted under option 1) for those learners with LDD entering FE. The LSP will be replaced by the IDP. This option would require this function

and associated costs to be taken on by the 22 local authority education services. Careers Wales spent £147,530 in 2013-14 on staff costs for those involved in the development of LSPs. This would be a recurrent cost incurred across all 22 local authority education services in Wales. However, as there would be no requirement to create a new plan equivalent to the LSP, this function would be subsumed into the IDP review process and should therefore lead to savings in time and cost.

- 7.141 As with option 2 (paragraph 7.74), local authority education services would also take on responsibility for funding placements at specialist colleges; this is currently funded by the Welsh Government. Post-16 specialist placements are based on need, and therefore there is no reason to believe that the number of placements would increase or that the funding required would need to increase under this option. Therefore local authorities would take on the current funding provided by Welsh Government (currently £10.4m annually). Funding for this function would no longer be ring-fenced; it is likely to be funded via the RSG. The distribution of this funding within the RSG is a matter for the Distribution Sub-Group (a sub-group of the Partnership Council for Wales) and the Minister for Public Services. As with option 2, through better joint working across local authority education services and social services departments the local authority would have a stronger position from which to negotiate specific costs. The ability of local authorities to better plan for effective transitions into suitable post-16 education could also lead to reductions in costs.
- 7.142 There would be an administrative cost to local authority education services for taking on the responsibility for securing a placement for those who require post-16 specialist provision. This would create opportunities for efficiencies which can be created through better joint working across local authority education services and social services departments; whilst also enabling local authority education services to be better placed to negotiate the funding required for a placement at an independent specialist college. The cost to the 22 local authorities across Wales is a maximum of £179,000 per annum. This would be need to be considered in the transfer of funds from the Welsh Government to local authorities via the RSG, to be negotiated via the Local Government Distribution Sub-Group.
- 7.143 Local authority education services would also be expected to attend a one-off awareness session for the post-16 specialist placements process. This would be the same as described in option 2 (paragraph 7.76). The cost has been estimated at £300 per authority. This equates to a total cost of £6,600 across all 22 local authorities. This is a one-off transition cost.
- 7.144 Local authority education services would continue to be under a duty to resolve disagreements and provide information and advice. Local authorities usually fulfil this duty by using Parent Partnership Services to deliver these services. The current SEN Code of Practice refers to the term 'Parent Partnership Service'. Similarly, in order for learners to be able to fully exercise their right to appeal or to engage in disagreement resolution procedures local authorities would continue to be required to provide advocacy services which

can also provide information and advice. These services currently support those of school age. These services would have to be refreshed in order that they reflect the new ALN system. The services would also have to be extended to ensure they cover the rights of children and young people up to the age of 25 who would want to use these services. There is a potential for a larger case load as the services would have to cater for the extended age range, however it is not possible to quantify a cost to local authorities for this.

- 7.145 Under this option, local authority education services would be required to make separate arrangements for avoiding and resolving disagreements between learners and their parents, and schools, local authorities and others. This would include providing access to help in resolving disagreement from an independent person and ensuring these arrangements are known. The Code would be used to emphasise that local authorities should avoid disagreements arising by ensuring learners and parents are supported to understand and participate in the decisions that are taken.
- 7.146 As highlighted in option 1 (paragraph 7.22) the majority of local authorities use third sector organisations to take on the services described above. Under this option these services would need to be extended slightly to include those parents/carers where the learner would fall into the new age range, i.e. those entering FE; and ensure a focus on disagreement resolution. As with option 2 we do not anticipate an increase in the use of either of these services in the long-term. However any possible costs in the short-term would be off-set by a potential reduction in resolving disagreements before they become disputes. Utilising a PCP approach within the new system, as highlighted in Chapter 3, which allows for more involvement of learners and their parents in decisions, we do not expect that the range of appeals on education matters to increase but to potentially reduce over time.

### **Local Authority Social Services**

- 7.147 Under this option we are proposing to implement a more flexible system, whereby social services would only be invited to participate when their input can benefit the learner. Social services would be required when the assessment/review involves looked-after children; placement of a learner at a post-16 specialist provider; or when their involvement can provide added value. We expect that the involvement of social services staff would be no greater than current levels of involvement, with the potential arising through this flexible approach for reduced involvement, when appropriate. We do not anticipate any additional costs to local authority social services under this option.
- 7.148 As with option 1 we expect that the variation of time spent on assessment and reviewing plans would remain, to take account of the individual needs of the learner.
- 7.149 Local authority social services would also continue to be responsible for contributing to post-16 specialist placements. Local authority social services

spent £5.5m on this function in 2013-14. As discussed above (local authority education services) we do not expect the numbers of learners attending ISCs to increase.

7.150 Local authorities would continue to be responsible for ensuring the educational needs of looked-after children are met. It is possible under this option that the IDP planning process would be able to integrate the planning and review process of the Personal Education Plan (PEP) and Care and Support Plan (CSP). As social services would be involved in the IDP process when discussing the additional learning needs of a looked after child there could be a potential saving as they would be able to assess and review plans at the same time.

## Schools

7.151 The proposals and associated costs that affect Schools would be broadly similar to that which is set out under option 2. However there are some key differences between the proposals highlighted under option 2 and what is proposed in option 3. Under option 3 we would not:

- have both statutory and non-statutory IDPs. It would not be a fair or equitable system for some learners to have a statutory entitlement to provision whilst others do not.
- require statutory plans to be reviewed every 6 months. This places an unnecessary burden on school staff. Our intention to introduce a system of impact monitoring will ensure interventions identified to meet learners' needs will be monitored and assessed for its effectiveness, throughout the period of the intervention and thereby ensuring a continuous review process is in place.
- propose that the wider AN category of learners (in option 2) should be entitled to a non-statutory IDP. It is not considered an effective use of school resources to have a significant proportion of learners (under the wider AN definition) on a non-statutory IDP, which could have significant administrative costs for schools to implement.
- Under option 3 we are also introducing a statutory ALN Coordinator (ALNCO) role. This is discussed further below.

7.152 Under option 3 all learners with ALN would be required to have an IDP (with the exception that learners with ALN over the age of 16 would need to give their consent to an IDP), and where a learner has an IDP there would be a statutory entitlement to the provision set out within the IDP. All schools would therefore be expected to take reasonable steps to secure the additional learning provision that is included within the IDP. Schools currently provide provision to those learners on non-statutory plans and for those learners with statements of SEN. Schools are required to use their best endeavours to deliver the necessary special educational provision as set out in these plans. Schools would continue to provide the types of provision they do now. The number of school-aged learners who would be entitled to an IDP would be

broadly the same as those currently entitled to Statements of SEN and non-statutory Individual Education Plans. However, we would anticipate the Code providing clearer guidance than is currently available about the 'entry point' for an IDP to ensuring a consistent approach across Wales to providing IDPs to those learners who meet the definition of ALN. Therefore we do anticipate there to be any increase in cost of provision. As identified within option 1, Deloitte have estimated that schools spend 95% of their SEN expenditure on the provision of support. Through the use of impact monitoring, as described earlier, school provision could be better targeted through interventions which are known to be the most effective. This would allow schools to use their resources more effectively.

- 7.153 Under this option the time spent assessing and reviewing a learner would be based upon their need. Therefore, as is currently the case we expect there would be a variation of time spent on planning and reviewing plans. However, the IDP process should be proportionate to the needs of the learner. Those with the most severe and/or complex needs would require greater assessment and reviewing time, whereas those who have low level needs would not require the same level of assessment and reviewing time. It is anticipated that implementation of the ALN system will be phased at key transition points in a learners education. This will ensure any burden of moving to and maintaining IDPs for schools is kept to a minimum.
- 7.154 Under option 3, all maintained schools in Wales including nurseries and Pupil Referral Units (PRUs) would be required to appoint an ALN Coordinator (ALNCO). The ALNCO would be critical to the development of a culture of high aspirations and improved outcomes for learners with ALN. The role would involve coordinating planning and interventions around ALN and ensure standards around planning, target setting and outcome focus are consistently applied. Currently all schools have individuals who undertake the non-statutory role of a SENCO or similar responsibilities. It would be for the school to appoint the most appropriate individual to take on this role, but it is not anticipated that this would result in the creation of a new post within a school, nor consequently any new costs.
- 7.155 The Welsh Government would be responsible for communicating the new system of ALN and would follow a similar approach as set out in option 2 (see paragraph 7.86). A Code for Practice would provide guidance and information to schools and local authority education services and Welsh Government would ensure School Governor training is updated. Awareness raising of the new unified system would be cascaded through relevant ALNCO networks. The ALNCO would support staff as needed and ensure all staff were aware of their responsibilities. No additional costs are expected to be incurred by schools as awareness raising would be expected to take place during INSET days for practitioners or existing network days for ALNCOs.

## **Mainstream Further Education Institutions**

- 7.156 The proposals and associated costs that affect FEIs would be broadly similar to that which is set out under option 2 (see paragraph 7.87). The key difference between the two options for FEIs would be similar to that set out for schools above. Option 3 removes the proposal under option 2 to have both statutory and non-statutory IDPs; the need to review statutory plans every 6 months; the wider AN category of learners who would be entitled to a non-statutory IDP and introduces an ALNCO.
- 7.157 Under option 3 all learners with ALN would be required to have an IDP, and where a learner has an IDP there would be a statutory entitlement to the provision set out within the IDP. All FEIs would therefore be expected to take reasonable steps to secure the ALP that is included within the IDP. FEIs are currently responsible for assessing needs of learners entering FE and for the provision of relevant support for those learners who require it. Those learners who do require additional provision currently receive an individual learning agreement upon entry into the FEI. This includes those learners who do not have complex / severe needs and thus are unlikely to have a LSP. As FEIs are already undertaking an element of structured assessment for this wider group of learners, we do not expect FEIs to incur any additional costs under this option. We anticipate the number of learners entering into FE to remain broadly similar to current levels.
- 7.158 For those learners with severe and/or complex needs entering into FE, it is probable that the IDP would be maintained by the local authority. The FEI would have a responsibility to respond to any request for help or information by the local authority maintaining the IDP. It is expected that for FEIs the majority of requests would be in relation to information already held by the FEI. It is therefore anticipated that there would be no additional costs to the FEI in responding to requests from a local authority education service.
- 7.159 Similarly with schools, it is anticipated that implementation of the ALN system will be phased at key transition points in a learners education. This will ensure any burden of moving to IDPs for FEIs is kept to a minimum.
- 7.160 As described under the school section above, under option 3, FEIs must appoint an ALNCO with the prescribed qualification or experience. FEIs already have individuals who undertake a similar role, thus we do not anticipate FEIs specially creating a new post for this role.
- 7.161 As with option 2, the Welsh Government would be responsible for communicating the new system of ALN and the approach to FEIs would be the same. A Code would be developed which would provide guidance and information on the new system and it would be for FEIs to determine how to ensure awareness of the new system is raised with its staff. No costs are expected to be incurred by the FEI as awareness raising would be expected to be incorporated into current staff development processes.

