

Evidence paper for the Children, Young People & Education Committee inquiry into childcare and education access for disabled children and young people and the extent to which childcare providers, schools and local authorities meet their duties under the Equality Act 2010.

EDUCATION PROVISION

1. Background

- 1.1. We are undertaking systemic reform of education in Wales which includes introducing a new curriculum and a new system to ensure those learners with additional learning needs (ALN) have their needs properly planned for and protected. Together, the Curriculum for Wales (CfW) and the ALN system seek to transform the expectations, learning experiences and outcomes for children and young people. Both emphasise an inclusive education system which balances equity of access to the curriculum for all learners with addressing the needs of individual learners.
- 1.2. The CfW is designed to raise aspirations for all learners, including those with ALN; seeing every learner as an individual with different strengths and areas for development, who may progress in different ways and at different paces. The ALN system is being implemented over the four-year period from 1 September 2021 until August 2025. It is gradually replacing the special educational needs (SEN) system. Early identification, intervention and prevention is a key aim of the ALN system which changes the legal framework and practices to support children and young people, so their needs are met in a more timely way.
- 1.3. Under the ALN system learners aged 0-25 who require additional learning provision to meet their ALN are entitled to a statutory plan called an Individual Development Plan (IDP) which sets out their needs and the provision required to meet those needs.
- 1.4 It is worth noting that not all disabled children and young people will necessarily have ALN. A learner will have ALN if it is decided that their 'learning difficulty or disability' calls for additional learning provision (ALP).
- 1.4. Maintained schools and further education colleges have duties under both the ALN and Education Tribunal Act 2018 and the Equality Act 2010. These duties are separate, and a learner may require reasonable adjustments, provision under an IDP, or in some cases, both. Meeting the duties under one Act does not negate the need to discharge the duties under the other.
- 1.5. The CfW guidance notes that a school's curriculum is everything a learner experiences in pursuit of the curriculum's mandatory four purposes. It is not simply what we teach, but how we teach and crucially, why we teach it. The guidance has been developed in Wales, by practitioners for practitioners, bringing together educational expertise and wider research and evidence. The guidance helps schools design their own curriculum. It contains

information on legal requirements, guidance on how to develop a school curriculum, and an explanation of the purposes and principles of assessment.

- 1.6. The [Progression Code](#) sets out the ways in which a curriculum must make provision for all learners. Progression in learning requires partnerships among all those involved, including the learner. It should recognise the individual learning needs and backgrounds of each learner and encourage a holistic view of each learner's development. Accordingly, both practitioner and learner should develop an understanding of how the learner learns and their attitude and approach to learning, in order to support them to continue to progress and to foster commitment to their learning.
- 1.7. The duties and responsibilities the ALN Act and ALN Code place on schools, local authorities, FE institutions (FEIs) and other agencies are intended to break down barriers so that learners with ALN receive the right additional learning provision at the right time and have their views, wishes and feelings taken into consideration as part of the process.
- 1.8. We have invested significantly in helping schools, local authorities, and others prepare to meet their responsibilities under the ALN system and we are continuing to work closely with providers, local authorities, Estyn, and other stakeholders to ensure the system is implemented effectively.
- 1.9. We have invested over £62 million of revenue grant funding in ALN between 2020 and 2023 and we increased the ALN implementation grant by £5.4m, to £12m, across Wales for 2023-24. This additional grant is intended to increase the resources for schools to implement the ALN system and lead whole-school strategies to embed inclusive education.
- 1.10. The Welsh Government's Sustainable Communities for Learning Programme is in its second phase and has played a major role in improving education infrastructure across Wales, including new special schools and specialist resource base provision in some areas. To support local authorities to deliver facilities for learners with additional learning needs, the Welsh Government funding rate increases from 65 percent to 75 percent of the total project costs.
- 1.11. In addition to the significant investment we are making in the education infrastructure through our Sustainable Communities for Learning programme, we have also made an additional £20 million of capital funding available to local authorities in 2022 and 2023. This funding is to support the improvement or creation of inclusive spaces and facilities to help ensure all learners are taught in classrooms and spaces with the technologies and facilities they need.
- 1.12. The CYPE Committee is currently scrutinising implementation of both the curriculum and ALN reforms. [Evidence provided](#) to the Committee as part of that scrutiny sets out what we are doing to support schools and local authorities with implementation of these reforms. This includes consideration

of ALNCo workloads and work to address issues related to teaching assistants.

