

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 76

Ymateb gan: Plant yng Nahymru

Response from: Children in Wales

Children in Wales is the national umbrella organisation in Wales for those working with and for children and young people, bringing organisations and individuals from all disciplines and sectors together. Children in Wales also ensures that children and young people's voices are heard by decision makers. One of our core aims is to make the United Nations Convention on the Rights of the Child (UNCRC) a reality in Wales. Children in Wales campaigns for sustainable quality services for all children and young people, with special attention for children in need and works to ensure children and young people have a voice in issues that affect them.

Children in Wales works closely with its member organisations and has established working relationships with the Welsh Government and other funders. A key role for our organisation is to maintain a constructive flow of information between those working to develop policy and legislation and those working directly with children and young people. Our conference and extensive training programme, together with the forums and networks that are supported or managed by Children in Wales, serve as a means for ensuring that our members and Welsh Government officials are kept informed of current and evolving developments in the field, and that these developments help shape policies and enhance practice. Children in Wales membership covers a vast array of organisation who work to improve the lives of children in Wales and includes voluntary/third sector organisations, professional associations, local authorities and health bodies, as well as many smaller community groups, schools and individual members. At the time of writing, there are over 260 members. For further information on the work of Children in Wales, please see www.childreninwales.org.uk and www.youngwales.wales

In addition to this response Children in Wales wishes to draw the Committee's attention to the response from the Third Sector Additional Needs Alliance (TSANA) and the UNCRC Monitoring Group. Children in Wales welcomes the opportunity to respond to this consultation.

Are the Welsh Government's three overarching objectives for the Bill the right objectives and is the Bill sufficient to meet these?

Overall Children in Wales welcomes the three overarching objectives of the reforms. However we believe that the Bill does not fully deliver on these objectives in a satisfactory way.

Are the Welsh Government's ten core aims for the Bill the right aims to have and is the Bill sufficient to achieve these?

Children in Wales believes that the ten core aims for the Bill are the right aims to have, but again we are concerned that the Bill will not sufficiently deliver on these intended aims.

The remainder of our response highlights areas of concern within the Bill which explains our reasons for the above responses.

Increased participation of children and young people and Children's Rights

Children in Wales welcomes the Welsh Government's commitment to ensure that children have a voice when adults are making decisions that affect them (UNCRC Article 12, UNCRDP Article 7.3). We believe it is essential that children are fully involved, engaged and heard during every stage of the ALN process, and that robust monitoring arrangements are in place so that improved child rights based outcomes are achieved. Reasonable adjustments, including an appropriate allocation of time, support and encouragement to enable a child to express their views and actively participate, must be in place. Participation must be compliance with the recently refreshed Welsh Government's National Participation Standards for Children and Young People. It is vital to ensure that the child fully understands the process and that appropriate methods of communication are used and are fully understood by the individual. The child should always be at the centre of the process and all appropriate language support for children and young people with additional learning needs or whose first language is neither English nor Welsh, must also be made available.

Children in Wales strongly believes that the Bill should include provision for a duty of due regard to the United Nations Convention on the Rights of the Child and the United Nations Convention on the Rights of Disabled People on the face of the Bill. Given the objectives and principles of the Bill, it appears strange that the Bill was tabled without these duties. This represents a missed opportunity to help ensure that the conventions are fully embedded in the legislation. We believe the Bill would be better and more likely to deliver its principles and aims for its inclusion if this occurs.

Multi Agency Working

The Bill aims to support early identification and timely intervention to ensure that every child and young person with an Additional Learning Need can achieve their full educational potential. The Welsh Government considers that sharing information between agencies is essential in terms of early identification of needs and that the right support is put in place for every child to enable children and young people to achieve their best possible outcomes. Children in Wales believes the requirement for organisations to share information could be made stronger and recommend that there should be a duty to work in a multi-agency way which is underpinned by local protocols between health, social services and education to assess and deliver provision.

Health

Children in Wales welcomes the significant attempt to strengthen the duty on health bodies “to consider whether there is any relevant treatment or service that is likely to be of benefit in addressing a child’s additional learning need”, that “any treatment or service so identified must be included in the learner’s IDP and that the health body must secure the provision of the treatment or service”. However if no treatment or service is identified, none will have to be provided. It is accepted that many practitioners will base their decision on clinical judgement but others may not identify a service because they believe that there is a lack of funds to provide it. The reference to treatment could also imply a clinical need where what is required is a more holistic focus on supporting social and developmental requirements.

