

Explanatory Memorandum to the Draft Additional Learning Needs Co-ordinator (Wales) Regulations 2020

This Explanatory Memorandum has been prepared by the Department for Education and Public Services and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Additional Learning Needs Co-ordinator (Wales) Regulations 2020. I am satisfied that the benefits justify the likely costs.

Kirsty Williams
Minister for Education

3 November 2020

PART 1

1. Description

The Draft Additional Learning Needs Co-ordinator (Wales) Regulations 2020 Regulations (“*the ALNCo Regulations*”) place a statutory duty on governing bodies to ensure that additional learning needs co-ordinators (ALNCoS) have prescribed qualifications or prescribed experience. The Regulations also prescribe the functions of ALNCoS in relation to provision for pupils or students (as the case may be) with additional learning needs (ALN).

The requirements set out in the ALNCo Regulations are intended to ensure children and young people with ALN have their needs identified early and receive appropriate additional learning provision (ALP) through effective co-ordination of such provision.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

The ALN Code, which will be published in April 2021, will provide the necessary comprehensive guide to public bodies on their statutory functions in relation to ALN, including those set out in the ALNCo Regulations. A designated chapter within the ALN Code on the role of the ALNCo will set out clearly the responsibility of the ALNCo within the education setting and explain the regulatory requirements on governing bodies and ALNCoS. A draft of the ALN Code, including a chapter on ALNCoS, was consulted on during 2019¹.

Ahead of the ALN Code coming into force, the statutory roles set out within the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (“*the 2018 Act*”), including the role of ALNCo, will commence in January 2021². To accompany that commencement, the ALNCo Regulations and guidance on all statutory roles under the new ALN system will be published. The guidance will include text from the aspects of the revised ALN Code related to these roles and will clarify their responsibilities.

3. Legislative background

Section 60 of the 2018 Act requires governing bodies of schools³ and further education institutions in Wales to designate a person, or more than one person, to have responsibility for co-ordinating ALP for pupils or students (as the case may be) with ALN. Section 60 (3) of the Act states that a person designated under this section is to be known as an ALNCo.

Section 60(4)(a) of the 2018 Act confers powers on Welsh Ministers to make regulations that require governing bodies to ensure that ALNCoS have prescribed

¹ <https://gov.wales/draft-additional-learning-needs-code>

² The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 1) Order 2020, which also commences the powers to make the ALNCo Regulations

³ A community, foundation or voluntary school, a maintained nursery school, or a pupil referral unit

qualifications or prescribed experience (or both). The 2018 Act also confers powers on Welsh Ministers under section 60(4)(b) to prescribe the functions of ALNCoS in relation to provision for pupils or students (as the case may be) with ALN.

In accordance with section 98 of the 2018 Act, the ALNCo Regulations must be laid, and approved by resolution of, the National Assembly for Wales (now Senedd Cymru) – under the affirmative resolution procedure.

4. Purpose and intended effect of the legislation

The ALN transformation programme, will transform the separate systems for special educational needs (SEN) in schools; and learning difficulties and/or disabilities (LDD) in further education, to create a unified system for supporting learners from 0 to 25 with ALN. At the heart of this reform agenda is the 2018 Act which creates the legislative framework to improve the planning and delivery of ALP, through a person-centred approach to identifying needs early, putting in place effective support and monitoring, and adapting interventions to ensure they deliver desired outcomes. Implementation of the 2018 Act will come into force in a phased approach from September 2021.

Under the current legislative framework surrounding SEN, there is no statutory role for special educational needs co-ordinators (SENCoS). In practice however, the majority of schools and further education institutions (FEIs) provide for such roles.

One of the aims of the workforce development strand of the ALN Transformation Programme is to raise the standards of the education workforce that supports learners with ALN. The purpose of the ALNCo Regulations is to ensure there is a sufficiently skilled workforce to support the delivery of the ALN legislative framework and to contribute to the overall objectives of the ALN reforms, specifically to:

- ensure that all learners with ALN are supported to overcome barriers to learning and can achieve their full potential;
- improve the planning and delivery of support for learners from 0 to 25 with ALN, placing learners' needs, views, wishes and feelings at the heart of the process; and
- focus on the importance of identifying needs early and putting in place timely and effective interventions which are monitored and adapted to ensure they deliver the desired outcomes.

The ALNCo Regulations, with the prescription of qualifications to be an ALNCo and setting out the tasks to be undertaken, will help to apply a consistent approach to this statutory role across Wales and support the delivery of improved educational provision for children and young people with ALN.

