

Cynulliad Cenedlaethol Cymru | National Assembly for Wales

Y Pwyllgor Plant, Pobl Ifanc ac Addysg | Children, Young People and Education Committee

Bil Anghenion Dysgu Ychwanegol a'r Tribiwnlys Addysg (Cymru)| Additional Learning Needs and Education Tribunal (Wales) Bill

ALN 32

Ymateb gan yr Undebau ar y cyd | Joint Union Response ATL, NAHT, Undeb Cenedlaethol Athrawon Cymru & UCU

## 1. Background

1.1 We welcome this opportunity to respond to the Stage One scrutiny process of the ALNET Bill.

1.2 As the Explanatory Memorandum, which was laid alongside the copy of the Bill, says:

“3.3 The Bill will create: a) a unified legislative framework to support all children of compulsory school age or below with ALN, and young people with ALN in school or further education (FE); b) an integrated, collaborative process of assessment, planning and monitoring which facilitates early, timely and effective interventions; and c) a fair and transparent system for providing information and advice, and for resolving concerns and appeals.”<sup>1</sup>

1.3 There are many things which can be welcomed within the Bill. These include:

- a single framework for support for children and young people aged 0–25,
- an emphasis on listening to children and young people and their parents;
- increased collaboration with health services and joined up plans for children looked after by the local authority (LAC).

1.4 The Welsh Government plan to implement the changes in stages, as part of what they describe as the wider transformational programme.

1.5 This is all to be welcomed and therefore we would agree with the General Principles of the legislation.

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<sup>1</sup> <http://www.assembly.wales/laid%20documents/pri-ld10862-em/pri-ld10862-em-e.pdf> p.7

## 2. Barriers to implementation

2.1 There are many barriers to implementation of this Bill. We feel that some of these need to be addressed in order that the Bill will meet its stated aims and that children and young people with ALN are able to meet their full potential and the education workforce is able to support them to do this.

2.2 Our key concerns are as follows:

- Funding
- ALNCo role
- Duties on governing bodies
- Assessment and IDP template

2.3 More specific detail related to more of our concerns, which we believe could prevent smooth implementation of the stated aims, are set out below.

## 3. Funding

3.1 ALN must be properly funded, with prevention of cuts by local authorities to ALN budgets.

3.2 The EM sets out additional costs for organisations, not covered by the cost savings:

- Health boards: £825,600 (£206,400 per year)
- Further education institutions (FEIs): £92,800 (£23,200 per year)
- Estyn: £172,000 (£ 43,000 per year)
- Welsh Government: £680 (£170 per year).<sup>2</sup>

3.3 It goes on to state:

The Welsh Government is supporting the implementation of the Bill through transition grants totalling £6,956,000. Thus, there are transition costs of £2,600,050 which will not be covered by Welsh Government grant funding and will be incurred by local authority education services, local authority social services, mainstream schools, health boards, FEIs, Estyn and pupil referral units .<sup>3</sup>

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<sup>2</sup> <http://www.assembly.wales/laid%20documents/pri-ld10862-em/pri-ld10862-em-e.pdf> in 6.2, p86

<sup>3</sup> Ibid p87

3.4 Whilst all organisations and public bodies, including schools, are facing challenging times in terms of budgets, further education institutions in particular have faced substantial funding cuts in recent years<sup>4</sup>.

3.5 We believe that in order for this Bill to provide ALP for children and young people with ALN it needs to be fully funded.

#### **4. Additional Learning Needs Coordinators 54 (4)**

4.1 The Bill says governing bodies must appoint an ALNCo and that the role of the ALNCo and their qualifications and / or experiences should be set out in the code by the Minister.

We believe this should be subject to affirmative procedure and subject to greater scrutiny by the Assembly.

4.2 Currently, the role within an FEI is not always undertaken by a qualified teacher, therefore FEIs need to be taken into account when drafting the Code.

4.3 Training must be ensured outside of ITE and the “New Deal” for ALNcos. We would also note that ALN training for all staff must be wider than that offered by the New Deal or ITET – and include those in FEIs and support staff roles.

