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Consultation Document

Options for implementing the Additional Learning Needs and Education Tribunal (Wales) Bill

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Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Options for implementing the Additional Learning Needs and Education Tribunal (Wales) Bill

Overview

This consultation seeks the views about how the Additional Learning Needs and Education Tribunal (Wales) Bill should be implemented if it receives Royal Assent. It focuses on the broad principles associated with implementation. The Bill creates a new legislative system to support children and young people, aged 0 to 25, who have additional learning needs. The new system will replace the existing legislation surrounding special educational needs and the assessment of children and young people with learning difficulties and/or disabilities in post-16 education and training.

How to respond

Responses to this consultation should be e-mailed/posted to the address below to arrive by **9 June 2017** at the latest.

Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

The consultation documents can be accessed from the Welsh Government's website at www.gov.wales/consultations

Contact details

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Data protection

How the views and information you give us will be used

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

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

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

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Introduction

1. The Additional Learning Needs and Education Tribunal (Wales) Bill (the Bill) was introduced to the National Assembly for Wales in December 2016. Assembly Members are currently considering the Bill and will decide whether to make any amendments and whether to pass or reject the Bill. This consultation will help Members in this process by engaging as wide a range of views as possible in thinking through the implications for implementation of the Bill if it receives Royal Assent.
2. The purpose of this consultation document is to seek the views of a wide range of stakeholders – including early years settings, maintained schools, further education institutions, health and social services and third sector partners as well as parents, carers and children and young people themselves – about the approach to implementing the proposed new legislative framework, which is currently being considered by the National Assembly.
3. We want to get a broad view from stakeholders and delivery partners about the implementation of the proposed new additional learning needs system. This includes the introduction of individual development plans – the proposed new statutory plans for all learners with additional learning needs. This is potentially the most significant element of the new system in terms of planning the approach to implementation and the associated package of support the Welsh Government is committed to providing to delivery partners during the transition phase.
4. We are interested to hear your views about whether we employ a big bang or phased approach to converting existing plans into individual development plans and what support delivery partners will need during the implementation period. Various issues are described in the following pages, along with implications that should be considered when weighing up the options.
5. Feedback in response to this consultation will enable the Welsh Government to gauge views about the broad themes and principles of how the proposed new legislative framework should be implemented, allowing us to develop detailed plans and arrangements to support delivery partners to prepare for the transition to the new system, if the Bill is passed by the National Assembly and receives Royal Assent.
6. Other aspects of implementing the new system will be subject to more detailed engagement in due course. For example, the proposed transfer of responsibility from Welsh Ministers to local authorities for securing specialist post-16 placements will be the subject of detailed engagement with the Local Government Revenue Support Grant Distribution Sub-Group.
7. We have worked with a representative group of stakeholders through the ALN Strategic Implementation Group in developing these options. We will also be holding a series of regional events in February and March with practitioners, stakeholders and members of the public to discuss these options. We will continue to engage with stakeholders through a number of technical and expert groups to develop more detailed implementation plans.

8. This consultation will close on 9 June 2017 after which we will reflect on the feedback before determining a preferred approach. We will publish a summary of the consultation responses later in 2017.

Background

Principles underpinning our approach to implementation

9. In 2015, the Welsh Government consulted on a draft Bill and published an outline of the plans for legislative changes to be implemented across Wales¹. This established a number of core principles underpinning our approach to implementation, including ensuring there is sufficient time for learners, families and relevant professionals to become aware of the proposed changes and prepare for the impact these changes will have.
10. At the heart of this is the principle that there must be adequate time, resources and support to manage the transition from the existing system to the new system in a coherent way, which ensures services are prepared to deliver the new system effectively. We must balance the need to introduce a new system – which will have significant benefits for learners – as soon as possible to ensure maximum opportunity for children and young people to access those benefits against the need to ensure children, young people and families are not adversely affected by a rush to implement a new system in an unrealistic timeframe.
11. At the same time, we want to minimise the potential complexities and confusion that could arise from running two systems in parallel by moving to the new system in full as soon as is practical.
12. The timeframe for implementation therefore needs to be reasonable, from the point of view of those charged with delivery as well as for children, young people and families who are set to benefit from the reformed system.

