

WELSH GOVERNMENT INTEGRATED IMPACT ASSESSMENT

Title of proposal:	Draft Additional Learning Needs Code
Official(s) completing the Integrated Impact Assessment (name(s) and name of team):	Additional Learning Needs Transformation Team
Department:	Education and Public Services
Head of Division/SRO (name):	Ruth Conway, Deputy Director, Support for Learners
Cabinet Secretary/Minister responsible:	Cabinet Secretary for Education
Start Date:	10 December 2018

WHAT ACTION IS THE WELSH GOVERNMENT CONSIDERING AND WHY?

Background

This impact assessment relates to the draft Additional Learning Needs ('ALN') Code ('the draft Code') and the revised Social Services and Well-being Act 2014 ('the 2014 Act') Part 6 Code of Practice – Looked After and Accommodated Children ('the Part 6 Code'). These were published for consultation on 10 December 2018; the consultation will close on 22 March 2019.

The Additional Learning Needs and Education Tribunal (Wales) Act 2018 ('the 2018 Act') makes provision for a new statutory framework for supporting children and young people with ALN. It will replace existing legislation surrounding special education needs ('SEN') and the assessment of children and young people with learning difficulties and/or disabilities ('LDD') in post-16 education and training.

The 2018 Act requires the Welsh Ministers to issue a Code on ALN ('the ALN Code') and provides a number of regulation-making powers to Welsh Ministers. The ALN Code and regulations are intended to underpin the implementation and operation of the new system.

The draft ALN Code published for consultation focuses on describing the functions placed on relevant persons by the Act and those proposed to be in regulations. In addition, the draft ALN Code itself imposes requirements on local authorities, governing bodies of maintained schools and further education institutions ('FEIs') in Wales. It also gives guidance on the exercise of these functions.

The proposed revisions to the Part 6 Code largely flow from amendments made to the 2014 Act by the 2018 Act but also reflect a policy intention, referred to in the relevant consultation document, to create, through regulations made under the 2014 Act, a new statutory role in relation to the education of looked after children.

It is intended that the ALN Code and regulations will be laid before the National Assembly for Wales by the end of 2019, with a view to the provisions of the 2018 Act and regulations commencing from September 2020, with a three year implementation period before they apply in full.

Development of policy

The draft ALN Code, including where it sets out the policy intention behind the proposed regulations, has been developed in the light of the five ways of working in the Well-being of Future Generations (Wales) Act 2015.

It is intended to provide **long term** underpinning to a new statutory system for supporting children and young people with ALN. The mandatory requirements it proposes to impose, and the policy intention for future regulations that it describes, are designed to ensure that the system will apply consistently but will also have sufficient flexibility to accommodate innovation in educational practice and major developments, such as curriculum reform.

The requirements are focused on **preventing** children and young people from missing out on educational opportunities and the chance to fulfil their potential, by ensuring that they receive the provision called for by their ALN in a timely and efficient way, enabling them to participate in and benefit from learning.

The draft ALN Code's approach directly supports and **integrates** with the key theme of 'Ambitious and Learning' within *Prosperity for All* and with the well-being objectives within that key theme and others. It, and the Act that it supports, have been developed in **collaboration** with our partners in the delivery of the proposed requirements, including local authorities, health boards, schools and further education institutions, early years providers, third sector representatives, unions, professional bodies and commissioners. A Transformation Programme has been developed to ensure that our partners have the capacity and understanding necessary to implement the requirements.

Given that they are the intended beneficiaries of the new system of support, we have also sought to **involve** children, young people and their families in the development of the proposals by undertaking targeted engagement events. We will do so again as part of the current consultation.

Impact

The mandatory requirements proposed in the draft ALN Code, the policy intention it sets out in relation to proposed regulations, and the proposed revisions to the Part 6 Code, relate to the following broad themes:

- timescales by which public bodies must complete certain duties;
- delegation of functions to the management committees of pupil referral units;
- the content of and template for statutory individual developments plans ('IDPs');
- factors and criteria for deciding whether it is necessary to prepare and maintain an IDP for a young person or to prepare and keep a plan for a detained person;
- the provision to be made for a person detained in hospital under Part 3 of the Mental Health Act 1983;
- a time limit for requesting a local authority reconsideration of an IDP maintained by a school;
- transfers of IDPs between public bodies;
- arrangements for the avoidance and resolution of disagreements
- the creation of a statutory looked after children's education (LACE) co-ordinator role; and
- the incorporation of IDPs into the personal education plans for looked after children.

The requirements proposed are intended to ensure the smooth and effective operation of the new system. They have been developed in the light of the operation of the current SEN and LLD systems, in particular their evidenced deficiencies. The proposed creation of the statutory LACE co-ordinator role is intended to have a wider positive impact on the educational welfare of looked after children.

Financial implications

The financial implications of the new system introduced by the 2018 Act and the ALN

Code (including the incorporation of IDPs into personal education plans) were set out in the Regulatory Impact Assessment that accompanied the Act¹. The Specific Regulatory Impact Assessments for the Code and the regulations to be made under the 2018 Act will be produced at the point in time for the laying of the Code for approval by the National Assembly. The creation of a statutory LACE Co-ordinator role is not expected to have any additional costs as all local authorities in Wales already have officers fulfilling this role on a non-statutory basis.

Mechanism for delivery

The ALN Code (and where appropriate, the Part 6 Code) will provide the necessary comprehensive guide to public bodies on their statutory functions in relation to ALN, including those set out in the Act and regulations made under it. As the ALN will also impose additional statutory requirements, it is itself a form of secondary legislation.