#### **5. Governing Bodies (section 10 and 41)**

5.1 The primary duty for providing additional learning provision must lie with the local authority. Governors should be given more training on ALN, but this cannot supersede the need for specialist advice and support from the LA. Clarity around the duty on FEIs is also sought.

5.2 The EM says:

3.91 Where a learner with an IDP maintained by a local authority is registered or enrolled at a maintained school (including a maintained nursery) or FEI, the Bill (section 41) requires that the school or FEI takes all **reasonable** steps to secure the ALP included in the IDP – but ultimate responsibility rests with the local authority that maintains the IDP.<sup>5</sup>

5.3 This is welcomed.

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<sup>4</sup> <http://www.walesonline.co.uk/news/education/tories-warn-fatal-damage-wales-9734751>

<sup>5</sup> <http://www.assembly.wales/laid%20documents/pri-ld10862-em/pri-ld10862-em-e.pdf> p30-31

5.4 Within section 10 of the Bill it states the circumstances when a governing body may pass the responsibility to a local authority:

(2) The circumstances are— (a) the governing body considers that the child or young person has additional learning needs— (i) that may call for additional learning provision it would not be reasonable for the governing body to secure, (ii) the extent or nature of which the governing body cannot adequately determine, or (iii) for which the governing body cannot adequately determine additional learning provision, and the governing body refers the child’s or young person’s case to the local authority responsible for the child or young person to decide under section 11(1); <sup>6</sup>

5.5 There is still a question about when and in what circumstances the governing body is capable or not of making that decision.

5.6 We are concerned the local authority, rather than the governing body will decide when it takes over a plan – and what ‘reasonable’ looks like.

5.7 We would be concerned that rather than create a unified system this will create an additional barrier for support with ALP as the governing body and the local authority dispute who is responsible.

5.8 An exchange between Llyr Gruffydd AM and the Minister summarises our concerns<sup>7</sup>:

[295] **Llyr Gruffydd:** But ultimately, if there is a stand-off, let’s say, between a governing body and the local authority, the local authority trumps the governing body.

[296] **Alun Davies:** I would anticipate that to be the case, but I would also be disappointed—

[297] **Llyr Gruffydd:** If it came to that, yes.

[298] **Alun Davies:** —were that stand-off to happen.”

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<sup>6</sup> <http://www.assembly.wales/laid%20documents/pri-ld10862/pri-ld10862-e.pdf>

<sup>7</sup> <http://www.senedd.assembly.wales/documents/s58417/12%20January%202017.html?CT=2#Sesiwn1>

5.9 We are deeply concerned about this. We believe this to be a barrier to providing the most appropriate support for young people with ALN. This is not sufficiently clarified by the draft Code.

## 6. Specialist Provision

6.1 We have concerns about the level of specialist provision that will be available and funded under the Bill. Whilst we welcome the Cabinet Secretary's assertion in July that:

“all education settings should have access to individuals with specialist skills, for instance, educational psychologists, teachers of the visually or hearing impaired, and speech therapy.”<sup>8</sup>

6.2 We would seek assurances that all education settings **must** have access to such specialists. We believe “should” is not strong enough in this context.

6.3 The EM suggests (7.109) it will be the role of health boards to appoint someone to co-ordinate the role of such specialists in carrying out an assessment of ALN<sup>9</sup>. We would however seek clarity about the role of such specialists in delivering ALP in schools and FEIs, and what specialist provision will be funded by the local authority and made available to schools and FEIs to ensure they can assess and support children with ALN?

6.4 Further concerns about who pays for specialist provision are raised by the Code.

## 7. Assessment (Sections 9)

7.1 Whilst the LA or a governing body must make a decision (section 9) about the child's ALN, the assessment process remains unclear. It is described as ‘seamless’ and ‘unified’ within the EM, but lacks clarity. This is not cleared up in the Draft Code.

7.2 An assessment road map would be helpful – which outlines the steps taken by each individual and organisation and reasonable timeframes for decisions.