2. Local Authority responsibilities

- 2.1. Local authorities are responsible for ensuring suitable education provision for children and young people in their area, including those with ALN, and this includes responsibility for the planning of school places. Local authorities have to keep under review the extent to which their existing pattern of school provision meets current and forecast demand for school places and the requirements of delivering the modern curriculum.
- 2.2. Under the ALN Act, local authorities also have a duty to keep their arrangements for ALN, and those of their schools, under review. This duty involves the local authority considering, at a strategic level, the overall additional learning provision in their area, as well as arrangements to support the identification of needs and provision to meet them. This review is a key part of local strategic planning and decision making and enables local authorities to assess current and likely future needs and secure sufficient provision and services to meet those needs.
- 2.3. We recognise that more needs to be done to establish a consistent approach to implementation of the ALN Code and Act across local authorities in Wales. We asked Estyn to review schools and local authorities' progress on implementing the Additional Learning Needs system and supporting pupils with ALN. This review is crucial in helping us understand both the progress achieved, and areas of improvement required across the system as implementation of the ALN reforms continue.
- 2.4. They found that overall, pupils in the schools they reviewed are receiving the support they need, although they found that individual settings are interpreting and applying the legislation in different ways. We are working closely with education stakeholders to surface challenges and variations in implementation, highlight effective practice and co-create further action.

3. Welsh language provision

- 3.1. One of the core aims of the ALN Act is to create a bilingual system of support for learners with ALN. Under the new ALN system, local authorities and education settings are required to consider whether additional learning provision (ALP) should be provided to children or young people in Welsh. Where a learner has a need for ALP in Welsh, this must be specified in the Individual Development Plan, and the body must take all reasonable steps to ensure that it is provided.
- 3.2. The ALN Act also includes a series of strategic duties which are aimed at driving progress towards a bilingual ALN system. In particular, local authorities are required to consider the sufficiency of additional learning provision made in Welsh. If it is not sufficient they must take steps to remedy that.

- 3.3. Local authorities must set out in their Welsh in Education Strategic Plans how they will use the findings of their reviews under the ALN Act to improve Welsh language provision for learners with additional learning needs and for workforce planning within the ALN sector.
- 3.4. The challenges highlighted by the Welsh Language Commissioner and Children's Commissioner for Wales' joint policy paper [The Welsh Language in the Additional Learning Needs System](#) echo many of the points raised with us by the sector and by learners and their families. Addressing these challenges is a priority.
- 3.5. A national stakeholders group has been established to help co-ordinate and prioritise the development of Welsh-medium additional learning provision, resources and professional learning at a national level. The group will be supported by a National Welsh Language Lead who will work with local authorities and other partners to develop a consistent offer across Wales.
- 3.6. Through the newly established bilingual educational resources company 'Adnodd', we aim to continue creating new Welsh-medium resources to support the teaching and learning of the Curriculum for Wales and identify and commission resources to better support learners with ALN.

4. Person-Centred Practice and keeping people informed

- 4.1. Under the ALNET Act there is a duty on those exercising functions under the Act to involve and support children, their parents and young people. This duty gives effect to rights in the United Nations Convention on the Rights of the Child (UNCRC) and United Nations Convention on the Rights of Disabled People (UNCRPD).
- 4.2. The ALN system places a duty on all local authorities and schools to ensure the views, wishes and feelings of the child and the child's parent, or the young person, are at the heart of the decision-making process. This duty reflects the ethos of Person-Centred Practice (PCP). The Welsh Government has published guidance to support the use of PCP approaches. Chapter 4 of the ALN Code for Wales explains this duty and what is expected. A range of resources to support practitioners in using person-centred practice approaches is available on Hwb.
- 4.3. Estyn's recent thematic review of the implementation of ALN reforms found local authorities and schools united in their enthusiasm for PCP and planning. As a result, relationships between schools and families have been enhanced. Person-centred practices align well with the overall direction for the CfW, which has been designed to be inclusive.
- 4.4. In 2022 the Welsh Government published guidance to support local authorities in their duties as set out in the Equality Act 2010 (Disabled School Pupils) (Wales) Regulations 2021. This provides guidance on providing

advice and information; resolving disagreements; case friends; and independent advocacy services.

- 4.5. Under the ALNET Act, local authorities are required to make arrangements to provide people with impartial advice and guidance on ALN and the ALN system and take reasonable steps to make these arrangements known to providers, children, young people and parents.
- 4.6. Estyn's thematic review of the implementation of the ALN reforms found nearly all local authorities who participated in the review have uploaded relevant information on ALN reform to their websites. In addition, a range of information leaflets aimed at parents and carers, and children and young people have also been produced. Those that have been produced by clusters of schools, or regionally, help to ensure a consistent message across a region.
- 4.7. However, Estyn noted the quality and accessibility of information for parents on both council and school websites are too variable and that some families are being incorrectly advised that the ALN system does not apply to their child. In addition, insights from Education Tribunal Wales and parents suggest greater transparency in decision making and accountability is required.
- 4.8. Recommendations in Estyn's review include for local authorities to provide clear, accurate and up-to-date information to stakeholders in relation to what constitutes additional learning provision in its schools; and for schools to improve the quality of information they provide for parents and to clearly state what the school regards as additional learning provision.

