



Llywodraeth Cymru
Welsh Government

ADDITIONAL LEARNING NEEDS AND EDUCATION TRIBUNAL (WALES) BILL

Explanatory Memorandum
Incorporating the Regulatory Impact Assessment
and Explanatory Notes

November 2017

Explanatory Memorandum to the Additional Learning Needs and Education Tribunal (Wales) Bill

This Explanatory Memorandum has been prepared by the Education and Public Services Group of the Welsh Government and is laid before the National Assembly for Wales.

It was originally prepared and laid in accordance with Standing Order 26.6 in December 2016, and a revised Memorandum is now laid in accordance with Standing Order 26.28.

Member's Declaration

In my view the provisions of the Additional Learning Needs and Education Tribunal (Wales) Bill, introduced by the then Minister for Lifelong Learning and Welsh Language on 12 December 2016, are within the legislative competence of the National Assembly for Wales.

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Assembly Member in charge of the Bill

14 November 2017

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PART 1 – EXPLANATORY MEMORANDUM

1. Description

- 1.1 The Additional Learning Needs and Education Tribunal (Wales) Bill makes provision for a new statutory framework for supporting children and young people with additional learning needs (ALN). This replaces existing legislation surrounding special educational needs (SEN) and the assessment of children and young people with learning difficulties and/or disabilities (LDD) in post-16 education and training. The Bill also continues the existence of the Special Educational Needs Tribunal for Wales, which provides for children, their parents and young people to appeal against decisions made by the local authority in relation to their or their child's ALN, but renames it the Education Tribunal for Wales.

2. Legislative competence

- 2.1 The National Assembly for Wales ('the National Assembly') has the legislative competence to make the provisions in the Additional Learning Needs and Education Tribunal (Wales) Bill ('the Bill') pursuant to Part 4 of the Government of Wales Act 2006 ('GoWA 2006'). The relevant provisions of GoWA 2006 are set out in section 108 and Schedule 7.
- 2.2 Paragraphs 5, 9 and 15 of Schedule 7 set out the following subjects on which the Assembly may legislate.

Education and training

5. Education, vocational, social and physical training and the careers service. Promotion of advancement and application of knowledge.

*Exception—
Research Councils*

Health and health services

9. *Promotion of health. Prevention, treatment and alleviation of disease, illness, injury, disability and mental disorder. Control of disease. Family planning. Provision of health services, including medical, dental, ophthalmic, pharmaceutical and ancillary services and facilities. Clinical governance and standards of health care. Organisation and funding of national health service.*

Exceptions—

Abortion.

Human genetics, human fertilisation, human embryology, surrogacy arrangements.

Xenotransplantation.

Regulation of health professionals (including persons dispensing hearing aids).

Poisons.

Misuse of and dealing in drugs.

Human medicines and medicinal products, including authorisations for use and regulation of prices.

Standards for, and testing of, biological substances (that is, substances the purity or potency of which cannot be adequately tested by chemical means).

Vaccine damage payments.

Welfare foods.

. . . Health and Safety Executive and Employment Medical Advisory Service and provision made by health and safety regulations.

Social welfare

15. *Social welfare including social services. Protection and well-being of children (including adoption and fostering) [and of young adults]. Care of [children,] young adults, vulnerable persons and older persons, including care standards. Badges for display on motor vehicles used by disabled persons.*

Exceptions—

Child support.

[Child trust funds, apart from subscriptions to such funds by—

(a) a county council or county borough council in Wales, or

(b) the Welsh Ministers.]

Tax credits.

Child benefit and guardian's allowance.

Social security.

[Independent Living Funds.

Motability.]

Intercountry adoption, apart from adoption agencies and their functions, and functions of “the Central Authority” under the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption.

The Children's Commissioner (established under the Children Act 2004 (c 31)).

Family law and proceedings, apart from—

(a) [welfare advice] to courts, representation and provision of information, advice and other support to children ordinarily resident in Wales and their families, and

(b) Welsh family proceedings officers.

3. Purpose and intended effect of the legislation

- 3.1 The current legislative framework for supporting children and young people with special educational needs (SEN) and learning difficulties and/or disabilities (LDD), is based on a model introduced more than 30 years ago and is no longer fit for purpose. A series of enquiries and reviews of SEN provision in Wales by Estyn, the Wales Audit Office and the National Assembly's former Education, Lifelong Learning and Skills Committee have highlighted that the current system is complex, bewildering and adversarial. The evidence points to an assessment process that is inefficient, bureaucratic and costly, as well as being insufficiently child-centred and user-friendly. Needs are sometimes identified late and interventions are not planned or implemented in a timely or effective way. Families say they feel they have to battle at each stage of the process to get the right support for their child, and that they do not know where to turn for advice and information.
- 3.2 The White Paper Legislative Proposals for Additional Learning Needs,¹ published in May 2014, set out the rationale behind the Welsh Government's proposals for legislative change in order to address the weaknesses in the current system. These weaknesses include:
- The current terminology stigmatises children and young people and is associated with a system that needs fundamental reform.
 - There is an unclear divide between those requiring statements of SEN and those who do not.
 - The existing SEN Code of Practice is not always applied rigorously or is interpreted differently by different local authorities.
 - It is unfair that the provision necessary to address more complex needs is protected through the issuing of a statement but the provision required to address less complex needs is not statutorily protected.
 - Trust between parents and local authorities or schools, is often undermined and this leads to dispute.

¹ <http://gov.wales/consultations/education/proposals-for-additional-learning-needs-white-paper/?skip=1&lang=en>

- It is difficult to adopt a flexible approach to the delivery of special educational provision.
- The current arrangements for children and young people with LDD potentially disrupt their smooth transition between school and post-16 education and may make the system of post-16 provision less efficient than it should be.
- Some parents and families feel excluded from the processes around statements of SEN, which they see as impenetrable, bureaucratic and inefficient.
- Parents also say that even when their child has a statement, if their needs change, or if a condition worsens or improves, the system can be too slow to adapt.
- For looked after children, the SEN statutory assessment is just one of many assessments, and the separate processes are not well integrated.
- The current arrangements for disagreement resolution are insufficiently robust to ensure that disagreements are resolved quickly or avoided altogether.

3.3 The Bill will create:

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

3.4 In order to achieve these three overarching objectives, eleven core aims have been established, within which the Bill's provisions have been developed.

3.5 ***The introduction of the term Additional Learning Needs (ALN):*** The Bill replaces the terms 'special educational needs' (SEN) and 'learning difficulties and/or disabilities' (LDD) with the new term ALN. This will help to avoid some

of the stigma associated with the existing terms and will mark a clear break from the current systems, which is no longer fit for purpose. Using ALN as a single term which encompasses children and young people aged 0 to 25 reflects the move to a more equitable system for supporting learners with ALN across early years, schools and FE settings.

- 3.6 ***A 0 to 25 age range:*** The Bill brings together the existing and different legislative systems for supporting:
1. children and young people of compulsory school age who have SEN; and
 2. young people in FE who have LDD.
- 3.7 There will be a single legislative system relating to the support given to children and young people aged 0 to 25 who have ALN. As a result, transition of learners between school and post-16 education will be improved to allow greater equity in terms of support and rights for this group of learners.
- 3.8 ***A unified plan:*** The Bill creates a single statutory plan (the individual development plan (IDP)) to replace the existing variety of statutory and non-statutory SEN and LDD plans for learners in schools and FE - including statements of SEN, individual education plans for learners supported through school/early years action or school/early years action plus, and learning and skills plans carried out via assessments under section 140 of the Learning and Skills Act 2000. This will ensure greater consistency and continuity and, unlike the current system, ensure that provision and rights are protected regardless of the severity or complexity of needs. For most children with ALN who are looked after, the Bill will require their IDP to be incorporated into the personal education plans (PEPs) made for these learners as part of their care and support plans (CSP). This will eliminate duplication of effort and ensure that the educational needs of a child who is looked after are considered in a holistic way.
- 3.9 ***Increased participation of children and young people:*** The Bill requires that the views of children, their parents and young people should always be considered as part of the planning process, along with those of their parents.

It is imperative that children and young people see the planning process as something which is done with them rather than to them. They and their families will, therefore, be supported to participate through the provision of clear and impartial information, advice and advocacy. The Bill provides children and young people with various rights to receive information in relation to ALN and decisions being taken about them, and to make their own decisions in certain circumstances. For children who lack sufficient understanding to make their own decisions, these rights can be exercised by their parent or through the use of a 'case friend' appointed by the Education Tribunal.

- 3.10 ***High aspirations and improved outcomes:*** The emphasis of IDPs will be on making provision that delivers tangible outcomes that contribute in a meaningful way to the child's or young person's achievement of their full potential.
- 3.11 ***A simpler and less adversarial system:*** The process of producing and revising an IDP will be much simpler than is currently the case with statements of SEN and should avoid the adversarial nature of the existing, overly bureaucratic approach.
- 3.12 ***Increased collaboration:*** The new system will support a strong focus on collaboration. All services involved in working with children, young people and their families, including education, health and social services, will have a crucial role to play in working together to deliver efficient, effective, child-centred support for learners with ALN. Whilst most children with ALN will not require any specific health involvement because their ALN will not be health related, where it is relevant and appropriate, advice and assistance may be sought from health professionals. In particular, local health boards (health boards) or NHS Trusts will be under a duty to consider whether there is a treatment or service that is likely to be of benefit to addressing the learner's ALN and, if so, secure the provision of that treatment or service. That treatment or service will need to be included in the learner's IDP. The reforms will encourage improved collaboration and information sharing between

agencies, which are 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.

- 3.13 To support improved collaboration, the Bill places a new duty on health boards to appoint a Designated Education Clinical Lead Officer (DECLO). DECLOs will play a pivotal role in improving the extent and effectiveness of collaboration between health, education and social care in the delivery of services for children and young people with ALN. Maintained schools, including maintained nurseries, pupil referral units and further education institutions (FEIs), will be required to have a designated Additional Learning Needs Co-ordinator (ALNCo). And local authorities will be required to appoint an Early Years ALN Lead Officer to coordinate its functions in relation to children under compulsory school age who are not yet in a maintained setting. These roles will help to facilitate effective multi-agency collaboration to improve services for learners.
- 3.14 ***Avoiding disagreements and earlier disagreement resolution:*** The new system will focus on ensuring that where disagreements occur about an IDP or the provision it contains, the matter is considered and resolved at the most local level possible.
- 3.15 ***Clear and consistent rights of appeal:*** Where disagreements about the contents or provision of an IDP cannot be resolved at the local level, the Bill ensures that children and young people entitled to an IDP, or those who believe that they should have an IDP (and their parents in the case of those under 16) have a right of appeal to the Education Tribunal for Wales, currently the Special Educational Needs Tribunal for Wales (SENTW) but which is renamed by the Bill. The Bill extends the right of appeal to young people with ALN up to the age of 25 who are pursuing FE. Children who lack sufficient understanding to make their own decisions, will be able to exercise their right of appeal through the use of a 'case friend' appointed by the Tribunal (as well as by a parent).

- 3.16 **A mandatory Code:** Responding to calls for a stronger Code that can be enforced, the provisions included in the Bill will be supported by a new statutory ALN Code. The Code will facilitate national consistency by ensuring that the new ALN system has a set of clear, legally enforceable parameters within which local authorities and those other organisations responsible for the delivery of services for children and young people with ALN, must act. It will, therefore, be a type of subordinate legislation, and confer duties and rights on those subject to it. The Code will also set out practical guidance on how the statutory duties will be carried out, which will be supported by best practice illustrations.
- 3.17 **A bilingual system:** Services will be required to consider whether the child or young person needs ALP in Welsh. If they do, this must be documented in the IDP and ‘all reasonable steps’ must be taken to secure the provision in Welsh. A mechanism is included in the Bill to remove by regulations the ‘all reasonable steps’ test, so that the duties to provide ALP through the medium of Welsh become absolute over time. A series of strategic duties are also aimed at driving progress towards a truly bilingual ALN system.

Background and context

- 3.18 Between 2003 and 2007, a three-part review of SEN was undertaken by the National Assembly’s Education, Lifelong Learning and Skills Committee and associated reports were published in the following order:
- a) Early Identification and Intervention, November 2004;
 - b) Statutory Assessment Framework (Statementing), May 2006; and
 - c) Transition, March 2007.
- 3.19 The Committee’s evidence was informed by earlier reports from the Audit Commission (*Special educational needs: A mainstream issue*, 2002) and Estyn (*Support for Children with Special Educational Needs: An Estyn Overview*, 2003). Taken together, these reports concluded that in relation to the current system of SEN:

- the assessment process associated with statements is inefficient, bureaucratic, costly, and insufficiently child-centred or user-friendly;
- needs are often identified late and interventions are not sufficiently timely or effective; and
- families say that they often have to battle to get the right support for their child and do not know where to turn for information and advice.

3.20 The Welsh Assembly Government conducted a wide-ranging preliminary consultation on possible reforms to the system of support for SEN and LDD (*Statements or Something Better*, 2007). Subsequently, a number of action research projects were set up to develop and trial new systems and approaches to help shape future policy and legislation. These included:

- four reform projects involving eight local authorities aimed at developing and trialling a person-centred approach to planning (using an IDP) for children and young people with SEN together with a new quality assurance system and an online planning and assessment tool; and
- a 'right of appeal for the child' pilot scheme involving two local authorities.

3.21 Evaluation of the action research projects concluded that² the introduction of a person-centred IDP would be largely welcomed by schools, professionals and families. However, there were concerns about the implications of person-centred practice (PCP) in relation to staff capacity and security and privacy concerns were raised about the use of an online tool. The principles underpinning a new quality assurance system were broadly supported. Strong views were expressed that for impact monitoring to be effective and efficient, there was a need to integrate it into the whole school agenda, rather than as a separate exercise for monitoring those with SEN.

² Reports of the findings are published on the Welsh Government's website: <http://gov.wales/statistics-and-research/programme-action-research-additional-learning-needs-pilot/?lang=en>

- 3.22 The use of a person-centred approach to plan support for children and young people with SEN has been increased across Wales following the action research projects. The Welsh Government has commissioned electronic resources specifically for Wales and funded training with £600,000 over two years. Work is also underway to ensure that monitoring the impact of interventions is integrated into the wider school improvement processes, with guidance on the subject planned as part of the wider ALN Transformation Programme.
- 3.23 The ‘right of appeal for the child’ pilot project was designed to test the provisions included in the Education (Wales) Measure 2009 in relation to the right of children to appeal in respect of SEN and their right to make a claim of disability discrimination in schools. Following a positive evaluation, regulations implemented the rights and duties conferred by the Measure across the whole of Wales from the 5 January 2015.
- 3.24 The last Welsh Government included in its *Programme for Government*, published in July 2011, a commitment to ‘reform the ALN process for the most vulnerable children and young people in either a school or FE setting’. In June 2012 it published a pre-legislative consultation document, *Forward in Partnership for Children and Young People with Additional Needs*³, which set out a broad vision of a reformed system. In response to the consultation feedback, the Minister for Education and Skills announced in September 2012 that legislative reform would take place later in the Assembly Term, following work with key partners to sift through the implications of the proposals in more detail. In July 2013, the Minister for Education and Skills published the summary of responses to the 2012 consultation and announced that officials would seek further views from stakeholders, to develop and reconsider the scope, impact and deliverability of the proposals⁴. To that end, a series of workshops was held in autumn 2013 with a range of external

³<http://webarchive.nationalarchives.gov.uk/20140406073301/http://wales.gov.uk/consultations/education/senframeworkconsultation/?status=closed&lang=en>

⁴<http://gov.wales/about/cabinet/cabinetstatements/2013/sen/?lang=en>

stakeholders and professional groups, in order to identify practicable and realistic ways in which effective reform could be taken forward⁵.

- 3.25 Provisions relating to the registration and approval of independent schools, the assessment of the educational and training needs for post-16 learners with LDD, and specialist FE placements were included within the Education (Wales) Bill. However, in response to calls from the then National Assembly's Children and Young People's Committee to consider all SEN provisions in a single legislative vehicle, the provisions were removed from the Bill during Stage 2 proceedings in January 2014. At this time the previous Minister for Education and Skills announced that they would be brought forward in a separate Bill dealing with the full range of provisions relating to ALN.
- 3.26 During this period, the Social Services and Well-being (Wales) Act 2014 was passed by the National Assembly, reforming social care planning and also setting out core values shared by the ALN proposals. At the same time, the previously shared legislative basis for SEN across England and Wales was fundamentally altered by the passing of the Children and Families Act 2014. This Act reformed SEN planning and provision in England. It provided important lessons for consideration as well as raising some challenges and cross-border implications.
- 3.27 Drawing on the outcome of the previous consultations and stakeholder engagements and taking into account the changed context, the Welsh Government published for consultation on 22 May 2014, a White Paper entitled *Legislative Proposals for Additional Learning Needs*⁶. The nine week consultation ran until 25 July 2014. A young person's version of the consultation was produced and disseminated, and a series of engagement events were held to gather views from children and young people.

⁵ A summary of discussions is available on the Welsh Government's website:

<http://gov.wales/topics/educationandskills/schoolshome/pupilsupport/additoinal-learning-needs-reform/?lang=en>

⁶ <http://gov.wales/consultations/education/proposals-for-additional-learning-needs-white-paper/?skip=1&lang=en>

- 3.28 A summary of responses to the consultation was published in October 2014. Broadly, the proposals for reforming the system were welcomed. Stakeholders emphasised the importance of underlying principles, such as the need to listen to children and young people and to adhere to the United Nations Convention on the Rights of the Child (UNCRC) when implementing a reformed system. In addition, there was particular support for the:
- adoption of the proposed term Additional Learning Needs (ALN), considering it to be more inclusive;
 - introduction of IDPs, with respondents emphasising the importance of plans which were flexible, ‘live’ documents, capable of adaptation to meet learners’ changing needs; and
 - proposal that all young people with ALN from 0 to 25 years should be entitled to a single statutory plan, citing the benefits that a unified system would bring in improving transition planning.
- 3.29 During the period of development and engagement there have been a number of other, significant advances in policy that will impact on the implementation of the proposed reforms and are relevant when considering the proposed provisions.
- 3.30 In March 2014, the Minister for Education and Skills appointed Professor Graham Donaldson to lead a comprehensive, independent review of the curriculum and assessment arrangements in Wales. In February 2015, Professor Donaldson’s report, *Successful Futures: Independent Review of Curriculum and Assessment Arrangements in Wales*, was published. The report set out firm foundations for a new approach to curriculum and assessment that is genuinely and fully inclusive, and recognises the importance of learner-centred approaches and teacher assessment that supports the learning needs of all learners. The recommendations provide a vision for what a successful young person leaving statutory education should look like. The Welsh Government accepted the 68 recommendations in June 2015.

- 3.31 *A curriculum for Wales – a curriculum for life*, which sets out the steps that will be taken to deliver the recommendations in *Successful Futures*, was published in October 2015. It will see the design, development and realisation of an entirely new curriculum within six years. It will involve changes to initial teacher education and training, professional development of existing teachers, changes to Estyn's inspection framework, and changes to data collection procedures. It will be underpinned by new legislation and will be available for first teaching in settings and schools by September 2021.
- 3.32 These changes will have radical and wide-ranging implications for the education system in Wales, with a new curriculum focussed on four overarching principles, which aim to create an education system where children and young people will develop as:
- ambitious, capable learners, ready to learn throughout their lives;
 - enterprising, creative contributors, ready to play a full part in life and work;
 - ethical, informed citizens, ready to be citizens of Wales and the world; and
 - healthy, confident individuals, ready to lead fulfilling lives as valued members of society.
- 3.33 To support these principles and prevent the narrowing of the curriculum, there will be reformed assessment and accountability arrangements.
- 3.34 The new curriculum and assessment arrangements are being developed through an innovative and collaborative way of working – a practitioner network of Pioneer Schools, funded and facilitated by the Welsh Government and supported by an all-Wales partnership of education bodies from across Wales and national and international expertise. This approach places practitioners at the heart of the curriculum design process. This will ensure that the benefits of the new curriculum and assessment arrangements and changes to the accountability system are realised and owned by the profession.

- 3.35 Pioneer Schools have also been appointed to lead the development of a national Professional Learning Offer in preparing for the new curriculum. This will ensure that all practitioners have access to the highest quality development opportunities at all stages of their career. The Professional Learning Offer will focus on a number of fast track strands including digital, leadership, assessment and ALN.
- 3.36 In addition, reform of initial teacher education (ITE) in Wales arising from the *Teaching Tomorrow's Teachers* report is a fundamental part of Professional Learning Offer. The Teacher Education Accreditation Group, chaired by Professor Furlong, was tasked with developing new criteria for accrediting ITE in Wales to improve the quality and consistency of ITE provision and introduce a new approach. The Teacher Education Accreditation Group developed draft criteria that have been shared with stakeholders, formal consultation on revised criteria was launched on 29 September 2016. It is anticipated that in the future all ITE programmes will be led by a 'partnership', that is a University working in close collaboration with a number of 'lead partnership schools'. It is this partnership that will bring forward the programme for accreditation. In the future, accreditation will depend on the ITE partnership embodying the vision and meeting the criteria to support a Welsh, world class ITE system that can compete with the best in the world.
- 3.37 Workforce capacity and capability specifically in relation to SEN has been highlighted as a concern throughout consultations and stakeholder engagement. Early work was put in train, ahead of the legislation, to support workforce planning and development. In 2015 the Welsh Government published two reports: *An Assessment of SEN Workforce Development Requirements* and *Workforce Planning for SEN Specialist Services*. The findings of these two studies have led to the development of a three tier approach to meeting the existing and future workforce development needs in order to better support learners with ALN.
- 3.38 The three-tier approach is focused on core skills (for all teaching practitioners), advanced skills (in particular for the ALNCo) and specialist

skills (for specific individuals across a school cluster, or within a specialist support service) and is a fundamental aspect of the ALN Transformation Programme, which the Bill also forms part of. The focus on core skills is specifically linked to our wider approach for the Professional Learning Offer and the Pioneer Schools programme, which will ensure our entire workforce develops ALN knowledge and skills. To support teaching practitioners within education settings, a masters level qualification for use by existing SENCos (and future ALNCos) will be developed. This will ensure every teaching practitioner has access to an individual within their setting who can provide both specific SEN advice and professional development to staff.

- 3.39 Ensuring our workforce has the necessary tools, and confidence to use those tools, will reduce the need to refer to specialist support services. This in turn, will also improve the capacity of specialist services to focus on those learners with more complex needs. In addition, the Welsh Government is working with key stakeholders to develop a national workforce planning system for ALN specialist services to ensure a sustainable approach to developing the capacity of specialist support services to meet learners' needs.
- 3.40 Reflecting on the immediate need for workforce development and building on the success of previous projects, the Welsh Government has funded the development of two bespoke training programmes: raising awareness of Autism Spectrum Disorder in primary and secondary schools, with the requirements for roll out within FEIs being scoped over the coming year; and the consistent use of person-centred-practice (PCP), which includes the publication of PCP resources to support the wider use of the approach. PCP underpins the new planning process and embedding this approach will support the smooth implementation of the Bill.
- 3.41 As a result of the fundamental and connected aspects of the Welsh Government's education change programme, and the importance both of ensuring alignment and consistency in respect of the ALN Transformation Programme and of ensuring the reforms were workable and supported, the former Minister for Education and Skills took the decision on 6 July 2015 to

publish a draft of the Additional Learning Needs and Education Tribunal (Wales) Bill for consultation.

- 3.42 The draft Bill built upon the White Paper *Legislative Proposals for Additional Learning Needs*. However, in addition to providing the legislative detail of how the proposals set out in the White Paper might be realised, the draft Bill also included some new provisions. In particular, it set out new provisions that have the potential to significantly improve multi-agency working around the planning and delivery of provision for learners with ALN, especially across the education and health sectors.
- 3.43 The consultation ran until 18 December 2015, and included two major multi-agency events in North and South Wales, a series of workshops specifically with children, young people and their carers and a programme of informal, targeted sessions with key stakeholders from across the public services and third sector.
- 3.44 During the consultation period, the National Assembly's former Children, Young People and Education Committee undertook pre-legislative scrutiny of the draft Bill. The Committee wrote to the then Minister for Education and Skills and the then Minister for Health and Social Services to report on their findings. Much of the Committee's findings reflected the comments and feedback received in the responses to the consultation⁷.
- 3.45 In September 2016, the Welsh Government reaffirmed in its new Programme for Government, *Taking Wales Forward 2016-2021*⁸, its commitment to legislate for a new system of ALN support.

Legislative context

- 3.46 SEN legislation is currently set out in Part IV of the Education Act 1996. Although the definition of SEN applies to children and young people with a wide range of needs, the legislation focuses primarily on those children and

⁷The Committee's letter and Welsh Government's response are available on the National Assembly's website: <http://www.senedd.assembly.wales/mgIssueHistoryHome.aspx?IIId=12991>

⁸ <http://gov.wales/about/programme-for-government/?lang=en>

young people with more complex needs who are entitled to a statement of SEN issued by the local authority. At July 2015, 104,957 pupils at maintained schools in Wales had some form of SEN, which is around 22% of all pupils. However only 12,437 pupils with SEN had a statement, which is 2.7% of all pupils.

- 3.47 Statutory guidance on SEN is provided in the SEN Code of Practice for Wales. For children with SEN who do not have a statement, the Code sets out guidance in relation to interventions that are additional to, or different from, those provided as part of the school's or early years setting's usual, differentiated curriculum strategies. These differentiated strategies are known as 'school action' or 'early years action'. Where a school or early years setting seeks the help of external support services, this is known as 'school action plus' or 'early years action plus'. There is no published guidance in relation to post-16 learners with LDD.
- 3.48 The legislation relating to post-16 learners in FE with LDD is included in the Learning and Skills Act 2000. The Welsh Ministers currently have a general duty under sections 31 and 32 of this Act to secure 'proper provision' for the education and training of learners aged between 16 and 19, and 'reasonable facilities' for those over the age of 19. This Act also requires the Welsh Ministers to secure the provision of boarding accommodation for children and young people with LDD if they cannot otherwise secure provision of facilities for education and training which are sufficient in quantity and adequate in quality for 16 to 19 year olds or reasonable facilities for those aged 19 to 25. Section 140 of the Learning and Skills Act 2000 places a duty on the Welsh Ministers to make arrangements for the assessment of young people who have statements of SEN, where they are likely to leave school at the end of the last year of compulsory schooling to receive post-16 education or training or higher education (HE). It also gives the Welsh Ministers a power to do so in relation to those up to 25 who do not have a statement of SEN but who appear to have a learning difficulty.

- 3.49 Under section 160 of the Education Act 2002 independent schools must be registered and an application to enter an independent school onto the register must contain information about whether the school admits pupils with SEN. The Independent School Standards (Wales) Regulations 2003 set out the standards to which an independent school will be inspected.
- 3.50 In addition to the registration process, under section 347 of the Education Act 1996, the Welsh Ministers may approve an independent school to admit children with a statement of SEN generally; or give individual consent to admit a child with a statement of SEN, where a school has not been approved. The Education (Special Educational Needs) Approval of Independent Schools Regulations 1994 prescribe the requirements to be complied with by an independent school as a condition of its approval as a school suitable for the admission of children for whom statements of SEN are maintained. In order for a child with a statement of SEN to be admitted into an independent school, the school must be registered under section 160 of the Education (Wales) Act 2002 and approved under section 347 of the Education Act 1996.
- 3.51 The Social Services and Well-being (Wales) Act 2014 offers opportunities to improve the connection between ALN and social care planning for children and young people, including children who are looked after. It places a duty on local authorities to provide and to keep under review, CSPs for children and adults who have 'eligible needs' or fall into one of the 'passported' categories e.g. looked after child.
- 3.52 Section 54(8) of the Social Services and Well-being (Wales) Act provides that a local authority may:
- a) prepare, review or revise a Care and Support Plan (CSP) under that section at the same time as it or another body is preparing, reviewing or revising another document in the case of the person concerned; and
 - b) include the other document in the plan.

- 3.53 Section 83(8) of the 2014 Act makes similar provision in relation to CSP for children who are looked after by a local authority.
- 3.54 This provides scope for integrated planning to ensure that the individual needs of children and young people are met. In addition, the 2014 Act places a duty on those exercising functions under that Act to seek to promote the well-being of people who need care and support. Section 2(2) of the 2014 Act defines “well-being” as in relation to education, training and recreation (amongst others). In addition, under section 2(3), “well-being” in relation to a child (defined for the purposes of that Act as a person under 18 years of age) also includes physical, intellectual, emotional, social and behavioural development. Section 78(2)(a) of the Act states that the duty of a local authority to safeguard and promote the well-being of a child looked after by it includes a duty to promote the child’s educational achievement.
- 3.55 The Well-being of Future Generations (Wales) Act 2015 came into force in April 2016. It requires specified Welsh public bodies, including the Welsh Government, local authorities and health boards, to think more about the long-term, to work better with people, communities and each other, look to prevent problems and take a more joined up approach – helping to create a Wales we all want to live in, now and in the future.
- 3.56 The well-being goals and principles provided in the Act connect directly to the objectives of the ALN Transformation Programme. Specifically, the ALN reforms will contribute to a more equal, healthier, prosperous and resilient Wales.
- 3.57 *Equal* in so far as the reforms directly address the inequality of rights and protections currently afforded to learners with ALN, including by providing the right to a statutory plan to all learners with ALN regardless of the severity of need. The reforms also aim to enhance equality between ALN and non-ALN learners, by focussing on inclusion and driving up standards so that all learners are supported to reach their full potential. This also links to *prosperous* and *resilient*, with learners being encouraged to have high

aspirations and supported to achieve educationally. The reforms aim to support learners to go on to live fulfilling lives and make a full contribution to society, including through employment. Priority placed within the reforms on early intervention, ensuring the right provision to meet learners' needs and multi-agency working to support learners and deliver effective and prudent interventions also support the *healthier* goal.

- 3.58 The sustainable development principles – in particular long term prevention, collaboration and involvement – reflect the approach that has been taken to develop the reforms and the approach that will need to be followed to implement and effectively embed the new system.

Who is affected by the Bill?

- 3.59 Children and young people with ALN are the direct beneficiaries of the Bill's provisions. It provides them with a system that puts them at the centre of everything and is designed to ensure that their needs are determined, and the provision necessary to meet those needs is planned for in a more timely, collaborative, consistent and equitable way. Children, their parents and young people have a right under to the Bill to have their views, wishes and feelings regarded by those exercising functions under the Bill. This will lead to more consensual approach to decision-making and planning to address the learner's ALN, moving away from the adversarial nature of the current system.
- 3.60 Local authorities and governing bodies of maintained schools and FEIs in Wales are required to operate in accordance with a new statutory framework. This new framework replaces the statutory frameworks established by the Education Act 1996 in relation to school and pre-school education, and by the Learning and Skills Act 2000 in relation to FE.
- 3.61 Relevant practitioners, teachers and teaching assistants will be involved in the identification of ALN and the provisions for supporting the learner's education. In addition, the Bill requires that all maintained schools (including maintained nurseries and pupil referral units, but excluding maintained

special schools as they are specifically established to deliver ALP) and FEIs have a designated ALNCo.

- 3.62 The Bill's provisions that apply to health boards and NHS Trusts (NHS bodies) represent a significant step forward. In particular (in the minority of cases where the learner's ALN are health related) the provisions require NHS bodies, when asked, to consider whether there is a treatment or service that is likely to be of benefit to addressing the learner's ALN and, if so, secure that treatment or service. Moreover, the creation of the DECLO role will ensure that, for the first time, ALN will be on the strategic agenda of every health board – with a senior, strategic lead in each health board area overseeing the board's responsibilities, acting as a single point of contact for other agencies on ALN matters and providing strategic oversight of the coordination of day-to-day health input.
- 3.63 Other public bodies with functions under the new legislative framework include persons in charge of relevant youth accommodation and the Education Tribunal for Wales.
- 3.64 Providers of nursery education that are in the voluntary or private sector, where they are in receipt of state funding for nursery places, will be required to have regard to the ALN Code. Local authorities will also be required to have Early Years ALN Lead Officers to coordinate arrangements in respect of children under compulsory school age who are not yet in a maintained setting.
- 3.65 Independent schools and specialist post-16 institutions will be affected by new provision or amended provision relating to their registration or approval. An element of Careers Wales' work in relation to the conduct of post-16 education and training assessments on behalf of the Welsh Ministers will cease as a consequence of changes introduced by the Bill.
- 3.66 Finally, various bodies, including some in England (such as local authorities, maintained school governing bodies and health bodies) will have a

conditional duty to help a local authority in Wales in relation to the discharge of the latter's functions under this Bill.

Implementation and delivery plan

- 3.67 The key components of the new statutory framework are set out on the face of the Bill and will, subject to the will of the National Assembly, be commenced either on Royal Assent or in accordance with the commencement orders made by the Welsh Ministers.
- 3.68 The Bill requires the Welsh Ministers to prepare, consult on and publish a Code on ALN. The Code will contain provisions about the exercise of functions made under the Bill. It must be laid before the Assembly for its approval. The Welsh Government will undertake a public consultation on and lay a final draft of the Code should the Bill become an Act.
- 3.69 The Welsh Government intends to adopt a phased approach to implement the new statutory framework, which will run alongside delivery of the wider ALN Transformation Programme, in order for institutions and practitioners to understand the new system and effectively manage and transfer learners from the existing to the new system. A full public consultation on the options for phasing in the new system took place between March and June 2017. Feedback from this consultation is being used to develop a detailed implementation and transition plan to be published in due course. A summary of the consultation responses and statement on implementation plans will be published during the autumn 2017.
- 3.70 The Welsh Government is committed to the principle that no child or young person should lose their statutory protection or provision required to meet their needs as they are transferred from the existing to the new system.
- 3.71 A £20 million package of support for the ALN Transformation Programme was announced in February 2017. This will include the provision of grant funding to partners to facilitate the implementation of the provisions set out in the Bill. This funding will be allocated to local authorities, FEIs, the Tribunal, health

boards and Estyn. This will build on the grant funding already established through the ALN Innovation Fund (over £1m in 2016-17) supporting local authorities and their partners to develop and improve multi-agency working arrangements to support the delivery of services for learners with ALN.

- 3.72 In addition, the Welsh Government will support the transition phase and ensure a smooth transfer from the current framework to the new statutory regime, through the appointment of ALN Transformation Leads to provide advice, support and challenge to local authorities, FEIs and other delivery partners in preparing for, and managing transition to, the new ALN system.
- 3.73 The Welsh Government will deliver resources and awareness-raising activities to support the implementation of the Bill. This will include a suite of interactive materials to improve understanding and expectations about effective interventions and the role of key players. Awareness-raising activities will also focus on engaging stakeholders about their new legislative duties, and explaining and promoting the system and the rights it confers to children, their parents and young people.
- 3.74 The Welsh Government has convened an Additional Learning Needs Strategic Implementation Group (ALN-SIG) comprising of key delivery partners. It will assist with the development of the implementation plan to support local authorities, education providers and others to shape and prepare for roll-out of the ALN Transformation Programme and, in particular, the statutory provisions outlined within the Bill. The ALN-SIG will play a crucial role in raising awareness around the reforms and developing evidence-based practice. The Group will continue to have a role in monitoring and reviewing implementation arrangements during the transition period that will follow the enactment of the Bill.
- 3.75 The monitoring and evaluation model 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.

3.76 The compliance, impact monitoring and evaluation approach will form the basis of a post implementation review. This will be further supported through ongoing inspection and review arrangements led by Estyn.

Territorial application

3.77 This Bill applies in relation to Wales. Local authorities have responsibilities in relation to children and young people aged 0 to 25 in their area, including where they are receiving education in England. The governing bodies of maintained schools and FEIs in Wales also have responsibilities for children and young people who are resident in England but attend the school or FEI. If they are identified as having ALN, the governing body must prepare and maintain an IDP or they may refer their case to the home local authority (the local authority in England in whose area the child or young person is resident). The English local authority is subject to duties under the Children and Families Act 2014, which might result in it preparing and maintaining an education, health and care plan (EHCP). The school or FEI in Wales which the child attends will not then be under a duty to prepare an IDP for the child, but is under a duty to take all reasonable steps to secure that the ALP called for by the person's needs is made. Ultimate responsibility for delivering the special educational provision set out in an EHCP will lie with the English local authority.

3.78 Officials from the Welsh Government's Education and Public Services Group continue to work with officials from the UK Government's Department for Education to produce guidance to support Welsh children and young people who attend an education institution in England and vice-versa.

- 3.79 The Code will set out practical guidelines on how the educational needs of learners who are being educated in England but live in Wales, and vice versa, should be met.

Overview of the Bill

- 3.80 The remainder of this chapter explains the components of the new statutory framework and the provisions of the Bill in more detail.

The introduction of the term Additional Learning Needs (ALN)

- 3.81 The Bill (section 2) provides for the term ‘additional learning needs’ (ALN) to replace the existing terms ‘special educational needs’ (SEN) and ‘learning difficulties and/or disabilities’ (LDD) and allows for its use in relation to children or young people of any age. The section makes clear that a medical condition which causes or contributes to ALN falls within scope of the definition. For the purposes of the Bill, 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.
- 3.82 The use of a single term across the 0 to 25 age range underlines the new system’s coherence and provides greater equity for learners. It will also help to avoid some of the stigma associated with the existing terms, in particular special educational needs, and marks a clear break from the current systems.
- 3.83 The Bill (section 3) uses the term ‘additional learning provision’ (ALP) to replace the term ‘special educational provision’ (SEP), although it retains much the same definition that SEP currently has – that is, ALP is provision which is additional to, or different from, the educational or training provision made generally for children or young persons of the same age in maintained schools other than in special schools and mainstream FEIs. It has a slightly different meaning for children under the age of three.