The proposed additional learning needs system

13. The proposed new additional learning needs system includes primary legislation (the Bill), underpinned by regulations and a new additional learning needs code, which will replace the current special educational needs code of practice. The code will set out how the new statutory framework should operate in practice and will include mandatory requirements in relation to a number of aspects of the new system which will have the same statutory effect as regulations. A draft of the Code will be subject to a full public consultation in due course.
14. The key components of the proposed new statutory framework are set out on the face of the Bill. A detailed explanation of the legislative provisions is available in the explanatory notes and explanatory memorandum published alongside the Bill².
15. The Bill proposes to create a unified system for supporting learners with additional learning needs from birth to the age of 25, replacing the separate systems which currently exist for learners with special educational needs (SEN) in schools and learning difficulties and/or disabilities (LDD) in further education (FE).

¹ gov.wales/consultations/education/draft-aln-and-education-tribunal-wales-bill/?lang=en

² www.senedd.assembly.wales/mgIssueHistoryHome.aspx?lId=16496

16. The Bill proposes to create a single statutory plan – the individual development plan – to replace the existing variety of statutory and non-statutory SEN and LDD plans for learners in early years, schools and FE. These currently include statements of SEN, individual education plans for learners supported through school/early years action or school/early years action plus, and learning and skills plans carried out via assessments under section 140 of the Learning and Skills Act 2000.
17. The single individual development plan framework will ensure greater consistency and continuity and, unlike the current system, ensure provision and rights are protected regardless of the severity or complexity of needs. Currently approximately 2% of school-aged learners have statutory statements of SEN and 20% are identified as having SEN but do not have a statutory plan.
18. Under the proposed new system, all those learners with additional learning needs (a broadly similar definition to those currently defined as having SEN) would be entitled to an individual development plan, with statutory rights to receive the provision set out in the individual development plan and associated rights of appeal to the new education tribunal, which will replace the current Special Educational Needs Tribunal for Wales.
19. The process of producing and revising an individual development plan will be much simpler than is currently the case with statements of SEN and should avoid the adversarial nature of the existing, overly-bureaucratic approach.
20. For most children with additional learning needs who are looked after by a local authority, the Bill proposes to require their individual development plan to be incorporated into their personal education plans as part of their care and support plans. This will eliminate duplication of effort and ensure the educational needs of a looked-after child are considered in a holistic way.
21. A number of steps will be required if and when the Bill receives Royal Assent and becomes an Act before the new additional learning needs system could start.
22. Most of the provisions will be commenced by way of an order made by the Welsh Ministers (see section 87 of the Bill as introduced). This will give the Welsh Ministers the discretion to decide when the law will change in practice and whether, for example, that change should occur sooner for some cohorts than for others.
23. The earliest the Bill could receive Royal Assent is around Christmas 2017.
24. The Bill requires the Welsh Ministers to prepare, consult and publish a code on additional learning needs (see section 4 of the Bill as introduced). It also provides for a number of pieces of subordinate legislation. We have published a Statement of Policy Intent setting out our intentions in relation to those subordinate legislation functions. These include, for example, regulations relating to the way the education tribunal is constituted or the level of information to be recorded on the list of independent specialist post-16 institutions from which local authorities will be permitted to secure provision for learners with additional learning needs.

25. An early working draft of the code and a statement of policy intent for the regulations have been made available during the Bill scrutiny process to aid Assembly Members' understanding of the proposed operation of the new legislative framework in practice and support scrutiny of the Bill.
26. Subject to the Bill receiving Royal Assent, the draft code will be revised to take account of any amendments made to the Bill by the Assembly and any feedback and further work undertaken to refine the draft.
27. The Welsh Government will formally consult on the revised draft code and draft regulations following Royal Assent.

