

## **Paper 6**

### **National Assembly for Wales**

### **Children and Young People Committee**

### **Education (Wales) Bill : Stage 1**

### **Response from : Estyn**

#### **Introduction**

Estyn welcomes the opportunity to contribute a response to the scrutiny of the Education (Wales) Bill by the NAW Children and Young People's Committee. This paper outlines both our general and specific responses and is set out under the following headings:

- Education Workforce Council – registration and regulation of teachers and the wider workforce
- Reform of the registration and approval of independent schools in respect of special educational needs
- Post-16 assessment of educational and training needs and specialist further education
- School term dates
- The appointment of HM Chief Inspector and HM Inspectors of education and training in Wales

We try to cover, under the above headings, any barriers to the implementation of these provisions and whether the Bill takes account of them or where they are aspects that will need further attention in Codes and guidance to be published in association with the eventual Act when it becomes legislation.

#### **Education Workforce Council – registration and regulation of teachers and the wider workforce**

All learners and parents need to have confidence in a highly skilled and well-regulated education workforce. The proposed functions for the Education Workforce Council would enable them to promote high standards of professional conduct among a wider range of education professionals in Wales. Currently the GTCW registers school teachers and deals with issues related to professional conduct and analyses data related to workforce planning and contributes to CPD. We welcome the future council's involvement in these areas across a wider range of professionals, notably in the further education sector, with the potential for widening the range beyond that to include workers in WBL and the youth service. The introduction of this legislation should contribute to improving standards of professional conduct among the education workforce.

The registration of full-time staff in further education institutions would give parity of esteem with academic staff in schools and help to achieve equity for staff from all sectors who work in the 14-19 phase.

Staff in FE colleges have a wide range of qualifications, industrial and business experience and have often achieved standards set by professional but not teacher-education bodies. Some thought will need to be given, in developing the categories outlined in Schedule 2 of the Bill, to what qualifications FE teachers and support workers will need to hold in order to be fully registered. A system of 'equivalent qualifications' would need to be established. Opportunities to achieve the qualifications required would need to be offered, perhaps using continuous professional development (CPD) arrangements so that registration status would correspond to that required of school teachers and learning support workers. Many full-time teaching staff in further education have gained either a certificate in education or a post-graduate certificate in education. These programmes are often completed in-service by teachers new to FE teaching and, as such, they are undertaken on a part-time basis.

The registration of part-time or visiting teachers or learning support workers in FE institutions will need careful consideration. Many of these staff bring a wealth of professional expertise and specialist skills into FE institutions on a more occasional part-time basis. They are currently employed in a part-time capacity by FEIs often because they mainly work as lawyers, accountants, artists, designers or performers. In other words, they are professionals in other vocational areas whose main profession is not that of a teacher or support worker in FE and whose professional training and qualifications will not include teaching qualifications.

The registration process will also need to accommodate staff who might meet qualification requirements but choose to work part-time. Taking a phased approach to the registration of workers in FE, starting with full-time FE teachers, would be likely to make sense initially should these proposals become law.

### **Provision of advice by the Council**

The GTCW currently gathers a range of useful information related to education professionals. They would continue to provide advice to Welsh Government on issues of conduct, fitness to practise, categories of registration and other issues related to career development and performance in future as EWC. However, it would be problematic for the Council to provide detailed advice relating to 'improving the standards of teaching and the quality of learning' as there is nothing in the Bill that indicates that its staff will be in the position of having a source of primary evidence to support an evaluation standards of teaching and learning across Wales. However, the council would be in a position to pay appropriate attention to published

data, including Estyn reports on school inspections and thematic publications to support their work in promoting high standards of professional conduct.

## **Reform of the registration and approval of independent schools in respect of special educational needs**

### **Introduction**

Point 78 of the memorandum states that:

*‘The Bill seeks to reform the way that independent schools register to admit learners with special educational needs (SEN) to reduce duplication and increase the information available about SEN provision in independent schools’.*

Specifically, the Bill repeals the needs to seek SEN consent to place a pupil with a statement in an independent school without approved status. It also removes the approved status and amends the registration status to include the types of special education needs for which a school is registered.