5. Disability Rights Taskforce

- 5.1. The Disability Rights Taskforce brings together people with lived experience, representative organisations, and Welsh Government policy leads, with the aim of removing the inequalities and discrimination disabled people face every day, in every aspect of their lives. The Taskforce works to the Social Model of Disability, and within the scope of the Welsh Government's legal remit and not in areas that solely fall under the UK Government's responsibilities.
- 5.2. The Taskforce has established a number of thematic working groups to take forward key priorities for disabled children and adults. The working groups have a range of stakeholders, including organisations that support disabled people, people with lived experience and Welsh Government policy leads.
- 5.3. The Children and Young People Working Group has held two meetings to-date and has heard presentations from CAMHS colleagues and Learning Disability Wales. We are making plans for children, parents and carers' participation to inform our work. The group will present co-produced recommendations and actions, to the Disability Rights Taskforce on 14

December 2023. The recommendations from the working groups will form a Disability Rights Action Plan, which we will commence drafting in 2024.

6. ALN Workforce

- 6.1. A key part of our work on implementing the new ALN system is to help ensure teachers can develop the skills they need to meet the needs of learners with ALN so they can put in place differentiated teaching or other targeted interventions so children can learn more effectively and make best use of expert advice and support provided by specialists.
- 6.2. As part of the professional learning available to all teachers we have developed an online national ALN professional learning pathway. This pathway, which is available on Hwb, is intended to help all teachers support learners with ALN, and especially ALN Co-ordinators (ALNCos) who have a strategic role in schools and are the first point of call for teachers seeking advice and guidance on ALN. We will continue to review professional learning on ALN as the ALN reforms progress.
- 6.3. To assist with the supply of specialists the Welsh Government funded training for local authority-based teachers of learners with sensory impairment and we are channelling over £2.6 million between 2022-23 and 2024-25 to train new educational psychologists, through a contract with Cardiff University, who must spend the first two years of their career working for local authorities in Wales.
- 6.4. Local authorities are responsible for planning their workforce and under the ALNET Act they are required to keep under review their arrangements for children and young people with ALN and those of their maintained schools. This review must include consideration of the size and capability of the workforce available.
- 6.5. We are alert to concerns about the increased workload placed upon ALNCos and the need for schools to ensure there is sufficient support around the ALNCo to prevent them becoming isolated and overwhelmed with caseloads. The ALN Code makes clear that the designation of an ALNCo does not remove the responsibilities of the wider workforce.
- 6.6. An ALNCo Task and Finish Group has been looking at the pay and non-contact time of ALNCos in response to a recommendation from the Independent Wales Pay Review Body (IWPRB) and is expected to report back to the Minister for Education and Welsh Language by December with recommendations for the Independent Welsh Pay Review Body (IWPRB) on this matter.

7. CHILDCARE PROVISION

Overview

- 7.1. The Childcare and Play sector in Wales encompasses a wide range of different types of provision, which are subject to a set of [National Minimum Standards](#).
- 7.2. The key distinction is between child minding and day care. Child minding is childcare provided by one or more people for children from birth up to the age of 12 years within domestic premises that are not the child's own home, for more than 2 hours per day for reward. Day care is provided on non-domestic premises and includes day nurseries, out of school childcare, play groups, crèches and open access play.
- 7.3. The Welsh Government launched its vision of an integrated Early Childhood Play Learning and Care (ECPLC) system in 2019, centring on the principle that all children should have a high quality stimulating learning and care experience in any education and care setting they attend. Sitting within a wider landscape of early years support, ECPLC focuses on pre-school provision (0-5), building on the programmes already operating in this space:
- Flying Start;
 - The Childcare Offer;
 - Universal provision of early education.
- 7.4. Flying Start, launched in 2006, is the Welsh Government's flagship early years programme. It continues to make a real difference to the lives of children in some of our most disadvantaged communities and the Welsh Government has reaffirmed its commitment to continue to support the programme throughout this term of government.
- 7.5. This targeted early years programme aims to make a decisive difference to the life chances of children under four years with four core elements; fully funded quality childcare, parenting support, intensive health visitor support, and support for speech, language and communication. Flying Start is geographically targeted using income benefit data, a proxy indicator for poverty, to identify areas with the highest proportions of children under 4 living in income benefit households. Flying Start parenting guidance recognises that some parents may require special consideration and those providing parenting support may need to adapt services to accommodate their particular needs. This includes parents of disabled children and those with children who have additional learning needs.
- 7.6. In 2021-22, the last year of programme data currently available, 2% of children on Flying Start health visitor caseloads had a declared impairment. Flying Start guidance prescribes that local authorities must accommodate children with ALN and disabilities to enable them to engage with provision so far as this is practicable and in the best interest of the child. This commitment

may extend to training, purchasing equipment and supporting adaptations of the environment. Flying Start parenting guidance also recognises that some parents may require special consideration and those providing parenting support may need to adapt services to accommodate their particular needs. This includes parents of disabled children and those with children who have additional learning needs.

