

Cyflwynwyd yr ymateb hwn i ymchwiliad y [Pwyllgor Plant, Pobl Ifanc ac Addysg i weithredu diwygiadau addysg](#)

This response was submitted to the [Children, Young People and Education Committee inquiry into Implementation of education reforms](#)

IER 45

Ymateb gan: Comisiwn Cydraddoldeb a Hawliau Dynol

Response from: Equality and Human Rights Commission

Nodwch eich barn mewn perthynas â chylch gorchwyl yr ymchwiliad. | Record your views against the inquiry's terms of reference.

This is the submission from the Equality and Human Rights Commission (EHRC) offering views on the Senedd CYPE Committee's inquiry on implementation of education reforms. This submission's focus will be on implementation of the ALNET (Wales) Act 2018 as part of the third check-in on implementing education reforms.

The Equality and Human Rights Commission (EHRC/the Commission) is a statutory body established under the Equality Act 2006. It operates independently to encourage equality and diversity, eliminate unlawful discrimination, and protect and promote human rights. We welcome the opportunity to contribute to this consultation.

The Additional Learning Needs and Education Tribunal (Wales) Act 2018 is central to the Welsh Government's education equity strategy and long-term goals for education attainment improvement and reform. The 2018 act outlined a new code of practice and gave schools significantly more independence and flexibility in determining eligibility and appropriate levels of support, along with statutory rights for ALN learners. The EHRC is keen that children and young people with ALN are a central focus for schools as a protected characteristic group under the Equality Act.

In the EHRC's [submission](#) to the CYPE committee during the second check-in 2023, we recommended a number of areas where we felt it would be useful for the



committee to focus its scrutiny and work moving forward. We focussed our submission on [our report](#) and recommendations to the United Nations Convention on the Rights of the Child and the EHRC's state of the nation report: *Is Wales Fairer 2018*.

We will not repeat all the information and observations outlined in our previous submission to this inquiry but will note areas of on-going concern and any continued/new recommendations.

As noted in our submission in 2023, we advised that the commission would be publishing a new state of the nation report: [Equality and Human Rights Monitor: Is Wales Fairer? 2023](#), which we published in November 2023. Some of the recommendations and information set out in this consultation response reference our report.

Since our last submission to this inquiry in 2023, there are several areas and themes which we feel would be useful for the CYPE Committee to focus on.

Since the implementation period for the ALNET Act 2018 began, concerns have been raised regarding the decline in the number of learners classified as having additional learning needs, compared with the previous SEN system.

- According to the 2023 schools census, there were 63,089 (r) pupils with additional learning needs (ALN) or special educational needs (SEN) in maintained schools (13.4% of all pupils), down from 74,661 (15.8%) at February 2022. ¹
- According to the same 2023 schools census, there were 10,499 (r) pupils with Individual Development Plans under the new ALN system in maintained schools (16.6% of pupils with ALN or SEN), up from 3,330 (4.5%) at February 2022. ²
- In December 2023, Welsh Government published a summary of findings in its scoping report: [Evaluation of the Additional Learning Needs System](#), as

¹ <https://www.gov.wales/schools-census-results-headline-statistics-january-2023> revised August 2023

² <https://www.gov.wales/schools-census-results-headline-statistics-january-2023> revised August 2023



part of the first phase of a four-year evaluation exercise. In this they recognised that the decline in ALN learners was not expected and that they will continue to review the situation but noted the increase in Individual Development Plans (IDP) as confirmed in the school census 2023.

We recommend that the CYPE committee continue to focus on the decline in ALN learner numbers in schools, including the continuing decline through 2023 and monitor any barriers which can be identified in slowing school actions on ALN learner provision, including the setting of IDPs (Individual Development Plans).

In March 2023, the Welsh Government announced that it would extend the timeframe for ALN implementation through 2025, adding another year to the implementation process ³

While we recognise that this decision was made in consultation with the education sector, we are concerned that another year of delay may cause more young people currently in education to continue to attend school, without some of the support mechanisms they are entitled to under the ALNET Act 2018 and the recommendations of the UNCRC.

In our Is Wales Fairer 2023 report, we found that there remains a significant attainment gap between disabled learners and/or those with ALN/SEN and those without. ⁴ We have used the term SEN here as this is how the most recent data available refers to those with additional learning needs. This is reflected in our Is Wales Fairer 2023 report.

Our 2023 report found that since our last state of the nation report in 2018, there was a fall in attainment for all disabled learners / SEN types in early years/foundation phase.

³ <https://research.senedd.wales/research-articles/government-decides-more-time-needed-to-make-additional-learning-needs-changes/>

⁴ <https://www.equalityhumanrights.com/sites/default/files/2023/Is%20Wales%20Fairer%20Equality%20and%20Human%20Rights%20Monitor-%20English-%20accessible%20PDF.pdf> p 119-123 'Outcomes'



Our report further found that in early years attainment, disabled children / those with SEN in Wales are falling behind children without a disability / SEN at a faster rate than in England or Scotland.