Estyn supports the broad thrust of the proposals in the Education (Wales) Bill 2013. The main responsibility of ensuring that a learner is appropriately placed in an independent school should, and does, rest with the local authority. It would be useful if supporting guidance could emphasise this. The consent system has the weakness of being used by local authorities as a safety net that allows them not to take this responsibility seriously enough. It is also helpful to local authorities to amend the registration of independent schools, so as to establish a clearer menu of options to enable local authorities to select the best school to meet the needs of individual learners.

Alongside this legislation, the Welsh Government needs to consider a number of further issues in relation to how the requirements of the Bill would operate in practice. These issues are set out below.

In general, it would be useful if supporting guidance were to explain the wider legislative changes that are intended to be introduced in due course. This would set the current proposals in the context of broader policy development in this area.

### **Terminology**

For example, the wording of the Bill is predicated on the status quo in relation to current arrangements for categorising pupils with SEN. It refers to pupils with statements (of special learning needs) and uses the word ‘statements’ on the face of the Bill when statements are likely to be replaced by Individual Development Plans (IDPs), as a result of the proposed ALN Statutory Reform.

The Bill and memorandum also refer to special educational needs (SEN)<sup>1</sup>. They do not take into consideration the policy intention to replace the term SEN with additional learning needs (ALN) or additional needs (AN). There is a lack of clarity currently regarding the meaning of these terms. This confusion is not helpful for schools, parents and carers, learners or local authorities.

### **Multi-agency working**

Similarly, there is very little mention in the Bill of multi-agency working in relation to SEN, despite the emphasis of Welsh Government on the need for education, social services, health and other agencies to work together to support learners with SEN. Proposals under 'ALN Statutory Reform' require multi-agency involvement in agreeing the individual development plans that are to replace statements of SEN.

One potential advantage of the IDPs is that agencies will carry out joint assessments. It is crucial, when assessing learners with complex needs, that all of their needs are considered. A placement needs to be appropriate in terms of health and care as well as special educational needs where relevant.

### **Equality of access**

There is considerable variation currently in local authority policies and practice in relation to 'statements of SEN'. In January 2013, the percentage of pupils with statements within local authorities ranged from 4.3% to 1.5%, with 2.9% of pupils across Wales having statements. Swansea and Newport currently have the highest percentage of statements (4.3% and 4.1%) while Torfaen and Bridgend have the lowest (1.6% and 1.5%). It is important to note that, during local authority inspections, Estyn have found that there is not necessarily a correlation between the percentage of statements and the quality of ALN services being provided.

Currently the three stages of support for pupils with SEN in maintained schools are:

- Statements of SEN
- School Action Plus
- School Action.

Roughly 20% of pupil cohorts receive support under one of these categories, depending on the severity of needs.

Over recent years, local authorities have sought to reduce the number of statements and to provide support for pupils at School Action Plus. The rate at which this has happened varies considerably from one authority to another. Some authorities have been involved in Welsh Government pilots to develop Independent Development Plans – intended to replace the current system under ALN Statutory Reform – but

---

<sup>1</sup> Estyn has used SEN rather than ALN or AN for consistency throughout the document

there does not appear to be a correlation between those local authorities involved in these pilots and a reduction in statementing.

The proposals included in the Bill refer to pupils who have statements – see Part 3 43 (1) (e).

However, in local authorities where the percentage of statements is low, many pupils with significant ALN do not have statements. As such, different local authorities may still take decisions to fund provision in independent schools for pupils with similar needs, but a pupil who might have a statement in one local authority might not have one in another. Across all independent schools in Wales, 11.8% of pupils have SEN but not statements and 4.4% have a statement. How will Welsh Government ensure that safeguards are in place to ensure provision is equally appropriate for all publicly-funded learners with SEN?

