

P-06-1392: Reform of the additional learning needs Code of Wales 2021

Y Pwyllgor Deisebau | 4 Mawrth 2024
Petitions Committee | 4 March 2024

Reference: SR24/7752-9

Petition Number: P-06-1392

Petition title: Reform of the additional learning needs Code of Wales 2021.

Petition text: Despite only a couple of years into the changes and promises of earlier and better support for children and young people with ALN, more and more ALN pupils are being missed in Wales. There are also issues with consistency and accountability.

There is still a large focus on Universal Provisions as opposed to the holistic approach of Person Centred IDPs for ALN pupils. Pupils with mental health / physical disabilities should have equal access to support and a quality education.

More details: Children under the age of 5 years are being denied support based on an 'assumption' that they will simply 'catch up' by the time they reach statutory school age. When IDPs are produced schools are able to "interpret" what is required without adequate accountability and contact of specialist health therapists for guidance. We call for the rights of all children under the UN Convention of Disabled People to be respected by ensuring:

- A universal code of practice to provide an inclusive quality education for all ALN pupils.
- Educational settings providing properly resourced provisions and trained staff that reach a quality assured standard of education to make the system fair, reliable and able to meet ever increasing demand.
- Education and health need to work more closely together.
- Compulsory specialist training and support for teachers and their staff.



1. Summary

- The new Additional Learning Needs (ALN) system is currently being implemented over a four year period (September 2021 to August 2025).
- Under the new system, learners recognised as having ALN are entitled to an Individual Development Plan (IDP).
- The Welsh Government issued the ALN Code in 2021, which sets out the detail of how schools, colleges, local authorities and health boards should, and must, meet their responsibilities under the Additional Learning Needs and Education Tribunal (Wales) Act 2018.
- The definition of ALN is essentially the same as for Special Educational Needs (SEN) under the framework that the new system is replacing. However, numbers identified as having ALN have reduced by a third since the new system began being implemented.
- This is because of a shift towards meeting lower level needs through universal provision rather than Additional Learning Provision (ALP). However, many of these learners still require more than universal provision and an intermediate category has emerged of learners who are between universal provision and ALP.
- Estyn is reviewing the implementation of the new ALN system and published the first of its reports in September 2023.
- The Senedd's Children, Young People and Education Committee is scrutinising implementation of these reforms, throughout this Senedd term (until May 2026).
- Issues identified include variation in understanding and use of terms such as 'universal', 'targeted' and 'specialist' provision, ambiguity in where responsibility for IDPs lies between schools and local authorities, and persistent challenges to joint working between local government and health.

2. Background to the new ALN system

The Welsh Government and the education sector are currently implementing the Additional Learning Needs and Education Tribunal (Wales) Act 2018. This replaces the existing/previous Special Educational Needs (SEN) system with a new Additional Learning Needs (ALN) system.

The new ALN system is being introduced on a phased basis over four years (September 2021 to August 2025). All learners newly identified with ALN come under the new system, while those already supported with SEN are transferring over in different years, depending on their year group and level of intervention (whether or not they have a statement of SEN). As such, both the existing/previous SEN system and new ALN system are operating side by side, until August 2025.

The last Welsh Government described the Additional Learning Needs and Education Tribunal (Wales) Act 2018 as a “complete overhaul” of a system “no longer fit for purpose”. Weaknesses of the current system, identified in previous reviews dating back many years, include families often having to battle to secure provision for their child, insufficient joint working between local government and health, and inconsistencies in how different learners’ needs are met.

2.1. Defining ALN

Learners judged to have ALN are eligible for a statutory Individual Development Plan (IDP). An IDP describes a person’s ALN and the Additional Learning Provision (ALP) which the person’s learning difficulty or disability calls for.

The 2018 Act’s definition of ALN is materially the same as that for SEN, whereby learners:

- have a significantly greater difficulty in learning than the majority of others of the same age; or
- a disability (for the purposes of the Equality Act 2010) which prevents or hinders them accessing education or training that is generally provided for others of the same age; and
- the learning difficulty or disability calls for ALP.

The final point of the definition is significant as, if a learning difficulty can be addressed through universal, or ordinarily available, provision and does not require ALP then the learner will not be considered to have ALN.

2.2. Information guides

The Welsh Government has produced a series of information materials on the ALN system, including guides for children, parents and their rights, and post-16 learners.

3. The ALN Code

As required by the 2018 Act, the Welsh Government has issued an Additional Learning Needs Code, which was approved by the Senedd in March 2021. The ALN Code outlines requirements and guidance for schools, further education institutions, local authorities, NHS bodies and others on delivering the ALN system.

The Welsh Government consulted on a draft version of the ALN Code in Winter 2018/19. Issues raised included defining and identifying ALN, timescales for meeting duties, the roles of various professionals and arrangements for resolving disagreement, advocacy services and appeals. The Senedd's Children, Young People and Education (CYPE) Committee submitted a response following work it undertook with stakeholders.