Health accountability is also an issue and Children in Wales is disappointed that the role of the Education Tribunal isn’t being expanded to cover health.

Instead complaints will continue to be investigated under “Putting Things Right” which isn’t independent of health and has no timescales attached. We would also question whether the power of the NHS, to decline a tribunal order to revise an IDP in order to secure the revised additional learning provisions, undermines the power of the tribunal.

Children in Wales welcomes clarification on the following sections of The Bill:–

- Section 18 (2) should be amended to ensure that a local authority can also refer an early years case to a NHS body to consider if there’s any health support which will support the child’s learning.
- The Bill states that once an IDP outlines that a service is to be provided by a health body, the local authority/governing body loses responsibility for it (section 19 (4)). The Tribunal has no jurisdiction over health (section 19 (7) and (8)). This could mean that so any provision named within an IDP loses legal enforceability which is a retrograde step from current legislation.
- Section 57 (4) states that health bodies ‘may’ bring to attention of a local authority that they consider a child could have ALN. This is weak considering the key role that health play in the lives of many learners with ALN, especially within the early years when health professionals are those most likely to identify an additional need.

Children in Wales believes that there is insufficient accountability on health in the Bill, in relation to children’s rights and entitlements. Children will be unable to learn and develop if their health needs are not being met. The Rights of Children and Young Persons (Wales) Measure places a clear duty on all Welsh Ministers, in exercising their functions, to have ‘due regard’ to the UNCRC. The Bill therefore has to evidence due regard to the UNCRC, and Children in Wales would advocate for this duty to be extended to health provision.

Other Agencies

Children in Wales recommends that the Bill should also be strengthened in relation to other multi-agency relationships, particularly around key

transition points to ensure that appropriate bodies from early year and post-16 settings work with local authorities. We are concerned that the Bill gives little information about young people who leave school, do not go onto further education but do require support from social services, health and other agencies. Previously many young people in this position were supported through the Welsh Government funded Transition Key Worker programme which ran from 2008 - 2013 and the convergence funded Regional SEN Transition to Employment Initiative from 2011 - 2014 and Children in Wales is concerned that learning from these programmes is being lost., when evidence from practice could be used to inform the development of future services.

The relationship between the Bill and the Social Services and Wellbeing Act should be enhanced. Children in Wales supports looked after children with ALN being entitled to an IDP and recommends that the care leaver's pathway plan and the care and support plan, under Part 6 and Part 4 of the Social Services and Well-being (Wales) Act respectively, link to the IDP. Part 9 (Co-operation and Partnership) of the Social Services and Well-being Act. This would ensure that provision is made for partnership arrangements between Local Authorities and Local Health Board, including pooled budgets. Cooperation and partnership working could be further reinforced by the introduction of a duty to work in a multi-agency way, underpinned by local protocols between health, social services and education to assess need and deliver provision.

Needs Assessment / Provision Pathway and The Individual Development Plan

Children in Wales welcomes that every child and young person with an Additional Learning Need will be entitled to a statutory Individual Development Plan (IDP) to support their learning. We note that the Bill requires that the child or young person's voice should be at the heart of the decision making process, and to support this, a person centred planning system is being introduced to ensure that their views, wishes and feelings are fully taken into account when preparing and reviewing an IDP. To fully support this, all information within the plan must be fully understood by those children, young people and parents that it relates to.

Children in Wales is concerned that a statutory template, which is consistent, legally accountable and portable, is not being proposed. We believe that without a mandatory IDP template the Bill will not be able to deliver on many of its core aims. The development by local authorities or schools of their own IDPs could result in a multitude of templates in use which would not assist with multiagency working or assessing for compliance.

Children in Wales welcomes clarification on the following sections of The Bill:-

- Section 21 of the Bill should reference the role of families and professionals within the review process.
- Section 23 allows for an IDP to be prepared, reviewed or revised at the same time as another document for a learner. While there are benefits to combining the timing of certain plans, it is important that this is only permitted to happen if it does not cause unreasonable delays in creating an IDP.
- Before directing governing bodies to prepare/maintain an IDP (Section 12 (2b)), Children in Wales believes local authority should consider whether the school has the relevant expertise around the learner's needs to do so.