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<sup>8</sup> <http://www.assembly.wales/en/bus-home/pages/rop.aspx?meetingid=3616&language=en&assembly=5&c=Record%20of%20Proceedings&startDt=30/06/2016&endDt=13/07/2016&keyword=kirsty%20williams>

<sup>9</sup> <http://www.assembly.wales/laid%20documents/pri-ld10862-em/pri-ld10862-em-e.pdf> p113

7.3 We would seek clarity as to when it is the duty of the school or FEI to assess a child for ALN and when it should fall to the local authority.

7.4 The Minister gave evidence to the CYPE Committee, and suggested he would seek to ‘articulate rather than define’<sup>10</sup> what ALN looks like: “I think is probably the best way of doing it. We have put examples in the code.”

7.5 He went on to say:

*“We do rely on the professionalism and the trust of individuals taking these decisions. I hope that we will articulate that these are the sorts of places where we expect decisions to be taken—these are the edges, if you like—and I would expect and anticipate that local authorities or schools would then go through an iterative process of determining what their decisions would be for that individual. Of course, you then have the right of appeal if you believe that your individual development plan doesn’t deliver on the needs. But I really hope that the appeal and tribunal system is very much a backstop. What I want to be able to do is lead a process of transformation—and it’s a wider process of transformation in terms of training and in terms of providing the funding to enable change to take place—and then the change of culture that we spoke about earlier, which will deliver on these needs. But, you know, there will always be those difficult areas at the edges where a finely balanced decision might be required.”*

7.6 We believe clarity is needed on who is involved, the role of appropriate health practitioners, and who will pay for the assessment process for children and young people. This is not clarified by the draft Code.

## **8. Favouring mainstream schools: Section 45(2)**

8.1 This section is a Duty to favour education for children at maintained schools. Regulations under this section allow Welsh Ministers to set out further circumstances in which local authorities would not be under a duty to favour maintained schools.<sup>11</sup>

8.2 We have concerns about the wording in terms of the individual with ALN. We would seek clarity that the local authority will place the needs of the child with ALN, and the most appropriate setting for them, at the heart of their

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<sup>10</sup> <http://www.senedd.assembly.wales/documents/s58417/12%20January%202017.html?CT=2#Sesiwn1> [294]

<sup>11</sup> <http://www.assembly.wales/laid%20documents/pri-ld10862-em/pri-ld10862-em-e.pdf> p70-7

decision making, and that the duty will lie with the local authority to ensure that any additional learning provision (ALP) is met.

8.3 We would welcome the Minister making provision about the type of school attended by a child with ALN subject to affirmative procedure.

## 9. The individual development plan (IDP) (Section 10)

9.1 We welcome that the aim of the IDP is to avoid duplication, and to bring together differing plans for children and young people.<sup>12</sup>

9.2 However, we would strongly recommend a Wales wide IDP template.

9.3 The Minister said he was happy to look at the IDP when he gave evidence to CYPE Committee:

*“[279...] The IDP is very clear: it goes up to age 25, and it looks at the sort of support that a young person will need as they move from childhood into adulthood, if you like—as they move from being in education into the world of work and, sometimes, supported employment. Certainly, the IDP will identify the sort of support that that young person will need as they embark upon the next stage of their life. Now, I think it’s an interesting matter of debate—and this is something that I hope the code will cover when we publish the implementation code on this legislation—as to how detailed that IDP is, whether it is a mandated IDP template, or whether it’s a mandated skeleton that is then filled in by professionals, and to what extent, then, does that actually mandate support for that young person moving, for argument’s sake, from a further education college to a work-based apprenticeship, for argument’s sake. How is that support delivered? How is that support provided? Who’s responsible for doing that? What is the nature of that transition and the support through that transition? I think it’s absolutely critical that we get that right. At the moment, I think that is one of the real pinch points in the whole system.”*

9.4 We would recommend a standard template, but with the flexibility to include additional relevant information, as required.