It is possible that some mainstream independent schools may choose not to register to cater for any pupils with a statement. This may reduce the choice available to placing authorities.

### **Categorisation of SEN**

The Bill states the need for independent schools to state the category of SEN they plan to cater for. There are already issues regarding the use of PLASC SEN categories in mainstream schools, with schools not understanding the definitions well enough. There will need to be greater clarity about definitions if these are to be used to decide whether or not a school can be allowed to cater for particular SEN pupils. It will also be essential to make sure those schools and local authorities have a common understanding of these categories.

Categorising need is a difficult task. Learners do not fit neatly into boxes. Many will have more than one learning need. Every learner is different. A general label such as ‘autistic spectrum disorder’ for instance will not indicate the severity of the need in order to judge whether a school will be able to cater for pupils with ASD.

Within any disability/difficulty, there is a wide spectrum of need. Pupils with severe autism or social, emotional and behavioural difficulties are likely to require very specialist provision. While many independent schools cater well for pupils with, for example, Asperger syndrome or pupils with emotional difficulties who benefit from smaller settings, there is a danger that, in the new system, schools could accept pupils with severe difficulties whose needs cannot be met in a non-specialist setting.

### **Protection of vulnerable learners**

In addition to full inspections under S163 every 6 years, Estyn carries out annual monitoring inspections of all independent special schools. This work includes those independent schools newly registered since 2003 that do not have SEN approval but are known to cater wholly or mainly for pupils with special educational needs.

Currently Estyn also advises, on individual case-by-case basis, the applications to the Minister on 'SEN consents' and this provides a safety net to help to protect the most vulnerable learners to make sure that each placement matches individual needs. Estyn's annual monitoring process does not check the appropriateness of individual placements and cannot be a full proxy for the 'consents' system. Estyn has previously opposed proposals to abolish the system of individual SEN consent and we still hold the view that by removing SEN consent, there is a risk that pupils may be placed in schools that cannot meet their needs.

Point 84 of memorandum states that the process of individual SEN consent takes an average of 6 to 8 weeks. However, it is possible under the proposed system that a pupil could be incorrectly placed for up to 12 months before Estyn undertakes an annual monitoring visit.

Estyn's annual monitoring visits focus mainly on compliance with the Independent School Standards (Wales) 2003. These Standards do not place enough emphasis on the school's role in meeting all pupils' special needs (regardless of whether or not they are funded by a local authority). The current wording of the Standards is not robust enough to protect vulnerable learners, once SEN consent is removed.

Local authorities have a responsibility to ensure that the educational placements that they fund in independent schools are appropriate based on the needs of individual pupils. Estyn's inspections have found that, in general, local authorities do not monitor the quality of educational placements well enough. We have been critical of the quality of 'corporate parenting' in Wales. There will be a need to ensure that local authorities are held to account to ensure that provision matches the needs of individual pupils.

### **Manageability**

The current system whereby Estyn carries out registration visits and annual monitoring visits to independent special schools, as well as dealing with individual SEN consent requests, has been manageable. However, there are currently 34 mainstream independent schools and should a large number of these schools register to enrol pupils with SEN, we would be hard-pressed to carry out annual monitoring visits to them all. If there were a significant expansion of the need to undertake more annual monitoring visits we would probably need to transfer some resources from the S163 inspection cycle of independent schools. There is a limit to the transferability of resources however because it would be a matter of requiring more staffing resource with ALN expertise than we have available currently.

In addition, the system of annual monitoring is predicated on the registration status. There would need to be a system to ensure that information is collected about whether pupils with statements are actually currently enrolled at schools to ensure that they aren't monitored annually when it is unnecessary.

