

Finance Committee
**Financial implications of the
Additional Learning Needs and
Education Tribunal (Wales) Bill**

May 2017



National Assembly for Wales
Finance Committee

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To carry out the functions of the responsible committee set out in Standing Order 19; the functions of the responsible committee set out in Standing Orders 18.10 and 18.11; and consider any other matter relating to the Welsh Consolidated Fund.

Current Committee membership:



Simon Thomas AM (Chair)
Plaid Cymru
Mid and West Wales



David Rees AM
Welsh Labour
Aberavon



Steffan Lewis AM
Plaid Cymru
South Wales East



Mike Hedges AM
Welsh Labour
Swansea East



Nick Ramsay AM
Welsh Conservative
Monmouth



Eluned Morgan AM
Welsh Labour
Mid and West Wales

The following Member was also a member of the committee during this inquiry.



Mark Reckless AM
UKIP Wales
South Wales East

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01. Background and Overview

1. The Additional Learning Needs and Education Tribunal (Wales) Bill (the Bill) was introduced by Alun Davies AM, Minister for Lifelong Learning and Welsh Language (the Minister) on 12 December 2016.
2. The Bill proposes to replace the current Special Educational Needs (SEN) framework with a reformed system based on Additional Learning Needs (ALN).
3. The Explanatory Memorandum (EM) details three overarching objectives of the Bill:
 - 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);
 - an integrated, collaborative process of assessment, planning and monitoring which facilitates early, timely and effective interventions; and
 - a fair and transparent system for providing information and advice, and for resolving concerns and appeals.¹
4. The EM states that the Bill’s provisions are based on ten core aims established by the Welsh Government, in order to meet these three objectives:
 - The introduction of the term Additional Learning Needs (ALN);
 - A 0 to 25 age range;
 - A unified plan;
 - Increased participation of children and young people;
 - High aspirations and improved outcomes;
 - A simpler and less adversarial system;
 - Increased collaboration;
 - Avoiding disagreements and earlier disagreement resolution;
 - Clear and consistent rights of appeal; and
 - A mandatory Code.²
5. A Regulatory Impact Assessment (RIA) is contained in the EM, which presents the estimated costs and benefits resulting from the Bill.
6. The Committee took evidence from the Minister on the financial implications of the Bill on 8 February 2017.

¹ Explanatory Memorandum, paragraph 3.3

² Explanatory Memorandum, paragraph 3.5-3.16

02. Summary of additional costs and benefits of the Bill

7. The RIA compares the costs of two options:

- Option one – Do nothing, and
- Option two – Introduce legislation to improve the current Special Educational Needs (SEN) system to reduce existing conflict in the system and improve outcomes for young people with additional learning needs (ALN).³ This is the Welsh Government’s preferred option.

8. The EM states that in 2015-16, 107,668 out of 477,549 pupils had SEN.⁴ The Welsh Government estimates that the current system will cost £365.4 million in 2016-17, with the majority of costs (£324.6 million) falling on local authority education services and schools.⁵

9. The preferred option to introduce legislation incurs expenditure in the form of transition costs amounting to £12 million and increases ongoing costs for some organisations (health boards, further education institutions, Estyn and the Welsh Government) by £1.1 million.

10. The Bill proposes replacing the existing SEN and learning difficulties and/or disabilities (LDD) plans with a statutory Individual Development Plan (IDP) for those with additional learning needs. The EM identifies cost savings for local authority education services in terms of fewer disagreements regarding decisions relating to assessing and issuing IDPs than is currently the case with statements and fewer decisions appealed to the Special Educational Needs Tribunal Wales (SENTW).⁶ The original RIA states that there is potential for the Bill to generate net savings of £14.2 million between 2017-18 and 2020-21 (excluding transition costs).⁷

11. The Minister subsequently wrote to the Chair of the Children, Young People and Education (CYPE) Committee on **7 February 2017** to explain that errors had been identified in the RIA, which had resulted in a number of changes to the figures included in that document. These revisions impacted on the estimated overall savings flowing from the implementation of the Bill, reducing the £14.2 million net savings specified in the RIA to £12.8 million over the four-year period 2017-18 to 2020-21.

