

# Financial implications of the Additional Learning Needs and Education Tribunal (Wales) Bill – Supplementary report

September 2017

## Background

01. 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. The Finance Committee (the Committee) initially undertook scrutiny of the financial implications of the Bill on [8 February 2017](#) and laid its [Stage 1 scrutiny report](#) prior to the reporting deadline of 24 May 2017.
02. The Minister wrote to the Committee on [7 February 2017](#) (one day prior to the Finance Committee’s scrutiny session with the Minister) detailing errors in the [original Regulatory Impact Assessment \(RIA\)](#). The letter outlined a reduction in savings from £14.2 million over the four-year implementation period, to £12.8 million, citing an instance of double counting as the primary error. These issues were considered by the Committee during its scrutiny of the RIA and resulted in a recommendation in the [Committee’s report](#) for the RIA to be updated with the relevant figures.
03. On 7 February 2017, the Minister also [announced](#) a £20 million funding package to support Additional Learning Needs transformation. In its [report](#), the Committee recommended 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”.<sup>1</sup>

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<sup>1</sup> [Finance Committee, Financial implications of the Additional Learning Needs and Education Tribunal \(Wales\) Bill, May 2017, Recommendation 2](#)



## Stage 1

04. The Minister wrote to the Chairs of the Finance Committee and the Children, Young People and Education (CYPE) Committee on 25 May 2017 (the day after the Stage 1 reporting deadline) to outline changes to the costs of the Bill. The letter identified changes as a results of discussions with SNAP Cymru and related to “disagreements and disputes”, an area within the RIA that the Welsh Government had anticipated savings would be generated.
05. In the letter, the Minister outlined a change in the overall cost of the Bill over the four-year implementation period, with the Bill no longer anticipated to generate a saving of £4.8 million, but instead result in a cost of £8.3 million. These revisions also incorporated changes which the Minister had previously advised the Committee of on 7 February 2017.
06. Ahead of the Stage 1 debate on the general principles of the Bill, the Minister wrote to all Assembly Members to inform them that a revised RIA would be prepared which would incorporate all revisions made to the original version. He also announced his decision, following a request by the Chair of the Committee, to delay the financial resolution, which provides the Assembly’s authorisation (in principle), for the Welsh Ministers to spend the money required as a consequence of the Bill, until the Assembly had been able to consider the implications of the changes to the RIA.
07. During the debate, the Chair of the Committee expressed his disappointment at the changes to the financial information:

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“...the levels of revision have raised serious concerns as to the validity of the Government’s costings and its ability to successfully fund and implement the Bill. The Government must ensure that the revised regulatory impact assessment, promised by the end of the summer recess, is published in good time, is accurate and robust, and allows us all in Plenary and in committee to allow for proper scrutiny before a financial resolution is moved in Plenary.”<sup>2</sup>

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<sup>2</sup> National Assembly for Wales, Plenary, Record of Proceedings, 6 June 2017



## Summary of the changes

08. The Minister wrote to the Finance and CYPE Committees on 8 September 2017 to outline further changes to the RIA, resulting from an internal review of the RIA and an external peer review of the methodology used to create the estimates within the RIA, conducted by Dr Miguel Garcia Sanchez and Aldaba Limited.
09. The letter included some adjustments to figures and was accompanied by a revised RIA that incorporated all previous changes. The amendments to the RIA reduced the net cost of the Bill, over the implementation period, from £8.3 million to £7.9 million. The revised £7.9 million net cost of the Bill represents an increase of £12.7 million when compared to the original RIA, which projected a saving of £4.8 million.
10. The Minister's letter explained that there are three aspects to the additional change since his letter of 25 May 2017:
  - A discrepancy of £20, which increases the projected ongoing savings by £20;
  - A reduction of £425,930 to the cost of implementing the Bill by including only the transition costs directly relating to the Bill;
  - A reduction to costs for the Special Educational Needs Tribunal for Wales of £100.
11. The changes mean that the revised RIA contains net ongoing savings of almost £3.7 million and transition costs of £11.5 million.
12. The Minister's letter also confirms that the costs of implementing the Bill will be met by the £20 million funding package previously announced.
13. The Committee took evidence from the Minister and representatives from SNAP Cymru on the revised financial implications of the Bill on 21 September 2017.
14. The changes to the baseline costs have resulted from a reduction in costs to the "Disagreements and Appeals" element of the "Individual Development Plans" section and the reduction to the line "Dispute Resolution" (Table 69 and 70 in the original and revised RIA). The figures relating to dispute resolution were considered as 'double counting' and have been reduced from £12.1 million a year in the original RIA (£48.6 million over the implementation period) to £0 in the revised RIA, in both the "Do Nothing" and "Preferred option". The official accompanying the Minister confirmed that this course of action was recommended by the external review:



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“It was identified by the economist that peer reviewed the RIA for us. The line that we’ve taken it out of was effectively cost neutral because it showed both options, the do-nothing option and the cost-of-the-Bill option, as coming out as zero, but the actual cost in terms of dispute resolution is included elsewhere within that summary table. So, it’s included in the IDP section of the summary table. So, the reviewer was suggesting to us that technically that was considered double counting, so we removed it for clarity purposes, but actually the overall impact was zero because that line was showing as a balance of zero anyway.”<sup>3</sup>

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15. The revised RIA no longer includes a breakdown of “sunk costs”. These were noted in the original RIA but not included in the total cost of the Bill and amounted to £1.8 million of costs already incurred. The Minister told the Committee that, as a result of the internal review, these were removed in the updated RIA in line with guidance in [HM Treasury Green Book](#):

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“What we sought to do was to provide additional information as part of the RIA, which would then provide a fuller picture of what the costs actually are, which I thought was, frankly, if I was looking at the cost of this legislation, something I’d want to see. However, that is not strictly in line with Treasury Green Book guidance, which says very, very clearly—and I do have a quote here—

‘Costs of goods and services that have already been incurred and are irrevocable should be ignored in an appraisal. They are ‘sunk costs’. What matters are costs about which decisions can still be made.’

So, the guidance that we have here is very clear, that we don’t include the sunk costs, even though they do partly reflect the total cost of implementation of a wider transformation programme.

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<sup>3</sup> National Assembly for Wales, Finance Committee, draft Record of Proceedings, 21 September 2017, paragraph 144



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So, the revised RIA reflects both the recommendations that this committee and other committees have made, but also a stricter adherence to Treasury guidance.”<sup>4</sup>

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## SNAP Cymru evidence

16. As part of its scrutiny of the Bill the CYPE Committee undertook a consultation and held formal evidence sessions with stakeholders, including SNAP Cymru. SNAP Cymru provide disagreement resolution services for children, young people and parents and are contracted to do so by 20 of the 22 local authorities in Wales. Within its evidence,<sup>5</sup> SNAP Cymru provided information that challenged figures used to calculate the financial implications of the legislation in the area of disagreements and appeals.

17. In his letter of 25 May 2017, the Minister said:

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“...the information used in the RIA relating to the cost associated with disagreements and appeals was based on data provided by SNAP Cymru. My officials met with representatives from SNAP at the end of March to discuss their concerns and have subsequently worked with the organisation to make changes to the RIA following receipt of revised information. SNAP Cymru provided new information that reflected both a reduction in the number of cases of dispute resolution (around 50 per cent) and the cost to local authorities of services for resolving disagreements (of around 75 per cent).”<sup>6</sup>

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18. There are two key impacts of the changes instigated by SNAP Cymru, a change in the number of disputes, which has reduced from 1,533 to 758 and a reduction in the average cost for each disagreement supported through disagreement resolution services, from £2,000 to £875. These figures are used in calculations throughout the “Disagreements and Appeals” section of the revised RIA, altering a number of figures.

19. The revised RIA also outlines that the cost of each disagreement is formed of two parts, a cost to local authorities (£500) and a subsidy (£375). The subsidy is

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<sup>4</sup> National Assembly for Wales, Finance Committee, draft Record of Proceedings, 21 September 2017, paragraphs 129–131

<sup>5</sup> Written Evidence, CYPE Committee, [ALN 78, SNAP Cymru](#)

<sup>6</sup> [Letter from the Minister for Lifelong Learning and Welsh Language, 25 May 2017](#)



provided by SNAP Cymru “through fund raising, use of charity reserves and volunteer hours”<sup>7</sup>. Information on the subsidy was not included in the original RIA. Snap Cymru explained:

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“It can be volunteer time, but it’s cost-of-case time. It’s the cost of a case. So, we’ve worked it out that each case is subsidised by SNAP Cymru in some way or other by £350. That’s a disagreement, though. That’s a formal disagreement resolution.”<sup>8</sup>

