



Ein cyf/Our ref MA(L)ARD/0234/17

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Children, Young People and Education Committee
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11 April 2017

Dear Lynne,

Thank you for your letter of 22 March requesting further information to inform the Committee's Stage 1 report. Provided below are responses to the additional questions you set out in your letter. I have also taken the opportunity to put on record my position on a number of topics not covered in your letter.

Firstly, and crucially, I want to be clear on the scope of the system established by the Bill. A child or young person has additional learning needs if they have a learning difficulty or disability that calls for additional learning provision. The definitions are outlined in sections 2 and 3 of the Bill and guidance on the practical considerations of these definitions is included in the draft Code. The result is that the cohort of learners that will fall within scope of the new system is broadly similar to those currently with special educational needs (including learners who have such needs but do not have a statement).

We consulted on a possible widening of the scope of the definition in 2012. This would have included all children and young people from particular minority or vulnerable groups and those with healthcare needs or with behavioural issues.

A high level of concern was expressed that using a wide definition might dilute the benefits to those learners who most needed support. Feedback was that there was a risk that, in some instances, the majority of a class could fall within this definition. Also, significantly increasing the number of learners brought into scope would inevitably have resulted in a significantly increased workload for delivery partners, with a very broad group of learners entitled to IDPs, which would have made implementation of the changes much more challenging.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

We listened to those strong views and refined our proposals ahead of our 2014 White Paper on legislative proposals and subsequent draft Bill, ensuring that the definition remains focussed on those learners who most need support through the new system. This more focussed approach was welcomed in feedback to the consultations.

We have to be ambitious, and we are, but the reforms will only have a real benefit if delivery is feasible and realistic. We also have to draw clear lines on what falls within the scope of the system and what does not. Extending the definition to cover healthcare needs/medical conditions, for example, would significantly increase the number of learners entitled to a statutory plan and the rights attached to that. It would potentially mean conditions such as peanut allergies, asthma or migraines fell within scope and carried rights of appeal to the Education Tribunal. It would also extend the provision set out in the plan – it would no longer be confined to educational or training provision, but also include healthcare provision which did not educate or train. In short, determining additional learning provision for children and young people with additional learning needs is fundamentally different in nature to supporting learners with healthcare needs.

Such an extension of the system would not be appropriate or proportionate in my view.

If a child or young person has an additional learning need, including where that is caused by a medical condition, they will be covered by the system introduced by the Bill. But not all healthcare needs will involve additional learning needs.

I also wanted to address directly the evidence received by Committee and put to me during the session on 22 March regarding the United Nations Convention on the Rights of the Child (UNCRC). This is a Bill with its foundations in children's rights; it is all about providing greater and equal rights to children. The Bill enshrines into law the relevant principles of the UNCRC by providing for clear and practical duties which give rights to children in this context. For example, children have rights to bring their own appeals and claims to the Tribunal, to request reviews of their IDP and to receive copies of IDPs and rights to independent advocacy services, ultimately to ensure that their voice is heard. Section 6 of the Bill requires those exercising functions under the Bill to have regard to (amongst other things) the views, wishes and feelings of the child or young person concerned

If there is a deficiency in the detailed provisions in respect of children's rights, this should be addressed with a provision specifically to target the deficiency. That will guarantee rights; a due regard duty on front line practitioners does not. It does not require a particular outcome, just that consideration is given. Also, placing such a duty on governing bodies and local authorities may create unintended effects, such as diverting time and resources away from children's services by creating unnecessary bureaucracy. So I am simply not persuaded that amending the Bill to include a due regard duty would strengthen the focus on children's rights in the Bill.

There is also the fact, which I feel strongly about, that the Assembly has already legislated on this point and rightly, placed the duty on Ministers. It is for Governments to ensure that their laws comply with the Convention. It can even be said to be a dereliction of the Government's duty under the Convention to transfer to front line practitioners duties that are aimed at States. This is not something I can support.

Turning to the specific points covered within your letter:

Healthcare needs

- 1. Could the Minister comment on evidence the Committee has received that funding mechanisms under the current SEN framework are used to support healthcare needs even where the learner does not actually have SEN. How does he respond to the concerns of some stakeholders that the Bill will make things worse as such opportunities for flexibility may no longer be available?**

Our delivery partners are best placed to determine how services are provided locally, in response to local need and context. The Bill does not require that resources are directed in a particular way; the position under the current law is maintained in that respect. Therefore, I am not convinced that opportunities for flexibility will not be available.