12. When the Committee asked whether the Bill had been driven by the anticipated cost savings, the Minister said:

“I don’t want it to be seen as a way of changing the system just to save money. What I want to see is that this Bill is seen as something that transforms the system and changes the experience of learning.”⁸

13. Addressing the revised RIA figures which were included in his letter of 7 February 2017, the Minister said he considers “that these figures are robust and that they are figures that you can depend upon”.⁹

³ Explanatory Memorandum, Chapter 8

⁴ Explanatory Memorandum, Table 2, page 118

⁵ Explanatory Memorandum, paragraph 8.15

⁶ Explanatory Memorandum, paragraph 8.203

⁷ Explanatory Memorandum, page 87

⁸ Record of Proceedings, Finance Committee, 8 February 2017, paragraph 6

⁹ Record of Proceedings, Finance Committee, 8 February 2017, paragraph 12

14. The Minister told the Committee that following the identification of errors in the RIA he would be looking to revise the RIA at subsequent stages in the Bill process. He advised that “we’re not just publishing the RIA here and then letting it be; we review the RIA as we move forward”.¹⁰

15. In evidence to the CYPE Committee, the Minister indicated that transformation activity which would be required alongside the provisions in the Bill may go on beyond the timescales recorded in the RIA. He stated:

“We published an RIA for the period of this Assembly until 2021. We’re seeking to do two things... To create different structures and different processes, and to do that with the legislature changes that we’re debating and discussing this morning. We’re doing it through a transformation programme, which is about the culture change we spoke about earlier – it’s about the training, it’s about enabling people and creating capacity within the system – and then we’re seeking to deliver that consistently across the face of the country, and to do that bilingually. Now, will we achieve all of that within the four years? I think that’s pretty unlikely.”¹¹

16. On 7 February 2017, the Minister announced¹² plans for an investment of £20 million to:

“support ALN learners in a range of ways over the next five years, including helping the education sector transfer to [the] new system set out in the Bill, encouraging organisations to work closely together, developing the workforce and raising awareness of ALN.”¹³

17. The Minister told the Committee that the £20 million additional funding related not only to the Bill, but also to wider transformation activity. He continued:

“...this Bill is part of the process of transformation, and what I have tried to focus on during the discussions that we’ve had is that we want to transform the system, and as part of that, I’ve pledged and have made a clear commitment to the Assembly that we will be funding the changes. Now, the changes do go beyond the Bill. It’s part of the process, but not the process in its entirety. So, what we’re trying to do in this new package of £20 million is to ensure that we invest in people, and invest mainly in the people, truth be told, but also ensure that we can expand and strengthen, if you like, the kind of systems that we have. So, the funding is new, but I want to make it clear that even though this is new funding, part of the funding is part of the £100 million that Kirsty Williams [Cabinet Secretary for Education] has already announced for education. So, it’s part of the education budget.”¹⁴

18. The Minister wrote to the Committee on **8 March 2017** outlining how the £20 million funding will be allocated to facilitate and support the implementation of the Bill. The letter also confirmed that £10.1 million of the £20 million programme will be drawn from the additional £100 million

¹⁰ Record of Proceedings, Finance Committee, 8 February 2017, paragraph 12

¹¹ Record of Proceedings, Children, Young People and Education Committee, 12 January 2017, paragraph 341

¹² **Written Statement: Minister for Lifelong Learning and Welsh Language, 7 February 2017**

¹³ **Welsh Government, Press Release, 8 February 2017**

¹⁴ Record of Proceedings, Finance Committee, 8 February 2017, paragraph 17

investment announced by the Cabinet Secretary for Education to improve school standards,¹⁵ whilst the remaining £9.9 million is based on planning assumptions that the ALN budget line is maintained at its current level until 2020-21.¹⁶

19. The Committee queried why the additional funding is necessary, given that the RIA identifies savings. In response, the Minister said:

“As we change the system, as the RIA states, we do foresee some savings to different bodies. However—however—because this element of the wider transformational process shouldn’t be taken in isolation and shouldn’t be taken in isolation from the overall transformational programme, which will not be cost-neutral or which won’t be about savings—it’s about changing the system—then we’re not looking at savings in the way of releasing additional resources and cash to a local authority to do other things with, for example. What we’re doing is seeking to streamline the system to invest those savings back in the system to deliver transformational change. So, if you isolate the different elements of this programme, then you don’t get the full picture. But we deliver the Bill, we deliver the legislative change, we deliver a new statutory system—that will create some savings, as outlined in the impact assessment; those savings are then reinvested in a wider transformational programme, which has now seen additional investment from Government.”¹⁷

Committee view

20. The Committee notes that errors in the RIA resulted in a reduction in the anticipated savings which would be achieved by implementing the Bill’s provisions and acknowledges the Minister’s assurances that the revised financial information is robust. However, the Committee is disappointed that these errors were not identified prior to the Bill’s introduction and only notified to the Committee the day before it took evidence from the Minister, which had an impact on its ability to robustly scrutinise the financial implications of the Bill.

21. The Committee acknowledges that there is scope for savings in terms of staff time spent statementing learners and dealing with appeals, and supports those savings being reinvested in the ALN system.

22. The Committee recognises that the Welsh Government’s ambitions to overhaul the system for supporting pupils with ALN extend beyond the Bill itself, however, it believes that the cost of implementing the Bill was underestimated when it was introduced. Therefore, the Committee welcomes the additional £20 million funding, which should assist in delivering the Bill’s aims. The Committee also notes how the Welsh Government anticipates allocating this funding to support ALN transformation as outlined in the Minister’s letter of 8 March 2017. The Committee recognises that the wider context of transformational change makes it more challenging to categorise costs, however, the lack of clarity surrounding the funding necessary to directly support and facilitate the implementation of the Bill makes it difficult for the Committee to undertake the robust financial scrutiny it strives to achieve.

¹⁵ [Welsh Government, Press Release, 20 October 2016](#)

¹⁶ [Letter from the Minister for Lifelong Learning and Welsh Language, 8 March 2017](#)

¹⁷ Record of Proceedings, Finance Committee, 8 February 2017, paragraph 93

23. The Committee notes from the letter of 8 March 2017 that £9.9 million of the £20 million additional investment is reliant on future year budget allocations and that the Minister's spending intentions are subject to change as the work of the ALN Strategic Implementation Group develops. The Committee intends to monitor and review the implementation of the provisions in the legislation as it is clear that its financial impact is still being established and that the Minister anticipates further transition costs beyond those identified in the RIA. As such, the Committee will be considering the revised EM which will be published after Stage 2 proceedings.

Recommendation 1. The Committee recommends that the Regulatory Impact Assessment is updated to incorporate the relevant revisions to figures.

Recommendation 2. The Committee recommends that there is transparency regarding the £20 million additional funding for Additional Learning Needs and that any revised Regulatory Impact Assessment makes clear whether additional funding is being made available for the purposes of the Bill.

03. Transition Costs

24. The RIA identifies £12 million in transition costs, comprising of £9.4 million for the Welsh Government and £2.6 million for other organisations. The anticipated transition costs for the Welsh Government comprise of £2.4 million costs to the Welsh Government and £7 million in transition grants available to other organisations.¹⁸

Costs to other organisations

25. When the Minister appeared before the Committee he confirmed that the £2.6 million cost to other organisations had been superseded by his announcement on 7 February of £20 million additional funding. He said:

“I would anticipate and expect that yesterday’s announcement will cover much of that £2.6 million, and if there are residual amounts required, then clearly, we will look at that and look at trying to deliver sufficient resources on the basis of that.”¹⁹

Costs to the Welsh Government

26. The RIA identifies the following transition costs to the Welsh Government:

- £1.1 million for the second year of the ALN Innovation Fund in 2017-18;²⁰
- £135,000 to support the ongoing work of the ALN Strategic Implementation Group between 2017-18 and 2020-21;²¹
- £200,000 between 2017-18 and 2020-21 on work monitoring compliance with the new legislative requirements;²²
- £300,300 over the three year period 2018-19 to 2020-21 to fund a strategic advisor to work with local authorities and other delivery partners as they transition to the new ALN system;²³ and
- £400,000 between 2017-18 and 2020-21 on developing resources and awareness-raising activities to support the implementation of the Bill.²⁴

