



Children's Rights Impact Assessment (CRIA)

Title / Piece of work:	Additional Learning Needs and Education Tribunal (Wales) Act 2018
Name of Branch:	Additional Learning Needs Transformation Branch, Support for Learners Division
Department:	Education and Public Services Group, Welsh Government
Date:	July 2018

Six Steps to Due Regard



Step 1. What's the piece of work and its objectives?

The Additional Learning Needs and Education Tribunal (Wales) Act 2018 ('the Act') will create a new statutory framework for children and young people aged 0 to 25 with additional learning needs (ALN). This new framework will replace the existing statutory special educational needs (SEN) framework and the assessment and planning for young people with learning difficulties and/or disabilities (LDD) in post-16 education and training.

The objectives are to create:

- a unified legislative framework to support children of compulsory school age or below with ALN and young people up to the age of 25 with ALN who are in school or further education (FE);
- an integrated, collaborative process of assessment and planning that facilitates early, timely and effective interventions; and
- a fair and transparent system for providing information and advice, and resolving concerns and appeals.

To fulfil these objectives, the Act includes the following elements.

The introduction of the term additional learning needs

The Act provides for the term 'additional learning needs', which will replace the existing terms 'special educational needs' and 'learning difficulties and/or disabilities' (LDD), and allow for its use in relation children or young people with ALN who are of compulsory school age or below, or are over compulsory school age and in school or FE. For the purposes of the Act, a child is a person not over compulsory school age, while a young person is a person over compulsory school age but under the age of 25.

The use of a single term across the 0 to 25 age range will underline the new system's coherence and provide greater equity for learners. It will also help to avoid some of the stigma associated with the existing terms and will mark a clear break from the current systems.

A 0-25 age range

The Act provides for the same statutory plan to be given to learners with ALN aged 0 to 25, irrespective of whether they are of, or below, compulsory school age, or are in sixth form or a further education institution (FEI). It will, therefore, place the systems for supporting learners with ALN in schools and FEIs on a more equal footing and should improve transition between school and post-16 education.

The Act's provisions will require local authorities in Wales to secure specialist post-16 education or training where the individual development plan (IDP) indicates that this is necessary to meet the learner's needs. This responsibility will no longer be a function of the Welsh Ministers and will improve the transition process by encouraging local authorities and post-16 providers to work together to plan for, secure support for, and improve local provision relevant to the individual needs of children and young people with ALN. This will provide a greater incentive for local authorities to make the connections between education and social services departments that are needed for a child or young person's effective transition into further education.

The Act places duties on local authorities and National Health Service bodies to have due regard in relation to the United Nations Convention on the Rights of the Child (UNCRC) and the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) when exercising functions in relation to the Act. This means that local authorities and NHS bodies' strategic decision making will have regard to the conventions in accordance with the ALN Code.

A unified plan

The Act introduces statutory IDPs for children and young people with ALN.

The IDP will describe the child or young person's ALN and the additional learning provision (ALP) required to meet those needs. IDPs will normally be prepared, maintained and reviewed by the governing body of the school or FEI in Wales that the child or young person attends following a determination by that body that the child or young person has ALN. The ALP set out in the IDP will normally be delivered by that school or FEI. Local authorities in Wales also have duties to prepare and maintain IDPs for children and young people in their area. For example, in cases where adequately determining the extent of the child's or young person's ALN, or adequately determining the necessary ALP, is beyond the school or FEI's capability; or where it would not be reasonable for the governing body of the school or FEI to secure the ALP that may be required; or where the child or young person is not attending such a setting (including those attending non-maintained schools and non-maintained early years settings or children who are home educated), the local authority would be responsible for determining ALN, preparing and reviewing the IDP (if that is necessary in the case of a young person not attending a maintained school or FEI in Wales) and securing the ALP within it. The intention is that the ALN Code will provide guidance on instances where it may not be reasonable for a school or FEI to determine the ALN of a learner or secure the ALP required by a learner.

Local authorities will be responsible for preparing, maintaining and reviewing IDPs for children with ALN who are looked after by them and are in the area of a local

authority in Wales (whether their area or another local authority's).

As a minimum, IDPs would have to be reviewed at least once in every 12 month period, and may need to be reviewed more frequently depending upon the circumstances.

Where a learner with an IDP maintained by local authority is registered or enrolled at a maintained school or FEI in Wales, the Act requires that the governing body of the school or FEI takes all reasonable steps to secure the ALP included in the IDP – but ultimate responsibility for securing that provision would rest with the local authority that maintains the IDP. Local authorities also must consider whether it is necessary to prepare and maintain an IDP for a young person who is not in a school or FEI, whether it is no longer necessary to maintain a plan for a young person; and whether it will be necessary for a plan to be maintained for a detained person, including a detained child, when the person is released.

The Act addresses when duties to maintain an IDP cease and when they transfer to another body. For example, a body may cease to maintain an IDP if it decides that the child or young person no longer has ALN, but in this case, before it ceases to maintain the plan, the learner has an opportunity to challenge the decision. There is also provision for duties to maintain an IDP to transfer to another body, for example when a child or young person moves to a different school or local authority area, or transfers from school to an FEI.