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<sup>12</sup> <http://www.assembly.wales/laid%20documents/pri-ld10862-em/pri-ld10862-em-e.pdf> p8

9.5 The IDP needs to be legally enforceable at a local authority level. The IDP must be undertaken and reviewed in a timely fashion, with input from the head/ head of year / director of studies as well as information from all agencies involved.

9.6 The Code needs to be easier to read in relation to the IDP – and include clear examples.

## 10. Transition

10.1 Arrangements for transition between key stages and settings are key to young people receiving the right support, as is a plan for once they reach 25 – and at key stages before that age, including the transition between school and college. The Bill and Draft Code are not strong on transition.

## 11. Transport

11.1 Local authority transport arrangements could be considered under the IDP. Transport arrangements are not in the Bill, as tabled. They would currently fall under the Learner Transport (Wales) Measure 2008.<sup>13</sup>

11.2 However, we would stress that the local authority where the child or young person lives **must** be responsible for providing transport to the most appropriate setting. Transport requires a wider over-view than an individual school or FEI can offer.

## 12. Health and Collaborative working (Section 18 and 19)

12.1 The EM sets out the role of the Designated Education Clinical Lead Officer (DECLLO).<sup>14</sup>

12.2 The Minister added to his vision for the role in his evidence session:  
*[221...] “The role of the designated education clinical lead officers, or DELCOs, for example, is something that came out of the more recent consultation in the predecessor committee, so that each health board will have a structure within which they can operate to deliver on the duty to deliver the sort of treatment and support that a young person may require according to the clinical judgment of the specialist dealing with that individual.”<sup>15</sup>*

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<sup>13</sup> <http://www.legislation.gov.uk/mwa/2008/2/contents>

<sup>14</sup> <http://www.assembly.wales/laid%20documents/pri-ld10862-em/pri-ld10862-em-e.pdf> p39

<sup>15</sup> <http://www.senedd.assembly.wales/documents/s58417/12%20January%202017.html?CT=2#Sesiwn1>

12.3 We believe Health boards and health professionals must have a duty placed upon them to ensure they are involved in the planning or provision of ALN, if the health needs of the child or young person affect their access to education.

12.4 Schools and FEIs are not health specialists and are therefore in no position to decide on a child or young person's healthcare needs.

12.5 We have concerns that the draft Code lacks a clear vision for the way in which the DECLO role will support schools, FEIs and LAs. It seems very high-level. It is unclear how, if at all, LAs, schools or FEIs can challenge the health provision which HBs are prepared to provide.

12.6 We believe that whilst schools and FEIs can put some simple assistance in place, if a child has an unmet health need this may have a detrimental impact on their learning? (Eg undiagnosed sight problem or hearing loss).

### **13. Communication needs (Especially Section 2)**

13.1 We recognise that the Bill is stronger than previous drafts in terms of Welsh medium provision, but still needs strengthening. The effectiveness of ALN provision can be undermined unless it is available in the language of choice.

13.2 Local Authorities' access to Welsh medium ALN resources is varied and limited. According to evidence gathered jointly by the WLC and the Children's Commissioner for Wales, Local Authorities' ability to provide Welsh Medium ALN support is inconsistent and though some LAs claim to be able to provide for ALN through the medium of Welsh the majority of LAs admitted to failing to provide in at least some fields, especially Autism, Speech and Language Difficulties and Behavioural Difficulties. We are also aware of problems concerning the availability of Welsh medium diagnostic tests and staff to carry out assessments in Welsh. The wording of the Bill does nothing to get to grips with these current failures in the system – and it should. There should be some clear guidelines about how to determine the language medium of the provision.

13.3 There are clearly issues concerning insufficient numbers of Welsh speakers in the workforce (including Educational Psychologists; teachers;

other providers of specialist support, such as speech and language therapists) and lack of workforce planning. We would welcome increased training for the current and future workforce to ensure they can fully meet the needs of Welsh speaking learners.

13.4 We note that the Bill does not make the same requirements that the process of applying for ALN and receiving ALP be delivered in accessible formats – such as Braille, large print, BSL etc.

13.5 We would expect a clear commitment of resources in order that schools and FEIs are able to meet the needs of learners with ALN in their preferred formats and language.

