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Y Gweinidog Addysg a Sgiliau
Minister for Education and Skills



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA(L)/HL/0268/15

Ann Jones AM
Chair
Children, Young People and Education Committee
National Assembly for Wales
Ty Hywel
Cardiff Bay
CF99 1NA

7th December 2015

Dear Ann,

**Children, Young People and Education Committee – Pre-legislative Scrutiny
of the draft Additional Learning Needs and Education Tribunal (Wales) Bill**

Thank you for your letter of 7 December seeking additional information on a number of points further to my appearance at the pre-legislative scrutiny evidence session on the draft Additional Learning Needs and Education Tribunal (Wales) Bill (“the draft Bill”). I have set out my response to each of the points that the Committee has identified below.

Firstly though, I wish to take this opportunity to highlight the importance I place on these reforms. Legislative and wider reform in relation to additional learning needs (ALN) is an absolute priority for me. The underpinning objectives and ten core aims seek to address the shortfalls in the current system, as highlighted in various reports including those of the predecessor to the Committee. As I said during my evidence session, they are based on common sense. I believe fully that the proposals we have set out in the draft Bill and working draft of the ALN Code will have a real and lasting impact, making a difference to the lives of some of our most vulnerable learners and their families.

My vision is a fair and equitable system for all learners with ALN. I want to see the right provision, at the right time, for the right learner. The system we are proposing will deliver this and we are continuing to work with key stakeholders to ensure our goal is met.

I want an inclusive education system that delivers equal access to the highest standards of education and supports all learners to achieve their potential. Our ALN reforms form part of a wider package of reforms including “*A Curriculum for Wales – A Curriculum for Life*”, “*New Deal*” and “*Teaching Tomorrow’s Teachers*”. All of our changes work towards an inclusive education system that supports each learner to reach their full potential.

This is my aim and we have set out how we propose delivering this. That said, we have published the Bill in draft, along with a working draft of the Code, to ensure we get it right and that, ultimately, a Bill is presented to the Assembly which includes a set of proposals that are as robust and comprehensive as possible. I hope the findings of the Committee will help ensure this and I look forward to considering them in due course.

Now to respond to the specific points on which the Committee is seeking further information:

- 1. Whether you envisage a similar balance between the number of learners whose IDPs are the responsibility of schools and those that are the responsibility of local authorities, to the current balance between those on either School Action or School Action Plus and those with statements.**

The draft Bill gives entitlements for children and young people with additional learning needs to have a statutory plan (an IDP) regardless of need level or location; as a result, these individuals will also be entitled to the additional learning provision identified as appropriate.

The current balance between learners with a statement of SEN and those supported through school action/school action plus varies widely between local authorities. This variation is caused, as least in part, by variations between local authorities in the extent to which they delegate SEN funding to schools and the extent to which they work well with parents in agreeing the right support for learners without recourse to a statement.

These variations in funding delegation are also likely to occur under our proposed ALN system. Consequently, it is likely that there will also be variations between local authorities in relation to the balance of school and local authority maintained IDPs. However, if funding delegation rates remain generally as they currently stand, we would expect the overall balance between school and local authority maintained IDPs to be very similar to the existing balance between learners supported through school action/school action plus and those with a statement.

- 2. Your comments on the perception that there will be less detail prescribed on the process that has to be followed in terms of assessment – timescales and who will need to be consulted etc.**

It is true that statutory assessments of SEN currently made by local authorities are undertaken in accordance with a process detailed in legislation. This includes obtaining advice for every assessment from a prescribed set of contributors, including an educational psychologist, a medical practitioner and a social worker. Furthermore, certain regulatory limits are set in relation to the timeframe within which advice must be submitted and the overall assessment completed.

However, for pupils with SEN who are not referred to a local authority for a statutory assessment, there is no prescribed process for the 'assessment' of their need nor any time limits set in relation to how quickly this takes place.

Under the proposed ALN system, the process and timescales for determining whether a child has ALN, and should therefore have an IDP, will be set out as mandatory legal requirements in the ALN Code. Our initial thoughts on this are outlined in the published working draft of the Code. Whilst these will be subject to change as the Code undergoes further development, it is expected that the timescales for determining ALN and putting in place an IDP will be shorter than is currently the case for statutory assessments of SEN. Moreover, the processes and timescales will cover all learners with ALN, not just those referred to the local authority.

It is not expected that the Code will include a mandatory list of professionals who must contribute to the development of an IDP because, as is currently the case with statements, this often results in resources and time being wasted in seeking and providing advice that is irrelevant to the circumstances of the individual child. We want to move away from a tick-box process to one which is centred around the views and circumstances of the child or young person; a model with flexibility and individualism built in and which reacts quickly to support learners.