Context

28. A number of factors need to be considered in relation to implementing the new additional learning needs system. These relate to other significant reforms affecting public sector bodies with duties under the additional learning needs legislative framework.
29. In response to the *Successful Futures* report, the Welsh Government is committed to creating a new curriculum and assessment framework for Wales which is genuinely and fully inclusive, recognising the importance of learner-centred approaches and assessment policies that support the learning needs of all learners³. It is proposed this will see the design, development and realisation of a new curriculum, underpinned by new legislation, which will be used to support teaching and learning in settings and schools by September 2021. It is also proposed this will involve changes to initial teacher education and training, professional development of existing teachers, changes to Estyn's inspection framework, and changes to data collection and accountability policies.
30. The Welsh Government has recently set out proposals for reform of local government. The White Paper *Reforming Local Government: Resilient and Renewed*, published for consultation in January 2017, invites views on whether elements of local authority additional learning needs functions could be effectively delivered at a regional level. The proposals for local government reform and the development of robust, accountable regional arrangements on a statutory basis, present significant opportunities to support more effective implementation of the Bill and the wider additional learning needs transformation programme. The outcome of this consultation may, therefore, have potentially significant implications for the way that additional learning needs services are managed and organised in future. We are committed to ensuring that the timing of implementation of local government reforms and the new legislative duties outlined in the Additional Learning Needs and Education Tribunal (Wales) Bill are carefully managed in a coherent and complementary way.

Question 1: How should the implementation of individual development plans be done?

³ Welsh Government (2015), *A curriculum for Wales – a curriculum for life*
gov.wales/topics/educationandskills/schoolshome/curriculum-for-wales-curriculum-for-life/?lang=en

31. We would like your views on whether the approach to implementing individual development plans for learners with additional learning needs should be phased in for different groups of learners, or available to all eligible learners at the same time if the Additional Learning Needs and Education Tribunal (Wales) Bill receives Royal Assent.
32. The Welsh Government is committed to the principle that no child or young person should lose current statutory protection or provision required to meet their needs during or as a result of transition to the new system. In effect this means that to some degree, the current SEN/LDD systems would continue to operate in parallel alongside the new additional learning needs system, until a defined cut off point at which the relevant statutory provisions of the Education Act 1996 and the Learning and Skills Act 2000 cease to apply. For example, those learners who currently have statements of SEN will continue to have the same legal rights and protections until an individual development plan is put in place for them.
33. One of the principles underpinning our approach to implementation set out at the time of the consultation on the draft Bill was that *“individual development plans should be phased in over a set period of time to allow local authorities and education settings to review plans and policies currently in place to support learners with SEN or LDD.”*
34. There would however be different ways in which individual development plans could be phased in during an implementation period. We could set a go live date and allow local authorities to determine their own approach to rolling out the new system within their areas or prescribe a phased approach across Wales at a national level.
35. Our assumption is that all new entrants to the system – in other words any learners requiring a plan for the first time – would automatically be provided with an individual development plan from the time that the new system comes into force. The options below therefore relate to the process of converting existing plans – statements, IEPs, learning and skills plans, post-16-based plans and personal education plans – into individual development plans. However, we would welcome your views on how reasonable an assumption this is.
36. We welcome your views on the following options.

Option 1a. Introduce individual development plans with a single date to go live

37. A big bang approach would, in theory, mean the new system applying to all learners with additional learning needs from the same point in time. This could be argued to be a more equitable approach as it would avoid prioritising some learners over others. However, the significant workload implications of creating individual development plans for nearly a quarter of all learners to the same timetable (and subsequent revising dates all falling at the same time) may make it unrealistic. In practice it might be more realistic to set a period between which individual development plans could begin being issued and a final date by which all eligible learners had an individual development plan in place.

38. This would inevitably mean each setting or area determining their own rationale for how to manage and prioritise the transfer and creation of new plans. This would allow each local area to determine the best approach for its context – for instance, local authorities which had been involved in earlier Welsh Government-funded additional learning needs pilots might be in a position to implement individual development plans for a greater cohort of learners having been operating aspects of the new system for some time. However, it would create inconsistency across Wales in terms of the rationale and speed of take-up for individual development plans, inequity of rights and entitlements for learners depending on their location, and complexities in terms of transition between areas and tribunal appeals.