27. A team will be employed to support the implementation of the legislation, amounting to £558,200 in staff costs between 2017-18 and 2020-21²⁵ and the Welsh Government will also spend £18,000 updating guidance materials and £76,220 producing the new code of practice.²⁶

ALN implementation grants

28. The Welsh Government intends to make a number of ALN implementation grants available to facilitate the Bill’s implementation, including:

¹⁸ Explanatory Memorandum, page 86

¹⁹ Record of Proceedings, Finance Committee, 8 February 2017, paragraph 78

²⁰ Explanatory Memorandum, Table 5, page 124

²¹ Explanatory Memorandum, paragraph 8.32

²² Explanatory Memorandum, paragraph 8.34

²³ Explanatory Memorandum, paragraph 8.35

²⁴ Explanatory Memorandum, paragraph 8.36

²⁵ Explanatory Memorandum, paragraph 8.37

²⁶ Explanatory Memorandum, paragraphs 8.38-8.39

- £5.2 million between 2017-18 and 2020-21 through the ALN implementation grant for local authorities;
- £280,000 ALN Grant funding for Further Education Institutions (FEIs) between 2017-18 and 2019-20;
- £101,000 available to the SENTW in 2018-19;
- £14,000 for Local Health Boards (LHBs) in 2018-19; and
- £225,000 to Estyn between 2018-19 and 2019-20.²⁷

29. When asked whether there was any accounting for contingency within the transition grants, the Minister said he hoped that the additional £20 million announced on 7 February would enable investment in real change more quickly. He continued:

“...I’m confident that we have the numbers available to us and that we have the funding and resources available to us, but, clearly, if in future years it becomes apparent that we need additional funding, then I’ve got no issue at all with seeking that additional funding.”²⁸

30. In terms of how the ALN grant funding will be distributed, the Minister told the Committee that he “wouldn’t want local authorities to have to go through an application process”.²⁹ The Welsh Government official accompanying the Minister explained:

“Our current thinking there is to keep the bureaucracy at an absolute minimum in relation to that, to develop a formula-based allocation. Our thinking is probably not to use data on current SEN levels, because one of the reasons that we’re seeking to legislate is that we know that that differs in terms of different approaches and different policy applications in different local authorities. So, potentially, on a population-type basis, but we’ll work with finance colleagues within local authorities to find a fair distribution method and keep it to a minimum in terms of bureaucracy—no large-scale application process and funding where we see it being needed.”³⁰

31. The Minister also indicated that he would not anticipate other organisations such as FEIs, Estyn or LHBs having to make a grant application.³¹

32. The Minister confirmed in his letter of 11 April 2017 to the CYPE Committee that:

“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.”³²

²⁷ Explanatory Memorandum, Table 72, page 293

²⁸ Record of Proceedings, Finance Committee, 8 February 2017, paragraph 70

²⁹ Record of Proceedings, Finance Committee, 8 February 2017, paragraph 72

³⁰ Record of Proceedings, Finance Committee, 8 February 2017, paragraph 47

³¹ Record of Proceedings, Finance Committee, 8 February 2017, paragraphs 74-76

³² [Letter from the Minister for Lifelong Learning and Welsh Language](#), 11 April 2017

Developing learning plans for post-16 learners

33. Under the existing regime, Careers Wales is responsible for developing learning and skills plans for learners with learning difficulties and/or disabilities entering further education. The Bill proposes to replace learning and skills plans with IDPs and transfers responsibility to local authorities. The role of Careers Wales will change from developing learning and skills plans to supporting local authorities to maintain IDPs for FEI learners.³³ The Welsh Government will continue to fund Careers Wales during the two year implementation period 2018-19 to 2019-20, at a cost of £709,400.³⁴

34. The Minister confirmed that, whilst funding will be transferred from Careers Wales to local authorities for further education placements, no decision has been taken to ring-fence this funding. He said:

“I have no view on that at the moment, and I want to have that conversation with people, but I do have worries, quite honestly, because if you ring-fence a particular amount of money, that ring fence could end up being a cap and we don’t want that. So, I think we need to have a conversation with local government about the sorts of financial structures that enable all local authorities to receive the sorts of resources they need.”³⁵