A 0 to 25 age range

- 3.84 If a local authority is made aware that a child or young person within this age range has or may have ALN, or if a governing body of a maintained school or

FEI is made aware that a registered learner has or may have ALN, the local authority or governing body must determine whether or not the individual has ALN. There is some similarity with a determination of needs made under section 323 of the Education Act 1996, but that is generally for learners with more severe and complex needs. If it decides that the learner does have ALN, and the learner is a child, or is a young person in a maintained school or FEI in Wales, or in other cases, the local authority decides (in accordance with regulations) that it is necessary to prepare and maintain a plan for the young person to meet the person's reasonable needs for education or training, it must ensure that an IDP is put in place for that learner. The Bill replaces Part 4 of the 1996 Act, which established the current SEN system for schools and pre-16 education in general. It also (at section 46) amends section 41 and repeals section 140 of the Learning and Skills Act 2000, which make provision in relation to LDD and FE. In their place, Part 2 of the Bill provides for the same statutory plan (the IDP) to be given to learners with ALN irrespective of whether they are in, or are likely to enter, nursery, school or an FEI. This is unlike a statement of SEN set up by the current system (under section 324 of the Education Act 1996), which generally only applies to those with the most severe and complex needs. The Bill therefore places support for learners with ALN in schools and FE on a more equal footing and will, therefore, improve transition between school and post-16 education.

- 3.85 In some cases local authorities will need to secure specialist post-16 education or training for a young person to meet their reasonable needs for additional learning provision. 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 and secure support, and to improve local provision relevant to the individual needs of children and young people with ALN. It also provides a greater incentive for local authorities to make the connections between education and social services departments, which are needed for a child's or young person's effective transition into FE and ultimately into adulthood.

A unified plan

- 3.86 The Bill introduces statutory IDPs (sections 8 -17) for children and young people with ALN. Statements, individual education plans and learning and skills plans will cease to exist.
- 3.87 The IDP will describe the child's or young person's ALN and the ALP required to meet those needs (section 8). It will also specify whether a child or young person should receive ALP through the medium of Welsh; if it is specified, all reasonable steps must be taken to secure that the specified ALP is provided to the young person in Welsh. IDPs will normally be prepared, maintained and reviewed by the school or FEI that the child or young person attends, following a determination by that body that the child or young person has ALN (sections 9 -10). The ALP set out in an IDP maintained by a governing body, must be secured by the school or FEI (section 10). In cases where determining the nature of the child or young person's ALN, or the ALP which is required, is beyond the school or FEI's capability, or where it would not be possible for them to secure the ALP required, the matter can be referred to the local authority. The local authority would then be responsible for determining ALN, preparing and reviewing the IDP and securing the ALP within it (sections 11 and 12). In the case of a young person who is not attending an FEI or a school, the local authority is responsible for determining ALN and preparing and maintaining an IDP (and securing the ALP within it) for that young person if it considers it necessary.
- 3.88 Local authorities have powers and duties, in some circumstances, in relation to the reconsideration of decisions about ALN taken by schools, taking over responsibility for IDPs previously maintained by a school or FEI, and directing a school to prepare and/or maintain an IDP (sections 24 - 26). As a minimum, IDPs would have to be reviewed every 12 months, but in practice should be reviewed when necessary or on request, which in many cases will be more frequent than every 12 months (sections 21 and 22). Interventions set out in the IDP action plan should include clear and specific milestones and outcomes, which will trigger a review of their effectiveness.

- 3.89 The Bill (section 27) relieves a local authority of its duty to reconsider decisions taken in relation to a child's or young person's ALN if the local authority has previously considered it and is satisfied the position has not changed.
- 3.90 This will prevent a local authority from being required to consider repeat or vexatious requests. The Bill (sections 24 ,25 and 30) enables a child, young person or a child's parent to request that a local authority:
- a) reconsiders a decision made by a school about whether he/she has ALN;
 - b) reviews his/her IDP;
 - c) considers taking over an IDP maintained by a school or FEI; or
 - d) reconsiders a school's decision to cease to maintain an IDP.
- 3.91 The Bill permits a local authority to name a maintained school in Wales in the IDP for the purposes of securing admission to that school, where it is satisfied that the child's interest requires the ALP identified in the IDP to be delivered at that school, and places a concomitant duty on a school named in the IDP to admit pupils in these circumstances (section 44). The Bill (section 49) also empowers local authorities to arrange for ALP to be made otherwise than in a school; or make such arrangements to enable a child or young person for whom they are responsible to attend an institution outside of Wales or England which specialises in making the ALP described in the child's or young person's IDP (section 55).
- 3.92 Where a learner with an IDP maintained by a local authority is registered or enrolled at a maintained school (including a maintained nursery) or FEI, the Bill (section 43) requires that the school or FEI takes all reasonable steps to secure the ALP included in the IDP – but ultimate responsibility rests with the local authority that maintains the IDP.
- 3.93 Local authorities will be responsible for maintaining an IDP for a child who is educated at a non-maintained school (regardless of whether the local authority or the parent funds their place at that school) and for a child who is

educated at home by their parents. This is similar to the current system for maintaining statements of SEN. Local authorities will be responsible for maintaining IDPs for young children who attend non-maintained nursery education settings. However, where such settings receive state funding to provide nursery places they will be required to have regard to the guidance set out in the ALN Code (section 4). The Code will set out an expectation that non-maintained nursery education providers should refer to the local authority any child they suspect has ALN.

- 3.94 A governing body may cease to maintain a plan for a child or young person if they no longer have ALN, are no longer registered or enrolled at the school or FEI, or if the plan is transferred to the local authority (section 29). A local authority may cease to maintain an IDP for a child or young person where it ceases to be responsible for that learner (for example if a child who is not looked after by the local authority moved to a different local authority), if the learner no longer has ALN, or if the learner is a child who is no longer looked after by the local authority. Before making a decision to cease to maintain a plan because it believes the learner no longer has ALN, the local authority is required to notify the child, their parent or the young person about that proposed decision.
- 3.95 The Bill provides a framework for the transfer of IDPs between governing bodies, FEIs and local authorities (section 33). It makes clear the circumstances in which a transfer would take place and where the duties to maintain the plan fall. There are mechanisms for ensuring the resolution of disagreements between local authorities and FEIs about the maintenance of IDPs of students enrolled at a FEI (section 34). Regulations may also provide further details on how transfers can take place (section 35). We expect these regulations to place duties and powers around the sending and receiving of IDPs and other relevant information, the transfer of responsibility, and the inclusion of future provision in an IDP. This framework aims to provide a coherent way of ensuring children and young people with IDPs who move to another institution or another local authority area receive continuous support for their ALN.

- 3.96 When a child or young person is detained within relevant youth accommodation and is identified as having ALN, the Bill (sections 38 and 40) provides that their home local authority will be required to secure an IDP, and make necessary ALP in accordance with that IDP, on their release from detention. Relevant youth accommodation for the purposes of these sections would normally be a young offender institution or a secure children's home.
- 3.97 If a child or young person has ALN and is subject to detention, the Bill (section 40) provides that their home local authority must keep the IDP while the person is detained in relevant youth accommodation and arrange for appropriate ALP to be made for them whilst they are detained. This might be the ALP set out in the IDP, provision corresponding as closely as possible to that ALP, or any ALP that the home local authority considers appropriate.
- 3.98 The effect of these provisions will be to remove the inconsistencies and the unfairness which arise from the existing statutory and non-statutory categories of SEN, and the different systems for learners in schools and FEIs. By introducing a single plan to cover a wide spectrum of need, the new system will be more flexible and responsive, as IDPs will be able to be more easily adapted over time to take account of changes in needs or circumstances. Furthermore, it will end the uncertainty about when and for whom a statement should be made and the inconsistency that results. It will also ensure continuity for learners across the school/FE divide.

Increased participation of children and young people

- 3.99 The Bill (section 6) provides for the views, wishes and feelings of children and young people to form a central 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 provided.
- 3.100 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. The embedding of PCP is being supported by the Welsh Government, including through the commissioning of Wales-specific resources for use in education settings from early years to FE, and through the provision of £600,000 funding over two years for training in person-centred approaches.

- 3.101 The Bill (section 7) 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 Bill. It also requires local authorities to make known those arrangements to the affected parties, thus ensuring that this information and advice is disseminated and is accessible for all those who need it.
- 3.102 For children and young people to be able to fully exercise their right to appeal under the Bill, or to engage in disagreement resolution procedures, the Bill (section 65) places a duty on local authorities to provide them with access to independent advocacy services. These are services providing advice and assistance to a child or young person who is making, or intending to make, an appeal to the Education Tribunal for Wales ('the Tribunal'), considering whether to appeal to the Tribunal under that section, or taking part in, or intending to take part in, dispute resolution arrangements
- 3.103 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 Bill (section 80) provides for such learners to have a 'case friend' where appropriate. A 'case friend' may represent and support the child and take decisions on the child's behalf in relation to matters concerning their ALN and ALP. Children who lack sufficient understanding will be able to use a 'case friend', as appointed by the Education Tribunal, to exercise their rights under the Bill. 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.

- 3.104 The Bill (section 71(e)) also enables regulations to make provision for a person to support a child or young person who does not lack capacity. It is intended that the person supporting such children or young people may not make decisions on their behalf, but can support them and appear on their behalf when dealing with disagreements and appeals.

High aspirations and improved outcomes

- 3.105 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 (or group of settings), whose role is to strategically co-ordinate planning and interventions around ALN and ensure that standards in respect of planning, target setting, and outcome focus are consistently applied and driven upwards. To this end, the Bill (section 56) requires that mainstream maintained schools, including maintained nurseries and pupil referral units, but excluding maintained special schools where every staff member will have a focus on ALN, and FEIs have a designated ALNCo.
- 3.106 The ALNCo role will replace the existing non-statutory SENCo role, which is currently interpreted differently across settings and authorities. It also extends the role to some education settings that may not currently have a SENCo or equivalent role.
- 3.107 The Bill enables the IDP to be created so the ALP it contains has a strong focus on outcomes rather than the making of provision being an end in itself.
- 3.108 It permits local authorities to place children and young people at independent schools or independent post-16 specialist colleges where it is necessary and appropriate in the light of the individual's ALN (section 47).
- 3.109 However, local authorities will be prohibited from placing a learner with ALN at an independent school unless they are satisfied that the school is able to provide the ALP required to meet the ALN, as set out in the learner's IDP (section 51). Repealing section 347 of the Education Act 1996 (section 54) and strengthening the way in which independent schools register to admit

learners, under section 160 of the Education Act 2002 will remove the unnecessary duplication and confusion between the two regimes and enable a clear single system of registration (section 50). Section 160 will be amended so that an independent school wishing to admit learners identified as having ALN, will be required to have demonstrated as part of its registration that it can provide the required type of ALP. In addition, the Welsh Ministers will publish the independent school register which, combined with the above strengthening of the registration process, will clearly set out for local authorities and parents of learners with ALN the ALP an independent school can cater for. This will reduce the risk of inappropriate placements of learners with ALN into an independent school. Annual monitoring of independent schools is undertaken by Estyn, which will also have a role in ensuring that independent schools are able to deliver the ALP they are registered to deliver.

3.110 Similarly, local authorities will be prohibited from placing 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 this Bill (section 52). Currently, minimum criteria are set via a funding contract between independent specialist colleges and the Welsh Ministers. The provisions in this Bill will ensure any independent setting that is funded by a local authority to provide ALP will continue to meet minimum criteria that will be transparent and set out in regulations. Furthermore, it will provide the necessary assurance that when a child or young person with ALN is placed in this type of education setting, their needs will be met. Local authorities will be required to pay any fees arising from the placement of the child or young person at an independent school or college (section 45). These provisions should smooth the path of transition, enable better coordination with social services' support in particular, and encourage the provision of local packages of support. Annual monitoring of independent specialist colleges is also undertaken by Estyn.

3.111 The Bill largely replicates the existing legislative presumption in favour of those with ALN being educated in mainstream schools wherever possible

(section 47). This not only supports the Welsh Government's general policy on inclusiveness, but underlines our view that expectations of and aspirations for those with ALN should be as high as possible. However, the Bill 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. Section 47, therefore, enables a local authority to place a child outside of the mainstream education sector in such circumstances.

- 3.112 To ensure that high standards are universal, the Welsh Government will, during the transitional period and after the legislation comes into force, work with local authorities to enable them to put in place arrangements to monitor and review the operation of the new system within and by maintained schools. The ALN-SIG will support this work in the lead up to enactment of the legislation and beyond.
- 3.113 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 Bill requires local authorities to keep under review the arrangements made by them for ALP (section 59). This includes a specific requirement on local authorities to consider the sufficiency of ALP in Welsh.
- 3.114 Local authorities may also supply goods and services to governing bodies to help them meet the needs of the child or young person (section 63).

A simpler and less adversarial system

- 3.115 In removing the current artificial and contentious divide between children and young people who receive a statement of SEN, as well as the divide between those whose needs are not considered sufficiently severe or complex to receive a statutory plan with statutory protection, the Bill seeks to eliminate one of the principle causes of adversarial tension. Its emphasis on the participation of children, their parents and young people in the decisions that affect them and in the development of IDPs, will result in a more consensual approach to planning. The Bill's provisions on IDPs also pave the way for a

less bureaucratic and time-consuming process for planning provision, which will be simpler to understand and less confrontational.

Increased collaboration

- 3.116 To foster better working relationships and practices, the Bill (section 61) provides that where a local authority requests help or information from other bodies, including another local authority, an NHS body or an FEI (amongst others), in the exercise of any of 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.
- 3.117 The duty to share information is new and will address some of the current issues around the failure of bodies to share information as effectively as they should. It will be underpinned by clear guidance in the Code. The duty to help is similar to that which appears in the existing SEN legislation and will form the basis for ensuring the appropriate involvement of professionals in the development and review of IDPs for those with more severe and complex needs. Where input is required from other agencies to support the child or young person to overcome barriers to learning, the Bill will enable the IDP to include ALP made by health (section 19), as well as education. IDPs will contain an action plan that is clear about which agency is responsible for delivering the individual elements.
- 3.118 The Bill (section 23) provides for IDPs and other plans relating to the same learner to be prepared, reviewed or revised at the same time. Other plans may also be included in the IDP; this mirrors the provisions included under section 58 of the Social Services and Well-being (Wales) Act 2014. This provision provides a clear legislative basis for avoiding the duplication of effort and confusion that arise where multiple plans are produced for the same individual, and enabling the much closer alignment and integration of otherwise separate planning processes.

- 3.119 In relation to looked after children, and in recognition of the fact that a significant proportion of this group of children are likely to have ALN, section 14 also provides for the IDP to be included in the PEP of a child who is looked after. The PEP is prepared for them as part of their CSP under the Social Services and Well-being (Wales) Act 2014. For the purposes of the Bill a child with ALN who is looked after is defined as being of compulsory school age or under (section 13). These provisions will ensure that planning for the educational needs of this vulnerable group of learners are streamlined and better co-ordinated.
- 3.120 The Bill (section 15) requires governing bodies of maintained schools to refer to a local authority any child that it looks after who they believe may have ALN. The local authority must then decide whether the child has ALN (section 16); if it decides the child does have ALN, it must prepare and maintain an IDP (section 17). Local authorities will be responsible for preparing, maintaining and reviewing IDPs for all children with ALN who are looked after by them.
- 3.121 In response to concerns around the status of the early years within the ALN system, the Bill establishes a new role of Early Years ALN Lead Officer within local authorities. Authorities will be required to designate an individual to coordinate its functions under the Bill 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 do not receive appropriate early intervention. The role will have key links with the other roles created by the Bill, helping facilitate improved multi-agency working and connections between service provision.
- 3.122 Responding to consultation feedback and calls from stakeholders to strengthen the responsibilities of health practitioners in relation to children and young people with ALN, the Bill (section 18) includes a new duty on NHS bodies in relation to the minority of learners whose ALN may be health related. 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, secure that treatment or service. A description of the treatment or service must then be included in the learner's IDP. The duty represents a significant step forward in ensuring that there is greater clarity and certainty around which service will be delivering the ALP within an IDP than is currently the case with statements of SEN.

- 3.123 If an NHS body identifies that a child or young person requires ALP through the medium of Welsh, the Bill requires the NHS body to take all reasonable steps to provide that service or treatment. It must also notify the governing body or local authority that is required to maintain the IDP.
- 3.124 The Bill (section 57) includes a new duty on health boards to appoint a Designated Education Clinical Lead Officer (DECLO). This role will ensure there are appropriate service models within each health board; provide leadership within the health board to support compliance with relevant duties; liaise with partners and serve as a primary point of contact for local authorities; and prompt and facilitate effective inter-professional working for the benefit of children and young people with ALN. The DECLO will not be routinely involved in the assessment and reviews of specific IDPs, except in the course of their usual clinical practice, but they would be responsible for ensuring the appropriate health board input is provided. Day-to-day operational functions will be undertaken by health professionals in contact with the child or young person, acting as a 'health co-ordinator' at a local level, and ensuring the role of the NHS in the ALN system is mainstreamed. DECLOs will play a pivotal strategic leadership role in improving the extent and effectiveness of collaboration between health, education and social care in the delivery of services for children and young people with ALN. The DECLO, ALNCo and Early Years ALN Lead Officer roles will help to facilitate effective collaboration between the education and health to improve services for learners.
- 3.125 Where an NHS body in the course of exercising any of their functions in relation to a child who is under compulsory school age, forms the opinion that

he/she has (or probably has) ALN, the Bill (section 60) requires them to bring this to the attention of the appropriate local authority if they believe that to be in the child's best interests (having discussed the matter with the child's parent before doing so). The Bill also provides that if an NHS body believes that a child who is looked after has ALN, it may bring this to the attention of the local authority that looks after that child (section 60).

Avoiding disagreements and earlier disagreement resolution

- 3.126 The Bill (section 64) requires local authorities to make arrangements for avoiding and resolving disagreements between children, their parents and young people on the one hand, and schools, local authorities and others on the other hand. 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 Code will be used to emphasise that local authorities' first priority will be to try and avoid disagreements arising by developing ways of ensuring that children, their parents and young people are supported to understand and participate fully in the decisions that affect them; provided with appropriate reassurance; and offered opportunities to raise concerns and have their questions answered. However, where disagreements do arise, arrangements should focus on ensuring that these are resolved at the earliest opportunity and at the most local level possible.
- 3.127 The development and implementation of effective disagreement avoidance and resolution arrangements is key to improving the trust that children, their parents and young people have in the system, and minimising the extent to which they feel the need to exercise their rights of appeal. Local authorities must, however, make children, their parents and young people aware that these arrangements do not affect their rights to appeal to the Education Tribunal for Wales.

Clear and consistent rights of appeal

- 3.128 The Bill (section 85) renames and expands the remit of the existing Special Educational Needs Tribunal Wales (SENTW), which will be renamed the

Education Tribunal for Wales ('the Tribunal'). The Bill makes provision for the continuation of the Tribunal's constitution, membership and remuneration and expenses (section 85 to 87). The new name reflects not only its role in determining appeals in relation to ALN but also the role currently undertaken by the SENTW in determining disability discrimination claims relating to schools, a function that the Tribunal will continue to undertake. In addition, the Bill (section 80) 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, claims 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 Bill.

- 3.129 Currently, only children and young people registered at maintained schools have the right to appeal to SENTW in relation to their SEN. The Bill introduces more equitable rights of appeal by extending this right to children and young people up to the age of 25 who are pursuing FE. This extension of appeal rights will help to underpin the new system's 0 to 25 age range and deliver on the core aim of a more equitable approach.
- 3.130 The Bill (section 66) enables a child, child's parent or young person to appeal to the Tribunal where a local authority or FEI governing body takes a decision in relation to an individual's ALN, or maintains an IDP for that individual. In the case of a local authority, this would include reconsiderations about school governing body decisions or plans maintained by a school governing body.
- 3.131 Orders of the Tribunal are binding on local authorities and FEI governing bodies. Moreover, local authorities and FEI governing bodies are required to report back to the Tribunal on action taken to comply with an order (section 73). Where appropriate, there will be a role for the NHS in preparing the report to the Tribunal. The section 61 duty to provide information and help will facilitate this.
- 3.132 Section 72 makes clear that NHS bodies can be required to provide evidence to the Tribunal and will be subject to recommendations made by the Tribunal.

NHS bodies will be required to report back to the Tribunal on compliance with recommendations, ensuring careful consideration of recommendations and an explanation of any decision to take no action in response to recommendations. These provisions ensure the NHS has a role to play at every stage of the process, including during and following an appeal to the Tribunal.

3.133 Although use of the Tribunal should be a last resort, the right of appeal to an independent tribunal whose decisions are binding (section 73) will ensure the new system for supporting learners with 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.

3.134 The Bill (sections 70 and 71) allows for the Welsh Ministers to make regulations about the proceedings of the Tribunal on an ALN appeal and the initiation of such an appeal. Requirements can be imposed in relation to disclosure of documents and attendance at tribunal. If the Tribunal makes an order, the local authority concerned must comply with it before the end of the period prescribed in regulations and beginning with the date on which it is made.

3.135 The Bill (section 76) also allows that a party to any proceedings about ALN before the Tribunal may appeal to the Upper Tribunal on any point of law arising from a decision made by the Tribunal in those proceedings.

A mandatory Code

3.136 The Bill requires the Welsh Ministers to issue a Code on ALN (section 4). The Code will apply to those with functions under this Bill and will be able to impose:

- mandatory requirements (where specified in the Bill) in accordance with which relevant bodies must act; and

- guidance to which those bodies and other providers of education and training must have regard.

3.137 The creation of a Code of this nature will ensure the new ALN system has a set of clear, legally enforceable parameters within which local authorities and those other organisations responsible for the delivery of services for children and young people with ALN must act. The Code will be targeted towards practitioners so they understand and can implement the new ALN system.

3.138 In particular, the Bill enables the Code to provide detailed requirements about how IDPs are to be prepared, maintained and reviewed. This will include requiring the plan to be in a specified form, which the Bill requires the Code to provide, and contain specified information and requiring specified persons to undertake certain roles and/or actions in relation to the preparation, maintenance and reviewing of IDPs within set time limits. The Bill also enables the Code to set out the functions of ALNCoS and impose requirements in relation to the provision of independent advocacy arrangements.

3.139 The Bill (section 5) requires that the Code is subject to consultation with local authorities, schools, FEIs, Estyn, the Welsh Language Commissioner, the Children's Commissioner for Wales, the relevant Committee of the National Assembly and other appropriate persons. In addition, the Code (and any subsequent revisions) will have to be laid before the National Assembly. The Code cannot be issued unless approved by the National Assembly.

3.140 As part of plans in respect of implementation and monitoring and evaluation, the Welsh Government is giving full consideration to ways for ensuring appropriate compliance with the Code, including through Estyn or its own roles.

A bilingual system

3.141 The Government's aim is a bilingual ALN system. The provisions of the Bill are intended to drive progress towards achieving this aim.

- 3.142 The section 6 duty to involve and support children, their parents and young people underpins the operation of the ALN system in terms of the Welsh language. Regard must be had to the views, wishes and feelings of the child, child's parent or young person and language will be critical to this. This duty applies to the operation of the new system in its entirety.
- 3.143 The Bill includes specific duties in relation to ALP through the medium of Welsh. It places requirements on school and FEI governing bodies, local authorities and NHS bodies to consider whether a 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. (Sections 10, 12, 17, 18 and 19).
- 3.144 A mechanism to remove by regulations the 'all reasonable steps' test is provided for by section 84. The removal of 'all reasonable steps' will mean that the duties to provide ALP through the medium of Welsh become absolute. The regulations will work in a comparable way to the Welsh Language Standards so that particular geographical challenges can be reflected. The use of regulations under section 84 will be informed in large part by a new duty on the Welsh Ministers to review the sufficiency of Welsh language provision every 5 years and publish reports following these reviews (section 83). These elements of the Bill will ensure that the legal requirements it contains keep pace with the developments in the ability of services to deliver bilingually and also that they drive and encourage those developments.
- 3.145 These requirements are supported by other strategic duties in the Bill around the Welsh language. Including a duty on local authorities to keep under review the sufficiency of ALP in Welsh in its area and take all reasonable steps to remedy any deficiencies identified (section 59). These duties, taken alongside wider initiatives, are intended to drive progress towards a truly bilingual ALN system.

4. Consultation

White Paper – Proposals for the Additional Learning Needs Bill

- 4.1 The First Minister in his legislative statement of July 2011 made a commitment to consult appropriately and engage meaningfully with our partners when developing legislation. The Department for Education and Skills (which is now part of the Education and Public Services Group) issued a White Paper on 22 May 2014 on the proposals for an Additional Learning Needs Bill. This followed an earlier pre-legislative consultation document published in June 2012, *Forward in Partnership for Children and Young People with Additional Needs*, which set out a broad vision of a reformed system⁹.
- 4.2 The 2014 White Paper invited comments on the proposals for the Bill and was published on the Welsh Government website. As part of the Welsh Government's compliance with the UNCRC, a consultation specifically tailored to young people was undertaken at the same time. This involved ten questions which covered the issues the Welsh Government was seeking the views of young people on.
- 4.3 The consultation ran for nine weeks from 22 May to 25 July 2014. A total of 215 responses were received by the Welsh Government, four of which were completed using the young people's version of the questionnaire.
- 4.4 The Welsh Government also undertook workshops for children and young people and their parents. The children and young people were aged between 8 and 20 plus and came from a variety of education settings from primary, secondary and FE across Wales, including mainstream and special schools. Inclusive, participative methods to ensure good understanding and encourage

⁹ This 2012 consultation document and a summary of responses is available at: <http://webarchive.nationalarchives.gov.uk/20140406073301/http://wales.gov.uk/consultations/education/senframeworkconsultation/?status=closed&lang=en>

children, young people and their parents/carers to address these questions.

The contractor worked with:

- fourteen groups of children and young people with a broad range of ALN – 174 children and young people took part in total; and
- six groups of parents/carers – 55 parents/carers took part in total.

4.5 Broadly, the proposals set out in the White Paper were welcomed by those who responded to the consultation. Stakeholders emphasised the importance of underlying principles, such as the need to listen to children and young people and to adhere to the UNCRC when implementing a reformed system. The outcomes of this consultation exercise were used to inform the policy development process and the production of a draft Bill.

4.6 In a Written Ministerial Statement¹⁰ that accompanied the summary of consultation responses¹¹, the Minister for Education and Skills explained how some important points raised in the consultation were being addressed. This included:

- emphasising that IDPs would give all learners aged 0-25 years with ALN the same statutory protection as the current statements of SEN;
- explaining that the term ‘best endeavours’ was the current legislative term used in relation to schools, which we proposed to extend to FEIs;
- reassuring that all those with ALN, including those with the highest level of need, would have their needs met;
- the bringing into force of the reforms and a new Code would be accompanied by a programme of promotion and training for professionals from across the relevant agencies who work with children and young people with ALN; and

¹⁰ <http://wales.gov.uk/about/cabinet/cabinetstatements/2014/additionallearningneeds/?lang=en>

¹¹ <http://gov.wales/consultations/education/proposals-for-additional-learning-needs-white-paper/?lang=en>

- outlining the intention to issue a Code with mandatory requirements and statutory guidance to ensure that learners receive the support they need.

Consultation on the draft Additional Learning Needs and Education Tribunal (Wales) Bill

- 4.7 On 18 June 2015 the Minister for Education and Skills announced that a draft Additional Learning Needs and Education Tribunal (Wales) Bill would be published for consultation.
- 4.8 The consultation ran from 6 July to 18 December 2015. To support the consultation, the then Minister published in September 2015 a draft ALN Code and an outline of the possible timescales for implementation of the proposed new system. 263 written responses were received.
- 4.9 A consultation document for children and young people was published along with an easy read explanation of the draft Bill. These documents supported the delivery of bespoke participation workshops with children, young people and their parents/carers. A total of 23 workshops took place.
- 4.10 During the workshops the views of children and young people were elicited separately from those of their parents/carers to ensure that their views were accurately recorded. There were 19 workshops for children and young people, held at 16 settings, with a total of 222 participants. Workshops took place at special schools, primary schools, secondary schools, FE settings and a pupil referral unit, as well as with 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 the role of the health service within the proposed reforms.
- 4.11 There were four workshops for adults with a direct interest in the legislation; a total of 45 adults participated. The sessions included a group of foster carers, a support group consisting of parents with statemented children, an early years group and a group of home educating parents. 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.

- 4.12 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 ten core aims of the reform proposals. While there was an overall high level of support, there was a difference between the responses of the children/young people, and the adults.
- 4.13 In addition to the series of workshops with children, young people and their carers, the Welsh Government hosted two national events in North and South Wales, which were attended by 158 people; and delivered a programme of informal, targeted sessions with key stakeholders from across the public services and third sector.
- 4.14 Feedback received during the consultation period indicated general support for the main objectives and ambitions of the legislative reforms and the key principles of the draft Bill; this support was reflected in the written responses to the consultation. Whilst some concerns were expressed with the legislative proposition outlined in the draft Bill, the vast majority of concerns related to the implementation and operation of the new statutory framework rather than the framework itself. Specific provisions within draft Bill received criticism, particularly in relation to the perceived lack of provisions specifically for early years providers, the level of duties placed on NHS bodies in respect of their role in delivering ALP and the absence of provisions dealing with support for Welsh speaking learners.

Changes made to the Bill

- 4.15 The responses to the consultation, along with feedback gathered from wider stakeholder engagement, including from children and young people, and the findings of the National Assembly's Children, Young People and Education Committee's pre-legislative scrutiny of the draft Bill, were used to inform the

refinement of the Bill and development of the wider ALN Transformation Programme.

4.16 The table below sets out the changes made to the Bill. It indicates which of these changes were made as a direct consequence of comments received during the consultation, and which resulted from further consideration given to the drafting of the Bill. The section numbers below refer to the sections in the Bill as introduced, unless otherwise stated.

4.17 Changes that are minor or technical, which do not significantly alter the core framework provided for within the Bill, have not been included in the table.

Changes made to the Bill

Changes made	Reason
Children who are looked after (sections 13, 14, 15, 16, 17, 22, 57 and other sections throughout Part 2 of the Bill) Section 56 of the draft Bill proposed a significant regulation making power that would have enabled a different system of legislative support for looked after children and care leavers and ALP for them to have been developed through secondary legislation. The Bill contains particular provisions for the application of the ALN system in relation to children who are looked after. Generally, the Bill places responsibility for ALN matters on the local authority that looks after the child, rather than the maintained school attended by the child or (if different) the local authority in whose area the child is. Those governing bodies and local authorities are required to refer to the looking after local authority any children who are looked after who they suspect may have ALN. The local authority must then decide whether the child has ALN and if it decides that the child does have ALN, it must prepare and	This was an existing policy intention which was not realised in the draft Bill. It was considered more appropriate to replace the regulation making powers set out in the draft Bill with a comprehensive framework of primary legislative provision that applies in the case of children who are looked after. This has been developed in light of the implementation of the Social Services and Well-being (Wales) Act 2014, which came into force in April 2016.

maintain an IDP. If the child already has an IDP maintained by a governing body or local authority, the looking after local authority becomes responsible for maintaining it. The Bill requires for the IDP to be incorporated into the personal education plan (PEP) of the child who is looked after. The PEP is prepared for them as part of their CSP (made under the Social Services and Well-being (Wales) Act 2014). The provisions relating to children who are looked after apply to those that are of compulsory school age or below compulsory school age (section 13), and are not detained. The further categories of children who are looked after may be excluded from these provisions by regulations. Duties on the looking after local authority are switched off if the child is placed in England. The Bill also requires that the independent reviewing officer of a child who is looked after must be informed about decisions made in relation to the child's ALN, including a proposed decision by a local authority to cease to maintain a plan; and must be given a copy of the child's IDP (including a revised IDP). Other amendments flow from these provisions throughout the Bill (e.g. appeals).	
Duty on NHS bodies to deliver provision (section 18) Section 14 of the draft Bill proposed that if a health board or NHS Trust agreed, an IDP may specify that ALP described in the plan is to be secured by that health board or Trust. The health board or Trust would then secure the ALP specified in an IDP, and any corresponding duties of governing bodies or local authorities to secure that element of ALP would be switched off.	Raised during consultation Section 14 of the draft Bill was considered to be too weak by some respondents to the consultation and by the National Assembly's Children, Young People and Education

The duty on NHS bodies is now refocused in the Bill, so that the link between this duty and the principle of clinical need is more apparent. The Bill makes clear that local authorities and FEIs can refer a matter to an NHS body and request the NHS body to consider whether there is a relevant treatment or service that is likely to be of benefit in addressing the learner's ALN (in the minority of cases where a learner's ALN is health related). If it identifies that there is a treatment or service that would address the learner's ALN, it must secure the provision. This provision will be included in the learner's IDP. These amendments strengthen the duties on NHS bodies.	Committee in its pre-legislative scrutiny of the draft Bill.
Changing DMO/DCO to DECLO (section 55) Section 47 of the draft Bill proposed that a duty be placed on health boards to designate an officer to have responsibility for co-ordinating the board's functions in relation to children and young people with ALN. The officer was to be known as a Designated Medical Officer (DMO) or Designated Clinical Officer (DCO). The Bill changes the title of these officers to designated educational clinical lead officers (DECLO). The amendment has no effect on the nature of the role but clarifies the purpose of the role; makes clear its education focus; and may avoid unhelpful comparisons being made between differently qualified professionals.	Raised during consultation There were calls for clarity about the role particularly in terms of education and the dual title.
Ceasing to maintain an IDP (section 29) Section 20 of the draft Bill enabled governing bodies and local authorities to cease to maintain an IDP for a learner if it was no longer necessary to maintain it. The Bill (section 29) builds on that provision to make clear the various circumstances in which the duties on governing bodies of maintained schools,	Identified during drafting process to provide greater clarity about when duties to maintain an IDP cease and when a body may cease to maintain one.

governing bodies of FEIs and local authorities to maintain an IDP for a learner will cease to apply. The Bill also includes specific provision for ceasing to maintain an IDP for a child who is looked after.	
Duty to favour education at mainstream maintained schools (section 45) Section 29 of the draft Bill required local authorities to exercise their functions so that children with ALN are educated in mainstream schools unless certain exceptions apply. The exceptions were that educating them in this way would be incompatible with the wishes of the child's parent, or the provision of efficient education for other children. The Bill now includes, as an additional exception to this duty, instances where educating the child at a mainstream maintained school would not be appropriate in the best interests of the child and is compatible with the provision of efficient education for other children. This reflects the person centred nature of the reforms and ensures that the learner's interests are placed at the heart of all decisions. The overall presumption in favour of mainstream schooling would be retained however, as this provides a key underpinning to an inclusive education system. The Bill makes clear that a local authority is not required to secure provision in a non-maintained mainstream school if the parent expresses a wish for their child to be educated otherwise than at a mainstream school.	Raised during consultation Some respondents to the consultation felt that the current exceptions did not pay sufficient account to the needs of the individual child.