There are particular duties on local authorities in relation to children or young people detained in relevant youth accommodation. If a child or young person is identified as having ALN during detention, the home local authority may be required to prepare an IDP. Where this happens and where a child or young person detained in relevant youth accommodation has an IDP when they enter detention, the home local authority must keep the IDP for him or her and arrange appropriate ALP. This will include detentions under the Mental Health Act where Welsh Ministers will be able, through regulations, to ensure that children and young people with ALN who are detained as a result of poor mental health do continue to get the ALP they require. Appropriate ALP might differ from the ALP in the IDP due to the circumstances of their detention. Upon release, a local authority may need to maintain the IDP.

Increased participation of children and young people

The Act provides for the views, wishes and feelings of children, their parents and young people to form a core element of the new system and emphasises the importance of children, their parents and young people participating as fully as possible in the decisions that are taken in relation to their ALN and the ALP that is provided for them.

This will give statutory underpinning to the Welsh Government's existing policy of promoting a much more person-centred approach to identifying needs and appropriate actions to meet those needs, and help to ensure that IDPs are developed in accordance with the principles of person-centred thinking and planning. To facilitate this, the Act requires local authorities to make arrangements to provide children, young people and others with information and advice about ALN and the system set out in the Act. It further requires local authorities to make known those arrangements to those people and various others, thus ensuring that this information

and advice is disseminated appropriately and is accessible for all those who need it.

In order that children and young people are able to fully exercise their right to appeal under the Act, or to engage in disagreement resolution procedures required by it, the Act places a duty on local authorities to make arrangements for the provision of independent advocacy services to be made available to children, young people and their case friends. These are services providing advice and assistance to a child, young person or a child's case friend who is making, or intending to make, an appeal to the Education Tribunal (the 'Tribunal'), considering whether to appeal to the Tribunal, or taking part in, or intending to take part in, disagreement resolution arrangements.

Parents will ordinarily help children who lack capacity to understand their IDP and other documents and information presented to them, as well as the decisions being made in relation to their ALN. In order to cover situations where this may not happen, the Act provides for the appointment of a case friend for such learners. A case friend may represent and support the child and take decisions and act on the child's behalf in relation to matters concerning their ALN and ALP (subject to any provision in regulations). Children who lack sufficient understanding will be able to use a 'case friend', where appointed by the Tribunal, to exercise their rights under the Act. The purpose is to ensure that the rights of these children can be exercised even where a parent is not acting in the best interests of the child.

The Act also enables regulations to make provision for a person to appear on behalf of a party in appeals or applications to the Tribunal. This would include a child who has capacity and young person.

In addition, the Act requires that the independent reviewing officer of a child who is looked after (within the meaning in section 15 of the Act) must be informed about decisions made in relation to the child's ALN, including a proposed decision by a local authority that the child no longer has ALN; and must be given a copy of the child's IDP (including a revised IDP).

High aspirations and improved outcomes

Critical to the development of a culture of high aspirations and improved outcomes is the designation of an individual (or group of individuals) for each setting whose role is to co-ordinate planning and interventions around ALN and aim to consistently apply and drive up standards around planning, target setting, and outcome focus. To this end, the Act requires that all maintained schools (including maintained nurseries and pupil referral units, but excluding maintained special schools, who by their very nature are established to specifically deliver ALP) and FEIs in Wales have a designated Additional Learning Needs Co-ordinator (ALNCo). The ALNCo will replace the existing non-statutory SENCo role. It also extends the role to some education settings that may not currently have a SENCo or equivalent role.

The Act also requires local authorities to designate an individual - an Early Years ALN Lead Officer - to coordinate its functions under the Act in relation to children under compulsory school age who are not yet in a maintained setting. It is anticipated that this role will also have a preventative function, for instance by identifying young children with developmental delay, which could escalate to ALN if they didn't receive appropriate early intervention.

Local authorities may seek a placement for a child or young person at an independent school or independent special post-16 institution in Wales or England, in order to meet their reasonable needs. However, local authorities cannot place a learner with ALN at such an independent school unless they are satisfied that it is able to make the ALP set out in the learner's IDP. This will reduce the risk of inappropriate placements of learners with ALN into an independent school. Annual monitoring of independent schools in Wales is undertaken by Estyn, who will also have a role in ensuring that independent schools are able to deliver the ALP they are registered to deliver. The independent school must also be on the register of independent schools in Wales or the register of independent educational institutions in England.

Similarly, local authorities cannot place a learner at an independent specialist college in Wales or England, unless the college is entered on a list of such colleges established under provisions set out in the Act.

Also, the Act largely replicates the existing legislative presumption in favour of those with ALN being educated in mainstream schools wherever possible. This not only supports the Welsh Government general policy on inclusiveness, but it underlines our view that expectations of and aspirations for those with ALN should be as high as possible. However, the Act promotes a person-centred approach and acknowledges that in some instances attending a mainstream school may not be appropriate or in the child's best interests. Therefore, the duty to favour mainstream maintained education does not apply in such circumstances.

To ensure that the overall learning provision the local authority makes continues to meet the needs of children and young people in their area, the Act requires local authorities to keep under review the arrangements made by them (and by the governing bodies of schools in their areas) for ALP. This includes a requirement on local authorities to have regard to the desirability of ensuring that ALP is available in Welsh.

