



Children, Young People and
Education Committee

**Report on the Additional
Learning Needs and Education
Tribunal (Wales) Bill**

May 2017



National Assembly for Wales
Children, Young People and Education Committee

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The Committee was established on 28 June 2016 to examine legislation and hold the Welsh Government to account by scrutinising its expenditure, administration and policy matters, encompassing (but not restricted to): the education, health and well-being of the children and young people of Wales, including their social care.

Current Committee membership:



Lynne Neagle AM (Chair)
Welsh Labour
Torfaen



Mohammad Asghar AM
Welsh Conservative
South Wales East



Michelle Brown AM
UKIP Wales
North Wales



Hefin David AM
Welsh Labour
Caerphilly



John Griffiths AM
Welsh Labour
Newport East



Llyr Gruffydd AM
Plaid Cymru
North Wales



Darren Millar AM
Welsh Conservative
Clwyd West



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Welsh Labour
Cardiff North

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Recommendation 2. That the Minister provides regular updates to the Committee, and the Assembly as a whole, on the implementation of the wider ALN Transformation Programme. Page 18

Recommendation 3. The Minister should ensure that the Additional Learning Needs Code clarifies that:-

a. a child is not required to have a significantly greater difficulty in all areas of their learning to fall within Section 2 (2) (a) of the Bill; and

b. in the context of children under compulsory school age, the reference to 'learning' in section 2(2)(a) of the Bill includes more informal types of learning, such as learning through play and social interaction.

..... Page 24

Recommendation 4. The definition of Additional Learning Needs on the face of the Bill should be amended to provide clarity that a person has additional learning needs where he or she has a medical condition which causes them to have a significantly greater difficulty in learning than the majority of others of the same age, or the medical condition is a disability which prevents or hinders the pupil from making use of facilities for education or training of a kind generally provided for others of the same age, and such learning difficulty or disability calls for additional learning provision. Page 24

Recommendation 5. Section 4(4) of the Bill should be amended to require that the Additional Learning Needs Code stipulates timescales for undertaking assessments and preparing IDPs. Page 26

Recommendation 6. The Minister should strengthen the Code to provide greater clarity on where the responsibility for Individual Development Plans lies. In particular, there should be more clarity over the circumstances when a local authority rather than the governing body is responsible for an IDP. Page 34

Recommendation 7. The Minister should consider further the lack of provision within the Bill for local authorities to direct FEIs. Page 34

- Recommendation 8.** The Minister should clarify during the Stage 1 debate how and in what circumstances the Welsh Ministers might use their regulation making powers under section 34 of the Bill and/or intervention powers under section 57 of the Further and Higher Education Act 2002. Page 34
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Recommendation 17. The Minister should provide further explanation as to why special schools have been removed from the list of schools for which the duty to designate an ALNCo would apply. Page 41

Recommendation 18. The Code should provide clarity that assessments for ALN in respect of children under compulsory school age must take account of how infants develop, including learning through play, and their needs for stimulation, encouragement and social interaction. Page 45

Recommendation 19. Section 57 of the Bill should be amended to place a duty on health bodies to bring to the attention of local authorities concerns they have that a child under compulsory school age has Additional Learning Needs. Page 45

Recommendation 20. The Bill or the Code should provide a clear route for professionals working in early years settings to refer any concerns they have that a child in their care may have ALN. Local authorities should be required to consider any referrals in a similar way to how they respond to referrals from health bodies. Page 45

Recommendation 21. The ALN framework in the Bill should be extended to include work-based learning. Page 52

Recommendation 22. The Minister should work to ensure that weaknesses in collaboration within the current SEN system are not imported into the new ALN system. Page 61

Recommendation 23. The Minister should provide further clarity on the nature of the DECLO role, especially how they will work with other health professionals, including the new health co-ordinator role. Page 61

Recommendation 24. The Minister should provide further information on the role of a 'health co-ordinator' within the ALN Code, and within the revised Explanatory Memorandum following Stage 2, including detailed costs within the Regulatory Impact Assessment. Page 61

Recommendation 25. The Minister should provide a detailed outline of the DECLO pilots, as well as a more precise timeline. Any findings from the pilots should be made available before Stage 3 of the Bill. Page 61

- Recommendation 26.** Section 62 of the Bill should be amended to ensure that a local authority must also be required to provide independent advocacy services to parents who are not case friends. Page 66
- Recommendation 27.** The Minister should ensure that the Bill and/or the Code ensures that independent information and advice is available for children, young people and parents at the earliest opportunity. Page 66
- Recommendation 28.** The Minister should ensure that the arrangements for the provision of independent advocacy services do not make it possible for a charge to be made on those requesting the service. Page 66
- Recommendation 29.** The Code should be strengthened to require information and advice at key stages of the learner’s education, key stages of the ALN process, and through key transitions to be actively promoted, and readily available and accessible to children, young people and parents. This should include the points at which young people exit the education system. Page 67
- Recommendation 30.** The Bill and/or the Code should ensure that independent information and advice is offered to children, young people and parents on each occasion that an IDP is reviewed, or ceased, rather than solely at the beginning of a local authority’s engagement with a family. Page 67
- Recommendation 31.** The Bill should be amended to include a specific duty on relevant bodies to have due regard to the UN Convention on the Rights of the Child. Page 72
- Recommendation 32.** The Bill should include a specific duty on relevant bodies to have due regard to the UN Convention on the Rights of Persons with Disabilities. Page 72
- Recommendation 33.** Sections 10(5), 12(5) and 18(5)(c) should be amended to remove the discretion for the governing body, local authority and health bodies to decide in the first instance whether provision should be made in Welsh. If a learner or their parent requests that provision is made in Welsh, this should be the starting point. The bodies concerned should then be required to take all reasonable steps to secure that the provision is made in Welsh. Page 76

- Recommendation 34.** Section 56 of the Bill should be amended and strengthened to remove reference to the “desirability” of ensuring that additional learning provision is available in Welsh, with the inclusion instead of the term ‘wherever possible’. Page 76
- Recommendation 35.** The Minister should consider whether section 56(3)(a) could be extended to cover languages other than Welsh, that over time could be included within the Bill’s provisions. Page 76
- Recommendation 36.** The Minister should adopt an eleventh core aim for the Bill to ensure the delivery of bilingual ALN services. Page 76
- Recommendation 37.** The Bill should contain specific provisions that require that, in future, the workforce must have the capacity to deliver additional learning provision through the medium of Welsh in all cases where this is required. The Minister should also prepare and publish a strategy to indicate how this provision would be met and the timescales in which it would be implemented. Page 76
- Recommendation 38.** The Bill should be amended to provide the Tribunal with remit over the decisions and actions of health bodies, and with the power to direct health bodies, in relation to Additional Learning Needs. In the event that any changes require Secretary of State consents this should be sought in the usual manner. Page 81
- Recommendation 39.** The Minister should consider how the composition of the Tribunal can be altered so that it sufficiently incorporates clinical judgment and expertise. The Minister should also consider whether any other changes to the Tribunal composition are needed so that it maintains an appropriate balance between health and educational expertise. Page 81
- Recommendation 40.** The Minister should consider the experiences of the tribunal system in England following the introduction of reforms there, to help mitigate any similar impact in Wales. Page 81
- Recommendation 41.** The Minister should revisit and provide clarity on its cost and saving estimates before bringing forward a revised Explanatory Memorandum following Stage 2. Page 88

- Recommendation 42. The Minister, through the Distribution Sub Group, should consider alternative mechanisms for funding post-16 specialist provision. Page 88**
- Recommendation 43. The Minister should give full consideration to the recommendations made by the Finance Committee. Page 88**
- Recommendation 44. The Minister should table amendments to the Bill to require that the ALN Code is made using a super affirmative procedure. Any revisions to the Code must also be made using the super affirmative procedure. Page 91**
- Recommendation 45. The Children, Young People and Education Committee should be provided with a copy of the final draft of the ALN Code to consider prior to any statutory consultation required under the Bill. Page 91**
- Recommendation 46. The Minister should give full consideration to the recommendations made by the Constitutional and Legislative Affairs Committee. Page 91**
- Recommendation 47. The Minister should consider aligning the ‘Supporting learners with healthcare needs’ guidance with the new ALN system, by extending the age range of learners covered by that guidance. Page 100**
- Recommendation 48. The ALN Code should be strengthened to add clarity about where medical needs fall under the definition of ALN, and the Welsh Government should work with stakeholders in this regard. Page 100**

01. Introduction

1. On 12 December 2016, Alun Davies AM, Minister for Lifelong Learning and Welsh Language (the Minister) introduced the Additional Learning Needs and Education Tribunal (Wales) Bill¹ (the Bill) and accompanying Explanatory Memorandum² and made a statement on the Bill in Plenary on 13 December.³
2. At its meeting on 22 November 2016, the Assembly's Business Committee agreed to refer the Bill to the Children, Young People and Education Committee (the Committee) for consideration of the general principles (Stage 1), in accordance with Standing Order 26.9. On 29 November 2016, Business Committee set a deadline of 12 May 2017 for the Committee to report on its general principles.
3. During Stage 1 consideration, the Committee encountered significant policy issues, and to ensure sufficient time to fully consider these issues prior to finalising its report, requested an extension to the Stage 1 reporting deadline. The Business Committee agreed to extend the deadline to 24 May.

Terms of reference

4. The Committee agreed the following framework within which to scrutinise the general principles of the Bill:

To consider:

- the general principles of the Additional Learning Needs and Education Tribunal (Wales) Bill and whether there is a need for legislation to deliver the Bill's stated policy objectives;
- any potential barriers to the implementation of the key provisions and whether the Bill takes account of them;
- whether there are any unintended consequences arising from the Bill;
- the financial implications of the Bill (as set out in Part 2 of the Explanatory Memorandum); and
- the appropriateness of the powers in the Bill for the Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum).

5. Alongside the terms of reference, the Committee asked for views on specific issues raised by the Bill, in particular:

- whether the Welsh Government's three overarching objectives (listed at para 3.3 of the Explanatory Memorandum) are the right objectives and if the Bill is sufficient to meet these;
- whether the Welsh Government's ten core aims for the Bill (listed at paras 3.5-3.16 of the Explanatory Memorandum) are the right aims to have and if the Bill is sufficient to achieve these;

¹ [Additional Learning Needs and Education Tribunal \(Wales\) Bill](#)

² [Explanatory Memorandum](#)

³ [Record of Proceedings, 13 December 2016](#)

- the provisions for collaboration and multi-agency working, and to what extent these are adequate;
- whether there is enough clarity about the process for developing and maintaining Individual Development Plans (IDPs) and whose responsibility this will be;
- whether Bill will establish a genuinely age 0-25 system;
- the capacity of the workforce to deliver the new arrangements; and
- the proposed new arrangements for dispute resolution and avoidance.

The Committee's approach

6. Between Thursday 15 December 2016 and Friday 3 March 2017, the Committee conducted a public consultation to inform its work, based on the agreed terms of reference. The Committee received 78 responses, listed at Annex A.⁴

7. The Committee held 17 oral evidence sessions. The schedule of oral evidence sessions is published on the Assembly's website, and listed at Annex B.

8. In addition, the Committee also undertook several exercises of outreach and engagement with stakeholders and people directly affected by the Bill, including:

- an event with stakeholders on 26 January;⁵
- a SNAP Cymru-organised event with parents and carers on 9 February;⁶ and
- two online surveys.⁷

9. The Committee would like to thank all those who have contributed to its work.

Other Committees' consideration of the Bill

10. The Assembly's Finance Committee took evidence from the Minister on the financial implications of the Bill on 8 February 2017.⁸ It reported on its conclusions on 15 May 2017.⁹

11. The Assembly's Constitutional and Legislative Affairs Committee took evidence from the Minister on the appropriateness of the provisions in the Bill that grant powers to make subordinate legislation on 27 February 2017.¹⁰ It reported on its conclusions on 24 May 2017.¹¹

⁴ [ALN Bill Consultation Responses](#)

⁵ Event with Stakeholders, 26 January 2017, [summary of evidence](#)

⁶ SNAP Cymru event with parents and carers, 9 February 2017, [summary of evidence](#)

⁷ ALN Bill survey with [Children & Young People](#) and [Parents / Carers](#)

⁸ Finance Committee Meeting, [8 February 2017](#)

⁹ [Finance Committee Report](#), 15 May 2017

¹⁰ Constitutional and Legislative Affairs Committee Meeting, [27 February 2017](#)

¹¹ [Constitutional and Legislative Affairs Committee Report](#), 24 May 2017

02. Background

Legislative competence

12. The Explanatory Memorandum (EM) that accompanies the Bill states:

“The National Assembly for Wales (‘the National Assembly’) has the legislative competence to make the provisions in the Additional Learning Needs and Education Tribunal (Wales) Bill (‘the Bill’) pursuant to Part 4 of the Government of Wales Act 2006 (‘GoWA 2006’). The relevant provisions of GoWA 2006 are set out in section 108 and Schedule 7.

2.2 Paragraphs 5, 9 and 15 of Schedule 7 set out the following subjects on which the Assembly may legislate.

Paragraph 5: Education and training

Education, vocational, social and physical training and the careers service. Promotion of advancement and application of knowledge.

Paragraph 9: Health and health services

Promotion of health. Prevention, treatment and alleviation of disease, illness, injury, disability and mental disorder. Control of disease. Family planning. Provision of health services, including medical, dental, ophthalmic, pharmaceutical and ancillary services and facilities. Clinical governance and standards of health care. Organisation and funding of national health service.

Paragraph 15: Social welfare

Social welfare including social services. Protection and well-being of children (including adoption and fostering) [and of young adults]. Care of [children,] young adults, vulnerable persons and older persons, including care standards. Badges for display on motor vehicles used by disabled persons.”

13. The Llywydd issued a statement on 12 December 2016, which stated that, in her opinion, the provisions of the Bill would be within the legislative competence of the Assembly.¹²

The Bill’s purpose and intended effect

14. The Bill makes provision for a new statutory framework for supporting children and young people with additional learning needs. This is to replace existing legislation surrounding special educational needs and the assessment of children and young people with learning difficulties and/or disabilities in post-16 education and training.

15. The Bill also continues the existence of the Special Educational Needs Tribunal for Wales and provides for children, their parents and young people to appeal to it against decisions made in relation to their or their child’s additional learning needs, but renames it the Education Tribunal for Wales.

¹² [Presiding Officer's Statement on Legislative Competence](#)

16. The EM states that the Bill will create:

- 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.

17. In order to achieve these three overarching objectives, the Welsh Government has established ten core aims, within which the Bill’s provisions have been developed. The detail of the ten core aims is set out in the EM, and have been included in this report at Annex C. The core aims cover the following areas:

- introducing the term Additional Learning Needs (ALN);
- establishing a 0 to 25 age range;
- creating a unified plan;
- increasing participation of children and young people;
- providing for high aspirations and improved outcomes;
- creating a simpler and less adversarial system;
- increasing collaboration;
- avoiding disagreements and earlier disagreement resolution;
- providing clear and consistent rights of appeal; and
- requiring a mandatory Additional Learning Needs Code.

18. In his oral statement to introduce the Bill, the Minister said:

“The Bill responds to concerns from families, who say that the current system is inefficient, bureaucratic and costly, and is not either child-centred or user-friendly. Needs are sometimes identified late, and interventions are not planned or implemented in a timely or effective way. Families say they have to battle at each stage of the process to get the right support for their child, and that they do not know where to turn for advice and information. The Bill targets directly these concerns, whilst building on what works well in the current system. It will place the learner at the heart of the process, and make the system more equitable, far simpler, and less adversarial for those involved.

The Bill will create a single statutory system to support children and young people from birth through to 25 who have additional learning needs, instead of the two separate systems currently operating. It will replace the terms ‘special educational needs’ and ‘learning difficulties and/or disabilities’ with the new term ‘additional learning needs’. It will replace the system of statementing, and

create a single statutory plan—the individual development plan—to replace the existing range of statutory and non-statutory plans for learners, ensuring equity of rights regardless of the learner’s level of need or the educational setting they attend.

It will ensure the views of learners and parents are considered throughout the planning process, so that they view it as something that is done with them rather than done to them, and that the child or young person is at the centre of everything. And, finally, it will encourage better collaboration between agencies, by introducing and establishing new statutory roles in health and education, so that needs are identified early and the right support is put in place.”¹³

- 19.** The provisions of the Bill will also be underpinned by a statutory Additional Learning Needs Code (the Code), which is required under Section 4 of the Bill (see core aim 10). The Code provides much of the detail for how the Bill’s provisions, and its objectives and core aims (as set out in the Explanatory Memorandum) will be delivered.
- 20.** The Welsh Government provided the Committee with an early draft version of the ALN Code to help inform Stage 1 scrutiny of the Bill. The Bill provides the formal mechanism for making the Code, which will be subject to formal consultation and scrutiny.
- 21.** It is important to note that the Committee’s scrutiny of the Bill at this stage did not include specific or detailed scrutiny of the Code. However, almost every aspect of the Bill’s provisions relate back to the detail contained in the Code, and as such reference to it is made throughout the report.

¹³ Record of Proceedings, 13 December 2016

03. General principles and the need for legislation

22. The introduction of the Bill follows many reviews, consultations, pilots and proposed reforms, which date back to 2002. For many years, stakeholders and families have called for reform, which it is widely accepted is now overdue. The Minister for Lifelong Learning and Welsh Language has stated that the Bill constitutes a “complete overhaul” of a system “no longer fit for purpose”. The Welsh Government is unequivocal in its view that there is a need to reform the current system.

23. The Bill provides for a new statutory framework for supporting children and young people with Additional Learning Needs (ALN), from birth; whilst they are in school; and, if they are over compulsory school age, where they are in further education. The Bill, and the new framework it creates, will replace the separate legislation and arrangements which currently exist for Special Educational Needs (SEN) up to age 16, and Learning Difficulties and/or Disabilities (LDD) post-16.

24. The new term, Additional Learning Needs (ALN) will be applied within a single legislative framework for all children and young people up to the age of 25 (other than those over 16 and not in further education) who are identified as having those needs.

25. The Bill provides for the same type of plan - an Individual Development Plan (IDP) - regardless of the learner’s age (up to 25) or the severity of their ALN. IDPs for all learners with ALN would therefore replace the current three-tier graduated system of School Action, School Action Plus and Statements of SEN.

26. The Additional Learning Needs Code, which will underpin the provisions of the Bill, provides the detail of how the new system would work in practice. The Minister recognises the importance of the Code in understanding the practical operation of the new system, and provided the Committee with a working draft copy of the Code on 14 February 2017.¹⁴ This working draft was provided for illustrative purposes only to help support the Committee’s scrutiny of the Bill, and was not in itself subject to scrutiny.

Stakeholders’ evidence

27. Stakeholders have expressed general support for the aims and objectives of the Bill but have many concerns over how it will work in practice. They have warned that greater clarity and detail is needed on implementation. However, very little evidence has been submitted opposing the general principles of the Bill and there is widespread agreement that the system needs to change.

28. There has been little criticism of the concept of IDPs, other than how they will be implemented, and there is broad support for the person-centred planning approach. Concerns have mainly related to resources, training requirements and the actual implementation of the Bill, which will largely require attention in the ALN Code and the wider ALN Transformation Programme.

29. However, there are some concerns about the approach taken in the Bill itself, such as the definition of ALN, the level of focus on early years and post-16, and the involvement and accountability of the health sector. These specific areas are covered in later sections of the report.

30. The survey undertaken on behalf of the Committee by the Assembly’s Outreach Team also identified broad areas of concern with the current system.

¹⁴ [Draft Additional Learning Needs Code](#)

“Of 530 families, parents and carers surveyed:

- 90% do not believe children and young people have their SEN/ALN identified quickly and well enough.

- 86% do not believe families have enough of a say about how their child’s SEN/ALN are met.

Of 177 children and young people aged between 12 and 25 (57% were aged 16-18):

- 61% do not believe children and young people have their SEN/ALN identified quickly and well enough.

- 46% believe children and young people do not have enough of a say about how their SEN/ALN are met. (32% do not know and 32% believe they do have enough of a say).”¹⁵

Minister’s response

31. The Welsh Government is keen to emphasise that reform of the SEN/ALN system in Wales is about more than just this legislation. The Minister has stressed that the Bill is “part of a wider programme” to “transform” the ALN system. The Welsh Government intends to adopt a phased approach to implement the new statutory framework alongside its broader ALN Transformation Programme.

32. The Minister told the Committee:

“I think sometimes legislators believe that we can change the world simply through passing a Bill or putting a piece of legislation on the statute book. What I would like to do, more than anything else, is to create a culture change within the way we work, because, at the end of the day, the success or not of this legislation will depend upon individuals working well together within the system that’s created. (...)

What I want to be able to do is lead a process of transformation—and it’s a wider process of transformation in terms of training and in terms of providing the funding to enable change to take place—and then the change of culture that we spoke about earlier, which will deliver on these needs.”¹⁶

Committee view and recommendations

33. The Committee very much welcomes the general principles set out in the Bill, and framed by the principle objectives and core aims set out in the accompanying Explanatory Memorandum, and believes the Bill will provide a platform for reform of the SEN/ALN system, which is long overdue. This is a view that is clearly shared by the majority of those providing evidence during scrutiny of the Bill. The Committee has, however, made a number of recommendations which are aimed to strengthen the legislation, and the Minister’s proposals for reform of the SEN/ALN system. The specific recommendations are detailed in the following chapters of this Report.

¹⁵ ALN Bill surveys with [Children & Young People](#) and [Parents / Carers](#)

¹⁶ Oral Evidence, Minister for Lifelong Learning and Welsh Language, [12 January 2017](#)

34. The evidence received highlights that there will be many challenges in implementing the Bill. Simply passing the legislation will not by itself address the deeper, underlying problems and challenges within the current system. The evidence received also highlights many concerns about the way the new framework is going to work in practice.

35. The Committee recognises the importance of the Welsh Government's wider ALN Transformation Programme in meeting those challenges and delivering a system that is robust and which provides the best opportunities for learners with Additional Learning Need. The Welsh Government must ensure that there are adequate resources, workforce planning and training arrangements in place to support the implementation of the Bill and also the wider Transformation Programme.

36. The Committee understands that the ALN Transformation Programme will take some time to be fully delivered. It is therefore important that progress in its implementation is monitored regularly. We believe that the Minister should provide updates to the Committee, and the Assembly as a whole, at all key stages of the Transformation Programme.

37. The Committee thanks the Minister for providing the working draft ALN Code, which was vital in supporting the scrutiny of the general principles of the Bill. The Committee is, however, disappointed that the Code was not made available at the time the Bill was introduced. The gap of two months between introduction of the Bill (12 December) and the availability of the Code (14 February) made the Stage 1 scrutiny process more difficult to manage, and resulted in delays to allow stakeholders sufficient time to consider the Code in advance of providing evidence on the Bill.

38. The Minister himself acknowledged "how important the Code is to understanding the practical operation of the new system". The Committee very much believes, therefore, that the Code should have been published at the time of introduction. While the late publication of the Code made the detailed scrutiny of the Bill's provisions more difficult, it did not in itself affect the wider consideration of the general principles of the Bill.

Recommendation 1. That the Assembly agrees the general principles of the Additional Learning Needs and Education Tribunal (Wales) Bill.

Recommendation 2. That the Minister provides regular updates to the Committee, and the Assembly as a whole, on the implementation of the wider ALN Transformation Programme.

YOUNG PEOPLE

177
RESPONSES
RECEIVED

61%

said that children and young people DID NOT have their additional learning needs identified quickly and well enough at the moment.

91.5%

thought that young people with ALN who are in college, doing apprenticeships or training in the workplace, should be included in the new system.

42%

thought that children and young people know what to do if they are unhappy with the support they are getting.

Young people with additional learning needs should always be able to receive information from:

- School: **78.3%** agreed
- College: **68.0%** agreed
- Local authority: **54.9%** agreed
- Independent person: **52.0%** agreed

FAMILIES, PARENTS AND CARERS

530
RESPONSES
RECEIVED

90%

DID NOT think that children and young people have their additional learning needs identified quickly and well enough at the moment.

95.6%

thought that young people with ALN who are in college, doing apprenticeships or training in the workplace, should be included in the new system.

89.2%

DID NOT think that families know what to do if they are unhappy with the education provision they receive.

86.3%

DID NOT think families have enough of a say about how additional learning needs are met.

90%

thought that information and advice should always be available from an independent person, rather than only from the school, college or local authority.

04. The definition of ALN

Background and the position in the Bill

39. The same definition as currently used for SEN is retained in the Bill for ALN. This definition has been in place since the Education Act 1996. This definition is also materially the same as the current definition of LDD at post-16.

40. The Bill sets out a two-step definition: firstly does the child or young person have a learning difficulty or disability; and secondly does that learning difficulty or disability call for Additional Learning Provision. If so, then the child or young person has ALN.

41. In relation to the first step of this definition, section 2(2) of the Bill states that:

“A child of compulsory school age or person over that age has a learning difficulty or disability if he or she -

(a) has a significantly greater difficulty in learning than the majority of others of the same age; or

(b) has a disability for the purposes of the Equality Act 2010 (c. 15) which prevents or hinders him or her from making use of facilities for education or training of a kind generally provided for others of the same age in mainstream maintained schools or mainstream institutions in the further education sector.”

42. The Bill also states in section 2(3) that a child under compulsory school age has a learning difficulty or disability if he or she is, or would be if no additional learning provision were made, likely to be within the definition outlined above.

43. The next step to identifying ALN is to determine whether the child or young person’s learning difficulty or disability requires Additional Learning Provision. Section 3 of the Bill defines Additional Learning Provision (ALP) in the same terms as currently used for Special Educational Provision. This is:

“For a person aged three or over, ALP means educational or training provision that is additional to, or different from, that made generally for others of the same age in mainstream maintained schools or colleges, or in nursery education.

For a child aged under 3, ALP means educational provision of any kind. (This is because a child of this age would not normally access educational provision.)”

44. The Welsh Government has stated that it envisages the same number of learners would be deemed as having ALN as those with SEN and LDD at present, as a result of using the same definitions.