Children with ALN in mainstream maintained schools (section 46) A new provision is included in the Bill to ensure that a child with ALN who attends a mainstream maintained school usually engages in school activities with children who do not have ALN.	Identified during drafting process to support the presumption in favour of mainstream maintained schooling and promote an inclusive education system.
Appeal rights for children and young people residing in England (sections 63 and 77) The Bill provides children and young people residing in England but attending a school or FEI in Wales with a right to challenge decisions about ALN. The provisions for local authorities to reconsider school governing body decisions and plans apply in a modified way so that, for example, the local authority in Wales which maintains the school has to consider these matters. Those decisions may then be appealed. English resident students at an FEI in Wales may also appeal to the Tribunal against the FEI's decisions (section 41(1) of the draft Bill prevented this). For learners with more severe and complex needs, the governing body or local authority would request the English local authority to secure an education, health and care needs assessment under the Children and Families Act 2014. If an education, health and care plan is put in place by the local authority in England, there is no duty on the governing body to prepare and maintain an IDP.	Identified during drafting process to ensure equitable rights of appeal for children and young people residing in England but attending a maintained school/FEI in Wales
Non-maintained institutions and appeal rights (sections 12, 17 and 63) The Bill enables non-maintained institutions to be named by a local authority as a type of provision which may need to be secured in order to meet the learner's needs for ALP. If such provision is included in the IDP, the local authority must include that provision in the IDP and secure it. The Bill	Raised during consultation There were concerns the draft Bill did not include an appeal right in relation to non-maintained schools.

provides for an appeal right in relation to this new provision.	
Non-maintained providers of nursery education (section 4) The draft Bill placed duties on maintained nursery schools in relation to the planning and making of ALP but placed no duties on the non-maintained early years sector. The Bill requires providers of nursery education in the voluntary or private sector, who are in receipt of state funding for nursery places, to have regard to the ALN Code. The Code will set out guidance on how such providers will be expected to support young children with ALN.	Raised during consultation There were concerns the draft Bill did not include specific duties on early years education providers.
Parents and young people lacking capacity (section 74) The Bill amends what was section 53 of the draft Bill to require Welsh Ministers to make regulations in relation to parents and young people who lack capacity under the Mental Capacity Act 2005.	Identified during drafting process
Capacity of children and case friends (section 75 and 76) The Bill provides for instances where a child does not have the capacity to sufficiently understand the information and documents that local authorities, governing bodies and NHS bodies are under a duty to provide them with or sufficient understanding to challenge decisions made in relation to their ALN. A local authority will decide if the child has sufficient understanding, with a right of appeal to the tribunal on this issue if there is a disagreement about the child's ability to understand. When such cases arise, the Bill exempts local authorities, governing bodies and NHS bodies of their duties to provide information and documents to such children. The Tribunal will be able to declare whether or not a child has the capacity to understand documents and	Identified during drafting process to enable this group of learners to exercise their rights under the Bill and to strike a balance between the rights of the child and the rights of the parents, who also have a right to appeal to the Tribunal. Original case friend provision has been expanded to include more detail on the face of the Bill.

information presented to them and what it means to exercise their rights under the Bill. The Tribunal will be able to do this either following an application or of its own volition. Where children are considered to lack sufficient understanding, the Bill includes a power to make regulations to provide for the appointment and removal of case friends by order of the Tribunal. These regulations will also make provision for these children to take forward an appeal through the case friend.	
Cross border responsibilities (section 82 and various other provisions e.g. 9 and 10) The draft Bill required schools and FEIs to prepare and maintain IDPs for children and young people with ALN unless the needs of the learner were beyond the capacity of the school or FEI to address, in which case they could refer the matter on to the responsible local authority, i.e. the authority in whose area they are. However, in the case of an England resident child or young person educated in Wales, this power of referral was not exercisable because the draft Bill placed no duties on English local authorities to prepare and maintain IDPs. English local authorities may, however, decide to put in place an education, health and care plan for the child or young person under the legislation that applies in England. The Bill provides that if the English resident learner's ALN can be addressed at school level or FEI level, the relevant school or FEI in Wales is required to prepare and maintain an IDP for that learner under section 10. If a school or FEI in Wales considers that an English resident learner's ALN is too severe or complex to be addressed by that body and the Welsh local authority agrees, the Welsh local authority may refer this to the learner's home local authority (in England) and ask them to consider whether that learner requires an EHCP. If	Identified during drafting process to ensure that where a Welsh local authority places a child for the purposes of their education in England, the Welsh local authority maintains the learner's IDP, and vice versa.

the home local authority decides to put an EHCP in place for that learner, the Welsh local authority is relieved of its duty to prepare and maintain an IDP for them. However, at the same time, the school or FEI has a duty to do what it can to plan for and meet the needs of that learner. This will ensure that the interests of these children continue to be protected. Section 82 of the Bill amends the meaning of “in the area” of a local authority in the Education Act 1996 and the Children and Families Act 2014. References to a person who is “in the area” of a local authority in England in Education Acts, would not include a person who would be wholly or mainly resident in the area of a local authority in Wales, were it not for provision secured under this Bill. Similarly, a reference to a person who is in the area of a local authority in Wales in the Education Acts, would not include a person who would be wholly or mainly resident in a local authority area in England, were it not for provision secured under Part 3 of the Children and Families Act 2014. This is to ensure that if a person is placed at a residential institution across the Wales/England border specifically to meet their additional learning needs, or in the case of a person from England, their special educational needs, the placing local authority continues to be responsible for that person under the relevant regime.	
Dual registered learners (section 28) Where a child or young person with ALN is registered or enrolled at more than one school or FEI in Wales, the draft Bill would have required each institution to prepare and maintain a separate IDP for them. The Bill has been changed to require schools and FEIs whose learners have ALN and are also registered or enrolled elsewhere, to refer those cases to the local authority so that they may prepare and maintain the IDP for the individual, ensuring coordinated and holistic support.	Identified during drafting process to ensure that the ALP for these individuals is properly co-ordinated and consistent across the different settings.

Transfer of IDPs (sections 33 and 34) Section 23 of the draft Bill provided regulation-making powers in relation the transfer of IDPs between governing bodies, FEIs and local authorities. The Bill has been amended to provide a framework for the transfer of IDPs between governing bodies, FEIs and local authorities (section 33). It makes clear the circumstances in which a transfer would take place and where the duties to maintain the plan fall. The regulation making power on transfers is retained to enable further detail to be provided.	Identified during drafting process to provide clarity on the transfer of IDPs.
Independent advocacy services (section 62) The Bill replicates section 38 of the draft Bill but removes the duty on local authorities to take reasonable steps to make the arrangements for independent advocacy known to children, their parents and young people; head teachers and governing bodies of maintained schools; case friends; and others it considers appropriate.	Identified during the drafting process The provisions have been removed as it was considered that these could be better dealt with through the ALN Code.
ALNCoS (section 54) Section 46 of the draft Bill required the governing body of a maintained school (including a special school) or FEI to designate a member of staff as an ALNCo. The Bill has been changed in two ways. Firstly, the wording of section 54 has been changed so that whilst it still requires all schools and FEIs to have an ALNCo, they would have greater flexibility in deciding whether to share one with other schools or appoint more than one person if necessary. Special schools are removed from the list of schools to which this duty would apply, on the basis that all staff at such schools are specialist ALN teachers and co-ordinators of ALP.	Raised during consultation The draft Bill was criticised for not enabling small schools to share an ALNCo, or for large schools or FEIs on multiple sites to designate more than one ALNCo. Identified during drafting process – the updated list in 54 is intended to provide

The Bill now lists community, foundation and voluntary schools and pupil referral units as being under a duty to designate an ALNCo.	clarity; the effect of the Bill is unchanged.
Additional learning provision through the medium of Welsh (section 5, 10, 17, 12, 44, 65, 56, 37) To address stakeholder concerns regarding the provision of ALN services through the medium of Welsh, the Bill now includes duties on local authorities and governing bodies of schools and FEIs when preparing IDPs to consider whether a child or young person should receive ALP in Welsh, and specify in the IDP what ALP should be delivered in Welsh. There is a further duty to take all reasonable steps to secure that the specified ALP is provided to the child or young person in Welsh. This also applies to children and young people with ALN who are detained. In addition, where NHS bodies deliver ALP, they must decide whether the treatment or service should be provided to the child or young person in Welsh, and if so, take all reasonable steps to secure the treatment or service is provided in Welsh. If the NHS body identifies that a child or young person requires ALP through the medium of Welsh this must be recorded on the IDP. There is an additional duty on local authorities to have regard to the desirability of ensuring that ALP is available in Welsh when reviewing the arrangements for ALP in their respective areas (section 56). Furthermore, the Bill (section 44) makes further amendments to the Learning and Skills Act 2000 (building on section 28 of the draft Bill), so that when planning the provision of post-16 education, the Welsh Ministers take into account the capacity of the FE workforce to deliver ALP in Welsh and availability of facilities for assessing through the	Raised during consultation Some stakeholders called for the Bill to make provision for improving ALN services through the medium of Welsh.

medium of Welsh.	
Duty to take all reasonable steps to secure additional learning provision (section 41) Section 25 of the draft Bill placed a duty on governing bodies of maintained schools and FEIs to take all reasonable steps to help a local authority secure the ALP that a child or young person's ALN called for, if that individual had a local authority maintained plan but was registered at the school or FEI. The Bill (section 41) replicates this provision and expands the duties to include children and young people who do not yet have an IDP, for example, if the local authority has not yet finalised the plan. If a child or young person is registered at a maintained school or FEI, the relevant governing body must take all reasonable steps to secure the ALP called for by the individual's ALN while the IDP is being prepared by the local authority.	Identified during drafting process to help ensure that provision is put in place for learners at the earliest possible opportunity and that there are no gaps in the requirement to secure provision.
Procedure for making the Code (section 5) Section 5 of the draft Bill included a list of persons that the Welsh Ministers must consult with before issuing or revising an ALN Code. The Bill now includes the Children's Commissioner and the Welsh Language Commissioner in the list of persons to be consulted. This change was made due to the implications of the Bill for children and ALN services through the medium of Welsh.	Raised during consultation Calls were made to add the Welsh Language Commissioner and Children's Commissioner to the list in section 5 of the draft Bill.
Minor and consequential amendments (section 83) The Bill includes Schedule 1 which provides for minor and consequential amendments and repeals to be made by the Bill.	Identified during drafting process - Schedule 1 was not included in the draft Bill as these amendments had not yet been determined.

- 4.18 In addition to the specific amendments made to the draft Bill, the responses and feedback received during the consultation have been, and continue to be, used to inform development of the wider ALN Transformation Programme, for example, in respect of the development of the education workforce. More information about the Transformation Programme is included in the ‘implementation and delivery plan’ section (pages 25-27) and stakeholders will be kept informed as the Programme develops.
- 4.19 All documents relating to the consultation, including summaries of responses to the written consultation, the workshops for children, young people and their carers, and the formal stakeholder engagement events, are available on the Welsh Government website¹².

Additional engagement

- 4.20 There has been sustained engagement with stakeholders on the matters contained within the White Paper and on the consultation on the draft Bill. This engagement commenced prior to the publication of the White Paper and continued through and beyond the consultation period of the draft Bill. The engagement focused on the proposed provisions in the draft Bill, the content of the draft Code and plans for implementation of the new system and on the wider ALN Transformation Programme.
- 4.21 Engagement following publication of the White Paper included, but was not limited to, meetings, presentations and workshops with:
- The Third Sector Additional Needs Alliance (TSANA) – via a Task and Finish Group which met on a monthly basis from December 2014 until July 2015 and submitted a report to the Welsh Government in autumn 2015 that has informed development of the reforms;
 - The Association of Educational Psychologists – including a day-long workshop with educational psychologists from across local authorities in Wales;
 - The Welsh Local Government Association (WLGA);

¹² <http://gov.wales/consultations/education/draft-aln-and-education-tribunal-wales-bill/?lang=en>

- The Association of Directors of Education in Wales (ADEW) and its sub-group on Inclusion;
- NATSPEC (the association of independent specialist colleges);
- Learning Disability Advisory Group;
- School Practitioner Panel;
- Colegau Cymru Colleges Wales – including a workshop with its network of LDD practitioners;
- SENCO Groups;
- British Association of Teachers of the Deaf;
- The South and North Wales Associations of Special School Headteachers (SWASSH and NWASSH);
- Union Partnership Group;
- Estyn;
- The Children’s Commissioner for Wales; and
- The UK Government’s Department for Education.

4.22 As outlined above, an extensive programme of engagement was undertaken during the period of consultation on the draft Bill and has continued beyond the consultation period. This involved informal targeted sessions (meetings, presentations workshops) with key stakeholders from across the public services and third sector including, but not limited to:

- TSANA;
- SENTW – including attendance at two user-group sessions and the SENTW annual members’ training conference;
- The Association of Transport Coordination Officers (ATCO);
- Children in Wales;
- SWASSH;
- Wales’ Youth Justice Panel;
- Colegau Cymru’s Learning Difficulty and/or Disability Network;
- Care Coordination Forum, Serennu Centre;
- WLGA;
- ADEW’s inclusion sub group;
- The Welsh Language Commissioner's office;

- The Education and Skills Ministerial Advisory Group;
- The UK Government's Department for Education.

4.23 Further stakeholder engagement took place in relation to the development of the draft ALN Code, including:

- A two-day workshop with a specific focus on identification of ALN, the process around IDPs and implementation of the proposed legislative reforms – this comprised representatives from the therapy profession, Association of Educational Psychologists, FE sector, ALNCos/SENCos, SENTW and head teachers.
- A day read through of the draft ALN Code by a group of key partners including representatives for the Children's Commissioner's Office, Educational Psychologists, local authorities, the WLGA, Colegau Cymru, ALNCOs/SENCos, speech and language therapists, special schools head teachers and TSANA.
- Establishment of an ALN Code Content Development Group (CDG), which ran from October 2015 until April 2016 and comprised representatives for key specialist groups and professionals with a direct interest in the legislative reforms and implementation of the proposed new system.

Implementation planning

4.24 An ALN Strategic Implementation Group (ALN-SIG) has been established by the Welsh Government as part of arrangements for the on-going development of implementation planning to support local authorities, education providers, and others to prepare for the ALN Transformation Programme and, in particular, the statutory provisions within the Bill. The ALN-SIG is a strategic partnership group with members from local authority education and social services departments, health boards, FE, the Welsh Government and others.

4.25 The ALN-SIG is considering practical solutions and will provide advice and recommendations to the Welsh Government to support implementation design and planning. Members of the ALN-SIG will also be expected to be

champions for change; promoting and embedding the new system within their organisations and supporting others to do the same.

- 4.26 It is envisaged that the ALN-SIG, which was convened in March 2016, will continue to have a role in monitoring and reviewing implementation arrangements during the transition period that will follow the enactment of the Bill.

Cross-border issues

- 4.27 There has been sustained engagement between the Education and Public Services Group and the UK Department for Education in relation to the potential cross border implications arising from the future interaction of the Children and Families Act 2014 and the Bill.
- 4.28 This work has included two jointly hosted cross-border events comprising local authorities and representatives from early years settings, schools, FEIs and health settings working along the border. The purpose of the workshops was to:
- explore the implications of supporting children and young people with SEN who are attending education settings over the border from their home local authority;
 - discuss the issues that emerge from having two separate legislative systems in operation in England and Wales; and
 - identify potential cross-border implications arising from the future interaction of the Children and Families Act 2014 and the introduction of ALN legislation in Wales.
- 4.29 The workshops were intended to inform advice or guidance that the Welsh Government and the Department for Education expect to jointly produce to facilitate and encourage a consistent policy approach to dealing with issues that arise when children or young people are resident in one country but are educated in the other. Joint guidance is expected to be produced in due course.

5. Power to make subordinate legislation

- 5.1 The Bill contains provisions to make subordinate legislation.
- 5.2 The Welsh Government will consult on the content of the subordinate legislation where it is considered appropriate to do so. The precise nature of consultation will be decided when the proposals are formalised.
- 5.3 The table below sets out, in relation to each provision, the:
- person upon whom, or the body upon which, the power is conferred;
 - form in which the power is to be exercised;
 - appropriateness of the delegated power; and
 - applied procedure, if any, together with the reasons why it is considered appropriate.

Summary of powers to make subordinate legislation for provisions in the Bill.

Section:	Power Conferred on	Form	Appropriateness for delegated power	Procedure	Reason for procedure
3(4): Additional learning provision	Welsh Ministers	Regulations	The definition of ALP included in the Bill has been made by reference to a child's age. Regulations under this section would allow the Welsh Ministers to replace the current references to the age of three with references to a different age, in response to changes in early years policy or evidence based practice. Therefore, delegated powers are appropriate.	Affirmative procedure	Enables provision to be made that may substantially affect provisions of Acts of Parliament, Assembly Measures or Acts of the Assembly.
4(5): Additional Learning Needs Code	Welsh Ministers	Code	The ALN Code will be the principal document used by those responsible for delivering the new system at the operational level, especially local authorities and the staff of schools and FEIs. The power for the Code to impose requirements is intended to cover detail around the discharge by local authorities and governing bodies of their duties in relation to ALN decisions and IDPs, advice and	Affirmative procedure as set out in section 5 of the Bill.	It is considered appropriate that provisions included in the Code and in accordance with which affected bodies must act, should be laid

			information giving, disagreement avoidance/resolution and independent advocacy services. It is appropriate that these detailed operational requirements should be made in the document, which is in effect an operational handbook. Setting out requirements in a Code rather than on the face of the Bill or in regulations provides a practical and easily accessible tool.		before the National Assembly and it be required to approve them before the Code can be issued. The Assembly procedure is set out on the face of the Bill.
4(6): Additional Learning Needs Code	Welsh Ministers	Code	The ALN Code will be the principal document used by those responsible for delivering the new system at the operational level, especially local authorities and the staff of schools and FEIs. Under 4(6) the Code must impose requirements in relation to the notification of decisions that a person does not have ALN within a prescribed period of time (subject to exceptions); the preparation and giving of an IDP within a prescribed period of time (subject to exceptions); and the use of appropriate standard form or forms of IDP, as described in the Code. It is appropriate that these detailed	Affirmative procedure	It is considered appropriate that provisions included in the Code and in accordance with which affected bodies must act, should be laid before the National Assembly and it

			operational requirements should be made in the document, which is in effect an operational handbook. Setting out requirements in a Code rather than on the face of the Bill or in regulations provides a practical and easily accessible tool.		be required to approve them before the Code can be issued. The Assembly procedure is set out on the face of the Bill.
5(4)(b): Sets out when the Code will come into force	Welsh Ministers	Order	The Bill enables the ALN Code to come into force on a day appointed by the Welsh Ministers in an order. This delegated power is necessary to ensure that the appointed day ties in with the detailed transition arrangements following the passing of the Bill.	None	Prescribes a technical and administrative matter that is unlikely to be controversial.
12(1)(c)(ii): Individual development plans: local authorities	Welsh Ministers	Regulations	For cases where a young person is not attending a maintained school or FEI in Wales, the Bill requires that local authorities decide in accordance with regulations whether it is necessary for them to prepare and maintain a plan for a young person. The setting of criteria for determining when it is necessary for them to do so is suitable for delegated powers as this provides the Welsh Ministers with flexibility	Affirmative procedure	As the provisions affect the rights of young persons under the Bill, a higher level of scrutiny is appropriate.

			to amend over time the criteria that should be applied in response to evidence based need and practice. It is, therefore, suitable for delegated powers.		
13(2): Key terms in relation to looked after children	Welsh Ministers	Regulations	The Bill provides a framework for supporting looked after children with ALN. It also enables the Welsh Minister's to prescribe in regulations categories of looked after children (within the meaning given by Part 6 of the Social Services and Well-being Act 2014) who are not looked after by a local authority for the purposes of the Bill. This power will allow categories to be excluded where it may not be necessary or appropriate to include certain groups of looked after child within the specific duties applicable to looked after children (e.g. because they do not have a personal education plan into which an IDP could be incorporated – see the power inserted into section 83 of the Social Services and Well-being Act 2014 by section 14). This delegated power provides the Welsh Ministers with flexibility to amend over time according to evolving policies.	Affirmative procedure, with negative procedure for any subsequent exercise of power.	Prescribes technical and administrative matters, which may be updated from time to time. Children who fell within any new category of exclusion would not be deprived of support for their ALN. Rather, they would be supported via the usual IDP process.

14(2): Amendments to the Social Services and Well-being (Wales) Act	Welsh Ministers	Regulations	Currently there is a regulation power in section 83 of the Social Services and Well-being (Wales) Act 2014 to prescribe the contents of a care and support plan under that Act. The new subsection (2A) makes a PEP a required part of such a care and support plan. However, the new regulation making power in 2B preserves the flexibility to make exceptions as in some cases a PEP might not be necessary or appropriate (such as children who are looked after for occasional short-term breaks, rather than on a continuing basis) and it might be appropriate to change exceptions in light of changing circumstances.	Affirmative procedure with negative procedure for any subsequen t exercise of power	The subsequent negative procedure is appropriate in order to align with the existing procedure set out in the Social Services and Well-being (Wales) Act 2014.
19(10)	Welsh Ministers	Regulations	The Bill places a duty on NHS bodies, having identified a relevant treatment or service or not identifying such a treatment or service to inform the body that maintains the IDP. The delegated powers will enable the Welsh Ministers, in respect of NHS bodies under a duty to inform, to prescribe a period within which the NHS body must do so. There might also be a need to change the period over time. Therefore, delegated powers are be	Negative procedure	Prescribes a technical and administrative matter which is unlikely to be controversial. The period prescribed might need to change from time to

			appropriate		time.
29(6)b	Welsh Ministers	Regulations	Regulations will determine, in the case of a young person, when it is no longer necessary to maintain an IDP to meet the young person's reasonable needs for education or training.	Affirmative procedure	As the provisions affect the rights of young persons under the Bill, a higher level of scrutiny is appropriate.
30(1)(b): Reconsideration by local authorities of decisions under section 29	Welsh Ministers	Regulations	The Bill places a duty on local authorities, if requested to do so, to reconsider a school governing body's decision to cease to maintain an IDP. The delegated powers will enable the Welsh Minister's to prescribe a period within which a child, the child's parent or the young person may make a request to a local authority in relation to such reconsideration. There might also be a need to change the period over time. Therefore, delegated powers are would be appropriate	Negative procedure	Prescribes a technical and administrative matter which that is unlikely to be controversial. The period prescribed might need to change from time to time.
34(3) Request to	Welsh Ministers	Regulations	The Bill enables local authorities to request that the governing body of an FEI becomes responsible for an IDP. If the governing body	Negative procedure	Prescribes a technical and administrative

transfer plan to governing body of further education institution			fails to agree to the request within a period of time prescribed by the Welsh Ministers under this power, the local authority may refer the matter to the Welsh Ministers. There might be a need to change the prescribed period over time. Therefore, delegated powers are would be appropriate.		matter which that is unlikely to be controversial. The period prescribed might need to change from time to time.
35: Regulations about transfer of individual development plans	Welsh Ministers	Regulations	Section 33 deals with the main situations of children and young people moving between educational institutions and provides for the transfer of duties to maintain an IDP accordingly. This power enables further provision and details to be made in connection with transfers. There may be a need to amend this detail over time and on a regular basis in response to evidence based practice. Therefore, delegated powers are appropriate	Negative procedure	Prescribes minor or ancillary matters, which may be updated from time to time. The regulations will provide technical detail to support the principles of transfer set out in the Bill.

37(2): Meaning of “detained persons” and other key terms	Welsh Ministers	Regulations	The Bill allows for regulations to modify, for the purpose of Part 2 of the Bill, the definition (in wider education law) of home authority in relation to looked after children and to apply other modifications to the definition which may be made under another power. This gives flexibility to allow for a different meaning in the context of ALN matters and to take into account whether, in the exercise of the other power, the same or different provision should be made for the ALN context. Delegated powers, therefore, are appropriate to enable this to happen.	Affirmative procedure	Prescribes minor or ancillary matters, which may be updated from time to time. The regulations will provide technical detail to support the principles set out in the Bill.
38(2)(b): Preparing individual development plans for detained persons	Welsh Ministers	Regulations	The Bill requires local authorities to decide in accordance with regulations whether it is necessary for a plan to be maintained for a detained person when they are released from detention. The setting of criteria for determining when it is necessary for them to do so is suitable for delegated powers as this will provide the Welsh Ministers with flexibility to amend over time the criteria that should be applied in response to evidence based need and practice and any changing education	Affirmative procedure	As the provisions affect the rights of detained children and young people under the Bill, a higher level of scrutiny is appropriate.

			policy.		
52(5): List of independent special post-16 institutions	Welsh Ministers	Regulations	Local authorities, when exercising their duties under this Bill, can only secure education or training for a child or young person at an independent special post-16 institution in Wales or England if the institution is on the list maintained by the Welsh Ministers under section 50. This is suitable for delegated powers as it provides the Welsh Ministers with flexibility for example, to add and amend what information must be collated as part of the list; set requirements that must be complied with to be placed on the list; criteria in respect of removal from the list; and provide for rights of appeal against decisions. There may be a need to amend the detailed requirements over time in light of evidence-based practice. It is, therefore, suitable for delegated powers.	Negative procedure	Prescribes technical and administrative matters, which may be updated from time to time.
56(4): Additional Learning Needs Co-ordinator	Welsh Ministers	Regulations	The Bill requires governing bodies of maintained schools and of FEIs in Wales to designate an 'additional learning needs co-ordinator' (ALNCo.) The proposed delegated powers will provide the Welsh Ministers with	Affirmative procedure	Prescribes technical and administrative matters, which may be updated

			flexibility to specify what prescribed qualifications and experience an ALNCo must have, as well as conferring any other functions relating to an ALNCo considered necessary to undertake their duties. These may require updating from time to time in response to evidence based practice and needs and, therefore, are appropriate for delegated powers.		from time to time.
61(5): Duties to provide information and other help	Welsh Ministers	Regulations	The Bill places duties on particular public bodies to provide information and help to local authorities upon request. Delegated powers will enable Welsh Ministers to specify a timescale (and exceptions) within which a body or person must comply (subject to the exception in subsection (2)) with a request under this duty. The timescales may need to change from time to time in the light of evidence based practice and changing practical considerations. Delegated powers, therefore, are appropriate.	Negative procedure	Prescribe an administrative matter, which is unlikely to be controversial.
63(1): Provision of goods or	Welsh Ministers	Regulations	The Bill provides for regulations to enable a local authority to supply goods and services in	Negative procedure	Prescribes administrative

services in relation to additional learning provision			relation to ALP. This is suitable for delegated powers as it enables the Welsh Ministers to set out technical detail about terms and conditions, which may need to change from time to time.		matters affecting public bodies, which may be updated from time to time.
70(1): Regulations about appeals and applications	Welsh Ministers	Regulations	The Bill entitles children, their parents and young people to appeal against certain matters. The detail of how such appeals can be made and determined could change from time to time in response to changing practical considerations and changing policies. It is, therefore, suitable for delegated powers.	Affirmative procedure	The principal substance of the subject-matter will be set out in subordinate legislation made in exercise of the power. The affirmative procedure is appropriate in light of this being about bringing appeals and applications to enforce rights and challenge decisions.

71(1): regulations about procedure	Welsh Ministers	Regulations	The detailed appeal procedures may need to change from time to time in response to changing practical considerations. For example changes in policies with regard to the award of costs or expenses, which need to be consistent across the Tribunal system as a whole. Therefore, delegated powers are appropriate.	Affirmative procedure	The principal substance of the subject-matter will be set out in subordinate legislation made in exercise of the power. The affirmative procedure is appropriate in light of this being about bringing appeals and applications to enforce rights and challenge.
71(2): Regulations about procedure	Welsh Ministers	Regulations	The detailed appeal procedures may need to change from time to time in response to changing practical considerations. These might include the circumstances in which it would be appropriate for the Tribunal's proceedings to be held in public, perhaps in response to changing practices in respect of	Affirmative procedure	The principal substance of the subject-matter will be set out in subordinate legislation made in exercise of

			tribunals more generally. Therefore, delegated powers are appropriate.		the power. The affirmative procedure is appropriate in light of this being about the conduct of appeals and applications to enforce rights and challenge.
71(4): Regulations about procedure	Welsh Ministers	Regulations	The detailed appeal procedures may need to change from time to time in response to changing practical considerations. This might include the making of provision which corresponds to Part 1 of the Arbitration Act 1996, perhaps in response to changing practices in respect of tribunals more generally. Therefore, delegated powers are appropriate.	Affirmative procedure	The principal substance of the subject-matter will be set out in subordinate legislation made in exercise of the power. The affirmative procedure is appropriate in light of this being about

					bringing appeals and applications to enforce rights and challenge.
72(3) NHS Bodies: evidence and Tribunal recommendations	Welsh Ministers	Regulations	The Bill provides the Education Tribunal with the power to make a recommendation and to an NHS Body and requires the NHS body to report back to the Tribunal in relation to that recommendation. The Welsh Ministers have a delegated power to prescribe the period of time within which a report must be submitted. There might be a need to change the prescribed period over time. Therefore, delegated powers are would be appropriate.	Negative procedure	Prescribes a technical and administrative matter which that is unlikely to be controversial. The period prescribed might need to change from time to time.
73: Compliance with orders	Welsh Ministers	Regulations	The Bill enables the Welsh Ministers to prescribe in regulations a period within which the governing body or local authority concerned must comply with an order of the Education Tribunal for Wales, beginning with the date on which it is made. This may need to change from time to time to reflect evidenced based practice. It is, therefore, suitable for	Negative Procedure	Prescribes technical and administrative matters, which may be updated from time to time.

			delegated powers.		
77(1): Regulations about disclosure and use of information	Welsh Ministers	Regulations	This power allows for the disclosure and use of information for the purposes of this Part of the Bill or other purposes related to the education of a child or young person. This includes, for example, disclosure of an IDP without consent of the person to whom it relates. Provisions about disclosure are likely to need change from time to time to reflect changing practical considerations such as developments in case law. Delegated powers, therefore, are appropriate.	Affirmative procedure	The principal substance of the subject-matter will be set out in subordinate legislation made in exercise of the power. These regulations may involve the use of information without consent, therefore the higher level of scrutiny is appropriate.
78(1): Parents and young people lacking capacity	Welsh Ministers	Regulations	The Bill requires the Welsh Ministers to make regulations to ensure that parents who are lacking mental capacity, at a time where they have a right to make a decision or represent their views, are sufficiently represented by an	Affirmative procedure	Enables provision to be made which relates to the application of

			appropriate person. These provisions may need to be amended from time to time to reflect evidence based practice and, therefore, are suitable for delegated powers. An equivalent power has been inserted into the Equality Act 2010 by virtue of Schedule 1 to the Bill, in relation to disability discrimination claims under that Act.		legislation (including Acts of Parliament and Acts and Measures of the Assembly) and therefore the higher level of scrutiny is appropriate.
80(8): Case friends	Welsh Ministers	Regulations	Case friends may be appointed for children who lack sufficient understanding to exercise rights conferred on them by the Bill and understand information and documents which must be presented to them under the Bill. The Bill sets out the main provisions on case friends – what they are, may do and how they are appointed and removed. This power is to make further provision about case friends. This detail is suitable for delegated powers as the Welsh Ministers may need to amend over time, including in response to changing circumstances in relation to how case friends might be used to support the rights of the	Affirmative procedure	The principal substance of the subject-matter is set out in the Bill but nevertheless regulations made under this section will affect how the rights of children are exercised. Therefore a higher level of scrutiny is

			child/young person. Therefore, delegated powers are appropriate.		appropriate.
84 Power to amend duties to secure additional learning provision in Welsh	Welsh Ministers	Regulations	The Bill includes six sections under which bodies have a duty to take all reasonable steps to secure additional learning provision in Welsh. This section provides the Welsh Ministers with the power to make regulations that omit the words “take all reasonable steps to” from any or all of these provisions, or provide that a provision has effect as if those words were omitted for a prescribed purpose; in relation to a prescribed body; or for a prescribed purpose in relation to a prescribed body. Furthermore, if the words “take all reasonable steps to” omitted from every relevant section, section 84 provides for the Welsh Ministers to make regulations that omit section 83 of the Bill (Review of additional learning provision in Welsh). These powers will allow the Welsh Ministers to ensure that the requirements the Bill places on bodies in relation to provision made through the medium of Welsh are progressively strengthened to take account of improvements in the	Affirmative Procedure	Enables provision to be made that may substantially affect provisions of Acts of Parliament, Assembly Measures or Acts of the Assembly.

			availability of Welsh language provision made over time. Therefore, delegated powers are appropriate.		
85(6): Constitution of the Education Tribunal for Wales	Welsh Ministers (with the agreement of the Secretary of State)	Regulations	The Bill sets out how the Education Tribunal for Wales is constituted. Delegated powers will allow Welsh Ministers, with the agreement of the Secretary of State, to: (a) provide for the jurisdiction of the Tribunal to be exercised by such number of tribunals as the President may determine from time to time, and (b) make any other provision in connection with the establishment and continuation of the Tribunal which are considered necessary or desirable. Regulations made under this section will provide administrative detail that may need to be updated from time to time in response to changing policies in relation to the tribunals more generally operate. Therefore, delegated powers are appropriate.	Negative procedure	Prescribes administrative matters, which may be updated from time to time.
86(2): The President and	Welsh Ministers (with	Regulations	The Bill sets out provisions for appointing a person as President, and appointing a person	Negative	Prescribes technical and

members of the panels	the agreement of the Secretary of State)		as member of the legal chair panel or lay panel. Delegated powers enable the Welsh Ministers to prescribe requirements that a person must satisfy to be appointed as a member of the lay panel. These would be technical in nature and may be updated from time to time to take account of new considerations. Therefore, delegated powers are appropriate.	procedure	administrative matters, which may be updated from time to time.
88: Meaning of “in the area” of a local authority – inserting subsection (3C) into section 579 of the Education Act 1996	Welsh Ministers	Regulations	Section 82 of the Bill inserts a regulation making power into section 579 of the Education Act 1996 which will allow the Welsh Ministers to make further provision about the meaning of “in the area” of a local authority in Wales. This gives flexibility to make further provision, for example, in light of any uncertain situations which may arise.	Affirmative procedure	The main provision is set out in the Act and this power allows for further detail to be made which is likely to be administrative, dealing with which local authority is responsible for a person.

90(1): Power to make consequential and transitional provision etc.	Welsh Ministers	Regulations	Delegated powers are suitable for giving Welsh Ministers the flexibility of making any supplementary, incidental or consequential provision and any transitory, transitional or saving provision, if they consider it necessary or expedient for the purposes of, in consequence of, or for giving full effect to any provision of the Bill. This enables Welsh Ministers to amend, repeal or revoke any enactment and statutory documents.	Affirmative procedure if amending primary legislation. Otherwise negative.	Affirmative where they enable provision to be made that amends provisions of Acts of Parliament, Assembly Measures or Acts of the Assembly, in which case the higher level of scrutiny is appropriate. Otherwise, the negative procedure applies – these changes are confined to being consequential etc., and linked
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					to the purposes of the Act.
92(8): General interpretation	Welsh Ministers	Regulations	This power is to amend the definition of “NHS body” used in the Bill so that it includes a special health authority established under section 22 of the National Health Service (Wales) Act 2006 (c.42). This would result in the duties under sections 18 and 19 (about additional learning provision) applying to such authorities. No such authorities currently exist in Wales, but if they did in future this regulation making power provides scope for including them in the duties if appropriate.	Affirmative procedure	The regulation making power allows only a very restricted administrative change.
93(2): Coming into force	Welsh Ministers	Order	Aside from sections 1 and 84 - 88, provisions of the Bill come into force on a day appointed by the Welsh Ministers in an order made by statutory instrument. This delegated power is necessary in order to ensure that the appointed day ties in with the detailed transition and implementation arrangements following the passing of the Bill.	None	Prescribes a technical and administrative matter.

Schedule 1, para 17(5)(f) (inserting replacement paragraph 6A(7) into Schedule 17 to the Equality Act 2010)	Welsh Ministers	Regulations	Case friends may be appointed for children who lack sufficient understanding to exercise the right to make a disability discrimination claim conferred on them by the Equality Act 2010. The Act as amended by the Bill, sets out the main provisions on case friends – what they are, may do and how they are appointed and removed. This power (which is similar to, but extends the existing regulation making power in paragraph 6A of Schedule 17 to the Equality Act) is to make further provision about case friends. This detail is suitable for delegated powers as the Welsh Ministers may need to amend over time, including in response to changing circumstances in relation to how case friends might be used to support the rights of the child. Therefore, delegated powers are appropriate. An equivalent power has been included at section 76(8) of the Bill in relation to appeals made under the Bill.	Affirmative procedure	The principal substance of the subject-matter is set out in the Act as amended by the Bill, but nevertheless regulations made under this section will affect how the rights of children are exercised. Therefore, a higher level of scrutiny is appropriate.
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Schedule 1, para 17(5)(g) (inserting new paragraph 6F(1) into Schedule 17 of Equality Act 2010)	Welsh Ministers	Regulations	This power, inserted into the Equality Act 2010 by the Bill, requires the Welsh Ministers to make regulations to ensure that parents who are lacking mental capacity, at a time where they have a right to make a disability discrimination claim on behalf of their child, are sufficiently represented by an appropriate person. It also requires the Welsh Ministers to make regulations to ensure persons over compulsory school age that lack capacity are sufficiently represented. These provisions may need to be amended from time to time to reflect evidence based practice and, therefore, are suitable for delegated powers. An equivalent power has been included at section 78 of the Bill in relation to appeals made under the Bill.	Affirmative procedure	Enables provision to be made that relates to the application of legislation (including Acts of Parliament and Acts and Measures of the Assembly) and, therefore, the higher level of scrutiny is appropriate.
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NB: At section 14(5) of the Bill an amendment is made to section 83(5)(a) of the Social Services and Well-being (Wales) Act 2014 in effect limiting what may be done in those regulations, so that it must be consistent with the provisions of the Bill. However, this is not a new power so has not been included in the table above.

In addition, section 50 amends section 160 of the Education Act 2002 so as to add to the list of matters which must be covered in regulations under that section (prescribing information to be included in an application to enter an independent school in the register). This is related to the repeal of section 347 of the Education Act 1996 in section 54.

Existing regulation making powers under the Equality Act 2010 relating to disability discrimination claims that will be heard by the Education Tribunal, have been changed from negative to affirmative procedure.

6. Regulatory Impact Assessment

- 6.1 A regulatory impact assessment has been completed for the Bill and follows in Part 2.
- 6.2 The regulatory impact assessment is not set out to mirror the structure of the Bill. Rather, the regulatory impact assessment presents the costs as they relate to the main changes brought about by the Bill, bringing together the relevant provisions.
- 6.3 Whilst standard practice is to set out estimated cost projections over a five year period, the approach taken in this regulatory impact assessment is to set out the costs over a four year period to coincide with the term of the current National Assembly for Wales.