A simpler and less adversarial system

In removing the current artificial and contentious divide between children and young people who receive a statement of SEN and the statutory protection that affords, and those who have needs that are not considered severe or complex enough to receive a statutory plan with statutory protection, the Act will eliminate one of the principle causes of adversary in the current system. The emphasis in the Act on the participation of children, their parents and young people in the decisions which affect them and the development of IDPs, will result in a more consensual approach to planning. The Act's provisions on IDPs will also pave the way for a less bureaucratic and time consuming process for planning provision, which should prove simpler to understand and less confrontational.

Increased collaboration

The Act provides that where a local authority in Wales requests help or information from other bodies, including another local authority, a governing body of a maintained school or an FEI (amongst others), which it requires for the purpose of exercising their ALN functions that body must comply with the request unless it considers that

doing so would:

- a) be incompatible with that body's own duties; or
- b) otherwise have an adverse effect on the exercise of its functions.

The Act provides for IDPs and other plans relating to the same learner to be prepared, reviewed or revised at the same time. This is aimed at avoiding (where appropriate) the duplication of effort and confusion that can arise where multiple plans are produced for the same individual, and enabling the much closer alignment and integration of otherwise separate planning processes.

In relation to children who are looked after by a local authority in Wales, and in recognition of the fact that a significant proportion of this group of children are likely to have ALN, the Act places responsibility for ALN matters on the local authority that looks after the child (unless the child is in the area of a local authority in England) and requires an IDP to be included in the child's personal education plan (PEP), where the child has ALN. The PEP will usually be a required part of their care and support plan under the Social Services and Well-being (Wales) Act 2014. This applies to most, but not all children (i.e. those of compulsory school age or under) who are looked after – see section 15 of the Act. These provisions will ensure that planning for the educational needs of this vulnerable group of learners are streamlined and better co-ordinated.

The Act includes a new duty on local health boards and NHS Trusts in Wales ('NHS bodies'). When asked, these bodies must consider whether there is a treatment or service that is likely to be of benefit to addressing the learner's ALN and, if so, the NHS body must secure that treatment or service. A description of the treatment or service must then be included in the learner's IDP. This duty represents a significant step forward in ensuring that there is greater clarity and certainty around who will be delivering what provision included within an IDP than is currently the case with statements of SEN. If the NHS body identifies that the treatment or service should be provided through the medium of Welsh, the Act requires the NHS body to take all reasonable steps to secure that service or treatment in Welsh.

The Act also includes a new duty on health boards in Wales to appoint a Designated Education Clinical Lead Officer (DECLO). The role of this officer will be to co-ordinate the health board's functions in relation to children and young people with ALN, which might include, for example, ensuring there are appropriate service models in place within the health board; providing leadership within the health board in support of meeting the relevant duties of the board; liaising with partners; and prompting and facilitating effective inter-professional and inter-agency working for the benefit of children with ALN. The DECLO, ALNCo and Early Years ALN Lead Officer roles will help to facilitate effective collaboration between education and health to improve services for learners.

There is also a specific power on various health bodies in Wales and England in the course of exercising any of their functions in relation to a child who is in the area of a local authority in Wales and under compulsory school age. That is, the body forms the opinion that a child has (or probably has) ALN, the Act will provide the health body with the power to bring this to the attention of the local authority responsible for the child (or in the case of a looked after child, the authority that looks after the child) if they believe that to be in the child's best interests. Before doing so, they must

inform the child's parent of their view and their power and give an opportunity to discuss.

The Act also enables the Tribunal to share with Welsh Ministers reports received from local authorities, FEIs and health bodies about their compliance with orders and on action taken to respond to recommendations along with other related information. Information about failure to comply with orders, or of health bodies' failure to take action in response to recommendations, could also be shared.

This information will ensure the system can be monitored and also action taken where appropriate in response to non-compliance. The monitoring and evaluation of the system in relation to compliance will be useful in establishing whether tribunal recommendations to health bodies are effective.

Avoiding disagreements and earlier disagreement resolution

The Act requires local authorities to make arrangements for avoiding and resolving disagreements which might arise between children, their parents and young people on the one hand, and education bodies on the other (namely governing bodies and local authorities) or, in the case of disagreements about the ALP made, various educational institutions. This includes providing access to help in resolving a disagreement from an independent person. Local authorities will also be required to ensure that children, young people and parents are made aware of these arrangements.

The development and implementation of effective disagreement avoidance and resolution arrangements is key to improving the trust that children, young people and parents have in the system and minimising the extent to which they feel the need to exercise their rights of appeal at Tribunal level. Local authorities must, however, take reasonable steps to make children, their parents and young people aware that these arrangements do not affect their rights to appeal to the Tribunal.

Clear and consistent rights of appeal

The Act renames and expands the remit of the existing Special Educational Needs Tribunal for Wales (SENTW). SENTW will be renamed the Education Tribunal for Wales. The Act makes provision for the continuation of the SENTW's constitution, membership and remuneration and expenses. The new name reflects not only its role in determining appeals in relation to ALN, but also the role currently undertaken by SENTW in determining disability discrimination claims relating to schools, a function which the Tribunal will continue. Currently, only those young people (not yet 19 years old) who are registered at maintained schools have the right to appeal to the SENTW in relation to their SEN. The Act will introduce more equitable rights of appeal by extending this right to all young people up to the age of 25 years who are in school or pursuing FE.

The Act also provides for a 'case friend' to be appointed by order of the Tribunal where a child lacks capacity.