Option 1b. Introduce individual development plans in mandatory phases

39. A phased approach to implementation of individual development plans would allow schools, early years settings, local authorities and further education institutions greater time to develop statutory individual development plans using person-centred practice for the first time. This would reflect the scale of the changes, the number of learners affected and the practicalities of engaging a number of agencies in the person-centred approach.
40. This approach has the potential to create complexities during the implementation period if there were different rights, duties and powers in respect of learners in different settings, areas or with different levels of need, although this is already the case under the current statutory system. However, by mandating the phases at a national level, there would be a consistent approach across Wales to the switching on of rights.

Question 2: If individual development plans should be introduced in phases, how should these be grouped into tranches?

41. If we adopt a phased approach to implementing individual development plans, there are a number of possible options for grouping into tranches. These are set out below.
42. Given that plans for learners are currently reviewed on an annual basis, it is our expectation that during the transition period these annual reviews were used as the opportunity to convert existing plans into individual development plans, using the principles of person-centred practice and in accordance with the guidance and requirements set out in the new additional learning needs code.
43. We recognise that using person-centred practice to create individual development plans for the first time may be more time consuming than the current annual review process, but the evidence from those who have already adopted this approach is that it leads to significant improvements in quality of plans, learner participation in the decisions that affect them, parental engagement, and that once the initial plan has been developed it is quicker and more flexible to review and update on an ongoing basis. Nevertheless, we recognise there is a need to ensure that there is adequate time for the conversion of plans during the transition period.
44. In responding to this question, we would also welcome your views on how much time should be allowed for converting learners in each tranche onto individual development plans.
45. Having the system up and running at pace would mean learners with additional learning needs who are currently without statutory entitlements would be able to access new rights quickly. It would also minimise the amount of time that services will be required to operate both the current and new systems, which we appreciate will be challenging.
46. However, we understand that changing to the new system will require extensive planning and preparation, and the timescales need to allow all partners to engage in person-centred practice to develop individual development plans. There is a risk that requiring statutory plans to be put in place for all eligible learners too quickly would place too great a pressure on the workforce and the new system would not be introduced effectively.
47. It is important we do not lose momentum at implementation stage, and must ensure delivery is smooth. Finding the right balance between having the time and resources to implement the new system, without expecting learners and services to cope with two systems running in parallel for too long, will be essential.

Option 2a. Existing statutory plans

- Tranche one: Learners with current Statements of SEN and/or Personal Education Plans for looked-after children who have ALN
- Tranche two: Learners with current non-statutory plans (School Action/ School Action Plus/ Early Years Action/ Early Years Action Plus/ Learning and Skills Plans)

48. This option would be based on converting existing statutory plans to the new system before extending such rights to a new cohort, and would arguably prioritise those with the highest level of need first. There are a much smaller number of learners with a statement than the number of learners with other non-statutory plans, but a greater level of complexity and the involvement of more agencies.
49. Including looked after children with personal education plans in the first tranche alongside those learners with existing statements of SEN recognises the importance of improving the coordination of planning for the educational needs of this vulnerable group of learners.
50. This option could create a significant overlap in terms of the appeals that could be heard by the tribunal (as for a period of time it would have to deal with appeals under both the current and the new law), but should be a relatively clean transition. The downside is that current differences in practice under the existing SEN code of practice for Wales mean that learners with relatively high levels of need may have a statement or not according to variations in local practice.

Option 2b. Education setting

- Tranche one: Learners in schools and early years settings
 - Tranche two: Learners in post-16 settings
51. This option would involve schools and early years settings putting in place the new statutory planning process of individual development plans first, and give post-16 settings additional time to prepare for implementation. It would give local authorities greater time to prepare for their new duties in relation to post-16 learners, including responsibilities for securing specialist post-16 placements where appropriate. This option would also provide the simplest transition for the tribunal, minimising the need to run two appeals systems simultaneously. However, this would mean that all learners with additional learning needs in schools and early years settings would be eligible for an individual development plan in the first tranche, which could put a significant burden on the workforce.