Summary – regulatory impact assessment

Additional Learning Needs and Educational Tribunal (Wales) Bill

Preferred option: introduce legislation to improve the current special educational needs (SEN) system to reduce existing conflict in the system and improve outcomes for young people with additional learning needs (ALN). The specific options include introducing:

- statutory individual development plans (IDPs) for young people with ALN. See pages 97 and 142
- a requirement for local authorities to avoid *and* resolve disagreements. See pages 104 and 225
- a responsibility for local authorities to assess need post-16 and to secure specialist further education provision. See pages 107 and 240
- changes to the registration and approval of independent schools in respect of special educational needs. See pages 111 and 254
- changes to the statutory basis of special educational needs co-ordinators in education. See pages 114 and 274
- changes to the statutory basis of special educational needs co-

ordinators in health. See pages 119 and 286 • Requirement for local authorities to appoint an early years ALN lead officer. See pages 123 and 293 • The power for Welsh Ministers to determine where responsibility lies to maintain an IDP where a disagreement exists between a local authority and an FEI. See pages 129 and 301 • The requirement for Welsh Ministers to undertake a five yearly review to assess the demand for, and supply of, additional learning provision delivered through the medium of Welsh. See pages 126 and 297		
Stage: stage 3	Appraisal period: 2017-18 to 2020-21	Price base year: 2016-17
Total cost Total: £7,821,560 Present value: £7,221,660	Total benefits Total: £4,272,740 Present value: £3,923,530	Net present value (NPV): £3,298,130

Administrative costs

Costs Ongoing costs: Overall, the Bill is expected to result in cost savings. There are, however, four organisations which are likely to incur additional ongoing costs: Further education institutions (FEIs): £92,800 (£23,200 per year) Estyn: £172,000 (£43,000 per year) Welsh Government: £1,240 (£310 per year). Transition costs: it is likely nine public sector organisations will incur transition costs. This includes: local authority education services, local authority social services, SENTW, mainstream schools, health boards, FEIs, Estyn, pupil referral units and the Welsh Government. The total transition costs are £11,655,160. Welsh Government transition costs are £1,972,510, leaving £9,682,650 transition costs which fall to the remaining public sector organisations. The Welsh Government is supporting the implementation of the Bill through

transition grants.			
Transition: £11,655,160	Recurrent: £266,040	Total: £ 11,921,200	PV: £10,986,140
Cost savings: Overall, there is potential for the Bill to achieve estimated ongoing savings of £4,766,340 over the four year period 2017-18 to 2020-21. This is an estimated saving of £1,191,585 per year. There is potential for local authority education services to save an estimated £2,750,740 over the four year period, with Careers Wales potentially saving and estimated £1,954,400 and SENTW potentially saving £61,200 over the four year period. The estimated savings are expected to be achieved from provisions in the Bill which aim to remove the current adversarial nature of the statement process. As well as recognising the potential savings which could be realised from the introduction of the preferred options, the regulatory impact assessment acknowledges it is unknown the extent to which the potential savings will be achieved. Thus, when calculating the savings, mid-range savings have generally been used to avoid overstating the potential savings. In addition, where it has not been possible to identify the potential savings due to diverse practices likely to be put in place when implementing provisions within the Bill, illustrative savings are presented within the text, but are not then included in summary Table 70 and Table 71.			
Transition: £0	Recurrent: £4,766,340	Total: £4,766,340	PV: £4,376,790
Net administrative cost: £7,154,860			

Compliance costs

Independent schools, parents and providers of dispute resolution services will incur additional costs over the four year period. There are, however, net benefits for parents and service providers when the benefits set out below are taken into account.

Independent schools will incur additional estimated costs of £17,300 over the

four year period. This consists of £2,100 transition costs and £15,200 ongoing costs. The estimated additional ongoing cost per year is £3,800.

There will be an additional cost to parents of £592,400 over the four year period due to extended rights of appeal, this is equal to £148,100 per annum.

Providers of dispute resolution services will incur additional costs of £57,000 over the four year period due to extended rights of appeal, this is equal to £14,250 per annum.

Transition: £2,100	Recurrent: £664,600	Total: £666,700	PV: 612,310
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Other costs

The regulatory impact analysis has identified no economic, social or environmental costs associated with introducing the preferred options.

Transition: £0	Recurrent: £0	Total: £0	PV: £0
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Unquantified costs and dis-benefits

There are a number of costs, dis-benefits and risks associated with introducing the Bill, which it has not been possible to quantify and the costs are unknown. These include:

Cost to public administration

- ongoing current and future costs to schools of complaints about plans and provision
- ongoing current and future costs to further education institutions of complaints about plans and provision
- costs associated with staff turnover in relation to the ALNCo minimum qualification
- costs associated with developing the ALNCo minimum qualification
- current ongoing cost to LHBS of co-ordinating health provision for children and young people with ALN

These are set out by provision and by organisation throughout the regulatory impact assessment.

Benefits

The regulatory impact analysis has identified potential estimated savings of £3,921,900 over the four year period to parents of young people with additional learning needs. This is a potential estimated saving of £980,475 a year.

There is potential for providers of dispute resolutions services to make savings of £350,840 over the four year period. This is a potential estimated saving of £87,710 a year.

The unquantified benefits are set out in the options section.

Transition:	Recurrent:	Total:	PV:
£0	£4,272,740	£4,272,740	£3,923,530

Unquantified benefits

There are a number of benefits associated with introducing the Bill, which it has not been possible to quantify. These include:

Benefits to public administration

- potential savings to further education institutions as a result of not having to maintain college-based plans for all young people with ALN as a result of the provision to introduce local authority maintained IDPs for some young people with ALN who attend further education
- potential savings to local authorities associated with any reduction in the number of disagreements as a result of the provision requiring local authorities to avoid *and* resolve disputes
- potential savings to social services and health services arising from the removal of the current requirement for them to provide advice in all statutory assessment cases, irrespective of its relevance

Benefits to other organisations

- potential savings to providers of dispute resolution services as a result

of the provision requiring local authorities to avoid *and* resolve disputes

Benefits to children, young people and parents

- potential savings to parents associated with any reduction in the number of disagreements as a result of the provision requiring local authorities to avoid and resolve disputes

Social benefits

- social benefits associated with children and young people with ALN achieving their full potential including increased attainment, college attendance, independent living and future employment.
- These are set out by provision and by organisation throughout the regulatory impact assessment.

Key evidence, assumptions and uncertainties

The key evidence, assumptions and uncertainties are set out in the introduction. More detail can be found in the discussions on the costs and benefits of the individual proposals.

PART 2 - IMPACT ASSESSMENT

7. Options

- 7.1 This chapter outlines the options associated with each of the following provisions set out in the Bill:
- Plans to support children and young people with additional learning needs
 - Dispute resolution
 - Responsibility for assessing need post-16 and for securing specialist further education provision
 - Registration and approval of independent schools in respect of special educational needs
 - Statutory basis of the special educational needs co-ordinators in education
 - Statutory basis of special educational needs strategic co-ordinators in health
 - Requirement for local authorities to appoint an early years ALN lead officer
 - Reviews of additional learning provision through the medium of Welsh
 - The power for Welsh Ministers to determine where responsible lies for maintaining an IDP.

Plans to support children and young people with additional learning needs

- 7.2 Currently, young people with additional learning needs (also referred to as special educational needs) will have one or more of the following plans:
- a. A statutory statement of special educational needs (SEN)
 - b. A non-statutory individual education plan
 - c. A statutory learning and skills plan
 - d. A college based non-statutory plan.
- 7.3 Which of the above plans a child or young person has, will depend on the statutory basis of the special education provision and the stage the young person is in their school career. Children and young people with the most complex needs, for example, will have a statement of SEN and an individual education plan whilst attending school and will have a learning and skills plan whilst attending post-16 education at an FEI. Children and young people with mild to moderate additional learning needs (ALN) will have an individual education plan whilst attending school and a college-based plan whilst in post-16 further education.
- 7.4 As well as having diverse plans, children and young people currently have diverse rights. Children and young people who have a statement of SEN can challenge decisions made by the local authority regarding provision, by appealing to the Special Educational Tribunal for Wales (SENTW). Children and young people who have an individual education plan are not able to appeal to SENTW to challenge decisions made by schools regarding provision.

Option one: do nothing

- 7.5 Under option one, the existing approach regarding education plans to support children and young people with additional learning needs would continue.

Advantages

- 7.6 Option one does not involve any additional costs.

Disadvantages

- 7.7 The current system is inequitable. Children and young people with the most severe needs and who fall above the threshold for having a statement of SEN, have service provision which is protected by law. In contrast, children and young people whose needs are less severe and who fall below the threshold for having a statement of SEN do not have protected provision or statutory rights.
- 7.8 The existing eligibility threshold for a statement of SEN is not defined in the Special Educational Needs Code of Practice for Wales¹³. Consequently, local authorities can interpret eligibility in diverse ways, resulting in inconsistency between local authorities.
- 7.9 The existing practices and processes associated with statements of SEN are inefficient and inflexible, and can result in ineffective provision for children and young people.
- 7.10 The current arrangements for reviewing and amending statutory plans are administratively cumbersome and involve schools inviting a prescribed set of professionals, regardless of whether their presence and input is necessary to the effectiveness of the review. Statutory reviews take considerable time to organise and prepare for. Amending a plan can, therefore, be a lengthy process and can result in learners experiencing delays in receiving the most appropriate support.
- 7.11 In addition, there is little flexibility when reviewing the provision for children and young people who are on the threshold for receiving statutory support. Where, for example, the outcomes of a statutory plan have been achieved for a child or young person, concern from parents about losing statutory entitlement may result in pressure for the plan and its provision to be maintained, despite this not necessarily being the most effective provision for the young person.

¹³ <http://learning.gov.wales/docs/learningwales/publications/131016-sen-code-of-practice-for-wales-en.pdf>

- 7.12 The current system does not facilitate smooth transitions between distinct stages of education. That is, between early years and school and between school and post-16 education. This can have a negative impact on the education of learners.
- 7.13 In addition, the current system does not provide all children and young people with ALN a right of appeal to the Special Educational Needs Tribunal for Wales. Unlike children and young people of compulsory school age, young people in post-16 education are currently not able to appeal to the Special Educational Needs Tribunal Wales.

Option two: replace existing support plans with a single plan for children and young people with additional learning needs

- 7.14 Under option two, the existing statutory and non-statutory plans for learners with SEN and LDD would be replaced with a single statutory individual development plan (IDP) for all children and young people with ALN.
- 7.15 The IDPs will be maintained by schools, further education institutions (FEIs) or by local authorities. It is expected those children and young people who currently have a non-statutory plan will have a school/FEI maintained IDP and those who have statutory plans will have a local authority maintained IDP
- 7.16 Option two is the preferred option.

Advantages

- 7.17 There would be no additional ongoing costs associated with developing and reviewing IDPs following their implementation¹⁴. The proposed definition of ALN is similar to current definitions of SEN and LDD¹⁵. Thus, the number of learners who would be defined as having ALN should be the same as those who currently have SEN or LDD.
- 7.18 Using the term additional in relation to learning needs would have the benefit of helping to avoid the stigma associated with the existing term of special and move the focus to the additional support children and young people require to access education.
- 7.19 All children and young people with ALN would be treated equitably regardless of the severity of their need. All learners in early years settings, schools (including maintained nurseries, pupil referral units and special schools) and FEIs who require additional learning provision (ALP) would be entitled to a statutory plan, the IDP.

¹⁴ It is possible, however, FEIs could incur additional ongoing costs of £23,200 responding to appeals made by young people with LLD and PMLD as a result of extending the right of appeal to SENTW to include young people up to the age of 25 who have ALN who attending FE.

¹⁵ See the introduction of the term Additional Learning Needs section of the explanatory memorandum.

- 7.20 Introducing statutory plans for all young people with ALN would enable a greater focus on early identification and support. Early intervention could result in cost savings through, for example, preventing needs from escalating.
- 7.21 In addition, all children and young people with ALN will have a right of appeal to the Education Tribunal for Wales (currently the Special Educational Needs Tribunal Wales). Option two, by extending the right of appeal to all learners, including those in post-16 provision, would introduce more equitable rights of appeal for children, their parents and young people.
- 7.22 The processes and practices introduced to support IDPs should facilitate the introduction of a more efficient and flexible approach to assessment and review. This would include, for example, requiring health and social services practitioners to be invited to participate in assessments and reviews only where their input would benefit the learner¹⁶. There is potential, therefore, for cost savings both in terms of professional time and in the time involved in organising and co-ordinating assessment and review meetings.
- 7.23 Learners and their families should also benefit as delays in planning and/or reviewing plans are reduced as it will be easier to organise meetings where fewer professionals are invited.
- 7.24 Having a single plan for all children and young people with ALN will remove the existing parental pressure to maintain the provision set out in a statement of SEN after the objectives of the plan have been achieved and the same level of provision is no longer warranted. This pressure stems from concern about loss of entitlement to a statutory plan if the provision is reduced. Removing the existing boundary between statutory provision for the most complex needs and non-statutory provision for learners with less complex needs will overcome this concern.

¹⁶ Currently when making an assessment a local authority must seek advice from the child's parent, the head teacher (or equivalent), the health authority, who must obtain the advice from a fully registered medical practitioner, an educational psychologist, social services authority and any other advice which the authority consider appropriate for the purpose of arriving at a satisfactory assessment (see the Education (Special Educational Needs) (Wales) Regulations 2002 (2002 No 152)).

- 7.25 Removing the distinction between statutory and non-statutory provision is expected to lead to a more flexible approach to planning which has potential to reduce cost and increase effectiveness as services could be better targeted to meet the needs of the learner.
- 7.26 Having a single plan to cover children and young people will facilitate greater consistency in ALN practices and processes, with all practitioners operating within a single regime, across early years, schools and further education.
- 7.27 In addition, a single plan has potential to improve planning around the transitions between distinct stages of education – early years, school and further education – since it is expected a single plan will promote continuity in planning. Under the current system there are a range of plans which reflect distinct education stages. A single plan should facilitate the delivery of uninterrupted provision.
- 7.28 Smooth transitions between distinct education stages should help prevent the consequences of poor transitions, whereby the benefits gained by learners during childhood are undermined when entering adulthood.

Risks

- 7.29 Increasing the number of children and young people who have statutory entitlement to provision could result in increased pressure for provision.
- 7.30 Under option two, the number of young people who will have a statutory plan will increase from 13,318 to 107,668¹⁷. There is potential for a proportion of the additional 94,350 children, young people and/or their parents to have increased expectations of a statutory plan compared to their previous non-statutory plan and to challenge decisions regarding provision.
- 7.31 This may result in additional disagreements regarding provision set out in school and FEI maintained IDPs. Where this occurs, there will be cost

¹⁷ Based on 2015/16 figures and on the assumption that all the young people who are currently identified as having special educational needs are subsequently identified as having additional learning needs.

implications¹⁸. This risk is, however, considered to be low due both to the introduction of person-centred planning(PCP)¹⁹ and additional workforce development, as part of the professional learning offer, including training around identifying and differentiating teaching for children and young people with additional learning needs.

¹⁸ There are not expected to be any additional appeals to tribunal since the Bill puts in place provisions around disagreement resolution which focus on ensuring where disagreements occur about an IDP or the provision it contains, the matter is considered and resolved at the most local level possible.

¹⁹ Section 6 of the Bill provides for the views, wishes and feelings of children and young people to form a core element of the new system and emphasises the importance of children and young people, and their parents participating as fully as possible in the decisions that are taken in relation to their ALN and the ALP that is provided for them.

Dispute resolution

- 7.32 Currently, local authorities are required to put in place arrangements for avoiding *or* resolving disputes in relation to decisions made about statements.
- 7.33 More generally, local authorities are required to make arrangements for avoiding or resolving disputes about special education provision between schools and children, their parents and young people.

Option one: do nothing

- 7.34 Under option one, the existing approach to dispute resolution would remain.

Advantages

- 7.35 There are no additional costs related to option one.

Disadvantages

- 7.36 The current arrangements may not be as efficient as they could be as local authorities are not currently required to focus on avoiding disputes. Thus, there is potential for disagreements which could have been avoided to become unnecessarily confrontational and time consuming.

Option two: extend the scope of current arrangements

- 7.37 Option two differs to option one in two ways. First, the scope of existing arrangements will be extended to include all young people with additional learning needs, including those in further education.
- 7.38 Second, local authorities will be required to put in place arrangements for avoiding *and* resolving disagreements. Currently, local authorities are required to put in arrangements for avoiding *or* resolving disputes.
- 7.39 Option two is the preferred option.

Advantages

- 7.40 Focussing on avoiding and resolving disagreements should increase the efficiency of dispute resolution and should reduce costs to local authority education services and to children, their parents and young people by reducing instances of disagreements escalating, including avoiding disputes escalating to tribunal.
- 7.41 Evidence from a local authority which has introduced the role of additional learning needs family support officer as a way to avoid disagreements has seen a significant fall in the number of appeals to tribunal.
- 7.42 The additional learning needs family support officer is responsible for providing advice and support with assessments, statements and annual reviews, including preparation for and support at meetings²⁰.
- 7.43 Children and young people should also benefit through having a more efficient and less formal approach to resolving disagreements.

Risks

- 7.44 Having a clear requirement to have both avoidance and resolution arrangements potentially increases the costs of such arrangements. Where

²⁰ http://fis.carmarthenshire.gov.uk/eng/aln_support_e.htm

this is not effectively implemented, there is a risk there will be an increase in costs without the expected savings resulting from avoiding expensive resolution or tribunal arrangements.

Responsibility for assessing need post-16 and securing specialist further education provision

- 7.45 Currently, responsibility for assessing provision for post-16 learners with learning difficulties and/or disabilities and for securing specialist post-16 education provision for learners with the most severe needs is the responsibility of the Welsh Ministers. Careers Wales undertake assessments on behalf of the Welsh Ministers and Welsh Government officials secure placements on behalf of the Welsh Ministers.
- 7.46 During the time a young person is making the transition from school to post-16 education, the following takes place:
- as part of the annual review and transition process, schools, FEIs and/or independent specialist colleges provide information about the learner to Careers Wales
 - Careers Wales use the information when assessing the special educational needs of the learner and when drawing up the learning and skills plan
 - where a young person has complex needs which requires the support of specialist post-16 provision, Career Wales makes an application to the Welsh Ministers to consider
 - the Welsh Ministers are responsible for securing and funding post-16 specialist provision.

Option one: do nothing

- 7.47 Under option one, existing responsibilities for assessing need and for securing specialist post-16 education would remain.

Advantages

- 7.48 There would be no additional costs associated with option one.

Disadvantages

- 7.49 Under the current arrangements, local authorities are responsible for assessing need and for securing specialist education provision for children and young people up to the age of 16 or 19 where the young person has a statement. Following this, responsibility is undertaken by Careers Wales and Welsh Government officials on behalf of Welsh Ministers.
- 7.50 There is a risk the knowledge a local authority has built up about the learner over their school career to be lost on transition. Unlike local authorities, Welsh Government officials and officials in Careers Wales have not developed relationships with the young person and, thus, have limited information on which to base decisions.
- 7.51 In addition, existing relationships end and new ones have to be developed. This can be frustrating for young people and their parents.

Option two: make local authorities responsible for planning and securing specialist further education provision for learners with ALN

- 7.52 Under option two, where learners have a local authority maintained IDP, responsibility for assessing need and securing post-16 specialist provision would be transferred to local authorities. The existing budget used by Welsh Ministers to plan and secure specialist post-16 provision would be transferred to local authorities when they take on these responsibilities. Thus, local authorities will not be subject to additional costs.
- 7.53 In addition, Welsh Ministers would be required to maintain, and publish, a list of independent specialist post-16 colleges.
- 7.54 Local authority education services would work directly with schools and post-16 providers to identify and secure the necessary provision to meet the learners' needs. Local authorities would not be able to place a young person in a college which is not on the list of independent specialist colleges maintained by Welsh Ministers.
- 7.55 Option two is the preferred option.

Advantages

- 7.56 Existing relationships would be maintained and the knowledge the local authority has built up about the young person will not be lost on transition to further education.
- 7.57 Transferring responsibility to local authorities would enable local authority education departments and local authority social services departments to collaborate when negotiating the development of, and cost of, provision. In this way, the local authority is better positioned than Welsh Government officials to encourage the development of local packages of support.
- 7.58 In addition, taking on a direct role would allow the local authority to work with local further education institutions in developing local provision for young

people with complex needs. This has potential to reduce out-of-county placements and to make associated savings. Young people and their families would benefit from the option of having local provision.

- 7.59 The Welsh Ministers' list of independent specialist colleges would provide assurance to local authorities and to young people regarding the standards and quality of teaching.

Risks

- 7.60 Currently, the assessment and funding processes are undertaken by separate bodies – Careers Wales and Welsh Government. Under option two, local authorities would be both the funder and the assessor. There is a risk the objectiveness of the assessment will be less certain than it currently is. That is, the cost could be more of a determining criterion than it currently is.
- 7.61 This risk is low, since local authorities can be held to account for decisions they make in terms of provision for young people with special educational needs.
- 7.62 In addition, the Welsh Government will clarify the criteria for specialist further education placements.
- 7.63 There is a risk the knowledge Careers Wales has built up about independent specialist colleges in terms of the support they can provide specific groups of young people with additional needs will be lost. This risk is expected to be low and can be mitigated by Careers Wales passing on information to local authorities.

Registration and approval of independent schools in respect of SEN

- 7.64 Currently, there are two separate legislative systems in operation for the registration and approval of independent schools in Wales in respect of SEN²¹.
- 7.65 Any establishment wishing to operate as a school in the independent sector must be registered with the Welsh Ministers. The independent school should also register if it intends to admit learners with SEN.
- 7.66 In addition, an independent school must be approved by the Welsh Ministers to generally admit children with a statement of SEN. Where independent schools are approved to generally admit children and young people with a statement of SEN they are monitored annually by Estyn.
- 7.67 Where an independent school has not been approved to admit children with a statement of SEN, it is possible for a local authority to seek the Welsh Ministers' consent to an individual placement of a child with a statement of SEN within the school. Where this is the case, Estyn does not carry out annual monitoring of these settings.
- 7.68 It is possible for parents to make their own arrangements to pay for a place for a child or young person at an independent school, which has not been approved by the Welsh Ministers, insofar as the authority maintaining the statement is satisfied the arrangements are suitable.

Option one: do nothing

- 7.69 Under option one the current arrangements for registering and approving independent schools who wish to admit children and young people with a statement of SEN will remain.

²¹ Section 160 of the Education 2002 requires schools to register in respect of SEN and section 347 of the Education Act 1996 requires schools to gain the approval of the Welsh Ministers to admit a child with a statement of SEN.

Advantages

- 7.70 There are no additional costs associated with option one.

Disadvantages

- 7.71 The Two separate legislative systems which, to a certain extent, replicate each other in respect to SEN will continue.
- 7.72 Under the existing arrangements independent schools who are approved by Welsh Ministers to generally admit children and young people with a statement of SEN, can admit any child or young person with a statement, regardless of the specific level of provision required.
- 7.73 In addition, it would continue to be possible for children and young people with SEN to have a placement at an independent school which is not monitored by Estyn. This would happen where a school did not have the approval of the Welsh Ministers to generally admit children and young people with a statement of SEN but the local authority had gained consent to an individual placement of a child with a statement of SEN within the school.

Option two: reform the system for the registration and approval of independent schools in respect of SEN

- 7.74 Option two would introduce a requirement for Welsh Ministers to maintain, and publish, a register of independent schools.
- 7.75 As part of the registration process, schools will be required to set out the types of additional need they are able to cater for. Prior to placing a child or young person at an independent school, the local authority must be satisfied the school can cater for the ALP required to meet the young person's additional learning needs, as set out in their IDP.
- 7.76 Option two is the preferred option.

Advantages

- 7.77 The publication of the independent schools' register, combined with the changes to the registration system, would clearly set out for local authority education services and parents of learners with ALN the additional learning provision an independent school can cater for.
- 7.78 Clearer information on what a school can cater for would reduce the risk of inappropriate placements for learners with ALN into an independent school.
- 7.79 Option two provides a level of assurance to the local authority and the parent, that the independent school can meet the needs of the learner, as identified within their IDP. In addition, all independent schools who have registered their ALP will be monitored annually by Estyn, providing assurance to all children, young people and their parents about the quality and standards of teaching and provision at the school.

Disadvantages

- 7.80 There are no disadvantages associated with option two.

Statutory basis of special educational needs support co-ordinators in education

- 7.81 The existing approach to co-ordinating support for children and young people with SEN in early years settings and in schools is through a special educational needs co-ordinator (SENCo). The SENCo has responsibility for coordinating SEN provision for children including training other staff, coordinating with a range of agencies, liaising with families, teaching and supporting children and young people, and maintaining records.
- 7.82 Research findings indicate effective co-ordination of SEN provision in a mainstream school is a key determinant of effective provision for children and young people with SEN²².
- 7.83 While the SENCo is a recognised role, there is currently no requirement for early years settings, mainstream schools, pupil referral units or FEIs to have a designated member of staff who undertakes the role of a SENCo.
- 7.84 The Special Educational Needs Code of Practice for Wales has no mandatory basis and, thus, Welsh Ministers are currently unable to prescribe how the SENCo role should be undertaken. The code sets out the key responsibilities the role of a SENCo may include but provides little guidance about the time and support that should be given to the role. Consequently, there is no agreed definition of the role at either the local or national level and the role is undertaken in diverse ways.
- 7.85 FEIs do not have SENCos. Rather, young people with LLD in further education have access to the FEIs support services.

22 <http://www.assembly.wales/laid%20documents/gen-ld7255%20-%20written%20response%20to%20the%20enterprise%20and%20learning%20committee,%20rapporteur%20group%20report%20on%20support%20for%20-08102008-100412/gen-ld7255-e-english.pdf>

Option one: do nothing

- 7.86 Under option one the current approach to co-ordinating provision for children and young people with SEN and LDD would continue. That is, there would be no statutory requirement for schools, or other education settings, to appoint a SENCo and no requirement for FEIs to establish support services.

Advantages

- 7.87 There are no additional costs associated with option one.

Disadvantages

- 7.88 Currently, there is no requirement for education settings to have SEN co-ordinators. Although schools do have them, there is no consistent approach across Wales in terms of who should be a SENCo, what qualifications the SENCo should have and how the role should be undertaken. Whilst SENCos are generally qualified teachers, it is also possible for SENCos not to be qualified teachers. The SENCo could, for example, be a higher level teaching assistant or a member of the non-teaching staff.
- 7.89 To undertake the role effectively, SENCos need specific training in assessing and teaching young people with SEN. There is, however, currently a lack of specific training and a corresponding lack of skilled SENCos.
- 7.90 There are currently issues regarding the extent to which teachers are trained to assess and teach young people with SEN (see for example Rose, 2010). A recent study commissioned the Welsh Government, (Holtom et al, 2010)²³ concluded education staff were generally confident in their skills and knowledge in relation to SEN. The evidence from the study suggests, with the important exceptions of assessment and differentiation²⁴, this confidence is reasonably well-founded.

²³ <http://dera.ioe.ac.uk/22888/1/150330-sen-en.pdf>

²⁴ Differentiation refers to an educational approach that requires teachers to tailor their learning, teaching and assessment whilst adjusting the curriculum to the needs of children, including those with SEN, rather than expecting pupils to fit the existing curriculum (Cole, R, (2008), Educating

- 7.91 Lack of training for SENCos and teachers can result in some schools having limited capacity to deal with SEN and prevent unnecessary recourse to local authority assessment (see for example Rose, 2010).
- 7.92 In addition, parents have expressed concerns about inconsistencies in the effectiveness and quality of service from the SENCos at their children's school²⁵.

Everybody's Children: diverse strategies for diverse learners, Association for Supervision and Curriculum Development, Google Books, <http://books.google.co.uk/books?id=ixmW-porsOAC>; Rogers, C. (2007), Experiencing an Inclusive Education: parents and their children with special educational needs, British Journal of Sociology of Education, 28, 1, pg 55-68.

²⁵ Welsh Government (2008) Statements or something better: summary of progress to date and the next steps. Available at: <http://gov.wales/dcells/publications/publications/guidanceandinformation/ellscomitteerecommendations/summaryprogressenglish?lang=en>

Option two: introduce a statutory ALN support co-ordinator role

- 7.93 Under option two, a statutory role of ALN coordinator (ALNCo) would be introduced. All education settings, other than special schools, would be required to appoint an ALNCo.
- 7.94 It is expected within schools and maintained early years settings²⁶, the ALNCo will be a qualified teacher and within FEIs the ALNCo will be a teaching practitioner.
- 7.95 In addition, all ALNCoS will have to have undertaken a masters level programme of training.
- 7.96 Option two is the preferred option.

Advantages

- 7.97 The requirement to appoint an ALNCo will extend current practice. Under option two, all education settings including pupil referral units and FEIs will be required to appoint an ALNCo.
- 7.98 Making the ALNCo a statutory role would have the benefit of ensuring the role is clearly defined within the code, which would lead to a consistent approach to the coordination role across Wales.
- 7.99 A specific masters level qualification will provide the training necessary for the ALNCo to effectively fulfil the responsibilities of the role, including training and supporting other staff.
- 7.100 The statutory role of the ALNCo, together with other policy initiatives, including workforce development through the professional learning offer, should raise capacity within schools to deal with ALN and prevent unnecessary recourse to local authority assessment.

²⁶ Independent early years settings will not be required to have an ALNCo but will be required to refer young people with ALN to the local authority.

Disadvantages

- 7.101 There are no disadvantages associated with option two.

Risks

- 7.102 There is a risk the new ALNCo requirements may be perceived as creating too much of a burden, which may put people off remaining, or becoming, an ALNCo.
- 7.103 This risk is, however, considered to be small due to the work the Welsh Government will undertake to avoid the role becoming too burdensome. This will include, for example, working with local authorities and teachers to develop the ALNCo role; consulting on the detail of the role as set out in regulation; and providing teacher training and support linked to the professional learning offer.

Statutory basis of strategic co-ordinators in health

- 7.104 There is currently no requirement for health boards to appoint a lead role or single point of contact with strategic responsibility for health related provision for children and young people with SEN.

Option one: do nothing

- 7.105 Under option one, the existing approach to provision would continue. That is, health boards would continue to adopt diverse approaches to the strategic development, co-ordination and oversight of provision for children and young people with SEN and there would be no standard mechanism to quality assure performance or drive service improvement.

Advantages

- 7.106 There are no additional costs associated with option one.

Disadvantages

- 7.107 Although health boards currently secure SEN provision, which is overseen and coordinated to some degree, there is no formalised leadership role. It is not, therefore, consistently or strategically overseen across the Welsh NHS, nor is it necessarily prioritised at a central, strategic level. There is no single, identifiable role and thus, no common job title or set of responsibilities.

Option two: introduce a statutory role of designated medical or clinical officer

- 7.108 Option two would introduce a statutory role of designated educational clinical lead officer (DECLO). Health boards would be required to appoint a DECLO
- 7.109 It is expected the DECLO role will be undertaken by an individual reporting to the board. The role will facilitate the development of an efficient and effective delivery framework for ALN support, the promotion of local problem solving, escalation of issues to the board and facilitate monitoring compliance of the board's statutory duties. The DECLO will have strategic responsibility for establishing efficient systems to ensure the health professionals involved in ALN assessment (including speech and language therapy, occupational therapy, physiotherapy, child and adolescent mental health services (CAMHS), community paediatrics and learning disability services, primary care teams including GPs, health visitors and school nurses) are skilled to undertake appropriate, timely assessments, make evidence based recommendations on effective interventions, monitor outcomes, quality assure advice and benchmark across health boards to reduce any variation in practice or expectations.
- 7.110 The DECLO will be responsible for ensuring day-to-day health provision for ALN is effectively managed and co-ordinated. The operational aspects of this function should, however, be delegated to a health professional, who is in contact with the child or young person. The health professional would act as a 'health co-ordinator' at a local level and would be the key point of contact for children and young people, parents, schools and local authorities.
- 7.111 The DECLO will be a registered health professional with clinical qualifications and senior experience in an aspect of healthcare relevant to ALN, including but not confined to medical (primary or secondary care), nursing, midwifery, allied health or public health.

7.112 It is expected the time allocated to the role will be one day per week per 200,000 population or per 40,000 children and young people. This equates to three full time positions, spread across the seven health boards. On average, each of the seven health boards in Wales would have a healthcare professional undertaking DECLO responsibilities for approximately two days per week.

7.113 Option two is the preferred option.

Advantages

7.114 Appointing a DECLO within health boards would have the benefit of facilitating the delivery of effective, co-ordinated health services to improve outcomes for children and young people with ALN, health boards to discharge their ALN responsibilities and facilitate the effective collaboration between health boards and their partners in the delivery of services for learners with ALN. The DECLO would also ensure there is a robust structure for assuring the quality and safety of services and collect data about service quality, outcomes and performance; simplify the system for children, young people, parents and partners by providing a single point of contact for local authorities and others within health boards on ALN matters. In addition, the appointment of the DECLO should ensure ALN provision is a strategic priority for health boards.

7.115 The DECLO is expected to have benefits to the learner by overseeing the embedding and integration of effective health provision in relation to ALN and by ensuring the delivery of appropriate health services. It is expected the introduction of the DECLO will result in cost savings for health boards since there will be a co-ordinated approach to ALP which has potential to reduce duplication.

Risks

7.116 Although the responsibilities of the DECLO are currently being undertaken in a dispersed way by health boards, and so are an existing resource which

would benefit from better focus and organisation, there is a risk the introduction of a formal role of DECLO could have additional cost implications. Since current practices are diverse across health boards, it has not been possible to estimate what, if any, these additional costs could be. This cost is, therefore, not known.

7.117 The vast majority of learners with ALN who require ALP delivered by NHS Wales are already receiving the support they need. It is possible, however, that by placing ALN on the strategic agenda of health boards and improving the way NHS manage ALN functions and responsibilities, the introduction of DECLOs could result in the identification of a greater need for ALP. It is not possible to quantify any potential increase in need but taking an early adopter approach to the roll out of the DECLO role should help ensure any new need is effectively planned for and managed. This cost is, therefore, not known.

7.118 The additional population of 18-24 year olds that now fall within the remit of the ALN system represent a new potential client group who previously may have not received any NHS contribution to learning support. This is as yet unquantified, but is not envisaged to include many learners who have not been identified prior to age 16.

Statutory basis of early years co-ordinators in local authorities

- 7.119 There is currently no requirement for local authorities to appoint a lead role or single point of contact with strategic responsibility for co-ordinating additional learning provision for children under compulsory school age.

Option one: do nothing

- 7.120 Under option one, the existing approach to provision would continue. That is, local authorities would continue to adopt diverse approaches to co-ordinating additional learning provision for children under compulsory school age.

Advantages

- 7.121 There are no additional costs associated with option one.

Disadvantages

- 7.122 Although local authorities currently coordinate additional learning provision for young people under compulsory school age, there is no consistent model or formalised leadership role. There is no single, identifiable role and thus, no common job title or set of responsibilities. In addition, there is also often no single point of contact within local authorities for additional learning provision for children under compulsory school age. Lack of coordination for statutory SEN duties risks negligence claims or reputational damage.

Option two: introduce a statutory role of designated early years additional learning needs lead officer

- 7.123 Option two would introduce a statutory role of early years additional learning needs lead officer. Each local authority would be required to designate an individual (similar to an ALNCo in schools and FEIs) with responsibility for coordinating local authority functions under the Bill in relation to children under compulsory school age who do not attend a maintained pre-school setting.
- 7.124 In addition to coordinating additional learning provision, the early years ALN lead officer role will include:
- Early identification of lower level ALN
 - Prevention of the development of ALN. That is, identifying young children with developmental delay, which could escalate to ALN if they don't receive appropriate early intervention.
 - Ensuring the early years workforce has the appropriate skills, mechanisms and tools for preventing the development of ALN and supporting young children with ALN.
- 7.125 Option two is the preferred option.

Advantages

- 7.126 The requirement to appoint an early years ALN lead officer will extend current practice. Under option two, all local authorities will be required to appoint an early years ALN lead officer.
- 7.127 Making the early years ALN lead officer a statutory role and ensuring the role is clearly defined within regulations and the code, will lead to a consistent approach to the coordination role across Wales.
- 7.128 Specific early years ALN lead officer training will enable the early years ALN lead officer to effectively fulfil the responsibilities of the role.

- 7.129 A qualified early years ALN lead officer will also contribute to the early identification and intervention which will support positive outcomes for children, including the preventing developmental delay becoming an additional learning need.

Disadvantages

- 7.130 There are no disadvantages associated with option two.

Additional learning provision through the medium of Welsh

- 7.131 Under the new system, where an IDP provides for a particular kind of additional learning provision to be delivered in Welsh, local authorities, governing bodies and NHS bodies are required to take all reasonable steps to secure the provision in Welsh.
- 7.132 In addition, local authorities will be required to keep under review the arrangements made by the authority and by the governing bodies of maintained schools in its area for children and young people with additional learning needs. This includes consideration of the extent to which the provision is sufficient to meet the additional learning needs of children and young people through the medium of Welsh.
- 7.133 Whilst the extent to which additional learning provision through the medium of Welsh meets demand at the local authority level will be known by local authorities, there is currently no arrangements in place to review the demand for, and supply of, additional learning provision delivered through the medium of Welsh at the national level. Thus, the extent to which demand for additional learning provision delivered through the medium of Welsh is met across Wales is unknown.