Stakeholders’ evidence

Application in early years

45. Stakeholders in the early years sector believe the Bill’s definition of ALN is too narrowly focused on learning in a strictly education or academic sense. They feel it does not account sufficiently for the way young children develop, for example their social and environmental

development and learning through play. In its response to the Committee’s consultation, Mudiad Meithrin wrote:

“there is a danger that children’s needs for stimulation, encouragement and social interaction (which are absolutely essential in brain development of young children) may be ignored or overlooked. When considering the assessment of additional educational needs of young children under three years old, consideration should be given to their access to critical early experiences (such as socialising and playing in a setting such as a *Ti a Fi* group or a *cylch meithrin*).”¹⁷

Aspects of learning

46. Estyn suggested a change to the way section 2 of the Bill is worded so that it would read “significantly greater difficulty in aspects of learning” rather than “significantly greater difficulty in learning”. They believe this would reflect the fact that some pupils may have problems in only one or more part of their learning which might not be picked up if schools only considered their progress across the board.

47. The National Deaf Children’s Society cautioned that such a change in the wording of the definition in section 2 must not have the opposite effect to that intended, by implying all aspects of learning. SNAP Cymru suggested that using the words “some or all aspects of learning” might resolve this.

Understanding of the term ‘Additional Learning Needs’ in practice

48. Estyn also highlighted potential problems in the application of the term ‘Additional Learning Needs’ within the legislation.

49. They cautioned that whilst the definition of Additional Learning Needs (ALN) in sections 2 and 3 of the Bill is the same as the existing legal definition of Special Educational Needs (SEN), this overlooks the fact that a broader concept of ALN was applied after the Welsh Government issued Inclusion and Pupil Support guidance in 2006. This guidance was replaced by new guidance in 2016, which referred to the legal definition of SEN (now to be used for ALN under the Bill).

50. Estyn reported that ALN has been understood as a broad umbrella term that covers other groups of vulnerable learners such as those with mental health needs, a medical condition or a disability. Estyn wrote ‘the change in terminology is likely to cause confusion’ and ‘there is a risk that attention will be moved away from those learners’.

Medical needs in schools

51. The Committee has received a significant amount of evidence relating to the duties on schools to manage pupils’ medical needs and for this to be potentially included in the ALN Bill. This included, potentially, amending the definition of ALN. The Committee’s detailed consideration of this issue is covered in Chapter 18 (Medical needs in schools).

Minister’s response

52. The Minister rejected the suggestion that the Bill’s definition of ALN is too narrow and does not account for forms of learning undertaken in early years. He said:

¹⁷ Written Evidence, Mudiad Meithrin, [ALN54](#)

“I think that the current definition is sufficiently broad to capture learning in its wider sense and not just strict, formal learning. I’m absolutely sure that the definition also covers informal learning—learning through play, for example, for ... younger children.”¹⁸

53. He also disagreed with Estyn about the benefits of including the words ‘aspects of’ within the definition in section 2, stating:

“I’m not persuaded or convinced by those arguments, I must say. Why qualify something? Learning is learning, and any aspect of learning should be covered by it. I don’t understand why we would want to qualify that by aspects of learning. I don’t understand why that would actually improve the definition.”¹⁹

54. In terms of whether the term ALN applies to the wider needs of learners rather than just their educational or learning needs, the Minister was clear that this is an education Bill and is specifically about learning needs (see also the section on medical needs in schools).

Committee views and recommendations

55. In relation to the application of the definition to early years, the Committee has some concerns with the wording of the definitions in sections 2 and 3 of the Bill, and how this would be interpreted.

56. The Committee believes that the Code should be used to clarify that ‘learning’ includes more informal learning in early years, such as learning through play and social interaction.

57. In relation to including the term ‘aspects of learning’, the Committee accepts the view put forward by Estyn that some pupils may have problems in only one or more part of their learning which might not be picked up if schools only considered their progress across their ‘learning’ as a whole. However, the Committee was satisfied that the definition in section 2 did not require qualification to specifically refer to ‘aspects of learning’. The Committee does, however, believe that the Code should be used to clarify that ‘learning’ as defined in section 2(2) does not simply refer to a person’s learning as a whole, and also includes reference to specific aspects or elements of their learning.

58. Estyn’s evidence refers to the fact that a broader concept of ALN has been applied since the Welsh Government issued the Inclusion and Pupil Support guidance in 2006. As already set out, the Committee is broadly satisfied with the definition of ALN within the Bill, and believes that the term Additional Learning Needs should not change. The Welsh Government may, however, wish to consider further the possible implications of using the same term for other vulnerable learners who were covered under the broader ALN term adopted by the Inclusion and Pupil Support guidance in place between 2006 and 2016 (see also chapter 9 - Early Years).

59. In relation to the inclusion of medical needs within the definition of ALN, the Committee is clear that, as outlined by the Minister, where a person has a medical condition which:

- causes them to have a significantly greater difficulty in learning than the majority of others of the same age; or

¹⁸ Oral Evidence, Minister for Lifelong Learning and Welsh Language, **22 March 2017**

¹⁹ Oral Evidence, Minister for Lifelong Learning and Welsh Language, **22 March 2017**

- is a disability for the purposes of the Equality Act 2010 which prevents or hinders the pupil from making use of facilities for education or training of a kind generally provided for others of the same age in mainstream schools or mainstream institutions in the further education sector;

that person already falls within the definition of ALN as set out in section 2 of the Bill.

60. However, the Committee believes that the definition contained in section 2 of the Bill should be amended to provide clarity on the face of the Bill that a person has additional learning needs where he or she has a medical condition which causes them to have a significantly greater difficulty in learning than the majority of others of the same age, or the medical need is a disability which prevents or hinders the pupil from making use of facilities for education or training of a kind generally provided for others of the same age, and such learning difficulty or disability calls for additional learning provision. Further discussion of the Committee’s consideration of medical needs in schools in light of the evidence received and the background to Recommendation 4 is contained at chapter 18.

Recommendation 3. The Minister should ensure that the Additional Learning Needs Code clarifies that:-

- a child is not required to have a significantly greater difficulty in all areas of their learning to fall within Section 2 (2) (a) of the Bill; and
- in the context of children under compulsory school age, the reference to ‘learning’ in section 2(2)(a) of the Bill includes more informal types of learning, such as learning through play and social interaction.

Recommendation 4. The definition of Additional Learning Needs on the face of the Bill should be amended to provide clarity that a person has additional learning needs where he or she has a medical condition which causes them to have a significantly greater difficulty in learning than the majority of others of the same age, or the medical condition is a disability which prevents or hinders the pupil from making use of facilities for education or training of a kind generally provided for others of the same age, and such learning difficulty or disability calls for additional learning provision.

05. Timescales for assessments and preparation of Individual Development Plans

Background and the position in the Bill

61. The statutory timescales for undertaking assessments and preparing IDPs will be stipulated in the draft ALN Code, rather than on the face of the Bill. The timescales will be mandatory in the final version of the Code.

62. The draft Code provides some indicative timescales for assessments and the outcomes from referrals.²⁰ The Welsh Government has stated that these timescales have been developed with the input of stakeholders but are subject to ongoing discussions and not fixed at this stage. The indicative timescales as set out in the draft ALN Code are that:

- Once a referral is made to a school or college, they have either 2 weeks to refer the case on to the local authority (because the ALN are sufficiently complex) or 7 weeks to assess the learner’s ALN and produce an IDP if they believe this is necessary.
- If a local authority receives a referral, including from a school or college, they have 2 weeks to decide if the case is within the school or college’s capability and direct them to produce an IDP or 10 weeks following the referral to produce an IDP themselves if they believe this to be necessary. A school has 5 weeks to produce an IDP, if they are directed to do so by the local authority.

63. The consequence of these timescales is that families should have to wait a maximum of 12 weeks for the outcome of their request for an assessment and IDP. This compares to 26 weeks under the current SEN framework.

Stakeholders’ evidence

64. In its written submission to the Committee, Estyn wrote:

“Although timelines in respect of assessment and issuing IDPs are suggested in the draft ALN Code, it may be helpful to include these in the Bill, therefore ensuring that timely provision arising from any identification of need is made.”²¹

65. The National Deaf Children’s Society (NDCS), in its written submission said:

“It will be imperative that the final version of the Code of Practice includes clear and robust time limits to ensure that the IDP process works effectively.”²²

Minister’s response

66. The Constitutional and Legislative Affairs Committee asked the Minister why the timescale, specifically for schools to respond to a parent’s request to reconsider a decision not to maintain an IDP, is not on the face of the Bill. The Minister responded by saying:

²⁰ [Draft ALN Code](#) (Paragraphs 10.28–10.51)

²¹ Written Evidence, Estyn, [ALN14](#)

²² Written Evidence, National Deaf Children’s Society, [ALN29](#)

“We felt it was more appropriate that the timescale should be included as part of a wider and more general timescale to be included in the Code relating to the development and review of IDPs in their totality.”²³

67. When asked why timescales could not be established in the Bill in the first instance and then amended through Regulations where necessary, the Minister said:

“I’m not sure that would achieve very much, quite honestly. But, you know, what we were seeking to do was to ensure that a timescale for reconsideration requests should be a part of the overall determination and description and structure of the IDP, rather than to treat this individual issue in isolation. That was our intention, so that all of this would be covered within the code.”²⁴

Committee views and recommendations

68. From the evidence presented, it is clear that there is a call for as much certainty as possible regarding timescales for assessments and preparation of IDPs. However, as outlined by the NDCS, there appears to be general agreement for the timescales for assessments to be set out in the Code rather than on the face of the Bill - providing this is done in a clear and robust way.

69. It is clear from the Minister’s evidence that he considers that the Code should be used to specify timescales, and this reflects his views on timescales for decisions about assessments and IDPs more generally.

70. The Committee agrees that it is appropriate for the timescales for carrying out assessments and preparing IDPs to be included in the Code rather than on the face of the Bill. Section 4 (4) (ii) of the Bill provides the Welsh Ministers with the power to impose requirements on local authorities and governing bodies of maintained schools and FEIs as to the preparation of IDPs. Any requirements made under this power would be mandatory and enforceable. The Committee believes this will provide a robust basis on which to set out the timescales. The Committee acknowledges that draft ALN Code sets out indicative timescales, there is however nothing at present that requires the Code to include the detail on timescales on an on-going basis. The Committee believes that the Bill should be amended to require that the Code to stipulates timescales.

Recommendation 5. Section 4(4) of the Bill should be amended to require that the Additional Learning Needs Code stipulates timescales for undertaking assessments and preparing IDPs.

²³ Oral Evidence, CLA Committee, Minister for Lifelong Learning and Welsh Language, [27 February 2017](#)

²⁴ Oral Evidence, CLA Committee, Minister for Lifelong Learning and Welsh Language, [27 February 2017](#)

06. Responsibility for Individual Development Plans

Background and the position in the Bill

71. The Bill places responsibility for assessing whether a learner has ALN, and putting in place any subsequent IDP, on a school or further education institution (FEI) governing body rather than the local authority. Under section 9 of the Bill, if a governing body has decided that a child or young person has ALN, it must prepare an IDP, unless any of the circumstances specified in section 10(2) of the Bill apply. In such circumstances, the governing bodies can refer a case to the local authority responsible for the child or young person to decide if the person has ALN. The circumstances specified in section 10(2) are:

- where the ALN call for provision that it ‘would not be reasonable’ for the governing body to secure;
- where the governing body ‘cannot adequately determine’ the learner’s ALN; or
- where the governing body ‘cannot adequately determine’ the additional learning provision for the ALN.

72. Section 12(2) enables a local authority to direct a school governing body to maintain an IDP, where they believe it is reasonable for the school to do so. There is no equivalent power for them to direct an FEI to maintain a plan. However, the Minister stated in oral evidence that the Welsh Ministers may make Regulations under section 34 of the Bill transferring IDPs to FEIs in situations where there are problems.

73. The draft Code provides some further detail on the distinction between those IDPs that are expected to be the responsibility of the governing body and those likely to be the responsibility of the local authority. Paragraphs 1.20 and 1.22 state that governing bodies will be ‘directly meeting the needs of the majority’ of learners with ALN and local authorities will be ‘directly responsible for meeting the needs ... of those with the most complex and/or severe needs’.

74. Some further indications on when a school or an FEI ‘might consider that it would not be reasonable for it to secure the Additional Learning Provision (ALP), depending on the circumstance of the school/college (i.e. its location, size, budget etc.)’ are given in paragraphs 9.2.9 and 9.3.8. Examples within the draft Code include where the child or young person:

- has a low incidence condition/rare condition which requires specialism that the school or FEI cannot reasonably provide;
- requires regular advice and support from external agencies which is over and above that which can be reasonably arranged and accessed by the school or FEI;
- requires equipment which can only be used by one child or young person/cannot be reused/is beyond the reasonable resources of the school/FEI; or
- requires very intensive daily support which cannot be reasonably funded or secured by the school or FEI’s budget.

Stakeholders' evidence

75. Estyn wrote that there is a need for unambiguous guidance as to when an IDP becomes the responsibility of the local authority as a lack of agreement could result in a delay in making the provision to the learner. In oral evidence, they said:

“I think the area that we’ve raised some concerns about is at what point that shift in responsibility happens. I don’t think that that is clear enough in the Bill. And I’m not sure that the code, which does set out some times or some occasions that may lead that shift responsibility to happen, actually really ties it down.

I think it’s an area that it would be helpful to have very clear guidance on to enable consistency, which is one of the things that certainly the Bill is trying to achieve, and to also avoid misunderstanding, potential delays in development and delivery of additional learning provision. So, I think that is an area that we feel could be strengthened, whether it’s that some of what is in the code at the moment, which gives an indication of what might happen, could become part of the face of the Bill, but, certainly, I think it’s right and proper that there is a responsibility for a school and, at times, a local authority. But I just think the point of shifting that way and potentially back needs to be explored a little bit more.”²⁵

76. The WLGA commented on the relationship between local authority and school-led IDPs in the context of resource implications for local authorities. In their written submission the WLGA highlighted the potential that local authorities would have to take on more IDPs than the Regulatory Impact Assessment anticipates, due to the level of cases that are referred by schools or where parents request the local authority intervenes (this relates to section 26 of the Bill).

77. In oral evidence, the WLGA said it was not “quite clear at this stage” and that the wording in section 10(2) is a “bit ambiguous” and “could be open to interpretation”. However, they referred to ongoing discussions with the Welsh Government’s strategic implementation group and did not place a great deal of emphasis on this issue. The WLGA’s overall comment was that “the understanding of the implications and maybe the unintended consequences will take some time, and is potentially challenging”.

78. Carmarthenshire’s Director for Education, representing ADEW, placed it in the context of local authorities’ approaches to delegating school funding, saying it was about:

“making sure that schools have the resources so that they can provide the additional learning provision required and meet those needs without having to revert to the local authority.”²⁶

79. The WLGA was most concerned about the situation regarding learners in further education as local authorities will have the power to direct schools to maintain an IDP in the event of a disagreement over who should take responsibility. However, there is no equivalent power to direct

²⁵ Oral Evidence, Estyn, **8 March 2017**

²⁶ Oral Evidence, ADEW, **2 March 2017**

FEIs, meaning that if an FEI refers a case to a local authority, there is no means for the local authority to refer it back even if they believe it is within the FEI's capability.

80. In oral evidence, the WLGA said this was "a genuine concern" of the 22 authorities:

"Once an authority has taken on one from an FE institution, there doesn't seem to be any way of 'giving it back', if those circumstances change and it would be appropriate to do that, which, of course, an authority could do with a school."²⁷

81. The Association of School and College Leaders (ASCL) told the Committee:

"I'm quite happy that there is, written into the legislation, the ability for schools and governors to say, 'This one is beyond our capability, we need somebody from the local authority, actually, to come in and assess this.'²⁸

82. The National Association of Headteachers said:

"The difficulty around this, and from your question particularly, is around this 'What is reasonable?' I think that's where there are going to be some hard conversations maybe."²⁹

83. When asked whether it was sufficiently clear at present where responsibility for IDPs would lie, the NAHT said:

"I don't think so at present. Because I think, often, these cases will be very specific to the specific case; so, it will be very difficult to articulate that, I think, in a code. But I do think there needs to be—. I suppose our members' fear would be: when you have those sorts of conversations about what is or what isn't reasonable, at what point and who makes that ultimate decision? What it can't be is a push-back to schools. It can't be that because, from my point of view, irrespective, in a way, of what the school or local authority is saying, it's the needs of the child at the centre that is the key part. Actually, somebody has to take responsibility for the additional learning needs provision for that child."³⁰

84. ASCL commented on the potential for 'ping-pong' between schools and local authorities as follows:

"It's a theoretical possibility. One would hope, as a school leader, that your relationship with the local authority will be such that you could have those frank discussions. Quite often, it could be that a local authority would say, 'Well, we will do this for you, which will allow you to do that', and that's fine. The problem—what you don't want—is a sort of ping-pong: 'We can't deal with it, you do it', 'No, you deal with it', and that isn't good for the child."³¹

²⁷ Oral Evidence, WLGA, [2 March 2017](#)

²⁸ Oral Evidence, ASCL, [8 March 2017](#)

²⁹ Oral Evidence, NAHT, [8 March 2017](#)

³⁰ Oral Evidence, NAHT, [8 March 2017](#)

³¹ Oral Evidence ASCL, [8 March 2017](#)

85. The Children’s Commissioner for Wales’ written submission suggested:

“Another alternative, would be to clarify that the primary duty for ALP resides with the local authority, but maintain governing bodies’ responsibilities for coordinating provision and monitoring progress within the school setting. Such an approach would be consistent with the legal position between school governing bodies and local authorities, and could then allow for a clear mechanism for governing bodies to escalate concerns in order to promote collaborative and integrated working as required by the Wellbeing of Future Generations Act. Local authorities’ role within public service boards would mean they are effectively placed to influence securing additional provision required outside of the school setting.”³²

86. The Commissioner explained in oral evidence:

“What we need to do is make sure that lines of responsibility are very clear and I think that the governing body in a school would have a vital role still to play here, but if that overall responsibility for provision for all schools still lay with the local authority, then you would avoid that potential dispute between governing bodies and local authorities.”³³

87. The NAHT were keen on the Children’s Commissioner’s idea that the primary duty for IDPs should reside with local authorities in all cases.

“So, the duty sitting with the local authority, I think, is very, very important because, for whatever reason, at school level there will be occasions when that might be at risk. So, there has to be somebody who is the gatekeeper on behalf of the child and young person.”³⁴

88. Governors Wales stress that the governing body performs a “strategic role” and they have concerns that governors will be expected to make decisions without having the necessary knowledge and experience. Governors Wales accept that “it makes sense that schools should be responsible for preparing the more straightforward IDPs”, with local authorities taking on those that are more complex, but say the ‘problem is likely to come in deciding and agreeing where that line is’.

89. In their response to the Committee, Special Educational Needs Co-ordinators (SENCOs) in Ceredigion said that clarity was needed as to when responsibility for an IDP transfers to local authorities and that national criteria would help decisions about this. The written submission from SENCOs in secondary schools across Wales observed there is “no clear cut off point on transfer of responsibility”, which they described as “very unclear”.

Involvement of Educational Psychologists

90. The draft Code makes several references to the role that educational psychologists (EPs) have in informing decisions about a child or young person’s ALN. They are listed as one of the agencies and professionals who can help in identifying ALN (para 6.43). The draft Code also states that they should

³² Written Evidence, Children's Commissioner for Wales, [ALN20](#)

³³ Oral Evidence, Children's Commissioner for Wales, [2 March 2017](#)

³⁴ Oral Evidence, NAHT, [8 March 2017](#)

have a specific role in decisions about whether a learner’s IDP should be the responsibility of the school/college governing body or the local authority.

91. In its written evidence to the Committee, the Association of Educational Psychologists (AEP) raised the “critical role of EPs in all complex cases (including working with multi-agencies)” and called for the role of EPs to be recognised on the face of the Bill and in the Code . The AEP also highlighted a difference between the requirements on governing bodies and local authorities to engage with EPs. In oral evidence the AEP said:

“With the current legislation and code of practice, it’s expected that, before a referral is made to a local authority to have a statutory assessment, there will have been an educational psychology involvement...

under the current proposals, there’s certainly no mention of educational psychologists on the face of the Bill. There is mention of educational psychologists in the draft code of practice, where it says that, if a child is referred to the local authorities, so that the local authority would take responsibility for the IDP, then the local authority must engage with an educational psychologist. Prior to that though, it says that schools should be encouraged to seek the advice of an educational psychologist, not that they must do, which is really what they’re expected to do now.”³⁵

92. The involvement of an EP will not be necessary in all cases of ALN. As such, the draft Code only states that a school should consider consulting an EP before referring a case to a local authority (para 9.2.9). However, the draft Code states that local authorities must engage with an EP once a case has been referred to them by a school or college governing body.

93. When asked if there should be a requirement for schools to seek advice from EPs, the AEP said:

“Yes, basically. And I think we’re concerned because it seems as if, actually, you’re reducing the rights that children and young people have had since 1981 [the Education Act 1981], of having that access to a specialist professional, who has the holistic approach to looking at children in schools, but bringing in other aspects of their development as well.”³⁶

Minister’s response

94. The Minister confirmed that he was aware the argument that there is not enough clarity where responsibility for IDPs will lie had been made with the Committee, but that he had not seen any evidence of this himself. The Minister told the Committee that this issue had not been raised where IDPs have been trialled, he said:

“Well, I have seen that evidence. It hasn’t been provided to me as part of the discussions that I’ve had, I have to say. It hasn’t been an issue where the system is in operation—in Carmarthenshire, for example. You will be aware

³⁵ Oral Evidence, Association of Educational Psychologists, [16 March 2017](#)

³⁶ Oral Evidence, Association of Educational Psychologists, [16 March 2017](#)

that this system has been trialled there, and it hasn't been raised as an issue. But I know that it's been raised with you.”³⁷

95. The Minister also confirmed that he was content with the arrangements set out in the Bill and did not agree with the Children's Commissioner's suggestion for local authorities to have primary responsibility for all IDPs:

“I think that would alter the balance too much and take too much away from schools, and I don't think that that's necessary. I haven't seen evidence that we need to alter the balance in that way. (...)

Now, I'm content with the current situation, that schools have the responsibility for planning provision. I do think that's the best approach. I don't want to see local authorities taking all responsibility away from schools. I think that would alter the balance that we currently have between teachers, schools, governors, local authorities and those other agencies involved.”³⁸

96. When asked about the options open to local authorities where they feel FEIs are not taking responsibility for an appropriate share of ALN cases, the Minister replied:

“It is possible to make regulations under section 34 to enable that to happen when it needs to happen, but I would prefer us to have a modus operandi across sectors that would be relevant and appropriate for those different sectors and institutions. Of course, where people think that they aren't getting the fairness they deserve, they have a right to go to tribunal, and if the system itself isn't working—and I think that this is at the heart of your question—I, of course, as Minister, do have the power to intervene.”³⁹

Committee views and recommendations

97. It is clear from the evidence received that the Bill opens up uncertainty in relation to the responsibility for Individual Development Plans. While Members were broadly content that section 10(2)(a) of the Bill was drafted appropriately, they agreed that the Code should be strengthened to provide greater clarity around this issue. In particular, there could be more clarity over the circumstances when a school or college governing body rather than the local authority is responsible for an IDP.

98. The Committee believes that the Bill is not sufficiently clear what happens if a local authority and an FEI do not agree who is responsible for a learner's IDP. While the Committee acknowledges that FEI's are not under the control of local authorities, it is concerned about the lack of instruction or direction local authorities could give to an FEI, and that this could lead to a situation where a case could be referred from an FEI to a local authority, but the local authority had no power to refer it back if it considered that was appropriate.

99. The Committee welcomes the Minister's view that where FEIs are not taking responsibility for an appropriate share of ALN cases he has the power to intervene under section 34 of the Bill, which enables regulations to be made relating to the transfer of IDPs. It is not however clear as to when such

³⁷ Oral Evidence, Minister for Lifelong Learning and Welsh Language, **22 March 2017**

³⁸ Oral Evidence, Minister for Lifelong Learning and Welsh Language, **22 March 2017**

³⁹ Oral Evidence, Minister for Lifelong Learning and Welsh Language, **22 March 2017**

regulations would be made. The Committee believes that the Welsh Government should consider this further, and clarify the circumstances in which those powers would be used.

100. Alongside the powers in section 34, the Committee considered whether there were any other mechanisms a local authority or the Welsh Government might use to intervene where an FEI does not accept responsibility for an IDP, and whether conditions of funding could be added to the grant offer the Welsh Government issues to an FEI for this purpose. The Committee notes that a financial memorandum between the Welsh Government and FEI providers sets out the conditions of grants and principles of financial management that recipients of the funding must follow. The Welsh Government also issues FEIs with a grant offer and conditions of funding document shortly after informing them of their allocations. This states the educational provision the FEI is required to make in return for those funds.

101. These conditions are relatively high-level and it is not clear how these conditions could be used to direct FEIs to take responsibility for cases of ALN. It is also unclear how using such conditions would affect the ONS classification of FEI's in Wales. However, the Committee believes that the Welsh Government should explore the possibility of using grant funding conditions to ensure FEIs take responsibility for IDPs where that is considered appropriate.

102. The Committee notes that section 57 of the Further and Higher Education Act 2002 provides the Welsh Ministers with a power to make directions if an FEI's governing body has either failed to discharge any duty imposed on them by an Assembly Act or are acting or proposing to act unreasonably with respect to the exercise of any power or performance of any duty imposed under an Assembly Act.

103. The Committee shared the concerns of the WLGA that local authorities would have to take on more IDPs than the Regulatory Impact Assessment anticipates, due to the level of cases that are referred by schools or where parents request the local authority intervenes in accordance with section 26 of the Bill. This is potentially very significant as it may cause greater than anticipated resource implications for local authorities. The Committee believes that the Minister should review this within 12 months of the full introduction of the new system to ensure that there is an appropriate balance in where responsibility for an IDP lies.