## **Abolition of requirement for approval of independent schools**

In Estyn's experience, placing authorities do not always take enough care to ensure that a school is able to meet a pupil's special educational needs. Therefore it is important that:

- an independent school's registration status should clearly determine the categories of SEN for which it caters;
- the definitions of SEN and requirements of a school are clear to all;
- schools are made more aware of the importance of that status and the need to apply for material change to widen or alter those categories;
- there is clear guidance for authorities, for example, concerning the requirements of Independent School Standards (Wales) Regulations 2003, to ensure they take appropriate care in placing pupils;
- authorities monitor placements effectively; and
- the Welsh Government is prepared to change the category of registration if a school does not make appropriate provision for pupils so that they are no longer registered to admit pupils with SEN or with particular categories of SEN.

## **Registration of independent schools**

The current registration application form for new independent schools does not require the school to provide enough detailed information. It asks the following questions:

|                                                                                                                                                                                                                                                                                 |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Does the proposed school intend to admit pupils with special educational needs?</p> <p>Does the proposed school intend to cater wholly or mainly for pupils with special educational needs?</p> <p>For which type of learning difficulty will the proposed school cater?</p> |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Currently, proprietors are not always familiar enough with the different categories of additional needs to complete the form accurately.

During the first registration visit, Estyn is not able to inspect all of the standards as there are no pupils (the visit advises Welsh Government on suitability for registration). Estyn will therefore not be able at this point to judge whether the school is able to cater for specific groups. Currently, unless a school is seeking to register as an independent special school, approval to admit pupils with a statement of SEN would not be granted until the 2<sup>nd</sup> registration visit has taken place. The new arrangements should allow for this safeguard to continue.

Schools do not always understand that they must apply to Welsh Government to make a material change should they wish to alter the category of needs for which they initially registered.

To ensure that the system is effective:

- the registration application form should require specific and relevant detail about the categories of need for which the school intends to provide; and
- there will need to be detailed guidance on how to complete the form, including clear guidance regarding the categories of SEN;
- the Welsh Government should consider how the severity of need catered for will be captured as part of the registration process;
- the Independent School Standards should be strengthened to allow Welsh Government to judge whether schools are able to cater for the needs of pupils with SEN;
- the Welsh Government must ensure that Estyn has up-to-date information about each school's SEN registration and about the enrolment of pupils with SEN at those schools, to ensure that appropriate inspection and annual monitoring work can be planned;
- a school would need to apply for material change if it intended to accept a wider range of pupils with SEN; and
- a school would need to demonstrate that they have staff with the necessary expertise to support and manage provision for pupils with particular categories of learning difficulties or special needs.

## **Post-16 assessment of educational and training needs and specialist further education**

### **Persons with learning difficulties: assessment of post-16 educational and training needs**

Estyn is in support of the general principles in the proposed legislation. In particular, Estyn strongly supports the proposal to delegate the responsibility for assessing the needs and securing suitable provision for Post-16 learners with LLDD to local authorities, with responsibility for securing specialist provision or provision, including boarding accommodation, falling to local authorities. This change will allow local authorities to plan for progression and continuity of provision across the 16-year transition.

Many of the issues that are raised below will be capable of being addressed in the proposed new Code of Practice.

### **Status quo/terminology**

The assumption here again is that statementing will continue – see 40A (1) (a). This part of the Bill also refers to 'persons with learning difficulties', a term that might also be replaced by ALN Statutory Reform.

## **Equality of access**

The points made in the section above on equality of access also apply here. The Bill only places a duty on local authorities to assess the needs of learners with statements. What about those with significant needs who are being supported at School Action Plus, or for whom a statement has been already been replaced by an IDP?

## **Education and training needs (ETN) assessments**

There is a lack of clarity about the proposed changes in terms of what this new assessment or the resulting report will look like and how it will link in with current arrangements such as transition reviews or proposed new arrangements such as IDPs. It is therefore difficult to comment on some aspects of the Bill. This lack of clarity does mean that there is potential for duplication between different processes.