The Act enables a child or young person up to the age of 25 years, or a child's parent, to appeal against particular matters to the Tribunal where a local authority or FEI governing body has taken a decision in relation to an individual's ALN, or

prepared or maintains an IDP for that individual. In the case of a local authority, this would include reconsideration of school governing body decisions and revisions of plans maintained by a school governing body.

Orders of the Tribunal are binding on local authorities and FEI governing bodies. What's more, the local authority or FEI governing body must report back to the Tribunal on the action it has taken to comply with an Order.

In addition to binding orders on local authorities and FEI governing bodies, the Act gives the Tribunal the power to make recommendations to NHS bodies. It also requires NHS bodies to report back to the Tribunal on action taken in response to its recommendations.

Although use of the Tribunal should be a last resort, the right of appeal to an independent tribunal whose decisions are binding will ensure the new system for supporting ALN is robust and has the confidence of children, their parents, and young people. It will also help to ensure that the duties in respect of learners with ALN are properly discharged: this will safeguard the rights of children and young people and will provide for greater equity. The Act also creates the role of Deputy President which will enhance the operational efficiency, business continuity and sustainability of the tribunal.

A mandatory Code

The Act requires the Welsh Ministers to issue a Code on ALN. The Code will apply to those with functions under this Act and will be able to impose:

- mandatory requirements (in respect of particular matters specified in the Act) in accordance with which governing bodies and local authorities must act; and
- guidance to which those bodies and others who have functions under the Act must have regard.

The creation of a Code of this nature will help ensure the new ALN system has a set of clear, legally enforceable parameters within which local authorities and governing bodies must act. The Code will be targeted towards practitioners so they understand and can implement the new ALN system. The Code will also include statutory guidance and best practice to enable practitioners to effectively operate the new system and adhere to their legal duties under the new regime.

A bilingual system

The Act includes specific duties in relation to ALP through the medium of Welsh. Services must consider whether the child or young person needs ALP in Welsh. If they do, this must be documented in the IDP and services must take 'all reasonable steps' to secure the provision in Welsh. The Act includes a mechanism to remove by regulations the 'all reasonable steps' test so that the duties to provide ALP through the medium of Welsh become absolute.

The Act includes a series of strategic duties to drive improvements in the availability of Welsh language ALP, including a requirement on Welsh Ministers to review the sufficiency of ALP in Welsh every five years. These duties, taken alongside wider initiatives, are intended to drive progress towards a truly bilingual ALN system.

The Act ensures that the duty to consider whether Welsh Language provision is appropriate should be continuous and not confined to the stage where an IDP has been prepared.

Step 2. Analysing the impact

We believe the Act will deliver the following positive impacts (in terms of children's rights) for learners from birth to 25 years:

- **provide a unified, equitable system** across the 0 to 25 age range, different education providers and varying levels of need, thereby removing inconsistency and unfairness (articles 1 & 3);
- **introduce a more flexible, responsive process** of ongoing assessment, enabling provision for the individual learner to evolve over time in accordance with their changing needs (articles 28 & 29);
- **ensure a more person-centred approach**, placing the child or young person's views at the heart of the process and involving them and their families in the planning, intervention, and review process from the onset (article 12 & 16);
- **provide better support and access to information and advice** for children, young people and their families to understand the ALN process and make informed choices (article 13);
- **avoid duplication** arising from plans that do substantially the same thing and integrate where possible and appropriate, existing plans and interventions delivered for children and young people (article 3);
- **improve collaborative working** between agencies to plan their interventions, agree priorities, and ensure appropriate resources are made available in time to make a difference (articles 3 & 23);
- **reduce the likelihood of disputes arising** by developing stronger partnership working with parents and promoting a culture of transparency, which should encourage greater trust between parents, education providers and local authorities; (articles 12 & 13)
- **minimise the number of appeals** by ensuring that disagreements can be resolved at the earliest possible opportunity (articles 1 and 12); and
- **retain and extend rights of appeal** to the Tribunal as an ultimate safeguard in relation to the adequacy of the support provided to every child and young person who has ALN, not just those who have complex needs (articles 3 & 4).

A series of engagement events were held for children and young people (and their families) both during the consultation on the White Paper, titled *Legislative proposals for additional learning needs*, and during the consultation on the draft Additional Learning Needs and Education Tribunal (Wales) Bill ("the draft Bill").

In the summer of 2014, the Welsh Government commissioned an external contractor to gather the views, feelings and opinions of children, young people and their families on the legislative proposals as set out in the White Paper. The workshops used a variety of engagement methods including play, discussion sessions and debates using the 'easy read' consultation paper. The easy read paper was also used by children and young people in schools and colleges to submit their views. The

outcomes of this consultation exercise were used to inform the policy development process to produce the draft Bill. Summaries of both the White Paper responses and the workshops were published on 14 October 2014¹.

A draft Bill, which built upon the White Paper, was published for consultation on 6 July 2015. To support the consultation, which ended on 18 December 2015, a draft version of the ALN Code and outline timescale for implementation of the new system were also published.

A consultation document for children and young people was published along with an easy read explanation of the draft Bill. These documents were used by a contractor, as commissioned by the Welsh Government, to assist with the delivery of bespoke participation workshops with children, young people and their parents/carers. A total of 23 workshops took place across Wales.