The tasks of ALNCos' set out in the ALNCo Regulations will come into force ahead of the main operative provisions of the 2018 Act are implemented. However, the tasks can, to some extent, be performed prior to then to provide readiness for the start of the ALN system. The tasks in the ALNCo Regulations also give certainty to those involved in appointing to ALNCo roles as to what the role will entail.

PART 2 – REGULATORY IMPACT ASSESSMENT

5. Options

This Regulatory Impact Assessment (RIA) has been developed to consider the regulatory implications for mandating requirements on governing bodies in relation to the designation of ALNCoS and the tasks which ALNCoS must undertake. These Regulations do not directly impact on local authorities.

From January 2021, the statutory roles set out in the 2018 Act will come into force which includes the statutory role of an ALNCo. Section 60(4) of the 2018 Act states that Regulations may:

- (a) require governing bodies to ensure that additional learning needs co-ordinators have prescribed qualifications or prescribed experience (or both);
- (b) confer functions on additional learning needs co-ordinators in relation to provision for pupils or students (as the case may be) with additional learning needs

The Welsh Government proposes to make regulations in this regard and accordingly has consulted on these in draft. This RIA reviews the proposals on whether to bring into force the ALNCo Regulations.

The RIA reviews two options. Since the 2018 Act already places a requirement on the governing bodies of schools and further institutions in Wales to designate a person (or more than one person) as an ALNCo there is no 'Do nothing' option :

- 1) *“Do-minimum - Adopt a non-legislative approach”* - This option would mean not proceeding with the ALNCo Regulations and that the new statutory role of ALNCo would apply without any requirements on governing bodies to consider the qualification or experience of an individual who would be considered for this important role. Furthermore, an ALNCo designated by a governing body would not have any functions set out in law as a requirement of the role. Guidance and advice may go some way to supporting governing bodies and ALNCoS to meet these objectives.
- 2) *“Make the legislation”* - The second option is to utilise the power afforded to Welsh Ministers to bring into force regulations under section 60(4) of the 2018 Act. This will therefore require governing bodies, who must designate ALNCoS (section 60(2) of the 2018 Act), to ensure ALNCoS have prescribed qualifications or prescribed experience (or both). This will also ensure clear functions for ALNCoS who are responsible for co-ordinating ALP for those who have ALN. This can be supported further with advice and guidance.

6. Costs and benefits

Option 1 - Adopt a non-legislative approach

Costs

There would be no direct costs associated with not prescribing in law requirements on governing bodies to consider qualifications and/or experience, and prescribing functions on ALNCoS.

Benefits

There are limited benefits to option one. It could be argued that not prescribing the qualifications and experience required to be an ALNCo would allow governing bodies some flexibility in the designation of the role. There will be investment in awareness raising and the training and development of ALNCoS. Furthermore, there will be advice available via the ALN Code to advise governing bodies and ALNCoS on their roles in designating an ALNCo and the expectations of the role, respectively.

Disadvantages

Adopting a non-legislative approach could lead to what happens currently with the non-statutory SENCo role, whereby there is an inconsistency in how the role is designated and in the co-ordination of suitable educational provision for those with learning difficulties. This inconsistency was noted in the RIA for the 2018 Act. This could therefore have a negative impact on the outcome for some learners with ALN who would not receive consistent and high quality co-ordination of their ALP in line with their peers with ALN.

Option 2 - Make the legislation

Costs

There will be nominal cost associated in designating an ALNCo. The governing body working closely with the head of the education setting will be well placed to identify individuals that are either already working within the setting or new to the setting, who would be suitable to undertake this role. In many cases, it is expected the existing SENCo will likely be designated as the ALNCo.

The tasks set out in the draft ALNCo Regulations are generally regarded as similar to those already undertaken by well performing SENCoS. Feedback from the consultation has supported this.

It is not possible to cost how much time would be required to undertake tasks set out within the Regulations. This is because how tasks are delivered will vary and will be dependent on a number of factors within the education setting or cluster, including the number of learners with ALN and the severity of needs that the cohort will have. This links to the findings of the RIA for the 2018 Act which noted

that the proportion of time a SENCo spends undertaking their teaching duties in relation to the SENCO role is not known. Consequently, it added that it was not possible to disaggregate the cost of undertaking SENCo related tasks from total salary costs.