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20. Representatives from SNAP Cymru told the Committee that the figures for disagreement and dispute resolution included in the original RIA were misinterpreted by the Welsh Government:

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“The Welsh Government did engage quite early on, and we did send figures across, and I think what happened in those early stages were misinterpretation or misinformation, but it was about how many were actually formal disagreement resolution and the difference between informal mediation and formal mediation; it’s about communication. So, what happened then is that we felt it was a misrepresentation of the work of SNAP Cymru in as much as it looks like there’s a lot of formal disagreement resolution going on, which has not been the case...”<sup>9</sup>

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21. SNAP Cymru also explained that the level of savings originally estimated could not be realised as much of these were not of monetary value as they related to time provided by its volunteers:

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“It’s difficult when you’re saying you’re going to save something in cash that hasn’t actually been spent. You know what I mean. Every year, SNAP Cymru has great value in volunteering—in gifts of time. I would value that up to

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<sup>7</sup> [Revised RIA, September 2017, paragraph 8.66](#)

<sup>8</sup> National Assembly for Wales, Finance Committee, draft Record of Proceedings, 21 September 2017, paragraph 63

<sup>9</sup> National Assembly for Wales, Finance Committee, draft Record of Proceedings, 21 September 2017, paragraph 15



around about £350,000. You know what I mean. But I can't save it, can I, if you know what I mean, because I haven't got it?"<sup>10</sup>

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22. The Committee heard that since raising its concerns around the figures, SNAP Cymru had held productive discussions with the Welsh Government and was content that the updated RIA had been revised to adequately address its concerns:

"...we're very pleased [...] with the Minister's response, and with the willingness of the civil servants to work with us, because we both have to learn each other's language, if you like, within that, but we do feel, at least we hope, that they will have a better understanding of the actual work that goes on on the ground and what parents are concerned about."<sup>11</sup>

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23. SNAP Cymru told the Committee that there was already a "heightened awareness" among parents of the changes due, and consequently that it would not expect its workload to decrease.<sup>12</sup>

24. The Minister told the Committee that the Welsh Government had engaged with SNAP Cymru following its evidence to the CYPE Committee in March 2017, which resulted in his letter of 25 May. He explained:

"They [SNAP Cymru] gave evidence to the Children, Young People and Education Committee in March, where they first said that they had some concerns about this matter. Officials met them a few days later on 30 March and then there have been full, quite significant and intensive conversations through March, and the period through April into May was about understanding the dimensions of that disagreement—understanding where that disagreement was. That led to my letter to the committee on 25 May. Advice to me, first of all, on 15 May then a letter to you on 25 May. That ensured that we had, first of all, an accurate and full understanding of the problem and then a full and accurate understanding of how to resolve that

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<sup>10</sup> National Assembly for Wales, Finance Committee, draft Record of Proceedings, 21 September 2017, paragraph 27

<sup>11</sup> National Assembly for Wales, Finance Committee, draft Record of Proceedings, 21 September 2017, paragraph 41

<sup>12</sup> National Assembly for Wales, Finance Committee, draft Record of Proceedings, 21 September 2017, paragraph 44



and then a full and mutual understanding and agreement on where we are today. And, as you'll have seen from your previous evidence session, you do have that full agreement today.”<sup>13</sup>

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## Committee view

25. The Committee is disappointed at the need to make the level of changes to the estimated financial implications of the Bill since its introduction in December 2016, however, it welcomes the action taken by the Minister to address the situation. In particular, the Committee welcomes the Minister's decision to produce a revised RIA and his agreement to postpone moving the financial resolution until the Committee had been able to consider the updated information.
26. The Committee is concerned by the inaccuracies raised by SNAP Cymru around the number of disagreements and disputes, and is surprised that SNAP Cymru was not consulted on the final figures included in the original RIA prior to its publication. The Committee notes the evidence from SNAP Cymru and is content that there is now a shared understanding of the revised figures and narrative, however the Committee remains concerned at the extent of changes due to the misinterpretation.
27. The Committee notes with concern the conclusion of Dr Miguel Garcia Sanchez and Aldaba Limited that the original version of the RIA was not reliable for the purpose of making decisions on the Bill, despite the assurance previously given by the Minister. The Committee acknowledges that revisions have since been made to the RIA and notes the Minister's assurances that the figures in the revised RIA are now robust.

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<sup>13</sup> National Assembly for Wales, Finance Committee, draft Record of Proceedings, 21 September 2017, paragraph 159