## **Local Health Boards**

7.162 The proposals and associated costs that affect LHBs would be broadly similar to that which is set out under option 2 (paragraphs 7.89 – 7.98). However there are some significant differences between the proposals highlighted under option 2 and what is proposed in option 3. Under option 3 we would not be:

- establishing multi-agency Support Panels. LHBs are already involved multi-agency discussions and adding another layer of bureaucracy could be potentially costly to the LHB. Instead, we are seeking to strengthen existing processes through a more flexible arrangement for multi-agency involvement in developing / reviewing an IDP and placing specific responsibilities on health to deliver the provision that they have agreed to in an IDP, and by requiring the appointment of a Designated Medical or Clinical Officer (DMO) to have responsibility for coordinating the LHBs function in relation to ALN (discussed further below);
- creating a single plan that would integrate other health care plans. This would create confusion as to who is perceived as 'in the lead'. IDPs would be focussed on the learning needs of an ALN learner and specifically replaces only the Statement of SEN; the IEP; and the LSP. The IDP would ensure that it is clear who is responsible for the delivery of the additional learning provision agreed within the IDP.
- making LHBs subject to the appeal process with SENTW. There is already an existing complaints process in respect to health service provision. Removing this proposal avoids any future confusion or inequity in the complaints process.
- moving to a definition that incorporates a wider category of learners. Under option 3 the group of learners who would come under ALN would be broadly the same as that currently under SEN. This will minimise the risk to LHBs of cost implications associated with potential unidentified health needs of the wider group of AN learners (option 2).

7.163 Under option 3, all learners with ALN would have an IDP and a statutory entitlement to the provision set out within the IDP. All LHBs would be required under option 3 to deliver any provision contained within the IDP that they have agreed to provide. As highlighted under option 1 (paragraphs 7.34-7.38), LHBs already fund health related SEN/LDD provision. This comes from within existing budgets. The NHS already has pathways / frameworks established to help prioritise provision based on clinical need and these would continue to be used. It is not anticipated that the current cost of NHS provision of support would change under this option. Therefore it is not anticipated that the current cost of NHS provision would change under this option.

7.164 As highlighted in option 1 (paragraph 7.36-7.37), LHBs currently contribute to statutory and non-statutory plans for school based learners. Therefore the involvement of LHBs in assessing need and reviewing plans for school-based learners with ALN is unlikely to increase under this option. In addition we are proposing to implement a more flexible system, whereby LHBs would only be invited to participate when their input can benefit the learner. LHBs would only be required where there is a health need that requires appropriate health



provision. The health needs of learners with ALN would not change under this option. We expect that the involvement of health services staff would be no greater than current levels of involvement, with the potential arising through this flexible approach for reduced involvement, when appropriate. We do not anticipate any additional costs to LHBs under this option. There is a potential risk for additional health needs to be identified under this option which may impact on LHBs. However, we do not anticipate this group of learners to be any larger than those currently identified under the existing system (i.e. Statementing and School Action Plus).

- 7.165 IDPs would cover those up to the age of 25. In the majority of cases, learners with ALN would have their needs identified as part of their IDP before going into FE, including any health provision required. As highlighted in option 1 (paragraph 7.39), there is no statutory duty for LHBs to be involved in the planning and review of educational plans for those in FE, but FEIs do have a duty of care to learners and would signpost or refer them to LHBs as necessary. It is anticipated that the numbers of learners entering post-16 provision would remain relatively similar to current levels. Therefore we do not anticipate any increases in the number of new referrals to LHBs relating to post-16 learners with newly identified ALN. However the introduction of a statutory planning process for those in post-16 education, could potentially include learners who have health needs, for example mental health, which may not have been identified previously. It is not possible to quantify the number of learners with ALN who may present with mental health problems in this age group, and therefore any possible cost to LHBs are unknown. However, the benefits of early identification and intervention are widely accepted, both in terms of outcomes for the individual and the overall costs of intervention.
- 7.166 For those learners with severe and/or complex needs entering into post-16 provision, it is probable that the IDP would be maintained by the local authority. The LHB would have a responsibility to respond to any request for help or information by the local authority maintaining the IDP. LHBs are already under a current duty to comply with a request for help from a local authority education service. It is therefore anticipated that there would be no additional costs to the LHB in responding to requests from a local authority education service. However where the age of the learner is between 19-25, this would be new activity for the LHB. This would be a potential cost to the LHB but the amount is unknown.
- 7.167 LHBs would also continue to be responsible for contributing to the funding of post-16 specialist provision for those learners whose needs require a placement there. This is a continued cost (£0.8m), which is detailed further in option 1 (paragraph 7.34).
- 7.168 Under option 3, LHBs would be required to appoint a DMO who would have responsibility for co-ordinating the LHBs functions in relation to learners with additional learning needs and act as a primary point of contact for local authorities. The DMO would be responsible for ensuring appropriate LHB input is provided. However we would not envisage the DMO being routinely

involved in the assessment and reviews of individual IDPs (except in the course of their usual clinical practice). It would be for the LHB to decide who within the LHB would be the most appropriate individual to take on this new role however it is not intended that this would involve the creation of a new post. LHBs already undertake the sorts of functions that the DMO would be expected to undertake. Therefore we do not anticipate any additional costs for LHBs to appoint a DMO.

7.169 The DMO would be required to attend a one-off training session on the new system. The cost of one member of staff at the appropriate level to attend one day of training has been estimated at £300 per LHB. A total cost of £2,100 is estimated across all LHBs. This is a one-off transition cost.

7.170 To support the DMO undertake their role in a consistent manner and share best practice a network would need to be established. This would support the DMO to be clear on their responsibilities. We would expect that this network would meet 2 times a year. The cost of one member of staff at the appropriate level to attend one day of the network is estimated to be £300 per LHB. The cost of meeting twice a year is estimated to be £600 per LHB. A total cost of £4,200 is estimated across all LHBs for the DMO to meet twice a year. This is a recurrent cost.

7.171 As highlighted above, LHBs would not be subject to appeals to the Education Tribunal (formally SENTW) and therefore there would be no costs associated with appeals in relation to health service provision. The NHS complaint procedure 'Putting Things Right' allows children, parents and young people to make formal complains about the LHB. There is a risk that there would be an increased risk in the use of Putting Things Right which would carry a cost to the LHB. Under this option, learners and their parents would continue to be able to make a formal complaint regarding their provision through this procedure. Therefore would be no additional costs to LHBs under this option.

## **Other Bodies**

### **Careers Wales**

7.172 The proposals and associated efficiency savings that affect Careers Wales would be the same as that which is set out under option 2. £147,530 per annum in staff cost savings for developing the LSP and £32,600 per annum in staff cost savings for applying to Welsh Government for funding post-16 specialist provision.

7.173 Careers Wales would continue to be involved in a range of learners as part of its statutory service requirements, but would only be involved in assessment and review for those learners with ALN, where they can provide added value. Further guidance on this will be included in the Code. This could potentially lead to further efficiency savings.

### **SENTW**

7.174 The proposals and associated costs that affect SENTW would be broadly similar to that which is set out under option 2. The key difference between the proposals set out under the two options is that under option 3 the remit of SENTW would not be broadened to include health care. As explained earlier a separate complaints process for health service provision already exists. Removing this proposal would avoid any future confusion or inequity in the complaints process. Option 3 also seeks to change the name of the SENTW to the Education Tribunal, which would reflect its role in relation to ALN and also the role it currently has in determining disability discrimination.

7.175 As with option 2, we do not expect that there would be an increase in the number of appeals on education matters under this option. However the number of learners and their parents who would have a right to appeal under this option is expanded. Currently every learner within schools (including special schools, nurseries and PRUs) can appeal about not receiving a statement of SEN, or if they have a statement, appealing against the contents of their statement. Under this option every learner within school or FEI can appeal about not receiving an IDP or if they have an IDP, appealing against the provision agreed (or not agreed) within their IDP. This increases the right of appeal compared to the status quo.

7.176 However, this should be offset by the fact that as all IDPs are statutory this should remove the main cause of contention, the unfairness of some provision being statutory and other provision being non-statutory; and use of PCP (as highlighted in Chapter 3) which allows increased involvement of learners and their parents about decisions that affect them. Evidence demonstrates that utilising the PCP approach can potentially reduce the range of appeals over time. In Carmarthenshire there were 12 appeals in 2010-2011, which fell to 0 appeals in 2013-14, following implementation of the PCP approach. Furthermore, 47% of appeals in 2013-14 were about a refusal to assess, reassess or provide a statement – points of contention which would be removed under option 3.

7.177 Option 3 also strengthens the process for avoiding and resolving disagreements, focusing on disagreements being resolved at the most local level possible. In order to support this, option 3 would require local authority education services to:

- make arrangements for avoiding and resolving disagreements between children, young people, parents, and schools, FEIs, local authorities and others.
- provide information and advice about ALN and the new unified system.
- provide children or young people (or case friend) with an independent advocacy service to engage in disagreement resolution procedures and ensure their voice and opinion is heard.

- 7.178 As a result of these requirements, we expect that the range of appeals to potentially reduce over time. Thus, the cost to the Tribunal in respect of appeals, is also expected to reduce over time.
- 7.179 In the first three years of implementation especially, it is likely that points of legislation will be challenged, increasing the potential for a number of onward appeals to the Upper Tribunal. Since SENTW's establishment in 2003/04, there have been 16 applications for onward appeals to the Upper Tribunal. It is therefore anticipated that the number of onward appeals to the Upper Tribunal under the new ALN system would be comparably low. However, as highlighted above, the greater emphasis under the ALN system on avoidance and resolution of disputes and use of person centred practice is expected to have a positive impact on the number of disputes and consequently, appeals, arising. Therefore it is not possible to quantify the number or cost of onward appeals to the Upper Tribunal. Therefore these costs are unknown.
- 7.180 There is a potential risk that PCP and the disagreement resolution service will not deliver the intended positive impact in reducing the number of appeals arising. Close monitoring by Welsh Government and the Tribunal will be key to ensuring there is sufficient resource to enable the statutory functions of the Tribunal can be fulfilled and the administrative team supporting the Tribunal is also appropriately resourced.
- 7.181 Existing Tribunal members will need to undertake training to understand the new unified system. The cost of training requirements to SENTW is estimated to be approximately £35,090. This is expected to be a one-off transition cost. The costs are based on:
- One day's training for the legal members covering the additional legal considerations in dealing with young people up to the age of 25 years.
  - One day's preparation for training by a Tribunal Chair.
  - Two day's training for all Tribunal members.
  - One day's follow-up training event approximately six months after the commencement of the new system to review the situation. Potentially this could lead to an additional half day's training to address any issues identified.
  - Two user group days (one for the North and one for the South), in order to inform and deal with concerns expressed by users regarding the new system.
- 7.182 The Tribunal will be required to consider its future membership requirements to ensure members have knowledge of FEI, in order to appropriately cover the extended age range. It is anticipated that the Tribunal will require 2 members with knowledge of FEI. The cost of recruitment and induction for 2 Tribunal members is £25,348. There would also be a small, one off administrative cost associated with the Tribunal's change of name.