Additional Learning Needs Co-ordinator (ALNCo)

35. The existing approach to co-ordinating support for children and young people with SEN is through a Special Educational Needs Co-ordinator (SENCo). The Welsh Government has estimated that each education setting employs one person in a SENCo position, at an estimated annual cost of £65.3 million to schools, £1.2 million to Pupil Referral Units and £513,100 to FEIs.³⁶

36. The Bill introduces a statutory Additional Learning Needs Co-ordinator (ALNCo) role in all education settings (other than special needs schools) and requires all ALNCos to undertake a Masters level programme of training.³⁷ The EM states that the establishment of the ALNCo position is not expected to result in any additional ongoing costs due to education settings already having a SENCo role in place.³⁸ However, the ALNCo role will attract the most significant transition cost of the Bill estimated to be £9.3 million, in order to train individuals currently undertaking similar positions to the required standard.³⁹

37. In response to questions regarding the ALNCo role, the Minister said:

“The key issue facing us in the new role of the ALNCO is to ensure that they have continuing professional development and that they have the training available to them. That is what we’re investing in and that’s part of the expenditure of £20 million that we announced yesterday. So, we do have an expectation that SENCOS are within the current system, but we also recognise that we need—not so much to fund new posts—but we do need to ensure that

³³ Explanatory Memorandum, paragraph 8.173

³⁴ Explanatory Memorandum, paragraph 8.40

³⁵ Record of Proceedings, Finance Committee, 8 February 2017, paragraph 50

³⁶ Explanatory Memorandum, paragraphs 8.502-8.504

³⁷ Explanatory Memorandum, paragraphs 5.13-5.14

³⁸ Explanatory Memorandum, paragraph 8.516

³⁹ Explanatory Memorandum, Table 68, page 259

they do have the expertise that they require. And, of course, the Bill doesn't demand full-time ALNCOs; it doesn't make that demand on schools."⁴⁰

38. The Minister subsequently confirmed, in his letter of 8 March 2017, that £12 million of the £20 million package of support will be invested in workforce development between 2017-18 and 2020-21.⁴¹

39. When asked whether there will be any mechanism to ensure that ALNCOs stay within the Welsh education system given the level of investment required, the Minister said:

“We don't have any golden handcuffs, as it were. But we had a debate briefly, I think, in the Chamber yesterday or last week about the devolution of teacher's pay and conditions to this place, which is taking place, and it might well be that, as a part of that process, we may be able to explore some of those different options. I have no strong views on that, but I would certainly want and anticipate that teachers who are qualified under this system will want to stay in Wales and practice and deliver on that... I would hope and anticipate that, by having a system in Wales that enables teachers to teach and enables teachers to focus in on a classroom in a way that doesn't always happen across the border—that it would be a better environment in which to work, and that teachers would choose to stay and to work in Wales.”⁴²

Committee view

40. The Committee welcomes the additional £20 million funding and acknowledges that, as a result of this additional money, the Minister expects that implementing the Bill will be cost-neutral for local government and other organisations within the period of this Assembly. However, the Committee notes that £9.9 million of this additional investment is reliant on future year budget allocations.

41. The Committee is grateful to the Minister for the information on the allocation of the additional £20 million provided in his letter of 8 March 2017, however it is disappointed that this did not distinguish between how the money would be broken down to cover the costs of implementing the Bill's provisions and the wider transformation changes. Whilst noting the Minister's comments about the difficulty in separating these costs, the lack of such detail makes it difficult to scrutinise the costs involved in implementing the legislation and the accuracy of the figures provided by the Welsh Government. The Committee supports the Welsh Government's approach to distributing implementation grants without the burden of an application process, and notes that discussions are ongoing as to the formula for allocating grant funding. However, the Committee is concerned that the Bill is in danger of raising expectations and, without a clear financial steer, it questions whether local authorities will be able to deliver the Bill's provisions.

42. The Committee notes that the majority of transition costs are associated with the ALNCO Masters level qualification and believes that the Welsh Government should put mechanisms in place to retain qualified ALNCOs in Wales to ensure that the benefits of such a significant investment are fully achieved.

