

**Briefing on the Minister for Lifelong Learning and Welsh Language response to the Children, Young People and Education Committee report on the Additional Learning Needs and Education Tribunal (Wales) Bill (stage 1)**

1. **Background**

On 17 July 2017, Alun Davies AM, Minister for Lifelong Learning and Welsh Language wrote to Lynne Neagle, Chair of the Children, Young People and Education Committee to respond to the 48 recommendations made by the committee in its stage one scrutiny report on the Additional Learning Needs and Education Tribunal (Wales) Bill. This briefing summarises this response with particular relevance to recommendations most relevant to the speech and language therapy profession in Wales and includes a section on next steps with regards the bill and implementation (*section 4*).

1. **Key points**

* The Minister accepted the majority of the recommendations, 32/47 including recommendations which relate to strengthening the early years elements of the new system (**18,19,20**), ensuring an all-Wales template for IDPs (**12**) and providing greater clarity on the DECLO and Health Co-ordinator roles (**23,24,25**).
* Four recommendations are still under consideration namely those related to;
* Making it more explicit within the Bill’s definition of ALN that **medical conditions** are to be deemed as ALN if they meet the criteria within that definition (4).
* Extending the remit of the Tribunal to include power to direct health bodies (**38,39**).
* The Minister has **rejected** the Committee’s recommendation that the Bill include a specific duty on relevant bodies to have **due regard to the UN Convention on the Rights of the Child and** UN Convention on the Rights of Persons with Disabilities**.** The Welsh Government believes that the existing duties on the Welsh Ministers are sufficient and that the Bill creates the architecture whereby children’s rights are inherently considered.

1. **More detail on the Minister’s response to9 the committee recommendations**

Definitions

**Recommendation 3 - accepted**

‘*The Minister should ensure that the Additional learning Needs Code clarifies that:-*

1. *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*
2. *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.*

The Minister will explore Estyn’s suggestion that the Code makes clear that it is not necessary to have “significantly greater difficulty in all areas of learning in order to have additional learning needs”

**Recommendation 4 – Under consideration**

‘*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.’*

Children and young people who have a medical condition which contributes to an additional learning need are entitled to additional learning provision under the new system but under consideration are the benefits and risks of an amendment to the definition of additional learning needs in section 2 to demonstrate its scope in relation to medical conditions.

IDPs

**Recommendation 5 – accepted**

‘*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’*

The draft code sets out current thinking on these timescales following engagement with practitioners.

**Recommendation 12 - accepted**

‘*The Minister should develop an all-Wales template for IDPs with a standardised format but allowing for person-centred content’*

The IDP Expert Group is currently working on a revised template to be included in the Code.

Early years

**Recommendation 18 – accepted**

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

**Recommendation 19 – accepted**

*‘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 – accepted**

*‘The Bill or 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.’*

Within the revised version of the legislation, local authorities will be required to designate an ‘early years lead officer’ as currently exists in some authorities. There will be a greater focus on prevention and early intervention.

Collaboration between health and education

**Recommendation 23 – accepted**

*‘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.’*

The Minister has written separately to the committee with further detail on the DECLO pilots. This may be found [here](http://senedd.assembly.wales/documents/s63709/Letter%20from%20the%20Minister%20for%20Lifelong%20Learning%20and%20Welsh%20Language%20and%20the%20Cabinet%20Secretary%20for%20Heal.pdf).

**Recommendation 24 – accepted**

‘*The Minister should provide further information on the role of the health co-ordinator within the ALN code, and within the revised explanatory memorandum following stage 2, including detailed costs within the Regulatory Impact Assessment.’*

The Minister has written separately to the committee with further detail on the pilots. This information may be found [here](http://senedd.assembly.wales/documents/s63709/Letter%20from%20the%20Minister%20for%20Lifelong%20Learning%20and%20Welsh%20Language%20and%20the%20Cabinet%20Secretary%20for%20Heal.pdf). The health co-ordinator role will be explained in both the revised Explanatory Memorandum and Code. A full review of the Explanatory Memorandum is underway, including the Regulatory Impact Assessment. The DECLO model is to be reflected in this.

**Recommendation 25 – accepted**

*‘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.’*

Further detail may be found [here](http://senedd.assembly.wales/documents/s63709/Letter%20from%20the%20Minister%20for%20Lifelong%20Learning%20and%20Welsh%20Language%20and%20the%20Cabinet%20Secretary%20for%20Heal.pdf). The pilots will test the current thinking behind the model and provide the evidence the Health Expert Group (SLT representation on this group) requires to further develop the role and surrounding model. The Committee will be kept updated on progress, during quarterly updates. The pilots will not conclude before stage 3.

Rights

**Recommendation 31 – not accepted**

‘*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’*

The Welsh Government believes that the existing duties on the Welsh Ministers are sufficient and that the Bill creates the architecture whereby children’s rights are inherently considered.

**Recommendation 32 – not accepted**

‘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’

Welsh Language

**Recommendation 33 – not accepted**

*‘Sections 10 (5), 12(5) and 18(5) 9c) 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 provision is made in Welsh.’*

The Minister believes there is already a duty in the Bill to decide whether the provision should be made in Welsh, not a discretion.

**Recommendation 34 – agreed in principle**

*‘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 – not accepted**

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

The Minister believes this issue should be addressed in the Code.

**Recommendation 37 – not accepted**

‘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.’

The Minister believes there are existing provisions within the Bill and relevant strategic activity outside of the Bill to address Welsh-language workforce capacity.

**Recommendation 38 – Under consideration**

*‘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 Consent this should be sought in the usual manner.’*

The Minister recognises the calls for consideration and is considering options over the summer with the Health Expert Group and on a cross-party basis.

**Recommendation 39 – Under consideration**

‘*The Minister should consider how the composition of the Tribunal can be altered so that it sufficiently incorporates clinical judgement 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.’*

The Minister recognises the calls for consideration and is considering options over the summer with the Health Expert Group and on a cross-party basis.

Costs and savings estimates

**Recommendation 40 – accepted**

*‘The Minister should revisit and provide clarity on its costs and savings estimates before bringing forward a revised Explanatory Memorandum following Stage 2.’*

The revised Regulatory Impact Assessment will be available in September.

Supporting Learners with Healthcare Needs

**Recommendation 47** – **accepted and being further considered**

‘*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 the guidance.’*

**Recommendation 48 – accepted**

‘*The 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.’*

Officials are working on illustrations and flowcharts to clarify the relationship between the ALN system and healthcare needs. These materials are due to be tested with the Health Expert Group and the Committee.

1. ***Next steps***

* The Minister has said the **Welsh Government will publish a revised Regulatory Impact Assessment in September** **and he will attend Finance Committee** to discuss the updated cost estimates with Assembly Members. The Minister intends to then table and move a financial resolution in Plenary, after which point the Children, Young People and Education Committee can meet to consider amendments to the Bill at Stage 2. We are seeking to influence relevant amendments via SLT membership of the Health Expert Group.
* The Welsh Government held a consultation in early summer on proposals for the implementation on the Bill. Welsh Government officials told a **conference** on 18 July 2017 that they expect to publish a **summary of the consultation in September** alongside a **Ministerial statement** signaling the proposed way forward. They said that **respondents ‘overwhelmingly’ preferred a phased approach** rather than a ‘big bang’ and clear prescription over implementation. The two options that proved most popular in the consultation were to introduce IDPs for learners already on statutory plans first, or to do it by key transition points (key stages etc.).
* The Welsh Government has indicated that the **first introduction of the new ALN system is likely to be in September 2019**. Implementation of 16-25 age-groups is likely to take place in a second tranche of implementation.