## Estyn

- 7.183 The proposals and associated costs that affect Estyn would be significantly different under option 3 compared with option 2 (see paragraphs 7.106 – 7.109). One key difference between the two options is that under option 3 ISCs would be required to be on a list, this is discussed further below. Estyn would be involved in assessing applications from ISCs in Wales that wish to be placed on that list. In addition Estyn would only be expected to undertake a risk based approach to monitoring independent schools, compared to monitoring all independent schools as in option 2.
- 7.184 Under option 3, independent schools would need to update their registration to include any specific ALP it can provide. However unlike option 2, it is only anticipated that approximately 44 independent schools would need to update their registration. These are schools currently admitting pupils with statements of SEN. Estyn would therefore need to be involved in the process to assess the request for a material change (as it currently does). The cost of undertaking a material change request depends on a number of factors such as the size and nature of the independent school and the inspection evidence already held. However, Estyn has identified that on average it takes 3.5 inspector days per change request. Based on a daily rate of £877.60 this equates to an average cost to Estyn of £135,150. This is a one-off transition cost.
- 7.185 Under this option, local authority education services would no longer be required to seek the Welsh Ministers consent to place a learner with a statement of SEN into an independent school. There is no specific trend for the number of applications for consent received each year. On average there are approximately 13 applications per year. This equates to an average continuing saving for Estyn of £11,400 per annum.
- 7.186 As highlighted in option 2, all independent schools that cater for ALN as part of their registration would be subject to consideration by Estyn for a monitoring visit. This is currently included within the Estyn Annual Remit letter, however in future Estyn would be expected to undertake a risk based approach to monitoring. Therefore we do not anticipate Estyn undertaking monitoring visits to every ALN registered independent school, only those it considers appropriate to do so. Further guidance will be provided to Estyn on how a risk-based approach should be applied. However, there should be no more independent schools monitored than is currently monitored by Estyn thus we anticipate there would be no additional costs to Estyn under this option.
- 7.187 Under option 3, ISCs would be required to be placed on a list in order to access funding from a local authority for a placement of a learner who requires post-16 specialist provision. Estyn would be involved in the consideration of an application from an ISC in Wales to be placed on the list. It is expected that Estyn will be involved in the consideration of 6 ISCs in Wales. It is anticipated that it will take 8.3 inspector days to consider an application

from an ISC. This would be a cost for Estyn of approximately £43,705. This is a one-off transition cost.

7.188 Estyn currently undertake monitoring visits of ISCs in Wales or jointly with OfSTED where an ISC in England has more than 10 learners from Wales. We expect this arrangement to continue to be set out within the Estyn Annual Remit letter as it is currently. The costs for monitoring ISCs is set out under option 1, however we anticipate there would be no additional costs to Estyn under this option.

### **Independent Specialist Colleges**

7.189 Under this option ISCs would be required to apply to Welsh Government to be placed on a list of post-16 specialist providers to enable it to receive the placement of learners whose needs require such provision. It is expected this would apply to approximately 22 ISCs (6 in Wales and 16 in England). The cost of applying to be placed on the list is estimated at 2 hours per ISC and the total cost for all ISCs is estimated at less than £500.

### **Independent Schools**

7.190 The proposals and associated costs that affect independent schools would be the same as that which is set out under option 2 (paragraph 7.110).

7.191 Independent schools would be required to apply for a material change under s162 of the Education Act 2002. It would apply to an estimated 44 Independent schools in Wales. The cost of applying for a material change to their registration is estimated at less than 1 hour per school and the total cost for all schools is estimated at less than £500.

## **Benefits**

### **Additional Learning Needs**

7.192 Using ALN as a single term which encompasses all learners aged from birth to 25 reflects the move to a more equitable system for supporting learners with ALN cross early years, schools and FE. For the learner and the parent, this would have the benefit of helping to avoid the stigma associated with the existing term of 'special' and move the focus on the additional support a learner needs to reach their potential. The definition of ALN is also more focussed than that proposed under option 2. This has the benefit of continuing to be applicable to the existing category of SEN learners whilst not placing any unnecessary administrative burdens on the schools and FEIs.

### **A statutory Code**

7.193 The current SEN Code of Practice for Wales is a non-statutory code to which local authorities must have due regard. This has led to wide spread

inconsistencies in how the system of SEN has been applied across Wales and resulted in postcode lottery approach to support for learners with SEN.

7.194 The creation of a statutory Code would ensure the new ALN system has a set of clear, legally enforceable parameters within which local authorities and other organisations responsible for the delivery of services must act. This would provide a significant benefit to learners with ALN and their parents as it would ensure a clear, consistent approach to ALN across Wales and remove much of the variation across local authorities.

### **Putting the child at the centre**

7.195 As described in Chapter 3, this option would underpin Welsh Government's existing policy of promoting a much more person-centred approach to identifying needs and actions to meet those needs; and help ensure that IDPs are developed in accordance with the principles of PCP. This would help in the timely identification of support which the learner requires. Implementing timely intervention can reduce the need for more expensive interventions at a later date and assist the learner in managing their needs to achieve their potential.

7.196 PCP encourages greater active participation by the learner and their families. Under this option, local authority education services would be required to make arrangements to provide learners and their families with information and advice about ALN. This would help learners and their families to better understand the process and feel a greater ownership of the decisions made about them.

7.197 Strengthening the avoidance and resolution of disagreements process and providing access to independent advocacy services would facilitate a reduction in the level of confrontation, the number of disagreements and stop the level of animosity that parties involved in the process can feel and which prevents disagreements being resolved. This would lead to a reduction in appeals reaching the Tribunal and would have the benefit of removing stress and uncertainty for the learner and their families, as well as enabling savings for the local authority.

### **Meeting learners needs through a unified and flexible system**

7.198 Extending the age range from birth to 25 for all learners with ALN would enable a greater focus on early intervention, provision of support and transition between key phases of a learner's education. In addition, all learners with ALN would have an IDP and a statutory entitlement to the provision set out within the IDP which would allow greater equity in terms of support and rights for all learners within this group.

7.199 The creation of the IDP would replace current statutory and non-statutory plans, i.e. the Statement of SEN, the Individual Education Plan and the LSP; and would cover learners with ALN in both schools (including maintained

nurseries, PRUs and special schools) and FEIs. This would ensure greater consistency and continuity and ensure that provision and rights are protected regardless of the severity or complexity of needs, unlike the current system. This would also ensure greater coherence and continuity across the two sectors and facilitate a smoother transition between schools and FEIs as provision to meet a learner's needs would be identified at a school level, enabling this provision to be assessed and planned for at an FEI before the learner starts their post-16 education.

- 7.200 This would also ensure that the benefits gained by the learner during their childhood are not undermined when entering adulthood. These benefits are opportunity in nature and thus cannot be costed but could potentially enable long-term savings for all key stakeholders involved in ALN provision.
- 7.201 Introducing a unified system that provides for a more flexible approach would enable the provision of support to be modified and changed over time to best meet the changing needs of the learner. This would lead to improved support for learners as it means the provision they are receiving best matches their needs. The current system for statutory plans does not allow for flexibility in the learners' provision as learners and parents are concerned about losing their statutory protection. It can also be a very bureaucratic administrative process to change a statutory plan which currently requires the input of a number of professionals. Enabling flexibility in the provision of support can allow increased potential for efficiency savings as appropriate provision can be better targeted to meet the needs of the learner without the learner losing out on their statutory entitlements.
- 7.202 The IDP would contain a strong outcome focus rather than, as currently, the making of the provision being an end in itself. This would be supported through 'impact monitoring' which would be utilised to support providers of provision on assessing the impact that any provision provided has had in the attainment of educational outcomes for the learner. This would ensure that provision provided is better targeted through interventions which are known to be the most effective. This would lead to improved support for learners as it means the provision they are receiving best matches their needs. It could also lead to efficiency savings for key stakeholders as they would be able to stop interventions which are not having a positive impact and focus on interventions which are working.
- 7.203 In addition, under this option we would implement a more flexible multi-agency approach, whereby health and social services would only be invited to participate when their input can benefit the learner. The current system requires a range of professionals across education, social services and health to be statutorily involved even when there is no clear need or benefit to the learner. As proposals under this option involves professionals only when they are required and where there is a clear link or benefit to the learner there is significant potential to realise efficiency savings across those education services, social services and health services who may not need to be involved in an assessment. Through this flexible arrangement learners and their



families would also not experience delays to the planning or reviewing of the support required due to difficulties in getting all the professionals around the table as is currently required.

- 7.204 The IDP can be prepared, revised or reviewed at the same time as another document relating to the learner and any other relevant document can be included within the IDP. This might help improve the outcomes for the learner as a more holistic approach could be undertaken which considers the learner's wider needs. It could also reduce the time required by the learners and parents to attend meetings. It could also provide efficiency savings for different agencies as they would be able to conduct assessments and reviews at the same time.
- 7.205 Strengthening the involvement of health services role where appropriate within the ALN process would have a significant benefit to the learner and their families of ensuring that health related provision is provided. Placing a responsibility on LHBs to deliver any provision contained within the IDP that they have agreed to provide represents a significant step towards ensuring there is greater clarity and certainty around who would be delivering what within an IDP. In addition, appointing a DMO within LHBs would have the benefit of providing a singular point of contact for local authorities and would ensure any LHB agreed provision is strategically coordinated more effectively. The DMO has a pivotal role to play in improving the extent and effectiveness of collaboration between LHBs and local authority education services in the delivery of services for learners with ALN. This would have a significant benefit to the learner by ensuring that any health provision agreed by the LHB is provided.

### **Efficient and effective coordination of ALN**

- 7.206 Under option 3, all maintained schools in Wales including nurseries and PRUs would be required to appoint an ALN Coordinator (ALNCO). This would replace the existing non-statutory SENCO role which is interpreted differently across settings. The ALNCO would be critical to the development of a culture of high aspirations and improved outcomes for learners with ALN. The ALNCO would also be pivotal in coordinating and planning interventions around ALN and ensuring that standards around planning, target setting and outcome focus are consistently applied and driven upwards throughout the setting.
- 7.207 A focus on a prescribed qualification for newly appointed ALNCOs and professional development (as part of the New Deal) for those with the prescribed experience would have the benefit of helping to raise capacity and capability of ALNCOs across Wales in both the school and FE sectors. In addition, making the ALNCO a statutory role would have the benefit of ensuring the role is clearly defined within the Code, which would lead to a consistent approach to the coordination role across Wales.

### **A simpler and less adversarial system**

- 7.208 The provision agreed as being required for the learner and set out within the IDP would become a statutory entitlement. This should remove the perceived unfairness currently experienced by learners and their parents who do not have a statutory plan, i.e. those at School Action / School Action Plus. If a child or young person has ALN they would have their needs met irrespective of their complexity and would be entitled to have their provision statutorily protected.
- 7.209 The current system of statutory/ non-statutory plans is often a source of disagreements as the learner and their parents often believe they have to fight in order to receive the provision required to support a learner's needs. Introducing statutory IDPs should remove the 'cliff' between those receiving statutory provision and those receiving non-statutory provision. The removal of this distinction should also lead to a decrease in disagreements and disputes with local authorities.
- 7.210 As described above, having a more person-centred system in place would help learners and their families to feel a greater ownership of the decisions made about them. In addition the way that information is provided for learners as well as how disagreements and disputes are handled should support greater understanding of decisions made as well as helping more disagreements being resolved at a local level.
- 7.211 The development and implementation of effective disagreement avoidance and resolution arrangements is key to improving the trust that learners and parents have in the system and minimises the extent to which they feel the need to exercise their right of appeal. Under option 3, the requirement for local authorities to avoid and resolve disagreements would support a more efficient disagreement/resolution process. Focussing on avoiding and resolving disagreements in the first place would reduce the possibility of any escalation to disputes. In addition this option also provides for the Tribunal to stay an appeal for a period of time to allow dispute resolution to take place locally, where appropriate. This should prevent appeals being heard by the Tribunal when local procedures have not been fully utilised.
- 7.212 It is expected that a greater emphasis on local avoidance / resolution of disagreements would enable a saving with the Tribunal and local authorities due to the potential to reduce the number of appeals heard. It would also have a greater benefit to learners and their parents in ensuring issues are addressed effectively, reducing any anxiety and uncertainty felt by the learner and their families.

### **Consistent right of appeal**

- 7.213 Under option 3, all learners would have equitable rights to have their needs identified and receive the provision they require to support their learning. This would have the benefit that all learners with an IDP have equitable rights of appeal regardless of the complexity of their needs.