⁴⁰ Record of Proceedings, Finance Committee, 8 February 2017, paragraph 138

⁴¹ [Letter from the Minister for Lifelong Learning and Welsh Language, 8 March 2017](#)

⁴² Record of Proceedings, Finance Committee, 8 February 2017, paragraph 143

Recommendation 3. The Committee recommends that the Additional Learning Needs implementation grant funding provided to local authorities and other organisations should be ring-fenced to ensure that its use specifically relates to implementing obligations from the Bill.

Recommendation 4. The Committee recommends that the process for distributing grants should be well considered with a view to minimising bureaucracy, whilst ensuring value for money.

Recommendation 5. The Committee recommends that the Welsh Government considers strategies to retain and minimise turnover of Additional Learning Needs Co-ordinators, given the level of investment required to achieve the prescribed qualifications.

04. Ongoing costs

43. The EM states that the total ongoing costs (excluding transition costs) for the period 2017-18 to 2020-21 equate to £532.9 million, an average of £133.2 million a year.⁴³ In contrast, the ongoing costs associated with maintaining the current process under option one is £545.6 million, an average of £136.4 million a year.⁴⁴

44. The RIA identifies increased revenue costs for the following four organisations:

- LHBs: £206,400 per year to fund three Designated Education Clinical Lead Officer (DECLLO) roles to support improved collaboration between health, education and social care in the delivery of services for children and young people with ALN.⁴⁵
- FEIs: £23,200 per year to respond to appeals made by young people as a result of extending the right of appeal to the SENTW to include those learners aged up to 25, with ALN and attending further education.⁴⁶
- Estyn: £43,000 per year as a result of the increase in the number of independent schools Estyn will be responsible for monitoring.⁴⁷
- Welsh Government: £170 per year through various activities including transfers of funding and registration costs.⁴⁸

Plans to support children and young people with additional learning needs

45. The Bill replaces the existing support plans with a single, statutory, IDP for children and young people with SEN and LDD, aged 0-25. The Welsh Government estimates that creation of the IDP will increase the number of learners with a statutory plan by 94,350. The RIA identifies as a key risk the:

“potential for a proportion of the additional 94,350 children, young people and/or their parents to have increased expectations of a statutory plan compared to their previous non-statutory plan and to challenge decisions regarding provision.”⁴⁹

46. In response to concerns raised by the Committee that the significant increase in the number of learners entitled to a statutory plan could lead to increased expectation and additional costs, the Minister said he hoped that moving away from a statementing system which was “rooted in conflict” to an IDP process which is open to everybody would raise expectations.⁵⁰ He added:

“By moving away from that, I hope that we are releasing resources in the way that we’ve already described. But we’re also enabling support to be delivered in a more coherent way. So, we don’t expect, and we don’t anticipate, that we will be increasing costs, but we do anticipate that we will be moving to a very

⁴³ Explanatory Memorandum, Table 70, page 290

⁴⁴ [Letter from the Minister for Lifelong Learning and Welsh Language, 7 February 2017](#)

⁴⁵ Explanatory Memorandum, paragraph 8.552

⁴⁶ Explanatory Memorandum, paragraph 8.575

⁴⁷ Explanatory Memorandum, paragraph 8.576

⁴⁸ Explanatory Memorandum, page 86

⁴⁹ Explanatory Memorandum, paragraph 7.30

⁵⁰ Record of Proceedings, Finance Committee, 8 February 2017, paragraph 123

different system, and I think a system that will be welcomed on all sides of the Chamber.”⁵¹

47. When asked whether he was confident that the estimated figure of 94,350 additional learners is accurate, the Minister said:

“...we are confident that we know how many children have special needs and additional needs. We think that we know how many of those there are, and I don't know of any figures that suggest that we've had this wrong or any other figures that suggest that figures should be higher or lower. So, I'm very confident that we know how many children and young people are in the system at present, and what we're doing is expanding provision for everyone.”⁵²

48. In relation to the capacity of the system to deliver for the additional learners who would be entitled to a statutory IDP, the Minister said in his letter of 11 April that:

“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.”⁵³

49. In evidence to the CYPE Committee, SNAP Cymru⁵⁴ challenged the costs on dispute resolution set out in the RIA. The CYPE Committee subsequently **wrote** to the Minister to seek further information on this issue and the Minister **responded** on 21 March 2017 confirming that the figures in the RIA on dispute resolution are based on data provided by SNAP Cymru. In his letter, the Minister advised that his officials have arranged a meeting with the stakeholder concerned “to discuss the relevant data and agree a way forward” and that the RIA will be amended if necessary.⁵⁵

Responsibility for assessing need post-16 and securing specialist further education provision

50. The Bill proposes transferring the responsibility for planning and securing independent specialist college placements for young people with LDD from the Welsh Government to local authorities. This means that the existing budget of £12.4 million a year used by Welsh Ministers to plan and secure specialist post-16 provision will be transferred the local government.⁵⁶ The RIA states that “as a result, local authorities will not, therefore, be subject to any additional ongoing costs associated with option two”.⁵⁷ The RIA does not specify whether this funding will be ring-fenced or transferred into the Revenue Support Grant, however the Minister's letter of 11 April states that:

“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,

⁵¹ Record of Proceedings, Finance Committee, 8 February 2017, paragraph 124

⁵² Record of Proceedings, Finance Committee, 8 February 2017, paragraph 173

⁵³ **Letter from the Minister for Lifelong Learning and Welsh Language**, 11 April 2017

⁵⁴ Written evidence, Children, Young People and Education Committee: **ALN78: SNAP Cymru**

⁵⁵ **Letter from the Minister for Lifelong Learning and Welsh Language, 21 March 2017**

⁵⁶ Explanatory Memorandum, Table 69, page 279

⁵⁷ Explanatory Memorandum, paragraph 8.392

not a time specific grant. The details of this transfer are being discussed by the Distribution Sub Group.”⁵⁸

51. Addressing concerns that local authorities may not allocate the transferred funding as anticipated unless it is ring-fenced, the Minister confirmed that options are currently being considered by the distribution sub-group and reminded the Committee that local authorities could ultimately be sanctioned through a tribunal. He added:

“What I don’t want is a cap or a fixed budget; we want to have a demand-led, if you like, budget, whereby everybody who requires a placement, a specialist placement, in further education, will be able to have that delivered for them, irrespective of the funding issues. Clearly, if that is not delivered by individual local authorities, then people will have the right to go to a tribunal, but I don’t see us arriving in that very confrontational place. We know that local authorities are already working with further education institutions in order to deliver specialist provisions and to increase the local options available to people. So, we know that that change, if you like, is already beginning to take place.”⁵⁹

Designated Educational Clinical Lead Officer (DECLO)

52. There is currently no requirement for LHBs to appoint a lead role or single point of contact with strategic responsibility for health related provision for children and young people with SEN. Therefore, LHBs currently adopt diverse approaches to this role and there is no common set of responsibilities for the position.⁶⁰

53. The Bill introduces a statutory DECLO within LHBs, with responsibility for establishing efficient systems to ensure the health services involved in ALN assessment “are skilled to undertake appropriate, timely assessments, make evidence based recommendations on effective interventions, monitor outcomes, quality assure advice and benchmark across health boards to reduce any variation in practice or expectations”.⁶¹

54. The DECLO will be a registered health professional with clinical qualifications and the Welsh Government expects the time allocated to the role will be one day per week per 200,000 population or per 40,000 children and young people. This would equate to three full-time positions spread across the seven LHBs.⁶² The establishment of the DECLO will result in ongoing costs of £206,400 per year to employ three DECLOs, amounting to £825,600 over the four years.⁶³

55. In relation to the funding mechanism for the mandatory DECLO role, the Minister said:

“There is an expert group on health at the moment, looking at these matters. I haven’t seen a report from them. We know that health boards are piloting at the moment, and if there is a need for additional resources, then that’s something I

⁵⁸ [Letter from the Minister for Lifelong Learning and Welsh Language](#), 11 April 2017

⁵⁹ Record of Proceedings, Finance Committee, 8 February 2017, paragraph 132

⁶⁰ Explanatory Memorandum, paragraphs 7.104-7.105

⁶¹ Explanatory Memorandum, paragraph 7.109

⁶² Explanatory Memorandum, paragraphs 7.110-7.111

⁶³ Explanatory Memorandum, paragraph 8.577

can write to the committee to explain when we have further information from the expert group and from the pilots.”⁶⁴

Committee view

56. The Committee recognises the Welsh Government’s aspirations for a needs-based, equitable system for supporting learners with ALN and notes that the estimated increase of 94,350 additional young people with a statutory plan has not been challenged. However, the Committee is concerned that the cost of expanding the system to those who need more support than available at present could escalate if the actual number of learners is higher than anticipated.