104. The Committee carefully considered the suggestion from the Children's Commissioner that the primary duty for all IDPs should rest with the local authority in all cases. While the Committee acknowledges that there was some support for this from other stakeholders, it felt this would not strike an appropriate balance between placing responsibilities on local authorities and schools or colleges respectively.

105. The Committee has also considered the involvement of Educational Psychologists under the new framework established by the Bill. The Committee was concerned by the suggestion from the Association of Educational Psychologists that there may be a reduction in the rights that children and young people have had since the Education Act 1981, where they have had specific access to that specialist profession.

106. The Committee believes that the Minister should consider whether the Code needs to include more specific reference to the involvement of EPs and whether the Code should be strengthened to place a duty on schools to seek the advice of an educational psychologist in complex cases or before they refer any case to the local authority. We are aware that similar arguments could be made in respect of other professionals, such as Speech and Language Therapists and Occupational Therapists.

However, we have commented specifically on EPs as the draft Code makes particular reference to their role in advising on cases where there is a question over where responsibility should lie.

Recommendation 6. The Minister should strengthen the Code to provide greater clarity on where the responsibility for Individual Development Plans lies. In particular, there should be more clarity over the circumstances when a local authority rather than the governing body is responsible for an IDP.

Recommendation 7. The Minister should consider further the lack of provision within the Bill for local authorities to direct FEIs.

Recommendation 8. The Minister should clarify during the Stage 1 debate how and in what circumstances the Welsh Ministers might use their regulation making powers under section 34 of the Bill and/or intervention powers under section 57 of the Further and Higher Education Act 2002.

Recommendation 9. The Minister should explore the possibility of using grant funding conditions to ensure FEIs take responsibility for IDPs where that is considered appropriate.

Recommendation 10. Within 12 months of the full introduction of the new system, the Minister should review the level of IDPs that are, or become, the responsibility of a local authority, including the impact on the local authority's resources, to ensure that there is an appropriate balance in where responsibility for an IDP lies.

Recommendation 11. The Minister should consider whether the Code needs to include more specific reference to the involvement of educational psychologists and whether the Bill or Code should be strengthened to place a duty on governing bodies of schools to seek the advice of an educational psychologist before referring a case to the local authority.

07. Template for Individual Development Plans

Background and the position in the Bill

107. Chapter 11 of the draft Code provides details of what content will be mandatory within an IDP. While the Code does not go as far as providing a template, the detail it contains is not far short of a template. The draft Code also states that an IDP is intended to be a flexible document but it is important that all IDPs contain key elements. In practice, an IDP will have to record what ALN the learner has and what ALP they require. The mandatory headings and content in IDPs, which are required by the draft Code are:

- Responsibility for the IDP;
- Basic biographical information;
- The views, wishes and feelings of the child, child’s parent or young person;
- Record of information used to develop the IDP;
- Description of the child or young person’s ALN;
- Description and delivery of the child or young person’s ALP;
- Intended outcomes;
- A section to record any arrangements for transition;
- Reasons for decisions made;
- Timeline of key events in the learner’s life; and
- Signatures of the child or young person and/or their parent(s), as well as the person responsible for co-ordinating the IDP.

Stakeholders’ evidence

108. There was almost unanimous agreement in both written and oral evidence that there should be a national all-Wales template for the IDP, which would be a critical component of improving the standard of support. This was also reflected in discussions in the Committee’s stakeholder event and the event with parents and carers organised with SNAP Cymru.

109. Stakeholders believe the use of a template would ensure consistency across Wales and portability should a learner with ALN move between local authority areas, and would also help consistency across different ages and key stages. The use of a template would also be particularly useful for the health sector, as a local health board usually works across several local authority areas so would find the consistent approach of a template useful. Evidence suggested that it would also help people follow the new system and make introducing IDPs far easier.

110. There was also widespread agreement that use of a template does not have to mean a blanket ‘one size fits all’ approach, suggesting that the content of an IDP should be personal and tailored to the individual learner but within a standard template.

111. Estyn suggested that having a common IDP template would be helpful to workforce development in this area. They said:

“We think that a common IDP template would be helpful. It will help ensure consistency. It will be supportive, so people know that whichever school they’re working in, and whichever local authority, that it’s the same template as they used before. So, I think some of those factors that have been thought through at this point, I think we would think will be supportive.”⁴⁰

Transport

112. The Committee received some evidence about the impact that learners’ needs can have on the transport requirements of learners, including how this could be considered as part of an IDP. The NUT gave the example of a learner with autism who might have difficulty with bus timetables and handling money, suggesting the local authority would need to arrange a taxi to take them to school.⁴¹ They also highlighted that if a learner needed to go to a special school, then the local authority should fund transport as it would be their nearest suitable school, which is the test under the Learner Travel (Wales) Measure 2008.

113. Stakeholders campaigning for medical needs to be more explicitly addressed in the Bill referred to transport within this wider context. Diabetes UK told the Committee:

“Even just taking part in the normal school day; even the school bus, the school transport. There are issues at every stage, unfortunately.”⁴²

114. Dr Justin Warner, a paediatrician and diabetologist from the Royal College of Paediatric and Child Health spoke of the risks to pupils with certain medical conditions during the home to school journey:

“A child with diabetes, wherever they are—at home or at school, or on a school bus—are at risk of acute complications, one of those being low blood sugars. Without urgent action, it results in that child having a seizure, being taken to hospital and being excluded then from that school day. And quite the reverse: if they’ve got high blood sugar, their inability to concentrate. So, access to proper school transport, where they are being looked after during that period of time—it may only be 15 to 20 minutes, but it’s vitally important.”⁴³

115. The Anaphylaxis Campaign gave a similar example and summarised the view of the stakeholders giving evidence on medical needs that home to school transport should be included within IDPs:

“It’s the same for anaphylaxis. In fact, we’ve had parents who’ve had to take their children out of school because there isn’t adequate home-to-school transport, because there isn’t anyone trained on that transport to administer the adrenaline in case of an emergency. And whilst the risk is low, it relies on the child not eating anything, or not taking the risk, and you can’t rely on a child, a young child, to take that level of risk. So, it’s a difficult one with home-to-school transport. Ideally, it would be fantastic if it was covered, because even if the school have got it perfectly right, and the child is perfectly adequately cared for

⁴⁰ Oral Evidence, Estyn, **8 March 2017**

⁴¹ Oral Evidence, NUT, **8 March 2017**

⁴² Oral Evidence, Diabetes UK, **16 March 2017**

⁴³ Oral Evidence, Dr Justin Warner, **16 March 2017**

in school, getting to and from the school can actually be the obstacle that stops them going to school.”⁴⁴

116. Diabetes UK added:

“That would be massively helpful, definitely. I try and help the parents by using the learner travel Measure in Wales, and there’s a very, very brief reference to disability in it, which isn’t medical conditions management, but that’s the nearest thing. But it’s inadequate—it doesn’t help me at all in assisting families.”⁴⁵

117. However, the WLGA and the Association of Directors of Education in Wales (ADEW) pointed to the separate arrangements for home to school transport. Gareth Morgans, Carmarthenshire’s Director of Education, representing ADEW, told the Committee:

“I think there’s other legislation about home-to-school transport, which hopefully will cover that requirement. We have systems and processes in place where, if the child has some special needs and they do need that, they do get that transport. I’m not concerned about that; I think the current legislation we have does cover that, from my personal view.”⁴⁶

118. Some of the problems facing children and young people during transport to school relate to medical conditions that are not necessarily within the scope of ALN and would need to be addressed through the Supporting learners with healthcare needs guidance. The guidance states:

“For example, depending upon the circumstances, local authorities may need to arrange home-to-school transport for a learner, or provide appropriately trained escorts for such journeys to facilitate the attendance of a learner.”⁴⁷

Minister’s response

119. In the draft Code, the Welsh Government states that “consideration is being given to a standard template for IDPs as well as the possibility of electronic IDPs”.

120. In oral evidence, the Minister referred to the existing requirements for certain information to be included within IDPs, which are also prescribed in the draft Code, highlighting that the “the template, if you like, is there to an extent”. However, he said he is open to going a step further and the idea of an all-Wales template for IDPs, as long as it provided enough flexibility. He said:

“I am open to considering that. I don’t think it’s a bad idea necessarily. What I’m eager to ensure is that there is sufficient flexibility in any template that we may choose in order to enable these specialists, or whoever’s dealing with that, to ensure that it is child-focused and that we don’t go through some box-ticking exercise as part of this process. I am very eager to ensure that we do have that

⁴⁴ Oral Evidence, Anaphylaxis Campaign, [16 March 2017](#)

⁴⁵ Oral Evidence, Diabetes UK, [16 March 2017](#)

⁴⁶ Oral Evidence, WLGA, [2 March 2017](#)

⁴⁷ [Supporting learners with healthcare needs](#)

flexibility, but I wouldn't disagree with the comments heard by the committee in terms of having a template."⁴⁸

Committee views and recommendations

121. The Committee agrees with the views expressed widely during Stage 1 scrutiny that there should be a national all-Wales template for IDPs. The Committee believes that this would help ensure consistency across Wales and portability should a learner with ALN move between local authority areas, as well as also helping consistency across different ages and key stages. The Committee agrees that the use of a template would also be particularly useful for the health sector.

122. As set out in evidence, the Committee agrees that any IDP template should be based on a standard format, but should be personal and tailored to the individual learner. It should not become a box ticking exercise.

123. The Committee notes that under the Learner Travel (Wales) Measure 2008, local authorities must assess the travel needs of learners aged under 19, including having regard to the needs of disabled learners and learners with learning difficulties, and publish their transport policy for those learners. Whether a learner with ALN in compulsory schooling will be eligible for free or transported arrangements is assessed under the Measure and will vary with individual circumstances. There is currently no duty to provide free or assisted transport arrangements for nursery or post-16 learners. Although it appears that reference to home to school transport is to be included in the draft Code, it is currently silent on how transport issues will be dealt with.

124. The Committee is concerned that issues surrounding transport have not been given sufficient consideration during the development of the Bill and it is not clear how and where transport will be considered as part of the IDP process.

125. Whilst the Committee recognises that travel needs of learners would not presently form part of an IDP unless the Bill is amended, it believes that it would be desirable for the Welsh Government to consider further how travel could be incorporated in order that the learner attends the school or FEI which is most appropriate and best meets their needs.

Recommendation 12. The Minister should develop an all-Wales template for IDPs with a standardised format but allowing for personalised content.

Recommendation 13. The Welsh Government should consider how travel needs of learners can be incorporated into an IDP.

⁴⁸ Oral Evidence, Minister for Lifelong Learning and Welsh Language, 22 March 2017

08. Additional Learning Needs Co-ordinators

Background and the position in the Bill

126. Section 54 of the Bill requires all mainstream maintained schools, including maintained nurseries and Pupil Referral Units, to have a designated Additional Learning Needs Co-ordinator (ALNCo). Special schools are exempt from this requirement as every staff member is expected to have a focus on ALN. The Welsh Government believes that the designation of an individual (or group of individuals) within each setting (or group of settings) is crucial to ensuring consistency and high standards through effective co-ordination and planning.

127. The ALNCo position will replace the existing non-statutory SENCo role, which the Welsh Government says is interpreted differently across settings and authorities. Section 54 also confers a power on the Welsh Ministers to make regulations prescribing the qualifications and/or experience a person must have to be an ALNCo. The Welsh Government's intention is that ALNCoS will be required to have a Master's level qualification. The Explanatory Memorandum that accompanies the Bill states that to support teaching practitioners within education settings, a Master's level qualification for use by existing SENCoS (and future ALNCoS) will be developed.⁴⁹

Stakeholders' evidence

128. Most stakeholders who commented on ALNCoS believed that the role should be seen as part of the senior management team of a school. They also tended to believe it is more important that ALNCoS are part of senior management than it is for them to have a Master's qualification.

129. Conwy local authority argued that a "whole school approach is needed" and had reservations about the "expert in school" model of the ALNCo. Conwy wrote that the Master's qualification "seems a costly proposition that is not currently supported by any evidence".

130. Overall, many stakeholders have been sceptical about the Welsh Government's intention that the role require a Master's qualification. Wrexham County Council noted that small schools would struggle to ensure that their ALNCoS had a Master's qualification, but it did agree with the principle of training and qualification for ALNCoS. It recommended that the required qualification would not need to be at Master's level but could be a module at this level. Bridgend County Borough Council did not feel a Master's qualifications is the right pathway, saying that:

"Not all school staff currently in a SENCo or SENCo type role are necessarily Qualified Teacher Status (QTS). This would be a major cost implication for schools in addition to workforce implications... There is recognition that although training is necessary for the ANLCoS we do not feel that a Masters qualification is necessarily the right pathway."⁵⁰

131. Rhondda Cynon Taf welcomed training for ALNCoS but believed a requirement for a Master's would pose problems in terms of recruitment, costs for schools and staff turn-over. Other evidence also suggested there could be problems in recruiting enough ALNCoS, particularly if they require a Master's qualification. The National Association of Independent Schools and Non-Maintained Special Schools (NASS) claimed their "experience in England leaves [them] unsure whether it will be possible to field sufficient numbers of suitably qualified ALNCoS in an acceptable timeframe".

⁴⁹ Explanatory Memorandum

⁵⁰ Written Evidence, Bridgend County Borough Council, [ALN12](#)

Minister's response

132. The Minister confirmed to the Committee that it remains the Welsh Government's intention that ALNCOs should be required to have a Master's qualification. However, he suggested this was a long-term aspiration and would not necessarily prevent those who do not have a Master's, but have suitable skills and experience, from carrying out the role. He said:

“We don't expect that to be overnight, of course. We don't anticipate that the Bill receives Royal Assent on Monday and all ALNCOs will have a Master's on Tuesday. That's not our intention. Clearly, we would need to implement this in a way that is sensible and which takes account of the time needs of the workforce and we will need to plan it. (...)

I think it would be an appalling arrogance for me to assume that that experience doesn't exist because somebody doesn't have a Master's degree. I think that would be an appalling assumption to make. We value the experience and the knowledge of the workforce. We are working with the workforce, I hope, sufficiently well to ensure that we do have a graduated approach that recognises and respects the expertise and the experience that already exists in the workforce, and that we move over a reasonable period of time to a situation whereby we have these qualifications and this qualification structure in place. But it's not something that's going to happen overnight; it's something that will happen with the workforce and not to the workforce. It is something that we will ensure respects, appreciates and values the knowledge and expertise that already exists.”⁵¹

Additional Information

133. The Committee received a late submission from the Head-teacher of a special school relating to the designation of ALNCOs within special schools. The submission states that, following a recent All Wales Special School Head Teachers conference, the views of Head-teachers were sought regarding the ALNCO position within Special Schools. The submission also states that the vast majority of Special School heads who responded to this, or who attended the All Wales Special School Head Teachers conference, wanted to have ALNCO's in Special Schools. The reasons given were:

- The main reason was the inclusion debate as they would want to be like every other sector in Wales.
- They also felt they would want to access funding for training.
- They did not want to inhibit their staff having a different route to the leadership team.
- Some felt it was a coordinator type responsibility and it could be a different type of ALNCO within a Special School.
- They wanted to access mainstream ALNCO meetings as an equal representative.
- They felt that ALNCO's may work across Special Schools and Pru's.

134. The submission also stated that the above were all discussion points, as the Special Schools who were against having a designated ALNCO all felt they themselves did this role as Head-teachers.

⁵¹ Oral Evidence, Minister for Lifelong Learning and Welsh Language, **22 March 2017**

Committee views and recommendations

135. The Committee acknowledges the vital role that SENCos play in the current SEN system, and welcomes the intention to introduce the ALNCo role on a statutory basis. The Committee agrees that the designation of an ALNCo within each setting is crucial to ensuring consistency and high standards through effective co-ordination and planning.

136. The Committee welcomes the aspirations of the Minister in looking to ensure that ALNCoS are qualified to Master's level, but is concerned that this could result in the loss of highly skilled and experienced people currently working as SENCos, who are not and may not in the future attain a Master's qualification. Qualification requirements are not in the Bill itself but the Welsh Government will have power to make regulations on them. The Committee believes that a Master's qualification should be desirable rather than required amongst ALNCoS, enabling those without such a qualification to work, or continue to work, in that role.

137. The Committee also considers that it would be desirable for other qualifications or skillsets, of a similar level to Master's, to be considered as appropriate for an ALNCo. This might encourage people from different professions to apply to become ALNCoS.

138. The Committee is also concerned that the enhanced role of the ALNCo, could potentially impact on workload, resulting in resource and capacity implications. In addition, resource and capacity could be made more difficult to maintain should a Master's qualification be required. These issues could raise particular problems in smaller schools, where often an ALNCo covers more than one setting. The Committee therefore believes that the Minister should review the impact of the new ALNCo role on resources and capacity within 12 months of the full introduction of the new system.

139. In relation to the additional information provided on ALNCoS in special schools, the Committee was not able to fully consider this due to its late receipt. The Explanatory Memorandum explains that since the draft Bill was considered, special schools have been removed from the list of schools for which the duty to designate an ALNCo would apply. The EM specifies that the basis on which this decision seems to have been made is that all staff at special schools are specialist ALN teachers and co-ordinators of ALP. However, the Committee would welcome further explanation from the Minister as to why special schools have been removed from the list, especially given the concerns expressed in the late submission.

Recommendation 14. The Minister should reconsider his approach with regard to qualifications for ALNCoS, and make it clear that going forward, a Master's qualification should be desirable and not required.

Recommendation 15. The Minister should consider whether it would be desirable for other qualifications and skillsets, of a similar level to Master's, to be considered as appropriate for an ALNCo.

Recommendation 16. The Minister should review the impact of the new ALNCo role on resources and capacity within 12 months of the full introduction of the new system.

Recommendation 17. The Minister should provide further explanation as to why special schools have been removed from the list of schools for which the duty to designate an ALNCo would apply.

09. Early years

Background and the position in the Bill

140. One of the Welsh Government's core aims for the Bill is to establish a single age 0-25 system, which identifies and provides for a child's ALN from birth.

141. The definition of ALN is slightly different for a child aged under 3. A child will be deemed to have ALN if their learning difficulty or disability calls for any education provision of any kind. This recognises that children aged under 3 do not normally access education provision. (The test for children aged 3 or over is they must require education that is additional to or different from what is made generally for others of the same age.)

142. A lack of detail and involvement of the early years sector was one of the criticisms of the draft Bill. The Welsh Government extended the duties that the draft Bill placed on maintained nursery schools regarding ALN to non-maintained providers as well, but only where they are in receipt of local government funding for nursery places. Such providers are therefore included within the reach of the ALN Code. Independent providers who do not receive state funding are not required to comply with the Code.

143. Chapter 7.1 of the draft Code provides details how the ALN of children below compulsory school age who do not attend a maintained school should be identified. Chapter 9.1 covers duties on local authorities to decide whether a child below compulsory school age has ALN and how to prepare an IDP.

Section 57 – Referral from health

144. Because education services are not normally involved with a child in early years, the Bill places a particular role on health bodies to identify ALN. Section 57 requires health bodies to notify the child's parents where they form the opinion that a child under compulsory school age has, or probably has, ALN. However, the Bill provides health bodies with the discretion to bring this to the attention of the relevant local authority if they are satisfied this is in the child's best interests. Local authorities must then decide whether the child has ALN unless specific exceptions apply. The draft Code (para 7.1.33) states that health bodies may provide diagnostic services and other help if an IDP is subsequently prepared.

145. This is a change from the current legal position. As documented at paragraph 4.36 of the existing SEN Code of Practice, under section 332 of the Education Act 1996, health bodies must inform the appropriate local authority as well as the parent(s) where they form the opinion that a child under compulsory school age has SEN.

Stakeholders' evidence

146. Most stakeholders commenting on the way the Bill relates to early years believed there was a lack of focus and detail on pre-school age. This mirrors comments about post-16 (see Chapter 10), with many stakeholders feeling that the Bill is predominantly focused on school-age children.

147. A wide range of views on early years provision were expressed across the various evidence gathering exercises undertaken by the Committee. The following represents a summary of stakeholders' views:

- The Bill’s definition of ALN only interprets it in the context of what is expected of children when they are at school age. This is a narrow definition of learning which does not recognise how infants develop. By basing the definition of ALN on the context of formal education, there is a risk that children’s needs for stimulation, encouragement and social interaction (essential in brain development of young children) may be ignored or overlooked (see also Chapter 4: Definition of ALN).
 - The definition of ALN in early years should explicitly refer to child development as well as education/learning.
 - There is a risk the Bill will not allow for children to access support for their development which is not strictly educational.
 - There is a little reference to non-maintained childcare settings and their functions in dealing with children with ALN.
 - A child’s need will usually be first identified when they attend a day nursery or playgroup. In the Bill, it is unclear what the route to referral would be for these children and what responsibilities are on the childcare providers.
 - There is no provision to enable services in early years to directly refer a child to the local authority for an assessment where they believe the child has ALN. Professionals working in childcare and early years should have the right to refer a child to the local authority for an assessment for ALN.
- (para 7.1.35 of the draft Code states local authorities should work with other providers of nursery education and childcare so they too are capable of identifying and reporting ALN.)
- The role of childcare and early years professionals in preparing Individual Development Plans is not clear. Whilst the duty will sit with the local authority, partnership working and a joined up approach is key.
 - Training, information and support needs to be promoted, available and accessible for the wider childcare and early years sector, beyond simply school-based staff.
 - The Bill does not appear to provide for ALNCos to be appointed to work in early year settings, only schools and colleges.

Section 57 – Referral from health

148. Some stakeholders, including Estyn, have suggested that section 57 should be strengthened to require health bodies to always inform the local authority when it suspects a child under compulsory school age has ALN, as long as it is in the child’s best interests. Estyn highlighted that local authorities are better placed to plan provision when they have all available information.

149. The WLGA also highlighted that most contact with children in the 0-2 age range will be with health services (health visitors). Therefore, local authorities will have responsibility but might not always know about learners who need their support.

150. When asked whether the discretionary power in section 57 should be replaced with a duty, the All Wales Health Visitor Forum told the Committee:

“I guess, if there’s any opportunity for local interpretation, then that does create weakness, doesn’t it? So, yes, essentially, I would agree with you, that that

probably—. If it's left discretionary, then there's always that risk. Whether it's resources or other issues that impact on that decision, then I suppose, potentially, it creates that risk, yes."⁵²

151. When asked by the Committee, none of the representatives of three health boards could think of any circumstances when it would not be in the child's best interests for a health body to inform the local authority when it has concerns a child under compulsory school age has ALN.

Minister's response

Perceived lack of focus on early years

152. The Minister rejected the argument that the Bill does not adequately focus on early years:

"I'm not convinced by that evidence. This is a zero-to-25 Bill, and all its different sections should apply equally, but appropriately, to the entirety of that age range. If there are areas, parts or clauses of this Bill that the committee does not believe sufficiently address the needs of learners in those settings, I would be interested to hear. I've heard the comment made, but I haven't seen any evidence that substantiates that comment."⁵³

Section 57 – referral from health

153. The Minister and his officials confirmed that section 57 of the Bill is a change from the current position. The Welsh Government lawyer accompanying the Minister to Committee explained that granting health bodies a power, rather than imposing a duty, on health bodies to inform the local authority was in order to build in safeguards around disclosure of medical information.

154. The Welsh Government accepted that it would only be in "very rare and unlikely circumstances" that informing the local authority would not be in the child's best interests. They also predicted the change from a duty to inform to a discretion to refer would not make it less likely that health bodies would bring cases to the attention of the local authority.

155. Neither the Minister nor his officials fully explained why there is a need to change the law from duty to inform to discretion to refer, other than a brief reference to the introduction of the Human Rights Act 1998 since the existing legislation was made in 1996. However, section 23 of the Children and Families Act 2014 makes it a requirement in England for health bodies to bring the matter to the attention of local authorities, bringing into question the relevance of the human rights aspect.

156. The Minister said that the Code could issue further guidance on the application of section 57 and that he would consider this further following the completion of Stage 1 scrutiny.

Committee views and recommendations

157. The Committee agrees with the wide ranging concerns expressed in evidence that the Bill's definition of ALN for children under compulsory school age, requires practitioners to consider what is expected of children once they reach school age, and that this may not recognise how young infants develop. The Committee is concerned that by basing the definition of ALN on the context of formal education, there is a risk that learning through play, as well as children's needs for stimulation, encouragement and social interaction may be ignored or overlooked.

⁵² Oral Evidence, All Wales Health Visitor Forum, **16 March 2017**

⁵³ Oral Evidence, Minister for Lifelong Learning and Welsh Language, **22 March 2017**

158. The Committee therefore believes that the Code should provide clarity that assessments for ALN in respect of children under compulsory school age need to take account of how infants develop, including these elements.

159. In relation to Section 57 of the Bill, the Committee did not accept the Minister's explanation as to why the Bill seeks to remove the current requirement for health bodies to bring to the attention of local authorities concerns they have that a child under compulsory school age has ALN and replace it with a discretionary power. The Committee notes the Minister's view that the Code could issue further guidance on the application of section 57, but believes that the Bill should be amended to place a duty on health bodies in this respect. In reaching this view, the Committee also notes the respective provision in section 23 of the Children and Families Act 2014, which makes it a requirement in England for health bodies to bring the matter to the attention of local authorities.

160. The Committee was concerned to hear from stakeholders working in the early years sector that there is no clear route of referral for childminders and those working in childcare settings where they had concerns that a child under compulsory school age has ALN. The Committee believes that these professionals will be well placed to help identify ALN and need a clear and understandable mechanism to refer cases to local authorities. The Bill places a duty on health bodies to inform parents and a power to notify the parents of concerns but not for early years providers. The draft Code (para 7.1.35) states that local authorities should work with providers to ensure they too are capable of identifying and report ALN but this requires greater detail and consideration.

Recommendation 18. The Code should provide clarity that assessments for ALN in respect of children under compulsory school age must take account of how infants develop, including learning through play, and their needs for stimulation, encouragement and social interaction.

Recommendation 19. Section 57 of the Bill should be amended to place a duty on health bodies to bring to the attention of local authorities concerns they have that a child under compulsory school age has Additional Learning Needs.