7.214 Currently only learners registered at maintained schools have the right to appeal. Under option 3, by extending the right to appeal to learners up to the age of 25, including those in post-16 provision, would introduce more equitable rights of appeal for learners and their parents.

7.215 In addition, changing the name of the SENTW to the Education Tribunal would better reflect its role in relation to ALN and also the role it currently has in determining disability discrimination.

### **Approval and individual consent for independent schools**

7.216 Improving the registration process for independent schools and prohibiting local authorities from placing a learner in an independent school that is not registered to cater for a particular need, would provide for a more effective system for placing learners with ALN in the independent sector. These proposals would also provide a level of assurance to the local authority and the parent that the independent school can meet the needs of the learner, as identified within their IDP. The local authority would play a crucial role in maintaining the IDP.

7.217 The proposals set out under option 3 would simplify the system for admitting pupils with ALN into an independent school and it would remove the current confusion and duplication that exists within the two legislative systems. In addition the publication of the independents schools register, combined with the changes to the registration system would clearly set out for local authority education services and parents of learners with ALN the additional learning provision an independent school can cater for. Clearer information on what a school can cater for and a prohibition on local authority education services linked to the school's ALN provision would reduce the risk of inappropriate placements for learners with ALN into an independent school.

### **Post-16 institutions (including independent specialist placements)**

7.218 For those learners seeking to enter into post-16 education, local authorities would be expected to utilise the data it holds on learners more effectively in order to plan the support required, including identifying those learners who would require post-16 specialist provision. As described above, a unified system of ALN and an IDP that covers learners in both school and FE would have the benefit of facilitating a smoother transition between schools and FEIs for the learner.

7.219 Within the current system local authority education services are expected to play a role in providing information about the learner within the transition process to Careers Wales in order for placements to be determined. Through our proposals, local authority education services would take on the lead role and responsibility for those learners entering post-16 education. Local authority education services would work with schools and post-16 providers directly to identify and secure the necessary provision to meet the learners'

needs. This would ensure the necessary provision for learners is in place prior to commencing a programme of study.

7.220 In addition local authority education services would no longer need to apply to the Welsh Government for funding post-16 specialist placements, as the responsibility would lie with the local authority themselves. Taking on a direct role would allow the local authority to negotiate the cost of a placement with the ISC. Through better collaboration between the local authority education and social services departments, the local authority would be better positioned to encourage the provision of local packages of support and negotiate the cost of a placement with an ISC, and thereby have greater potential to realise savings.

7.221 The Welsh Government would also no longer be required to approve individual specialist placements. This would provide a continuing saving to Welsh Government of £179,000 per annum from 2018-2019 onwards. This would be need to be considered in the transfer of funds from the Welsh Government to local authorities.

## **Conclusion**

7.222 Option 3 establishes a legislative framework that deals with the problems identified with the current SEN/LDD systems. It has a lower additional cost compared to option 2 with a greater focus on the educational achievement of those currently covered by SEN and LDD. It would be a more sustainable system which focuses on learners who most require support, and provides for them in a more proportionate and equitable way than either option 1 or 2. For these reasons, option three was selected as the appropriate option to progress.

## **Specific impact assessments**

7.223 A number of specific impact assessments have been completed, they are summarised below. Where specific impact assessments have been published, this is referred to under the relevant heading.

### **Equality**

7.224 An analysis of impacts against the interests of six groups with protected characteristics (according to age, disability, gender or transgender, race, religion or belief/ non-belief, and sexual orientation) and two further groups introduced by the Strategic Equality Plan (marriage/civil partnership, pregnancy/maternity) has been undertaken. As our proposals seek to improve the educational outcomes for those children and young people with ALN, a number of positive impacts have been identified.

- It would have a positive impact on people because of their age, as it would benefit children and young people up to the age of 25.

- It would have a positive impact on those who are disabled, because some disabilities fall under ALN (such as a learning disability).
- Our proposals also support Human Rights, in particular the United Nations Conventions on the Rights of the Child (which is discussed in greater detail below).

7.225 No negative impacts were identified. The full assessment has been published on the Welsh Government's website at:

<http://gov.wales/consultations/education/draft-aln-and-education-tribunal-wales-bill/?lang=en>

### **United Nations Convention of the Rights of the Child**

7.226 Our proposals aim to improve the educational outcomes for those children and young people within this age range who have ALN. A young person's version of the consultation Legislative Proposals for Additional Learning Needs was produced and disseminated and a series of engagement events were held to gather a representative sample of views from children and young people. The feedback from these consultations has been reflected in the proposals.

7.227 It has been identified that this legislation supports the following articles:

- 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 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 23 - Children who have any kind of disability should have special care and support so that they can lead full and independent lives.
- Article 28 -Children have a right to an education. Discipline in schools should respect children's human dignity. Primary education should be free.
- 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.

7.228 The full assessment has been published on the Welsh Government's website at:  
<http://gov.wales/consultations/education/draft-aln-and-education-tribunal-wales-bill/?lang=en>

### **Health impact**

7.229 Our proposals support timely identification and intervention to meet the ALN of any child or young person within an education institution. Where there is a benefit to the child or young person, this would include timely input and advice from health professionals. Implementing timely intervention can reduce the need for more expensive interventions at a later date and help the child / young person achieve their potential, which could also benefit their health. The balance of evidence strongly supports the principle that effective early intervention is more cost effective than those of later years in forestalling a wide range of social problems including poor educational attainment, adverse health conditions and in association with these poverty and inequality.

7.230 LHBs would be required to pay for the provision which they agree to provide from existing budgets. The NHS already have Frameworks established to help prioritise provision based on need, we would expect LHBs to use these existing Frameworks. A statutory plan would not disrupt established Frameworks. The use of these frameworks means that LHBs provision costs are unlikely to change.

### **Privacy**

7.231 Consideration has been given to the collection and transfer of personal data, in particular with IDPs being transferred between different bodies. Public bodies are required to follow relevant legislation when storing or transferring data, in particular the Data Protection Act. Any personal data collected, stored or being transferred as part of the IDP would need to follow existing legislation. It would be the responsibility of the relevant public body to ensure any transfer of data complies with the Data Protection Act and personal data is securely kept. During implementation we would work with stakeholders to ensure data compliance, although public bodies would need to satisfy themselves that they are complying with relevant legislation.

### **Justice impact**

7.232 Our proposals do not create new civil sanctions/ orders/ offences or amend civil sanctions/ orders/ offences. Our proposals impact on Devolved Tribunals – in particular the Education Tribunal.

7.233 We would be replacing existing rights of appeal under the current SEN framework with new rights of appeal. The number of children and young people who will have a right to appeal will be expanded as the new ALN system will cover those currently on non-statutory SEN plans and those over the age of 16 within a school or FEI setting will be able to appeal to the Tribunal if they feel their needs are not being met.

- 7.234 As discussed under option 3 the draft Bill contains a number of provisions to ensure the system is less adversarial and to help disagreements be resolved at a more local level before reaching appeals at the Tribunal. Relevant training would be funded by the Welsh Government. There will be close monitoring by the Welsh Government and the Tribunal to ensure there is sufficient resource to enable the statutory functions of the Tribunal can be fulfilled.
- 7.235 The draft Bill provides that a party to any proceedings before the Education Tribunal for Wales may appeal to the Upper Tribunal on any point of law arising from a decision made by the Tribunal. An appeal may only be brought if the Tribunal or the Upper Tribunal has given its permission.
- 7.236 We do not believe there is reason to consider that there will be an increase in the burden to the Upper Tribunal.
- 7.237 Although it is possible there will be a reduction in the amount of cases brought to the Upper Tribunal our draft Bill does not amend the rights to take a case to the Upper Tribunal.
- 7.238 The draft Bill places a duty on the Welsh Ministers to establish and maintain a list of Independent Specialist Colleges (ISCs). Local Authorities would only be able to fund learners to attend ISCs if the institution is entered on the list. There would be no compulsion for ISCs to be entered on the list, but decisions of who is entered on the list would therefore be of some importance to ISCs.
- 7.239 In order to provide a fair system and to comply with Article 6 of the ECHR, ISCs will be able to appeal decisions made by the Welsh Ministers to an independent and impartial tribunal.
- 7.240 This appeal would be to HM Courts and Tribunals Service (HMCTS), in particular the Upper Tribunal. The proposals are expected to have a negligible impact on HMCTS.
- 7.241 Experience of the independent schools registration system in Wales shows that no appeals have been lodged since it was established in 2002. This may be attributed to:
- close working with Estyn;
  - the incentive arising from the link between registration and the provider's ability to operate; and
  - the opportunity for providers to submit an action plan setting out how and by when they would address any standards they do not meet first time.
- 7.242 We will be seeking to replicate this to ensure that appeals of ISCs are kept to an absolute minimum.

### **Third Sector, Communities First and Tackling Poverty**

- 7.243 The Welsh Government is committed to supporting Communities First Areas and Tackling Poverty. The ALN proposals compliment the Pupil Deprivation Grant, which is fully delegated to schools to invest in effective approaches for tackling the impact of deprivation on educational attainment. Our proposals also compliment funding provided for schools in Communities First areas.
- 7.244 The Welsh Government has six key proprieties in the Tackling Poverty Action Plan. Our proposals strengthen:
- 7.245 **Early Years** – our proposals covers those aged 0-5. Our proposals promote early identification of ALN and providing necessary support and provision based on the child’s needs. This includes those in early years providers. Those living in Flying Start Areas receive enhanced screening from health visitors, which can identify ALN.
- 7.246 **Increasing educational attainment amongst pupils from low income households (and reducing the inequalities that currently exist)** – our proposals promote timely identification and providing necessary support and provision based on the child’s or young person’s needs. 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). An article in the Times Educational Supplement has suggested that those who are in less affluent areas are more likely to be classified as having SEN.<sup>12</sup>
- 7.247 By improving the system it would have a have a disproportionately positive effect on those from a low income household.
- 7.248 **Reducing the number of young people who are NEET** - Currently, those with SEN are more likely to become NEET. The Audit Commission found in 2010 that
- Over 40 per cent of young people with SEN were NEET at least once, and a quarter were NEET for six months or more.*<sup>13</sup>
- 7.249 Timely identification and the correct provision of support for a child or young person based on their needs would help the child/young person achieve their educational potential. This would help children/young people with ALN to make a smooth transition into adulthood and reduce the likelihood of them becoming NEET.
- 7.250 Those in Flying Start Areas receive enhanced screening from health visitors. Flying Start targets those in the most deprived areas in Wales. These enhanced health visitor assessments can identify ALN at an earlier date and work with the local authority to ensure the correct provision is provided as soon as possible. It will ensure the child’s needs are planned for and forward

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<sup>12</sup> <https://www.tes.co.uk/article.aspx?storycode=6219928>

<sup>13</sup> Against the odds: Targeted briefing – young people with special educational needs. The Audit Commission, August 2010



planning can take place to ensure the child/young have a smooth transition into adulthood. As noted above those in more deprived areas are likely to be classified as having SEN, therefore by improving the educational achievement for those classified as having ALN it will have a disproportionate positive effect on those within Flying Start Areas.