In fact, there are provisions in the Bill that present opportunities for improvement. For example, the duties placed on NHS bodies to consider whether there is a treatment or service that is likely to be of benefit in addressing the learner's ALN and, if so, to secure it (section 18); and the introduction of the Designated Education Clinical Lead Officer (DECLO) in every health board (section 55). These duties provide scope to improve practice and relationships on the ground, the benefit of which will extend beyond children and young people with ALN.

Individual Development Plans

- 2. Will the final version of the Code contain any more detail than the current draft?**

Changes will be made to reflect any amendments made to the Bill during its passage through the Assembly, and to take account of feedback from stakeholders, including responses to the public consultation on the draft Code to be undertaken in due course. In addition, the development of the Code will also be informed by the IDP Expert Group, which is currently considering the appropriateness and practicality of national guidelines on IDP and support thresholds, along with the other Expert Groups.

- 3. Under the new framework, an extra 90,000 learners will be entitled to a statutory IDP. How confident is the Minister about the capacity of the system to deliver such an additional level of provision? Would the Minister consider placing any detail regarding transitional arrangements on the face of the Bill?**

The new framework does not expand the number of children and young people with ALN in the education system overall. Those learners exist now and are receiving support under the current system via statutory or non-statutory plans. Our reforms focus on consistency, improved planning and ensuring the right support is delivered to the right learners. It is about doing things differently, not doing more.

That said, capacity within the system is something to consider closely. Work with partners is underway to ensure that the workforce is prepared for the reforms. During this new financial year, we will undertake readiness work and assessments to measure the level of preparedness, which will feed into plans for implementation. Estyn will also be undertaking a thematic review to assess the readiness of partners.

You are aware we are currently consulting on implementation options, which will inform our approach to transition, including how children and young people will be transferred on to the system of IDPs. It would therefore be pre-emptive to include transitional arrangements on the face of the Bill.

4. To what extent is there a risk that local authorities will use their power under section 12 to direct schools to maintain IDP due to the pressure on their own resources rather than because it is reasonable for schools to take responsibility?

The Bill does not link maintaining an IDP and securing provision with the funding of provision. These are separate issues and will ultimately be a matter for local determination based on the particular context, including the level of funding delegation to schools.

In practice, schools and local authorities currently work in partnership to agree what can be delivered by schools and what should be delivered by local authorities. I want to see schools, local authorities and others continue working together in the interests of meeting the child or young person's needs.

5. The draft Code provides indicative timescales for the outcome of referrals for assessment, decisions about ALN and the preparation of IDPs. Would the Minister consider placing these on the face of the Bill?

Flexibility is important in this respect. Placing indicative timescales for the outcome of referrals for assessment, decisions about ALN and the preparation of IDPs on the face of the Bill would limit this flexibility. As such, it would be more appropriate to provide these details through secondary legislation.

Although timescales in the draft Code have been tested with partners, these will be kept under review as the operational detail develops through the work of the ALN Strategic Implementation Group and its Expert Groups. We may also need to reflect on the timescales in the light of the consultation on the Code and consider what is appropriate for the transition period and I am keen that we have the option of improving on the timescales once the system beds in. Secondary legislation would allow for this flexibility.

Duties on health bodies

6. How does the Minister respond to the views of health boards (Aneurin Bevan) that the RIA underestimates the costs and resource implications of the DECLO role and that they are concerned it is in the Bill before it has been adequately explored and tested?

Health boards are already required to provide services to children with special educational needs, and the Designated Medical Officer role set out in the SEN Code of Practice 2004 includes the co-ordination of provision made by the health service.

I am satisfied that the principles of the role are sound and am not concerned about its inclusion on the face of the Bill. The role of the DECLO has been welcomed by stakeholders, including health professionals, and the potential of the role has been widely recognised.

However, I accept that the operational detail needs working through; this role is a key aspect of the new system and we must get it right. This is the reason for the DECLO pilot and of bringing professionals together through the Health Expert Group to co-develop the specifics of the role. I have committed to keeping the Committee updated on this work as it progresses.

In terms of the RIA, the costs and resource implications of the role are a best estimate, based on thinking at a particular point. These will be reflected on as the operational detail and specifics of the role take shape.

7. What impact will the Bill have on ALN learners' access to specialist health professionals, such as Speech and Language Therapists? Will it be easier to gain access as a result of a more integrated system with more earlier interventions (the Welsh Government's second overarching objective for the Bill) or more difficult because of greater demands on professionals' time due to the sheer number of IDPs they might potentially need to be involved with?

As outlined in response to question 3, the Bill does not expand the number of children and young people with additional learning needs in the education system overall. Those learners exist now and are receiving support, including from health professionals where necessary, under the current system via statement or non-statutory plans. Our reforms focus on consistency, improved planning and ensuring the right support is delivered to the right learners. Therefore, I do not anticipate greater demands on professionals' time.