Option 2c. Key stages

- Tranche one: Foundation Phase and key stage 2
 - Tranche two: Key stage 3, 4 and post-16
52. This option would prioritise those learners at the early stages of their education first, in recognition of the importance of early identification and intervention which is a cornerstone of the additional learning needs transformation programme. However, it would mean the tribunal would need to run two appeals systems simultaneously for a longer period of time, potentially causing a lack of clarity for those wishing to bring an appeal, as well as additional administrative burdens.

Option 2d. Significant points of transition

- Tranche one: Those moving between school setting, local authority or key stage

- Tranche two: All others
53. This option would prioritise those learners at key points of transition in recognition of the importance of effective transition planning and taking advantage of the opportunity to review existing plans and provision for a new setting or key stage. It would also mean the tribunal would need to run two appeals systems simultaneously for a longer period of time, potentially causing a lack of clarity for those wishing to bring an appeal, and administrative burdens.

Option 2e. Early adopter local authorities

- Tranche one: Those local authorities who are most ready (those who were pilot authorities)
 - Tranche two: All others
54. Some local authorities, particularly those who participated in the additional learning needs pilots between 2008 and 2012, will have been operating ways of working which are consistent with the proposed new system for some time and may be keen to move to the proposed new statutory system; many having been instrumental in the development of the early thinking around the reforms. An early-adopter model would allow these local authorities to begin using the proposed new system in the first tranche, allowing other local authorities greater time to prepare for implementation and to learn from the experience of others. However, it would create mixed provision across Wales and could lead to increased demand in particular local authorities providing the proposed new system. Again, it may also mean running the existing and new appeals and tribunal systems simultaneously for a prolonged period.

Question 3: What are your views on the priorities for Welsh Government support for delivery partners as they prepare for transition to the new system?

55. The Bill is a key part of our additional learning needs transformation programme, which aims to deliver complete system change. Its impact is not confined to children and young people with additional learning needs; it is fundamental to our broader vision for education in Wales – one of inclusion, ambition and high-standards.
56. As part of the additional learning needs transformation programme, the Welsh Government will be supporting delivery partners to prepare for and successfully manage the transition to the proposed new system. In February, the Minister for Lifelong Learning and Welsh Language announced⁴ a £20m package of investment for the period 2017-18 to 2020-21 to support the transformation programme.
57. The aim of the investment is to ensure that delivery partners are as well prepared as possible to implement the proposed new legislative framework and that it will have a positive impact on outcomes for learners.
58. It is our intention that we use a substantial amount of this investment to deliver workforce development activities to up-skill all those involved in supporting learners with additional learning needs. Ensuring professionals have the knowledge, expertise and confidence is critical, both in terms of the new additional learning needs co-ordinator workforce, to core skills for staff in schools, early years settings, further education institutions, health and social services.
59. We plan to provide grant funding to partners to facilitate the implementation of the provisions set out in the Bill, to support local authorities, further education institutions, the tribunal, health boards and Estyn. This will build on the grant funding already established to roll-out person-centred practice and through the additional learning need innovation fund to support local authorities and their partners to develop and improve multi-agency working arrangements to support the delivery of services for learners with additional learning needs.
60. In addition, we propose to appoint a team of additional learning needs strategic supporters to provide advice, support and challenge to our delivery partners during the transition phase. These supporters will play a key role in our ongoing work with delivery partners to assess their readiness, monitor compliance once the new legal duties are in place, and evaluate the impact of the changes. This will be further supported through ongoing inspection and review arrangements led by Estyn.
61. We would welcome your views about what the priorities should be for Welsh Government in supporting transition and implementation.

⁴ <http://gov.wales/about/cabinet/cabinetstatements/2017/ALN/?lang=en>