Option one: do nothing

- 7.134 Under option one, the existing approach would continue. That is, there will be no requirement to review the demand for, or supply of, additional learning provision delivered through the medium of Welsh at the national level.

Advantages

- 7.135 There are no additional costs associated with option one.

Disadvantages

- 7.136 The extent to which demand for additional learning provision delivered through the medium of Welsh is met across Wales will not be routinely

assessed and, thus, will not be known. This restricts the ability to make informed policy decisions about additional learning provision through the medium of Welsh.

Option two: introduce a requirement for Welsh Ministers to review additional learning provision delivered through the medium of Welsh

7.137 Under option two, Welsh Ministers would be required to review the demand for, and supply of, additional learning provision delivered through the medium of Welsh. The requirement is that such a review is undertaken once every 5 years.

7.138 Option two is the preferred option.

Advantages

7.139 Introducing a requirement for Welsh Ministers to review the extent to which demand for additional learning provision delivered through the medium of Welsh will facilitate the ability to make informed policy decisions about additional learning provision through the medium of Welsh.

Disadvantages

7.140 There are no disadvantages associated with option two.

Determination powers in relation to disagreements about maintaining plans

- 7.141 Currently, local authority responsibility for developing and maintaining statements for young people ends when the young person leaves school.
- 7.142 Where a young person with additional learning needs goes on to further education, the FEI will develop a college-based plan for the young person.
- 7.143 Under the new system, IDPs will follow the young person from school to further education. Responsibility for school maintained IDPs will transfer from the school to the FEI when the young person starts further education. There are currently 8,905 young people with a learning difficulty and/or disability who attend FEIs. It is likely these young people have an IEP rather than a statement and are, therefore, likely to have a college maintained plan under the new system.
- 7.144 Local authorities will, however, maintain responsibility for some IDPs. This will include maintaining IDPs for the 298 young people who attend independent specialist colleges and a proportion of the IDPs for the 120 young people with PMLD who attend FEIs. It is not possible to be specific about the number of young people with PMLD who will have a local authority maintained IDP. This is because the number of young people with PMLD who attend FEIs and had a statement whilst at school is not known. It is possible that between 0 and 120 young people had a statement and, thus, may have a local authority maintained IDP whilst in further education. For the purposes of the RIA, the midrange of 60 local authority maintained IDPs is assumed.
- 7.145 Under the new system, it is possible for local authorities to request an FEI takes over the responsibility for maintaining a plan. This would happen in circumstances where the local authority considers the needs of the young person can reasonably be met by the FEI. The FEI does not, however, have to accept a local authority request to take over the responsibility of maintaining a local authority maintained IDP. Since local authorities can not discharge their responsibility for maintaining an IDP until the FEI accepts

responsibility for maintaining it, there is potential for local authorities to continue to maintain IDPs despite this not being appropriate.

Option one: do nothing

- 7.146 Under option one where an FEI refuses to accept responsibility for maintaining an IDP for a student enrolled at the FEI, which the local authority believes it would be appropriate for the FEI to maintain, the local authority would continue to be responsible for maintaining the IDP.

Advantages

- 7.147 There are no advantages associated with option one.

Disadvantages

- 7.148 Under option one there is a risk local authorities may maintain IDPs which it is inappropriate for them to maintain. This would place an unnecessary burden and cost on local authorities and undermine the effectiveness of the system with responsibility for the maintenance of plans at an appropriate level, whether that be school, FEI or local authority.

Option two: introduce a power for Welsh Ministers to determine who is responsible for maintaining an IDP

- 7.149 Option two would introduce a power for the Welsh Ministers to determine who is responsible for maintaining an IDP. This power would be used in instances where a local authority and FEI can not agree about who is responsible for maintaining an IDP.
- 7.150 Where an FEI refuses a request from a local authority to accept responsibility for maintaining an IDP, the local authority would be able to refer the matter to the Welsh Ministers for determination.
- 7.151 Option two is the preferred option

Advantages

- 7.152 Option two provides a solution to resolving disagreements about who should be responsible for maintaining an IDP. There is, therefore, potential to reduce any unnecessary burden placed on local authorities in respect of maintaining IDPs.

Disadvantages

- 7.153 There are no disadvantages associated with option two.

8. Costs and benefits

Introduction

- 8.1 This chapter sets out the costs and benefits associated with the options outlined in chapter six. The costs and benefits have been informed by key stakeholders²⁷, work undertaken by Holtom et al (2012)²⁸ and Deloitte (2015)²⁹, and analysis undertaken by Welsh Government officials.
- 8.2 In 2012, the Welsh Government published interim research (Holtom et al, 2012) into the costs and benefits of the statutory reform of special educational needs. The research considered the cost of initiatives undertaken during the piloting phase of the reforms. Where possible, costs have been drawn from this work to inform the costs and benefits of the proposals set out in the Bill.
- 8.3 In 2014, the Welsh Government commissioned Deloitte to undertake a review to investigate the costs associated with supporting learners with SEN or LDD under the current legislative framework in Wales. This included total costs and individual costs associated with:
- assessing need;
 - providing support;
 - undertaking reviews; and
 - disputes and appeals.
- 8.4 Deloitte analysed publicly available data and collected data from key stakeholders such as local authorities, FEIs, schools and Careers Wales (see Table 1 below).

²⁷ Including stakeholders from SENTW, Estyn, Careers Wales, WLGA and SNAP Cymru.

²⁸ Holtom et al (2012) Programme of Action Research to Inform the Evaluation of the Additional Learning Needs Pilot: interim report on the costs of the statutory reform of special educational needs provision.

²⁹ Deloitte (2015) An Examination of the Provision of Funding for Learners with Special Educational Needs or Learning Difficulties and/or Disabilities (Welsh Government: Cardiff).
<http://gov.wales/docs/dcells/publications/150706-final-report-en.pdf>

- 8.5 The financial data collected by Deloitte refers to 2011-12 to 2013-14. These figures are used throughout this regulatory impact assessment, where it is the most up-to-date information available. The 2013-14 prices have also been set out in present day (2016-17) prices using the GDP deflator series. In addition, for comparative purposes, all costs have been set out in 2016-17 prices.

Table 1: data sources

Body	Data source
Health boards	NHS programme budget expenditure ³⁰
Local authority education	RO expenditure ³¹ Survey data collected by Deloitte
Local authority social services	RO expenditure ³²
Further education institutions (FEIs)	Total FEI funding allocations Total mainstream and discrete funding allocations Survey data collected by Deloitte
Schools	Section 52 outturn statement ³³ Pupil level annual school census (PLASC) ³⁴ Survey data collected by Deloitte
Careers Wales	Survey data collected by Deloitte
Special Educational Needs Tribunal Wales (SENTW)	SENTW annual reports ³⁵

- 8.6 In addition to above sources, data from the Welsh Government lifelong learning Wales record (LLWR) was used³⁶.
- 8.7 It was not possible, however, for Deloitte to collect all the data required to assess the costs and benefits of the proposals set out in the Bill. This was in large part because there is no requirement for schools, colleges or health boards in Wales to report on the amounts spent on SEN and/or LDD.

³⁰ <http://wales.gov.uk/statistics-and-research/nhs-expenditure-programme-budgets/?lang=en>

³¹ <https://statswales.wales.gov.uk/Catalogue/Local-Government/Finance/Revenue/Outturn>

³² <https://statswales.wales.gov.uk/Catalogue/Local-Government/Finance/Revenue/Outturn>

³³ <https://statswales.wales.gov.uk/Catalogue/Local-Government/Finance/Revenue/Delegated-School-Outturn>

³⁴ <http://gov.wales/statistics-and-research/schools-census/?lang=en>

³⁵ <http://sentw.gov.uk/about/areports/?lang=en>

³⁶ Statistics on learners in post-16 education and training, excluding those at schools but including those at Further Education Institutions, other Work-based Learning providers and Community Learning provision collected via the Welsh Government's Lifelong Learning Wales Record (LLWR). <https://statswales.wales.gov.uk/Catalogue/Education-and-Skills/Post-16-Education-and-Training/Further-Education-and-Work-Based-Learning/Lifelong-Learning-Wales-Record>

- 8.8 In addition, although local authorities currently report on SEN spending through the revenue outturn (RO) reports to the Welsh Government (of which SEN spending is a subset), this is not disaggregated by assessment, review, provision, disputes or reviews.
- 8.9 Where actual figures have not been available or where estimates have not previously been made, officials have estimated costs and benefits.
- 8.10 The costs set out within this RIA should, therefore, be considered as the best estimates based on the findings reported by Holtom et al (2012), Deloitte, estimates made by officials and the available evidence. For a number of the elements, assumptions have had to be made in order to produce the estimates. Generally, where this is the case, the costs have been rounded to the nearest £100 to reduce the risk of spurious accuracy.
- 8.11 In some instances, it has not been appropriate to round the estimated cost to the nearest £100. This includes, for example, where the estimated cost is less than £50 and rounding to the nearest £100 would remove the cost. As a consequence, the total costs of options one and two, as set out in Table 70 and Table 71, are not rounded to the nearest £100.
- 8.12 Table 2 shows, in 2015-16, there were 477,549 children and young people in Wales in maintained schools³⁷, independent schools or otherwise educated by the local authority (EOTAS). Of these, 94,350 (20%) had SEN, support for which was being delivered through a non-statutory plan (early years action, school action, early years action plus or school action plus); and 13,318 (3%) had SEN, support for which was being delivered through a statutory plan (statement of SEN). In total, in 2015-16 there were 107,668 children and young people in education settings in Wales with a SEN.

³⁷ Including maintained nursery schools.

Table 2: Number of children and young people with SEN in education settings in Wales

	2011-12	2012-13	2013-14	2015-16
Maintained				
Total number of pupils in a maintained setting ³⁸	465,943	464,868	465,081	466,555
Early Years (EY)/School Action (SA) and EY/SA Plus	89,940	91,053	92,773	92,709
With statement	13,098	12,738	12,530	12,434
Maintained SEN total	103,038	103,791	105,303	105,143
Independent				
Total number of pupils in an independent setting ³⁹	8,929	8,862	8,603	8,880
School Action (SA) and SA Plus ⁴⁰	1,009	1,043	1,092	813
With statement ⁴¹	343	386	388	412
Independent SEN total	1,352	1,429	1,480	1,225
Education other than at school (EOTAS)⁴²				
Total number of EOTAS pupils	2,577	2,577	2,367	2,114
School Action (SA) & SA Plus	557	589	635	828
With statement	365	443	424	472
EOTAS SEN Total	922	1,032	1,059	1,300
Total number of pupils	477,449	476,307	476,051	477,549
Total SA and SA Plus	91,506	92,685	94,500	94,350
Total with statement	13,806	13,567	13,342	13,318
Total SEN Provision	105,312	106,252	107,842	107,668

Source: StatsWales⁴³

³⁸ <https://statswales.gov.wales/Catalogue/Education-and-Skills/Schools-and-Teachers/Schools-Census/Pupil-Level-Annual-School-Census/Pupils/pupils-by-localauthorityregion-agegroup>

³⁹ <https://statswales.gov.wales/Catalogue/Education-and-Skills/Schools-and-Teachers/Schools-Census/Independent-Schools/Pupils/number-by-localauthorityregion-agegroup>

⁴⁰ <https://statswales.gov.wales/Catalogue/Education-and-Skills/Schools-and-Teachers/Schools-Census/Independent-Schools/Special-Educational-Needs/senbutnostatement-by-year>

⁴¹ <https://statswales.gov.wales/Catalogue/Education-and-Skills/Schools-and-Teachers/Schools-Census/Independent-Schools/Special-Educational-Needs/senstatement-by-year>

⁴² <http://gov.wales/statistics-and-research/pupils-educated-other-than-school/?lang=en>

⁴³ <https://statswales.wales.gov.uk/Catalogue/Education-and-Skills/Schools-and-Teachers/Schools-Census/Pupil-Level-Annual-School-Census/Special-Educational-Needs/pupilssen-by-localauthorityregion-provision>

- 8.13 The number of children and young people recorded as having SEN from 2011-12 to 2015-16 has been relatively stable at 23% of pupil population. During this period, the number of children and young people in Wales with a statement of SEN also remained relatively stable at around 3% of the pupil population.
- 8.14 Table 3 below shows in 2014-15, there were 73,195 children and young people aged up to 25 enrolled in mainstream FEIs. Of these, 9,025 (12%) identified themselves as having an LDD⁴⁴, of which 120 (0.2%) identified themselves as having profound and multiple learning difficulties⁴⁵. In addition, there were 298 young people in independent specialist colleges who received specialist provision to meet their LDD needs. That is, there were a total of 9,323 young people in further education in Wales during 2014-15 who identified themselves, or were identified as having LDD. Since young people in further education do not have to declare LDD, it is possible the actual number of young people in further education with LDD was higher.

Table 3: Number of young people aged up to 25 in further education provision who have a learning disability and/or a physical disability

	2012-13	2013-14	2014-15
Total Mainstream FE enrolled	81,460	78,920	73,195
Mainstream FE LDD (includes physical disability)	7,695	8,220	9,025
Independent Specialist College	250	278	298
Total Learners with LDD	7,945	8,498	9,323

Source: Stats Wales⁴⁶

⁴⁴ Including profound and multiple learning difficulties.

⁴⁵ In 2014-15 there were a total of 9,025 young people in FEI under 25 who had a learning difficulty and/or disability including those young people with PMLD. The breakdown by age group for young people with LDD excluding PMLD is: under 16 - 270, 16 - 2,300, 17 - 2,055, 18 - 1,295, 19 - 945 and 20-24 - 2,040. The breakdown by age group for young people with PMLD is: under 16 - 0, 16 - 30, 17 - 20, 18 - 15, 19 - 20 and 20-24 - 35. That is there were 8,905 young people with LDD and 120 with PMLD - a total of 9,025.

See <https://statswales.gov.wales/Catalogue/Education-and-Skills/Post-16-Education-and-Training/Further-Education-and-Work-Based-Learning/Learners/Further-Education/uniquelearnersenrolledfurthereducationinstitutions-by-primarydisability-gender>

⁴⁶ Unique learners enrolled at further education institutions by primary disability and/or learning difficulty and gender

- 8.15 As Table 4 shows, the estimated total cost of delivering SEN/LDD provision in Wales in 2016-17 prices is £365.4m. The majority of the costs - £324.6m (89%) - fell on local authority education services and on schools.

Table 4: estimated cost by sector of delivering the current SEN/LDD system in Wales, 2011-12 to 2013-14

Sector	2011-12 (£m)	2012-13 (£m)	2013-14 (£m)	Total 2011/12 - 2013/14	2016-17 ⁴⁷ (£m)
Welsh Government ⁴⁸	8.9	9.7	10.4	29.00	10.7
Local authority Education Services	167.5	155.7	138.4	461.6	142.8
Local authority Social Services	5.6	5.8	6.1	17.5	6.3
Schools	157.1	178.3	176.2	511.6	181.8
FEIs	7.3	7.4	7.5	22.2	7.7
Health boards	13.7	14.1	14.7	42.5	15.2
Careers Wales	0.8	0.7	0.7	2.2	0.7
SENTW ⁴⁹	0.1	0.2	0.1	0.4	0.2
Total	361.0	371.9	354.1	1087.0	365.4

Source: Deloitte (2015)

<https://statswales.wales.gov.uk/Catalogue/Education-and-Skills/Post-16-Education-and-Training/Further-Education-and-Work-Based-Learning/Learners/Further-Education/uniquelearnersenrolledfurthereducationinstitutions-by-primarydisability-gender>

⁴⁷ 2013-14 prices uprated to 2016-17 prices.

⁴⁸ Cost of administering and funding post-16 specialist placements.

⁴⁹ The costs to SENTW set out in this section refer to cost incurred from hearing related costs including the president, members add hearing venue costs. In addition, reimbursement of expenses and training for members are included. The costs do not include administrative costs.

Executive summary

- 8.16 The executive summary provides an overview of the cost of doing nothing and the cost of implementing the preferred options. The preferred option in each case is option two. Further detail can be found in the summary of cost and benefits.
- 8.17 Overall, the regulatory impact assessment suggests there could be a total additional cost of £7,154,860 over the four year period 2017-18 to 2020-21 (see Table 70), when all cost to public administration are taken into account. This is an average cost of approximately £1,788,715 per year.
- 8.18 There is potential for the provisions within the Bill to realise an ongoing cost saving to public administration of £4,500,300 over the four-year period 2017-18 to 2020-21 (see Table 70). The estimated savings in ongoing costs each year from 2017-18 is £1,125,075. The majority of the estimated savings are expected to be achieved from provisions in the Bill which aim to remove the current adversarial nature of the statement process. As set out below, there are risks associated with the extent to which the potential savings will be realised.
- 8.19 In addition to the costs and benefits incurred by public administration, it is expected independent schools, parents and dispute resolution service providers will incur costs and benefits. As set out in Table 72, independent schools are estimated to incur additional costs of £17,300 over the four year period (£4,325 per year); parents are estimated to benefit from savings of approximately £3,329,500 (£832,375 a year); and dispute resolution services providers are estimated to benefit from savings of £293,840 over the four year period (£73,460 a year). This saving is made up of both financial savings and opportunity savings, whereby savings will be made in volunteer time spent on resolving disagreements which in turn allows volunteers undertake other activities.

- 8.20 The discussion below considers in more detail the costs and benefits of implementing the preferred options. The Bill does not contain any provision charging expenditure on the Welsh Consolidated Fund.

Welsh Government transition costs

- 8.21 As Table 5 below sets out, the Welsh Government expects to incur transition costs estimated at approximately £1,972,510 between 2017-18 and 2020-21 to support the implementation of changes proposed in the Bill. In addition to the costs set out below, the Welsh Government has made a number of grants available to support stakeholders to implement the bill.

Table 5: Welsh Government transition costs

	2017-18	2018-19	2019-20	2020-21	Total
ALN Strategic Implementation Group (SIG) Expert Groups	5,000	5,000			10,000
Development of core skills, awareness raising and resources	100,000	50,000	135,000	105,000	390,000
Compliance and impact monitoring	80,000	130,000			210,000
Implementation project management	217,600	217,600	123,000		558,200
Code of practice development	76,220				76,220
Policy and guidance revision	18,000				18,000
Careers Wales		354,700	354,700		709,400
Post-16 specialist placements	320				320
Registration of independent schools	370				370
Totals	497,510	757,300	612,700	105,000	1,972,510

- 8.22 The Welsh Government is funding a number of activities to support the implementation of the Bill. This includes allocating funding of £10,000 to support the ongoing work of the ALN-SIG and expert groups in preparing for

implementation of the Additional Learning Needs and Education Tribunal (Wales) Bill between 2017-18 and 2020-21.

- 8.23 £210,000 is expected to be spent between 2017-18 and 2020-21 on work to monitor compliance with the new legislative requirements and to assess the extent to which the legislative changes are embedded and making an impact on outcomes for learners.
- 8.24 Between 2017-18 and 2020-21, it is estimated the Welsh Government will spend approximately £390,000 on developing training resources, cores skills development and awareness-raising activities to support the implementation of the Bill. Awareness-raising activities will also focus on engaging stakeholders about their new legislative duties, and explaining and promoting the system and the rights it confers to children, young people and parents.
- 8.25 The Welsh Government will incur some costs associated with managing the above programmes of work to support implementation. This will include managing awareness-raising, grant administration and managing the monitoring and evaluation of the Bill. This is estimated to cost £558,200 between 2017-18 and 2020-21.
- 8.26 In addition, the Welsh Government will incur transition costs associated with developing a new Additional Learning Needs code to support the implementation of the new legislative framework. The cost to produce the code will be approximately £46,220. This is based on one full-time higher executive officer for a year and a head of branch for two weeks. The code would also require consultation, translation and promotion at an approximate cost of £30,000. The total cost of producing the code would, therefore, be approximately £76,220.
- 8.27 The Welsh Government will incur transition costs associated with updating guidance and policy materials, estimated to cost £18,000.

- 8.28 The Welsh Government will continue to fund Careers Wales during the two year period 2018-19 to 2019-20. Thus, there is a transition cost to the Welsh Government of approximately £709,400.
- 8.29 Transitions costs of £320 will be incurred as a result of implementing changes to post-16 specialist placements and £370 will be incurred as a result of implementing changes to the registration of independent schools.

Plans to support children and young people with additional learning needs

- 8.30 As set out above, the financial data collected by Deloitte refers to 2011-12 to 2013-14. These figures have been used within this section on plans to support young people with additional learning needs, where it is the most up-to-date information available. The 2013-14 prices have also been set out in present day (2016-17) prices using the GDP deflator series. In addition, for comparative purposes, all costs have been set out in 2016-17 prices.

Option one: do nothing

- 8.31 Under option one, current practice would remain in respect of education plans to support children and young people with additional learning needs.
- 8.32 Depending on the statutory basis of their additional learning provision and the stage the child or young person is in their education, a child or young person will have one of the following plans: a statutory statement of special educational needs, a non-statutory individual education plan, a statutory learning and skills plan or a non-statutory college based plan.
- 8.33 There are no additional ongoing costs to option one.

Summary of costs

- 8.34 Table 6 below sets out the cost of the current processes and practices associated with plans to support young people with additional learning needs. The total ongoing cost to public administration in 2016-17 is estimated to be £28,536,850. Table 7 sets out the total ongoing cost to parents in 2016-17 being an estimated £3,678,600 and the ongoing cost to dispute resolution service providers is estimated to be £320,510. In total, therefore, option one is estimated to have ongoing costs of £32,526,460 in 2016-17.

Table 6: do nothing summary of ongoing costs to public administration by organisation, 2016-17 prices

	2016-17 (£)	Total (£)
Local authority education services		
Statutory assessments	7,980,700	
Statutory reviews	4,023,600	
Local authority disagreement resolution services – disagreements	384,950	
Responding to disagreements	1,633,100	
Local authority disagreement resolution services – appeals	5,300	
Responding to appeals	1,083,300	
Total	15,110,950	
Local authority social services		
Statutory assessments	307,800	
Statutory reviews	182,100	
Total	489,900	15,600,850
Mainstream schools		
Statutory assessments	1,410,100	
Statutory reviews	1,547,000	
Non-statutory assessments	2,959,300	
Non-statutory reviews	2,158,300	
Total	8,074,700	
Special schools		
Statutory assessments	0	
Statutory reviews	938,700	
Total	938,700	9,013,400
Local health boards		
Statutory assessments	1,829,100	
Statutory reviews	1,082,600	
Total	2,911,700	
Careers Wales		
Assessments – learning and skills plans	354,700	
Reviews	274,800	
Total	629,500	
SENTW	152,000	
Total	152,000	
Further education institutions		
Reviews	228,600	
Disagreements	800	
Appeals – PMLD	0	
Appeals – LDD	0	
Total	229,400	
Total	28,536,850	

Table 7: do nothing summary of ongoing costs to parents and to disagreement resolution service providers, 2016-17 prices

		2016-17 (£)
Parents		
	Appeals	817,550
	Disagreements	2,861,050
Total cost to parents		3,678,600
Service providers		
	Dispute resolution services - disagreements – subsidy	288,710
	Dispute resolution services – appeals - subsidy	31,800
Total cost to service providers		320,510

8.35 The cost of the current system comprises of costs associated with:

- statutory assessments and reviews
- non-statutory assessments and reviews
- disagreements and appeals related to statements.

8.36 Table 8 shows the estimated cost of undertaking statutory assessments and reviews was approximately £19,931,200 in 2016-17 prices. Of this, approximately £11,882,400 was spent on assessment and £8,048,800 was spent on review.

Table 8: summary of total cost of undertaking statutory assessment and review 2016-17 prices, by organisation

	Statutory assessment (£)	Statutory review (£)	Total (£)
Local authority education services	7,980,700	4,023,600	12,004,300
Local authority social services	307,800	182,100	489,900
Mainstream schools	1,410,100	1,547,000	2,957,100
Special schools ⁵⁰	0	938,700	938,700
Local health boards	1,829,100	1,082,600	2,911,700
Careers Wales	354,700	274,800	629,500
Total	11,882,400	8,048,800	19,931,200

Table 9: summary of total cost of undertaking non-statutory assessment and review, 2016-17 prices

	Non-statutory assessment (£)	Non-statutory review (£)	Total (£)
Mainstream schools	2,959,300	2,158,300	5,117,600

8.37 Table 9 above sets out the estimated costs of undertaking non-statutory assessments and reviews⁵¹. The estimated total cost of undertaking non-statutory assessments was approximately £5,117,600 in 2016-17 prices, of which approximately £2,959,300 was spent on non-statutory assessments and approximately £2,158,300 was spent on non-statutory reviews.

8.38 In addition to the costs of undertaking statutory assessments and reviews, local authorities, SENTW and parents incur costs relating to disagreements with, and appeals against, decisions made in relation to statutory assessments and reviews.

⁵⁰ Deloitte (2015) state, 'There is no estimated investment for 'assessment of need' which is not to say there is no activity related to 'assessment of need' but that special schools found it challenging to disaggregate 'assessment of need' activity from everyday support provided to learners as they are 'always assessing the needs of learners' rather than it being a discrete activity' (page 20).

⁵¹ The costs are shown as falling only on mainstream schools. Although it is possible other agencies would have been involved, to a limited extent, in non-statutory assessments and reviews, Deloitte (2015) did not collect data disaggregated by statutory and non-statutory plans. All costs falling on local authority education services, social services and health services have been allocated to statutory plans.

8.39 Table 10 below sets out the estimated costs associated with resolving disagreements about statements. The total cost per year for resolving disagreements is estimated to be approximately £5,167,810 (in 2016-17 prices). It is estimated local authorities spend approximately £2,018,050 a year on resolving disagreements. Of this, it is estimated £1,633,100 is incurred as a result of responding to disagreements and £384,950 is incurred as a result of funding dispute resolution services to support children, young people and parents who have a disagreement with local authorities. Providers of dispute resolution services are estimated to incur costs of approximately £288,710 as a result of subsidising the cost of dispute resolution services for disagreements. In addition, parents are estimated to incur costs of £2,861,050 as a result of disagreements with local authorities about statements.

Table 10: summary of total costs for resolving disagreements about statements, 2016-17 prices⁵²

	Cost per year (£)
Local authority cost of responding to disagreements	1,633,100
Dispute resolution services - disagreements - cost to local authority	384,950
Dispute resolution services –disagreements - cost to service providers	288,710
Average cost to parents	2,861,050
Total	5,167,810

8.40 As Table 11 sets out, the estimated total cost relating to disagreements about statements which progress to the Special Educational Needs Tribunal Wales (SENTW) is £2,089,950. It is estimated local authorities spent approximately £1,088,600 a year in appeal related costs, made up of approximately £1,083,300 in defence related costs and £5,300 in dispute resolution services to support children, young people and parents. Providers of dispute resolution services are estimated to incur costs of approximately £31,800 subsidising the

⁵² See Table 16 for local authority and service provider costs and Table 44 for average cost to parents.

cost of the service. Parents are estimated to spend approximately £817,550 a year in appeal related costs.

Table 11: summary of costs incurred as a result of appeals to SENTW, 2016-17 prices

	2016-17 prices (£)
SENTW ⁵³	152,000
Local authority cost of defending an appeal	1,083,300
Dispute resolution services - appeals - cost to local authorities	5,300
Dispute resolution services - appeals - cost to service providers	31,800
Parents ⁵⁴	817,550
Total	2,089,950

- 8.41 The following section sets out the detailed costs associated with statutory and non-statutory plans to support young people with ALN.

⁵³ Costs to SENTW set out in this section refer to programme costs only and do not include administrative costs.

⁵⁴ Costs to parents range from £5,522 where a parent uses advocacy services to £9,572 where parents do not access advocacy themselves but fund total professional costs. Source: Kids First (2013).

Costs by Sector

Local authority education services

- 8.42 Deloitte (2015)⁵⁵ estimates local authority education services total investment in special educational needs (SEN) between 2011-12 and 2013-2014, was £461,600,000⁵⁶.

Statutory assessment

- 8.43 Since local authorities have diverse processes for planning SEN provision, including the number of staff, the grade of staff and the time involved in the process, it has not been possible to identify the actual cost of undertaking an assessment. It is, however, possible to estimate an average cost per assessment based on the estimated costs Deloitte (2015) identifies as being spent by local authority education services on assessment and the number of assessments undertaken by local authorities each year.
- 8.44 Deloitte estimate local authority education services spent approximately £461,600,000 between 2011-12 and 2013-14. Of this, an estimated £25,800,000 was spent on assessments. That is, approximately 6% of local authority education services spend was spent on assessments.
- 8.45 Data on the number of assessments undertaken by local authority education services was collected until 2012⁵⁷. Thus, the actual number of assessments undertaken for 2013-14 is not available. It was, however, possible to estimate the number of assessments undertaken during 2013-14 by using the estimated average cost of assessments during 2011-12 and 2012-13.

⁵⁵ Deloitte (2015) An Examination of the Provision of Funding for Learners with Special Educational Needs or Learning Difficulties and/or Disabilities (Welsh Government: Cardiff).
<http://gov.wales/docs/dcells/publications/150706-final-report-en.pdf>

⁵⁶ This includes both statutory and non-statutory plan expenditure, funding of places for under-5s with SEN who are not in a maintained nursery and SEN inter-authority payments.

⁵⁷ <http://dera.ioe.ac.uk/17898/1/130619-pupils-statements-special-educational-needs-january-2013-en.pdf>

- 8.46 In 2011-12, local authorities undertook a total of 1,944 assessments⁵⁸ at an estimated total cost of approximately £9,362,000. The estimated average cost to local authorities of an assessment during 2011-12 was, therefore, approximately £4,800.
- 8.47 In 2012-13, local authorities undertook a total of 1,870 assessments at an estimated cost of approximately £8,702,500, giving an estimated average cost of £4,650 per assessment. Based on the assumption the cost of undertaking assessments during 2013-14 was broadly the same as that during 2011-12 and 2012-13, it is possible to estimate the number of assessments undertaken in 2013-14.
- 8.48 Local authority estimated spend on assessments during 2013-14 was £7,735,500. Using the 2013-14 spend and the average estimated cost of £4,750 for undertaking an assessment between 2011-12 and 2012-13, an estimated 1,634 assessments were undertaken in 2013-14 (see Table 12 below).

Table 12: local authority education services estimated spend on assessment by year

	2011-12	2012-13	2013-14	2016-17 prices⁵⁹
Total SEN spend (£)	167,500,000	155,700,000	138,400,000	142,786,300
Estimated spend on assessment (£)	9,362,000	8,702,500	7,735,500	7,980,700
Number of assessments	1,944	1,870	1,634	1,629
Cost per assessment (£)	4,800	4,650	4,750	4,900

- 8.49 The estimated cost to local authorities for undertaking assessments in 2016-17 prices is £7,980,700 per year.

⁵⁸ Includes completed and ongoing assessments.

⁵⁹ 2013-14 costs uprated to 2016-17 prices.

Cost of assessment by local authority

- 8.50 Data on the number of assessments completed was collected by each of the 22 local authorities in Wales until 2012. It was possible, therefore, to work out spend per local authority for 2011-12 and 2012-13.
- 8.51 The cost per local authority for 2013-14 was estimated by taking the average number of assessments undertaken between 2011-12 and 2012-13 by each local authority as a proportion of the total average number of assessments undertaken between 2011-12 and 2012-13.
- 8.52 The proportion was used to estimate how many of the total estimated 1,634 assessments each local authority undertook.
- 8.53 Table 13 below sets out the estimated spend on undertaking assessments by local authority.

Time spent on assessments

- 8.54 Deloitte (2015) estimates the time taken to review requests for statutory assessments (to determine whether a statement of SEN is required) ranges from 1 to 2.25 hours and the time taken to perform statutory assessments ranges from 24 to 65 hours. Reviewing requests and undertaking statutory assessments is, therefore, estimated to take local authorities between 25 hours to 67.25 hours per statutory assessment.

Table 13: number of assessments⁶⁰ per year by local authority

	Assessments actual		Assessments estimated	Estimated cost (£)			
Local authority	2011	2012	2013	2011-12	2012-13	2013-14	2016-17
Isle of Anglesey	32	32	27	154,110	148,920	129,800	133,910
Gwynedd	62	76	59	298,580	353,680	279,890	288,760
Conwy	37	35	31	178,190	162,880	146,030	150,660
Denbighshire	46	30	33	221,530	139,610	154,140	159,030
Flintshire	66	72	59	317,850	335,070	279,890	288,760
Wrexham	46	49	41	221,530	228,030	192,680	198,790
Powys	69	51	51	332,290	237,340	243,380	251,090
Ceredigion	12	2	6	57,790	9,310	28,390	29,290
Pembrokeshire	45	73	51	216,710	339,720	239,330	246,920
Carmarthenshire	202	176	162	972,800	819,060	766,660	790,960
Swansea	189	177	157	910,200	823,710	742,320	765,850
Neath Port Talbot	130	159	124	626,060	739,940	586,150	604,730
Bridgend	47	80	54	226,350	372,300	257,580	265,740
Vale of Glamorgan	37	44	35	178,190	204,760	164,280	169,490
Rhondda Cynon Taf	167	193	154	804,250	898,170	730,150	753,290
Merthyr Tydfil	32	47	34	154,110	218,730	160,230	165,310
Caerphilly	115	106	95	553,820	493,300	448,230	462,440
Blaenau Gwent	117	20	59	563,450	93,080	277,860	286,670
Torfaen	47	26	31	226,350	121,000	148,060	152,750
Monmouthshire	58	41	42	279,320	190,800	200,790	207,150
Newport	146	170	135	703,110	791,130	640,910	661,220
Cardiff	242	211	194	1,165,430	981,940	918,770	947,890
Total	1944	1870	1634	9,362,020	8,702,480	7,735,520	7,980,700

Reviews

- 8.55 Deloitte (2015) estimate between 2011-12 and 2013-14, local authority education services spent £11,700,000 on reviewing statements. That is, local authorities spent approximately 2.5% of their total spend of £461,600,000 on reviews.
- 8.56 Deloitte did not provide a breakdown of local authority spend on reviewing statements by year. It is, however, possible to estimate local authority spend per year on reviewing statements based on the assumption the percentage spend in each of the three years was consistent at approximately 2.5% of total spend.

⁶⁰ Completed and ongoing

- 8.57 As Table 14 below sets out, the estimated cost of undertaking a review between 2011-12 and 2013-14 ranged between £310 and £260. It is not clear why the estimated cost of undertaking a review between 2011-12 and 2013-14 has decreased by £50 per review. Thus, the average estimated cost of £290 for undertaking a review during this period is used to calculate the 2016-17 price.
- 8.58 In 2016-17 prices, it is estimated local authorities incurred costs of £4,023,600 undertaking reviews of statements.

Table 14: local authority education services estimated spend on review by year

	2011-12	2012-13	2013-14	Average cost	2016-17 prices⁶¹
Total spend (£)	167,500,000	155,700,000	138,400,000	153,866,700	158,743,100
Estimated spend on review (£) ⁶²	4,245,600	3,946,500	3,508,000	3,900,000	4,023,600
Number of reviews ⁶³	13,800	13,600	13,300	13,600	14,000
Cost per review (£)	310	290	260	290	300

- 8.59 In total, it is estimated local authorities spend a total of £12,004,300 per year assessing and reviewing statements, this is made up of £7,980,700 on assessments (see Table 12) and £4,023,600 on reviews (see Table 14).

Disagreements and Appeals

Disagreements about wanting or having a statement

- 8.60 For the purposes of this regulatory impact assessment, disagreements have been grouped into those which are about wanting a statement and those which are about having a statement. Disagreements about wanting a statement includes disagreements about a local authority decision not to

⁶¹ Average costs 2011-12 to 2013-14 uprated to 2016-17 prices.

⁶² Based on approximately 2.5% of total yearly spend on SEN.

⁶³ Based on the assumption each statement is reviewed once each year.

assess and disagreements about a local authority decision not to issue a statement. Disagreements about having a statement relate to local authority decisions about the content of the statement.

- 8.61 In addition to the costs of assessing and reviewing statements, local authorities incur costs associated with disagreements about statements. The costs are incurred from providing disagreement resolution services for children, young people and parents who disagree with decisions local authorities have made in respect of statements and are incurred from the costs to local authorities when responding to those disagreements.
- 8.62 It has not been possible to determine the number of disagreements local authorities dealt with in 2013/14, since this data is not publicly available⁶⁴. It has, however, been possible to estimate costs using the number of cases dealt with by SNAP Cymru. SNAP Cymru is currently commissioned by the majority of local authorities in Wales to provide Parent Partnership and disagreement resolution services for children, young people and parents.
- 8.63 SNAP Cymru charges local authorities on average approximately £574,400 per year for parent partnership and dispute resolution services. The service is enhanced by funding from the Families First project which enables SNAP to provide additional support to vulnerable families. In total, SNAP receives an income of approximately £814,200 a year for parent partnership and dispute resolution services.
- 8.64 It is unlikely all parents who disagree with, or appeal against, a local authority decision related to not issuing a statement will use local authority funded disagreement resolution services. As such, the estimated costs set out below should be considered to be the minimum expected cost incurred by local authorities.

⁶⁴ Officials from Welsh Government contacted WLGA and individual local authorities. Data was not, however, available.