- 7.251 As Communities First Clusters support the most disadvantaged people in the most deprived areas in Wales, those living in Communities First Clusters are likely to benefit from our proposals supporting the Tackling Poverty agenda and possibly the enhanced screening available in Flying Start Areas.
- 7.252 It is the Welsh Government's understanding that currently SNAP Cymru is contracted to provide the advice and support and independent advocacy roles in 20 out of the 22 local authorities, under separate contracts. The remaining 2 local authorities contract their services to Citizens' Advice Bureau to provide information and advice whilst SNAP provide disagreement resolution services.
- 7.253 Our reforms would not change the ability of local authorities to contract their services out, to SNAP other Third Sector organisations, should they wish.

### **Welsh Language**

- 7.254 The Welsh Government's 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.'
- 7.255 The ALN supports this strategy; it also compliments the WESP (Welsh in Education Strategic Plan) requirements (Required under the School Standards and Organisation (Wales) Act 2013) which can support local authorities to improve the planning and delivery of additional learning support for pupils in in Welsh-medium education.
- 7.256 Our proposals support the delivery of Welsh provision. The Code will provide further information on the delivery of provision in the Welsh language.
- 7.257 The full assessment has been published on the Welsh Government's website at:  
<http://gov.wales/consultations/education/draft-aln-and-education-tribunal-wales-bill/?lang=en>

### **Other impact assessments**

- 7.258 It has been considered that our policy does not affect biodiversity, Rural proofing, the environment, habitat regulations, climate change or state aid. Therefore, full impact assessments of these topics have not been completed.

## **8. Competition Assessment**

- 8.1 The provisions within the draft Bill would not affect business, or charities and/or the voluntary sector in ways which raise issues related to competition. The competition filter has not been applied.
- 8.2 The legislation is not expected to have any impact on competition or place any restrictions on new or existing suppliers. The majority of the costs associated with the legislation are expected to fall on public bodies, who already meet these costs.
- 8.3 The legislation is not expected to have any negative impact on Small and Medium sized Enterprises (SMEs) in Wales.

## **9. Post implementation review**

- 9.1 The draft Bill is principally involved with improving the outcomes of those children and young people with ALN. Implementation will be undertaken through a phased approach and stakeholders will be involved to minimise any potential disruption.
- 9.2 A phased approach will be adopted to implement the new statutory framework in order for institutions and practitioners to understand the new system and effectively manage and transfer learners from the existing system to the new system.
- 9.3 Working with key delivery partners an implementation plan will be developed to support partners through the period of implementation. The implementation is expected to be phased over three years focussed around key entry points for learners within the education system.

### **Implementation review**

#### **Ongoing review and monitoring**

- 9.4 The Support for Learners Division of the Department for Education and Skills is planning for the implementation of the draft Bill using standard management techniques and documentation. Monthly progress reports will be compiled as part of normal business.
- 9.5 These will be informed by existing oversight arrangements. Welsh Government officials meet regularly with key stakeholders including Local Authority Association of Directors of Education (and the Inclusion Sub Group); LHB representatives, Estyn; Regional Associations of Special Head Teachers; Third Sector Additional Needs Alliance (TSANA); Colegau Cymru; National Association of Specialist Colleges; Independent Schools Council; SENTW; Careers Wales, and others.
- 9.6 Frequent ad hoc communication and engagement with these key stakeholders and the public is also normal which will provide additional opportunity for dialogue.
- 9.7 In addition there will be specific monitoring by the Welsh Government, the Tribunal and local authorities of the number of appeals to the Tribunal (and the Upper Tribunal) to ensure there is sufficient resource to enable the statutory functions of the Tribunal to be fulfilled. The Tribunal already collect this information as part of their annual report, although more frequent engagement will be required to monitor numbers. This will also enable the

Welsh Government to assess the capacity of the administrative team supporting the Tribunal to ensure it is appropriately resourced.

### **Formal review points**

- 9.8 Estyn, as part of its statutory role, inspects the quality and standards in education and training providers in Wales. Through this formal inspection process, the Welsh Government will monitor how effectively education providers are implementing the new system for ALN.
- 9.9 Welsh Government officials meet regularly with Estyn. Frequent communication and engagement with Estyn is normal, providing additional opportunity for dialogue. This provides an opportunity to review and monitor the impact of the legislation on an ongoing basis and to address any issues that might become apparent.
- 9.10 Estyn also provide advice and guidance to the Welsh Government through their thematic reports which are commissioned by the Minister for Education and Skills. Once the transition period has been completed, Welsh Government will consider with Estyn the remit for a thematic review focused on how well education providers have implemented the new statutory framework. Allowing for the three year period to be completed will enable the new statutory framework to settle and any subsequent evaluation to be comprehensive.
- 9.11 Additional data or studies into aspects of policy development under the new statutory framework may also be sought if stakeholder engagement has highlighted any issues which require further investigation.

### **Outcomes review**

- 9.12 The outcomes promoted by the new statutory framework will be reviewed using broadly similar methodology and inputs as the review of implementation, with the exception being a focus on the attainment levels of learners with ALN. Annual attainment statistics will be monitored by the Welsh Government to ensure learners are reaching their potential.
- 9.13 As mentioned above we will also be engaging with the Tribunal to monitor appeal rates and the reasons for appeal. The Tribunal already collect this information as part of their annual report. We will be considering these findings on an annual basis.

## **ANNEX A**

# **DRAFT ADDITIONAL LEARNING NEEDS AND EDUCATION TRIBUNAL (WALES) BILL**

## **DRAFT EXPLANATORY NOTES**

### **INTRODUCTION**

1. These draft Explanatory Notes relate to the draft Additional Learning Needs and Education Tribunal (Wales) Bill published for consultation on 6 July 2015.
2. They have been prepared by the Department for Education and Skills of the Welsh Government in order to assist the reader of the draft Bill and to help inform debate on it. They do not form part of the draft Bill.
3. The draft Explanatory Notes should be read in conjunction with the draft Bill. They are not meant to be a comprehensive description of the draft Bill. Where an individual section of the draft Bill does not seem to require any explanation or comment, none is given. Where the draft Notes go beyond mere explanation of the effect of that section, by offering the policy rationale behind the provision and outlining how the Welsh Government might seek to amend the provision before introducing a Bill to the Assembly, this is made clear in the text.
4. The powers to make the draft Bill are contained in Part 4 of the Government of Wales Act 2006 (GoWA 2006). The relevant provisions of GoWA 2006 are set out in section 108 and Schedule 7. The Assembly has the requisite legislative competence to make the provisions in this draft Bill. Under Part 1 of Schedule 7 to GOWA 2006, paragraph 5 sets out the subjects on which the Assembly may legislate under the heading “education and training”; Paragraph 9 sets out the subjects on which the Assembly may legislate under the heading “health and health services”; and paragraph 15 sets out the subjects on which the Assembly may legislate under the heading “social welfare”.
5. In these Explanatory Notes, ‘the 1996 Act’ means the Education Act 1996 and ‘the 2000 Act’ means the Learning and Skills Act 2000.

### **Background**

6. Between 2003 and 2007, a three-part review of special educational needs (SEN) was undertaken by the former Education, Lifelong Learning and Skills 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. *Transition*, March 2007.
7. 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:
- a. the assessment process associated with statements is inefficient, bureaucratic, costly, and insufficiently child-centred or user-friendly;
  - b. needs are often identified late and interventions are not sufficiently timely or effective; and
  - c. 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.
8. In response to the Committee's reports, the then Welsh Assembly Government conducted a wide ranging consultation on possible reforms to the existing system of support for SEN and learning difficulties and/or disabilities (LDD) in 2007 (*Statements or Something Better*) and again in 2012 (*Forward in Partnership for Children and Young People with Additional Needs*). In addition, the Welsh Government's *Programme for Government*, published in July 2011, contained a commitment to 'reform the additional learning needs (ALN) process for the most vulnerable children and young people in either a school or Further Education (FE) setting.'
9. The Education (Wales) Bill introduced to the National Assembly for Wales in July 2013, contained provisions relating to the registration and approval of independent schools for the placement of learners with SEN, the assessment of the educational and training needs for post-16 learners with LDD, and specialist FE placements. However, in response to calls from the Children and Young People's Committee to consider all SEN provisions in a single legislative vehicle these provisions were removed from the Bill during Stage 2 proceedings in January 2014. The Minister for Education and Skills announced at that time that the provisions would be incorporated into a separate Bill dealing with the full range of issues relating to ALN.
10. Drawing on the outcome of the previous consultations and stakeholder engagement, and taking into account the provision withdrawn from the previous Education Bill, the Welsh Government published for consultation on 22 May 2014 a White Paper entitled *Legislative Proposals for Additional Learning Needs*.
11. A summary of responses to the consultation was published in October 2014. Broadly, the Welsh Government's proposals were welcomed by those who responded to the consultation. This draft Bill has been developed around the principles and proposals set out in that consultation.

## **SUMMARY OF THE DRAFT BILL**

12. The draft Bill has five Parts comprising 70 sections.
13. It will establish a new statutory framework for supporting children and young people with ALN. This will replace existing legislation surrounding SEN and the assessment of children and young people with LDD in post-16 education and training up to the age of 25 years.
14. It will introduce a new statutory plan to replace all the existing statutory and non-statutory education plans specifically for children and young people with SEN and LDD. The meaning of child and young person for the purposes of this draft Bill are set out in section 68. A 'child' means a person not over compulsory school age, while a 'young person' means a person over compulsory school age but under 25.
15. It will provide rights of appeal to children, the parents of children and young people in connection with this new statutory plan. These appeals will be to the Education Tribunal for Wales, which will be the new name for Special Educational Needs Tribunal Wales (SENTW).
16. It will make consequential amendments to other Acts, including the 1996 Act, the 2000 Act, the Education (Wales) Measure 2009, and the Equality Act 2010.

## **COMMENTARY ON SECTIONS OF THE DRAFT BILL**

### **Part 1 – Overview**

#### **Section 1 - Overview of this Act**

17. This section describes the content of the draft Bill.

### **Part 2 – Additional Learning Needs**

#### **Key terms**

#### **Section 2 – Additional learning needs**

18. Section 2 defines the term 'additional learning needs' ('ALN') for the purposes of the draft Bill. This definition is very similar to the definition of 'special educational needs' (SEN) under the 1996 Act but it does not limit its use to those below the age of 18 as in the case of the term SEN. The definition of ALN is framed so that it is potentially applicable to a person of any age.
19. A person is not considered to have ALN because their home language is different to the language in which they are taught.

#### **Section 3 - Additional learning provision**

20. Section 3 defines the meaning of ‘additional learning provision’ (‘ALP’), which itself forms part of the definition of ALN in section 2. This definition is very similar to the definition of ‘special educational provision’ found in the 1996 Act but widens the definition by reference to mainstream post-16 institutions in Wales. Mainstream post-16 institutions are defined in section 68.
21. The definition of ALP included in the draft Bill has been made by reference to a child’s age. Regulations under this section would allow the Welsh Ministers to replace the current references to the age of three with references to a different age, in response to changes in early years policy or evidence based practice.

## **Code of practice**

### **Section 4 - Additional learning needs code**

22. Section 4 places a duty on Welsh Ministers to issue and publish a code (‘the Code’) on ALN. This will provide guidance to which key stakeholders listed in this section must have regard when exercising their functions under this draft Bill in relation to ALN.
23. In addition, the Code may also impose requirements on:
  - a. local authorities in relation to their duties regarding advice, information and independent advocacy services; and
  - b. governing bodies of maintained schools or institutions in the further education sector (hereafter referred to as further education institutions (FEIs)) in Wales (as defined in section 68 of the draft Bill) in relation to the preparation, content, form, review, revision and cessation of individual development plans (‘IDPs’).
24. The Education Tribunal for Wales must consider the requirements set out in the Code where relevant to any questions arising on appeal.