During the workshops, the views of children and young people were elicited separately from those of their parents/carers to ensure their views were accurately recorded. There were 19 workshops for children and young people, held at 16 settings, with a total of 222 participants. The workshop settings included special schools, primary schools, secondary schools, further education settings, a pupil referral unit, a group of looked after children and home educated children. The overall level of support for the proposals was very high: the main criticism raised by children and young people was the lack of focus on health provision within the proposed reforms.

There were four workshops with adults with a direct interest in the legislation. A total of 45 adults participated. They included foster carers and parents with children who: have a Statement of SEN; are in early education; and who are being home educated. Overall, there was a high level support for the proposed changes: the main criticism was in relation to the resources available to deliver the proposed system.

Each workshop was structured to provide participants with the information and understanding to allow them to make empowered decisions when responding to the ten set consultation questions, which reflected the then ten core aims of the reforms. While there was an overall high level of support, there was a difference between the responses of the children/young people, and the adults.

The views of children, young people and their parents/carers were used, along with responses received through wider consultation, to inform the refinement of the Bill, development of the draft Code and wider ALN Transformation Programme. Officials from the Education and Public Services and Health and Social Services Groups within the Welsh Government have worked closely on developing the health provisions within the Act and wider reform programme. This development work addressed directly the main concerns raised by children and young people.

In her 2015-16 Annual Report (October 2016), the Children's Commissioner made the following recommendation:

'Welsh Government should introduce new legislation and a robust Code of Practice that delivers on its commitment to children and young people with additional learning needs. It should strengthen the coordination, provision

¹ These documents are available on request from SENReforms@gov.wales

and support provided to children and young people with additional learning needs, including the introduction of statutory duties on LHBs and NHS Trusts to provide support and to strengthen the powers of the Education Tribunal for Wales’.

This recommendation has been addressed through the Act, the draft Code and the wider ALN Transformation Programme.

The Welsh Government engaged substantively with the Children’s Commissioner’s Office during the development of the Bill and draft ALN Code. The Commissioner’s Office was represented on the Code Content Development Group, which helped to develop the second iteration of the draft Code, which was made available to the Children, Young People and Education Committee in February 2017 to support the Assembly’s scrutiny of the Bill. Feedback from the Committee on the draft ALN Code and accompanying documents has been considered and we continue to use it to inform ongoing policy development linked to our reforms.

A Children’s Rights Impact Assessment was published at the same time as the draft Bill and a further version was published upon introduction of the Bill into the National Assembly for Wales on 12 December. The impact assessment was revised in light of Stage 2 amendments and further policy developments. This impact assessment has been revised in light of Stage 3 amendments and further policy developments. It is available on the Welsh Government website:

<http://gov.wales/topics/educationandskills/schoolhome/additional-learning-special-educational-needs/transformation-programme/legislation-and-statutory-guidance/>

An easy read explanation of the Bill was produced by Learning Disability Wales on behalf of the Welsh Government and published on the Welsh Government’s website in February 2017:

<https://beta.gov.wales/sites/default/files/consultations/2018-01/151019-easy-read-explanation-en.pdf>

Our proposals support the Child Poverty Strategy for Wales 2015. Objective 3 of the strategy is: *Reducing the inequalities which exist in the health, education and economic outcomes of children and families living in poverty, by improving the outcomes of the poorest.* Our proposals aim to remove education inequalities by ensuring that all children and young people are able to achieve their educational potential. The Welsh Government’s publication *Rewriting the future* states that a learner eligible for free school meals (eFSM) in Wales is twice as likely to have SEN. By improving the system it will have a disproportionately positive effect on children and young people from a low income household.

Using ALN as a single term which encompasses children and young people aged 0 to 25 years will help to avoid some of the stigma associated with the existing terms SEN and LDD, and will mark a clear break from the current systems which is widely considered to require fundamental reform.

We have identified no negative impacts of these proposals on children and young people.

Step 3. How does your piece of work support and promote children's rights?

This work supports the following UNCRC articles:

Article 1 - Everyone under 18 years of age has all the rights in this Convention.

The Act introduces an equitable system to meet the needs of children of compulsory school age or below with ALN, and young people with ALN up to the age of 25 years who are in school or pursuing FE, or are in further education (FE). The Act also affords the right to appeal to children and young people up to the age of 25 who attend, or wish to attend, FEIs or specialist post-16 institutions; providing such appeal rights to the latter group of learners for the first time.

Article 2 - The Convention applies to everyone whatever their race, religion, abilities, whatever they think or say and whatever type of family they come from.

The Act applies in respect of children and young people ordinarily resident in Wales aged 0 to 25, who are of compulsory school age or below, or are over compulsory school age and are in school or pursuing FE. This includes children and young people who attend an independent setting (whether funded by the parents or otherwise), who are educated at home, who are looked after by a local authority, or who are detained. The Act also includes those detained under the Mental Health Act where Welsh Ministers will be able, through regulations, to ensure that children and young people with additional learning needs who are detained as a result of poor mental health continue to get the ALP they require. Some provisions also apply in respect of children or young people resident in England who attend maintained schools or FEIs in Wales.

The Act will ensure that every child and young person with ALN, of compulsory school age or below, or over compulsory school age and in school or FE, is entitled to a statutory IDP to support their learning, regardless of the severity or complexity of their needs. This will ensure greater consistency and continuity and that provisions and rights are protected regardless of the severity or complexity of needs.