Children in Wales welcomes the inclusion of detained young people within the Bill. However we have a concern that Section 37 refers to “keep(ing)” IDPs for detained young persons, to be maintained again upon their release, rather than ensuring the continuation of an existing plan during the period of detention. This process will not provide constancy for detained children and young people with additional learning needs, which is required during their detention. Children in Wales recommends that young people are assessed for ALN upon entry into the secure estate. This will ensure that the significant proportion of young people who have been detained and have additional learning needs that have not previously been recognised, will receive the appropriate support at an earlier stage.

The capacity of the workforce to deliver the new arrangements

Children in Wales believes that the main barriers to implementation of the Bill will be lack of knowledge and awareness of the reforms among key

professionals. We are aware that the Welsh Government has developed a Transformation Programme to support implementation that includes training. However we recommend that –training includes:–

- Training for multi–agency professionals, such as health visitors, GPs, early years’ providers, so that they are able to recognise when a child may have an ALN and make a referrals for an IDP.
- The Bill places a great deal of responsibility on school governors. Children in Wales is concerned that governors will not have the expertise in ALN, particularly in relation to low incidence needs. Failure to identify lower incidence needs, such as deafness, could prevent governing bodies from passing a case on to a local authority. It is therefore important that they receive training on ALN and the IDP process.
- The Additional Learning Need Coordinators (ALNCOs) also have a prominent role in the new system and need to have a basic understanding of specific disabilities as well as the IDP systems and structures to ensure that they can provide training, mentoring and capacity building to other staff. It is essential that ALNCOs have designated time to fulfil their role.
- Given the potential difficulties around capacity to deliver the system for all staff, section 56 of the Bill would benefit from a clause promoting forward planning mechanisms in local authorities.
- Initial teacher training must include an increased focus on children with additional learning needs as well as including training on person centred planning.

A 0–25 system

Children in Wales welcomes that The Bill covers children from birth to 25 years of age. However in its current format, we are concerned that the Bill does not deliver on a genuine 0–25 system.

Early Years

Children in Wales remains concerned by the lack of detail in the Bill about how the system will deliver for families in relation to the early years. The Explanatory Memorandum states that maintained nurseries must follow the statutory Code of Practice, while private nurseries will only have to pay

regard to it. However some private nurseries receive state funding to provide pre-school places on behalf of local authorities. As these nurseries will therefore be in receipt of public funds, they must be under the same statutory obligations as maintained nurseries. If this doesn't occur, the quality of ALN provision for families within the same local authority could be subject to significant inequalities. Consideration must be given in relation to the impact of the legislation on pre-school playgroups and childminder provision.

As the First 1,000 Days of parenting are now accepted to be the most significant in a child's development, it is especially important that parents are given support from health professionals including health visitors and GPs who are the main universal professional contact for families in the early years. Children in Wales therefore recommends that it is important to raise awareness of the new ALN systems among these professionals and that education services and health child and development teams form positive working relationships.

Post 16

Children in Wales notes that Further Education Institutions (FEIs) are independent and outside the control of LA. Currently FEIs largely support young people with high incidence and low level needs. However as a result of the transfer of post 16 funding from WG to the Local Authority revenue support grant, many young people with complex needs will attend FEIs rather than accessing residential placements. Children in Wales recommends that further clarity is provided within the Bill on how FEIs can be supported under the new system.

Children in Wales is disappointed that the Bill does not include those young people who are on training placements work based learning or apprenticeship schemes which reflects the options available to other young people above compulsory school age.

Advocacy

Children in Wales welcomes the provision within the Bill for children and young people with ALN to have access to an independent advocate. However,

it will be important that all children, parents and young people with ALN are informed and regularly reminded of the entitlement to independent advocacy from the start of the process and not just upon their request.

The Bill does not explicitly provide for the provision of advocacy for parents, this in spite of the Code informing that '*The child, child's parent or young person should be enabled to participate as fully as possible in the decision making processes.*' Children in Wales believes it is vital that the new ALN system does not disadvantage the children and young people, due to the challenge faced by parents of in navigating the system. We recommend that parents must be able to access advocacy support themselves.

Monitoring / Data Recording

Children in Wales recommends that ALN systems and structures form part of Estyn's core inspection of schools, FEIs and local authorities. Statistics on The Education Tribunal and local authorities Dispute Resolution Services cases should be reported to the Welsh Government so that any areas where there may be recurrent issues of a similar nature are identified and addressed.

Children in Wales notes that much responsibility is placed on schools within this Bill. It is important however that local authorities retain a degree of responsibility for monitoring schools and ensuring that they are delivering their duties effectively.