The ALNCo Regulations are clear that the ALNCo is responsible for carrying out or ensuring that the required tasks are carried out. The chapter on the role of the ALNCo within the ALN Code will provide advice and guidance on the role of the ALNCo within their setting and the expectations for the support the ALNCo should be able to call on and be provided with, in order to undertake their role effectively.

During the passage of the 2018 Act through the Bill process, the policy intention was for ALNCos to obtain a specific masters level qualification to provide the necessary training in support of the ALNCo effectively fulfilling the responsibilities of the role. However, the Welsh Government acknowledged the risk associated with this approach in respect of uptake and cost. The total transition costs identified for upskilling ALNCos through the Masters programme were expected to be £9,255,320. Based on feedback, the level of uptake was assessed to be at risk as a result of the time and commitment involved in a Masters qualification. Given the evidence, we believe that this would be a potential barrier to entry into the role, instead of a motivator in attracting and retaining worthy applicants.

The Welsh Government has therefore adopted a new approach for the training and development for ALNCos as part of the ALN National Professional Learning Programme. The programme, which is currently in development, will support practitioners to deliver this change to the way we will support learners with ALN. The learning is for:

- existing Special Educational Needs Co-ordinators, who will become Additional Learning Needs Co-ordinators (ALNCos);
- aspiring ALNCos; and
- interested teachers and college lecturers.

This programme will adopt a targeted approach that will ensure that tailored training is timely and relevant to the individual, building on their existing knowledge and skills.

A significant proportion of the £20m ALN Transformation Programme funding will be used to support activity to upskill the workforce to better meet the needs of learners with ALN. Work is currently underway to develop a specific professional learning offer for ALNCos, who will provide a strategic leadership role and be the first port of call for professional advice and guidance. Work is underway to determine the amount of funding that will be available to support ALNCos to undertake the training, to determine the mechanism for funding the training, and to consider of what aspects the funding will cover.

The RIA for the Act sets out those costs that could be determined in relation to the salary costs for the ALNCo. In order to ensure clarity we have revised these costs below and updated to reflect inflation. These costs should be attributed to

the requirements of the Act and are not additional costs resulting from these Regulations.

The ALNCo Regulations do not govern how many ALNCoS there will be in the new ALN system. The 2018 Act requires the governing body to designate a person, or more than one person, to have responsibility for co-ordinating ALP. It does not require the person to be employed by the education setting. The ALNCo Regulations do specify that an ALNCo in a school must be either a qualified teacher or a SENCo within the school immediately prior to the coming into force of the Regulations. In the case of the former, this would not necessarily mean a person employed by the school. In some cases it might be that an ALNCo is part of an existing cluster of schools. Similarly, larger settings such as FEIs, may decide to employ more than one ALNCo.

Therefore, for the purposes of estimating current costs, an average of one ALNCo per setting has been used. Based on an average of one ALNCo per education setting, the total number of ALNCoS in the system will be 1,515 – 1480 in schools, 22 in pupil referral units (PRUs) and 13 FEIs.

The RIA for the 2018 Act noted that the SENCo role has been implemented in diverse ways in schools, with a variation in designation, from higher level teaching assistant (HLTA) to deputy heads being designated as SENCoS; although we do know that the vast majority hold a teacher qualification. Consequently it was not possible to determine the precise national salary cost. This is still the case today.

Therefore, for the purposes of estimating current costs for an ALNCo in a school, the midpoint for classroom teachers has been used. For 2020 to August 2021, the relevant salary point is £33,912 (£44,086 including on costs).

Whilst these Regulations do not directly inform the allowances paid to a SENCo or an ALNCo going forward; currently, some SENCoS are entitled to a SEN allowance for undertaking SEN responsibilities. Where appropriate, regulations on teachers' pay provide for an additional annual allowance of between £2,270 and £4,479 for SEN responsibilities (within set criteria). Under the new ALN system this will apply, although any changes to teachers pay, including to SEN allowances, will need to be discussed as part of the annual teacher pay review process.

Similarly, whilst these costs are included in the baseline and RIA for the Act and are not additional costs as a result of these Regulations; we have extracted and updated information in relation to the following. Unlike schools, pupil referral units would not usually have a designated SENCo. A co-ordinating role will, however, be undertaken. For illustrative purposes, it is assumed the role is undertaken by a teaching member of staff employed at £44,086 per year (including on costs) and all SENCoS receive an average SEN allowance of £3,375.