The group of disabled children / those with SEN who saw the largest drop in attainment from 2016/17 to 2018/19 were those with moderate learning difficulties. Among children with behavioural, emotional and social difficulties we also recorded a significant drop.

Our report found that by key stage 4 (GCSE year 11, age 16) there continues to be a large attainment gap between pupils with and without a disability / SEN. From 2015/16 to 2018/19, the attainment of both groups decreased year on year, and the gap between them widened each year.

While children at key stage 4 with a disability / SEN improved at a higher rate than those without, there remains a large gap between the two groups.

We recommend that the CYPE Committee continue to monitor attainment and education outcomes when and where possible, throughout the implementation period and afterwards. We continue to recommend that the CYPE committee pay specific attention to the equality impacts and outcomes of the implementation of the ALNET Act 2018.

We continue to recommend that the CYPE Committee conduct a focused thematic check-in on equality and human rights and the impact of the ALNET Act 2018 on protected groups.

In our submission as part of the second check-in, we noted our EHRC report [How Coronavirus has affected equality and human rights](#) We recommend the CYPE committee continue to monitor the impact of Covid-19 on implementation of education reform and equality outcomes in the context of the ALNET Act 2018.



In our Equality and Human Rights Monitor: Is Wales Fairer 2023 report, we note that the Welsh Government has committed to exploring a human rights bill for Wales to incorporate further convention rights and human rights into legislation and policy making in Wales. ⁵

In the Welsh Government's updated (January 2024) [Children and Young People's Plan](#), the Deputy Minister for Social Services Julie Morgan MS noted that since the launch of the Children and Young People's Plan in 2022, the Welsh Government has noted the UNCRC sixth concluding observations for the UK. The Minister committed that the Welsh Government would consider how best to take forward the recommendations contained within the report.⁶

We recommend that the CYPE Committee monitor Welsh Government commitments on a human rights act for Wales and how it implements the recommendations of the UNCRC latest concluding observations for the UK, focussing on Wales and implementation of the ALNET Act 2018 and how it relates to the UNCRC. ⁷

Our [EHRC Human Rights Tracker](#) has noted that the Welsh Government has regressed in terms of inclusive education. We have noted several concerns regarding the implementation of the ALNET Act 2018 in this tracker.

As per our submission at the second check-in on ALNET Act 2018 implementation, as well as curriculum implementation, we strongly encourage the CYPE Committee to use this tracker when scrutinising and over-seeing the Welsh Government and their approach to education reform.

In September 2023, Estyn released the first of two [thematic reviews](#) on the implementation of ALNET Act 2018. This first review provides insight into both

⁵<https://www.equalityhumanrights.com/sites/default/files/2023/Is%20Wales%20Fairer%20Equality%20and%20Human%20Rights%20Monitor-%20English-%20accessible%20PDF.pdf> p112

⁶ [Update on the Children and young people's plan: January 2024 \[HTML\] | GOV.WALES](#)

⁷ <https://digitallibrary.un.org/record/4013807?ln=en&v=pdf>



successes and problems that have arisen during the implementation period. There are findings which we believe are important for the CYPE Committee to explore as part of its terms of reference for this inquiry check-in.

We have noted main findings in the thematic review relating to the interpretation of the code by schools and local authorities, the potential confusions that have become evident in some cases for parents and learners in navigating the new ALN system, some schools and local authorities waiting for tribunal decisions to act as precedents for decision making, teacher and additional learning needs co-ordinators (ALNcos) increased workloads and many others. ⁸ In all, there are 26 main findings – many of them positive, which we welcome – but there are clear areas of improvement which have been recommended by Estyn to the Welsh Government.

We recommend that the CYPE Committee continue to monitor and engage with the on-going work of Estyn in relation to the committee’s terms of reference for this inquiry and to monitor how the Welsh Government is working to implement Estyn’s recommendations.

We recommend that the CYPE Committee look particularly at the interpretation and implementation of the ALN code by schools and local authorities and the information provided to learners and their families. We further encourage the CYPE Committee to continue to monitor the use and take-up of professional development for school staff.

In our submissions for this inquiry’s second check-in in 2023, we noted the EHRC’s [commissioned work](#) to review the strategic equality plans published by secondary schools, special schools and Pupil Referral Units (PRUs) in Wales in 2022. We found that only around a quarter of these schools had published strategic equality plans. In response, the Commission produced [guidance](#) for

⁸ [The new additional learning needs system \(gov.wales\)](#) p-8-11 main findings



schools to help schools in implementing and following the Public Sector Equality Duty (PSED).

We continue to recommend that the CYPE Committee look at how schools are using the PSED in regard to the ALNET Act 2018. We continue to suggest that the CYPE Committee monitor how schools use the PSED and scrutinise the effectiveness of the Welsh Government's guidance and support for local government and schools to understand their obligations.