Recommendation 20. The Bill or the Code should provide a clear route for professionals working in early years settings to refer any concerns they have that a child in their care may have ALN. Local authorities should be required to consider any referrals in a similar way to how they respond to referrals from health bodies.

10. Post-16

161. The Bill provides for a new single system for ALN for both pre-16 and post-16, replacing the current SEN and LDD systems.

Background and the position in the Bill

162. Provision for learners aged over 16 who are not in school is set out in the Learning and Skills Act 2000 (the 2000 Act), which deals with the planning and funding of post-16 education. This is separate legislation to that currently used to define SEN (the Education Act 1996). The 2000 Act uses the term 'Learning Difficulties and/or Disabilities (LDD)' rather than SEN. However, the definition is essentially the same as for SEN.

163. The Welsh Ministers currently have a general duty under the 2000 Act to identify the LDD of learners aged 16-19. The Welsh Government currently discharges this by contracting Careers Wales to carry out assessments of learners with statements of SEN in their last year of compulsory schooling. This assessment results in a report setting out a person's educational and training needs, the post-16 education or training required to meet those needs, and the provision required. This report is known as a Learning and Skills Plan (LSP). The Welsh Ministers also have a power to arrange for an assessment of any learner under the age of 25, even where they have never had a statement.

164. Where a learner's LDD can be met in a mainstream setting, the further education institution (FEI) absorbs this as part of its general budget. Prior to 2015-16 they could also apply to the Welsh Government for supplementary or exceptional funding to cover any additional costs incurred in meeting complex needs, although this budget was then transferred into allocations to FEIs under the new post-16 Planning and Funding Framework. Where a learner requires specialist or residential accommodation, Careers Wales prepares and submits an individual application to the Welsh Government which then makes a decision over funding, including any negotiation for joint funding with local authorities and/or health boards.

165. Arrangements for the LDD of post-16 learners are complex and have been the subject of considerable review. This included a Ministerial Task and Finish Group which reported in 2010. The intention to transfer the duty from the Welsh Ministers to local authorities was initially included in the Education (Wales) Bill (as introduced) but withdrawn by amendment.

166. Section 9 places the same duty on governing bodies of both schools and Further Education Institutions (FEIs) to decide whether pupils/students have ALN "where it is brought to [their] attention or otherwise appears to [them]" that they "may have ALN". Where a governing body of a school or FEI decides that a pupil/student does have ALN, section 10 of the Bill requires them to prepare and maintain an Individual Development Plan (IDP) for them (unless specific circumstances apply). Therefore, all learners with ALN would have the same type of statutory plan irrespective of their age or whether they are in a school, a school sixth form or an FEI.

167. The Welsh Government says this will place learners in FE who currently have separate LSPs on a more equal footing with their school-based counterparts. The Welsh Government also says it will improve transition between school and post-16 education.

168. A significant change under the Bill, which is intended to facilitate more effective transition, is the transfer of the responsibility for specialist post-16 provision from the Welsh Ministers to local authorities. The Welsh Government believes this will encourage local authorities and post-16

providers to work together to plan and make provision, as well as incentivising local authorities to plan for the individual beyond the age of 16 in a way they do not necessarily have to at present.

169. The Welsh Government and the WLGA are in discussions about how to transfer a commensurate amount of funding into the Revenue Support Grant (RSG) to cover the new responsibilities for specialist post-16 provision. The WLGA said this is fraught with difficulty and that some local authorities risk losing out financially. The Committee has made specific recommendations on this matter in chapter 16: Financial and Resource Implications.

170. The Bill only encompasses young people aged 16-25 within the new ALN framework if they are in further education. It does not include those undertaking work-based learning, for example apprenticeships.

Stakeholders' evidence

171. The Committee has received wide ranging views in both its oral and written evidence. There was also detailed discussion on the post-16 aspects of the Bill at the stakeholder event held on 26 January. The following is a summary of the views expressed at the stakeholder event:

- The Bill will hopefully improve transition to post-16. Changes such as having a list of approved specialist FE colleges should help.
- Making greater provision at age 18-25 will have workforce and resource requirements. There are doubts about how ALN support would be provided to this age group.
- The Bill is a 'missed opportunity' to support young people with ALN into post-16 training and employment.
- Work-based learning should not be excluded although understood that extending duties to the private sector might make the Bill more complicated.
- FE is generally not sufficiently resourced, meaning that a child could receive adequate support when in school only for this support to disappear when they enter FE. There is a seamless transition for pupils going from Key Stage 4 to Sixth Form yet if they go to a different school or an FE college, the whole process has to start from scratch again.
- It is positive that FE colleges are included but there are concerns they do not have sufficiently skilled staff to implement the requirements. There is also a risk that local authorities and FE will be battling with each other over who has responsibility for an individual learner.
- The Code must provide adequate information on how to manage learners' transition into adulthood. The latter years of an IDP during statutory schooling should include plans for potential transition to employment as well as continuing in education.

Further education

172. Colegau Cymru, the umbrella organisation representing the 14 FEIs in Wales support the general principles of the Bill and believe there is a "definite and long overdue need" to update the legislation on SEN/ALN. In their evidence to the Committee, Colegau Cymru made the following points:⁵⁴

⁵⁴ Written Evidence, Colegau Cymru, [ALN34](#)

- There are new duties for FEIs, presenting a major change which will require considerable preparation.
- Local authorities and regional consortia are not currently in the habit of including FEIs in planning and in their training and project work. This needs to change.
- There is a need for much improved information sharing.
- There are uncertainties over who pays for what in terms of specialist services. There is a need to strengthen the role of the health sector.
- Arrangements for transition for learners with ALN enrolling at colleges do not take place early enough.
- The responsibilities on colleges will create workforce pressures. The large number of learners entitled to IDPs will require more specialist staff, including transition specialist staff.
- Colegau Cymru highlight the risk of different processes, paperwork and formats regarding IDPs across different local authorities unless a common template is used.
- There has been little information given to FEIs regarding funding for implementation. FEIs will be required to carry out additional tasks and duties with a large (as yet unconfirmed) number of learners with ALN.
- There will be costs of the new staffing structure, including the new ALNCo role.

173. In oral evidence, Colegau Cymru revealed that only Coleg Gwent amongst the FE sector had been involved to any extent in trialling IDPs. They also were critical of the amount of implementation funding that further education has had access to, suggesting that the majority had been allocated to schools and local authorities.⁵⁵

Work-based learning

174. Stakeholders have generally called for the extension of the Bill’s provisions to those beyond further education. Estyn told the Committee:

“If you look at the principle behind the Bill, then I think it would be difficult to see why that group of learners wouldn’t be included.”⁵⁶

175. In fact, Estyn commented that it was “slightly misleading” to claim the Bill covers 0-25 year olds when it only includes those not of compulsory school age who are in further education. Only approximately one fifth of the total population of 16 to 25 year olds are in further education.

176. The National Training Federation Wales (NTFW) believe the new ALN framework should also be available to young people undertaking work-based learning. They wrote:

“We think that this provision should also be accessible to Apprenticeship learners and that the types of support available should be diverse to meet the needs of all FE Training options to include work-based learning.

NTfW feels that work based learning merits inclusion in the Bill to reflect

⁵⁵ Oral Evidence, Colegau Cymru, **16 March 2017**

⁵⁶ Oral Evidence, Estyn, **8 March 2017**

provision for those learners who opt for an alternative route to their career development in the post 16 compulsory education system.”⁵⁷

177. In oral evidence, NTFW highlighted the implications the different treatment of work-based learning could have for attempts to establish parity of esteem.

“We’re working alongside Welsh Government to progress the aim of creating parity of esteem between vocational learning and more academic routes. We feel that parity of esteem should start from 0 to 25, so you’re building that parity of esteem right through an individual’s learning, and so the omission of work-based learning looks at where that parity of esteem ends then. Does it end after they’ve left school? It should continue from 0 to 25, and so it’s building that esteem from 0 to 25, so that those learners who traditionally or naturally choose a vocational route feel that it is on par with academia—that they’re not choosing a less standard route. They’re choosing a route that is on par with academia. Therefore, the inclusion of work-based learning, the environment of work-based learning, means that the learner has that parity of esteem, that they’re not choosing a route that is not a viable route or considered to be a less valuable route than that for people who choose academia.”⁵⁸

178. NTFW also highlighted that it is often learners with the most complex barriers (including learning difficulties) that go down the work-based learning route rather than an academic education route. For NTFW, the proposed system “therefore needs to include such a learner”.

179. NTFW reported that the work-based learning sector has “considerable experience” of supporting learners with ALN and that there are many examples of the variety of support given to learners on its Traineeship scheme. They also noted that work-based learning providers can currently apply for Additional Learning Support for learners who are deemed by Careers Wales to require it. However, NTFW reported that neither the process nor the funding mechanism are straightforward. They said “ALN is not properly funded under the work-based learning contract”.

180. The Welsh Government has outlined the potential for work-based learning providers providing support on a voluntary rather than a statutory basis, although NTFW appeared sceptical whether this would be sufficient. They told the Committee:

“What we have found is, the omission of work-based learners gives the assumption that it doesn’t apply to them—you know, the Bill doesn’t apply. At a recent event that was co-ordinated by Welsh Government, one of the questions was, ‘What about the settings outside of the establishment?’, and the omission, sometimes, when you’re working, trying to get people to have that transitional support outside of traditional routes, means that some people feel that it’s nothing to do with them.”⁵⁹

⁵⁷ Written Evidence, National Training Federation for Wales, [ALN45](#)

⁵⁸ Oral Evidence, National Training Federation for Wales, [16 March 2017](#)

⁵⁹ Oral Evidence, National Training Federation for Wales, [16 March 2017](#)

Minister's response

Further education

181. When answering questions about the specific issue of the absence of a power for local authorities to direct an FEI to make ALN provision, the Minister referred to the regulation making powers available to the Welsh Ministers under section 34 of the Bill (see chapter 6 of this report). Unfortunately, the Committee did not have time to explore in greater detail the nature of the relationship between local government and FE and whether this is sufficiently established to make these aspects of the Bill work.

182. The Minister and his officials confirmed that the duties on FEIs towards any of their learners with ALN will apply regardless of the intensity of the course being studied. The head of the Welsh Government's ALN legislative programme said:

“If a learner is enrolled with an FEI, then they will fall within the Bill, and they will be entitled to an IDP if they have ALN, regardless of how long they're in that setting for. I guess there is an element of proportionality there, and most learners who arrive at an FEI will probably arrive with their IDP, which the FEI will then review and take on. So, there's some operational detail to work through there, but the basic principle is that they will fall within the scope of the Bill.”⁶⁰

183. On the subject of the level of involvement in the pilots, the same official said:

“Coleg Gwent has been directly involved in the work that we're doing. They sit on our strategic implementation group, for example, but also ColegauCymru do, as well, so there is a broader range of FEIs involved as well now. In terms of the original pilots that we ran a few years ago, FEIs weren't involved in those, but they are now much more involved in the engagement that we're doing.”⁶¹

Work-based learning

184. The main reason the Minister offered in evidence for not including work-based learning within new ALN framework is that this would extend the Bill into the private sector and that this is 'an education Bill for education providers':

“The reason it isn't included in the Bill, of course, is that work-based training takes place, almost by definition, within a private business, and the provisions of this Bill have not been extended outside of the education sector in that way. (...)

[Work-based learning] isn't part of the duties contained within this Bill, because that would require broadening the Bill to move away from the education system and to enter the broader economy, and the Bill doesn't do that.

We have the powers within the system to change the situation in the public sector, which doesn't exist for the private sector.”⁶²

⁶⁰ Oral Evidence, Minister for Lifelong Learning and Welsh Language, **22 March 2017**

⁶¹ Oral Evidence, Minister for Lifelong Learning and Welsh Language, **22 March 2017**

⁶² Oral Evidence, Minister for Lifelong Learning and Welsh Language, **22 March 2017**

185. The Minister did, however, signal that the Welsh Government would want work-based learning providers to support young people with ALN on a voluntary basis. He said:

“However, I must say that we have spoken to work-based learning providers over the period of time since the publication of the Bill, and I would hope and anticipate that, whilst those providers will not have statutory duties to perform and to deliver upon, there will be an ability for work-based learners to support apprentices or other people with the needs that they have in order to continue their learning. So, I hope that we will be able, by creating a new framework—a statutory framework—for the statutory sector, to also lead to a culture change. (...)

That can mean, on occasion, that we try and change the culture and not just try and change the law.”⁶³

Committee views and recommendations

186. The evidence presented to the Committee raises serious concerns about the adequacy of the existing relationship between local authorities and the FE sector to make the provisions of the Bill work effectively and in the best interests of the learner. The Committee is not satisfied that the provisions of the Bill are adequate to ensure that the needs of learners with ALN will be met, especially in the difficult transition to further education.

187. The Committee is also concerned that FE colleges have not been involved sufficiently in either the pilot work or in planning for transition to the new system, and believes that the Welsh Government should have done more to engage with the FE sector throughout this period.

188. The Committee notes the Minister’s confirmation that the duties on FEIs towards any of their learners with ALN will apply regardless of the intensity of the course being studied, and that learners with ALN would be entitled to an IDP, regardless of how long they are in that setting for. The Committee believes, however, that this approach needs to apply a broad test of proportionality to ensure that resources are used to support learners across the board in the most effective way.

189. The Committee agrees with views expressed by many stakeholders that the ALN framework should be extended to include work-based learning, provided outside of an FEI setting, rather than being supported on a voluntary basis as suggested by the Minister. It is often learners with the most complex barriers, including learning difficulties, who choose the work-based learning route, and the proposed new system should include such learners.

190. The Committee recognises that extending duties to the private sector might make the Bill more complicated. However, private companies providing work-based learning receive money from the Welsh Government to deliver the schemes and it is not clear why they are excluded from the scope of the Bill’s provisions, when private nurseries receiving Welsh Government/local authority funding are not. The Committee also recognises that the sector has not thus far been consulted on any extension. Any extension to the private sector would also need to be proportionate, to ensure resources are used in the most effective way to support learners across the board. However, the Committee believes the Minister should explore the feasibility of this further.

⁶³ Oral Evidence, Minister for Lifelong Learning and Welsh Language, 22 March 2017

191. Although not raised specifically in evidence during Stage 1, it has been raised with Members that specialist college places are sometimes allocated to best meet the budgets of the FEIs / local authorities, and do not in all cases meet the needs of the learner in the best way possible. There is a potential conflict of interest for local authorities in assessing a learner's ALN, deciding on the provision required and financing that provision. The Committee believes that more explicit safeguards are necessary to ensure that local authorities must, when providing a college place, make a decision in the best interests of the learner.

192. Chapter 2 of the draft Code sets out the general principles which should underpin the planning and provision of support for children and young people with ALN. One of those principles is that all those involved in providing support to children and young people with ALN should work together in the best interests of the child or young person - and this should include placements in colleges. The Committee believes that there should be greater safeguards to ensure that local authorities must, when deciding on what specialist provision is offered to a post-16 learner, make a decision in the best interests of the child or young person.

Recommendation 21. The ALN framework in the Bill should be extended to include work-based learning.

11. Collaboration and the involvement of the health sector

Background and the position in the Bill

Duties on health bodies

193. Since the draft Bill was considered, the Welsh Government has sought to strengthen the wording of the most significant duty on health bodies, which is the duty that leads to them providing services. Section 18 of the Bill places the following requirements on health bodies:

- Where asked to by a local authority, a health body ‘must consider whether there is a relevant treatment or service that is likely to be of benefit in addressing the child’s or young person’s ALN’.
- If the health body identifies such a relevant treatment or service, it ‘must secure’ it for the child or young person.

194. ‘Increased collaboration’ is one of the Welsh Government’s ten core aims for the Bill and is intended to help meet the objective of:

- ‘An integrated, collaborative process of assessment, planning and monitoring which facilitates early, timely and effective interventions.

195. Section 58 of the Bill provides that where a local authority requests information or other help from other bodies (such as health boards) in carrying out any of their ALN functions, for example assessing a learner’s needs or preparing a IDP to meet the learners’ ALN, the body must comply with that request unless doing so would:

- be incompatible with their own duties; or
- otherwise have an adverse effect on the exercise of their functions.

196. The duty to help is similar to the current requirements regarding SEN at present. However, the duty to comply with requests for information is new and is designed to address current ‘issues around the failure of bodies to share information as effectively as they should’. The Welsh Government says it will be underpinned by clear guidance in the Code.

DECLLO role

197. Section 55 of the Bill imposes a new duty on health boards to appoint a Designated Education Clinical Lead Officer (DECLLO). This new role must be undertaken by a member of staff who is a registered medical practitioner, or a registered nurse or other health professional.

198. The Explanatory Memorandum explains that the DECLLO will:

- ensure there are appropriate service models within each health board;
- provide leadership within the health board to support compliance with relevant duties;
- liaise with partners and serve as a primary point of contact for local authorities; and
- prompt and facilitate effective inter-professional working on ALN.

199. The Explanatory Memorandum also suggests that DECLO will not be routinely involved in the assessment and reviews of specific IDPs, except in the course of their usual clinical practice, but will be responsible for ensuring the appropriate health board input is provided. Chapter 12 of the draft Code provides more information on the intended role of the DECLO and its main responsibilities.

200. In a letter to the Committee, the Minister clarified that the Welsh Government intends the DECLO to be wholly a strategic role.⁶⁴ They “should not be involved in delivery of day to day additional learning provision; these operational functions must be embedded in the whole service”. However, the Welsh Government has said that health boards should also have a “health coordinator” in place to “signpost to the correct health professionals and act as a point of contact for schools, local authorities, parents and children and young people”.

Stakeholders’ evidence

201. Multi-agency collaboration is one of the most important issues for stakeholders and has been consistently highlighted in evidence as one of the biggest barriers to effective provision under the current system.

202. The following extract from the Special Educational Needs Tribunal for Wales’ (SENTW) response to the Welsh Government’s consultation on the draft Bill (November 2015) summarises views about the problems at that time surrounding joint working between local authorities and health boards:

“At the present time the weakness in collaboration that has plagued the effectiveness of the current SEN and LDD assessment and support systems is likely to be imported into the new system and the Tribunal is concerned that this will undermine its overall effectiveness.”⁶⁵

203. The duties in the draft Bill on health boards and local authorities to collaborate, particularly the requirements on health boards to make ALN provision, were criticised by the National Deaf Children’s Society (NDCS) and Children in Wales as being too weak and not sufficient to secure the contribution and input of the health sector.

Duties on health bodies

204. At the stakeholder event on 26 January, participants said that the most common issue and biggest obstacle is where education services have no access or influence over health delivery and health bodies are not adequately engaging.⁶⁶ There is a perception that, whilst the duties on health bodies have been strengthened since the draft Bill, they still do not go far enough. This was supported in much of the written evidence.

205. Carmarthenshire Educational and Child Psychology Services remained concerned that duties on health bodies “do not appear to be strong enough” in the Bill and “need to be worded in order to tie in commitment from health”. The National Autistic Society believed that the Bill “still does not adequately enforce multi-agency working” and that section 18 is not robust enough.

⁶⁴ Letter from the Minister for Lifelong Learning and Welsh Language, [21 March 2017](#)

⁶⁵ Written Evidence on the Draft ALN Bill (November 2015), [SENTW](#)

⁶⁶ Stakeholder Event, 26 January 2017, [Summary of Evidence](#)

206. Bridgend and Wrexham local authorities were concerned that health bodies will be able to relieve themselves of responsibilities by removing obligations to make provision from an IDP (under section 19(6)), meaning they still have a discretion over whether or not they provide services.

207. The strengthened duties in the Bill “did not reassure” Afasic that all children and young people with speech, language and communication needs will be able to access proper health assessments.

208. The WLGA summed up the predicament which local authorities could face as follows:

“At the end of the day, there still isn’t real parity between health and local authorities. And there’s the point we’ve made about what happens if a local authority refers a case to the health board, and the health board considers that there is no relevant treatment or service that would help the learner. Where do you go from there? Is that the end of it? Can the authority then say, ‘We’ve asked them and they say no’. Or is it effectively deemed to be an education need, and the authority has to provide and pay for it?”⁶⁷

209. Carmarthenshire’s Director of Education, representing ADEW, gave an example of the uncertainty about whether the provisions in the Bill relating to health duties will address problems faced by local authorities at present:

“I think this goes back to what we were discussing earlier, really, about having speech and language therapy provision. At the moment, several local authorities buy that service from health or pay a service level agreement—we pay a considerable sum. That is a health need. In the future, do I say, ‘Okay, you provide that for the 100 pupils you’re providing for now, and I don’t have to pay for it.’? So, I think that’s an area we need to investigate and kind of tease out.”⁶⁸

210. The Third Sector Additional Needs Alliance remains critical about the robustness of the duties on the health sector. SNAP Cymru told the Committee:

“There is a huge lessening of entitlement here around health, and it is of great concern, really. We are not imagining that health professionals can participate in the whole process, but we do know that families are going to be disappointed where there is a significant need for health input into the person-centred planning process.”⁶⁹

211. Estyn noted that there can be a mismatch between clinical decisions and what parents want:

“I think there will always be, on occasion, a mismatch between a clinical decision about a health need and a health service that need to be provided, and perhaps a parent’s or a child’s or an education professional’s views about what might help to meet the needs of that child.”⁷⁰

⁶⁷ Oral Evidence, WLGA, [2 March 2017](#)

⁶⁸ Oral Evidence, Carmarthenshire’s Director of Education (ADEW), [2 March 2017](#)

⁶⁹ Oral Evidence, SNAP Cymru, [22 March 2017](#)

⁷⁰ Oral Evidence, Estyn, [8 March 2017](#)

212. The health sector is clearly conscious about such a mismatch – a gap between expectation and delivery – and feel that section 18 is worded too widely. The NHS Confederation emphasised that health services must always be a matter for clinical judgement. They said prudent healthcare principles must therefore be reflected within the Bill so that this legislation is consistent with the way other duties are placed on health bodies. The NHS Confederation called for section 18(4) to include the words: ‘based on clinical need’.

213. The Confederation also had some reservations about the term “benefit” within the criteria in section 18. They said its precise meaning is ambiguous as, in a health context, treatments can have benefit but not be clinically effective.

214. Cardiff and Vale University Health Board expanded on this in oral evidence, stating:

“I think the way that it’s worded at the moment, it says, ‘may be of benefit’. Lots of things may be of benefit, but is it evidence based and whose decision is it whether it is of benefit or not? I think it opens up a conversation that parents may think it’s of benefit, schools may actually think it’s of benefit, and as a clinician, we may actually be saying, ‘Well, there is no evidence to support that.’”⁷¹

215. Aneurin Bevan University Health Board added:

“It’s who considers it likely to be of benefit? It’s how much understanding of what is benefit and what knowledge base you have behind that, which is why I think it’s so important for the health professionals involved in the decision to say, ‘Actually, we need to explore this further.’ To take up the end point, it would be totally unacceptable to not provide a service if there was a clinical evidence for us and a clinical need. So, you can’t justify it on lack of resources if there is clinical evidence and need to do so. But, we already see a system where the expectation of assessment and, actually, diagnosis—. Education is one of the few places where telling a child, ‘Actually, there isn’t a long-term condition here,’ which should be good news, will lead to an appeal against it, because it disappoints people that they will no longer therefore be able to obtain the one-to-one they’d hoped they would get with the diagnosis. It’s an unusual situation.”⁷²

DECLO role

216. Stakeholders generally welcomed the Designated Education Clinical Lead Officer (DECLO) role within health boards. However, many sought more detail on how it would work in practice and were keen to understand the split between the strategic and operational nature of the role.

217. Stakeholders also highlighted the resource implications of the role. This was echoed by Aneurin Bevan University Health Board in oral evidence:

“It’s a bigger workload than is anticipated in the Bill, and when you look at the resource required to deliver the job—yes. When you look at managing joining the systems, north Wales have got six local authorities, we’ve got five local

⁷¹ Oral Evidence, Cardiff and Vale University Health Board, **16 March 2017**

⁷² Oral Evidence, Aneurin Bevan University Health Board, **16 March 2017**

authorities, Hywel Dda have got three. There are lots of linkages to do, and local authority childcare as well as education has to be part of that job. So, the resource, and actually how much time, I think has been underestimated in the supporting papers so far.”⁷³

218. Local government welcomed the DECLO role and hoped that it would improve collaboration. Carmarthenshire’s Director of Education, who represented ADEW alongside the WLGA, told the Committee:

“I think, for us, it’s having one designated person who we can go straight to for any challenges or issues we have with provision from health. At the moment, we might go to different heads of service or departments, and it is quite challenging sometimes to get the right person within the health service to have an influence. But I am concerned about, maybe, one of these roles in a huge health board like Hywel Dda, which spans quite a large geographical area. There are issues there, I think, which we need to kind of investigate, in the sense of whether it is one role. Or do you have three or whatever? I don’t know. And also about access to those officers as well and how that is managed.”⁷⁴

219. The WLGA indicated they were encouraged by recent progress in developing the DECLO role since the draft Bill:

“We know that so much work has been done in the interim on the DECLO role that it feels that it has been strengthened, if you see what I’m saying. Maybe the terminology in the Bill hasn’t strengthened, but what underpins the Bill and how the DECLO role will work has already been strengthened. Because we’ve seen the work that has been done—the pilots that are now going on in Betsi Cadwaladr and Aneurin Bevan to pilot that role. I think, maybe, it’s just a kind of mindset, that we feel it’s been strengthened.”⁷⁵

220. However, Aneurin Bevan University Health Board told the Committee that the pilots were “only just being established” and this concerns them, given that the DECLO role had already been included within the Bill. Aneurin Bevan UHB also spoke about their two-tier model for the DECLO (later set out in a letter from the Minister dated 21 March 2017).⁷⁶ Aneurin Bevan UHB told the Committee:

“We’re actually looking at separating out those two strategic roles and delivery roles and things like that, to looking at how school health nurses might be able to do the practical—making sure the service works for the child, and then an overarching role for co-ordinating the local authorities and social services. (...)