As such, we would expect those leading on the determination of whether a child has ALN and the development of the IDP to call upon the professional input of others in accordance with the circumstances of the child. Local authorities may request such input on the basis of their power to seek information and help under section 49 of the draft Bill. Regulations made under that section would set out the timescales within which compliance with requests must take place. It is likely that these timescales will be similar to those currently relating to statutory assessment advice.

We also consider that section 49 can be used in other instances where cooperation between local authorities and those listed in section 49(4) of the draft Bill is required. A person that decides not to comply with a request for help or information will have to provide written reasons for that decision.

3. In what ways do the proposed arrangements for post-16 provision account for vocational career paths (such as work-based learning) and entry and transition for young people with ALN into the world of work?

The draft Bill clearly sets out all duties and responsibilities relating to all age groups, including learners in maintained and non-maintained settings, schools, FEIs and those that have not started in education. We do recognise, however, that in respect of post-16 and early years, the practical detail of how the duties provided for in the draft Bill will operate is less well developed. This is something the Code Content Development Group has been tasked with and I expect future versions of the Code to be much more comprehensive in this regard.

The post-16 provisions in the draft Bill would apply in relation to young people attending schools, further education institutions or those attending an independent specialist post-16 institution. Every time the term “young person” is used in the draft Bill, the section is relevant to this group. Many of the core provisions in the draft Bill cover post-16 learners, including, for example, sections 2 and 3 which deal with the definitions of ALN and additional learning provision. Section 4 provides for the Code

to cover FEIs. Section 10 deals with IDPs in FEIs and section 6 (the duty to involve and support) includes young people.

However, the provisions do not apply in relation to work-based learning providers or other forms of vocational learning.

Placing statutory duties on employers would significantly extend the scope of the draft Bill and would also place considerable additional burdens on local authorities for which no additional funding will be available. However, we expect future iterations of the draft Code to provide detailed guidance on planning for and supporting transition from secondary or further education into employment or other forms of education or training. We also consider that with the consent of learners, it may be possible to provide IDPs, on a non-statutory basis, to work based learning providers, thus enabling a strong element of continuity in provision planning. This proposal has been welcomed by the work based learning sector, most recently at our national stakeholder engagement events.

4. Can we have a brief overview of what the ‘expanded remit’ of the Tribunal will consist of?

The Tribunal’s remit would be expanded in the sense that it would hear appeals in relation to learners aged up to 25, who are in further education. Post-16 learners do not currently have a right to appeal, so this development should not be undervalued.

The changing of the name of the Tribunal is also a key measure – ensuring the Tribunal’s role, which is already wider than Special Educational Needs, is fully reflected and acknowledged.

The removal of statements of SEN and the introduction of IDPs will necessarily alter the basis on which appeals are brought, but there will also be a great deal of equivalence and similarity.

5. What recourse will be available to learners and their families regarding disputes over health-related aspects of ALN provision?

The identification and securing of all additional learning provision (that which educates or trains), including additional learning provision that is also health provision will be the responsibility of the school (in the first instance), FEI or local authority that maintains the IDP. The only exception to this would be where a health board agrees to secure the additional learning provision set out in the IDP, in which case the duty to secure the provision would fall to the health board.

We expect there to be a practical working relationship between the local authority and the Health board. The establishment of the Designated Medical or Clinical Officer will strengthen and bolster this working relationship.

Appeals can be made to the Tribunal in relation to any aspect of additional learning provision, including any health related aspects, and the Tribunal will be able to make orders in relation any of those aspects. However, the Tribunal would not be able to

require health boards to secure additional learning provision. It would only be able to require this of local authorities (or further education institutions).

Where a local authority was subject to a Tribunal order that included a requirement to secure health related additional learning provision, we would expect the local authority to bring this to the attention of the health board.

There is also the ability to request the help of the health board in the exercise of this duty, using its power to request such help under section 49 of the draft Bill.

There is, of course, an existing and established arrangement in place for the management of concerns where a child, parent or young person is unhappy with a decision of a health body – Putting Things Right (<http://www.wales.nhs.uk/sites3/home.cfm?orgid=932>).

It is right and appropriate that this existing procedure is used. To create a separate or additional complaint mechanism would cause confusion, uncertainty, delay and possible inequity.

I trust that this information is helpful to Committee Members and I look forward to considering the Committee's findings shortly. I have placed a lot of emphasis on getting these reforms right and the support and challenge of the Committee in this is vital and appreciated.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Huw Lewis', written in a cursive style.

Huw Lewis AC / AM

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Minister for Education and Skills