4. A shift towards universal provision

There appears to have been a shift towards universal provision to meet children's needs, where previously those needs may have been recognised as SEN and special education provision put in place for them. This is despite the definition of ALN being essentially the same as SEN.

The number of learners identified with SEN or ALN has reduced by a third since the new system began being implemented – from 93,000 in 2020/21 (20% of all pupils) to 63,000 (13% of all pupils) in 2022/23. The decrease is accounted for by a reduction in those with relatively low level SEN/ALN, indicating that it is not the case that learners with severe or complex needs are no longer being recognised as having ALN/SEN.

However, the shift away from ALP towards universal provision for many learners who would previously have been regarded as having SEN/ALN was not something

publicly anticipated by the Welsh Government. The Welsh Government said during passage of the ALN Bill in 2017 that those covered under the new system would be broadly the same as before and, when making subsequent regulations in 2021, it anticipated there would be “around 110,000 school-age IDPs”, which was equivalent to the number of pupils with SEN at that time.

In its school census statistical release and in a letter from the Minister for Education and Welsh Language to the CYPE Committee, the Welsh Government has offered several explanations for the decrease.

- SEN has been historically over-reported, partly due to the inclusion of a learning difficulty category which on reflection does not actually amount to SEN/ALN;
- The new statutory ALN co-ordinators have reviewed their schools’ SEN registers and seen fit to remove some learners with the lowest levels of needs.
- The ALN legislation was conceived of a decade ago and the more inclusive approach of the new Curriculum for Wales means some learners who previously required ALP can have their needs met through universal provision, with differentiated teaching and inclusive education practice.

The removal of some pupils from the SEN/ALN register brings the proportion of all pupils identified as having SEN/ALN down from 20% in 2020/21 to 13% in 2022/23.

Senedd Research published an article in September 2022, Identifying Additional Learning Needs: Has the bar been raised or was it previously too low?

5. Estyn’s report on ALN reform implementation

In September, the education inspectorate, Estyn, published the first of at least two reports the Welsh Government has remitted it to produce. Among Estyn’s findings was a lack of consistency in people’s understanding and application of terms such as ‘universal’, ‘targeted’ and ‘specialist’, and how these relate to ALP. Estyn also noted that these terms do not necessarily appear in the ALN Code.

Estyn recommended that the Welsh Government ensures that all settings have a clear understanding of the legal definitions contained in the 2018 Act and the ALN Code, and provides practical examples to aid understanding.

Under the Act and the Code, a school may refer a case to a local authority where the learner's needs:

- may call for ALP that it would not be reasonable for them to secure, or
- are of an extent or nature which the governing body cannot adequately determine or cannot adequately determine what ALP is required.

Estyn found there is a lack of clarity and transparency regarding which IDPs will be maintained by local authorities, rather than schools. There is an expectation in the ALN Code that local authorities publish a set of principles setting out how they will apply the legal parameters on where responsibility should lie. However, not all have done this and the Minister said in August he would write to local authorities to remind them of their responsibilities under the Code.

There have been increases in funding to support the implementation of the new ALN system, although Estyn found that approaches to evaluate the impact of this funding on pupils with ALN are weak. It also reported that school leaders stated that they do not have a clear enough understanding of how funding decisions are made by their local authorities.

The Minister made a statement in Plenary on 28 November, setting out how the Welsh Government was responding to the issues raised in Estyn's report.

6. The Senedd's scrutiny

The Senedd's Children, Young People and Education Committee is scrutinising the implementation of the ALN reforms (along with other major reforms to the curriculum) throughout this Senedd. It is doing this through a series of 'check-ins' and has carried out two of these to date.

Details of letters it has sent to the Welsh Government and representatives of delivery partners, such as the Welsh Local Government Association and the NHS Confederation can be found on the Committee's web pages. For example, the letters to the WLGA and the NHS focused on collaboration between local government and health, one of the issues raised by this petition.

The Committee also specifically asked the Minister in a scrutiny session on 10 May 2023 whether he would consider issuing separate guidance on how schools should support the emerging category of pupils who have greater needs than others but which do not qualify as ALN (i.e. they need more than universal

provision but not as much as ALP), given that this scenario was not foreseen in the preparation of the ALN Code. The **Minister said** he would wait for Estyn's report and would keep it under review, but that it didn't appear to the Welsh Government that it would be necessary.

The CYPE Committee has begun a third 'check-in', scrutinising the implementation of the new ALN system and took evidence from Estyn on 21 February 2024. **Estyn said** that schools are meeting pupils' needs but there is a 'grey area' between universal support and formal identification of ALN.

Every effort is made to ensure that the information contained in this briefing is correct at the time of publication. Readers should be aware that these briefings are not necessarily updated or otherwise amended to reflect subsequent changes.