We’re splitting the role, so there would be somebody who’d be doing the strategic overview role, and somebody who’s making sure that the information

⁷³ Oral Evidence, Aneurin Bevan University Health Board, **16 March 2017**

⁷⁴ Oral Evidence, Carmarthenshire’s Director of Education (ADEW), **2 March 2017**

⁷⁵ Oral Evidence, WLGA, **2 March 2017**

⁷⁶ Letter from the Minister for Lifelong Learning and Welsh Language, **21 March 2017**

is gathered in a way that allows the individual education plans to be meaningful and useful for the children.”⁷⁷

Minister’s response

Section 18 duty

221. The Minister believes section 18 “strikes the right balance” between basing decisions about health interventions on clinical judgement and securing the adequate input and contribution from the health sector. He also believes the term “likely to be of benefit” is appropriate. The Minister told the Committee:

“There needs to be a focus on the clinical needs of the child or the young person concerned, and that is what must drive the decisions taken by medical staff in the national health service—what the clinical needs of that child are. Now, I don’t believe that the current test is too high or too low. It talks about ‘of benefit’ to the individual child or young person concerned. (...)

[Section 18] is a significant and stronger duty than has appeared in previous iterations of the Bill, and reflects the changes that have been made as a consequence of previous conversations and consultations on this Bill. And I think what I would really emphasise to the committee is that it is not ‘will be of benefit’; it is ‘likely to be of benefit’. So, the test is not one that would be overwhelmingly difficult to prove; ‘likely to be of benefit’ sets the bar probably at where it needs to be in terms of likely to be of benefit.”⁷⁸

222. The Minister did not concur with the NHS’s view that section 18 needs to explicitly refer to health bodies making such judgements “based on clinical need”. He said:

“I don’t understand on what other basis those decisions would be taken. I can understand people who are saying, ‘On what other basis or alternative basis would a decision be taken by a member of medical staff, except clinical need? (...)

On what basis would you start to qualify or define decisions? And, of course, when you start qualifying things, what do you do? You don’t just qualify in; you qualify out. I would say, ‘Be careful for what you wish’ to some people making these arguments.”⁷⁹

DECLO

223. The Minister confirmed that the DECLO role will be a strategic one:

“The role of the DECLO, or the designated lead ... will provide a strategic role. (...)

I think that’s right and proper, because we’re talking here about how a health board organises its resources, organises its people and organises its services in

⁷⁷ Oral Evidence, Aneurin Bevan University Health Board, **16 March 2017**

⁷⁸ Oral Evidence, Minister for Lifelong Learning and Welsh Language, **22 March 2017**

⁷⁹ Oral Evidence, Minister for Lifelong Learning and Welsh Language, **22 March 2017**

order to deliver what is required to that individual child or young person. So, we're not looking at somebody who actually does that delivery. We're looking for someone who's qualified to do that delivery, but we are looking at a person then, or a designated lead, who would be able to ensure that those services are provided where and how they should be provided. So, I see it very much as a strategic planning role. We know that's missing at the moment, and I hope that this will fill the gap.”⁸⁰

224. The Minister's letter to the Committee, dated 21 March 2017, further explained:

“[The Health Expert] Group has advised that the role as set out in the current draft of the Code should be strengthened further by clarifying the strategic responsibilities of the role. The Group has recommended that the DECLO must be undertaken by a person directly under Board level to enable successful escalation of issues to Board level, have sufficient influence over Board decisions and the autonomy to champion ALN, and monitor compliance of the board's statutory duties.

The Group is clear that the DECLO should not be involved in delivery of day to day additional learning provision; these operational functions must be embedded in the whole service.”⁸¹

225. The Minister's letter also raised something new, which is not referenced in the Bill or its accompanying documents, relating to a “health co-ordinator” which each health board should have “in place at the appropriate local level to signpost to the correct health professionals and act as a point of contact for schools, local authorities, parents and children and young people”. This is the two-tier role explained by Aneurin Bevan University Health Board (see earlier paragraphs). When asked about the health co-ordinator role, the Minister said:

“Some of those roles already exist and are being performed within health boards at the moment. So, it won't be involving additional costs.”⁸²

226. The Minister also confirmed the Welsh Government will review the Regulatory Impact Assessment (RIA) and publish an updated version following Stage 2. In answer to the comments of health boards that the RIA underestimates the costs and resource implications of the DECLO role, the Minister said in his letter of 11 April:

“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. (...)

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.”⁸³

⁸⁰ Oral Evidence, Minister for Lifelong Learning and Welsh Language, **22 March 2017**

⁸¹ Letter from the Minister for Lifelong Learning and Welsh Language, **21 March 2017**

⁸² Oral Evidence, Minister for Lifelong Learning and Welsh Language, **22 March 2017**

227. The Minister and his officials acknowledged it had “taken longer than hoped to get the pilots up and running on a practical level” but that the Welsh Government has wanted to develop the policy first before starting the pilots. The Welsh Government’s Deputy Director, Support for Learners, told the Committee:

“The pilots are in a scoping phase at the moment, and we would hope to see practical piloting on the ground in the next financial year. We’ll be monitoring that very closely. It will be a feedback group rather than an extended pilot with an evaluation at the end. (...)

It’s a fluid pilot that will help us to develop the role. The expert group is telling us at the moment that our original thinking may not have been quite right, and that they see the role as being a two-way linkage between the health boards and the co-ordinators across the different parts of the health system.(...)

The precise intention of the pilot is to establish the boundaries of the role of the DECLO and how it can have the most practical impact on ensuring the strategic co-ordination of all partners within health working at a strategic level in partnership with local authorities and education providers. (...)

The code will help to set out what the requirements of the DECLO role will be. It won’t be a job description as such, but it will set out what our expectations for that role will be within each health board, yes.”⁸⁴

Committee views and recommendations

228. The Committee notes that ‘Increased collaboration’ is one of the Welsh Government’s ten core aims for the Bill. Multi-agency collaboration was consistently highlighted in evidence as one of the biggest barriers to effective provision under the current system. It is vital that weaknesses in collaboration within the current system are not imported into the new system and the Welsh Government should work to ensure this does not happen.

229. The duties in the draft Bill on health boards and local authorities to collaborate, particularly the requirements on health boards to make ALN provision, were criticised widely in evidence as being too weak and not sufficient to secure the contribution and input of the health sector. While the Committee acknowledges that improvements have been made to strengthen the Bill as introduced, the Committee is concerned that many stakeholders still believe the duties in the Bill on health bodies are not strong enough.

230. In relation to section 18(4), the Committee has considered the call by the NHS bodies for that section to include the words “based on clinical need”. However, the Committee agrees with the view of the Minister that section 18(4) does not need to be qualified by referring to being based on clinical need, as it is satisfied that decisions under this section should always be based on clinical need. The Committee is also satisfied that the wording of sections 18(4) and 18(5) strikes an appropriate balance between valuing the clinical judgement of health professions of what treatments or services are likely to be of benefit and placing an onus on health bodies to secure that intervention once it has been identified.

⁸³ Letter from the Minister for Lifelong Learning and Welsh Language, **11 April 2017**

⁸⁴ Oral Evidence, Minister for Lifelong Learning and Welsh Language, **22 March 2017**

231. The Committee broadly welcomes the intention in the Bill to establish the DECLO role. Although not clear from the detail in the Bill or accompanying documentation, the Committee was grateful to the Minister for clarifying that the Welsh Government intends the DECLO to be wholly a strategic role, and that they should not be involved in delivery of day to day additional learning provision. However, the Committee believes that there is still a lack of detail about the nature of the role, especially how they will work with other health professionals, including the new health co-ordinator role (see following paragraphs).

232. The Committee is concerned that the role of a 'health co-ordinator' mentioned in the Minister's letter of 11 April 2017 raised a new concept that was not included in the Bill or accompanying documents. This suggests that each health board should have in place a health co-ordinator to signpost to the correct health professionals and act as a point of contact for schools, local authorities, parents and children and young people. While the Committee would welcome this approach, we believe that further information on this should be included within the Code, and within the revised Explanatory Memorandum following Stage 2, including the detailed costs within the Regulatory Impact Assessment (see also section 16: Financial and resource implications).

233. In relation to the DECLO pilots that have been initiated, the Committee is extremely concerned that these were not undertaken at a much earlier stage, in order to help inform the role specification for the DECLO before introduction of the Bill. The Committee believes that this is a missed opportunity to gain an important insight into the nature and operation of the role and how the Bill could have been used to help shape it.

234. The Committee is concerned that the DECLO pilots are still in a scoping phase at the moment, and that the Welsh Government only hope to see practical piloting on the ground in this financial year. The Committee believes the Welsh Government should provide a detailed outline of the DECLO pilots, as well as a more precise timeline. Any findings from the pilots should be made available before Stage 3 of the Bill, to help inform the Assembly of potential problems with the proposed DECLO role ahead of that amending Stage.

Recommendation 22. The Minister should work to ensure that weaknesses in collaboration within the current SEN system are not imported into the new ALN system.

Recommendation 23. The Minister should provide further clarity on the nature of the DECLO role, especially how they will work with other health professionals, including the new health co-ordinator role.

Recommendation 24. The Minister should provide further information on the role of a 'health co-ordinator' within the ALN Code, and within the revised Explanatory Memorandum following Stage 2, including detailed costs within the Regulatory Impact Assessment.

Recommendation 25. The Minister should provide a detailed outline of the DECLO pilots, as well as a more precise timeline. Any findings from the pilots should be made available before Stage 3 of the Bill.

12. Information, advice and advocacy

Background and the position in the Bill

235. The Explanatory Memorandum for the Bill acknowledges that previous reviews have concluded that the current system of statutorily backed local authority statements and non-statutory school-led provision is “complex, bewildering and adversarial”.

236. The Welsh Government’s intention is that introducing statutory IDPs for all learners with ALN will remove the “current artificial and contentious divide” and “eliminate one of the principal causes of adversarial tension”.⁸⁵ One of its overarching objectives for the Bill is to establish “A fair and transparent system for providing information and advice, and for resolving concerns and appeals”.

Information and advice

237. Section 7 of the Bill requires local authorities to make arrangements to provide information and advice about ALN and the ALN system. They must make their information and advice arrangements known to a list of persons specified in section 7(2). Paragraph 4.9 of the draft Code provides guidance on the intended effect of the information and advice, in addition to it being “accurate” and “neutral”.

238. Unlike disagreement resolution and advocacy services, the provision of information and advice does not need to be independent. However, where local authorities decide to commission advice and information to be provided by external parties, the draft Code sets out some commissioning principles. For example, local authorities will remain responsible for the overall standard of the service and should establish robust quality assurance arrangements.

Disagreement avoidance and resolution

239. Section 61 of the Bill requires local authorities to make arrangements for both avoiding and resolving disagreements between the child/young person and/or parent, and the school/college or local authority. This includes providing access to help in resolving a disagreement from independent persons. Local authorities must promote the use of the arrangements they put in place and explain to the child/young person and/or parent that any arrangements they participate in do not affect their right to appeal to the Education Tribunal for Wales.

240. Paragraph 18.4 of the draft Code lists a number of standards which local authorities are expected to reach in their arrangements for disagreement avoidance and resolution.

241. Local authority staff involved in delivering these arrangements must have a detailed understanding of the ALN system and should have no vested interest in the outcome of any potential disagreements. The independent help which local authorities are required to arrange should be from an experienced, knowledgeable and qualified source with no vested interest and no prior involvement with the learner.

242. Should a learner and/or their family decide not to use the disagreement resolution procedures arranged by the local authority, their rights to appeal to the Education Tribunal for Wales are unaffected.

⁸⁵ Explanatory Memorandum, Paragraph 3.114

Advocacy services

243. Section 62 of the Bill requires local authorities to make arrangements for independent advocacy services, in order to provide advice and assistance to a child or young person for whom they are responsible, including the option of representation. The Welsh Government plans to place a requirement in the Code on local authorities to take reasonable steps to make the availability of independent advocacy known to families and others involved. This was on the face of the draft Bill but the Welsh Government has explained in the Explanatory Memorandum that it could be better dealt with through the Code.

244. Under section 62 of the Bill, local authorities must refer any child or young person for whom they are responsible, who requests independent advocacy services, to an independent advocacy service provider. Paragraph 18.45 of the draft Code sets out the ways in which advocate can help a child or young person in that position. Local authorities are responsible for ensuring that the advocacy services are appropriate and of suitable quality.

Stakeholders' evidence

245. There was fairly strong criticism relating to this area during the stakeholder event held on 26 January. A summary of the views expressed during the stakeholder event is below. Comments made apply generally to the provision of information and advice, dispute resolution services and independent advocacy:

- Stakeholders believe the Bill does not go far enough to make the system less adversarial. There will still be a feeling of parents vs the local authority. At present, parents see the system as a “battle” and feel they need to be “ready for a fight”.
- Families need information, advice and advocacy support as early as possible. The independence of this advice is vital. Parents are more likely to accept decisions they may not necessarily like if an explanation comes from an independent, credible source.
- Families do not know where to go for information and advice. The situation is even worse at post-16, which is like a “black hole”. Parents should have access to guidelines setting out what they can expect from an IDP. This would enable them to understand their rights better and the options available to them should they have concerns about school or local authority actions and decisions in relation to their child.
- Advocacy is needed for parents as well as children, particularly as the parents of children with ALN will sometimes also have ALN themselves.
- Changes to legal aid were a big blow to families in accessing advocacy support and representation. There are some concerns over the level of access in Wales to legal representation specialising in the Welsh system. The new system needs to be more proactive in offering early independent advice and information.
- Local authorities need to provide more information about what the law is and what rights learners with ALN, and their families, have. The key to avoiding complaints is to work with the families right from the start, but this requires time.
- Advocacy to support families should be available from an independent source from the early disagreement avoidance stages through to the dispute resolution stages. Families need support “from start to finish”, including when attending tribunals.

246. One of the strongest points made by stakeholders is that independent advocacy should be available to parents, as well learners themselves. The Third Sector Additional Needs Alliance (TSANA) wrote:

“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’. As the duty is extended to a ‘case friend’ it would seem incongruous not to apply the duty in relation to parents. As such we have concerns both that those most vulnerable will not be heard and that very young children, or children who lack sufficient capacity to understand (as set out in section 75 of the Act) may not have appropriate parental representation.”⁸⁶

247. The National Deaf Children’s Society, which was part of the TSANA evidence panel, told the Committee:

“If local authorities and bodies know that parents have this access to advocacy then that kind of helps to police things itself. Similarly, if they know that there are mechanisms in place to monitor the appeals that are going through, and that there’s some kind of redress on them if they do things wrong, then they’re going to do things right in the first instance. So, we need to make sure that appropriate monitoring mechanisms are built in, but also we need to nail the code down to make sure that we get proper advocacy, proper information and advice to families, because if local authorities know that that’s in place, then they’re going to do things right, early on, first.”⁸⁷

248. The WLGA said that local authorities would be considering what arrangements they currently have for providing services to families and how these should continue under the new system:

“All local authorities will have to look at what arrangements they’ve got both for providing information and advice and for dispute resolution in the light of the Bill and in the light of the extended age range, because clearly they’ve not had to do that for post-16 before, so they all need to look at that and decide what arrangements will best suit their needs. There may be some where it all works very well and they’re happy to continue with the parent partnership arrangements, even though it won’t be a requirement as such. That will be something that they’ll have to look at as they come to implementation.”⁸⁸

249. SNAP Cymru explained the importance of independent advocacy as part of a combination of services for families. They said:

“If I could explain, if you were working with a family, there will be—not often, but on occasions—within the family, a difference of opinion between child and parent. So, the importance of having someone outside of that is clear. So, our practice has been that we would bring someone in from another region to work

⁸⁶ Written Evidence, TSANA, [ALN75](#)

⁸⁷ Oral Evidence, TSANA Panel - National Deaf Children's Society, [22 March 2017](#)

⁸⁸ Oral evidence, WLGA, [2 March 2017](#)

with the child and then you would continue working with the family. Because you cannot isolate one issue from the other. This is a family we're talking about and you need to look at the whole issue holistically. So, within that, advocacy is only one of the tools.”⁸⁹

250. SNAP Cymru also emphasised the importance of putting in place disagreement avoidance mechanisms at the earliest possible stage:

“I can't stress how important it is to understand that, unless we work on the avoidance of disagreement at a much earlier stage and give that the status that it requires, then it could be very costly. (...)

It's really disappointing to me that, after all this time, too much emphasis is being put on formal disagreement resolution and formal advocacy, instead of looking at things in a very holistic way and taking early intervention. There doesn't have to be something wrong. Where there is a parental concern or a young person is unhappy, you need to be in there resolving issues, before they become deep rooted and require costly forms of advocacy, tribunals and formal disagreement resolution.”⁹⁰

Minister's response

251. As stated within the Explanatory Memorandum, the Welsh Government is relying considerably on there being less disagreement and fewer disputes in its financing of the Bill and projection that the reforms will be cost-neutral.

252. SNAP Cymru and other stakeholders have argued that the information and advice local authorities will have to provide under section 7 should be independent, as well as the dispute resolution and independent advocacy services which are introduced at a later stage when conflict may have already arisen.

253. The Minister confirmed he was satisfied with these aspects of the Bill, whilst one of his officials confirmed:

“Information and advice can be provided. As long as it is consistent and balanced advice, then that could be provided by the local authority; it doesn't have to be an independent. When we get into a dispute situation, then there are aspects of the Bill that allow for independent advice or advocacy and so forth, depending on the escalation. But at the information point, it's not necessarily independent.”⁹¹

Committee views and recommendations

254. One of the Welsh Government's overarching objectives for the Bill is to establish a fair and transparent system for providing information and advice, and for resolving concerns and appeals. The Committee notes the intention that introducing statutory IDPs for all learners with ALN will help remove the 'current artificial and contentious divide' and 'eliminate one of the principal causes of

⁸⁹ Oral Evidence, TSANA Panel - SNAP Cymru, [22 March 2017](#)

⁹⁰ Oral Evidence, TSANA Panel - SNAP Cymru, [22 March 2017](#)

⁹¹ Oral Evidence, Minister for Lifelong Learning and Welsh Language, [22 March 2017](#)

adversarial tension'. The Committee is therefore concerned that there was fairly strong criticism received in evidence relating to this area.

255. The Committee welcomes the fact that Section 7 of the Bill requires local authorities to make arrangements to provide information and advice about ALN and the ALN system. The provision of general advice, or information to promote the system and how it works will be greatly valued. We also note that the Code provides guidance on providing this information, including that it be 'accurate' and 'neutral'.

256. The Committee is concerned that, unlike disagreement resolution and advocacy, the provision of information and advice does not need to be independent, but accepts that local authorities can decide to commission independent advice and information under commissioning principles set out in the draft Code. The Committee believes, however, that independent information and advice should be available for children, young people and parents at the earliest opportunity.

257. One of the main concerns raised by stakeholders is that independent advocacy should be available to parents, as well as learners themselves. The Bill does not explicitly provide for the provision of advocacy for parents (unless they are case friends), this in spite of the Code stating that "The child, child's parent or young person should be enabled to participate as fully as possible in the decision making processes". The Committee notes that the duty to provide independent advocacy is extended to a case friend and therefore agrees with the view, that section 62 of the Bill should be amended to also include parents.

258. The Committee is also concerned that section 62(4) of the Bill makes provision that arrangements made by a local authority may include provision for payment to be made to, or in relation to, any person carrying out functions in accordance with the arrangements made under that section. The Committee is concerned that this might result in fees for those requesting independent advocacy services, and believes that such services should be provided free of charge for those accessing it. Whilst this may not be the policy intention of the Welsh Government, the way section 62(4) is drafted makes it a possibility.

259. The Committee also considers that the provision of information and advice is especially important during the key stages of a learner's education, key stages of the ALN process, and through the key transitions, including to adulthood. The Committee believes that the Code should be strengthened to require information at these key stages to be actively promoted, and readily available and accessible to children, young people and parents. This should include the points at which young people exit the education system.

Recommendation 26. Section 62 of the Bill should be amended to ensure that a local authority must also be required to provide independent advocacy services to parents who are not case friends.

Recommendation 27. The Minister should ensure that the Bill and/or the Code ensures that independent information and advice is available for children, young people and parents at the earliest opportunity.

Recommendation 28. The Minister should ensure that the arrangements for the provision of independent advocacy services do not make it possible for a charge to be made on those requesting the service.

Recommendation 29. The Code should be strengthened to require information and advice at key stages of the learner’s education, key stages of the ALN process, and through key transitions to be actively promoted, and readily available and accessible to children, young people and parents. This should include the points at which young people exit the education system.

Recommendation 30. The Bill and/or the Code should ensure that independent information and advice is offered to children, young people and parents on each occasion that an IDP is reviewed, or ceased, rather than solely at the beginning of a local authority’s engagement with a family.

13. Children's rights

Background and the position in the Bill

260. The Bill and its supporting documentation put considerable emphasis on placing the interests of the child or young person centre stage, using a model of 'person centred planning'. This approach has been generally welcomed by stakeholders and many stressed this was critical to getting these reforms right.

261. Section 6 of the draft Bill requires that anyone exercising functions must have regard to:

- a) The views, wishes and feelings of the child and the child's parent or the young person;
- b) The importance of the child and the child's parent of the young person participating as fully as possible in the decision-making process;
- c) The importance of the child and the child's parent or the young person being provided with the information and support necessary to enable participation in decisions.

262. Section 7 requires local authorities to make arrangements to provide children and young people with information and advice about ALN and ALP (in addition to parents and school leaders). The draft Code requires that 'anyone exercising functions under the Act or this Code will need to involve children and young people at every stage of the process, with their views, wishes and feelings listened to' (para 22). The draft Code is also underpinned by several "general principles", including that "all those involved in providing support to children and young people with ALN should work together in the best interests of the child or young person".

Legislation regarding children's rights

263. In 2011, the Assembly unanimously voted in favour of the Rights of Children and Young Persons (Wales) Measure, and in doing so became the first legislature in the UK to pass dedicated child rights legislation. The Measure strengthened and built on the rights-based approach of the Welsh Government to making policy for children and young people in Wales. It placed a duty on the Welsh Ministers to have due regard to the rights and obligations within the UN Convention on the Rights of the Child (UNCRC) and its optional protocols.

264. The Measure partly came into force in May 2012 and the Welsh Ministers had a duty to have 'due regard' to the UNCRC when planning and developing new legislation or policy, or reviewing or changing existing legislation or policy. On 1 May 2014, this duty extended to all the functions of the Welsh Ministers.

265. Section 7(2) of the Social Services and Well-being (Wales) Act 2014⁹² includes a duty on relevant persons exercising functions under the Act in relation to a child to have due regard to the UNCRC. This does not apply to the Welsh Ministers who are instead covered by the 2011 Measure.

Stakeholders' evidence

266. The Children's Commissioner strongly called for duties of due regard to the UN Convention on the Rights of the Child and the UN Convention on the Rights of Persons with Disabilities to be placed on the face of this Bill. The Commissioner said that this "provides an opportunity for children's rights to be further embedded in Welsh legislation, policy and practice".

⁹² [Social Services and Well-being \(Wales\) Act 2014](#)

267. Several respondents to the written consultation echoed the evidence of the Children’s Commissioner for Wales which was that it is a “missed opportunity” for the Bill not to include a duty of due regard to the UN Convention on the Rights of the Child on the face of the Bill.

268. Barnardo’s believes it “appears incongruous that the Bill was tabled without these duties”. Afasic agree, describing due regard to the UNCRC as “fundamental” to this Bill.

269. The Wales UNCRC Monitoring Group reflected the feelings of a number of stakeholders in its comment:

“Not only can we see no reason why a duty of due regard to the UNCRC and the UNCRDP is not explicit on the face of the Bill, but we believe the Bill would be better and more likely to deliver its principles and aims for its inclusion.”⁹³

270. In oral evidence, the Children’s Commissioner said:

“there has probably not been a greater opportunity to further the Welsh Government’s duties to pay due regard to children’s rights than in this piece of legislation. Since the National Assembly got primary legislation powers, it’s probably, in my view, the biggest piece of legislation that’s focused on children and their fundamental rights, solely. (...)

this gives a fantastic opportunity, and really a vital opportunity, to absolutely cement Wales’s commitment to children’s rights through this legislation. (...)

I think that the strengthening would be that it would be empowering for children and young people. It really fits the ethos and aims of the Act to move away from a system that, clearly, is experienced by children and parents as disempowering, as being one that puts up barriers and acts as a sort of gatekeeping—keeping children away from exercising their rights to a full education and to fulfil their potential. (...)

I think that it would go such a long way to fulfilling some of the calls from the UN committee on the rights of the child, from the concluding observations last year. It would be a very positive and proactive response from Wales to the UN committee’s recommendations.”⁹⁴

Minister’s response

271. The Minister told the Committee he did not find “compelling” the argument that the Bill should include a duty on relevant bodies to have due regard to the UNCRC. He believes that it is adequately covered by the general duty of due regard to the UNCRC that is on the Welsh Ministers, and told the Committee:

“It was very clear to me, as a Member of that committee [that considered the 2011 Measure], that once it is on the face of one piece of legislation, putting an enduring duty on Ministers and the delivery of public services, we will not have to go through this process of slavishly placing the same duty into every piece of

⁹³ Written Evidence, Wales UNCRC Monitoring Group, [ALN60](#)

⁹⁴ Oral Evidence, Children’s Commissioner for Wales, [2 March 2017](#)

legislation subsequent to it. It was very, very clear to me, as a member of that committee, that we wanted to move away from that box-ticking exercise and have a piece of legislation that was broad, all-encompassing and enduring, and that would deliver on the ambitions of the UNCRC, both in terms of subsequent legislation but also in terms of the delivery of services. (...)

I don't think it's a good way of legislating. I think we need to be very clear about having a statute book that is robust, that is transparent, that is accessible, and that means ensuring that when we do pass [legislation] we respect them and that we work on the basis of them, rather than trying to repeat them in subsequent Bills and pieces of legislation.”⁹⁵

272. In his letter of 11 April, the Minister confirmed his position that he is “simply not persuaded that amending the Bill to include a due regard duty would strengthen the focus on children’s rights in the Bill”. He added:

“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.”⁹⁶

273. The Minister’s letter to the Committee of 11 April also answered the question of whether he was prepared to consider a duty to pay due regard to the UN Convention on the Rights of Persons with Disabilities. He said:

“The Bill reflects the general principles of the UN Convention on the Rights of Persons with Disabilities and other provisions [for example education] which are relevant in this context. (...)