- 8.65 During the 30 month period October 2013 to April 2016, SNAP Cymru dealt with approximately 12,600 cases on behalf of 20 local authorities. 1,743 of the 12,600 cases were about wanting or having a statement of SEN. 1,723⁶⁵ cases were concerned with resolving disagreements 20 cases progressed to the Special Educational Needs Tribunal Wales (SENTW).
- 8.66 The total average cost of dispute resolution services to support a disagreement case is £875⁶⁶. The average estimated cost to local authorities per disagreement dispute resolution case is £500. The remainder of the cost - £375 - is subsidised by SNAP Cymru, through fund raising, use of charity reserves and volunteer hours⁶⁷.
- 8.67 Thus, the total cost over the 30 month period October 2013 to April 2016 for disagreement dispute resolution services across 20 local authorities was £1,507,188. Of this, the cost to the 20 local authorities is estimated to have been approximately £861,250 and the cost to SNAP Cymru is estimated to have been £645,938. This equates to a total yearly cost of £602,875⁶⁸ of which an estimated £344,500 was incurred by 20 local authorities and £258,375 was subsidised by SNAP Cymru (see Table 15 below). Grossing these figures up from 20 local authorities to 22 local authorities equates to 758 cases⁶⁹ at a total estimated cost of £663,163 per year of which an estimated £378,950 would be incurred by local authorities, with an estimated subsidy of £284,213 subsidised. In 2016-17 prices, this is equivalent to a total estimated cost of approximately £673,660, of which £384,950 would be incurred by local authorities, with an estimated subsidy of approximately £288,710.

⁶⁵ Calculations based on 1,722.5 rather than 1,723 $(3,485/2)-20=1,722.5$.

⁶⁶ Source: SNAP Cymru.

⁶⁷ Costed at £26 per hour (source: SNAP Cymru).

⁶⁸ $(1,722.5/30)*12=689$ cases per year across 20 local authorities. 689 cases at an average cost of £875=£602,875

⁶⁹ $(1,722.50/30)/20=2.87$ cases per local authority per month. $(2.87*12)*22= 757.9$ cases per year across 22 local authorities.

Table 15: local authority dispute resolution services for disagreements around wanting or having a statement

Cost of cases relating to disagreements about wanting or having a statement - excluding appeals		2016/17 prices
Total number of matters over the 30 month period - 20 LAs	3,485	
Total number of cases over 30 months - 20 LAs	1,743	
Number of these cases which were appeal related	20	
Total disagreement cases over 30 months - 20 LAs (minus appeal related cases)	1,723	
Number of disagreement cases per month across 20 local authorities	57	
Estimated number of disagreement cases per year across 20 local authorities	689	
Average total cost per disagreement resolution case	875	
Average LA cost per disagreement resolution case	500	
Average SNAP Cymru subsidy per informal case	375	
Average estimated total cost per year across 20 local authorities	602,875	612,410
Average estimated cost to LAs per year across 20 local authorities	344,500	349,950
Average estimate SNAP subsidy per year across 20 LAs	258,375	262,460
Estimated total cost per year - all Wales (22 LAs)	663,163	673,660
Estimated total cost to LAs per year - all Wales	378,950	384,950
Estimated service provider subsidy per year - All Wales	284,213	288,710

- 8.68 In addition to dispute resolution services, local authorities incur costs responding to disagreements. The cost to local authorities of responding to disagreements is not known, since data is not collected. It is possible, however, to estimate the cost based on the cost of disagreement resolution services and the cost to local authorities of defending an appeal.
- 8.69 Holtom et al (2014)⁷⁰ estimate the cost to local authorities of defending a case appealed to SENTW is £10,000⁷¹. The average cost of dispute resolution services to support children, young people and parents through the appeal process is £4,125 per case⁷². Thus, the cost to local authorities of defending a case at SENTW is 2.42 times greater than the cost of services to support children, young people and parents through the appeal process.
- 8.70 The cost local authorities incur when responding to disagreements is not currently known. It is possible, however, to estimate this cost based on the assumption the ratio between the cost to local authorities of responding to a disagreement and the cost of resolving a disagreement via a local authority dispute resolution service, is the same as the ratio between the cost to local authorities of defending a case appealed to SENTW and the cost of providing services to support children, young people and parents through the appeal process. That is, the cost to local authorities of responding to a disagreement will be 2.42 times greater than the cost of resolving a disagreement via a local authority dispute resolution service (see Table 16 below).
- 8.71 Between October 2013 and April 2016, the average cost per disagreement resolved through a local authority disagreement service was approximately £875. Based on the assumption the costs to the local authority of responding to a disagreement is 2.42 times greater than the cost of a disagreement supported through a local authority dispute resolution service, it is estimated local authorities incur costs of £2,121 per disagreement responded to. On this

⁷⁰ Evaluation of a Pilot of Young People's Rights to Appeal and Claim to the Special Educational Needs Tribunal for Wales. Available at: <http://dera.ioe.ac.uk/20424/1/140626-pilot-young-peoples-rights-appeal-claim-sen-tribunal-en.pdf>

⁷¹ The estimate of £10,000 was provided by one of the local authorities participating in the pilot study.

⁷² Source: SNAP Cymru.

basis, it is estimated local authorities spent approximately £1,607,670 a year between 2013-14 and 2015-16 responding to an average of 758 disagreements each year.

- 8.72 In 2016-17 prices, the estimated cost to local authorities incurred as a result of responding to disagreements about statements is approximately £1,633,100.
- 8.73 As Table 16 below sets out, the total estimated cost incurred in relation to disagreements and appeals is approximately £2,306,760 per year in 2016-17 prices. Of this, local authorities incur estimated costs of £2,018,050 and the estimated cost of subsidizing the service is £288,710. This includes disagreements about both wanting and having a statement. That is, disagreements about not being issued a statement or disagreements about the content of the statement.

Table 16: cost per year incurred by local authorities due to disagreements about wanting or having a statement

	cost per appeal (£)	factor in relation to appeal cost	cost per disagreement (£)	number of disagreements (£)	Total cost per year - disagreements (£)	Total cost per year 2016-17 prices - disagreements (£)	Cost to local authority - per disagreement (£)	Subsidy - per disagreement (£)	Total cost to local authority - disagreement (£)	Total subsidy - disagreement (£)	Total cost to local authority - disagreement - 2016-17 prices (£)	Total subsidy - disagreement - 2016-17 prices (£)
LA disagreement resolution service	4,125		875	758	663,160	673,660	500	375	378,950	284,210	384,950	288,710
LA education services	10,000	2.42	2,121	758	1,607,670	1,633,100	2,121	0	1,607,670	0	1,633,100	0
Total					2,270,830	2,306,760			1,986,620	284,210	2,018,050	288,710

Disagreements related to wanting a statement

- 8.74 It is possible to disaggregate the costs local authorities incur as a result of disagreements about not having a statement from those which are concerned with the content of the statement.
- 8.75 Between 2013-14 and 2015-16 SENTW received 284 appeals, of which 150 (53%) were about not having a statement and 134 (47%) were about having a statement (see Table 17 below).
- 8.76 Assuming the proportion of disagreements about not having a statement are equivalent to appeals to SENTW about not having a statement (53%), it can be estimated 402 of the 758 disagreements per year between 2013-14 and 2015-16 would have been about not having a statement and 356 would have been about having a statement.

Table 17: appeal by type, 2013/14 to 2015/16

	2015-16	2015-16	2014-15	2014-15	2013-14	2013-14	2013-14 to 2015-16		
Type of appeal	Number of appeals	%	Number of appeals	%	Number of appeals	%	Total	Average	%
Refusal to assess	41	39	40	39	26	33	107	36	38
Refusal to statement	11	10	14	14	10	13	35	12	12
Refusal to re-assess	3	3	0	0	1	1	4	1	1
Cease statement	2	2	0	0	2	3	4	1	1
Not having a statement	57	54	54	53	39	50	150	50	53
Contents of statements – parts 2 and 3	11	10	11	11	10	13	32	11	11
Contents of statements – parts 2, 3 and 4	24	23	18	18	18	23	60	20	21
Contents of statements – part 3 only	5	5	8	8	4	5	17	6	6
Contents of statements – part 4 only	5	5	8	8	5	6	18	6	6
Contents of statements – parts 3 and 4	3	3	2	2	2	3	7	2	2
Having a statement	48	46	47	47	39	50	134	45	47
Total	105	100	101	100	78	100	284	95	100

- 8.77 The estimated total cost of local authority disagreement resolution services for 402 cases where parents want a statement is approximately £357,040 per year in 2016-17 prices. Of this, it is estimated approximately £204,020 is incurred by local authorities and £153,020 is subsidised.
- 8.78 In addition, local authorities will incur costs responding to parents who disagree with not having a statement. In total, it is estimated local authorities incur costs of £865,540 per year in 2016-17 prices responding to the estimated 402 cases where parents disagree with decisions about not having a statement.
- 8.79 Combining the cost of dispute resolution services and the cost of responding to parents, it is estimated local authorities incur costs of £1,069,570 per year in 2016-17 prices responding to 402 disagreements about not having a statement and £153,020 is subsidised (see Table 18 below).

Table 18: local authority costs incurred from disagreements by type of disagreement, 2016-17 prices

	Cost (100%)	Not having a statement (53%)	Having a statement (47%)	Not having a statement (53%) - LA costs	Having a statement (47%) - LA costs	Not having a statement (53%) - subsidy	Having a statement (47%) - subsidy
Disagreement resolution services	673,660	357,040	316,620	204,020	180,920	153,020	135,690
Local authority response	1,633,100	865,540	767,560	865,550	767,560	0	0
Total	2,306,760	1,222,580	1,084,180	1,069,570	948,480	153,020	135,690

- 8.80 As Table 18 sets out, it is estimated the total costs associated with disagreements about having a statement is £1,084,180 in 2016-17 prices as a result of the 356 disagreements each year about having a statement. Of this, the local authorities are estimated to incur total costs of £948,480 per year in 2016-17 prices made up of approximately £180,920 for local authority disagreement resolution services and £767,560 incurred as a result of responding to disagreements about wanting a statement. The remaining

estimated £135,690 is subsidised by disagreement resolution service providers.

Appeals about decisions relating to wanting or having a statement

- 8.81 In addition to disagreements about statements, local authorities incur costs where parents appeal to SENTW in response to local authority decisions around statements.
- 8.82 Local authorities provide access to services to support children, young people and parents to appeal to SENTW where a disagreement with a decision can not be resolved.
- 8.83 SNAP Cymru provide disagreement resolution services where parents wish to progress a disagreement to SENTW. The average cost of disagreement resolution services provided by SNAP Cymru, where a case is resolved through formal disagreement resolution without recourse to tribunal, is £2,000. The average cost of supporting a family from their initial concerns or disagreement through to appeal to SENTW is £4,125. The cost to local authorities for formal dispute resolution is £600.
- 8.84 During the 30 month period October 2013 to April 2016, SNAP Cymru dealt with a total of 20 cases which progressed to tribunal. That is, an average of 1 case per local authority over the 30 month period. This is equivalent to an average of approximately 9 cases per year across 22 local authorities or 0.4 cases for each of the 22 local authorities per year. Based on the assumption the average cost of £600 for dispute resolution services where a case progresses to tribunal would be the same across all local authorities, the estimated cost to local authorities would be approximately £5,300.
- 8.85 SNAP Cymru subsidises each dispute resolution case which progresses to tribunal by an estimated £3,525. The total subsidy per year is estimated to be approximately £31,800.

- 8.86 In addition to the cost of dispute resolution services, local authority education services will incur costs from undertaking activities related to defending decisions regarding assessments for, and issuing of, statements in a number of ways. These include prior preparation of the defence and costs incurred on the day.
- 8.87 Data on the cost to local authorities of defending cases at SENTW are not publicly available. Holtom et al (2014)⁷³, whilst acknowledging it is difficult to get exact figures for local authority costs of contesting a case at SENTW, use an estimate of approximately £10,000 in 2013. This is equivalent to £10,317 in 2016-17 prices.
- 8.88 The cost to local authorities of responding to 105 appeals is estimated to be approximately £1,083,300 per year in 2016-17 prices.
- 8.89 As Table 19 below sets out, the total estimated cost of providing access to dispute resolutions services and responding to appeals to SENTW is estimated to be approximately £1,120,400 per year in 2016-17 prices. Of this, local authorities are estimated to have incurred costs of approximately £1,088,600, with a subsidy to the service of an estimated £31,800.

Table 19: cost to local authorities of appeals to SENTW, 2016-17 prices

Appeals to SENTW (2015-16)	Total cost of disagreement resolution services - appeals (£)	Cost of disagreement resolution service - LA (£)	Subsidy (£)	Cost to local authorities of defending case	Total local authority cost	Total cost
105	37,100	5,300	31,800	1,083,300	1,088,600	1,120,400

⁷³ <http://gov.wales/docs/caecd/research/2014/140626-pilot-young-peoples-rights-appeal-claim-sen-tribunal-en.pdf>

Appeals about decisions relating to wanting a statement

- 8.90 Since data is collected about type of appeal, it is possible to disaggregate the cost to local authorities into appeals relating to wanting a statement and appeals related to having a statement.
- 8.91 As Table 20 sets out, during 2015/16 there were 57 (54%) appeals to SENTW regarding decisions related to not having a statement⁷⁴ and 48 (46%) appeals regarding decisions related to having a statement.

Table 20: appeals to SENTW 2015-16, by type

Type of appeal	Number of appeals	Percentage
Refusal to assess	41	39
Refusal to statement	11	10
Refusal to re-assess	3	3
Cease statement	2	2
Not having a statement	57	54
Contents of statements – parts 2 and 3	11	10
Contents of statements – parts 2, 3 and 4	24	23
Contents of statements – part 3 only	5	5
Contents of statements – part 4 only	5	5
Contents of statements – parts 3 and 4	3	3
Having a statement	48	46
Total	105	100

- 8.92 Based on the assumption the 9 cases supported by dispute resolution services have the same proportional split as appeals in 2015-16 between not having a statement and having, the cost of providing disagreement resolution services for appeals about not having a statement is estimated to be approximately £14,900 per year in 2016-17 prices. Of which £2,900 is incurred by local authorities and £17,200 is subsidised by service providers. The estimated cost local authorities incur defending 57 appeals about not having a statement is £585,000 per year in 2016-17 prices (see Table 21 below).
- 8.93 In total, the cost of providing disagreement resolution services and defending appeals about not having a statement is estimated to cost £605,000 per year

⁷⁴ This is consistent with the average of 53% between 2013-14 and 2015-6 set out in Table 17 above.

in 2016-17 prices (see Table 21 below). Of which, local authorities are estimated to incur costs of £587,900 with service providers incurring estimated costs of £17,200.

Table 21: local authority costs incurred from appeals by type of appeal, 2016-17 prices

	ALL	Not having a statement (54%)	Having a statement (46%)
Disagreement resolution services - total cost	37,100	20,000	17,100
Disagreement resolution services - cost to LA	5,300	2,900	2,400
Disagreement resolution services - subsidy	31,800	17,200	14,600
Local authority defence cost	1,083,300	585,000	498,300
total local authority cost	1,088,600	587,900	500,700
Total	1,120,400	605,000	515,400

8.94 As Table 21 sets out, the cost of providing disagreement resolution services to support appeals about having a statement is estimated to be £17,100 in 2016-17 prices. Of this, an estimated £2,400 is incurred by local authorities and £10,300 is a subsidy. The estimated cost local authorities incur defending 48 appeals about having a statement is approximately £498,300 per year in 2016-17 prices. In total, the cost of providing disagreement resolution services and defending appeals about having a statement is estimated to be £515,400 per year in 2016-17 prices. Of this, it is estimated local authorities incur costs of approximately £500,700 and £14,600 is a subsidy.

Table 22: summary of option one costs to local authority education services, by activity

	2016-17 prices
Assessments	7,980,700
Reviews	4,023,600
Dispute resolution services – disagreements – LA costs	384,950
Dispute resolution services – disagreements – subsidy	288,710
Responding to disagreements	1,633,100
Dispute resolution services – appeals – LA costs	5,300
Dispute resolution services – appeals – subsidy	31,800
Defending appeals	1,083,300
Total	15,431,460

Schools

Assessment and review

8.95 Deloitte (2015) estimate schools spent a total of £511,600,000 on SEN between 2011-12 and 2013-2014 (see Table 23 below for breakdown by year and type of school). Of this, a total of £12,500,000 was spent on statutory and non-statutory assessments and £13,200,000 was spent on reviewing statutory and non-statutory plans (see Table 24 below for estimated spend by type of school).

Table 23: estimated school spend on SEN by type of school

	2011-12 (£)	2012-13 (£)	2013-14 (£)	2011-12 to 2013-14 (£)	2016-17 prices (£)
Mainstream schools	76,200,000	92,600,000	86,500,000	255,300,000	89,241,400
Special schools	80,900,000	85,700,000	89,700,000	256,300,000	92,542,800
All schools	157,100,000	178,300,000	176,200,000	511,600,000	181,784,200

Table 24: estimated school spend 2011-12 to 2013-14 on assessment and review by school type

	Assessment (£m)	Review (£m)
Mainstream schools	12,500,000	10,600,000
Special schools ⁷⁵	0	2,600,000
Total	12,500,000	13,200,000

- 8.96 Deloitte did not, however, disaggregate spend on assessment and review by statutory and non-statutory plans, nor were costs per year provided.

⁷⁵ Deloitte (2015) state, 'There is no estimated investment for 'assessment of need' which is not to say there is no activity related to 'assessment of need' but that special schools found it challenging to disaggregate 'assessment of need' activity from everyday support provided to learners as they are 'always assessing the needs of learners' rather than it being a discrete activity' (page 20).

Table 25: percentage of school spending on assessment and review as a percentage of total spend on SEN in 2011-12 to 2013-14 by type of school

	Spend on assessment (%)	Spend on review (%)
Mainstream schools	5	4
Special schools ⁷⁶	0	1

- 8.97 Table 26 below sets out the estimated spend by mainstream schools and special schools on assessment and review by year. The yearly spend on assessment and review has been calculated by applying the percentage mainstream schools and special schools spent on assessment and reviews over the period 2011-12 to 2013-14 (see Table 25 above) to their estimated yearly spend on SEN (Table 23 above).
- 8.98 For example, between 2011-12 and 2013-14, mainstream schools used approximately 5% of their total SEN spending on assessments. In 2013-14, mainstream schools spent £86,500,000. Assuming approximately 5% of this was spent on assessments, mainstream schools spent an estimated £4,235,200 on assessments in 2013-14. This equates to £4,369,400 in 2016-17 prices.

⁷⁶ Deloitte (2015) state, 'There is no estimated investment for 'assessment of need' which is not to say there is no activity related to 'assessment of need' but that special schools found it challenging to disaggregate 'assessment of need' activity from everyday support provided to learners as they are 'always assessing the needs of learners' rather than it being a discrete activity' (page 20).

Table 26: estimated spend by mainstream schools and special schools on assessment and review by year

	2011-12 (£)	2012-13 (£)	2013-14 (£)	2011-12 to 2013-14 (£)	2016-17 prices (£)
Assessment - mainstream schools	3,730,900	4,533,900	4,235,200	12,500,000	4,369,400
Assessment - special schools	0	0	0	0	0
Assessment - all schools	3,730,900	4,533,900	4,235,200	12,500,000	4,369,400
Review - mainstream schools	3,163,800	3,844,700	3,591,500	10,600,000	3,705,300
Review - special schools	820,700	869,400	909,900	2,600,000	938,700
Review - all schools	3,984,500	4,714,100	4,501,400	13,200,000	4,644,000
Total	7,715,400	9,248,000	8,736,600	25,700,000	9,013,400

- 8.99 To disaggregate the estimated cost to schools of undertaking assessments and reviews by those which are statutory (statements) and those which are non-statutory (individual education plans), the proportion of time schools spent on statutory and non-statutory assessments and reviews was used.
- 8.100 The time spent on assessment and reviews varied significantly across schools. Table 27 below sets out the range of time spent on assessments and reviews by type.
- 8.101 As Table 27 below shows, there are significant variations in the estimated time schools spent on statutory assessments, ranging from 90 to 720 minutes per assessment. There are also variations in the estimated time spent on non-statutory assessments, which range from 60 to 180 minutes.
- 8.102 In addition, there were significant variations in the estimated time spent on reviewing statutory plans, ranging from 60 to 600 minutes, and on reviewing non-statutory plans, ranging from 10 to 120 minutes.
- 8.103 The mid-range has been used to estimate the proportion of time spent on statutory and non-statutory assessments and reviews. Given the range of time spent on each activity and a lack of data on the frequency of time spent on each activity, the mid-range may not provide the most accurate estimate.

Thus, the estimate of the proportion of time spent on statutory and non-statutory assessments and reviews and the costs apportioned as a result should be treated as illustrative.

Table 27: time spent on assessment and review by type

	Time range (mins)		Mid-point (£)
	Minimum	Maximum	
Assessment – statement	90	720	405
Assessment – individual education plans	60	180	120
Review – statement	60	600	330
Review – non-statutory plans	10	120	65

Source: Deloitte (2015)

8.104 In addition to estimating the length of time schools spend on statutory and non-statutory assessments and reviews, the number of statutory and non-statutory assessments and reviews was required to work out the spend on statutory and non-statutory assessments and reviews.

8.105 The number of statutory assessments undertaken per year is known (see Table 12 above) as is the estimated number of reviews of statutory assessments (see Table 14 above). The number of individual education plan assessments undertaken each year is not, however, known as this data is not collected.

Table 28: estimated number of assessments for statements and for individual education plans undertaken by schools by year

	2011-12	2012-12	2013-14
Pupils with statements	13,806	13,567	13,342
Number of assessments for statements undertaken	1,944	1,870	1,634
Assessments as a proportion of all statements (%)	14	14	12
Pupils with individual education plans (pupils with SA and SA+)	91,506	92,685	94,500
Estimated number of assessments for individual education plans	12,885	12,775	11,572

- 8.106 The estimated number of individual education plan assessments is based on the assumption the number of individual education plan assessments as a percentage of all individual education plans is the same as the number of assessments for statements as a percentage of all statements (see Table 28 above).
- 8.107 The estimated cost to schools of assessments and reviews by type is based on the proportion of time schools spent on statutory and non-statutory assessments and reviews. The total average time schools spent on each activity is outlined in Table 29 below and is based on the assumption both statutory and non-statutory plans are reviewed once a year⁷⁷.

Table 29: time schools spent on assessments and reviews by type

	Total average time spent (mins)		
	2011-12	2012-13	2013-14
Assessment – statement	787,320	757,350	661,675
Assessment – individual education plans	1,546,177	1,533,022	1,388,615
Total assessment	2,333,497	2,290,372	2,050,290
Review – statement	4,555,980	4,477,110	4,402,860
Review – non-statutory plans	5,947,890	6,024,525	6,142,500
Total time spent on reviews	10,503,870	10,501,635	10,545,360

- 8.108 The proportion of estimated time schools spend on assessing and reviewing statutory and non-statutory plans was used to disaggregate the cost of undertaking assessments and reviews by type of review and type of school. These are set out in Table 30 below.
- 8.109 Table 30 below sets out the estimated time spent by schools assessing statements and individual education plans as a proportion of the total time spent on assessments; and sets out the time spent on reviewing statements and individual education plans as a proportion of the total time spent on reviews.

⁷⁷ Individual education plans are actually reviewed twice a year but one of these reviews is generally done during the meeting with parents, so there is no additional cost for the second review.

Table 30: proportion of total time schools spent on statutory and non-statutory assessments and reviews

	2011-12 (%)	2012-13 (%)	2013-14 (%)
Assessment – statement	34	33	32
Assessment – individual education plans	66	67	68
Total assessment	100	100	100
Review – statement	43	43	42
Review – individual education plans	57	57	58
Total Review	100	100	100

8.110 Table 31 below sets out the disaggregated costs to schools of undertaking assessments and reviews (see Table 26) by those which are statutory (statements) and those which are non-statutory (individual education plans).

Table 31: estimated school spend on assessments and review by type of review and type of school

	2011-12 (£)	2012-13 (£)	2013-14 (£)	2016-17 prices (£)
Investment SEN - mainstream schools	76,200,000	92,600,000	86,500,000	89,241,400
Investment SEN - special schools	80,900,000	85,700,000	89,700,000	92,542,800
Investment SEN - all schools	157,100,000	178,300,000	176,200,000	181,784,200
Assessment - mainstream schools (£)	3,730,900	4,533,900	4,235,200	4,369,400
Statement	1,258,800	1,499,200	1,366,800	1,410,100
Individual development plan	2,472,100	3,034,700	2,868,400	2,959,300
Assessment - special schools⁷⁸	0	0	0	0
Statement	0	0	0	0
Individual education plan	0	0	0	0
Assessment - all schools (£)	3,730,900	4,533,900	4,235,200	4,369,400
Statement	1,258,800	1,499,200	1,366,800	1,410,100
Individual education plan	2,472,100	3,034,700	2,868,400	2,959,300
Review - mainstream schools	3,163,800	3,844,700	3,591,500	3,705,300
Statement	1,372,300	1,639,100	1,499,500	1,547,000
Individual education plan	1,791,500	2,205,600	2,092,000	2,158,300
Review - special schools	820,700	869,400	909,900	938,700
Statement	820,700	869,400	909,900	938,700
Individual education plan	0	0	0	0
Review - all schools	3,984,500	4,714,100	4,501,400	4,644,000
Statement	1,728,250	2,009,700	1,879,400	1,939,000
Individual education plan	1,791,500	2,205,600	2,092,000	2,158,300
Total spent	7,715,400	9,248,000	8,736,600	9,013,400

8.111 Table 32 below sets out the costs to schools of undertaking an individual assessment and review by type of school and type of assessment

⁷⁸ Deloitte (2015) state, 'There is no estimated investment for 'assessment of need' which is not to say there is no activity related to 'assessment of need' but that special schools found it challenging to disaggregate 'assessment of need' activity from everyday support provided to learners as they are 'always assessing the needs of learners' rather than it being a discrete activity' (page 20).

Table 32: cost of individual assessments and review by type of school and by type of assessment and review

	2011-12	2012-13	2013-14	2016-17 prices
Assessment - mainstream schools (£)	3,730,905	4,533,882	4,235,213	4,369,439
Number statements assessed	1,944	1,870	1,634	1,634
Total cost of assessing statements (£)	1,258,804	1,499,204	1,366,799	1,410,117
Cost per assessment of a statement - mainstream schools (£)	648	802	837	864
Number of individual education plans assessed	12,885	12,775	11,572	11,572
Total cost of assessing individual education plans (£)	2,472,101	3,034,678	2,868,414	2,959,322
Cost per assessment of an individual education plan - mainstream schools (£)	192	238	248	256
Review - mainstream schools (£)	3,163,807	3,844,732	3,591,461	3,705,284
Total cost of reviewing statements (£)	1,372,279	1,639,105	1,499,494	1,547,017
Number of statements reviewed	13,098	12,738	12,530	12,530
Cost of reviewing a statement – mainstream schools (£)	105	129	120	124
Total cost of reviewing individual education plans (£)	1,791,528	2,205,626	2,091,967	2,158,267
Number of individual education plans reviewed	89,940	91,053	92,773	92,773
Cost of reviewing an individual education plan – mainstream schools (£)	20	24	23	24
Review - special schools	820,679	869,372	909,949	938,700
Total cost of reviewing statements (£)	820,679	869,372	909,949	938,700
Number of statements reviewed	343	386	388	388
Cost of reviewing a statement – special schools (£)	2,393	2,252	2,345	2,419

Disagreements

- 8.112 Whilst the majority of schools collect data about complaints, data about the number, type or outcome of school complaints is not collated centrally. It is not, therefore, possible to determine the actual number of complaints schools receive which are disagreements about ALP.
- 8.113 Research undertaken by McKenna and Day (2012)⁷⁹ for the Department for Education in England found complaints to schools were low with two thirds of

⁷⁹ McKenna, K. and L. Day (2012) Parents' and Young People's Complaints about Schools. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/183559/DFE-RR193.pdf

primary and secondary schools having an average of one per 100 pupils per academic year⁸⁰.

- 8.114 Assuming a similar situation in Wales, for illustrative purposes, it is estimated there were 2,893 complaints to schools in Wales during 2013/14. The proportion of these complaints which were regarding ALP is, however, unknown.
- 8.115 McKenna and Day found the issues most commonly reported involved bullying, special educational needs (SEN), teacher conduct, and exclusions. The research did not, however, determine or estimate the proportion of complaints which were SEN related.
- 8.116 It has not been possible, therefore, to estimate the number or costs of ALP related complaints to schools in Wales.

Local authority social services and local health boards

- 8.117 Deloitte estimate local authority social services expenditure on SEN over the three years 2011-12 to 2013-14 was approximately £17,500,000 (see Table 33 below). This includes expenditure relating to the education of looked-after children with SEN and to funding placements for post-16 learners with LDD. Expenditure in 2013-14 has been uprated to 2016-17 prices using the GDP deflator series, this gives a figure of £6,293,300.
- 8.118 Deloitte estimate health boards spent approximately £42,500,000 on SEN/LDD between 2011-12 and 2013-14 (see Table 33 below). This includes the health board programme budget expenditure for learning difficulties and the health board contribution to post-16 specialist placements. The estimated cost in 2016-17 prices is £15,165,900.

⁸⁰ McKenna and Day use the figure for illustrative purposes, given the small and unrepresentative sample of schools on which the calculations are based.

Table 33: local authority social services and health board expenditure on SEN

	2011-12 (£)	2012-13 (£)	2013-14 (£)	2011-12 to 2013-14 (£)	2016-17 prices (£)
local authority social services	5,600,000	5,800,000	6,100,000	17,500,000	6,293,300
health boards	13,700,000	14,100,000	14,700,000	42,500,000	15,165,900
Total	19,300,000	19,900,000	20,800,000	60,000,000	21,459,200

8.119 Deloitte did not estimate the amount social services spend on SEN/LDD assessments and reviews, nor did they estimate health board spend on SEN/LDD assessment and reviews. The cost to social services of undertaking assessments and reviews has been estimated based on research findings into the costs of statements, undertaken by Craston et al (2014)⁸¹.

8.120 Table 34 below sets out the findings of the research as percentage cost of undertaking an assessment to each group of agencies as an average across nine geographical areas.

⁸¹ Craston, M., Carr, C., Spivack, R. and G. Thom (2014) Evaluation of the Special Educational Needs and Disability Pathfinder Programme: understanding the comparative costs of delivering the EHC planning and SEN statementing processes for newcomers to the SEN system (Department for Education: London). Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/342285/RR356B_-_Comparative_Costs_Evaluation.pdf

The initial phase of the evaluation (September 2011-March 2013) aimed to determine the comparative costs of delivering the Education, Health and Care (EHC) planning process relative to the SEN statementing process. The research consisted of two case studies covering nine geographical areas.

Table 34: average cost to agencies of undertaking statutory assessments in England

Agency group	Average %
SEN ⁸²	81.34
Specialist health ⁸³	15.87
Social care	2.67
Other	0.13
Total	100.00

- 8.121 Assuming the percentage split of costs is the same across agencies in Wales, it is possible to state on average an estimated 81% of statutory assessment costs would fall on local authority education services and mainstream schools, 16% on health boards, with 3% falling on local authority social services.
- 8.122 Local authority education services are estimated to have spent an average of approximately £4,750 per statutory assessment between 2011-12 and 2013-14 (see Table 12 above) and mainstream schools are estimated to have spent approximately £750 per statutory assessment (see Table 35 below).
- 8.123 The average estimated cost per statutory assessment to local authority education services and to mainstream schools was, therefore, approximately £5,500, which is assumed to represent 81% of the total estimated cost of statutory assessments, giving a total cost per statutory assessment of approximately £6,750. The remaining £1,250 (19%) is split between health boards and local authority social services with health boards spending an estimated average of approximately £1,050 per assessment and local authority social services spending an estimated average of approximately £200 per assessment (see Table 35 below).
- 8.124 The cost per statutory assessment (in 2016/17 prices) is estimated to be £1,150 for health boards and £200 for local authority social services departments.

⁸² Craston et al (2014) include the following in the SEN group: LA SEN team, educational psychologists, school staff, outreach team, portage professionals and advisory teachers.

⁸³ Craston et al (2014) include the following in the health group: speech and language therapists, community paediatrician, clinical commissioners, community nurses, occupational therapists and health visitors.

Table 35: estimated spend per statutory assessment 2011-12 to 213-14

Agency	Spend per statutory assessment (£)				
	2011-12	2012-13	2013-14	Average	2016-17 prices
Local authority education services	4,800	4,650	4,750	4,750	4,900
Mainstream schools	650	800	850	750	900
Total (81%)	5,450	5,450	5,550	5,500	5,800
health boards (16%)	1,050	1,050	1,100	1,050	1,150
Local authority social services (3%)	200	200	200	200	200
Total cost per statutory assessment	6,700	6,700	6,900	6,750	6,950

- 8.125 As Table 36 below shows, between 2011-12 and 2013-14, health boards estimated average spend on assessments each year was approximately £1,942,800 and local authority social services was approximately £326,900. This equates to approximately £1,829,100 per year for health boards and £307,800 per year for social services in 2016-17 prices.

Table 36: total estimated spend on statutory assessments by agency

Agency	Total spend on statutory assessments (£)				
	2011-12	2012-13	2013-14	Average	2016-17 prices
Local authority education services	9,362,000	8,702,500	7,735,500	8,600,000	7,980,700
Mainstream schools	1,258,800	1,499,200	1,366,800	1,374,900	1,410,100
Health boards (16%)	2,068,600	1,987,000	1,772,900	1,942,800	1,829,100
Local authority social services (3%)	348,100	334,300	298,300	326,900	307,800
Total	13,037,500	12,523,000	11,173,500	12,244,600	11,527,700

- 8.126 Assuming the contribution of health boards and social services in the review process had the same percentage split as in the assessment process, it is estimated in 2013-14, health boards spend on reviews each year was approximately £1,049,300 and local authority social services was approximately £176,500 . In 2016-17 prices, this equates to health boards

spending approximately £1,082,600 on reviews each year and local authority social services approximately £182,100.

Careers Wales

- 8.127 Deloitte estimate Careers Wales spent £2.2m on SEN/LDD 2011-12 and 2013-14, of which £0.74m was spent during 2013/14 (see Table 37 below). Deloitte estimate an average 64% of Careers Wales' total expenditure on supporting learners with SEN/LDD over the three years has been on assessment. This includes the assessment of the education and training needs of young people required under the Learning and Skills Act 2000, as well as any subsequent application for funding to Welsh Ministers for placements at specialist FE establishments (where required). The remaining 36% was spent on reviewing statements.

Table 37: Careers Wales spend on SEN/LDD by activity and year

Area	2011-12 (£)	2012-13 (£)	2013-14 (£)	2011-12 to 2013-14 (£)	average (£)	2016-17 prices (£)
Assessing need (64%) ⁸⁴	499,200	422,400	473,600	1,395,200	465,050	488,600
Reviewing statements (36%)	280,800	237,600	266,400	784,800	261,600	274,800
SEN/LDD total spend	780,000	660,000	740,000	2,180,000	726,650	763,400

- 8.128 In 2013-14, Careers Wales supported 1,103 learners with learning and skills plans, which take an average of ten hours to develop. Of these, 119 included applications for funding specialist FE establishments. Each of these applications requires an additional 35 hours staff time. The time required to complete assessments and funding applications has been used to disaggregate the total cost of assessing need into the cost for undertaking taking assessment and the cost of applications to Welsh Ministers.

⁸⁴ Assessing need includes completing funding applications for specialist placements and supporting with learning and skills plans.

8.129 As Table 38 below shows, in 2013-14 Career Wales is estimated to have spent approximately £343,800 undertaking learning and skills plan assessments and approximately £129,800 on applications to fund independent specialist college placements. This is equivalent to spending £354,700 on assessments and £133,900 on applications to fund independent specialist college placements in 2016-17 prices.

Table 38: Proportion of time and spend on learning and skills plan assessments and independent specialist college funding applications by year

	2011-12	2012-13	2013-14	2016-17 prices
Number of learning and skills plan assessments	1,398	1,166	1,103	1,103
Time taken to complete an learning and skills plan assessment (mins)	600	600	600	600
Total time taken to complete learning and skills plan assessments (mins)	838,800	699,600	661,800	661,800
Number of applications for funding at an independent specialist college	71	72	119 ⁸⁵	119
Time taken to complete a funding application	149,100	151,200	249,900	249,900
Total time taken (mins)	987,900	850,800	911,700	911,700
Proportion of time spent on learning and skills plan assessments (%)	85	82	73	73
Proportion of time spent on funding applications (%)	15	18	27	27
Estimated spend on completing learning and skills plan assessments (£)	423,900	347,300	343,800	354,700
Estimated spend on completing funding applications (£)	75,300	75,100	129,800	133,900
Total spend on assessment	499,200	422,400	473,600	488,600

8.130 Deloitte estimate £784,800 (36%) of Careers Wales total expenditure on SEN/LDD over the three years 2011-12 to 2013-14 was spent on annual reviews for learners with a statement as part of the transition process into further education. Deloitte estimate each review took on average two hours.