### **Section 5 – Procedure for making the code**

25. Section 5 ensures that before an ALN Code can be issued or published, or subsequent changes can be made to the Code, it must be consulted upon first. This section includes a list of public bodies which must be consulted, though the Welsh Ministers may also consult anyone else they consider appropriate. This section places a duty on Welsh Ministers to lay the Code before the National Assembly for Wales, and ensures that the proposed Code will not be issued if the Assembly resolves not to approve it within the 40 day period of it being laid. This does not however prevent Welsh Ministers from laying a new draft of a proposed Code before the Assembly.

## **Participation and access to information**

### **Section 6 - Duty to involve and support children, their parents and young people**



26. Section 6 seeks to ensure that local authorities place children, their parents and young people at the centre of decisions taken under the draft Bill which directly affect them, and enable them to participate in a fully informed way.
27. The definition of ‘child’ and ‘young person’ for the purposes of this draft Bill are set out in section 68.

### **Section 7 - Advice and information**

28. Section 7 requires local authorities to ensure that those who have an interest in the operation of the new ALN system (including children, children’s parents and young people) are provided with the information and advice about ALN and the provision under the Act. Local authorities must also make the availability of information and advice services known to schools and others. As noted, the ALN Code may impose further legal requirements on local authorities in relation to the provision of advice and information under this section.

### **Preparing and maintaining individual development plans**

#### **Section 8 - Individual development plans**

29. Section 8 explains what an IDP is. This plan will form the basis of the system for planning and providing ALP for children and young people with ALN as set out in the draft Bill.

#### **Section 9 - Individual development plans: maintained schools**

30. Section 9 sets out the duties of governing bodies of maintained schools in Wales in relation to IDPs. If it appears to a school governing body that one of its pupils may have ALN, or this has been brought to their attention, this section requires a governing body to decide whether that child or young person has ALN. However, the school governing body does not have to do so if the circumstances set out in section 11 of the draft Bill apply.
31. This section requires the governing bodies of maintained schools in Wales to prepare and maintain an IDP for those pupils they have decided have ALN, and in cases where they are directed to do so by a local authority. Where a governing body maintains an IDP, it must secure the ALP set out in that IDP. A copy of the IDP must be provided to the child and their parent, or the young person.
32. Where the governing body decides that the child or young person does not have ALN it must notify the child and their parent, or the young person, of the decision and the reasons for that decision.

#### **Section 10 - Individual development plans: further education institutions**

33. This section sets out the duties of governing bodies of FEIs in Wales in relation to IDPs. If it appears to an FEI that one of its students may have

ALN, or this has been brought to their attention, this section requires a governing body to decide whether that young person has ALN. However, the governing body does not have to do so if the circumstances set out in section 11 of the draft Bill apply.

34. This section requires the governing bodies of FEIs in Wales to prepare and maintain an IDP for those students whom they have identified as having ALN and to secure the ALP set out in that IDP. A copy of the IDP must be provided to the young person. Where a governing body decides that a young person does not have ALN it must notify the young person of the decision and the reasons for that decision.

### **Section 11- Circumstances in which the duties in sections 9 and 10 do not apply**

35. Section 11 provides the circumstances under which the requirements in section 9 on governing bodies of maintained schools in Wales, and the requirements in section 10 on FEI governing bodies in Wales, will not apply. This includes where a young person does not consent to a decision being made; and where the governing body has previously decided whether the child or young person has ALN and there has been no material change in the child or young person's needs or new information that would affect the decision.
36. This section also allows for governing bodies of maintained schools and FEIs in Wales to refer ALN decisions to the relevant local authority if they decide that the matter is beyond their capability or it is likely that the ALP necessary for the child or young person would be beyond what the governing body could reasonably be expected to provide.

### **Section 12 - Individual development plans: local authorities**

37. Section 12 sets out the circumstances in which a local authority will be required to decide if a child or young person has ALN unless the circumstances set out in section 13 of the draft Bill apply. A local authority might, for example, exercise the functions set out in this section where a decision about a child or young person's ALN has been referred by a school or FEI under sections 9 or 10 of the draft Bill; a child, a child's parent or a young person has made a direct request to the local authority; or a Local Health Board has made a referral under section 48 of the draft Bill.
38. Where the local authority decides that the child or young person does not have ALN it must notify the child and their parent, or the young person of the decision and the reasons for that decision.
39. Where ALN are identified, the local authority is required to prepare and maintain an IDP and secure the ALP set out in that IDP or, if the child or young person is to attend a maintained school, the local authority may prepare an IDP and direct the governing body of the school to maintain the plan; or direct the governing body of the school to prepare and maintain the

plan. These duties apply in relation to children (that is, those of compulsory school age as defined at section 68), young people enrolled in FEIs, and to other young people where the local authority considers it necessary. Consideration of where it is ‘necessary’ is to be undertaken in accordance with regulations made by the Welsh Ministers in accordance with the procedures set out in section 67 of the draft Bill. This is most likely to be the case where the needs of a young person are severe and/or complex, and can only be met at an independent special post-16 institution named on the list of such institutions established under section 33 of the draft Bill.

40. If the local authority is satisfied that the reasonable needs of a child or young person for ALP cannot be met unless it also secures board and lodging and/or other prescribed provision, that provision must be described in the plan. Where this applies, the local authority is unable to direct the governing body of a maintained school to prepare and/or maintain the IDP.
41. The local authority must give a copy of the IDP to the child and their parent, or the young person. Where the local authority maintains an IDP it must secure the ALP and any other provision described in the plan.

### **Section 13 - Circumstances in which the duty in section 12 does not apply**

42. Section 13 provides the circumstances under which the requirement to determine whether an individual has ALN in section 12 for local authorities will not apply. These include when the local authority is satisfied that the matter is already being decided by a governing body under section 9 or 10 of the draft Bill; where a young person does not consent to a decision being made; or where the local authority has previously decided whether the child or young person has ALN and there has been no material change in the circumstances.

### **Section 14 - Individual development plans: Local Health Boards and NHS Trusts**

43. Section 14 requires a Local Health Board or NHS Trust (hereafter referred to as “health bodies”) in Wales to deliver any ALP it has agreed to secure under this section. Governing bodies and/or local authorities which maintain IDPs will not be required to secure the ALP the health body has agreed to secure. The intention is to provide greater certainty to those with an interest in the IDP, especially children, children’ parents and young people, that the IDP’s content will be delivered, and to clarify which body is responsible for this.
44. The ALP which a health body has agreed to provide under this section may only be removed or changed on review of the plan in accordance with section 15 of the draft Bill at the request of, and with the agreement of, the health body. If, on review of the IDP, the health body requests to change the description of the ALP it has agreed to secure, the governing body or local authority must comply with the request.
45. Where the Education Tribunal for Wales makes an order that the provision being secured by the health body be changed, it will be the local authority or

governing body maintaining the plan that is responsible for securing the amended provision, unless the health body agrees to deliver it.

### **Section 15 – Review of individual development plans**

46. Section 15 requires that the IDP is reviewed at least every 12 months. It must also be reviewed at the request of a child or a child’s parent, or a young person (unless considered unnecessary); and at the request of a health body making provision in accordance with section 14 of the draft Bill. If a governing body or a local authority revises an IDP, it must give a copy of the revised plan to the child and their parent, or the young person. This section also permits the plan to be reviewed at any time that it is considered appropriate. This will enable prompt review of the IDP when circumstances change or in accordance with review dates set as part of the IDP’s action plan. If the IDP is revised, a copy must be provided to the child and their parent, or the young person.

### **Section 16 - Relationship of individual development plans to other similar documents**

47. Section 16 enables alignment of the process of preparing and reviewing IDPs for a child or young person with other statutory plans for that child or young person, including health and social care plans. The intention of this is to avoid duplication and provide a more integrated and holistic approach to meeting the ALN of children and young people.

### **Local authority reconsideration of governing body decisions and plans**

#### **Section 17 - Reconsideration by local authorities of decisions under section 9**

48. Section 17 enables a child or their parent, or the young person, to request that a local authority reconsiders the view of a school governing body that a child or young person has or does not have ALN. Where requested, the local authority must make its own decision on the issue; that decision will then replace the decision of the governing body, and the previous decision made by the governing body will cease to have effect. Before making a decision, the local authority must inform the governing body of the request and invite representations from the governing body. This section provides children and their parents, and young people, with an effective means of challenging the decision of the governing body of a maintained school in Wales, in the absence of a right of appeal to the Tribunal against these bodies.

#### **Section 18 - Reconsideration by local authorities of plans maintained under section 9**

49. Section 18 enables a child, child’s parent or young person to ask a local authority to reconsider and decide whether to revise an IDP prepared and maintained by the governing body of a maintained school in Wales. Before deciding whether or not to revise the plan, the local authority must inform the

governing body of the request and invite representations from the governing body. Where the local authority decides that the IDP does not require revision it must notify the child and their parent, or the young person, of the decision and the reasons for that decision.

50. Under this section the local authority may direct the governing body to maintain the revised IDP; alternatively the local authority may take on responsibility for maintaining the IDP itself. The former will occur where the local authority considers that the content of the IDP is such that the governing body can be expected to deliver the ALP it contains; the latter where this would be beyond the capability of the governing body.
51. If the local authority is satisfied that the needs of a child or young person for ALP can only be met by securing provision of the kind mentioned in section 12(6) (e.g. board and lodging; or prescribed provision), it must include a description of that other provision in the IDP. If this duty applies, the local authority may not direct a governing body to maintain the IDP under subsection (5)(a).
52. If a governing body or a local authority revises an IDP, the local authority must give a copy of the revised plan to the governing body, as well as to the child and their parent, or young person. This section provides children, their parents, and young people with an effective means of challenging the content of the IDP put in place for them by the governing body of a maintained school in Wales, in the absence of a right of appeal against these bodies.

### **Section 19 - Local authority taking over responsibility for governing body plans**

53. Section 19 requires a local authority to decide whether it should take over responsibility for maintaining an IDP in response to a request to do so. The request might be made by a governing body of a school or FEI – for example where the governing body no longer believes that maintaining the plan and delivering the ALP required by the child or young person is within its capability – or by a child, a child’s parent or young person, where they do not believe the governing body has proven capable of delivering the ALP required by the child or young person. The decision of the local authority not to take over responsibility for an IDP is challengeable by appeal to the Education Tribunal under section 40.
54. Where the request is from a governing body, the local authority must notify the child and their parent, or the young person, and invite representations. Where the request is from a child, a child’s parent or a young person, the local authority must inform the governing body and invite representations. The local authority must notify the governing body, and either the child and their parent, or the young person, of the decision and the reasons for that decision.

### **Ceasing to maintain plans**

#### **Section 20 - Ceasing to maintain individual development plans**

55. Section 20 enables a governing body or local authority to cease to maintain an IDP where it is no longer necessary to maintain it. The child and their parent, or the young person, must be notified of the intention to make such a decision before it is taken. Once a decision has been made, the child and their parent, or the young person, must be notified of the outcome and, in the case of a school governing body decision, of their right to request the local authority to reconsider the decision to cease to maintain the plan under section 21. In the case of a local authority or FEI decision to cease to maintain a plan, this is appealable under section 40.

### **Section 21 - Reconsideration by local authorities of decisions under section 20**

56. Section 21 enables a child, a child's parent or a young person to request that a local authority reconsiders a school governing body's decision to cease to maintain an IDP. The period during which this request can be made will be set out in regulations. The local authority must decide whether the IDP should cease and notify the governing body, the child and their parent, or the young person accordingly. If the local authority decides that the IDP should be maintained, the governing body must continue to do so. Where the local authority agrees that the IDP can cease to be maintained, its decision is appealable under section 40.