Specific reference to this Convention on the face of the Bill is neither necessary or 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.”⁹⁷

Children’s Commissioner’s Further Correspondence

274. The Children’s Commissioner wrote to the First Minister on 31 March 2017 to say it was “most disappointing” to hear Alun Davies’ evidence about the question of placing a duty of due regard on the organisations who will be implementing the Bill.⁹⁸ The Commissioner said it was “factually inaccurate” of the Minister to state that the existing duty on the Welsh Ministers to pay due regard to the UNCRC also applies to education providers.

⁹⁵ Oral Evidence, Minister for Lifelong Learning and Welsh Language, **22 March 2017**

⁹⁶ Letter from the Minister for Lifelong Learning and Welsh Language, **11 April 2017**

⁹⁷ Letter from the Minister for Lifelong Learning and Welsh Language, **11 April 2017**

⁹⁸ Letter from the Children's Commissioner for Wales to the First Minister, **31 March 2017**

275. The Commissioner cites the example of the Social Services and Well-being (Wales) Act 2014 including a duty on relevant persons exercising functions under that Act to have due regard to the UNCRC. She says it would be “incongruous” for such a duty to apply to one group of professionals and not to another, or not to apply in the context of ALN. The Commissioner wrote:

“Due regard to the UNCRC should not, and does not start and end with Ministerial functions.”

Response from the First Minister

276. The First Minister responded to the Children’s Commissioner on 8 May 2017, setting out the Welsh Government’s position.⁹⁹ The First Minister confirmed that while the Welsh Government’s commitment to the UNCRC remains absolute, he “does not agree that this requires us to place a general duty to have due regard to the UNCRC in all primary legislation relating to children and young people”.

277. In relation to the Bill, the First Minister did not believe that adding a due regard duty on service providers would lead to improved outcomes. The First Minister also stated that:

“If we were to place a due regard duty directly on those exercising functions under the Bill, we risk distracting frontline practitioners from supporting learners by creating layers of red tape and bureaucracy...”

278. The First Minister’s letter also highlights that in developing the Bill’s provisions, the Welsh Government has promoted children’s rights, and that specific provisions in the Bill “reflect the important and relevant articles of the UNCRC”. The First Minister’s letter also contained a table setting out how the specific provisions of the Bill address the relevant articles of the Convention. The Welsh Government’s position is that the UNCRC is aimed at governments whose role it is to put in place the necessary national policy and legislative architecture to ensure compliance with the Convention.

Committee views and recommendations

279. The Committee very much welcomes the emphasis in the Bill and its accompanying documentation on placing the interests of the child or young person centre stage, and believed that using a model of ‘person centred planning’ is the right approach, and critical to getting the reforms right. This is highlighted by the provisions of sections 6 and 7 of the Bill placing requirements on those exercising functions to have regard to, or involve, children and young people in the decision making process.

280. In relation to whether the Bill should include specific reference to the UN Convention on the Rights of the Child, the Committee agrees with the view of the Children’s Commissioner for Wales and other stakeholders, that it would be a missed opportunity not to embed Wales’s overarching commitment to children’s rights on the face of the Bill.

281. The Committee acknowledges the view of the Minister that by virtue of the 2011 Measure, there is already a general duty on the Welsh Ministers to have due regard to the UNCRC. The Committee further notes that, as set out in the First Minister’s letter to the Children’s Commissioner, there are a number of provisions within the Bill that reflect the important and relevant articles of the UNCRC. The Committee believes that reflecting the relevant articles of the UNCRC in the Bill’s provisions is not the same as placing a duty on those working in the area, which would require them

⁹⁹ Letter from the First Minister to the Children's Commissioner for Wales, [8 May 2017](#)

to have the relevant articles in their mind when making any decisions under the Bill and which would re-inforce the Convention in a way that the approach in the Bill does not.

282. The Committee believes that it is vital that the UNCRC filters down through policies to those responsible for delivery 'on the ground', and that the principles of the Convention are understood in the delivery of duties. The Committee therefore believes that the Bill should include a specific duty on relevant bodies to have due regard to the relevant articles of the UN Convention on the Rights of the Child.

283. In relation to the UN Convention on the Rights of Persons with Disabilities, the Committee notes the Minister's view that the Bill already reflects the general principles of the UNCRPD, but believes that this again provides an opportunity to enhance the Assembly's commitment to disabled people by further embedding their rights within the legislation. The call to include the UNCRPD within the Bill is, in the Committee's view, strengthened by the fact that it has not been incorporated into primary legislation in Wales in the same way as the UNCRC.

284. In recommending that specific reference to the UNCRPD should be incorporated into the Bill, the Committee is mindful of the declaration and reservation made by the UK Government in relation to Article 24 of the Convention, and considers that the Welsh Government should consider this further in the drafting of any amendment.

Recommendation 31. The Bill should be amended to include a specific duty on relevant bodies to have due regard to the UN Convention on the Rights of the Child.

Recommendation 32. The Bill should include a specific duty on relevant bodies to have due regard to the UN Convention on the Rights of Persons with Disabilities.

14. Welsh-medium provision

Background and the position in the Bill

285. The 2015 draft Bill was criticised over the level of attention it paid to the Welsh language. In the Bill introduced in December 2016, the Welsh Government has strengthened the provisions for learners with ALN to receive support through the medium of Welsh if this is their chosen language. Sections 10 and 12 which refer to the preparing and maintaining of an IDP by governing bodies or local authorities respectively now include a requirement that they consider whether provision should be made in Welsh and, if so, state this in the IDP.

286. Governing bodies and local authorities have a duty to take all reasonable steps to secure any Welsh-medium provision stated in an IDP. Section 18 which contains the duty on health bodies places a parallel requirement to the one on governing bodies and local authorities to consider if provision should be made in Welsh and, if so, to take all reasonable steps to secure it.

287. When keeping ALN in their area under review, in accordance with section 56, local authorities must have regard to the desirability of ensuring provision is available in Welsh.

Stakeholders' evidence

288. The Welsh Language Commissioner described ALN provision as an area where “making provision in accordance with the language needs of individuals is absolutely critical to the quality and effectiveness of the provision in question”.

289. The Commissioner was “excited by the tone” of the Bill and regards it as “so much more robust” than the draft Bill. However, she believes the duties within the Bill could be strengthened, stating that:

“- The requirements in sections 10 and 12 on school/college governing bodies and local authorities to decide when preparing an IDP if the ALN provision should be made available in Welsh implies that English is the default medium of provision and Welsh is the exception.

- Where Welsh language provision is identified in an IDP, the Bill sets duties on relevant persons to take all reasonable steps to ensure support through the medium of Welsh. This is not an absolute duty to provide Welsh language support and does not reflect the ambition and the challenge posed by the rest of the Bill. (Cymdeithas yr Iaith suggest the wording ‘best efforts’.)

- The reference to ‘desirability’ in the section 56 duty on local authorities to keep overall ALN provision under review is not strong enough and needs to be tightened.”¹⁰⁰

290. In relation to the provisions in sections 10 and 12 of the Bill, the Senior Policy Officer at the Commissioner’s office said:

¹⁰⁰ Written Evidence, Welsh Language Commissioner, [ALN13](#)

“It would be safer, I believe, to reword that so that it would state that the decision should be made as to whether the provision should be made in Welsh or in English. So, I think that needs to be changed or amended.”¹⁰¹

291. The Commissioner also called for an eleventh core aim for the legislation – delivering bilingual ALN services.

292. The other two main issues relating to the Welsh language that have emerged from the evidence are:

- The availability of ALN services through the medium of Welsh and the capacity of the system to meet demand.
- The extent to which the requirements of the Bill should be realistic about the current capacity of the workforce or whether legislation should be used to provide an impetus to increase capacity – a so called ‘chicken and egg’ scenario.

Minister’s response

293. The Minister rejected the suggestion that the way sections 10(5), 12(5) and 18(5) are worded implies the default language of provision is English rather than Welsh:

“I do not and nor should anyone else come to the conclusion that the default language is English. That’s not what’s contained within the Bill. I deny that that analysis is a possibility, frankly.”¹⁰²

294. The Minister highlighted problems in specifying “Welsh or English” in the Bill as this might preclude other languages, for example British Sign Language. He also defended the use of the term “reasonable steps” in 10(6)(b), 12(6)(c) and 18(5)(c), and told the Committee:

“It is much, much stronger than has been suggested—

‘must take all reasonable steps’. ‘All reasonable steps’. Not ‘most reasonable steps’, ‘some reasonable steps’—‘all reasonable steps’.

All reasonable steps to ensure that there is provision available through the medium of Welsh—all reasonable steps, and that’s what I would expect providers to take.”¹⁰³

295. The Minister accepted the wording of section 56 could be strengthened and was open to considering any alternative suggestions.

296. On the issue of workforce planning, the Minister said:

“What I’m very eager to do is to set very clear objectives for the future workforce. I will do that through the Welsh language strategy later this year, and I hope that the status of the Welsh language in this Bill will be sufficient to ensure that the children who do need provision through the medium of Welsh receive that provision. (...)

¹⁰¹ Oral Evidence, Welsh Language Commissioner, **2 March 2017**

¹⁰² Oral Evidence, Minister for Lifelong Learning and Welsh Language, **22 March 2017**

¹⁰³ Oral Evidence, Minister for Lifelong Learning and Welsh Language, **22 March 2017**

My objective is to ensure that we do have the workforce in place to allow that to happen. We are discussing that as part of our discussions on the broader language strategy, and I think that, at the moment, what is contained within the Bill is sufficient to ensure that the provision is available.”¹⁰⁴

Committee views and recommendations

297. The Committee welcomes improvements made to the Bill since the 2015 draft, including the strengthened provisions for learners with ALN to receive support through the medium of Welsh if this is their chosen language.

298. The Committee notes the concerns of the Welsh Language Commissioner that as drafted sections 10(5), 12(5) and 18(5) imply that English is the default medium of provision and Welsh is the exception. The Committee also notes the concerns of the Commissioner regarding the wording of sections 10(6), 12(10) and 18(5)(c), which refer to persons taking all reasonable steps to ensure support through the medium of Welsh. The Committee has considered this and is broadly content with the wording of these sections.

299. However, the Committee observed that the emphasis in sections 10(5), 12(5) and 18(5)(c) appears to be on schools/FEIs, local authorities and health bodies respectively to decide in the first instance whether to make provision in Welsh, then take all reasonable steps to provide it. The Committee believes these sections should be amended to place a greater presumption on provision being made available in whichever of English or Welsh is requested by the learner and / or their family. The term ‘all reasonable steps’ would allow for circumstances where this is not possible.

300. In relation to section 56 of the Bill, the Committee agrees with the Welsh Language Commissioner that the reference to “desirability” is not strong enough and needs to be tightened. The Committee believes that this reference should be removed from section 56, so that the provision requires a local authority to “have regard to ensuring that ALP is available in Welsh wherever possible”.

301. The Committee’s consideration of Welsh language provision within the Bill has highlighted the potential for other languages to be potentially excluded from a learner’s IDP, for example British Sign Language. The Committee believes that the Welsh Government should consider whether reviewing provision under section 56(3)(a) could be extended to cover other languages, that over time could be included within the Bill’s provisions.

302. The Committee has considered the view of the Commissioner that specific elements of the Bill do not reflect its ambition and the challenge for the Welsh language. The Committee agrees with the Commissioner’s call for an eleventh core aim for the Bill to ensure the delivery of bilingual ALN services.

303. The availability of ALN services through the medium of Welsh and the capacity of the system to meet demand is a real concern for the Committee. The Committee agrees that the requirements of the Bill should be realistic about the current capacity of the workforce, but believes that the Bill should contain specific provisions that require that, in future, the workforce must have the capacity to deliver additional learning provision through the medium of Welsh in all cases where this is requested. The Minister should also prepare and publish a strategy to indicate how this provision would be met and the timescales in which it would be implemented.

¹⁰⁴ Oral Evidence, Minister for Lifelong Learning and Welsh Language, **22 March 2017**

Recommendation 33. Sections 10(5), 12(5) and 18(5)(c) should be amended to remove the discretion for the governing body, local authority and health bodies to decide in the first instance whether provision should be made in Welsh. If a learner or their parent requests that provision is made in Welsh, this should be the starting point. The bodies concerned should then be required to take all reasonable steps to secure that the provision is made in Welsh.

Recommendation 34. Section 56 of the Bill should be amended and strengthened to remove reference to the “desirability” of ensuring that additional learning provision is available in Welsh, with the inclusion instead of the term ‘wherever possible’.

Recommendation 35. The Minister should consider whether section 56(3)(a) could be extended to cover languages other than Welsh, that over time could be included within the Bill’s provisions.

Recommendation 36. The Minister should adopt an eleventh core aim for the Bill to ensure the delivery of bilingual ALN services.

Recommendation 37. The Bill should contain specific provisions that require that, in future, the workforce must have the capacity to deliver additional learning provision through the medium of Welsh in all cases where this is required. The Minister should also prepare and publish a strategy to indicate how this provision would be met and the timescales in which it would be implemented.

15. The Tribunal

Background and position in the Bill

304. The Bill renames the existing Special Educational Needs Tribunal for Wales (SENTW) as the Education Tribunal for Wales. The Welsh Government says this better reflects the Tribunal's role as it hears disability discrimination claims relating to schools as well as SEN/ALN cases. Sections 79-81 largely retain the current practical arrangements for the Tribunal and the Bill does not make any significant changes to the way in which the Tribunal will hear appeals.

305. There are other sections of the Bill which relate to the Tribunal. The most important is probably section 69, which states that if the Tribunal makes an order, a governing body or local authority concerned must comply with that order. This does not extend to health bodies (section 19(8)) and the 'lack of teeth' for the Tribunal in relation to directing health bodies has been criticised.

306. The SENTW website¹⁰⁵ states that the whole process, from when the Tribunal receives a claim to when it make a decision, usually takes about four to five months.

307. As a comparison, under the NHS redress procedure,¹⁰⁶ NHS bodies must take all reasonable steps to issue an interim report within 30 working days. If this is not possible, the NHS body must let the person notifying the concern the reasons why and send the interim report as soon as reasonably practicable and within six months. Under exceptional circumstances, the final investigation report must be provided as soon as reasonably practicable, and not later than twelve months from the date that the Welsh NHS body received notification of the concern.

308. The Minister confirmed to the Committee that the NHS redress procedure had not been used in any cases of SEN/ALN.¹⁰⁷

Stakeholders' views

Remit over health bodies

309. The Special Educational Needs Tribunal for Wales (SENTW) has strong reservations about the lack of remit it currently has, and the Education Tribunal for Wales will have under the Bill, over the decisions and actions of health bodies. This was a key concern of stakeholders at the event on 26 January 2017, and has been raised in much of both the oral and written evidence.

310. SENTW articulated it as follows:

“In such cases, as things stand at present, the SENTW hears cases, and makes a decision which the local authority is responsible for delivering. If the Tribunal has determined that additional support is required for educational purposes, then the LA must ask the LHB to deliver. If the LHB refuse to deliver then either the LA must seek private provision (which can cause delay in the provision being made, is costly and difficult to regulate) or the needs of the child remain unmet, which is inequitable and damaging to their education. In

¹⁰⁵ [SENTW Website](#)

¹⁰⁶ Redress is dealt with in [The National Health Service \(Concerns, Complaints and Redress Arrangements\) \(Wales\) Regulations 2011](#), (Part 6, paras. 25-33, Part 7 for English NHS bodies) and the [2013 updated Putting Things Right Guidance](#). The timescales for dealing with redress in NHS Wales are dealt with in para.26 'Response to an investigation under regulation 23 where it is decided that there is or there may be a qualifying liability'.

¹⁰⁷ Letter from the Minister for Lifelong Learning and Skills, [11 April 2017](#)

such circumstances, SENTW has no power to enforce. Parents must complain to the Welsh Government.

SENTW regards this as a fundamental weakness in the current system.

Unfortunately it is a weakness that it appears is likely to reoccur in the new ALN system as a result of Section 19 (8) of the Bill. (...)

If the Tribunal has formed a decision (a legal judgment made, by those appropriately skilled to do so, on the basis of the expert evidence before it), and the LHB which should deliver that service can simply say that it does not consent then it undermines the whole purpose of having a Tribunal and is likely to result in the needs of the child/young person not being met.”¹⁰⁸

311. Evidence from a number of stakeholders suggested that having two appeal systems for families to navigate goes against the principles of person-centre planning and the objective of a fairer and more transparent system, which are meant to be at the heart of this Bill.

312. Estyn told the Committee that rather than extending the remit of the Tribunal, more should be done to join the two appeals processes together. They also noted that the Tribunal does not necessarily have the expertise to make decisions on health matters:

“I think a better approach, in a way, would be trying to find a way to make the two processes more aligned in some way. I’m not sure that SENTW should be able to direct health. I think it would need to be composed in a very different way, with different expertise, if it was going to reach that point. I think there is more work to be done to try to align the two processes, to try and make it less frustrating for the families involved.”¹⁰⁹

313. Dr Justin Warner from the Royal College of Paediatric and Child Health told the Committee he would welcome the Tribunal having remit over health bodies:

“Absolutely, yes. That’s exactly what we would want. I think it would—. I always spend a lot of my time writing letters to try and support children and often get nowhere, but this system would protect consultants as well. It would protect lots of people on that pathway of trying to provide that child with the best healthcare they can get. So, absolutely, yes, I agree with you.”¹¹⁰

314. Health boards are anxious about having health professionals’ clinically based decision overridden by a Tribunal that does not have that health expertise. However, the health boards which gave evidence to the Committee were comfortable with the Education Tribunal for Wales being able to direct health bodies as long as health professionals are involved in the Tribunal’s decision-making. For the NHS, it has to be clear that decisions about what health bodies should provide are made by people who understand prudent healthcare and clinical needs.

¹⁰⁸ Oral Evidence, SENTW, **2 March 2017**

¹⁰⁹ Oral Evidence, Estyn, **8 March 2017**

¹¹⁰ Oral Evidence, Justin Warner, **16 March 2017**

315. If the composition of the Tribunal can be addressed in such a way that it guarantees health professionals' involvement, health boards would appear to accept a single Tribunal and single appeals system. Aneurin Bevan University Health Board told the Committee:

“I think having independent health people as part of the tribunal process is the way forward.

But health professionals need to have assurance that the basis on which that assessment is made is that it's been made by somebody who understands the health needs.”¹¹¹

Workload

316. Due to the increased number of children and young people who are expected to have IDPs, a number of responders are concerned about the impact this will have on the Education Tribunal's workload, given the corresponding increase in the number of cases that potentially become disputes.

317. SENTW told the Committee that cases were on the increase, possibly in anticipation of the new reforms:

“The appeal numbers, year on year since the 2011-12 year, have been rising. Okay, we're not talking a huge amount of figures, but still, they are significant. I think, in 2011-12, there were 84 appeals and six claims, whereas in 2015, there were 118 appeals and 15 claims. We're also seeing, on a like-for-like basis, the current year also increasing.”¹¹²

318. Moving forward, SENTW predicted:

“If we follow England we'll get a lull while everything beds in and people try the system and see how it's working. Then, if there are problems with the system, and it's not working—the people-centred approach isn't working, the departments aren't coming together enough, and the individual plans aren't going forward—then I think we will definitely see a spike of 20 per cent.”¹¹³

Minister's evidence

Remit over health bodies

319. The Minister rejected the argument that the Tribunal should be able to direct health bodies and that having two separate systems disadvantages families:

“I disagree with that conclusion. I disagree with that analysis. The tribunal exists to determine what educational or training provision should be provided. I've seen no evidence at all, either to this committee or elsewhere, that it is in any way restricted in its ability to do that. If the evidence exists, I would like to see it. I haven't seen it yet.

I believe that it would be introducing far too much complexity into the system if you have two means of appeal. At the moment, we have a very clear redress

¹¹¹ Oral Evidence, Aneurin Bevan University Health Board, [16 March 2017](#)

¹¹² Oral Evidence, SENTW, [2 March 2017](#)

¹¹³ Oral Evidence, SENTW, [2 March 2017](#)

system. We can have disagreements about the robustness of it, I accept that—there will be political disagreements—but we have a very clear system of redress within the National Health Service, and we will have a very clear system of redress within the education service. And I think trying to pretend that they’re both the same thing, doing the same job in the same place, I think would create unnecessary complexity in the system.”¹¹⁴

320. The Committee asked the Minister how many SEN/ALN related cases have been pursued by families through the NHS redress procedure. The Minister answered that as far as the Welsh Government is aware there have been no such cases. In response to questioning about whether parents feel sufficiently empowered to use the NHS process, the Minister said:

“A general lack of awareness of the process is a likely explanation for this. Work to raise awareness of this right to redress and encourage families to use it where appropriate will form a key part of the awareness raising strand of the ALN transformation programme.”¹¹⁵

Workload

321. The Minister stated in his letter of 11 April that “there is no reason to believe Tribunal cases would rise either before or after implementation”.¹¹⁶ This contradicts the opinion of SENTW, which drew on the experience in England. However, the Minister says comparisons with England are of “limited value” due to the “very different” nature of the reforms.

Committee views and recommendations

322. The overwhelming concern expressed by stakeholders, including the Special Educational Needs Tribunal for Wales itself, is that the Bill does not provide the Tribunal with any remit over the decisions and actions of health bodies or any powers to direct those health bodies, as under the provisions of section 19(8) an NHS body must comply with any order made by the Tribunal only if it agrees to do so. This is a concern that the Committee very much agrees with.

323. The current system, and the system that would continue under the provisions of the Bill, provides for two separate redress procedures for disputes on Additional Learning Needs (i.e. the Tribunal and the NHS complaints and redress system). The Committee agrees with the views expressed by a number of stakeholders that having two appeal systems for families to navigate goes against the principles of person-centre planning and the objective of a fairer and more transparent system, which are meant to be at the heart of this Bill. The Committee therefore believes that the Bill should be amended to provide the Tribunal with remit over the decisions and actions of health bodies, and the power to direct those bodies under the Bill.

324. In extending the remit of the Tribunal to cover health bodies, the Committee believes that decisions about what health bodies should provide should be made by people who understand prudent healthcare and clinical needs. We therefore agree with the concerns of health boards that health professionals’ clinically-based decisions should not be overridden by a Tribunal that does not have that health expertise.

¹¹⁴ Oral Evidence, Minister for Lifelong Learning and Welsh Language, [22 March 2017](#)

¹¹⁵ Oral Evidence, Minister for Lifelong Learning and Welsh Language, [22 March 2017](#)

¹¹⁶ Letter from Minister for Lifelong Learning and Welsh Language, [11 April 2017](#)

325. The Committee is aware that whilst the Tribunal is a 'devolved tribunal', the existing legislation which governs the Tribunal includes a number of Minister of the Crown functions. It is therefore likely that altering the composition of the Tribunal and making any other changes that would be necessary would require the consent of the Secretary of State, which should be sought in the usual manner. The Committee believes that the Welsh Government should consider how it can alter the composition of the Tribunal so that it sufficiently incorporates clinical judgement and expertise.

326. The Committee notes concerns raised that the workload of the Tribunal could rise, as a result of the increased number of learners who are expected to have IDPs, and the corresponding increase in the number of cases that potentially become disputes. Although it is difficult to predict with any certainty the level of increase that may occur, the Committee believes the Welsh Government should consider the experiences of the tribunal system in England following the introduction of reforms there, to help mitigate any similar impact we could face in Wales.

Recommendation 38. The Bill should be amended to provide the Tribunal with remit over the decisions and actions of health bodies, and with the power to direct health bodies, in relation to Additional Learning Needs. In the event that any changes require Secretary of State consents this should be sought in the usual manner.

Recommendation 39. The Minister should consider how the composition of the Tribunal can be altered so that it sufficiently incorporates clinical judgment and expertise. The Minister should also consider whether any other changes to the Tribunal composition are needed so that it maintains an appropriate balance between health and educational expertise.

Recommendation 40. The Minister should consider the experiences of the tribunal system in England following the introduction of reforms there, to help mitigate any similar impact in Wales.

16. Financial and resource implications

Background and position in the Bill

327. The Welsh Government's Regulatory Impact Assessment upon introduction (pages 86-87) provides a summary estimating that, over the four year period 2017-18 to 2020-21, there would be a net administrative cost saving of £2.2 million (£14.2 million savings from a less expensive system against £12 million transitional costs). This figure includes transitional costs, but does not include 'sunk costs' of £1.8 million (costs already incurred prior to implementing the Bill).

328. Following the identification of errors in the original RIA, the Minister issued an update including detailed tables to replace those in the RIA directly affected by these errors. These suggest that the cost of the new ALN system is now projected to be £3.19 million less per year, whereas this was estimated in the RIA as £3.54 million per year. (These figures represent the amount the Welsh Government estimates the new system will save but does not take into account transitional costs.)

329. The Welsh Government has not recalculated the £2.2 million net administrative cost saving referred to above. The Minister said he intends to incorporate these and any other changes into the EM/RIA when it is revised after Stage 2 proceedings. It appears following the corrections, the net administrative cost savings over the four-year period 2017-18 to 2020-21 would be £809,630 (an average of £202,408 per year).

330. In summary, therefore, based on the updated information provided by the Minister:

- The Welsh Government estimates that the ongoing costs of the new ALN system will be £3.19 million less per year than the current system. This is largely due to the lower level of disagreements and disputes the Welsh Government anticipates there will be under the new system.
- The Welsh Government anticipates £12 million of transitional costs during the four-year period 2017-18 to 2020-21. Therefore, during this four-year period, the net administrative savings appear to be approximately £800,000 (on average around £200,000 per year).

Transitional costs

331. Transitional costs required to implement the new system are calculated over the four-year period 2017-18 to 2020-21 as £12 million (an average of £3 million per year). £9.4 million of this will be funded by the Welsh Government:

- £7.0 million through transition grants to the organisations affected.
- £2.4 million in Welsh Government transition costs.