Children are increasingly arriving at school with communication and language issues; this is a complex issue, which may not always be health related. I am aware that speech and language therapy is an unnecessary level of intervention for many children and young people. We need to get the broader interventions right at the earliest opportunities. It is up to professionals to consider the needs of individual learners and identify the most appropriate intervention.

Work is already underway through the wider ALN transformation programme to consider opportunities to change practice in key areas, such as speech, language and communication development. My officials are working with speech and language therapists through the Health Expert Group to consider what action can be taken.

8. Does the Minister have any comments on the suggestion from the Royal College of Nursing that there could be a duty within the Bill requiring health boards to consider ALN workforce implications in the workforce planning requirements they submit to the Welsh Government? Are there any other ways he and the Cabinet Secretary for Health have considered factoring in ALN workforce requirements into general NHS workforce planning?

Health boards are required under the NHS Finance (Wales) Act 2014 to prepare a three year Integrated Medium-Term Plan (IMTP) for approval by the Cabinet Secretary for Health, Well-being and Sport. Plans should be integrated, with coherence between service, workforce, infrastructure and financial elements. The NHS Wales Planning Framework provides guidance to organisations on developing IMTPs. This includes a requirement for setting out how maternal and child health services will be delivered across the whole patient journey, and includes children with additional learning needs.

The DECLO will also have an important role to play in the workforce planning arrangements of Health Boards. They will be responsible for ensuring services are in place to support children and young people with additional learning needs and fundamental to this will be effective workforce planning.

Disagreement and appeals

9. How does the Minister respond to the evidence of the WLGA and of SNAP Cymru that the RIA over-estimates the extent to which the new system will reduce disagreement and conflict and therefore the savings identified in the Regulatory Impact Assessment?

As I explained in my letter on 21 March, the information in the RIA is based on data provided and checked by SNAP Cymru. So it's unfortunate that we are in this position.

As I also indicated in my letter, my officials met with SNAP Cymru on 30 March. The meeting was productive and agreement was reached on next steps. My officials are now working through the implications for the RIA. I will update the Committee once this work is complete.

10. What does the Welsh Government project will happen to the number of cases reaching the Tribunal in the run-up to the new system being implemented, immediately after its introduction and subsequently thereafter in the long-term? What lessons are being taken from the experiences of the tribunal system in England following the introduction of the SEN system in 2014?

The Bill will remove the arbitrary line between those learners with special educational needs entitled to a statement and those entitled to only a non-statutory plan. Rather, under the new system all children and young people with additional learning needs will be entitled to a statutory plan. So there is no incentive to push for a statement before implementation and roll out of IDPs. Therefore, whilst I understand and appreciate that with change comes uncertainty, there is no reason to believe Tribunal cases would rise either before or after implementation.

The Bill will, of course, give rights of appeal to young people for the first time, ensuring equity of rights across the full 0-25 age range. The RIA suggests, however, that the resultant increase in Tribunal cases flowing from the increase in the age range will be offset by an anticipated reduction in cases overall, because of the adoption of person centred practice and focus on early and local disagreement avoidance and resolution.

The system introduced in England is very different to the one we are proposing for Wales, which makes comparisons of limited value. However, my understanding is that there has not been a dramatic increase in the number of cases going to Tribunal in England.

11. Can the Minister tell the Committee how many cases directly relating to SEN/ALN have been pursued by families through the 'Putting it Right's NHS redress procedure?

We have looked at the data available and as far as we are aware, no SEN/ALN related cases have been pursued by families through the NHS Putting Things Right process. A general lack of awareness of the process is a likely explanation for this. Work to raise awareness of this right of redress and encourage families to use it where appropriate will form a key part of the awareness raising strand of the ALN transformation programme.

Financial and resource implications

12. The Minister has informed the Committee of corrections needed to the figures within the Regulatory Impact Assessment. How confident is he that the latest figures he has provided the Committee with are robust and accurate?

I wrote to the Children, Young People and Education Committee and Finance Committee in February to highlight a number of minor changes to be made to the RIA as a result of a double counting incident. These were identified during the course of the ongoing review of the RIA and this approach will continue.

I have already said I will write to the Committee once the implications of the change in information provided by SNAP Cymru have been worked through. A revised RIA will be laid before the Assembly following Stage 2 proceedings as per Standing Order requirements.

13. Can the Minister clarify whether the Welsh Government still projects a net administrative saving from the Bill? How much will this be?

We still project a net administrative saving from the Bill. The result of the administrative errors I wrote to the Committees about in February is that savings associated with having to develop learning and skills plans was double counted. Hence the savings associated with the Bill were over-estimated by £354,700 a year.