### **Section 22 - Limitation on ceasing to maintain to allow reconsideration or appeal**

57. Section 22 provides that a governing body of a maintained school may not cease to maintain an IDP unless the period prescribed under section 21 has ended and no request for reconsideration under section 21 has been made. Similarly, a governing body may not cease to maintain an IDP where the local authority has decided under section 21 that the plan should not be maintained until the period prescribed, under section 41, for an appeal to be made against the local authority's decision has elapsed, or where an appeal has been fully determined before the end of that period. A governing body of a FEI or a local authority may not cease to maintain the IDP until after the prescribed period under section 41 for an appeal to be made has elapsed or until after an appeal has been determined. These limitations are in place to ensure that an IDP continues to be maintained until the child, the child's parent or young person (as appropriate) has had the opportunity to exhaust their appeal options.

### **Section 23 - Regulations about transfer of individual development plans**

58. Section 23 enables the Welsh Ministers to make regulations about the transfer of IDPs between local authorities and governing bodies. Regulations under this section may, for example, impose a duty on a local authority or governing body to maintain an IDP put in place by another authority and to treat the things done by the transferring authority in relation to the plan as done by the other authority or governing body. This section aims to ensure that the ALN system can provide coherent and consistent provision as

children and young people move around Wales and through the various stages of education.

### **Section 24 - Individual development plan after a young person's 25th birthday**

59. Section 24 ensures that if a young person becomes 25 shortly before the end of their course of study, the body responsible for the IDP and the ALP it contains can continue to deliver the ALP up until the end of that person's course of study or the day before the young person turns 26 (whichever is earlier).

### **Functions relating to securing additional learning provision**

#### **Section 25 - Duties of governing bodies to help local authorities secure additional learning provision**

60. Section 25 requires that when a local authority maintains an IDP for a child or young person in a maintained school or FEI, the governing body of the maintained school or FEI takes all reasonable steps to help the local authority secure the ALP set out in IDP.

#### **Section 26 - Duty to admit children to named institutions**

61. Section 26 places a duty on governing bodies of maintained schools in Wales to admit children where that school is named for the purpose of admission by a local authority in an IDP. This is similar to existing legislation in relation to the naming of a school in a statement of SEN. However, this section limits the circumstances in which schools can be named to those where the local authority is satisfied that the child's interest requires the ALP to be made at that school, and the more general education and training provided at the school is appropriate for the child. Before naming a school under this section, the local authority must consult the governing body of the school, and in the case of a maintained school where neither the local authority nor its governing body is the admissions authority for the school (as defined by section 88 of the School Standards and Framework Act 1998), the local authority for the area in which the school is located.

#### **Section 27 - No power to charge for provision secured under this Act**

62. Section 27 ensures that a child, parent or a young person does not have to pay for any provision that a governing body or local authority must secure for that child or young person under the draft Bill.

#### **Section 28 - General duties to secure post-16 education and training for persons with additional learning needs**

63. Section 28 amends the 2000 Act to reflect the new meaning of the term ALN defined under section 2 of the draft Bill. It also amends the same Act to remove the duties of the Welsh Ministers in relation to the securing of boarding accommodation for persons over the age of 16 years when they

have a learning difficulty and/or disability. Local authorities have a duty, under section 12 of the draft Bill to include board and lodging provision in an IDP and to secure that provision for persons up to the age of 25 years. Section 28 also removes section 140 of the 2000 Act which relates to assessments for Learning and Skills Plans, which will be replaced by IDPs established by section 8 of the draft Bill.

## **Additional learning provision in particular kinds of school or other institution**

### **Section 29 - Duty to favour education for children at mainstream maintained schools**

64. Section 29 requires that where a child of compulsory school age with ALN should be educated in a school, the local authority must ensure that child is educated in a mainstream school, whilst recognising that it might sometimes be appropriate to educate them elsewhere. Regulations may provide for exceptions to the general duty.

### **Section 30 - Additional learning provision otherwise than in schools**

65. Section 30 allows a local authority to secure the ALP identified in an IDP it maintains for a child to be made elsewhere when it is satisfied that it would be inappropriate for it to be made in a school.

### **Section 31 – Amendments to registration requirements for independent schools in Wales**

66. Section 31 amends the Education Act 2002 so that the Welsh Ministers must publish a list of the schools included in the register of independent schools in Wales. Furthermore, when independent schools register with the Welsh Ministers they may be required to specify the type(s) of ALP they make for pupils with ALN. This must also be specified in the published register.

### **Section 32 - Conditions applicable to securing additional learning provision at independent schools**

67. Under section 32, local authorities may not place a child or young person at an independent school in Wales unless the school can make ALP that corresponds to the ALN of the child or young person described in his or her IDP.
68. Similarly, local authorities are prohibited from placing children and young people at independent educational institutions (as defined under the Education and Skills Act 2008) in England, which are not organised to make the ALP that corresponds with a child or young person's ALN.
69. These provisions replace the existing approval and individual consent provisions in section 347 of the 1996 Act, which are removed under section 35 of this draft Bill.



### **Section 33 - List of independent special post-16 institutions**

70. Section 33 requires the Welsh Ministers to establish and maintain a published list of independent special post-16 institutions in England and Wales. Proprietors of such institutions that are specially organised to provide education and training for persons with additional learning needs may apply to the Welsh Ministers to be approved and placed on the list. Local authorities may not place children and young people at such institutions which are not on the list. The application procedures and requirements, including rights of appeal against decisions to refuse to list an institution, may be provided for by regulations made by the Welsh Ministers.

### **Section 34 - Abolition of approval for non-maintained special schools in Wales**

71. Section 34 amends the 1996 Act to remove the power of the Welsh Ministers to approve the creation of non-maintained special schools in Wales. There are no such schools currently in existence in Wales.

### **Section 35 - Abolition of approval of independent schools in Wales**

72. Section 35 repeals section 347 of the 1996 Act (approval of independent schools as suitable for admission of children with statements of special educational needs). See section 31 which provides additional registration requirements detailing ALP by independent schools.

### **Section 36 - Additional learning provision outside England and Wales**

73. Section 36 prevents a local authority from arranging for a child or young person with ALN to attend an institution outside England and Wales, unless that institution is organised to make the ALP that corresponds with the ALN of that child or young person as described in their IDP.

## **Disagreements and appeals**

### **Section 37 - Avoidance and resolution of disagreements**

74. Section 37 requires local authorities to make arrangements for both avoiding and resolving disagreements in relation to ALP for children and young people, between children, children's parents and young people on the one hand, and maintained schools, local authorities and other relevant institutions on the other hand. This requirement includes providing access to help in resolving a disagreement from an independent person. Under this section local authorities are required to ensure that children, children's parents and young people, head teachers, governing bodies and other relevant people are made aware of these arrangements, and to promote their use. Local authorities are also required to inform children, parents of children and young people that these arrangements do not affect their rights to appeal to the Education Tribunal for Wales.

### **Section 38 - Independent advocacy services**

75. Section 38 requires local authorities to make arrangements for independent advocacy services providing advice and assistance to a child, a young person or a case friend when making, or considering making, an appeal to the Education Tribunal for Wales. These services must also be provided for children, young people or a case friend taking part in, or intending to take part in, arrangements for the resolution of disagreements made under section 37 of the draft Bill.
76. Local authorities must have regard to the principle that the independent advocacy service arrangements should be independent of any person who is the subject of appeal or involved in the appeal.
77. Local authorities are also required to take reasonable steps to ensure that children, parents of children, young people, head teachers, governing bodies and other relevant people are made aware of these arrangements.

### **Section 39 - Case friends**

78. Section 39 allows the Welsh Ministers to make regulations to provide for a child or young person to have a “case friend”. This will allow the Welsh Ministers flexibility to provide further details on how case friends might be used to support the rights of children and young person.
79. A case friend would be able to make representations on behalf of a child or young person, with a view to avoiding or resolving disagreements with governing bodies or local authorities about the exercise of their functions under this draft Bill. A case friend would also be able to do anything the child or young person is able to do or is required to do under the draft Bill. The draft Bill provides for rights to be exercised fairly and competently and for the benefit of the child or young person. Regulations may make further provisions about case friends.

### **Section 40 – Appeals**

80. Section 40 provides children, parents of children and young people with a right to appeal to the Education Tribunal for Wales where disagreements about decisions relating to ALN and ALP cannot be resolved at the local level.
81. This section sets out the matters and circumstances in which a child, child’s parent or young person may appeal to the Education Tribunal for Wales and also prescribes the Tribunal’s powers in relation to appeals.
82. This section enables the Welsh Ministers to make regulations in relation to appeals to the Education Tribunal for Wales, for example provision about making and determining appeals, conferring further powers of the Tribunal on determining an appeal, and unopposed appeals.

83. This section provides that those who fail, without reasonable excuse, to comply with a requirement (where the requirement is imposed by regulations) to disclose documents or attend the tribunal to give evidence can be guilty of an offence punishable by fine.

#### **Section 41 - Procedure on appeals**

84. This section enables the Welsh Ministers to make regulations about the initiation of an appeal and the proceedings of the Education Tribunal for Wales under this draft Bill. This section lists provisions for which regulations may be made and that proceedings before the Tribunal must be held in private, except in prescribed circumstances.

#### **Section 42 - Compliance with Orders**

85. This section requires that if the Education Tribunal for Wales makes an Order, the governing body or the local authority must comply with the Order before the end of the period prescribed in regulations, beginning with the date on which it is made.

#### **Section 43 - Allowances for attendance at the Education Tribunal for Wales**

86. This section provides a power for Welsh Ministers to pay allowances in relation to attendance at the Education Tribunal for Wales.

#### **Section 44 - Appeals from the Education Tribunal for Wales to the Upper Tribunal**

87. The purpose of section 44 is to allow a party to any proceedings about ALN before the Education Tribunal for Wales to appeal to the Upper Tribunal on any point of law arising from a decision made by the Education Tribunal for Wales in those proceedings.

### **Supplementary**

#### **Section 45 - Duty to keep additional learning provision under review**

88. Section 45 places a duty on local authorities to keep under review the arrangements that they and the governing bodies of maintained schools in their area make for children and young people with ALN, in order to ensure that they are sufficient to meet the ALN of the children and young people for whom they are responsible. As part of their considerations, local authorities must have regard to the ALP that may reasonably be arranged by other bodies (such as health bodies). It also requires local authorities to consult any persons that they consider appropriate in order to inform the consideration and review of their arrangements for children and young people with ALN, and at times which they consider appropriate.

#### **Section 46 - Additional learning needs co-ordinator**

89. Section 46 requires governing bodies of maintained schools and FEI's in Wales to designate a member of staff as the additional learning needs co-ordinator (ALNCO) to co-ordinate ALP for children and young people with ALN. This section provides that regulations may require those taking on the ALNCO role are appropriately qualified and experienced to do so. It also allows regulations to confer functions on ALNCOs in relation to their role in coordinating ALP for children and young people with ALN.

#### **Section 47 - Designated medical or clinical officer**

90. Section 47 places a duty on Local Health Boards to designate an officer to co-ordinate the Board's functions in relation to children and young people with ALN. The officer must be suitably qualified and experienced in the provision of health care for children and young people with ALN. This section requires the officer to be either a registered medical practitioner (to be known as a designated medical officer), or a registered nurse or other health professional (to be known as a designated clinical officer).