CONCLUSION

How have people most likely to be affected by the proposal been involved in developing it?

The draft ALN Code has been developed over a significant period of time. Contributions have been made to its development through regular meetings with external stakeholders, including a series of specially established groups of stakeholder representatives who will either have a role in operating the ALN system or will have an interest in the impact that it has. These have included representatives from local authorities, schools, FEIs, Estyn, the Children's Commissioner, the Welsh Language Commissioner, the third sector and others. As part of the development and passage of the Act two previous iterations of the draft Code have been published and have been the subject of public scrutiny and comment. This has included the outcome of large scale public consultation events as well and a number of targeted engagement workshops with children, young people and their families.

What are the most significant impacts, positive and negative?

The three overarching objectives of the 2018 Act are to create:

- a) 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);

¹ <https://beta.gov.wales/sites/default/files/publications/2018-04/additional-learning-needs-and-education-tribunal-wales-act-2018-explanatory-memorandum.pdf>

- b) an integrated, collaborative process of assessment, planning and monitoring which facilitates early, timely and effective interventions; and
- c) a fair and transparent system for providing information and advice, and for resolving concerns and appeals.

By contrast, the existing legislative systems for supporting children and young people with SEN or LDD, provide planning and support on a different bases for children and young people, depending on their age, educational setting and the severity or complexity of their needs. This inconsistency in approach acts as a barrier to integration and collaboration, undermines the timeliness and effectiveness of interventions, and results in adversarial climate which can appear as unfair and lacking in transparency.

The proposed mandatory requirements to be imposed by the draft ALN Code, the policy intent that it describes in relation to the use of various regulation-making powers included in the 2018 Act, and the proposed revisions to the Part 6 Code, have been designed to promote and underpin the achievement of the 2018 Act's objectives.

Specifically, the requirements described in the draft ALN Code, seek to:

- ensure that the identification and planning for a child or young person's needs occurs in a timely way by setting timescales around the performance of public duties in this regard;
- provide for consistency in the way that plans are recorded by prescribing the mandatory content of IDPs and setting out mandatory templates for those plans;
- establish a consistent set of factors and criteria to be used when determining whether it is necessary to provide an IDP for certain young people and detained persons;
- establish what provision is to be made for a person detained in hospital under Part 3 of the Mental Health Act 1983;
- allow an appropriate amount of time for children, their parents, or young people to request that a local authority reconsider the decisions made by schools or the IDP that they prepare;
- set out processes by which IDPs can transfer between bodies; and
- provide certain standards in relation to arrangements for the avoidance and resolution of disagreements and the provision of advocacy services, to facilitate equal access to these things and to minimise the occurrence and impact of disagreements.

In the case of the proposed revisions to the Part 6 Code, and the expressed intention to create a statutory LACE co-ordinator role, the purpose is to:

- enable the effective integration of an IDP into a looked after child's personal education plan and a consequent streamlining and improvement in the planning of that child's education; and
- provide for a designated individual in each local authority to be responsible for ensuring the authority's functions in relation to ALN for looked after children are properly discharged – although the LACE co-ordinator will have a potentially wider impact in terms of improving the levels of educational attainment amongst looked after children.

Taken together, the intended impacts of the draft ALN Code, proposed regulations and proposed revisions to the Part 6 Code support and integrate with the key theme of 'Ambitious and Learning' within *Prosperity for All* and with the well-being objectives within that key theme and others. They also relate to a number of the well-being goals set out in the Well-being of Future Generations Act, in particular in the way that they contribute to a more prosperous Wales (by enabling more learners to reach their educational potential and thus be better placed to contribute economically) and equal (by ensuring that children and young people are able to benefit from education on a more equitable basis) Wales.

In light of the impacts identified, how will the proposal:

- **maximise contribution to our well-being objectives and the seven well-being goals; and/or,**
- **avoid, reduce or mitigate any negative impacts?**

As noted above, the draft ALN Code and the requirements proposed in it, are designed to promote and underpin the achievement of the 2018 Act's objectives, which themselves relate directly to the Welsh Government's well-being objectives. Furthermore, as also noted above, the 2018 Act and the legislative system it introduces, supports a number of the well-being goals. By ensuring that the guidance and requirements included in the draft ALN Code and proposed regulations appropriately underpin the successful implementation of the new ALN system, the proposals should maximise the impact of the new ALN system and the contribution it makes to the well-being objectives and goals.

Transition to, and implementation of, the ALN system, including the proposed requirements included in the draft ALN Code and proposed regulations, will require considerable preparation on the part of local authorities, schools and FEIs in particular. To enable this preparation to take place, and mitigate any harmful impacts it might otherwise have had, the Welsh Government has established a comprehensive Transformation Programme including a £20 million package of investment.

How will the impact of the proposal be monitored and evaluated as it progresses and when it concludes?

The Welsh Government has appointed five ALN Transformation Leads whose role includes monitoring and reviewing implementation arrangements during the transition period.

A post-implementation review will form part of the Welsh Government's overarching monitoring and evaluation model, which itself will consider implementation in stages, specifically:

- readiness – to assess the extent to which delivery agents are prepared for the changes;
- compliance – to monitor how effectively organisations are adhering to the new legislative requirements once they take effect; and
- impact – to evaluate the extent to which the legislative and wider policy changes are being embedded and making an impact on outcomes for learners.

This compliance, impact monitoring and evaluation approach will be further supported through ongoing inspection and review arrangements led by Estyn.

DECLARATION

Declaration

I am satisfied that the impact of the proposed action has been adequately assessed and recorded.

Name of Deputy Director: Ruth Conway
Department: Education and Public Services
Date: 3 December 2018