Finally, in FEIs, student support services currently provide for a co-ordinator whose role is broadly similar to a SENCo in schools. The individual who

undertakes this role will usually be a member of the teaching staff or member of the student support service. It is assumed that the individual will be on a comparable pay scale to a SENCo in a school at a cost of £44,086 per year (including on costs), based on 2019/20 pay scale. Teaching staff do not receive additional allowances like that available in schools. For those acting in a SENCo role or equivalent role in an FEI, this will likely form part of their formal pay structure of the common contract.

Benefits

The ALNCo Regulations will help to ensure a greater consistency across Wales in the designation of ALNCoS and the co-ordination of ALP for those with learning difficulties.

The ALNCo Regulations set out tasks associated with the policy intention to create a strategic role that will help foster a whole school/college approach to ALN. Other tasks will help increase awareness and knowledge of ALN among staff which will help raise the standards among the education workforce in providing support to all learners with ALN and lead to improved educational provision and outcomes for those learners.

The package of training and development that will be available to ALNCoS will help enable the ALNCo to effectively fulfil the responsibilities set out in the Regulations and supporting guidance, including the training and support of other staff.

Based on the analysis above of the existing system and the information available to us, we have determined that the long term benefits of this role as outlined in these Regulations will outweigh any ensuing costs.

Disadvantages

There are no dis-benefits identified with this option.

7. Consultation

The draft ALNCo Regulations were consulted on over a 14 week period from 10 December 2018 to 22 March 2019 as part of a wider consultation on the draft ALN Code. A [summary of responses](#) paper was published later in 2019, including a summary of responses to questions 55 and 56 of the consultation document, relating to the two main provisions within the ALNCo Regulations as set out by section 60(4)(a) and section 60(4)(b) of the Act.

Most who fed into consultation process agreed that the prescribed qualifications to be an ALNCo set out in the draft ALNCo Regulations were appropriate, although some suggested that because of the strategic aspect of the role, the ALNCo should in all cases be a qualified teacher, while others suggested experience should have more weight when considering who would be suitable for the role. Many also emphasised the importance of appropriate training and

continuing professional development in terms of previous experience and moving forward in the role.

With regard to the tasks set out in the draft ALNCo Regulations, the majority who fed into the consultation agreed with the tasks ALNCoS must carry out or arrange to carry out. There was feedback however which expressed some concern about the interpretation of sufficient time (as set out in the draft ALN Code) for ALNCoS to be able to carry out the tasks set out in law and risks of undue pressure being placed on those designated to be ALNCoS.

Whilst there was broad agreement for proposals in the consultation on the ALNCo Regulations, consideration has been taken of all consultation responses and whether the Regulations could be amended to reflect the feedback received. It has been decided that the ALNCo Regulations need not be amended with regard to matters raised, either because they are out of scope of the powers afforded to the Regulations or that the ALN Code and other aspects of the ALN Transformation agenda would be the most appropriate way to address these matters.

We have therefore strengthened the chapter within the statutory ALN Code on the role of the ALNCo to provide clarity on the matter raised, including considerations for the provision of sufficient time to undertake the requirements of the statutory role. Furthermore, Welsh Government investment into ALNCo training and development will ensure ALNCoS - either existing SENCoS or aspiring ALNCoS - will be equipped to meet the requirements set out in law.

Where changes have been made to the draft ALNCo Regulations, these are primarily to the structure of the Regulations, specifically where the tasks prescribed for ALNCoS are set out. Minor changes have been made to provide clarity on the regulations (previously 5(i) and 6(i)) to avoid misinterpretation of who has responsibility for undertaking certain tasks. Likewise, minor changes have been made to regulations 5(c) and 6(c) to provide clarity on what aspects of record keeping the ALNCo must undertake. Furthermore, the removal of regulations (previously 5(f) and 6(f)) relating to the preparation and review of information required to be published by the governing body pursuant to the code, and regulations (previously 5(d) and 6(d)) relating to liaising with and providing information to the individual (and in the case of a pupil, their parent) about their ALN, IDP and ALP being made. This is due to changes made to the code in this regard.

8. Competition Assessment

A competition filter has not been completed as this legislation does not affect business, charities and/or the voluntary sector.

9. Post implementation review

The Welsh Government intends to undertake a post implementation review of the new ALN system (including requirements set out in the ALNCo Regulations)

that will form part of the Welsh Government's overarching monitoring and evaluation model, which 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.