The estimated overall saving resulting from implementation of the Bill outlined in the RIA is incorrect. It should be just over £13m, or £3.2m a year. If this changes following the review of information from SNAP Cymru, I will update the Committee.

In any event, I have made clear that this is not a cost saving exercise and I do not expect any estimated savings to result in cash savings. The reforms are about providing a quality service and focussing on supporting children and young people; that's what the focus must be and any efficiency savings should be reinvested to this end.

14. To what extent does the £20 million the Minister announced on 7 February for implementation reflect an underestimate of the costs when the Bill and the RIA were published? Or is the £20 million separate to the implementation of the Bill? How much is for the Bill itself and how much for the wider ALN transformation project?

The £20 million funding support package I have made available is not a reflection of us underestimating the cost of implementation of the Bill. The RIA deals with the estimated cost of moving from one statutory system to another, it does not cost the wider culture and practice changes needed for true transformation. That is what the £20 million is aimed at.

As per my letter of 8 March to both the Children, Young People and Education Committee and the Finance Committee, the £20 million funding is for implementation of the programme in the round. It is difficult to separate out activities directly around implementation of the Bill. This is about a holistic approach to implementation of a complete new approach.

My letter also provides a full breakdown of how we expect to direct the funding, with reference to the main workstreams of the programme: implementation and transition support; workforce development; supporting policy; and awareness raising.

15. How will any additional funding be allocated to local authorities – through ring-fenced grants or through the Revenue Support Grant?

The £20 million implementation funding will be administered through grant funding, which is standard practice. However, it must be an appropriate and proportionate process. I envisage a grant allocation rather than a grant application process, but one that is based on clear criteria around what we expect of partners.

I want to avoid creating a bureaucracy. It is important that agencies focus on identifying priorities for action to meet the context of local areas. This is the approach we have taken with the ALN Innovation Fund – albeit on a regional basis – and it is working effectively.

The funding for specialist post 16 placements will be transferred to the Revenue Support Grant, which is appropriate as this is a transfer of funding, not a time specific grant. The details of this transfer are being discussed by the Distribution Sub Group.

Duty to presume mainstream provision

16. Does subsection 45(4), which states a local authority does not have to comply with a parental request for their child to be placed in a special school change the current law rather than clarify the existing position? Will parents who particularly want their child to be educated in a special school have more difficulty in achieving this than under the current system?

A parental wish for a child to be educated in a special school removes the local authority's *duty* to secure mainstream maintained education (under section 45(1)), but it does not *require* the local authority to educate in accordance with the parental wishes. Section 45(4) is intended to clarify this.

We consider the broad effect under the current law and that under the Bill to be the same – that is, that a parental wish for a child to attend a special school is not guaranteed as other considerations come into play.

Disabled children's rights

17. Would the Minister consider placing a duty on the face of the Bill on relevant bodies to have due regard to the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)? If he does not think this is needed, why not?

These reforms are about learning needs and not disabilities per se, although a disability may result in a child or young person having ALN. The Bill reflects the general principles in article 3 of the United Nations Convention on the Rights of Persons with Disabilities and other provisions (including article 24 on education) which are relevant in this context. For example, the very purpose of the Bill is to ensure that learners with ALN receive effective support which is particular to their individual needs in order to facilitate their education and development. It also seeks to maximise inclusion (see sections 45 and 46). Specific reference to this Convention on the face of the Bill is neither necessary nor appropriate.

Similar arguments as regards the UNCRC apply here. I am not convinced it is appropriate for professionals on the front-line to be subject to such a duty, as the Convention is directed at States. However, in complying with their duties under the Bill, these front-line services will be acting in accordance with the general principles in article 3 of the Convention, which the Bill reflects.

The ALN Code

18. What degree of change does the Welsh Government anticipate making to the Code before a final version is published for consultation after the legislation is made? To what extent will the general principles remain the same? What types of changes will be made?

As outlined in the response to question 2, I expect some changes to be made to the draft Code. I have been clear that the Code is a working draft and its development continues. Changes will need to be made to reflect any amendments made to the Bill, the development of regulations, professional advice, including from our Expert Groups, and responses to the public consultation on the draft Code to be undertaken in due course. I would expect these changes to relate largely to operational matters. I would not expect the general principles to change.

I hope this information is helpful in informing the Committee's Stage 1 report. I look forward to receiving your report next month.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Alun', with a horizontal line underneath.

Alun Davies AC/AM

Gweinidog y Gymraeg a Dysgu Gydol Oes
Minister for Lifelong Learning and Welsh Language