Article 3 - All organisations concerned with children should work towards what is best for each child.

The Act will support early identification and timely intervention to ensure that every child and young person with ALN can achieve their educational potential. To encourage collaboration and ensure that organisations work towards what is best for each child, where a local authority requests help or information from another specified body – including, for example, another local authority, governing body of a maintained school or FEI, or certain health bodies – in the exercise of their ALN functions, that body must comply with the request (unless specified circumstances apply). This is 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.

In addition, NHS bodies in Wales will be under a new duty to consider, when asked, whether there is any relevant treatment or service that is likely to be of benefit in addressing a learner's ALN. Any treatment or service so identified must be included in the learner's IDP and the health body must secure the provision of the treatment or service.

The new DECLO role and the ALNCo role will help to foster improved working relationships and practices between agencies who work with children to get the best outcome for the child or young person.

It is intended that the ALN Code, which will accompany and support the Act, will provide further guidance to professionals to support effective multi-agency working.

Whilst the Act largely replicates the existing legislative duty to favour those with ALN being educated in mainstream maintained schools (subject to limited exceptions), it also promotes a person-centred approach. The Act, therefore, acknowledges that in some instances, attending a mainstream maintained school may not be appropriate in the child's best interests. It consequently enables a local authority to place a child outside of the mainstream maintained education sector in some such circumstances.

Article 4 - Governments should make these rights available to children.

The Education (Wales) Measure 2009 amended the Education Act 1996 and the Equality Act 2010 to give a child at a school a concurrent right with their parents to make an appeal to the SENTW in respect of decisions made by the relevant local authority regarding the child's SEN or claims of disability discrimination in schools. The 2009 Measure's provisions were implemented by way of an initial pilot scheme in two local authority areas in Wales (Carmarthen and Wrexham). These provisions were rolled out across the whole of Wales in January 2015, following a positive evaluation of the pilot programmes.

The Act continues to provide rights for children and their parents to appeal to the Education Tribunal against a range of decisions of the local authority in relation to ALN matters, IDPs and discrimination.

The provisions of the Act will further support and promote children's and young people's rights by extending appeal rights to all individuals up to the age of 25 who are in school or pursuing FE.

The Act also places a duty on persons exercising functions under it about involving and supporting children and their parents, and young people in the decisions made under the Act, including in the development of the IDP.

In addition, the Act provides for a 'case friend' to be appointed by order of the Tribunal where the child lacks capacity. Whilst it is recognised that for the most part, appeals will be brought on behalf of children by their parents, where this is not the case, a case friend will still allow the child to exercise appeal rights and other rights under the Act.

Young people over compulsory school age with ALN are given the right to make their own decisions in relation to their ALN, including the right to withhold their consent to a decision about their ALN being taken by an educational institution or local authority.

This reflects the fact that these young people are no longer required to be in education and could reasonably expect to determine their own educational future. The Act provides for regulations to be made in relation to young people who lack capacity to take decisions themselves.

Article 12 - Children have the right to say what they think should happen, when adults are making decisions that affect them, and to have their opinions taken into account.

The Act will ensure that the child's and young person's voice is at the heart of decisions made about them and the planning that will ensure their ALN is met. The Act places duties on local authorities and National Health Service bodies to have due-regard in relation to the articles contained in the UNCRC and the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) when exercising functions in relation to the Act.

It builds on previous work to ensure the voice of the child is respected, such as the Education (Wales) Measure 2009 referred to above. As noted, the provisions of the Act extend appeal rights given under that Measure to children and young people up to the age of 25 years.

This Act bolsters those rights by providing that the views, wishes and feelings of children and young people are taken into account, for example when preparing an IDP and when reviewing it. The ALN Code will provide further details on the use of a person-centred planning approach. The Act also gives local authorities a duty to refer children and young people to an independent advocacy service on request. The ALN Code may impose further requirements and provide guidance in relation to these independent advocacy services, including, if necessary, their interaction with independent advocacy services prescribed elsewhere in legislation.

As outlined in Step 2, when consulting on its legislative proposals within the 2014 White Paper and on the draft Act during 2015, the Welsh Government provided children, young people and their carers/parents with the opportunity to share their views. This included making available versions of the consultation documents targeted at children and young people; producing an easy read explanation of the draft Act; and holding workshops across Wales targeted at children and young people and their carers/parents to gather their views on the proposals. The consultation materials were promoted through third sector partners, the Welsh Government's website and via social media. The Welsh Government commissioned external contractors to ensure that learners with varying levels of need (and their carers/parents) from a range of education settings were engaged. The views of children, young people and their carers/parents were considered during the refinement of the Bill and continue to be used to inform the further development of the wider package of reforms, including the development of the final draft of the ALN Code.

The easy read explanation of the Bill as introduced also supports articles 12 and 13 of the UNCRC on (respectively) giving children and young people with ALN the right to express their views on matters affecting them and their rights to freedom of expression.

Article 13 - Children have the right to get and to share information as long as the information is not damaging to them or to others.

The Act provides that local authorities will be required to make arrangements for providing children, young people and others with information and advice about ALN and the system set out in the Act. Local authorities will be required to take reasonable steps to make known these arrangements to various people. There are also duties on governing bodies to make these arrangements known to their learners and others.