7.7. The Childcare Offer for Wales is the Welsh Government commitment to providing 30 hours of government funded early education and childcare for 3 and 4-year-old children of eligible parents for up to 48 weeks of the year.

7.8. The Offer has been designed to take account of barriers that eligible parents may face in accessing the childcare element, in particular, those who have children with additional support needs including learning disabilities, physical and sensory impairments. To ensure the childcare element of the Offer is inclusive to eligible children who need additional support, help has been made available by means of a separate funding stream called the Childcare Offer for Wales Additional Support Grant (ASG). Local authorities can draw on this funding to help ensure that eligible children with additional needs are able to access the childcare element of the Offer in the same way as other eligible children.

7.9. An independent review of the ASG is currently being undertaken and is expected to report its findings and recommendations by March 2024. The review team have issued a survey to all 2500+ childcare providers registered to deliver the Offer to develop a better understanding of providers' concerns in accessing support and funding for those children with additional support needs that use their services. We know that many providers do access the ASG for those eligible children that require it, but due to the current grant monitoring and reporting requirements, the Welsh Government is unable to fully assess the scope of demand. The research project is intended for us to better understand whether the current grant is sufficient and easily accessible, and make improvements where needed to ensure that all eligible children may benefit.

7.10. As part of this review, the research team will also be seeking the views of parents accessing the Offer, including those who have received support via the ASG, to better understand how this support may be promoted, accessed, and coordinated.

8. Local Authority responsibilities

8.1. Local authorities have a statutory duty to secure, as far as is reasonably practicable, provision of childcare that is sufficient to meet the requirements of parents in their area to enable them to work or undertake education or training. To help them meet this duty LAs undertake a childcare sufficiency assessment (CSA) which must be supported by an action plan, identifying the gaps in provision, and how they intend to bridge them and keep them under review. They must then report on progress in relation to these actions on an

annual basis. LAs provided their most recent progress reports to the Welsh Government at the end of June 2023.

- 8.2. The assessment requires LAs to consider the issues around access to childcare for various categories of parents and carers, including families with children who have additional learning needs or who are disabled. Some of the gaps identified by CSAs in 2022 showed a higher incidence of children with additional needs post pandemic, particularly focused on speech and language needs.
- 8.3. The approach LAs use to identify and action ALN referrals within their areas may differ from one LA to another however, the majority of LAs have their own dedicated teams/people to manage ALN provision to ensure inclusion and access.
- 8.4. Local authorities progress reporting for 2022-23 show that multi-agency teams target support to those children identified with ALN and this could include providing training to the sector, specialist resources, 1:1 support and/or other support.
- 8.5. The Childcare and Play element of the Children and Communities Grant provides funding to LAs to help them address gaps in their CSAs including improving access for those with ALN. LAs have used this funding to support Assisted Places, Extra Hands and 1:1 support to improve access for children with ALN.
- 8.6. For example, one local authority hold half termly multi agency 'Enhanced Provision Panels' to ensure identified children with developmental delay are supported appropriately with early intervention within settings. They also provide a sensory room at the integrated children's centre over school holidays and after school sessions.
- 8.7. In another local authority the funding has been used the childcare and play grant funding to develop a resource library of specialist equipment for ALN, supported by guidance on strategies to maximise the benefit of the equipment.

9. Next Steps

- 9.1. In March 2023 the Welsh Government published its new road map for education—high standards and aspirations for all. This sets out our priorities for education, and the timetable for delivery this Senedd term.
- 9.2. This is a coherent and cohesive road map which covers the breadth of education in and for Wales, from early years to post-16 and beyond. It sets out the six objectives we believe will help us achieve those priorities. These are: learning for life; breaking down barriers; a positive education for everyone; high-quality teaching and leadership; community-based learning; and Cymraeg for all.

9.3. We will continue to review progress, share effective practice and work through challenges as implementation of the ALN system continues. A second thematic review will be undertaken by Estyn in 2024, in addition to formative evaluation of implementation of the ALN system (the ALN Act and ALN Code and associated regulations). The views of those implementing the ALN system and the experiences of children and young people and their parents/carers will be important insights to assess progress.