#### **Section 48 - Functions of health bodies to notify parents etc.**

91. This section relates to situations in which a health body in England or Wales is exercising any of its functions in relation to a child who is under compulsory school age and for whom a local authority in Wales is responsible (in accordance with section 55 which sets out the children for whom a local authority is responsible). When the health body forms the opinion that the child has (or probably has) ALN, section 48 provides the health body with the power to bring its opinion to the attention of the appropriate local authority in Wales responsible for the child, if the health body is satisfied that doing so would be in the best interests of the child.
92. This section ensures that the child's parent is informed of the health body's opinion and its power to inform the appropriate local authority, and ensures that the parent has an opportunity to discuss this opinion with an officer of the health body, before the health body exercises its power and brings its opinion to the attention of the appropriate local authority.
93. This section also places a duty on the health body to inform the parent of any voluntary organisations which it believes are likely to provide the parent with advice or assistance in connection with any ALN that the child may have.

#### **Section 49 - Duties of certain public bodies to provide information and other help**

94. Section 49 is intended to ensure that when local authorities request information or help from certain public bodies (referred to in this section as 'persons') in order to exercise their functions in relation to children and young people with ALN, those requests are complied with. The persons who are subject to this duty are listed in this section.

95. A person can decline to comply with the request for help or information if they consider that it is incompatible with their own duties or has an adverse effect on the exercise of the person's functions. However, if the person decides not to comply with such a request for help or information, they must provide their reasons for refusing the request to the local authority in writing.
96. This section allows for regulations to set out a prescribed period in which the person must comply with a request, and for exceptions to apply to this prescribed period.

### **Section 50 - Right of local authority to access premises of schools and other institutions**

97. Section 50 ensures that a local authority that maintains an IDP for a child or young person has a right to access the premises of the school or other institution in Wales or England where education or training is provided for that child or young person. This right of access only applies where it is necessary for the local authority to exercise its functions under this Part of the draft Bill, and it must be at a reasonable time.
98. The institutions that a local authority has a right to access are listed in section 50.

### **Section 51 - Provision of goods or services in relation to additional learning provision**

99. Section 51 allows for regulations to provide for local authorities to supply goods and services to persons providing ALP or exercising functions under this draft Bill. This may include regulations about terms and conditions for the supply of such goods and services.

### **Section 52 - Regulations about disclosure and use of information**

100. Section 52 allows for regulations about how information gathered in the course of preparing and maintaining an IDP and in exercising other functions under Part 2 (Additional learning needs) and Part 3 (Looked after children and detained persons) may be used and disclosed. This can include regulations about additional persons who must receive copies of IDPs, and cases when copies of plans must be provided without the consent of the child, the child's parent or young person.

### **Section 53 - Parents lacking capacity**

101. The purpose of section 53 is to enable regulations to be made to ensure that parents who are lacking capacity at a time where they are required to make a decision or represent their views, are sufficiently legally represented by an appropriate person. In this section, reference to lacking capacity refers to that which is defined within the Mental Capacity Act 2005.

## **General**

### **Section 54 - Giving notice etc. under this Act**

102. Where the draft Bill requires a governing body or local authority to deliver a document or notification to a person, section 54 lists the methods of delivery. Electronic delivery can only take place where the person has indicated that they wish to receive notifications or documents electronically and has provided a suitable address.

### **Section 55 - Persons for whom a local authority is responsible**

103. Section 55 sets out that, in this draft Bill, a reference to a child or young person for whom a local authority has responsibility means a child or young person who ordinarily resides within that local authority's area. If a child or young person does not have an ordinary residence but is residing in the local authority's area for the time being, the local authority will be responsible for them for the purposes of this draft Bill. This section enables regulations to make further provisions about children and young people for whom a local authority is responsible for the purposes of this draft Bill (for example, where the child is resident in more than one place, or is a looked after child).

## **Part 3 – Looked after children and detained persons**

### **Looked after children**

#### **Section 56 - Regulations about looked after children and persons formerly looked after**

104. Under section 56, the Welsh Ministers are given the power to make regulations about children who may have ALN and who are, or who were formerly, looked after by a local authority. It also enables regulations to make provision about the support provided by local authorities to promote the educational achievement and ALP of looked after and formerly looked after children.
105. Section 56 enables such regulations to amend, repeal or revoke any provisions in other legislation.

#### **Policy rationale behind the provision and how the Welsh Government might seek to amend the provision before introducing a Bill to the Assembly**

106. This section would enable the Welsh Ministers to create, through regulations, a system of planning for the educational needs of looked after children designed to suit their very specific circumstances. This would take into account the fact that a large percentage of such children are likely to have ALN and that the majority are particularly vulnerable as learners. The intention is to provide for a single educational plan for looked after children that integrates the existing Personal Educational Plan (“PEP”) with the IDP.

107. It has not been possible at this stage to place detailed provisions on the face of the draft Bill that enable this to happen because linked elements of the Social Services and Well-being (Wales) Act 2014 have yet to be implemented.. Once this legislation is complete it will be possible to finalise and include these detailed provisions on the face of the Bill.

## **Detained persons**

### **Section 57 - Meaning of “detained person” and other key terms**

108. Section 57 defines the meaning of “detained person” as a child or young person who is subject to a detention order and detained in relevant youth accommodation. This relates to definitions of the terms “detention order” and “relevant youth accommodation” in section 562(1A) of the 1996 Act:
- a “detention order” is an order made by a court, or an order of recall made by the Secretary of State;
  - “relevant youth accommodation” is youth detention accommodation (within the meaning given by section 107(1) of the Powers of Criminal Courts (Sentencing) Act 2000), and is not in a young offender institution, or part of such an institution, that is used wholly or mainly for the detention of persons aged 18 and over.
109. This section also defines other related keys terms used in this Part of the draft Bill, including “beginning of the detention” and “home authority”. In addition, it allows for regulations to be made which apply with modifications, the definition of “home authority”.

### **Section 58 - Preparing individual development plans for detained persons**

110. The purpose of section 58 is to ensure that when a detained child or young person is identified as having, or possibly having, ALN and an IDP is not being kept for them under section 60 their home local authority must decide whether the child or young person has ALN. If the home local authority decides that a child or young person does have ALN, it must decide whether it is necessary to maintain an IDP for that child or young person once they have been released from detention.
111. In order to make this decision, there is a duty placed on the home authority to invite the person in charge of the relevant youth accommodation to participate in the decision-making process, and if necessary in the preparation of an IDP. A copy of the IDP must be given to the detained child and their parent, or the detained young person, and the person in charge of the relevant youth accommodation.
112. The home authority must notify the detained child and their parent, or the detained young person, and the person in charge of the relevant youth accommodation, if it decides that the detained child or young person does not have ALN or that maintaining an IDP would not be necessary when he/ she is

released. The home authority must provide an explanation of the reasons for their decision.

### **Section 59 - Circumstances in which the duty in section 58 does not apply**

113. Section 59 sets out the exceptions to the duties on local authorities in section 58 in relation to preparing IDPs for detained persons. It states that these duties do not apply if a detained young person does not consent to the decision being made. Nor do they apply if the local authority has previously decided that the child or young person does not have ALN and is satisfied that the child or young person's needs have not changed materially since that decision was made, and there is no new information which would materially affect that decision.

### **Section 60 - Duty to keep individual development plans for detained persons**

114. If a child or young person has an IDP immediately before becoming detained, or one is prepared during their detention by the home local authority in preparation for their release (under section 58), section 60 places a duty on the home local authority to keep the IDP while the person is detained in relevant youth accommodation, and arrange for appropriate ALP to be provided to them whilst they are detained. Appropriate ALP is the ALP set out in the IDP, or if that is not practicable, ALP which corresponds to it, or ALP which the home authority considers appropriate.
115. The duty of a governing body of a maintained school FEI or a local authority to maintain an IDP under section 9, 10, 12 or 19 will cease from the beginning of the person's detention.
116. A home authority will only be responsible for keeping an IDP under section 60 once the fact that an IDP was being maintained by the governing body of a maintained school or FEI is brought to their attention.
117. The detained child and their parent, or the detained young person, and the person in charge of the relevant youth accommodation, must be informed in writing by the local authority if such an IDP is being kept.

### **Section 61 - Release of a detained person**

118. Section 61 ensures that when a child or young person is released from detention and on the date of release a local authority in Wales is responsible for the person (in accordance with section 55) the local authority will maintain the plan

### **Section 62 - Appeals**

119. Section 62 lists the matters against which a detained child and their parent, or a detained young person, may appeal to the Education Tribunal. It also lists the powers of the Education Tribunal in relation to such an appeal.



120. The Welsh Ministers are able to make regulations about appeals, particularly in relation to making and determining appeals, further powers of the Tribunal on determining an appeal; and unopposed appeals.
121. Section 62 provides that those who fail to comply with any requirements in relation to documents or evidence for the Tribunal are guilty of an offence punishable by fine.

## **Part 4 – Education Tribunal for Wales**

### **Section 63 - Constitution of the Education Tribunal for Wales**

122. Section 63 provides for the Special Education Needs Tribunal for Wales to be renamed as the Education Tribunal for Wales (“the Tribunal”). This section sets out how it must be constituted, including that it must have a President a ‘legal chair panel’ and a ‘lay panel’, and provides for their respective appointments. This section also enables the Welsh Ministers, with the agreement of the Secretary of State, to make regulations relating to the Tribunal.

### **Section 64 - The President and members of the panels**

123. Section 64 sets out the conditions and requirements under which a person may be appointed, re-appointed or may resign as a President, a member of the legal chair panel or a lay panel member of the Tribunal. It provides for the circumstances in which the Lord Chancellor (with the agreement of the Lord Chief Justice) may revoke the President’s appointment. This section also allows for regulations to be made by the Welsh Ministers with the agreement of the Secretary of State in relation to requirements for the appointment of members of the lay panel.

### **Section 65 - Remuneration and expenses**

124. Section 65 enables the Welsh Ministers to pay for the services of the President, members of the legal chair panel and lay panel members, and the expenses of the Tribunal.

## **Part 5 – General**

### **Section 66 - Power to make consequential and transitional provision etc.**

125. Section 66 provides the Welsh Ministers with powers to make regulations to make supplementary, incidental, consequential, transitory, transitional or saving provisions in order to give effect to any provisions in this draft Bill. In doing so, Welsh Ministers are enabled to make regulations which amend, repeal or revoke any provisions in other legislation.

### **Section 67 - Regulations**

126. Section 67 sets out that powers to make regulations under this draft Bill are to be exercised by statutory instrument. It allows for such regulations to make different provision for different purposes or cases; and to make incidental, supplementary, consequential, transitory, transitional or saving provisions. This section lists the regulations in the draft Bill which must be laid before, and approved by resolution of, the National Assembly for Wales in order to be made.

### **Section 68 - General interpretation**

127. Section 68 provides interpretations and definitions of terms and references used throughout the draft Bill.

### **Section 69 - Coming into force**

128. Section 69 enables a number of sections to come into force on Royal Assent; these sections are listed in this section. It provides for the remaining provisions within the draft Bill to come into force in an Order by Welsh Ministers, exercisable by statutory instrument, which may appoint different days for different purposes; and to make transitory, transitional or saving provisions about the days in which the provisions come into force.

### **Section 70 - Short title and inclusion as one of the Education Acts**

129. The short title of the draft Bill on becoming an Act will be 'the Additional Learning Needs and Education Tribunal (Wales) Act 2016'. It will be included in the list of Education Acts set out in section 578 of the 1996 Act.