## **14. Examinations and tests**

14.1 The duty for ensuring that resources for qualifications and examinations are accessible to a child or young person with ALN must lie with the appropriate exam board (usually WJEC) and qualifications regulator (Qualifications Wales) – or indeed Welsh Government for testing. We would seek to avoid a repeat of any situation where the young person with ALN is at a disadvantage<sup>16</sup>.

## **15. Further Education Institutions**

15.1 We have already mentioned some specific issues, however, FEIs are independent of local authorities, and we would seek clarity on how the Bill will apply to them – particularly in terms of how a local authority takes over a plan maintained by an FEI.

15.2 We would also have concerns about the provision of ALP for those undertaking work-based learning and apprenticeships and how the age-range will work within an FE context – including the provision for people wishing to undertake adult and community learning.

15.3 When asked about work-based learning the Minister said:

*“[272...] I think there are two gaps, in fact. I think the gap is work-based learning and the university sector as well.”<sup>17</sup>*

15.4 He explained the legislative context and went on to add that the IDP could be shared with an employer or HEI.

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<sup>16</sup> <http://www.walesonline.co.uk/news/education/exam-board-told-visually-impaired-11223658>

<sup>17</sup> <http://www.senedd.assembly.wales/documents/s58417/12%20January%202017.html?CT=2#Sesiwn1>

15.5 We would seek clarity that if a young person at a FEIs wants help from their parents – or another appropriate person – to articulate their needs during any assessment process they be allowed this help.

## 16. Tribunals (Chapter 4)

16.1 We accept the need for a commitment to conflict resolution prior to going on to a tribunal. We would wish to avoid disputes wherever possible.

16.2 However, we have some concerns about the potentially prolonged period that such a system adds to a process, particularly if such a case ultimately continues on to tribunal. The potential delay is not in the best interests of the child or young person. The timescales are set out in the Draft Code.

16.3 Any delay in the process may also be exacerbated by the widening of the right to appeal to a tribunal, which may well result in increased requests for tribunals. The potential for increasing the number of tribunals may also arise as a result of the lack of clarity around responsibilities – particularly between school and FEI governing bodies and local authorities.

16.4 The limited resources available for effective support for pupils with ALN should be focused upon the best provision and not on a potentially lengthy and costly dispute, appeal and tribunal process.

16.5 The greatest potential for conflict appears to be the lack of clarity for the role of the local authority and that of the governing body in providing ALP. Greater definition is needed, and as we have already stated, the duty to provide ALP, should lie primarily with the local authority.

16.6 The strengthened role for health is welcomed, particularly the commitment to place the clinical needs of the child / young person at the centre of NHS / LHB duty. There is now greater clarity showing that if a matter is referred to an NHS body, they *must* consider whether a relevant treatment or service is likely to be of benefit in addressing the child / young person's ALN.

16.7 However, fundamental concerns still remain concerning the following section of the bill 19 (8):

*'If the Education Tribunal for Wales orders the revision of an individual development plan in relation to additional learning provision specified under this section as provision an NHS body is to secure, an NHS body is not required to secure the revised additional learning provision unless it agrees to do so.'*

16.8 The above still suggests that even if a particular health-related provision is agreed to be revised at a tribunal, the tribunal has no power to compel a LHB or NHS trust to revise the health provision.

16.9 During a technical briefing, it was explained that, as a result of existing appeals processes already in place for health services, it was deemed unnecessary to bring health services into the educational tribunal processes. The success of such a multi-faceted approach is dependent upon the following:

- Clarity of each process to the individual / organisation choosing to appeal
- The ability of educational organisations to make an appeal within a health appeals system
- The potential bureaucratic nature of multiple appeals running in parallel
- The quality of advocacy services for those who require them
- The capacity of the NHS / LHB to meet the demands of potentially increasing appeals.

16.10 This potentially does not represent the best interests of the child or young person and in many cases the duty may still fall to educational settings to seek to provide the appropriate health-related provision – not the health board or NHS trust.

16.11 The Code should clarify these issues.