⁸⁵ Although 119 reviews undertaken in 2013-14 is a significant increase compared to the 71 undertaken in 2011-12, the higher figure has been used to calculate the 2016-17 prices since this does reflect the upward trend in Welsh Government funded ISC placements. In 2011-12, there were 256 ISC placements compared to 278 in 2013-14 – an increase of 22. The trend for increased ISC placements has continued. In 2015-16, Welsh Government funded 300 ISC placements.

- 8.131 Table 39 below sets out the total Careers Wales spent per year on undertaking reviews together with the cost per review between 2011-12 and 2013-14.

Table 39: cost per review of statement by year

	2011-12 (£)	2012-13 (£)	2013-14 (£)	Total	Average	2016-17 prices (£)
Spend on reviews (£)	280,800	237,600	266,400	784,800	261,600	274,800
Number of reviews undertaken	5,234	4,298	4,668	14,200	4,733	4,668
Cost per review	54	55	57		55	59

- 8.132 As Table 39 sets out, in 2013-14 Careers Wales spent approximately £266,400 on reviewing statements. This is equivalent to £274,800 in 2016-17 prices.
- 8.133 The total cost to Careers Wales of undertaking learning and skills plan assessments, preparing funding applications and reviewing statements in 2016-17 prices is estimated to be approximately £763,400 per year (see Table 37 above).

Mainstream further education institutions

- 8.134 Further education institutions received discrete and mainstream funding totalling £7,500,000 in 2013-2014 for LDD provision. This funding comes from the Welsh Government and might be used, for example, for one-to-one support for learners and for communication support workers. The total discrete and mainstream funding received by FEIs between 2011-12 and 2013-14 was £22,200,000.
- 8.135 Deloitte suggests a small proportion of funding may relate to assessment of need and annual reviews. It was not possible, however, for Deloitte to disaggregate spending on these two areas. It was possible, however, to estimate the costs FEIs incur when reviewing plans and responding to complaints based on the assumption the cost to FEIs are equivalent to those incurred by schools and local authorities.

- 8.136 There is currently no statutory requirement for young people to have a college-based plan and no guidance which sets out the expectations of plans to support young people with SEN during their further education. Most FEIs do, however, meet with learners with LDD to agree the support required and some form of documentation will be completed and reviewed on an annual basis.
- 8.137 There are 8,905 young people with LDD (excluding young people with profound and multiple learning difficulties)⁸⁶ who attend FE. Based on the assumption the cost to FEIs for reviewing plans for young people with LDD is equivalent to the cost of £24 currently incurred by mainstream schools for reviewing individual education plans (see Table 32 above), the cost to FEIs for reviewing 8,905 plans is estimated to be approximately £213,700 per year.
- 8.138 In addition, there are currently 120 young people in FEIs with profound and multiple learning difficulties⁸⁷. Based on the assumption the cost to FEIs to review college plans for young people with profound and multiple learning needs is equivalent to the cost of £124 currently incurred by mainstream schools for reviewing a statement (see Table 32 above), the estimated cost to FEIs is approximately £14,900 per year.

Table 40: estimated cost to FEIs of undertaking IDP reviews

	Individual cost	Number	Total (£)
Reviewing plans – young people with profound and multiple learning difficulties	124	120	14,900
Reviewing plans – young people with LDD	24	8,905	213,700
Total		9,025	228,600

⁸⁶ <https://statswales.gov.wales/Catalogue/Education-and-Skills/Post-16-Education-and-Training/Further-Education-and-Work-Based-Learning/Learners/Further-Education/UniqueLearnersEnrolledFurtherEducationInstitutions-by-PrimaryDisability-Gender>

⁸⁷ Children and young people with profound and multiple learning difficulties have a profound cognitive impairment/learning difficulty, leading to a significant delay in reaching developmental milestones. In addition, they display one or more of the following: significant motor impairments, significant sensory impairments, and/or complex health care needs/dependence on technology.

- 8.139 In total then, it is estimated FEIs incur costs of approximately £228,600 a year reviewing college-based plans and learning and skills plans.
- 8.140 FEIs are also likely to receive some complaints about the support they provide young people with ALN.
- 8.141 As set out above, there are 120 young people with profound and multiple learning difficulties up to the age of 25 who attend FE in Wales. If young people with profound and multiple learning difficulties disagree about the content of their plan at the same rate as young people with SEN in school currently disagree with the content of their statement, it is estimated FEIs would received one complaint a year about the content of their plan⁸⁸. Based on the assumption the cost incurred by FEIs when responding to complaints is the same as that incurred by local authorities (£2,121), it is estimated FEIs could incur costs of approximately £800 a year responding to complaints about the support they deliver to young people with profound and multiple learning difficulties.
- 8.142 In addition, there are 8,905 young people with LDD who attend FE in Wales. As with schools (see paragraph 8.113), data about the number, type or outcome of college complaints is not collated centrally. It is not, therefore, possible to determine the number of complaints colleges receive which are disagreements about ALP for young people with LDD. Thus, it has not been possible to estimate the current number or costs of complaints about college plans for young people with LDD who attend FE in Wales. These costs are, therefore, unknown.
- 8.143 In total then, it is estimated FEIs incur costs of approximately £229,400 a year reviewing college-based plans and learning and skills plans, and responding

⁸⁸ In 2015-16, there were 107,668 young people in school with SEN and local authority disagreement resolution services were used on an estimated 758 occasions. That is, 0.7% of young people with SEN in schools used dispute resolution services. Assuming 47% of these disagreements were about the content of statements, 0.33% of young people with SEN in school used disagreement resolution services regarding complaints about the content of their statement.

to complaints about the support they deliver to young people with LLD and profound and multiple learning difficulties.

Special Educational Needs Tribunal Wales

- 8.144 The Special Educational Needs Tribunal Wales (SENTW) hears and decides on appeals regarding certain decisions made by local authorities in relation to statements.
- 8.145 In 2015-16 total there were 105 appeals made to SENTW about certain local authority decisions. 57 (54%) appeals were concerned with local authority decisions about not having a statement and 48 (46%) were concerned with local authority decisions about having a statement (see Table 20 above).
- 8.146 Cases related to having a statement are estimated to cost three times more than cases related to not having a statement⁸⁹. This arises due to the complexity of cases about having a statement. In addition, a higher proportion of cases about not having a statement are dropped before they are heard⁹⁰. In such instances, whilst there are administrative costs, there are no tribunal hearing costs⁹¹.
- 8.147 In 2015-16, SENTW incurred costs of approximately £149,700⁹². Of this, it is estimated approximately £107,300 (72%) was incurred due to cases related to

⁸⁹ Source: SENTW.

⁹⁰ In an analysis of appeals between 2012 and 2015 regarding refusal to assess/re-assess/statement, SENTW found 79.5% of cases were discharged before reaching case statement stage (the evidence deadline for submitting the statement of a case in relation to the appeal submitted), compared to 45% of cases relating to content of statements. Cases discharged at this early stage only involve around 10% of the time/work which would be spent on a case that progresses to hearing. A further 8.5% of refusal cases were discharged before hearing (21% for content cases), involving approximately 55% of the time/work which would be used on a case that progresses to hearing. Just 12% of refusal cases actually reached hearing (using 100% of time/work on a case). This compared to 34% of content cases which reached hearing stage, incurring 100% of costs.

⁹¹ Whilst appeal cases dropped before they are heard at tribunal have lower costs to the tribunal, they do not necessarily result in lower costs for the appellant or the local authority, since the costs of putting the case or defence together can be the same, regardless of whether the case is heard or not. Thus, when calculating the costs to parents and local authorities in relation to appeals about not having a statement, the costs have not been adjusted.

⁹² Actual figure £149,704.97. This includes training costs for members of approximately £30,000.

having a statement and approximately £42,500 (28%) was incurred as a result of cases related to not having a statement⁹³.

8.148 In 2016-17 prices, it is estimated SENTW would incur costs of £152,000, of which approximately £108,900 would be incurred as a result of cases related to having a statement and £43,100 would be incurred as a result of cases related to not having a statement.

8.149 Table 41 below sets out the estimated cost to SENTW of appeals related to decisions about not having a statements and the costs of appeals related to decisions about the content of statements in 2016-17 prices.

Table 41: cost to SENTW for appeals against local authority decisions 2016-17 prices, by type of appeal

	Total cost (£)	Cost per appeal
Not having a statement	43,100	756
Having a statement	108,900	2,269
Total	152,000	

Children, young people and parents

8.150 The current assessment and review system is overly complex. This can militate against early intervention, creating delays in getting young people the support they need when they need it. As a result, needs can escalate unnecessarily, having negative impacts for the young person.

8.151 The complexity of the current SEN assessment and planning process can result in parental confusion, anxiety and frustration, can be alienating and can result in a lack of confidence in the system, even where practice appears to be good and there is relative satisfaction with the outcomes achieved⁹⁴.

⁹³ $(1 \times 57) + (3 \times 48) = 201$ (or 57 units related to not having a statement and 144 units related to having a statement = 201 cost units). The cost of appeals related to having a statement is (£149,704.97/201)

*144=£107,251 and the cost of appeals related to not having a statement is £149,704.97/201)

*57=£42,454.

⁹⁴ <http://www.natcen.ac.uk/media/25055/parental-confidence-special-educational.pdf>

- 8.152 Where young people and parents wish to challenge decisions related to issuing a statement or to the content of a statement, costs to parents can be significant.
- 8.153 In 2013, Kids First undertook a survey of parents' experiences of the Special Educational Needs and Disability (SEND) tribunal in England. As part of the survey, parents were asked about the costs they incurred when making an appeal to a SEND tribunal⁹⁵. The cost to parents ranged from no cost to over £30,000⁹⁶, with 42% of parents (n=110) incurring no cost and 10% of parents (n=25) incurring costs of over £20,000 (see Table 42 below).
- 8.154 Where parents had to pay professionals (that is, they did not access free support services from a charity or could not self-advocate) the average costs was approximately £9,600 (n=150). Where parents were able to access free support services and/or self-advocate, the survey found the average cost to parents for registering an appeal was £5,500 (n=260).

Table 42: cost to parents of making an appeal

Cost	Number of parents	Percent (%)
Incurred no cost	110	42
Less than £5,000	72	28
£5,000 to £20,000	53	20
Over £20,000	25	10

Source: Kids First (2013)

- 8.155 Based on the Kids First (2013) survey findings, the total estimated cost to parents in 2013-14 for registering 78 appeals with SENTW ranged between £430,700 where free services are accessed and £746,600 where professional services only are used⁹⁷.

Audit Commission (2002) SEN policy focus paper; Audit Commission, Statutory assessment and statements of SEN: in need of review?; Tennant, R., Callanan, M., Snape, D., Palmer, I. and Read, J. (2008) SEN Disagreement Resolution Services: National Evaluation, DCSF Research Report RR054.

⁹⁵ <http://www.mertonmencap.org.uk/pdfs/SEND-Tribunal-Survey-Results-August2013.pdf>

⁹⁶ one parent reported being £80,000 in debt after paying for an appeal to the second tier Tribunal

⁹⁷ The costs to parents are not intended to represent the cost to parents who use SNAP Cymru. Whilst SNAP Cymru case figures have been used, the RIA recognises there will be

8.156 Table 43 sets out the cost to parents, where the average lower cost is based on an average of £5,500 (where parents accessed free support services or self-advocated) and the average upper case is based on the figure of £9,600 (where parents did not access free support services or self-advocate). The estimated range of costs to parents for 2016-17 is between £598,200 and £1,036,900. The midpoint is £817,550.

Table 43: average range of costs to parents for registering an appeal

	Appeals to SENTW	Average lower cost	Average upper cost	Average mid-point
2011-12	86	474,900	823,200	649,050
2012-13	73	403,100	698,800	550,950
2013-14	78	430,700	746,600	588,650
2014/15	101	557,700	966,800	762,250
2015-16	105	579,800	1,005,100	792,450
2016-17 prices	105	598,200	1,036,900	817,550

8.157 As well as incurring costs related to registered appeals, parents who disagree with decisions taken by local authorities also incur costs. As Table 44 below sets out, parents are estimated to have spent a total of £2,773,150 in 2013-14 resolving disagreements with local authorities. This is equivalent to £2,861,050 in 2016-17 prices.

Table 44: average cost of dispute resolution to parents

	Cost per appeal	Factor	Cost per dispute	Disputes per year	2013-14 (£)	2016-17 prices (£)
Cost to parent – without disagreement resolution services support	9,572	2.32	4,641	758	3,517,400	3,628,900
Cost to parent – with disagreement resolution services support	5,522	1.34	2,677	758	2,028,900	2,093,200
Average cost to parent			3,659		2,773,150	2,861,050

more parents who progress disagreements, since not all parents will use SNAP Cymru services. Thus, the figures used refer to parents generally and not just those parents who use SNAP Cymru services.

8.158 In 2016-17 prices, parents are estimated to have incurred costs totalling approximately £3,678,600 (see Table 7) resulting from disagreements (£2,861,050, see Table 44) and making appeals (£817,550, see Table 43) in response to local authority decisions about statements.

Option two: replace the SEN and LDD plans with a statutory IDP for those with additional learning needs

- 8.159 Under option two, the plans for young people with additional learning needs including statements of SEN, individual education plans and learning and skills plans would be brought together under a single statutory individual development plan (IDP) for all children and young people aged 0-25 with additional learning needs. In addition, existing requirements regarding who must contribute to the preparation and review of plans will be reformed with the aim of making the system more efficient and effective.
- 8.160 Currently, when making an assessment, a local authority must seek advice from:
- the child's parent;
 - the head teacher (or equivalent);
 - the health authority, who must obtain the advice from a fully registered medical practitioner;
 - an educational psychologist;
 - social services authority; and
 - any other advice which the authority considers appropriate for the purpose of arriving at a satisfactory assessment⁹⁸.
- 8.161 Under option two, local authorities will have to seek advice from professionals only where it is relevant. Where a child or young person does not have any medical or health needs, for example, local authorities will not have to seek the advice of the health board.
- 8.162 Under option two, local authorities and schools can continue to invite educational psychologists to participate in IDP assessment and review meetings.
- 8.163 Under the current system, statements cease when a young person moves to further education and statutory learning and skills plans are developed for

⁹⁸ See the Education (Special Educational Needs) (Wales) Regulations 2002 (2002 No 152).

those learners with more severe and complex needs. Careers Wales is responsible for developing learning and skills plans for learners with LDD entering FE.

8.164 Under option two, learning and skills plans will be replaced by IDPs and responsibility for developing or maintaining IDPs for this group of young people will be transferred to local authority education services. Further education institutions will have a statutory responsibility, where appropriate, for developing⁹⁹ and maintaining IDPs for learners who have ALN and require ALP.

8.165 Option two is the preferred option.

Summary of costs

8.166 As Table 45 below shows, if option two is implemented, there is potential for an estimated saving to public administration of £822,885 per year (taking into account the midrange).

8.167 There are a number of calculations which use a mid-range. Table 45 sets out the difference between options one and two as estimated costs and savings. In addition, where a mid-range has been used, the final column in the table sets out the costs and benefits having taken into account the mid-range.

⁹⁹ Since the majority of learners will enter further education from school with an IDP, the number of IDPs FEIs will have to develop is expected to be very low.

Table 45: comparison of costs of options one and two, by organisation

	Option one (£)	Option two (£)	Difference (£)	Difference including mid-range (£)
Local authority education services				
Statutory assessments	7,980,700	7,980,700	0	0
Statutory reviews	4,023,600	4,023,600	0	0
Local authority funded disagreement resolution services – disagreements	384,950	180,920	-204,030	-102,015
Responding to disagreements	1,633,100	767,560	-865,541	-432,770
Local authority funded disagreement resolution services – appeals	5,300	2,400	-2,900	-1,450
Responding to appeals	1,083,300	498,300	-585,000	-292,500
IDP reviews FE	0	107,400	107,400	107,400
Appeals – FE ¹⁰⁰	0	16,400	16,400	15,950
Local authority funded disagreement resolution services – FE	0	15,500	15,500	15,500
Local authority – responding to disagreements - FE	0	2,200	2,200	2,200
Total	15,110,950	13,594,980	-1,515,970	-687,685
Total including midrange	15,110,950	14,423,265	-687,685	-828,285
Local authority social services				
Statutory assessments/ IDP assessments	307,800	307,800	0	0
Statutory reviews/ IDP assessments	182,100	182,100	0	0
Total	489,900	489,900	0	0
Total including midrange	489,900	489,900	0	0
Mainstream schools				
Statutory assessments/ IDP assessments	1,410,100	1,410,100	0	0
Statutory reviews/IDP reviews	1,547,000	1,547,000	0	0
Non-statutory assessments/ IDP assessments	2,959,300	2,959,300	0	0
Non-statutory reviews/IDP reviews	2,158,300	2,158,300	0	0
Total	8,074,700	8,074,700	0	0
Total including midrange	8,074,700	8,074,700	0	0
Special schools				
Statutory assessments/ IDP assessments	0	0	0	0
Statutory reviews/IDP reviews	938,700	938,700	0	0
Total	938,700	938,700	0	0
Total including midrange	938,700	938,700	0	0
Local health boards				
Statutory assessments/ IDP assessments	1,829,100	1,829,100	0	0
Statutory reviews/IDP reviews	1,082,600	1,082,600	0	0
Total	2,911,700	2,911,700	0	0
Total including midrange	2,911,700	2,911,700	0	0
Careers Wales				
Assessments – learning and skills plans	354,700	0	-354,700	-354,700
Reviews	274,800	274,800	0	0
Total	629,500	274,800	-354,700	-354,700

¹⁰⁰ A reduction of £450 has been made since this is the mid-range of the estimated cost of £0-900 for dispute resolution services for cases which go to tribunal (see para 8.186).

Total including midrange	629,500	274,800	-354,700	0
SENTW				
Appeals – current age range	152,000	108,900	-43,100	-21,600
Appeals – extended age range	0	12,500	12,500	6,300
Total	152,000	121,400	-30,600	-15,300
Total including midrange	152,000	136,700	-15,300	-15,300
Further education institutions				
Reviews	228,600	228,600	0	0
Disagreements	800	800	0	0
Appeals - profound and multiple learning difficulties	0	2,600	2,600	2,600
Appeals – LDD	0	41,300	41,300	20,600
Total	229,400	273,300	43,900	23,200
Total including midrange	229,400	250,100	20,700	20,700
Total	28,536,850	26,679,480	-1,857,370	-1,034,485
Total including midrange	28,536,850	27,502,365	-1,034,485	-822,885

8.168 As set out in table 51, there is potential for service providers to benefit from an estimated saving of £150,770 a year and for parents to save an average of approximately £832,375 per year.

8.169 The transition costs¹⁰¹ set out in this section are gross costs, since the Welsh Government is making grants available to local authorities and to SENTW to support the implementation of the Bill.

¹⁰¹ Transition costs are one-off costs.

Table 46: gross transition costs

	Activity	Cost	Opportunity costs	Total
Local Authority education service	Training – assessment and reviewing officers		18,200	18,200
Local authority social services	Training – LACE co-ordinators ¹⁰²		3,800	118,700
	Training social workers		114,900	
SENTW	Training – tribunal members	35,100		100,900
	Additional members	25,300		
	Updating publications, forms and processes	50,500		
Total				237,800

8.170 As Table 46 sets out, the total transition costs are £237,800 for introducing option two. Local authority education services are estimated to incur opportunity costs of £18,200, local authority social services are estimated to incur opportunity costs of £118,700 and SENTW to incur transition costs of £100,900.

Welsh Government

Ongoing costs

8.171 There are no additional ongoing costs for the Welsh Government as a result of option two.

Transition costs

8.172 Welsh Government transition costs associated with the Bill are set out in detail in Table 5 above.

¹⁰² Looked after children education co-ordinator.

Local Authority Education Services

Ongoing costs

- 8.173 As set out above in Table 45, it is estimated local authorities spend a total of £12,004,300 a year assessing (£7,980,700) and reviewing (£4,023,600) statements.
- 8.174 Overall, there will be no additional ongoing costs for local authority education services under option two. Rather, the findings from the regulatory impact assessment suggest there is potential for local authorities to save an estimated £687,685 (taking into account the midrange).
- 8.175 Currently, the majority of learners who have SEN or LDD have their needs met by maintained nurseries, schools or FEIs. It is expected this will remain the same under option two.
- 8.176 Under option two, local authorities would not be involved in the majority of IDP assessments and reviews. Rather, local authorities would only be required to be involved in the assessment or review of an IDP where the learner's needs could not reasonably be met by a maintained nursery, a school or an FEI, or where there is a need to reconsider a decision taken by a maintained nursery, a school or an FEI on a learner's ALN or additional learning provision.
- 8.177 Children and young people whose special educational needs cannot be met by maintained nursery or schools fall into the group of children and young people likely to be in receipt of a statement of special educational needs. Local authority education services are currently involved in assessing and reviewing statements of special educational needs. It is expected it will be this group of learners local authorities will continue to be responsible for under option two. Thus, there would be no additional responsibilities or costs for local authority education services in relation to IDPs for young people in maintained nurseries or school settings.

- 8.178 Local authorities will, however, have new responsibilities in relation to IDPs for young people in FE. Currently, all learners in receipt of a statement whilst at school will have a learning and skills plan when they enter FE. The Welsh Government currently funds Careers Wales to develop learning and skills plans, at a cost of approximately £354,700 a year.
- 8.179 Under option two, Careers Wales will no longer be responsible for developing learning and skills plans, since they will be replaced by IDPs. The group of learners currently in receipt of learning and skills plans are those with the most complex needs who generally attend independent specialist colleges.
- 8.180 Since local authority education services will be responsible for developing and maintaining IDPs for young people with the most complex needs, it is expected local authorities will generally be responsible for maintaining IDPs for those young people who would currently be in receipt of a learning and skills plan. Local authorities will not have to develop a new plan for young people entering FE since the IDP will follow them to FE. Rather, the additional responsibility to local authorities will be in respect of reviewing IDPs for those young people in FE.
- 8.181 In 2015-16, there were 298 young people with complex needs who attended independent specialist colleges. Based on an average cost of £300 per review¹⁰³, the estimated additional cost to local authorities for reviewing these IDPs is £89,400.
- 8.182 Some young people with complex needs attend mainstream further education. In 2014-15¹⁰⁴ there were 120 young people with complex needs who attended an FEI¹⁰⁵. A proportion of these young people will receive local authority ALP to support them during FE. In such instances, the local authority will maintain their IDP. The proportion of young people with complex needs who will have a

¹⁰³ The average cost to local authorities between 2011-12 and 2013-14 to review a statement was £290 (see Table 14 above) or £300 in 2016-17 prices.

¹⁰⁴ Latest data available at the time of writing.

¹⁰⁵ Referred to as profound and multiple learning difficulties.

<https://statswales.gov.wales/Catalogue/Education-and-Skills/Post-16-Education-and-Training/Further-Education-and-Work-Based-Learning/Learners/Further-Education/UniqueLearnersEnrolledFurtherEducationInstitutions-by-PrimaryDisability-Gender>

local authority maintained IDP is not known. For illustrative purposes, it is assumed 50% of young people will have a local authority maintained IDP. That is, local authority education services will have the additional responsibility for reviewing 60 IDPs a year. The additional estimated cost for reviewing the IDPs local authorities maintain for young people who attend an FEI is £18,000 a year¹⁰⁶.

- 8.183 In total, then, it is estimated local authorities will incur additional costs of £107,400 reviewing IDPs for young people who attend FE.
- 8.184 There is a risk local authorities will incur additional costs due to the potential for increased appeals to SENTW from young people with local authority IDPs who are making the transition to FE or are in FE.
- 8.185 If young people with complex needs/profound and multiple learning difficulties appeal about the content of their IDP at the same rate as young people with statements currently appeal about the content of their statement, it is estimated there could be approximately three appeals regarding the content of IDPs each two years¹⁰⁷. As set out above, it is estimated the cost to responding to an appeal is £10,317. The cost for three appeals is £30,951 every two years. For each year, therefore, the cost is approximately £15,500.
- 8.186 In addition, local authorities fund disagreement resolution services to support young people and parents who appeal to SENTW. The cost of providing disagreement resolution services is estimated to be £4,125 per appeal. The cost of providing services for three appeals is £12,375. The yearly cost is, therefore, approximately £6,200 per year. Since it is not known whether young people and parents will choose to use disagreement resolution services, the cost is £0-6,200 with a mid range of £3,100. Of this, it is estimated local authorities will incur additional costs of approximately £450 and dispute

¹⁰⁶ 50% of young people with complex needs who attend FEI is $120/2=60$. The cost per review is an estimated £300. Thus, $60*300=£18,000$.

¹⁰⁷ 358 young people with complex needs appealing at a rate of 0.79% would result in 3 appeals each year or 1.5 appeals about contents.

resolution service providers will incur additional costs of approximately £2,650.

- 8.187 The total additional cost relating to appeals to SENTW is estimated to be approximately £18,600. Of this, it is estimated local authorities will incur additional costs of £15,950 and service providers will incur costs of £2,650.
- 8.188 In addition, there is a risk local authorities will incur additional costs as a result of disagreements about the content of plans. There are currently a total of 9,323¹⁰⁸ young people with LDD and profound and multiple learning difficulties in FE in Wales. Based on the assumption young people in FE will use disagreement resolution services at the same rate as children and young people with SEN in school currently use disagreement resolution services regarding their statements, there is potential for approximately 31 additional young people to use local authority services to resolve disagreements about the content of their IDPs¹⁰⁹.
- 8.189 It is estimated the total cost for each disagreement supported through disagreement resolution services is £875. Thus, the total cost for an additional 31 cases supported through disagreement resolution services is estimated to be approximately £27,100. Of this, local authorities are estimated to incur costs of £15,500 and providers of dispute resolution services are estimated to incur costs of £11,600.
- 8.190 In addition, local authorities will incur costs responding to disagreements about the content of plans maintained by the local authority. Based on the assumption local authorities maintain 60 IDPs for young people with profound and multiple learning difficulties in FEIs and 298 IDPs for young people who attend an independent specialist college, and young people in FE disagree with the contents of their plans at the same rate as young people in school, it

¹⁰⁸ 9,025 young people with profound and multiple learning difficulties and LDD in FEIs and 298 young people with profound and multiple learning difficulties in independent specialist colleges.

¹⁰⁹ Of the 107,668 young people with SEN, there were 758 disagreements which used LA funded services. That is 0.7% of young people with SEN used LA funded services for disagreements about both having a statement and about the content of the statement. It is estimated 47% of the disagreements were about the content of the plan, reducing the percentage to 0.33.

is estimated local authorities will respond to one additional disagreement a year at a cost of approximately £2,200¹¹⁰.

- 8.191 There is potential, therefore, for additional costs of £29,300 per year as a result of disagreements about contents of IDPs raised by young people in FE. Of this, it is estimated local authorities will incur additional costs of £17,700 and service providers will incur additional costs of £11,600.
- 8.192 In total, it there is potential for additional costs of £155,300 as a result of extending the scope of statutory plans to cover young people up to the age of 25 who are in FE. Of this, it is estimated local authorities will incur additional costs of £141,050 (made up of an additional £107,400 for reviews, £15,950 for appeals and £17,700 for disagreements) and service providers are estimated to incur additional costs of £14,250 (made up of £2,650 for appeals and £11,600 for disagreements).

Benefits

- 8.193 When compared to option one, local authority education services are expected to incur less cost under option two for two reasons. First, local authorities are expected to benefit from having fewer disagreements regarding decisions relating to assessing and issuing IDPs than is currently the case with statements; and second, local authorities should benefit by having fewer decisions appealed to SENTW.
- 8.194 Currently, there is an incentive for parents to push local authorities to issue a statement as the provision within statements has statutory protection. Where local authorities decide not to issue a statement, this can result in costly disagreements and/or an appeal to SENTW against the decision not to issue a statement.

¹¹⁰ 358 young people disagreeing about the contents of their IDP at a rate of 0.33% would result in 1.2 disagreements. One disagreement at a cost of £2,155 (2016-17 prices) is approximately £2,200 per year.

- 8.195 Option two removes the distinction between statutory plans and non-statutory plans since all plans to support young people with additional learning needs will be statutory. Hence, option two removes the incentive for parents to pursue local authorities for a statement.
- 8.196 Since the distinction between statutory and non-statutory plans will be removed, it is expected the current costs associated with disagreements regarding decisions not to issue a statement will be saved.
- 8.197 As set out above in Table 18 above, the total cost of resolving 758 disagreements about statements is estimated to be £2,306,760. The estimated total cost of the 402 disagreements which were about not having a statement is £1,222,580. The distinction between statutory and non-statutory plans will be removed under option two. As a result, the disagreements about not having a statutory plan will not arise. There is, therefore, potential for a total saving of £1,222,580 per year. It is expected local authorities will save approximately £1,069,570 a year and service providers will save approximately £153,020 a year.
- 8.198 In addition, as set out in Table 21 above, there is total estimated cost of £1,120,400 as a result of 105 appeals about decisions relating to not having and to having a statement. Of this, local authorities are estimated to incur costs of approximately £1,088,600¹¹¹ and dispute resolution providers are estimated to incur costs of approximately £31,800. The total estimated cost of the 57 appeals about not having a statement is approximately £599,900. Of this, the cost to local authorities is estimated to be approximately £587,900, with dispute resolution service providers incurring estimated costs of £17,200. Since the distinction between statutory plans and non-statutory plans will be removed under the new system, appeals about not having a statement will not arise. Thus, there is potential for an overall estimated saving of approximately £599,900 per year.

¹¹¹ Made up of £ 5,300 incurred from funding advocacy services and £1,083,300 responding to appeals.

Table 47: expected savings to local authorities and dispute resolution service providers, option two

	Cases per year	Cost per year (£)	Mid range (£)
Option one - local authority disagreement resolution service – disagreements	758	384,950	
Option two - local authority disagreement resolution service – disagreements	356	180,920	
Saving		-204,030	-102,015
Option one - local authority education services – disagreements	758	1,633,110	
Option two - local authority education services – disagreements	356	767,560	
Saving		-865,550	-432,780
Option one - local authority disagreement resolution service – appeals	105	5,300	
Option two - local authority disagreement resolution service – appeals	48	2,400	
Saving		-2,900	-1,450
Option one - local authority – response to appeals	105	1,083,300	
Option two - local authority – response to appeals	48	498,300	
Saving		-585,000	-292,500
Local authority total saving		-1,657,480	-828,740
Option one - disagreement resolution service provider – disagreements		288,710	
Option two - disagreement resolution service provider – disagreements		135,690	
Saving		-153,020	-76,510
Option one - disagreement resolution service provider – appeals		31,800	
Option two - disagreement resolution service provider – appeals		14,600	
Saving		-17,200	-8,600
Service provider saving		-170,220	-85,110
Total saving		-1,827,700	-913,850

8.199 In total, there is potential for savings of £1,827,700 as a result of the removal of disagreements and appeals about not having statements (see Table 47 above). Of this, local authorities are estimated to save £1,657,480 and providers are estimated to save £170,220.

- 8.200 However, there is also a risk, this benefit will not be fully realised.
- 8.201 Under option two, IDPs will be maintained by local authorities and by schools. It is possible parents may disagree with local authority decisions not to maintain an IDP. Although this risk is considered to be low, it is not possible to determine how people will behave and consequently it is not possible to determine the extent of the risk. Thus, the estimated saving to local authorities is approximately £0-1,657,480 per year, with a mid-range saving of £828,740. Taking into account the additional costs of £141,050 set out at paragraph 8.192 above, there is potential for local authorities to make an estimated saving of approximately £1,516,430 with a mid-range saving of £687,690 a year under option two. In addition, it is estimated dispute resolution service providers will save £0-170,220, with an estimated mid-range saving of £85,110. Taking into the additional cost of £14,250 set out at paragraph 8.192 above, there is potential for providers to make an estimated saving of approximately £155,970 with a mid-range saving of £70,860. In total, it is estimated local authorities and dispute resolution service provides will make an overall saving of approximately £1,672,400, with a mid-range saving of £758,550.

Transition costs

- 8.202 Local authorities currently employ officers within inclusion units who are responsible for statement assessments and reviews. These officers will need to undertake training about their new responsibilities, including training on the legislative requirements introduced under the Additional Learning Needs and Education Tribunal (Wales) Act and those set out in the Additional Learning Needs Code which will accompany the act. In addition, officers will need to undertake training on the day-to-day processes and activities involved in developing and maintaining IDPs.
- 8.203 Data is not collected about the number of assessment and reviewing officers employed by local authorities, so it is not possible to determine with accuracy the opportunity costs which are expected to be incurred as a result of

undertaking training. It is, however, possible to illustrate the potential opportunity costs from the number of assessment and reviewing officers employed by Newport City Council.

- 8.204 In 2007-08, Newport City Council employed two assistant assessment and reviewing officers and two assessment and reviewing officers¹¹². During 2007-08, Newport City Council had 860¹¹³ children and young people with statements. Thus, one officer was employed per 215 children and young people with statements.
- 8.205 In 2015-16, there were 13,318 children and young people with a statement¹¹⁴. Based on the assumption assessment and reviewing officers across Wales have a similar case load as Newport City Council, it is estimated there are 62 assessment and reviewing officers in Wales.
- 8.206 Assuming a two day training course, it is estimated the total opportunity cost would be approximately £18,200¹¹⁵.
- 8.207 The Welsh Government will provide local authorities with training materials. It is expected these materials will be procured from training specialists. An expert sub-group of the ALN-SIG (strategic implementation group) is currently considering training requirements and will advise the Welsh Government about the approach to training. In addition, the Welsh Government will engage with stakeholders regarding the approach to training. This will include the medium which should be used, such as e-learning.

¹¹² Assistant assessment and reviewing officers employed at local government spinal column point (SCP) 26-28 and assessment and reviewing officers employed at local government SCP 33-36. Average salary of £35,167 based on 2016-17 local government pay scales, including on costs.

¹¹³ <https://statswales.gov.wales/Catalogue/Education-and-Skills/Schools-and-Teachers/Schools-Census/Pupil-Level-Annual-School-Census/Special-Educational-Needs/pupilssen-by-localauthorityregion-provision>

¹¹⁴ <https://statswales.gov.wales/Catalogue/Education-and-Skills/Schools-and-Teachers/Schools-Census/Pupil-Level-Annual-School-Census/Special-Educational-Needs/pupilssen-by-localauthorityregion-provision>

¹¹⁵ Based on a salary of 35,167 per year including on costs, 48 weeks, cost per day is £146.53. Two days at £146.53 for 58 employees is £18,169.72.

- 8.208 Since the form of the training is not known, it has not been possible to determine the exact cost to Welsh Government of the training materials. The Welsh Government has estimated costs of £390,000 for development of core skills, awareness raising and resources over the implementation period 2017-18 to 2020-21 (see Table 5 above).

Local authority social services

Costs

- 8.209 There will be no additional ongoing costs to local authority social services as a result of implementing option two.

Benefits

- 8.210 Under option two, social services would only be invited to participate in assessments or reviews when their input can benefit the learner. Social services will be required when the assessment/review involves looked-after children; children with a care and support plan; placement of a learner at a post-16 specialist provider; or when their involvement can provide added value.
- 8.211 Consequentially, there is potential for social services to be involved in a reduced number of assessments and reviews. Since it is not known how many of the estimated 200 assessments undertaken each year involve young people outside of the mandatory group set out in the paragraph above, it is not possible estimate the potential savings.

Transition costs

- 8.212 There will be some transition costs for social services departments. Social workers will need to be aware of the changes being introduced under the Additional Learning Needs and Educational Tribunal (Wales) Bill but will not need to change their practice. There are not expected to be any changes, for example, in the written reports they submit to the ALNCo/IDP co-ordinator. In terms of the person-centred approach to developing IDPs, local authorities

have received Welsh Government funding to support the implementation of PCP.

- 8.213 There are 1,363¹¹⁶ social workers within social work services for children and young people across Wales. The opportunity cost for 1,363 social workers to attend a half-day training course is estimated to be approximately £114,900¹¹⁷.
- 8.214 In addition, it is expected the looked after children education (LACE) co-ordinator in each local authority will undertake a one-day training course on the new system. The estimated opportunity cost for training 22 LACE co-ordinators is approximately £3,800¹¹⁸.
- 8.215 In total, then, it is estimated local authority social services will incur an opportunity cost of £118,700. This is a one-off cost which is expected to be incurred in 2017-18.

Schools

Costs

- 8.216 There will be no additional ongoing costs to schools as a result of option two. The number of children and young people with ALN will be equivalent to the current number of children and young people with SEN. Thus, there is not expected to be an increase in demand for provision to support young people with ALN.
- 8.217 In addition, there will be no increase in the number of young people who will be entitled to a school maintained plan. Schools are currently involved in

¹¹⁶ 2014-15. Latest available data at time of writing. See:

<https://statswales.gov.wales/Catalogue/Health-and-Social-Care/Social-Services/Staffing/staffoflocalauthoritiesocialservicesdepartments-by-localauthority-posttitle>

¹¹⁷ Basic salary of £30,645 for social workers 2014-15 price (see <http://www.pssru.ac.uk/project-pages/unit-costs/2015/index.php>), £39,839 including on-costs. Half day salary cost of £83, based on 48 weeks. Cost per half day 2016-17 prices is £84.31. Total cost 2016-17 prices, £114,915.