## **Implications of changes in funding**

The delegation of responsibilities proposed in the Bill will be accompanied by delegation of funding from Welsh Government to local authorities. It is not yet clear what this will mean in practice and on what formula these funds will be delegated. This makes it more difficult to identify how effective the proposed system will be in comparison to the current arrangements. Changes in funding mechanisms mean that local authorities will assess needs as well as make provision for all learners from their budgets. Is there a risk that, in the light of financial pressures, they will seek cheaper options rather than those that best meet the needs of the learners?

Current funding arrangements between FEIs, LAs and Independent Specialist Colleges for learners with SEN are confusing. FE colleges currently receive funding through the supplementary grant to support them in making their courses generally more accessible and through exceptional funding in relation to specific learners. This means that sometimes one provider receives funding to support learners on a course with another provider even though that provider has suitable support provision available through funding that is supplementary to the main course funding. The preferred option is that Welsh Government will continue to fund FEIs in this way. It is not clear enough whether there will be any tensions between this funding stream and the funding delegated to local authorities to secure provision identified in the ETN assessments that could impact on what provision is secured for an individual.

There are potential capacity and capability considerations for local authorities in implementing these requirements.

## **Local, regional and partnership working**

As noted above, The Bill refers to local authorities, but does not take into consideration the recent development of consortia. Although consortia are not

currently responsible for ALN, this could change in the future. The Bill seeks to ensure better liaison between schools, local authorities, FE colleges and specialist providers. No mention is made of private training providers.

The Bill currently only considers the assessment process. It does not consider whether these changes have any implications for ensuring better strategic planning, locally and regionally, to ensure appropriate specialist provision is available. There is also a need to clarify the role of 14-19 partnerships – locally and regionally - in mapping and commissioning specialist provision and support. There is a risk that local authorities will work in isolation and not with consortia partners.

### **Implications for Estyn**

Estyn currently inspects independent specialist colleges in Wales and also joins Ofsted to inspect independent specialist colleges in England where there are 10 or more Welsh learners. If the Bill's proposals are implemented it is not clear how Estyn will identify in which independent specialist colleges Welsh learners are accessing their education. It is possible that the provision in the Bill for the Welsh Government to request copies of ETN assessment reports from local authorities may provide this information.

### **Persons with learning difficulties: discretionary assessments of post-16 educational and training needs**

The number of statements issued is falling and there are different thresholds across Wales for statementing so that more pupils have provision made without recourse to statement. As a result, in some local authorities, pupils with significant SEN do not have a statement. It is not clear how the proposed new arrangement will ensure that there is equality of access to post-16 specialist provision and support in relation to their needs.

As already noted above, it is not clear that proposed changes to current arrangements for statementing been taken into consideration. In the interim, it is unclear as to whether this section potentially includes all pupils currently with individual education plans (in use now for learners with SEN) or 'individual development plans'.

Local authorities may prefer not to undertake discretionary assessments for learners whose learning difficulties were not identified during statutory schooling. Will this mean that more parents put pressure on local authorities to provide a statement, whereas there has been a move towards reducing the number of statements? How will equity be assured?

It is not clear enough how a learner in and FEI or WBL provider who is identified as having significant learning difficulties which have not been identified during stator schooling would get access to an ET assessment.

## **Subject matter of mandatory and discretionary assessments of post-16 educational and training needs**

Assessments of education and training needs need to be holistic and developmental to include, for example, independent living skills; and, where appropriate, labour market information. It is not clear whether the naming of providers in the assessment of ETNs override the admissions procedures of FEIs.

## **Assessments of post-16 educational and training needs: appeals**

Estyn agrees that it is valuable to include an appeals process but has no particular comments in relation to this section.

## **Post-16 education and training for persons with learning difficulties: code of practice**

Estyn agrees with the proposal to issue a Code of Practice. It is likely that many of the issues raised as part of this response could potentially be dealt with in more detail within a Code of Practice.

## **School term dates**

There are clear advantages to harmonising the dates of school terms across Wales for parents and carers who have to arrange care for children who attend schools or settings with different school term dates.

## **The appointment of HM Chief Inspector and HM Inspectors of education and training in Wales**

This is a technical adjustment with which we agree.