57. The Committee is concerned that the anticipated time allocated to the new DECLO role proposed by the legislation is inadequate and notes that the role is currently being considered by the Expert Group on Health and piloted by LHBs.

Recommendation 7. The Committee recommends that the funding transferred from the Welsh Government to local authorities for assessing the needs of post-16 students and securing specialist further education provision must be used for meeting the specific obligations of the Bill.

Recommendation 8. The Committee recommends that the Welsh Government provides an update on the outcome of the pilots and the Expert Group on Health’s conclusions in relation to the funding implications of the Designated Educational Clinical Lead Officer role.

⁶⁴ Record of Proceedings, Finance Committee, 8 February 2017, paragraph 149

05. Financial implications of subordinate legislation

58. Section 4 of the Bill requires the Welsh Ministers to issue a Code on ALN and section 5 requires the Welsh Government to consult on a draft of the Code prior to laying it before the Assembly, under a draft negative procedure.⁶⁵

59. The Code sets out much of the detail regarding the way in which assessments will be carried out and decisions concerning the provisions needed to meet a learner's ALN. The EM states that the Bill "enables the Code to provide detailed requirements about how IDPs are to be prepared, maintained and reviewed".⁶⁶

60. The Welsh Government published an early working draft of the new ALN Code in September 2015, during its consultation on the draft Bill. The Minister subsequently shared a draft version of the Code with the CYPE Committee on 14 February 2017.

61. During oral evidence to the CYPE Committee on 12 January 2017, the Minister commented that, whilst the code had not yet been released, it had informed the development of costs, adding:

"The code reflects the Bill, and so we're not going to revisit the impact assessment on the basis of publication of the code."⁶⁷

62. When asked how the additional costs of any changes to the Code and its implementation will be assessed, the Minister said:

"The [draft] code that's published next week is a document that is published for information. The final code will depend on the shape of the final Act, and the code itself, which will become statutory guidance, will of course be subject to its own parliamentary processes and its own scrutiny at that time. So, we will be able, at that time, to have that conversation, that debate. But the code that we're publishing next week is an aid to scrutiny. It isn't the code that we would expect to become law consequent to this Bill becoming law and receiving Royal Assent."⁶⁸

Committee view

63. The Committee accepts that the draft Code has been published to aid scrutiny and is subject to change. However, as most of the detailed requirements for IDPs will be set out in the Code, rather than on the face of the Bill, it is difficult for the Committee to understand the full costs and benefits of the Bill. The Committee believes that estimated costs for the delivery of provisions being made by subordinate legislation is important to enable sufficiently robust financial scrutiny of Bills and that this information should be provided alongside the substantive legislation.

64. In its report on the financial implications of the Public Health (Wales) Bill, the Committee concluded that the provision of estimated costs for the delivery of provisions being made by secondary legislation is important to enable the Assembly to fully understand the costs and benefits of a Bill. The Committee re-iterates that conclusion here.

⁶⁵ Additional Learning Needs and Education Tribunal (Wales) Bill

⁶⁶ Explanatory Memorandum, paragraph 3.134

⁶⁷ Record of Proceedings, Children, Young People and Education Committee, 12 January 2017, paragraph 338

⁶⁸ Record of Proceedings, Finance Committee, 8 February 2017, paragraph 164

Recommendation 9. The Committee re-iterates the recommendation made by the previous Finance Committee, that the Welsh Government should undertake work to develop a more consistent approach across Bills to providing costs associated with subordinate legislation, to enable better scrutiny of the full costs and benefits of Bills.

Recommendation 10. The Committee recommends that the estimated costs of implementing subordinate legislation are provided, where possible, when a revised Explanatory Memorandum is published after Stage 2.