These arrangements will support children and young people to have a say about what they think should happen (see article 12). In broad terms, such information has to be given to children with capacity to understand the subject matter and there is provision for giving it to case friends in instances where the child lacks that capacity. There are also procedures to allow a child to challenge a judgement on capacity, ultimately by application to the Tribunal.

As mentioned above, the easy read explanation of the Bill as introduced also supports articles 12 and 13 of the UNCRC on (respectively) giving children and young people with ALN the right to express their views on matters affecting them and their rights to freedom of expression.

Article 16 - Children have a right to privacy. The law should protect them from attacks against their way of life, their good name, their families and their homes.

The Act provides for regulations to be made about the disclosure or use of information for purposes connected with the education of the child or young person. Provisions of the Act and this regulation power recognise there are occasions where the sharing of information about individuals without the consent of the individual (or their parent in the case of children) might be appropriate or necessary. For example, because it would enable the provision of education suitable for a particular child of compulsory school age. The Act contains appropriate limits on the disclosure of information which respect privacy. For example, section 57 gives a power to particular health bodies to inform local authorities of its opinion that a child under compulsory school age has or may have ALN, but only after having discussed with the parent and if it is satisfied that doing so would be in the best interests of the child. Other law on information sharing and data protection will also apply.

Article 23 - Children who have any kind of disability should have special care and support so that they can lead full and independent lives.

The Act places duties on local authorities and National Health Service bodies to have due regard in relation to the UNCRPD when exercising functions in relation to the Act. This means that local authorities and NHS bodies' strategic decision making will have regard to the conventions in accordance with the ALN Code.

The Act provides that a person will have ALN if he or she has a learning difficulty or disability that calls for ALP.

It provides that a child of compulsory school age or person over that age has a learning difficulty or disability if he or she:

- has a significantly greater difficulty in learning than the majority of others of the same age; or
- has a disability 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.

A child under compulsory school age has a learning difficulty or disability if he or she is, or would be if no ALP were made, likely to have a significantly greater difficulty in learning than the majority of their peers when of compulsory school age.

Those children, and young people in school or FE, who have ALN will be entitled to receive an IDP and the ALP set out in it.

Where a child's or young person's reasonable needs cannot be met unless the local authority also secures particular provision, for example a place at a particular independent school and/or board and lodging so that they can attend a particular residential institution (this could be because of a child or young person has a disability and severe and/or complex ALN) the local authority must (subject to some other conditions) set out that provision in the IDP and secure it.

The Act will strengthen the current registration regime to provide the necessary assurance that a child or young person with ALN is placed in an appropriate setting.

Article 28 - Children have a right to an education. Discipline in schools should respect children's human dignity. Primary education should be free. Wealthy countries should help poorer countries achieve this.

The Act will provide for a system of support that enables children, and young people in school or pursuing further education, in Wales up to the age of 25 who have ALN, to access and fully benefit from the educational opportunities that are available to them and their peers.

Article 29 – Education should develop each child's personality and talents to the full. It should encourage children to respect their parents, and their own and other cultures.

The provisions in the Act are based on the principle that every child and young person should be supported to achieve their educational potential. The statutory IDP will help to ensure that every child and young person with ALN in compulsory and further education will receive the provision they require to do so.

Step 4. Advising the Minister and Ministerial decision

The advice to the Cabinet Secretary for Education confirms that this CRIA has been completed. No conflict with UNCRC articles has been identified.

Step 5. Recording and communicating the outcome

This revised CRIA will be published on the ALN Transformation website alongside the final Additional Learning Needs and Education Tribunal (Wales) Act 2018 and the final Explanatory Memorandum.

Step 6. Revisiting the piece of work as and when needed

The impact on the rights of the child and young person will be kept under review. As the wider Transformation Programme is developed and the implementation of the new ALN system rolls out, there will be further consideration on the impact on the UNCRC.

As part of the post implementation review an evaluation of the impact of the Act will be undertaken to monitor the extent to which the legislative and wider policy changes are being embedded and making an impact on outcomes for learners. A baseline study, against which future impact can be assessed, is currently being undertaken.

Budgets

As a result of completing the CRIA, has there been any impact on budgets?

No

Please give any details:

There has not been any impact on the budget as a result of this CRIA. A comprehensive consideration of the costs associated with the Act is set out in the regulatory impact assessment, which forms part of the Explanatory Memorandum that accompanied the Act.

Monitoring & Review

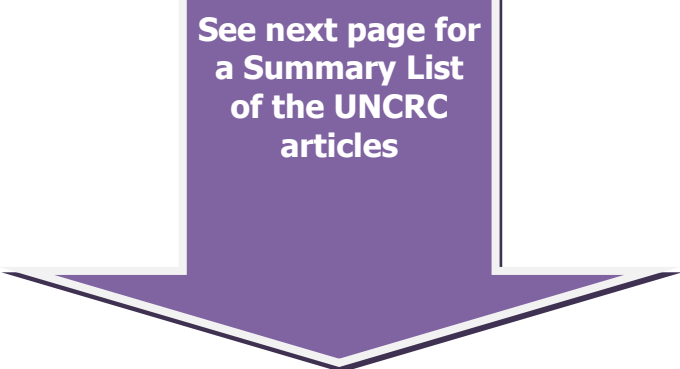
Do we need to monitor / review the proposal?