332. The Welsh Government initially envisaged that the remaining £2.6 million transitional costs would be met by public bodies other than the Welsh Government. However, since the introduction of the Bill and publication of the RIA, the Minister has announced a £20 million funding package to support the implementation of the Bill and the wider ALN Transformation programme. He told the Finance Committee on 8 February 2017 that this 'supersedes' the £2.6 million cost allocation to other public bodies.¹¹⁷

¹¹⁷ Oral Evidence, Finance Committee, 8 February 2017

333. In a letter to the Finance Committee, the Minister provided additional information on the £20 million funding.¹¹⁸ The Minister reiterated in his letter to the Committee dated 11 April¹¹⁹ that the £20 million is to fund ALN transformation “in the round” rather than merely the transition from one statutory system to another via the Bill. The Minister says it is difficult to “separate out those activities that focus solely on the implementation of the legislative framework”.

Stakeholders’ evidence

334. Many stakeholders who commented on resource issues felt that the successful implementation of the Bill will require extra resources for those involved in delivering it. They reported that most services are already struggling to fund the current, less comprehensive, system. Some directly noted that they felt the Welsh Government’s cost neutral assessment of the Bill is “overly optimistic”.

335. The most commonly cited reasons for the need for additional resources included:

- the need for a bigger workforce to deal with new duties of collaboration, person centred planning and the increased workload of administering the expanded number of statutory plans that are expected to be required (roughly from around 12,000 to 105,000 plans before taking into account pre and post-statutory school-age learners);
- the new ability to appeal decisions regarding ALN, which will require more time and resource to counter; and
- the expansion of statutory provision for 0-3 and post 16 year olds.

336. The Welsh Government is effectively using the projected savings it forecasts from reducing the level of conflict and number of disagreements to offset the transitional costs of establishing the new system. It therefore estimates that the Bill will save money in the long-term. There is a strong perception amongst local government that the estimated cost savings from reducing disagreement are unrealistic and overestimated.

337. When asked if the RIA underestimates the costs to local authorities under the new system, for example responding to requests from parents to reconsider a school or college’s decisions about ALN, the WLGA told the Committee:

“It’s highly likely. I think the RIA overestimates the potential savings to local authorities by the fact that the Bill removes—. Well, there will be no disagreements or appeals in future about not having a statement, but there could still potentially be lots of other disagreements, (...)”

It’s probably inevitable that the system will be tested and if you look at the number of statemented children who had disagreements or took appeals about the content of their statement then, if you extrapolate that across, as you say, the extra 100,000-plus children in compulsory education, plus those in further education, to whom the right of appeal will also be extended, which it currently isn’t, then you are looking at quite a lot more cases. We don’t know. (...)”

I think the savings are overestimated. Now, I can’t imagine that the new system

¹¹⁸ Letter from the Minister for Lifelong Learning and Welsh Language to the Finance Committee, **8 March 2017**

¹¹⁹ Letter from the Minister for Lifelong Learning and Welsh Language, **11 April 2017**

will cost any less than the current system does. As to whether it will cost more, yes, that's potential—again, it'll be something that we would have to keep under review over transition.”¹²⁰

338. Caerphilly, Vale of Glamorgan and Rhondda Cynon Taf local authorities respectively believe that the Welsh Government's expectations of cost savings in the RIA are “unlikely to be realistic”, “overly optimistic” and a “gross over-estimation”. The local authorities predict the expansion to age 25 will put pressure on capacity and that additional costs are not considered. They also point to the other education reforms, which local government is already tasked with implementing, with enhanced expectations from this Bill added to the mix.

339. SNAP Cymru told the Committee that the RIA overstates the current cost of providing dispute resolution services, consequently over-estimating the amount of savings achieved if, as the Welsh Government predicts, there will be fewer disagreements and appeals. SNAP said that the RIA indicates that local authorities spend £2.8 million per year procuring dispute resolution services under the current system but that the true figure is more like £800,000. The RIA cites SNAP data as the source of its figures, although SNAP says the Welsh Government has “misunderstood” the data. They argue:

“All conclusions drawn from this grossly misrepresentative figure [the £2.8 million annual cost to local authorities of dispute resolution] cannot be considered sound.”¹²¹

340. The significance of the discrepancies in the RIA is not so much about how much SNAP do or do not receive, but the implications any miscalculation of baseline costs may have for the robustness of the rest of the Welsh Government's costings of the Bill. The savings already appear to have reduced from £2.2 million to £800,000 over the period 2017-18 to 2020-2021 following the errors in the original RIA, of which the Minister has notified the Committee. If the baseline costs relating to dispute resolution need to be revised, this could alter the projected savings further.

341. The Special Educational Tribunal for Wales (SENTW) reported there is likely to be an increase in cases as families are eager to resolve issues before the new system is introduced and local authorities may be holding back in anticipation of the changes. SENTW said there should then be a lull as the new system beds in and families see how it works, then, should problems emerge, an increase in cases of possibly around 20%. This is all based on the experiences in England before and after reforms were introduced there in September 2014.

342. Estyn has been remitted by the Welsh Government to undertake a short thematic review into ‘Local authority and school readiness to meet the demands of the new Additional Learning Needs (ALN) Bill’, which the inspectorate said is one of a “series” of similar reviews over the “coming years”.

Transfer of funding for post-16 specialist provision

343. Local government had concerns about the transfer of the current duty on the Welsh Ministers to local authorities in relation to securing specialist post-16 ALN provision. The WLGA was concerned that if the funding is transferred into the Revenue Support Grant (RSG) on the basis of population rather than actual numbers of post-16 learners with specialist ALN, many local authorities would not be able to cover their costs.

¹²⁰ Oral Evidence, WLGA, 2 March 2017

¹²¹ Written Evidence, SNAP Cymru, [ALN78](#)

344. The WLGA highlighted that there are significant variations in demand between local authorities and between years, meaning that any division of the current quantum of funding between the 22 authorities is likely to be insufficient for the demands on some authorities.¹²²

345. Vale of Glamorgan Council said in written evidence:

“Supporting pupils into post 16 specialist provision is based on individual need and as a result can be very expensive. Currently the Welsh Government has responsibility for this but in the Bill this responsibility transfers to LAs. Funding for these placements will be allocated to LAs through a population distribution formula that does not allow fluctuations of need over time. The Welsh Government recognise that there is an “upward trend” in demand for such placements and an increase in numbers post transfer of funding could have significant financial implications for LAs.”¹²³

Finance Committee Consideration

346. The Assembly’s Finance Committee has undertaken separate and specific scrutiny of the financial implications of the Bill. The Finance Committee report on its scrutiny was laid before the Assembly on 15 May 2017.¹²⁴ The Finance Committee has made 10 recommendations relating to specific aspects of the Bill.

Minister’s response

347. The Minister was unequivocal in his first appearance before the Committee on 12 January 2017 that the purpose of the Bill “is not a cost-saving exercise”:

“The purpose of this legislation is not to reduce budgets, but to deliver a more robust system of support for people who need it. We are funding the transition. (...)

We’re looking at delivering those savings, certainly, but what I don’t want to do is to come to this committee and say, ‘That is the reason why we’re doing it; that is the purpose; that is the objective’, because the objective is a far better system, not a cheaper system.”¹²⁵

348. Alun Davies reiterated this message in Finance Committee on 8 February 2017.¹²⁶

349. The Minister has issued two letters regarding the financial information in the RIA. The first, dated 7 February, followed the Welsh Government’s identification of errors in some of the tables in the RIA that was published alongside the Bill. The second was in response to the Committee’s questions about the reliability of costings relating to dispute resolution, following evidence submitted by SNAP Cymru.¹²⁷ The Minister has also written to the Finance Committee, providing further

¹²² Written Evidence, WLGA, [ALN18](#)

¹²³ Written Evidence, Vale of Glamorgan County Council, [ALN09](#)

¹²⁴ [Finance Committee Report](#) on the Financial implications of the Additional Learning Needs and Education Tribunal (Wales) Bill

¹²⁵ Oral Evidence, Minister for Lifelong Learning and Welsh Language, [12 January 2017](#)

¹²⁶ Oral Evidence, Finance Committee, [8 February 2017](#)

¹²⁷ Letter from the Minister for Lifelong Learning and Welsh Language, [21 March 2017](#)

information regarding the £20 million funding package he announced to support the implementation of the Bill.¹²⁸ This followed his evidence to the Finance Committee on 8 February 2017.

350. The Minister’s letter of 11 April (which provided a response to additional information requested by the Committee) confirmed that the Welsh Government still projects an administrative saving from the Bill.¹²⁹ He puts this at £3.19 million per year. This is the estimated saving in operating costs of the proposed system and does not include transitional costs (see also the Background section above).

351. In response to SNAP Cymru’s querying of the figures regarding current costs of dispute resolution, the Minister says this is “unfortunate” as they were “based on data provided and checked by SNAP”. He says his officials have met with SNAP and are working through the implications for the RIA. The Minister promised to update the Committee if there were any changes to the overall savings from the Bill.

352. The Minister maintains that the allocation of the £20 million “is not a reflection of [the Welsh Government] underestimating the cost of implementation of the Bill”. He says the £20 million is aimed at the wider ALN transformation agenda rather than solely implementation of the Bill itself.

353. On the question of how the funding will be allocated, the Minister “envisages a grant allocation rather than grant application process”, although “one that is based on clear criteria” of what is expected.

354. The Minister’s letter of 11 April said that “work is underway with partners to ensure that the workforce is prepared for the reforms”. He also said the Welsh Government would carry out “readiness work and assessments to measure the level of preparedness”, in addition to Estyn’s thematic review.

Transfer of funding for post-16 specialist provision

355. The Minister told the Finance Committee on 8 February 2017:

“There are particular areas—for example, the transfer of funding to local authorities for further education placements—where we need to take decisions. At the moment, we have a budget available for that with Careers Wales. We will need to transfer that budget and then we need to take decisions. Do we ring-fence it? Do we simply put into the RSG? Now, 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.”¹³⁰

356. Subsequently, the Minister has indicated that the funding will be in the RSG. In his oral evidence, the Minister said:

¹²⁸ Letter from the Minister for Lifelong Learning and Welsh Language to the Finance Committee, **8 March 2017**

¹²⁹ Letter from the Minister for Lifelong Learning and Welsh Language, **11 April 2017**

¹³⁰ Oral Evidence, Finance Committee, Minister for Lifelong Learning and Welsh Language, **8 March 2017**

“These conversations are ongoing. They are a matter for the distribution sub-group. (...)

It’s a complex matter and it’s one where conversations are taking place.”¹³¹

357. In his letter of 11 April, the Minister added:

“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.”¹³²

Committee views and recommendations

358. The Committee is extremely concerned about the robustness of the Regulatory Impact Assessment, given the need for the Welsh Government to issue corrections to some of the figures and the scepticism of stakeholders over the estimate that the Bill is cost-neutral or will deliver savings.

359. The Committee agrees with the views expressed by many stakeholders that the Welsh Government has over-estimated the savings from its projection that there will be lower costs in resolving disputes. The Committee notes that these savings could also be revised downwards further following the work the Welsh Government is undertaking with SNAP to clarify current costs of dispute resolution. In light of this, the Committee believes that the Welsh Government should reconsider its assumption that lower costs in resolving disputes will offset other, transitional costs.

360. The Committee notes that the Minister has undertaken to publish a revised Explanatory Memorandum to incorporate any corrections. Given the uncertainty over many of the costs contained in the Regulatory Impact Assessment, including the basis on which savings have been estimated, the Committee believes that the Welsh Government should revisit and provide clarity on its cost and saving estimates before bringing forward a revised Explanatory Memorandum following Stage 2.

361. As detailed in chapter 11 of this Report (Collaboration and the involvement of the health sector) the Committee is concerned that the role of a ‘health co-ordinator’ mentioned in the Minister’s letter of 11 April 2017 raised a new concept that was not included in the Bill or accompanying documents. The Committee believes that further information on this should be included within the revised Explanatory Memorandum prepared following Stage 2, including details of the costs within the Regulatory Impact Assessment (see Recommendation 24).

362. In relation to the transfer of responsibility, and commensurate funding, for post-16 specialist provision to local authorities, the Committee shares the concerns expressed by the WLGA that “if the funding is transferred into the Revenue Support Grant on the basis of population rather than actual numbers of post-16 learners with specialist ALN, many local authorities will not be able to cover their costs”. This would have a detrimental impact on learners with ALN.

363. The Committee believes that the Minister, through the Distribution Sub Group, should consider alternative mechanisms for funding post-16 specialist provision, including:

¹³¹ Oral Evidence, Minister for Lifelong Learning and Welsh Language, [22 March 2017](#)

¹³² Letter from the Minister for Lifelong Learning and Welsh Language, [11 April 2017](#)

- whether the Welsh Government should maintain the funding, with local authorities subsequently recouping costs based on real numbers of learners provided for;
- whether the funding should be transferred as a separate grant rather than within the Revenue Support Grant; or
- consider some other means for demarcating the necessary funding from the overall unhypothecated grant each local authority receives from the RSG.

364. The Committee welcomes the work undertaken by the Assembly’s Finance Committee to scrutinise the Bill. It is vital that specific and dedicated scrutiny is given to these financial elements, and the Committee believes that the Minister should give full consideration to the recommendations made by the Finance Committee. The Committee notes that the Finance Committee has made a separate recommendation on the funding of post-16 specialist provision, but believes that this should be considered alongside the Committee’s recommendation on this matter.

Recommendation 41. The Minister should revisit and provide clarity on its cost and saving estimates before bringing forward a revised Explanatory Memorandum following Stage 2.

Recommendation 42. The Minister, through the Distribution Sub Group, should consider alternative mechanisms for funding post-16 specialist provision.

Recommendation 43. The Minister should give full consideration to the recommendations made by the Finance Committee.

17. Powers to make subordinate legislation

365. The Bill gives the Welsh Ministers 32 powers to make subordinate legislation. These are listed in a table in chapter 5 of the Explanatory Memorandum.¹³³

Additional Learning Needs Code

366. One of the specified powers requires the Welsh Ministers to produce an Additional Learning Needs Code, which itself will be a statutory instrument. Section 4 of the Bill requires the Welsh Ministers to produce a Code and section 5 requires them to consult on it before it comes into force. At present, the Bill provides for the Code to be made under the Assembly’s negative procedure. This means that it will become law unless Assembly Members resolve to reject it, rather than it requiring their express approval.

Stakeholders’ evidence

367. Most stakeholders who commented on this issue said that the ALN Code should be made under the Assembly’s affirmative procedure, where the approval of the Assembly must be required before the Welsh Minister could issue the Code, thereby ensuring it receives a higher level of scrutiny and greater checks and balances.¹³⁴ Nobody has explicitly said they are content for it to be made under the negative procedure.

Constitutional and Legislative Affairs Committee Consideration

368. The Assembly’s Constitutional and Legislative Affairs Committee has undertaken separate and specific scrutiny of the Bill. The CLA Committee Report, which includes further detail on the Bill’s delegated powers to make subordinate legislation was laid before the Assembly on 24 May 2017.¹³⁵ The CLA Committee make 12 recommendations, including that the Minister should table an amendment to the Bill applying a super affirmative procedure to making the ALN Code.

Minister’s response

369. The Minister was scrutinised by the Constitutional and Legislative Affairs Committee on 27 February 2017 about the Bill’s delegation of powers for subordinate legislation. He said:

“And if you take, for example, the code, I’ve given an undertaking to the Assembly committee that I’m very happy for them to examine the code, in addition to the statutory process of enactment of that piece of secondary legislation, to ensure that we have the fullest possible scrutiny available for Assembly Members.”¹³⁶

370. He also said:

“What section 5 seeks to do is to outline a process that tries to strike a balance between two elements: first of all, a consultation with practitioners, with

¹³³ [Explanatory Memorandum](#)

¹³⁴ The affirmative procedure provides that the Welsh Ministers cannot exercise their power to make subordinate legislation unless the Assembly has passed a resolution approving a draft of the subordinate legislation. The subordinate legislation is therefore laid before the Assembly in draft form, and cannot have effect unless the draft is approved by the Assembly.

¹³⁵ [Constitutional and Legislative Affairs Committee Meeting, Stage 1 Report](#)

¹³⁶ [Oral Evidence, Constitutional and Legislative Affairs Committee Meeting, 27 February 2017](#)

interest groups, with stakeholders, and, secondly, effective parliamentary scrutiny in this place. What we have sought to do in that section is to outline that the code needs to have, if you like, the fullest possible examination, both by Assembly Members here, but also by those people who will implement it and who will be delivering that code, as well, in practice. So, we're trying to strike a balance between that level of public consultation, if you like, and effective parliamentary scrutiny. Now, I've given additional undertakings to the Children and Young People's Committee that we will ensure that they have an opportunity to scrutinise the Bill as well. I recognise that isn't covered in section 5 at present, but we are open to ensuring that the code does have the widest possible and most vigorous scrutiny available to us, and we're happy to continue to work with the National Assembly to ensure that happens. (...)

As I've said, I'm content for the code to be subject to the most rigorous scrutiny that is required by the National Assembly. The old special educational needs code was delivered using different legislation at a different time, and was done in a different way, but I recognise that that's no argument for doing things differently today. I would be content for the National Assembly, were it to be so minded, to determine a different process of scrutiny if that is what the National Assembly wishes to do. What we're doing in section 5 is outlining what we believe is at the moment the most appropriate means of enacting this secondary legislation. But, clearly, if this committee believes it requires more vigorous scrutiny, then I'm happy to take those considerations on board."¹³⁷

371. In CYPE Committee, when asked whether the Welsh Government would be amenable to making the final ALN Code under the affirmative or super-affirmative procedure,¹³⁸ the Minister answered:

"I think, considering what I've just said, it would be difficult for me to answer in anything except the affirmative."¹³⁹

Committee views and recommendations

372. The Committee is concerned that, as currently set out in the Bill, the ALN Code will be made by using the negative procedure. The Code will be the primary document used by those responsible for delivering the new system, and the Committee believes that the Code should be subject to the highest level of scrutiny possible before it is made by the Assembly.

373. The Committee welcomed that a draft version of the Code was made available during Stage 1 to help inform the scrutiny of the Bill, but was disappointed that this was provided so late in the scrutiny process. It is important to note that the Code itself was not subject to any scrutiny during Stage 1, as it was provided by the Minister for illustrative purposes only.

¹³⁷ Oral Evidence, Constitutional and Legislative Affairs Committee Meeting, **27 February 2017**

¹³⁸ A very small proportion of subordinate legislation is subject to specific procedures set out in the enabling act. These procedures include enhanced affirmative procedures (sometimes known as super-affirmative procedures)

¹³⁹ Oral Evidence, Minister for Lifelong Learning and Welsh Language, **22 March 2017**

374. To ensure the highest level of scrutiny, the Committee believes that the Code should be subject to the super-affirmative procedure. The Committee would also very much welcome the opportunity to consider the final draft of the Code prior to any statutory consultation under the Bill.

375. The Committee welcomes the work undertaken by the Assembly's Constitutional and Legislative Affairs Committee. It is vital that specific and dedicated scrutiny is given to these legislative elements, and the Committee believes that the Minister should give full consideration to the recommendations made by the CLA Committee.

Recommendation 44. The Minister should table amendments to the Bill to require that the ALN Code is made using a super affirmative procedure. Any revisions to the Code must also be made using the super affirmative procedure.

Recommendation 45. The Children, Young People and Education Committee should be provided with a copy of the final draft of the ALN Code to consider prior to any statutory consultation required under the Bill.

Recommendation 46. The Minister should give full consideration to the recommendations made by the Constitutional and Legislative Affairs Committee.

18. Medical Needs in Schools

376. The Committee has received many calls relating to the duties on schools to manage pupils' medical needs and for this to be potentially included in the ALN Bill. Many of the calls pre-date introduction of the Bill, including a co-ordinated set of submissions to the Committee's consultation in summer 2016 on Fifth Assembly priorities.

377. As the specific issue of 'medical needs in schools' did not form a specific part of the Bill on introduction, the issue was not included specifically within the Committee's consultation on the general principles of the Bill. However, significant evidence has been presented on this issue.

Background

378. The Welsh Government issued non-statutory guidance in 2010: Access to Education and Support for Children and Young People with Medical Needs. The Welsh Government said its purpose was "primarily to provide advice to schools and local authorities".

379. In February 2016, the Welsh Government published new draft guidance, with a view to this replacing the existing 2010 version. The accompanying consultation document said the Welsh Government intended for some of the guidance to be statutory.

380. On 30 March 2017, the Welsh Government issued final guidance, 'Supporting learners with healthcare needs'. An early draft of this was made available to the Committee on 21 March ahead of the Minister's appearance at Committee the following morning. The whole of the document is issued as statutory guidance to schools and local authorities under section 175 of the Education Act 2002, which placed a duty on local authorities and governing bodies to make arrangements for the safeguarding and promoting of the welfare of children in schools. This includes their healthcare needs.

381. The definitions in the Bill do not specifically encompass the medical needs of those with conditions such as diabetes, other than in the way that they affect the ability to learn, in accordance with the ALN definition in section 2 of the Bill. Chapter 6 of the draft Code provides guidance to governing bodies and local authorities about the definition of ALN and how to consider healthcare needs when carrying out assessments.

382. The draft Code states that not all learners with a medical or healthcare need will have ALN and refers to "Continuing NHS Healthcare, which is a package of care provided by the NHS for those individuals with complex and primarily health-based needs". Under the definition of ALN established in the Bill, medical conditions, for example diabetes, epilepsy, or anaphylaxis will not be regarded as ALN where they do not cause a significantly greater difficulty in learning, or where they do not constitute a disability that prevents or hinders access to education or training generally on offer.

383. However, the draft Code recognises that healthcare needs may impact on pupils' capacity to learn and should be a factor to consider when determining if a learner has ALN:

"In some cases, healthcare needs/medical conditions may have a significant impact on the child or young person's experiences and the way they function in school or further education. The impact may be a direct one, in that the healthcare need/medical condition may affect their cognitive abilities, physical abilities, behaviour or their emotional state. The impact could also, or

alternatively, be indirect, for example by disrupting their access to education through unwanted effects of treatment or through the psychological effects that serious or chronic illness or disability can have on a child or young person and their family.”¹⁴⁰

384. The draft Code indicates that where a learner has ALN and a healthcare need, that the planning of provision for both can be joined up:

“Schools, FEIs and local authorities are able to prepare, review or revise an IDP at the same time as it, or another body, is preparing, reviewing or revising another document in relation to the individual. The local authority can also include that plan within the IDP. This ensures that, for example, where a child or young person has an individual health care or a continuing healthcare plan and an IDP, provision can be planned and delivered in a co-ordinated way: the IDP and the individual health care or a continuing health care package should be reviewed at the same time, ensuring integration of plans and/or provision where this is appropriate.”¹⁴¹

385. The draft Code does not provide for support with healthcare needs where there are no concerns a learner has ALN. This is dealt with by the Supporting healthcare needs in schools guidance.

Stakeholders’ evidence

386. As already highlighted, the Committee received a co-ordinated set of submissions to its consultation in summer 2016 on Fifth Assembly priorities, calling for statutory duties on schools to manage pupils’ medical needs, and for this to be potentially included in the ALN Bill. Many witnesses also commented on this issue as part of the Committee’s consultation on the Bill’s general principles.

387. Stakeholders, led by Diabetes UK and the Royal College of Paediatric and Child Health, strongly called for the Bill to be amended to incorporate medical needs. However, it was not always clear exactly how they wanted this to be achieved i.e.:

- whether they wanted the Bill to include a section placing the separate Supporting healthcare needs in schools guidance on a statutory basis (no longer necessary as the Welsh Government has now issued the guidance on a statutory basis); or
- whether they wanted the definition of ALN widened to explicitly include medical needs, regardless of whether they impact on learning (if they do cause a significantly greater difficulty on learning, they would be already covered under the existing definition in the Bill).

388. In oral evidence, Diabetes UK said the second option would be closer to what they are calling for. They do not believe that long-term medical conditions such as diabetes would ‘necessarily fall outside of sections 2 and 3’ but feel that it is ‘too open to interpretation’ and ‘not clear enough’. Diabetes UK believe that ‘if you put it in black and white at the start, that removes all the uncertainty’.

¹⁴⁰ [Draft Additional Learning Needs Code](#)

¹⁴¹ [Draft Additional Learning Needs Code](#)

389. The Anaphylaxis Campaign reported that the introduction of a statutory duty in the Children and Families Act 2014 had made a “massive difference” as it enabled organisation to “signpost parents and families towards the right way that things are meant to be”.

390. Dr Justin Warner, a paediatrician and diabetologist from the Royal College of Paediatric and Child Health, said “the widening of the ALN definition to include medical conditions would be entirely appropriate”.

391. Other points Diabetes UK and other organisations made to support their arguments included:

- The current SEN framework and funding mechanisms are presently used to support medical needs even though they might not be strictly considered to be SEN/ALN. (This was confirmed by Carmarthenshire’s Director of Education, representing ADEW.) Replacing the current SEN framework with a new system based on ALN will actually make the situation worse as schools and local authorities may no longer be able to use existing funding avenues.
- The existing guidance is inadequate. It is not adhered to by schools and there is a need for statutory duties.
- Assistance to pupils for their specific needs (whether educational or medical) is delivered by the “same systems, processes, agencies, funding streams and staff roles in practice”. “Systemic changes to any part will affect all of that system’s beneficiaries, not some of them. This is not reflected in the ALN reforms”. The campaigners believe the benefits that the ALN Bill will bring are exactly what children and young people with medical conditions need.
- The lack of an explicit reference to medical needs in the Bill sends a message to children, families, schools and local authorities that “children with medical needs are less important”. There is a danger that this group will be “deprioritised”.
- There is currently variable care for children across Wales. Children with medical needs are likely to be excluded from whole-school activities and parents need to come to school during the day to manage their children’s conditions (administer insulin etc).
- Wales should learn the lessons from England which has seen improvements following the introduction of a statutory duty.