Yes

If applicable: set the review date

Ongoing monitoring during implementation and a review five years following implementation.

**See next page for
a Summary List
of the UNCRC
articles**



THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD

www.uncrcletsgetitright.co.uk

The United Nations Convention on the Rights of the Child is an international agreement that protects the human rights of the children under the age of 18. On 16 December 1991, the United Kingdom of Great Britain and Northern Ireland formally agreed to make sure that every child in the UK has all the rights as listed in the convention. The Welsh Government has shown its commitment to the convention by adopting it as the basis for policy making for children in Wales.

Altogether there are 54 articles in the convention. Articles 43-54 are about how adults and governments should work together to make sure all children are entitled to their rights. The information contained here is about articles 1-42 which set out how children should be treated.



Llywodraeth Cymru
Welsh Government

www.cymru.gov.uk

Article 1

Everyone under 18 years of age has all the rights in this Convention.

Article 2

The Convention applies to everyone whatever their race, religion, abilities, whatever they think or say and whatever type of family they come from.

Article 3

All organisations concerned with children should work towards what is best for each child.

Article 4

Governments should make these rights available to children.

Article 5

Governments should respect the rights and responsibilities of families to direct and guide their children so that, as they grow, they learn to use their rights properly.

Article 6

All children have the right of life. Governments should ensure that children survive and develop healthily.

Article 7

All children have the right to a legally registered name, the right to a nationality and the right to know and, as far as possible, to be cared for by their parents.

Article 8

Governments should respect children's right to a name, a nationality and family ties.

Article 9

Children should not be separated from their parents unless it is for their own good, for example if a parent is mistreating or neglecting a child. Children whose parents have separated have the right to stay in contact with both parents, unless this right hurt the child.

Article 10

Families who live in different countries should be allowed to move between those countries so that parents and children can stay in contact or get back together as a family.

Article 11

Governments should take steps to stop children being taken out of their own country illegally.

Article 12

Children have the right to say what they think should happen, when adults are making

decisions that affect them, and to have their opinions taken into account.

Article 13

Children have the right to get and to share information as long as the information is not damaging to them or to others.

Article 14

Children have the right to think and believe what they want and to practise their religion, as long as they are not stopping other people from enjoying their rights. Parents should guide their children on these matters.

Article 15

Children have the right to meet together and to join groups and organisations, as long as this does not stop other people from enjoying their rights.

Article 16

Children have a right to privacy. The law should protect them from attacks against their way of life, their good name, their families and their homes.

Article 17

Children have the right to reliable information from the mass media. Television, radio and newspapers should provide information that children can understand, and should not promote materials that could harm children.

Article 18

Both parents share responsibility for bringing up their children, and should always consider what is best for each child. Governments should help parents by providing services to support them, especially if both parents work.

Article 19

Governments should ensure that children are properly cared for, and protect them from violence, abuse and neglect by their parents or anyone else who looks after them.

Article 20

Children who cannot be looked after by their own family must be looked after properly, by people who respect their religion, culture and language.

Article 21

When children are adopted the first concern must be what is best for them. The same rules should apply whether the children are adopted in the country where they were born or taken to live in another country.

Article 22

Children who come into a country as refugees should have the same rights as children born in that country.

Article 23

Children who have any kind of disability should have special care and support so that they can lead full and independent lives.

Article 24

Children have the right to good quality health care and to clean water, nutritious food and a clean environment so that they will stay healthy. Rich countries should help poorer countries achieve this.

Article 25

Children who are looked after by their local authority rather than their parents should have their situation reviewed regularly.

Article 26

The Government should provide extra money for the children of families in need.

Article 27

Children have a right to a standard of living that is good enough to meet their physical and mental needs. The Government should help families who cannot afford to provide this.

Article 28

Children have a right to an education. Discipline in schools should respect children's human dignity. Primary education should be free. Wealthy countries should help poorer countries achieve this.

Article 29

Education should develop each child's personality and talents to the full. It should encourage children to respect their parents, and their own and other cultures.

Article 30

Children have a right to learn and use the language and customs of their families, whether these are shared by the majority of people in the country or not.

Article 31

All children have a right to relax and play, and to join in a wide range of activities.

Article 32

The Government should protect children from work that is dangerous or might harm their health or their education.

Article 33

The Government should provide ways of protecting children from dangerous drugs.

Article 34

The Government should protect children from sexual abuse.

Article 35

The Government should make sure that children are not abducted or sold.

Article 36

Children should be protected from any activities that could harm their development.

Article 37

Children who break the law should not be treated cruelly. They should not be put in prison with adults and should be able to keep in contact with their families.

Article 38

Governments should not allow children under 15 to join the army. Children in war zones should receive special protection.

Article 39

Children who have been neglected or abused should receive special help to restore their self respect.

Article 40

Children who are accused of breaking the law should receive legal help. Prison sentences for children should only be used for the most serious offences.

Article 41

If the laws of a particular country protect children better than the articles of the Convention, then those laws should stay.

Article 42

The Government should make the Convention known to all parents and children.

For further information on the United Nations Convention on the Rights of the Child please visit: The Welsh Government's UNCRC Website: www.uncrcletsgetitright.co.uk/

Clc - The National Information and Advice Service for Young People www.clconline.co.uk/news/