392. The Committee asked Diabetes UK whether they would be satisfied if the Code was strengthened in relation to medical needs or whether they considered that the issue needed to be addressed on the face of the Bill. Diabetes UK answered:

“I think it’s important for clarification. So, I certainly would expect the Code to be updated quite significantly to be a lot clearer and a lot more definite. And, in terms of the face of the Bill, I think there is scope to clarify where a medical condition does impact on learning or there’s a barrier to education in some form—that should be clear as well. (...)

So, I think anything that can be as clear as possible. Being on the face of the

Bill gives it that authority, and you just—that is exactly what we would call for. So, I would definitely say to err on the side of as much clarity as possible.”¹⁴²

Minister’s response

393. In his oral evidence to the Committee, the Minister explained:

“The medical needs, where they impact on a child’s learning—that is the key test, because this is an education Bill about additional learning needs. So, what I am saying is, what I don’t want a definition to do is to introduce complexity, to remove flexibility, but also to narrow the definition down. The conversation that I’m having with you this morning is all based on learning and learning needs. It’s not simply saying, ‘You have an additional learning need’. If you have a long-standing medical condition or a short-lived medical condition that has no impact on your everyday learning, then, clearly, that wouldn’t be encompassed within this piece of legislation. This is about additional learning needs and how we define that.”¹⁴³

394. Regarding the need for the Supporting healthcare needs in schools guidance and how it is separate to ALN and the Bill, he said:

“There’s clearly a need for guidance. Take, for example, a child in a school, perhaps in my constituency, or perhaps in yours, who has a peanut allergy. Now, there needs to be a plan in place to deal with that. That doesn’t mean that child has additional learning needs: it means they have a particular healthcare need, but, obviously, it needs to be dealt with. Or a child—you’ve given diabetes as an example, and we can accept that as another example—. It doesn’t mean that they’ve got an additional learning need, but it does mean that they’ve got a medical requirement that needs to be supported, and a plan needs to be in place to deal with that within the school environment.”¹⁴⁴

395. Questioned further on how the Bill applies to medical needs, the Minister answered:

“My intention is that we have a Bill with a definition of additional learning needs that is broad, that encompasses a wide range of potential issues that might lead to additional learning needs. It doesn’t refer specifically to healthcare needs that do not lead to additional learning needs.”¹⁴⁵

396. On the significance of making the healthcare needs guidance statutory, he said:

“But I recognise that there are concerns—and you raised these concerns with me at our last meeting—that the current regime for providing guidance for healthcare needs was not sufficiently robust. The committee seemed to me to be in agreement that this guidance shouldn’t be in the form of advice, but it

¹⁴² Oral Evidence, Diabetes UK, **16 March 2017**

¹⁴³ Oral Evidence, Minister for Lifelong Learning and Welsh Language, **22 March 2017**

¹⁴⁴ Oral Evidence, Minister for Lifelong Learning and Welsh Language, **22 March 2017**

¹⁴⁵ Oral Evidence, Minister for Lifelong Learning and Welsh Language, **22 March 2017**

should be in the form of statutory guidance. So I've taken that on board and will be publishing it next week."¹⁴⁶

397. The Minister said there was no need for the ALN Bill to incorporate the healthcare needs guidance as they are two separate regimes and the Welsh Government is already making the guidance statutory using a power from section 175 of the Education Act 2002:

“The issues around healthcare are dealt with by one piece of guidance and statutory guidance, and advice on additional learning needs by a different piece. People understand and appreciate that. (...)

The requirement of a power to provide these guidelines already exists in law. It's already a part of the statute book. If you're asking us to put it back on the statute book again, then, clearly, I could consider that. But I would ask you to consider something as well: it is, I would argue, poor legislative practice to make repeated provisions in different pieces of legislation.”¹⁴⁷

398. In summary, the Minister's position that he set out to the Committee was that:

- Healthcare needs only fall within the reach of the Bill where they impact on learning to the extent that they result in ALN; and
- The statutory guidance on supporting healthcare needs in schools is separate to the ALN Bill, as it will deal with all healthcare needs whereas the legislation will only apply to them in the context of their impact on ALN.

399. However, the Minister then opened up the possibility of amending the Bill if stakeholders and/or the Committee felt that the statutory guidance on supporting healthcare needs in schools was not adequate. He said:

“We're enabling people to take time to look at this guidance at a time when we can amend this Bill if we believe that there is that conflict there, and we can make changes, and we can make changes at Stage 3 in September, when we've had an opportunity to allow these things to bed down a bit.(...)

We recognise that by [publishing the guidance] now, at this point, as we're coming to the conclusion of Stage 1 scrutiny of this Bill, we will then have an opportunity, through the summer term, to consider this in more detail and whether we wish to make amendments at Stage 2 in the summer or Stage 3 in the autumn. We will have the opportunity to do so. ... I say very, very clearly that I'm very open to further amendments to this Bill if we believe that they are required.”¹⁴⁸

Consultation on the new guidance on healthcare needs

400. Following the publication of 'Supporting learners with healthcare needs', the Committee undertook a targeted consultation seeking views of key stakeholders on how the new guidance

¹⁴⁶ Oral Evidence, Minister for Lifelong Learning and Welsh Language, **22 March 2017**

¹⁴⁷ Oral Evidence, Minister for Lifelong Learning and Welsh Language, **22 March 2017**

¹⁴⁸ Oral Evidence, Minister for Lifelong Learning and Welsh Language, **22 March 2017**

impacts on the Bill and how it affects the calls to include specific provisions for medical needs within the Bill.

401. Three responses were received:

- A joint response from 12 organisations representing children and young people with medical conditions. This response has been led by Diabetes UK.
- An individual response from Corinna Bretland, Specialist Diabetes Schools Educator Nurse, who is also a signatory to the joint response referred to above.
- A response from the Children’s Commissioner for Wales.

402. The joint response led by Diabetes UK reaffirmed their position that the Bill and Code need to be amended to explicitly encompass medical conditions. As in their previous written and subsequent oral evidence, it appeared they were calling for medical needs to be included in the ALN framework, regardless of whether the learner has ‘a significantly greater difficulty in learning than the majority’ or whether they constitute a disability which ‘prevents or hinders access’ to education or training.

403. The campaigners’ position therefore appeared to transition from initially calling for statutory duties on schools to manage medical conditions and criticisms that the guidance was non-statutory, to arguing that medical needs must be automatically encompassed within the ALN framework. Corinna Bretland said in her submission “it feels like the ALN Bill is the only route available to ensure the rights of people with medical needs can be protected in law”.

404. Diabetes UK et al. argue that the publication of the statutory guidance “doesn’t negate the need to amend the ALN Bill and Code, rather intensifies and accelerates it”.

405. Another argument made by Diabetes UK et al was that they believed the statutory guidance only imposes “voluntary duties”. This refers to the fact that individual teachers and support staff will not be obliged to provide support to learners with healthcare needs, including assisting or supervising the administration of medicines. Section 2.2.d of the guidance says that “this role is entirely voluntary”. This is because to make it a mandatory part of a teacher’s job would require changes to their pay and conditions. Although the Wales Act 2017 provides for the Assembly to have legislative competence on teachers’ pay and conditions, this is not expected to take effect until around April 2018. The voluntary nature of the duties on individual teachers and school support staff is not something that the Bill can change.

406. However, the statutory guidance does impose statutory responsibilities on the school as a whole. Schools will therefore still have to meet their duties to manage pupils’ healthcare needs under the guidance, either through the voluntary actions of staff in assisting or supervising the administration of medicines, or through some other means.

407. The Children’s Commissioner noted that the Supporting learners with healthcare needs guidance “has already been placed on a statutory footing for governing bodies and local authorities” and referred to the “complementary” duties in sections 18 and 19 of the Bill to identify and secure health-related ALN provision. The Commissioner wrote:

“It is my initial assessment that [the] Welsh Government’s published Supporting learners with healthcare needs guidance has made some progress ... and may be sufficient to meet the healthcare needs of learners in Wales.

Whilst I acknowledge the rationale to include a blanket provision on learners' healthcare needs in the Bill, it is important to recognise that a child's healthcare needs should not automatically be regarded as an additional learning need. This would be dependent on the individual context and is matter of proportionality and assessment."¹⁴⁹

408. All three responses were highly sceptical of the feasibility of reviewing the guidance in time for any changes to the Bill. It is therefore highly doubtful that this could inform any amendments to the Bill at Stages 2 or 3 as the Minister appeared to suggest. If such amendments were made, these would be on the basis of people's perceptions that the statutory guidance is insufficient rather than experience of how it has operated in practice.

Further response from the Minister

409. The Minister confirmed his position on the scope of the system established by the Bill. This is that a learner with medical needs will be covered by the new framework if they fall under the definitions in sections 2 and 3 of the Bill i.e. if they have a learning difficulty that calls for additional learning provision. The Minister says that retaining the same definition/scope as under the current Special Educational Needs (SEN) framework means that a similar number of learners will be covered. He clarified:

"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."¹⁵⁰

410. The Minister referred to the Welsh Government's consultation in 2012, which proposed a wider definition of Additional Needs, including those with healthcare needs. He said:

"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."¹⁵¹

411. The Minister stated that the Welsh Government "listened to those strong views and refined [its] proposals" ahead of the White Paper in 2014. He said "this more focussed approach" on "those learners who most need support through the new system" was welcomed by stakeholders.

412. 105,000 statutory school age pupils (23%), in addition to those in early years and FE at post-16, will be covered under the new ALN system. The Committee heard concerns about the viability of providing statutory IDPs to all of these learners and the Minister highlighted the need to be "realistic":

¹⁴⁹ Healthcare Guidance Response from [Children's Commissioner for Wales](#)

¹⁵⁰ Letter from the Minister for Lifelong Learning and Welsh Language, [11 April 2017](#)

¹⁵¹ Letter from the Minister for Lifelong Learning and Welsh Language, [11 April 2017](#)

“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.”¹⁵²

Committee views and recommendations

413. As already outlined in this report, the specific issue of ‘medical needs in schools’ did not form a specific part of the Bill on introduction. As such, the issue was not included specifically within the Committee’s consultation on the general principles of the Bill. However, significant evidence has been presented on this issue, and the Committee has considered this important issue in detail.

414. The Committee would like to highlight at the outset that it believes that it is hugely important that the medical needs of pupils in schools are managed effectively and that there is detailed and robust guidance in place to cover this. The Committee is pleased, therefore, that the Minister has issued the ‘Supporting learners with healthcare needs’ guidance on a statutory basis to schools and local authorities. However, the Committee is disappointed that the guidance was issued by the Minister so late into the Stage 1 process, and only the day before the Minister was due to attend the Committee. This did lead to delays in the stage 1 process.

415. In the Committee’s view, the issuing of the guidance under Section 175 of the Education Act 2002 satisfied the calls received during the consultation on the Bill, and the earlier consultation on the Committee’s priorities, to place the guidance on a statutory footing.

416. In considering the wider implications of the healthcare guidance, the Committee believes that it will take some time to fully consider its impact. The Committee will monitor how the guidance has worked in practice over the next 12-18 months. However, one issue that should be considered at the outset is the link between the new system being put in place for ALN which will cover learners from 0-25 years and the Supporting learners with healthcare needs guidance which covers learners up to 18 years. The Committee believes the Minister should consider aligning the two and extending the age range of learners covered by the healthcare guidance.

Additional consultation

417. The Committee acknowledges the responses put forward to the additional consultation undertaken on the ‘Supporting learners with healthcare needs’ guidance, and notes the continued

¹⁵² Letter from the Minister for Lifelong Learning and Welsh Language, [11 April 2017](#)

call for the Bill to be amended to include medical conditions. However, the Committee is clear that, as outlined by the Minister, where a person has a medical condition which:

- causes them to have a significantly greater difficulty in learning than the majority of others of the same age; or
- is a disability for the purposes of the Equality Act 2010 which prevents or hinders the pupil from making use of facilities for education or training of a kind generally provided for others of the same age in mainstream schools or mainstream institutions in the further education sector;

1. that person already falls within the definition of ALN as set out in section 2 of the Bill.

418. The Committee is also clear that the Bill does not provide for those learners who have medical conditions which are not a disability which prevents or hinders them from making use of facilities for education or training, or which do not significantly affect their ability to learn. In those circumstances, the Committee notes that the Welsh Government plans to use the new statutory guidance to manage medical conditions for those of statutory school age.

419. The Committee notes that Chapter 6 of the draft ALN Code provides guidance to governing bodies and local authorities about the definition of ALN and how to consider healthcare needs when carrying out assessments. The Committee believes that the Code could be strengthened to add clarity about where medical needs fall under the definition of ALN, and wants the Welsh Government to work with stakeholders in this regard.

420. In addition, the Committee believes that the definition contained in section 2 of the Bill should be amended to provide clarity on the face of the Bill that a person has additional learning needs where he or she has a medical condition which causes them to have a significantly greater difficulty in learning than the majority of others of the same age, or the medical need is a disability which prevents or hinders the pupil from making use of facilities for education or training of a kind generally provided for others of the same age, and such learning difficulty or disability calls for additional learning provision. The Committee has made a specific recommendation on this issue within section 4: Definition of ALN – see Recommendation 4.

Recommendation 47. The Minister should consider aligning the ‘Supporting learners with healthcare needs’ guidance with the new ALN system, by extending the age range of learners covered by that guidance.

Recommendation 48. The ALN Code should be strengthened to add clarity about where medical needs fall under the definition of ALN, and the Welsh Government should work with stakeholders in this regard.

Annex A: List of written evidence

The following people and organisations provided written evidence to the Committee. All [consultation responses and additional written information](#) can be viewed on the Committee's website.

Organisation	Reference
Parent	ALN 01
Flintshire County Council (Social Services Transition Team)	ALN 02
The Politics Group Cardiff Ely	ALN 03
The National Association of Independent Schools and Non-Maintained Special Schools (NASS)	ALN 04
Education Workforce Council	ALN 05
Careers Wales	ALN 06
National Union of Teachers, Wales	ALN 07
Individual	ALN 08
Vale of Glamorgan - Director's Office - Learning and Skills	ALN 09
British Academy of Childhood Disability	ALN 10
Individual	ALN 11
Bridgend County Borough Council	ALN 12
Welsh Language Commissioner	ALN 13
Estyn	ALN 14
Aneurin Bevan University Health Board	ALN 15
Special Educational Needs Tribunal for Wales (SENTW)	ALN 16
Sense Cymru	ALN 17
Welsh Local Government Association (WLGA)	ALN 18
National Service Advisory Group (NSAG)	ALN 19
Children's Commissioner for Wales	ALN 20
Governors Wales	ALN 21
Public Services Ombudsman for Wales	ALN 22
Wrexham County Borough Council	ALN 23
Catholic Education Service	ALN 24
Coeliac UK	ALN 25
Barnardo's Cymru	ALN 26
Anaphylaxis Campaign	ALN 27
PACEY Cymru	ALN 28
The National Deaf Children's Society (NDCS Cymru)	ALN 29
Joint response from: Action on Hearing Loss Cymru, Hearing Link, ASLI, Wales	ALN 30

Council for Deaf People & NDCS Cymru.	
Royal College of Paediatrics and Child Health	ALN 31
Joint Union Response ATL, NAHT, Undeb Cenedlaethol Athrawon Cymru & UCU	ALN 32
ASCL Cymru	ALN 33
CollegesWales	ALN 34
Conwy County Borough Council	ALN 35
National Association of Specialist Provision (Natspec) in Wales	ALN 36
National Autistic Society Cymru	ALN 37
Individual	ALN 38
NASUWT	ALN 39
Diabetes UK Cymru	ALN 40
Children & Young People's Wales Diabetes Network (& Brecon Group)	ALN 41
Association of Educational Psychologists	ALN 42
Nurture Group Network	ALN 43
Epilepsy Action	ALN 44
National Training Federation for Wales (NTfW)	ALN 45
The Royal College of Speech and Language Therapists (RCSLT)	ALN 46
Clybiau Plant Cymru Kids' Clubs	ALN 47
Young Epilepsy	ALN 48
University and College Union (UCU Wales)	ALN 49
British Dietetic Association (BDA)	ALN 50
Llamau	ALN 51
Caerphilly County Borough Council	ALN 52
Wales Pre-school Providers Association (Wales PPA)	ALN 53
Mudiad Meithrin	ALN 54
Learning Disability Wales	ALN 55
Rhondda Cynon Taf - Access and Inclusion Service	ALN 56
College of Occupational Therapists	ALN 57
Carmarthenshire Educational and Child Psychology Services	ALN 58
Hywel Dda University Health Board	ALN 59
Wales UNCRC Monitoring Group	ALN 60
Welsh NHS Confederation	ALN 61
National Association of Principal Educational Psychologists Wales (NAPEPW)	ALN 62
Afasic Cymru	ALN 63
Guide Dogs Cymru	ALN 64
RNIB Cymru	ALN 65
Individual	ALN 66

Royal College of Nursing Wales	ALN 67
Parent (sent from SNAP)	ALN 68
SENCOs - Ceredigion primary (mid + south)	ALN 69
Ceredigion Local Authority SEN Team staff	ALN 70
SENCOs - Ceredigion primary (North)	ALN 71
Secondary SENCOs and SRC teachers	ALN 72
Cymdeithas yr Iaith Gymraeg	ALN 73
Undeb Cenedlaethol Athrawon Cymru	ALN 74
Third Sector Additional Needs Alliance (TSANA)	ALN 75
Children in wales	ALN 76
Association of Schools in favour of Welsh Medium Education (CYDAG)	ALN 77
SNAP Cymru	ALN 78

Annex B: List of oral evidence sessions

The following witnesses provided oral evidence to the Committee on the dates noted below.

Transcripts of all oral evidence sessions can be viewed on the Committee's website.

Date	Name and Organisation
12 January 2017	Alun Davies AM, Minister for lifelong Learning and Welsh Language Emma Williams, Deputy Director, Support for Learners Tania Nicholson, Head of Additional Learning Needs Legislative Programme Mair Roberts, Lawyer Catherine Lloyd, Lawyer
18 January 2017	Denise Inger, SNAP Cymru Debbie Thomas, National Deaf Children's Society Tim Ruscoe, Barnardo's Cymru Zoe Richards, Learning Disability Wales Angie Contestabile, Sense Cymru
26 January 2017	Stakeholder Conference
9 February 2017	Meetings with Parents / Carers
2 March 2017	Dr Chris Llewelyn, Welsh Local Government Association Catherine Davies, Welsh Local Government Association Gareth Morgans, Association of Directors of Education in Wales Sally Holland, Children's Commissioner for Wales Hywel Dafydd, Children's Commissioner for Wales office Elizabeth Bowen-Dack, Children's Commissioner for Wales office Meri Huws, Welsh Language Commissioner Huw Gapper, Welsh Language Commissioner office Rhiannon Walker, Special Educational Needs Tribunal for Wales
8 March 2017	Mary van den Heuvel, ATL Cymru Lisa Edwards, UCU Wales Elaine Edwards, Undeb Cenedlaethol Athrawon Cymru Gareth Parry, National Union of Teachers - NUT Rex Phillips, NASUWT Rob Williams, NAHT Tim Pratt, ASCL Cymru Jassa Scott, Estyn Huw Davies, Estyn
16 March 2017	Iestyn Davies, Colegau Cymru Joe Baldwin, Bridgend College Humie Webbe, National Training Federation Wales (NTFW) Eleri Griffiths, Mudiad Meithrin Claire Protheroe, Professional Association for Childcare and Early Years

(PACEY)

Jane O’Kane, All Wales Health Visitor Forum

Jayne Morris, All Wales Health Visitor Forum

Andrea Wright, Wales Pre-school Providers Association

Sara Moran, Diabetes UK

Dr Justin Warner, Royal College of Paediatrics and Child Health (RCPCH) member in Wales and consultant at University Hospital of Wales

Mandy East, Anaphylaxis Campaign

Ann Sivapatham, Epilepsy Action

Dr Dave Williams, Aneurin Bevan University Health Board

Rosemarie Whittle, Cardiff and Vale University Health Board

Ellis Peters, Powys Teaching Health Board

Dr Alison Davies, Royal College of Nursing Wales

Lisa Turnbull, Royal College of Nursing Wales

Dr Karina Dancza, College of Occupational Therapists

Sarah Lewis-Simms, Cwm Taff LHB and a Member of the College of Occupation Therapists

Kate Fallon, Association of Educational Psychologists

Mary Greening, Association of Educational Psychologists

Dr Alison Stroud, Royal College of Speech and Language Therapists

Pippa Cotterill, Royal College of Speech and Language Therapists

22 March 2017

Denise Inger, SNAP Cymru

Cath Lewis, Children in Wales

Debbie Thomas, - National Deaf Children’s Society

Dr Stephen Beyer, Senior lecturer at Cardiff University

Alun Davies AM, Minister for Lifelong Learning and Welsh Language

Emma Williams, Deputy Director, Support for Learners

Tania Nicholson, Head of Additional Learning Needs Legislative Programme

Mair Roberts, Lawyer

Catherine Lloyd, Lawyer

Annex C: Overarching Objectives and Core Aims of the Bill

Overarching Objectives

The Bill will create:

- 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.

Ten Core Aims

1. The introduction of the term Additional Learning Needs (ALN): The Bill replaces the terms 'special educational needs' (SEN) and 'learning difficulties and/or disabilities' (LDD) with the new term ALN. This will help to avoid some of the stigma associated with the existing terms and will mark a clear break from the current systems, which is no longer fit for purpose. Using ALN as a single term which encompasses children and young people aged 0 to 25 reflects the move to a more equitable system for supporting learners with ALN across early years, schools and FE settings.

2. A 0 to 25 age range: The Bill brings together the existing and different legislative systems for supporting:

2. a) children and young people of compulsory school age who have SEN; and
3. b) young people in FE who have LDD.

There will be a single legislative system relating to the support given to children and young people aged 0 to 25 who have ALN. As a result, transition of learners between school and post-16 education will be improved to allow greater equity in terms of support and rights for this group of learners.

3. A unified plan: The Bill creates a single statutory plan (the individual development plan (IDP)) to replace the existing variety of statutory and non-statutory SEN and LDD plans for learners in schools and FE - including statements of SEN, individual education plans for learners supported through school/early years action or school/early years action plus, and learning and skills plans carried out via assessments under section 140 of the Learning and Skills Act 2000. This will ensure greater consistency and continuity and, unlike the current system, ensure that provision and rights are protected regardless of the severity or complexity of needs. For most children with ALN who are looked after, the Bill will require their IDP to be incorporated into the personal education plans (PEPs) made for these learners as part of their care and support plans (CSP). This will eliminate duplication of effort and ensure that the educational needs of a child who is looked after are considered in a holistic way.

4. Increased participation of children and young people: The Bill requires that the views of children, their parents and young people should always be considered as part of the planning process, along with those of their parents.

It is imperative that children and young people see the planning process as something which is done with them rather than to them. They and their families will, therefore, be supported to participate through the provision of clear and impartial information, advice and advocacy. The Bill provides children and young people with various rights to receive information in relation to ALN and decisions being taken about them, and to make their own decisions in certain circumstances. For children who lack sufficient understanding to make their own decisions, these rights can be exercised by their parent or through the use of a 'case friend' appointed by the Education Tribunal.

5. High aspirations and improved outcomes: The emphasis of IDPs will be on making provision that delivers tangible outcomes that contribute in a meaningful way to the child's or young person's achievement of their full potential.

6. A simpler and less adversarial system: The process of producing and revising an IDP will be much simpler than is currently the case with statements of SEN and should avoid the adversarial nature of the existing, overly bureaucratic approach.

7. Increased collaboration: The new system will support a strong focus on collaboration. All services involved in working with children, young people and their families, including education, health and social services, will have a crucial role to play in working together to deliver efficient, effective, child-centred support for learners with ALN. Whilst most children with ALN will not require any specific health involvement because their ALN will not be health related, where it is relevant and appropriate, advice and assistance may be sought from health professionals. In particular, local health boards (health boards) or NHS Trusts will be under a duty to consider whether there is a treatment or service that is likely to be of benefit to addressing the learner's ALN and, if so, secure the provision of that treatment or service. That treatment or service will need to be included in the learner's IDP. The reforms will encourage improved collaboration and information sharing between agencies, which are essential to ensuring that needs are identified early and the right support is put in place to enable children and young people to achieve the best possible outcomes.

To support improved collaboration, the Bill places a new duty on health boards to appoint a Designated Education Clinical Lead Officer (DECLO). DECLOs will play a pivotal role in improving the extent and effectiveness of collaboration between health, education and social care in the delivery of services for children and young people with ALN. In addition, maintained schools, including maintained nurseries, pupil referral units and further education institutions (FEIs), will be required to have a designated Additional Learning Needs Co-ordinator (ALNCo). These roles will help to facilitate effective multi-agency collaboration to improve services for learners.

8. Avoiding disagreements and earlier disagreement resolution: The new system will focus on ensuring that where disagreements occur about an IDP or the provision it contains, the matter is considered and resolved at the most local level possible.

9. Clear and consistent rights of appeal: Where disagreements about the contents or provision of an IDP cannot be resolved at the local level, the Bill ensures that children and young people entitled to an IDP, or those who believe that they should have an IDP (and their parents in the case of those under 16) have a right of appeal to the Education Tribunal for Wales, currently the Special Educational Needs Tribunal for Wales (SENTW) but which is renamed by the Bill. The Bill extends the right of appeal to young people with ALN up to the age of 25 who are pursuing FE. Children who lack sufficient understanding to make their own decisions, will be able to exercise their right of appeal through the use of a 'case friend' appointed by the Tribunal (as well as by a parent).

10. A mandatory Code: Responding to calls for a stronger Code that can be enforced, the provisions included in the Bill will be supported by a new statutory ALN Code. The Code will facilitate national consistency by ensuring that the new ALN system has a set of clear, legally enforceable parameters within which local authorities and those other organisations responsible for the delivery of services for children and young people with ALN, must act. It will, therefore, be a type of subordinate legislation, and confer duties and rights on those subject to it. The Code will also set out practical guidance on how the statutory duties will be carried out, which will be supported by best practice illustrations.