¹¹⁸ Based on a salary of £39,839 including on-costs, 2014-15. One day cost of £168.62, based on 48 weeks. One day cost of £171.29, 2016-17 prices. Cost for 22 LACE co-ordinators, £ 3,768.34.

assessment and reviews of both statements and individual education plans and this will continue under option two in respect of IDPs.

Transition costs

- 8.218 Schools are not expected to incur any additional costs as a result of making the shift from statements and individual education plans to IDPs since it will be possible for the transition to be made when local authorities and schools would normally undertake the annual review.
- 8.219 Although there is a risk reviews involving a move from statements and individual education plans to IDPs may take longer than reviews currently take, since the system will not be as familiar as the current one. This risk is, however, expected to be minimal. Local authorities and schools will already be using PCP when the provision is implemented and will, therefore, be familiar with the approach underpinning IDPs. In addition, the majority of the information required for the IDP will be contained in the existing statement or individual education plan.
- 8.220 Where schools have not developed individual education plans for children and young people with special educational needs who are on School Action or School Act Plus, as recommended in the Special Educational Needs Code of Practice for Wales¹¹⁹, there will be additional costs as additional resources will be required.
- 8.221 Any additional costs associated with developing IDPs for children and young people who are in receipt of School Action or School Action Plus support but do not have an individual education plan, have not been included in this impact assessment. This is because the additional resources do not result from the implementation of the provisions in this Bill as the expectation is individual education plans will already be in place.

¹¹⁹ <http://learning.gov.wales/docs/learningwales/publications/131016-sen-code-of-practice-for-wales-en.pdf>

- 8.222 It is expected the ALNCos will undertake training as part of the initial training for their new role (see section on special educational needs support co-ordinators in education below).

Benefits

- 8.223 Since the processes for assessing and reviewing IDPs are more flexible than statements, IDPs will facilitate early intervention. This will have benefits for schools since early intervention is expected to avoid issues from escalating and hence, resources from escalating. It has not been possible to quantify the benefits associated with early intervention.

Careers Wales

Costs

- 8.224 It is estimated Career Wales spend approximately £763,400 a year assessing and reviewing plans for children and young people. Of this, £354,700 is spent on developing learning and skills plans, £133,900 is spent on making funding applications (see Table 38 above) and £274,800 is spent on reviewing statements (see Table 37 above).
- 8.225 Under option two, Careers Wales will no longer be responsible for developing learning and skills plans, since learning and skills plans will be replaced by IDPs. In addition, the process of making funding applications will not exist under option two.
- 8.226 There will be no additional ongoing costs to Careers Wales as a result of introducing option two.

Benefits

- 8.227 The introduction of a single plan which follows a young person throughout their education means the need to develop a separate learning and skills plan in preparation for young people entering FE will no longer be required. Rather, the planning will take place as part of the IDP review process.

8.228 Careers Wales spend approximately £354,700 a year developing learning and skills plans. Since learning and skills plans will be replaced by IDPs, there will be an estimated saving of approximately £354,700 per year. In the short term, 2018-19 to 2019-20, Welsh Government will continue to fund Careers Wales, as the role being undertaken by Careers Wales will change from developing learning and skills plans to supporting local authorities to maintain IDPs for this particular group of young people. This transition period will ensure the knowledge Careers Wales has built up about independent specialist colleges will be transferred to local authorities.

Transition costs

8.229 As stated above, Welsh Government will continue to fund Careers Wales during the two year period 2018-19 to 2019-20. Thus, there is a transition cost to the Welsh Government of approximately £709,400. This cost is not included in the summary of transition costs set out Table 46 above but is included in the Welsh Government summary of transition costs set out in Table 5 above, which sets out the Welsh Government transition costs.

Local Health Boards

8.230 Under option two, health boards would be expected to contribute to local authority maintained IDPs as appropriate. Health boards currently contribute to statutory and non-statutory plans for school-based learners. Therefore, the involvement of health boards in assessing need and reviewing plans for school-based learners with ALN is not expected to increase under this option.

8.231 Currently, statutory plans cover young people whilst in school-based settings only. Option two extends the current scope of statutory plans to include young people up to the age of 25 where they remain in education.

8.232 Young people who have the most complex needs and attend a specialist FE establishment currently have a statutory learning and skills plan. Where a young person needs medical care whilst at a specialist FE establishment, the

health board will be asked to contribute to the learning and skills plan. Under option two, this practice will continue with health boards being asked to contribute to the IDP. Thus, there will be no additional costs to health boards where a young person attends a specialist FE establishment.

- 8.233 There are currently no requirements for young people who have less complex needs to have a special educational needs plan. There are, therefore, no formal arrangements for local authorities or FEIs to engage health boards in planning or reviewing plans for young people who need health or medical care whilst at an FEI.
- 8.234 Option two will introduce a requirement for health boards to be involved in assessments and reviews where young people have health care needs that impact their education. This additional requirement is not expected to result in additional costs since young people with health care needs will be known about, having been identified whilst at school. Thus, health care needs will likely be assessed prior to entering FE, as part of the IDP process.

Benefits

- 8.235 Option two will be more flexible than the current system. Health boards will only be required to contribute to an IDP where there is a health need that requires appropriate health provision. Currently, local authorities have to invite the health board to contribute to all assessments and reviews of statements, regardless of whether there is a health need.
- 8.236 Thus, the involvement of health services staff would be no greater than current levels of involvement, with the potential for reduced involvement, as appropriate. It has not been possible to estimate any potential savings as a result of reduced levels of involvement in contributing to plans where such input is unnecessary, since it is not known how many statements currently require a health input.

Transition costs

- 8.237 Health board staff will need to be aware of the changes being introduced under the Additional Learning Needs and Education Tribunal (Wales) Bill. There may be some transition costs associated with this but it is expected staff will become aware of the expectations of the new system through awareness raising activities undertaken by the DECLO (see section below about strategic co-ordinators in health, pages 286-292).
- 8.238 Health board staff will not require training in relation to practice, since there will be no change to current practice in relation to making contributions to IDPs. In particular, reports will be produced and submitted in a way that is consistent with current arrangements.
- 8.239 The Welsh Government will develop awareness raising materials (see section on Welsh Government implementation costs above).

Risks

- 8.240 There is a potential for additional health needs to be identified since the scope of statutory plans has been increased to include young people in FE.
- 8.241 In the majority of cases, however, learners with ALN would have had their needs identified as part of the IDP before going into FE, including any health provision required.
- 8.242 Currently, there is no statutory duty for health boards to be involved in planning or reviewing educational plans for those in FE, but FEIs do have a duty of care to learners and would signpost or refer them to the NHS as necessary. It is anticipated the numbers of learners entering post-16 provision will remain relatively similar to current levels. Therefore, the rate of new referrals to health boards relating to post-16 learners with newly identified ALN should remain relatively constant.

- 8.243 The introduction of a statutory planning process for those in post-16 education could, however, include learners who have health needs which may not have been identified previously. This may arise, for example, where a young person has an accident or develops a mental health issue.
- 8.244 It is not possible to quantify the number of learners who attend an FEI and who go on to develop a health care need. It has not been possible, therefore, to estimate any additional costs. This cost is, therefore, unknown.

Special Educational Needs Tribunal Wales

Ongoing costs

- 8.245 Overall, it is estimated there is potential for SENTW to see a reduction in ongoing costs of approximately £15,300 as a result of option two. The extent to which this saving will be realised is unknown. This is because there is both potential for an increase in cost of £0-12,500 and potential for savings of £0-43,100.

Costs

- 8.246 There is a risk there could be an increase in the number of appeals to SENTW under option two, due to the changes in the age of children and young people who would have a right to appeal.
- 8.247 Currently, all children and young people over the age of two up to the end of compulsory school age and all young people older than compulsory school age up to the age of 19 who are being educated at school can appeal about not receiving a statement of SEN, or if they have a statement, can appeal against the contents of their statement.
- 8.248 Under option two, every young person age 0-25 can appeal about local authority decisions about not having a local authority maintained IDP, or if they have a local authority maintained IDP, appeal against the provision agreed (or not agreed) within their IDP. The right of appeal is extended to children and young people aged 0-2yrs and to those young people, who are

not at school, are older than compulsory school age but who are younger than 25 and in FE. That is, option two extends the right of appeal to children under the age of two and to young people who wish to, or who already do, attend FE.

- 8.249 The risk of increased appeals to SENTW is considered to be small for young people aged 0-2. Where this group of young people have an issue which could make it difficult for them to learn, such as having a speech and language difficulty, they are identified by, and referred to relevant professionals, by health visitors.
- 8.250 The extent of the risk in relation to young people enrolled in FE is unknown. It is possible young people in FE with complex needs will appeal about the content of their plan at the same rate as children and young people in school with SEN appeal against the content of their statement¹²⁰.
- 8.251 As Table 48 below sets out, in 2014-15 there were 120 young people in FE who had profound and multiple learning difficulties¹²¹. In addition, there are 298 young people with complex needs who attend an independent specialist college. If these 418 young people appeal about the content of their IDP at the same rate as young people in school currently appeal about the content of their statement, it would be expected there would be approximately three appeals regarding the content of IDPs every two years¹²². The cost to SENTW for an appeal about having a statement is estimated to be £2,269 (see table 41 above). The cost for three appeals would be £6,807. Thus, the potential additional cost to SENTW each year is approximately £3,400.

¹²⁰ In 2015-16 there were 13,318 young people with statements in schools and 105 appeals. That is 0.79% of young people with statements made appeals. An average of 47% of appeals are about the content of statements.

¹²¹ Latest available data at time of writing. See: <https://statswales.gov.wales/Catalogue/Education-and-Skills/Post-16-Education-and-Training/Further-Education-and-Work-Based-Learning/Learners/Further-Education/uniquelearnersenrolledfurthereducationinstitutions-by-primarydisability-gender>

¹²² 418 young people appealing at a rate of 0.79% would result in three appeals each year or 1.5 appeals about contents.

Table 48: young people in FE who have profound and multiple learning difficulties and LDD which impacts on ability to learn and/or to use facilities generally supplied by the learning provider, 2014-15

	profound and multiple learning difficulties	LDD
Under 16	0	270
16	30	2,300
17	20	2,055
18	15	1,295
19	20	945
20 to 24	35	2,075
	120	8,905

Source: StatsWales¹²³

8.252 In addition, there is a risk SENTW could incur additional costs if young people with LDD in FE appeal about the content of their IDP at the same rate as young people with SEN in school currently appeal about the content of their statement. In 2015-16, there were 107,668 young people in school with SEN and 105 appeals. That is, 0.1% of young people with SEN in school appealed to SENTW.

8.253 If 0.1% of the 8,905 young people with LDD in FE appeal to SENTW, it is estimated there would be approximately four appeals regarding the content of IDPs each year¹²⁴. The cost to SENTW for an appeal about having a statement is estimated to be £2,269 (see table 41 above). It is estimated, therefore, the total additional cost to SENTW for four appeals about the content of an IDP would be approximately £9,100 a year.

8.254 In total, then, expanding the age range to include young people with complex needs who attend FEIs and independent specialist colleges could result in an additional ongoing cost to SENTW of £12,500 a year.

8.255 To what extent young people will appeal at the levels set out above, however, is unknown. On one hand, the risk could be minimal since young people

¹²³ Latest available data at time of writing. See: <https://statswales.gov.wales/Catalogue/Education-and-Skills/Post-16-Education-and-Training/Further-Education-and-Work-Based-Learning/Learners/Further-Education/uniquelearnersenrolledfurthereducationinstitutions-by-primarydisability-gender>

¹²⁴ 8,905 young people with LDD appealing at a rate of 0.1% would result in 8.68 appeals or 4.08 appeals about contents.

entering FE will have been known to schools and/or local authorities for some time, so disagreements about having an IDP or about provision are only likely to arise in exceptional circumstances, such as where a young person has suddenly developed a serious health problem which has an impact on their education. On the other hand, there is evidence to suggest transition points can result in additional appeals¹²⁵. Whilst moving from school to FE is likely to be a significant transition point for young people, with an increased risk of appeal, this will only hold true for young people within the first year of their studies. It unlikely young people within their second or third year of FE will appeal as frequently as those in their first year. Since it is not known how many of the young people with LDD will appeal against the content of their IDP, £6,300 is used which is the mid-point of the potential additional ongoing cost to SENTW of £12,500 a year.

Transition costs

8.256 Existing tribunal members will need to undertake training to understand the new system. The cost of this is estimated to be approximately £35,100¹²⁶. The costs are based on:

- one day training for legal members covering the additional legal considerations in dealing with young people up to the age of 25
- one day preparation for training by a tribunal chair
- two days training for all tribunal members
- one day follow-up training event approximately six months after the start of the new system to review how the system is working. This could potentially lead to an additional half day training to address any issues identified
- two user group days - to provide information and deal with any concerns expressed by users regarding the new system.

¹²⁵ Based on an analysis of appeals undertaken by SENTW at the transition from primary to secondary school. Of 240 appeals received in the three year period 2012 to 2015, it is estimated (based on child's age and details in case papers) that 45 appeals related to transition, equating to 19% of registered appeals. When the 240 cases were divided by 13 (years of school), this suggested 18 registered appeals by school year (7.5% of total cases). This indicates at periods of transition, the number of appeals (19%) more than doubles when compared to appeals per year generally.

¹²⁶ Source: SENTW

8.257 To ensure tribunal members have the knowledge required to cover the extended age range, it is expected SENTW will require two additional members with knowledge of FE. The cost of recruitment and induction for two tribunal members is £25,300¹²⁷.

8.258 In addition, the tribunal will need to amend existing documents, publications, forms and administrative processes including:

- tribunal procedural rules
- tribunal guidance, forms, website and DVD content
- practice directions
- members' handbook.

SENTW will incur transition costs which result from the human resources required to ensure all statutory requirements are accurately incorporated into tribunal publications, forms and processes. It is likely the work will be undertaken by an executive officer and will take approximately 15 months. The cost is estimated to be approximately £40,500¹²⁸.

Table 49: estimated proportion of SENTW spend on appeals related to assessments and issuing of statements

	Ongoing costs – option one 2016-17 prices	Transition costs 2017-18	Ongoing costs – option two 2016-17 prices	Ongoing cost difference	Ongoing cost difference including mid-range
SENTW	152,000	100,900	108,900	-43,100	-21,600
Total	152,000	100,900	108,900	-43,100	-21,600

Benefits

8.259 SENTW currently incurs costs of approximately £43,100 per year on appeals related to not having a statement (see Table 41 above). The removal of the

¹²⁷ Source: SENTW

¹²⁸ Based on the average EO salary of £32,400 including on costs.

distinction between statutory and non-statutory plans – statements and individual education plans – removes the basis of appeals related to not having a statement.

8.260 Since SENTW will not hear appeals related to not having a statement, there is potential for SENTW to make savings of £43,100 per year. This is considered to be the maximum saving since SENTW will have some fixed costs, which will not reduce perfectly in line with reductions in the numbers of appeals.

8.261 Whilst all children and young people will have a statutory IDP under option two, differences will exist in terms of how IDPs are administered. IDPs will either be maintained by the local authority or by the school. There is, therefore, a risk the estimated cost savings will not be realised due to the potential for children, young people and parents to appeal against not having an local authority maintained IDP.

8.262 IDPs for the small number of children and young people with the most complex needs will be developed and maintained by local authorities, whilst schools will develop and maintain IDPs for children and children and young people with less complex needs. Children, young people and parents will be able to challenge local authority decisions not to develop and/or maintain an IDP. So, whilst option two will eliminate appeals on the basis of not having a statement, there is potential these will be replaced by appeals regarding local authority decisions not to develop and maintain an IDP.

8.263 It is not possible to determine the number of appeals which could be made regarding local authority decisions not to development or maintain an IDP. Thus, the range of cost savings is estimated to be £0-43,100. For illustrative purposes, the midpoint of £21,600 is used when calculating the overall costs and benefits of the Bill.

Risks

8.264 There is a risk option two will result in additional challenges about the content of an IDP.

- 8.265 Extending statutory protection to all young people with ALN substantially increases the number of plans with statutory protection. Based on 2015-16 data, option two would increase the number of pupils with statutory plans from 13,318 pupils to 107,668 pupils. That is, under option two, there will be an additional 94,350 pupils with a statutory plan (see Table 2 above). It is expected the additional IDPs will be school-based, rather than local authority maintained.
- 8.266 There is not expected to be an increase in the number of appeals to SENTW about the content of statutory plans for young people, since the additional 94,350 IDPs will be school-based and school-based IDPs can not be referred directly to SENTW. Rather, it is expected disagreements will be resolved at the local level by parents approaching the school in the first instance.
- 8.267 Parents will be expected to raise concerns about school-based plans with the school. Where parents can not resolve the concerns they have about the school-based plan, they can raise their concern with the local authority. As such, there is a risk local authorities will have additional disagreements to address. This risk is, however, expected to be small since IDPs are developed using person centred practice (PCP), which has been found, compared to the existing system, to improve the experience of the process and to foster much greater trust and confidence in the process, particularly amongst parents and carers, who are engaged and play a central role in the decision making process (Holtom and Lloyd-Jones, 2014).
- 8.268 Where children, young people and parents are not satisfied with the outcome of the local authority disagreement process, it is at this point they can appeal to SENTW. This could include where, for example, the local authority has refused a request to maintain the IDP. This is not expected to result in an increase in appeals since this is similar to the existing process. Where children, young people and parents are not, for example, satisfied the school can deliver the SEN provision the child or young person requires, they can request a statutory assessment from the local authority. Where the local

authority decides not to assess or not to issue a statement, children, young people and parents can appeal to SENTW against this decision.

Further education institutions

- 8.269 It is estimated option two could result in additional ongoing costs of £23,200 to FEIs.

Costs

- 8.270 FEIs are currently involved in reviewing learning and skills plans and college-based plans for young people with profound and multiple learning difficulties and LLD. In addition, FEIs will currently have to respond to complaints they receive about the support they provide for young people with profound and multiple learning difficulties and LLD. As set out above, FEIs are estimated to incur costs of approximately £229,400¹²⁹ a year reviewing learning and skills plans and college-based plans and responding to any complaints about provision. FEIs are not expected to incur additional costs under option two in relation to maintaining IDPs.

- 8.271 Extending the right of appeal to young people in FE could, however, result in additional costs for FEIs. There is a risk FEIs may incur additional costs where young people with profound and multiple learning difficulties and LLD appeal about the content of their FEI maintained IDP. There are 120 young people with profound and multiple learning difficulties who attend FEIs. Based on the assumption 50% of the plans will be FEI-maintained, there would be 60 plans. Based on the assumption young people with profound and multiple learning difficulties appeal about the content of their statement at the same rate as young people in school complain about the content of their statement, it is estimated there would be one appeal every four years¹³⁰. Assuming the

¹²⁹ Made up of £226,600 for reviews (see Tables 40 and 45) and £800 for complaints (see Table 45).

¹³⁰ In 2015-16 there were 13,318 young people with statements in schools and 105 appeals. That is 0.79% of young people with statements made appeals. An average of 47% of appeals are about the content of statements. 60 young people with profound and multiple learning difficulties appealing at a rate of 0.79% would result in one appeal every two years or one appeal about the contents of a statement every four years.

cost to FEIs of responding to appeals is the same as the cost to local authorities, the estimated cost of responding to appeals each year would be approximately £2,600¹³¹.

- 8.272 There is a risk the 8,905 young people with LDD could appeal to SENTW. If young people with LDD appeal to SENTW at the same rate as young people with SEN in school (0.1%), there could be approximately four appeals regarding the content of IDPs each year. Assuming FEIs incur the same costs as local authorities when responding to an appeal, it is estimated FEIs could incur an additional cost of £41,268¹³² per year.
- 8.273 This risk is, however, considered to be low as it is expected disagreements about the contents of FEI maintained IDPs will be resolved locally.
- 8.274 In addition, prior to a young person entering FE, FEIs will not be obliged to accept responsibility from the local authority for maintaining an IDP where it would not be reasonable for the FEI to deliver the required ALP. In such cases, the local authority will continue to maintain the IDP.
- 8.275 Where a learner has commenced FE and the FEI thinks the learner has an ALN for which the FEI does not think it would be reasonable for the FEI to provide the necessary ALP, the FEI can refer the matter to the local authority for the local authority to determine the learners' needs and prepare the IDP.
- 8.276 Where an FEI has accepted responsibility for an IDP but subsequently feels unable to maintain the IDP due to not being able to provide appropriate support for the young person, the FEI can request the local authority take over responsibility for maintaining the IDP.
- 8.277 Since the risk of appeals to SENTW from young people with LDD is considered to be low, FEIs could incur additional costs of between £0-41,268 per year. The mid-range of approximately £20,600 is used. There is potential,

¹³¹ The cost to local authorities of responding to an appeal is estimated to be £10,317. One quarter of this cost is £2579.25.

¹³² 4 appeals at a cost of £10,317/appeal is £41,268.

then, for FEIs to incur additional ongoing costs of £23,200 responding to appeals from young people with LDD (£20,600) and from young people with profound and multiple learning difficulties (£2,600).

Transition costs

- 8.278 It is expected the FEI ALNCo will attend a two day training course about the new legislative requirements. In addition, the ALNCo will be expected to work with other agencies such as local authority officers and the DECLO in implementing the requirements of the legislation. The cost associated with the ALNCo are set out below in the section about the additional learning needs co-ordination.

Benefits

- 8.279 FEIs could benefit from cost savings as a result of local authority maintained IDPs. Currently, FEIs maintain and review plans for the 120 young people with profound and multiple learning difficulties. Under the new scheme a proportion of these plans will be maintained by local authorities. Thus, local authorities rather than FEIs will be responsible for managing and organising the review process. This will have cost savings for FEIs. It has not, however, been possible to estimate the saving to FEIs. This saving is, therefore, unknown.
- 8.280 FEIs and young people are expected to benefit from the introduction of a single plan for young people with ALN. Having a single plan, which has followed a young person throughout their education, will provide a rich source of information about the young person together with evidence about what support has worked well for the young person. By not having to start from scratch, the FEI will be able to allocate resources in the most efficient and effective way.
- 8.281 The young person will benefit from the transition process being part of, and not separate from, the ongoing IDP review process. Having a single plan should ensure planning is timely; is efficient for the young person since there will be no requirement to additional meetings or to repeat information

previously given; and should ensure the support put in place is effective since it will be based on evidence of what works.

- 8.282 It has not been possible to monetise the benefits to FEIs or to young people and their parents.

Children, young people and parents

- 8.283 Parents involved in disagreements or appeals incur considerable costs. As Table 51 below sets out it is estimated parents incur average costs of £3,678,600 per year pursuing disagreements and appeals. Overall, parents will not incur any additional costs as a result of option two. Rather, it is estimated parents will save an average of approximately £980,475 per year, with an overall saving of £832,375 per year when the additional costs of £148,100 are taken into account.

Costs

- 8.284 As set out above, there is potential for an additional 32 disagreements about the content of plans as a result of extending IDPs to young people up to the age of 25 in FE. The average cost to parents of a disagreement is £3,775¹³³. Thus, there is potential for parents to incur additional costs of approximately £120,800 a year.
- 8.285 Extending rights of appeals to young people with complex needs in FE up to the age of 25 is likely to result in three appeals every two years about the content of IDPs. The average cost to a parent of pursuing an appeal is £7,787¹³⁴. Thus an additional three appeals would be £23,359, with a yearly cost of approximately £11,700.
- 8.286 There is also potential for an additional four appeals a year about the contents of IDPs from young people with less complex needs who attend FE. The average estimated cost to parents to pursue these appeals would be

¹³³ Table 44 sets out the average cost as being £3,659 in 2013, which is £3,774.96 in 2067-17 prices.

¹³⁴ Table 44 sets out the average cost as being £7547 in 2013, which is £7,786.19 in 2067-17 prices.

approximately £31,100. The extent of this risk is not known since it is expected disagreements will be resolved at the local level. Thus, parents could experience costs of between £0-31,100. The mid-range cost of £15,600 is used.

In total then, parents could incur additional costs of approximately £148,100 a year.

Table 50: comparison of cost to parents of extending IDPs to include young people in FE up to age 25

	Option one cases per year	Option one cost per year (£)	Option two cases per year	Option two cost per year (£)	Additional cost (£)	Additional cost including mid-range (£)
Disagreements	0	0	32	120,800	120,800	120,800
Appeals - profound and multiple learning difficulties	0	0	1.5	11,700	11,700	11,700
Appeals - LDD	0	0	4	31,100	31,100	15,600
Total				163,600	163,600	148,100

Benefits

- 8.287 Children, young people and parents will benefit in a number of ways from the introduction of option two.
- 8.288 Children, young people and parents should benefit from having a less complex system. The current statementing process can take up to 26 weeks to complete, which militates against early intervention and creates delays in getting young people the support they need. This can have negative impacts on outcomes.
- 8.289 Option two proposes a more flexible approach to assessment and review, which will reduce the length of time it takes to make decisions and arrange provision. This has potential to have positive impacts on the outcomes for young people. This could include, for example, reducing the rate at which young people with ALN are excluded from school since decisions can be

taken quickly to get support in place for young people who are at risk of being excluded due to behavioural issues. Having a less complex system should reduce existing parental confusion, anxiety and frustration.

- 8.290 Parents are currently paying significant sums of money to pursue disagreements with local authorities regarding decisions not to issue a statement¹³⁵. As set out in table 51 below, It is estimated parents currently spend an estimated average of £2,861,050 a year resolving disagreements and an estimated average of £817,550 a year making appeals to SENTW.
- 8.291 Under option two, the removal of the distinction between statutory and non-statutory plans will remove disagreements and appeals about decisions relating to not having a statutory plan.
- 8.292 Parents will benefit from a reduction in costs associated with challenging decisions. It is estimated parents may benefit from an average estimated saving of £980,475 a year of which £758,575 is expected to be saved from disagreements and £221,900 from appeals.
- 8.293 Overall, when the potential additional costs of approximately £148,100 a year from extending the age range are factored into the potential savings of £980,475, parents are expected to save approximately £832,375 a year.

¹³⁵ <http://www.mertonmencap.org.uk/pdfs/SEND-Tribunal-Survey-Results-August2013.pdf>

Table 51: comparison of ongoing costs to parents and to disagreement resolution service providers, 2016-17 prices

	Option one cases per year	Option one cost per year (£)	Option two cases per year	Option two cost per year (£)	Option two – benefit (£)	Option two – benefit including mid-range (£)
Parents						
Disagreement - without support from local authority funded dispute resolution services	758	3,628,900	356	1,704,600	-1,924,300	-962,150
Disagreement - with support from local authority funded dispute resolution services	758	2,093,200	356	983,200	-1,110,000	-555,000
Average		2,861,050		1,343,900	-1,517,150	-758,575
Average including mid-range		2,861,050		2,102,475	-758,575	-1,532,600
Option one: appeals – without support from local authority funded dispute resolution services	105	1,036,900	48	474,000	-562,900	-281,500
Option one: appeals – with support from local authority funded dispute resolution services	105	598,200	48	273,500	-324,700	-162,400
Average		817,550		373,750	-443,800	-221,900
Average including mid-range		817,550		595,650	-221,900	-221,900
Total average		3,678,600		1,717,650	-1,960,950	-980,475
Total average including mid-range		3,678,600		2,698,125	-980,475	-980,475
Disagreements		0	32	120,800	120,800	120,800
Appeals - profound and multiple learning difficulties		0	2	11,700	11,700	11,700
Appeals - LDD		0	4	31,100	31,100	15,600
Total additional cost		0		163,600	163,600	148,100
Total average		3,678,600		1,881,250	-1,797,350	-832,375

Total average including mid-range		3,678,600		2,846,225	832,375	-964,975
Service providers						
Disagreements	758	288,710	356	135,690	-153,020	-76,510
Appeals		31,800		14,600	-12,000	-6,000
Disagreements – extending age to 25		0		5,300	2,650	2,650
Appeals – extending age to 25		0		23,200	11,600	11,600
Total provider		320,510		178,790	-150,770	-68,260

Risks

- 8.294 Under option two, school-based plans will become statutory plans. There is a risk this will increase expectations unrealistically and consequently, there will be an increase in disagreements and the associated costs. It has not been possible to estimate this cost and, thus, the cost is unknown.
- 8.295 This risk is, however, expected to be small since IDPs are developed using person centred practice (PCP), which has been found, compared to the existing system, to improve the experience of the process and to foster much greater trust and confidence in the process, particularly amongst parents and carers, who are engaged and play a central role in the decision making process (Holtom and Lloyd-Jones, 2014).

Dispute resolution

- 8.296 As set out above, the financial data collected by Deloitte refers to 2011-12 to 2013-14. These figures have been used within this section about dispute resolution, where it is the most up-to-date information available. The 2013-14 prices have also been set out in present day (2016-17) prices using the GDP deflator series. In addition, for comparative purposes, all costs have been set out in 2016-17 prices.

Option one: do nothing

- 8.297 Under option one, the existing approach to dispute resolution would remain.
- 8.298 Currently, local authorities are required to put in place arrangements for avoiding or resolving disputes in relation to decisions made about statements of SEN. More generally, local authorities are required to make arrangements for avoiding or resolving disputes about special education provision between schools and children, their parents and young people.
- 8.299 Person centred planning (PCP) is currently being introduced across Wales. In a recent evaluation of PCP in Wales, Holtom and Jones (2014) concluded although it was too early to judge whether a reduction in the level and frequency of disagreements would happen, there was evidence PCP and the IDP process had a positive impact on families' experience of the system. School staff, in particular, felt the more collaborative and informal process offers the potential to build parent and carer trust and confidence, reducing the level and frequency of disputes and disagreements.
- 8.300 The costs of doing nothing as set out below could, therefore, be over-estimated.

Summary of costs

Table 52: option one summary of costs to resolve disputes

	2016-17 ¹³⁶ (£)
Local authority dispute resolution services - disagreements	384,950
Local authority – response to disagreements	1,633,100
Local authority dispute resolution services - appeals	5,300
Local authority – response to appeals ¹³⁷	1,083,300
Local authority total	3,106,650
SENTW ¹³⁸	152,000
SEWTW total	152,000
Public administration total	3,258,650
Dispute resolution service providers – disagreements ¹³⁹	288,710
Dispute resolution service providers – appeals ¹⁴⁰	31,800
Dispute resolution service providers – total	320,510
Parents – disagreements ¹⁴¹	2,861,050
Parents – appeals ¹⁴²	817,550
Parents total	3,678,600
Total	7,257,760

8.301 Table 52 above, provides a summary of the costs associated with dispute resolution as set out in Table 6. The cost associated with dispute resolution are not set out separately in Table 70 and Table 71 as they are included in costs associated with individual development plans. As Table 52 shows the total estimated cost relating to disputes and their resolution are approximately £7,257,760 per year.

¹³⁶ 2013-14 price adjusted to 2016-17 prices using the GDP deflator series.

¹³⁷ See Table 19

¹³⁸ See paragraphs 8.145-8.150. The costs to SENTW set out in this section refer to cost incurred from hearing related costs including the president, members add hearing venue costs. In addition, reimbursement of expenses and training for members are included. The costs do not include administrative costs.

¹³⁹ See Table 43

¹⁴⁰ See Table 19

¹⁴¹ See Table 44

¹⁴² See Table 15

- 8.302 Local authorities are estimated to spend £3,106,650 per year on disagreements and appeals. This is made up of £2,018,050 cost incurred from dealing with disagreements (£384,950 providing dispute resolution services and £1,633,100 incurred as a result of responding to dispute). The remaining £1,088,600 is incurred from dealing with appeals (£5,300 from providing access to disagreement resolution services and £1,083,300 from responding to appeals)¹⁴³. Providers are estimated to incur costs of £320,510 subsidising dispute resolution services (£288,710 incurred as a result of disagreements and £31,800 as a result of appeals).
- 8.303 SENTW, which hears appeals against certain decisions about statements of SEN made by local authorities, is estimated to incur costs of approximately £152,000 per year.
- 8.304 Parents also incur costs as a result of disagreements or appeals about decisions made regarding special educational provision. The estimated annual cost to parents is approximately £3,678,600 (2,861,050 of which results from disagreements and £817,550 from appeals).

Benefits

- 8.305 There are no additional costs associated with option one.

¹⁴³ See also section on plans to support children and young people with additional learning needs, option one.

Option two: widen the scope of dispute resolution arrangements

- 8.306 Option two differs to option one in two ways. First, the scope of arrangements will be widened to include all young people with additional learning needs, including those in further education up to the age of 25.
- 8.307 Second, local authorities will be required to put in place arrangements for avoiding *and* resolving disagreements. Currently, local authorities are required to put in arrangements for avoiding *or* resolving disputes.
- 8.308 Overall, option two is not expected to result in any additional ongoing costs for local authorities, SENTW service providers or to parents. Rather, it is expected there will be an overall saving of £920,840, with an estimated saving of £156,690 to public administration and an estimated saving of £765,600 to parents (see Table 54 below). Since more evidence is required to determine if the potential savings will be realised, the savings have not been included in the summary tables 70 and 71. Rather, it has been assumed the costs will remain the same as option one. It has not been possible to estimate the potential savings to providers of dispute resolution services with any accuracy and these savings are, therefore, unknown.
- 8.309 Option two is the preferred option.

Costs

Local authorities

Disagreement resolution services

- 8.310 There is potential for local authorities to incur some additional costs as a result of widening the scope of disagreement resolution services to include young people up to the age of 25 who are in FE.
- 8.311 Assuming the proportion of young people in FE disagree with decisions made by local authorities is the same as the proportion of young people who disagree with local authority decisions about the content of their statement,

there is potential for an additional cost to local authorities of approximately £760 a year and an additional cost of £570 to providers of dispute resolution services (see Table 54).

- 8.312 As set out in the section about plans to support young people with ALN, local authorities fund services to resolve an average of 356 disagreements a year about the content of statements. In 2015-16 there were 13,318 young people in Wales with a statement. That is, 2.7% of young people with a statement disagreed with the content of the statement.
- 8.313 There are 120 young people under the age of 25 in further education who have profound and multiple learning difficulties¹⁴⁴. Assuming 50% of young people in FE will have a local authority IDP and 2.7% of them disagree with the contents of their IDP, there would be an additional three disagreements every two years supported by local authority dispute resolution services. The average cost of a disagreement, where appeal to tribunal is avoided is £889¹⁴⁵. Thus, the additional cost of resolving disagreements about the content of plans is estimated to be approximately £1,330 per year. Of this, £760 is incurred by local authorities and £570 by providers of dispute resolution services (see Table 54).
- 8.314 There is also a risk, as set out in the section on plans to support young people with ALN, extending the right of appeal to SENTW to include young people in FE up to the age of 25 could result in additional appeals to SENTW. Assuming the percentage of young people in FE who appeal against the content of their plan is the same as young people in school who complain about the content of their plan, it is expected one young person with profound and multiple learning difficulties in FE will appeal to SENTW about the content of their plan

¹⁴⁴ Latest available data at time of writing. See: <https://statswales.gov.wales/Catalogue/Education-and-Skills/Post-16-Education-and-Training/Further-Education-and-Work-Based-Learning/Learners/Further-Education/uniquelearnersenrolledfurthereducationinstitutions-by-primarydisability-gender>

In addition, there are 8,940 young people under the age of 25 who are in FE. The percentage of young people with LDD who would have local authority maintained plans is unknown, since the severity of the LDD is unknown.

¹⁴⁵ 2016-17 prices.

every four years¹⁴⁶. The average cost to local authorities for providing disagreement resolution services to support young people and parents to appeal to SENTW is approximately £4,125¹⁴⁷. The additional cost for dispute resolution services is, therefore, estimated to be approximately £1,030 a year with local authorities incurring a cost of approximately £150 per year and providers of dispute resolution services incurring a cost of approximately £880 (see Table 54).

Avoiding disagreements

- 8.315 It is expected arrangements designed to avoid disagreements will result in a cost saving to local authorities.
- 8.316 It is not possible to determine the actual cost to local authorities of putting in place practices to avoid disagreements, since the practices are not prescribed in the Bill¹⁴⁸.
- 8.317 It is, however, possible to present an illustrative example by referring to the practices put in place by Carmarthenshire County Council. Since 2012-13, Carmarthenshire County Council has employed an ALN family support worker who provides information and support to children, young people and parents going through the statement process. The aim of the role is to improve communication with families, by explaining the statement process and decisions, in an effort to reduce conflict and disagreement¹⁴⁹.
- 8.318 The yearly cost for the family support worker is approximately £43,600 (including on costs)¹⁵⁰. In addition to staff costs, there is an estimated cost of

¹⁴⁶ 120 young people with profound and multiple learning difficulties appealing at a rate of 0.46% would result in 0.56 appeals each year or 0.26 appeals about contents.

¹⁴⁸ It is expected the new additional learning needs code will set out the purpose and principles underpinning practices to avoid disagreements. The code is not expected to be explicit about the practices local authorities should put in place.

¹⁴⁹ <http://gov.wales/docs/caecd/research/2014/140626-pilot-young-peoples-rights-appeal-claim-sen-tribunal-en.pdf>

¹⁵⁰ Consists of £32,524 salary per year plus on costs in 2013-14 price. This equates to £43,641 in 2016-17 prices.

£1,100 per year for travelling costs¹⁵¹. If all local authorities in Wales were to adopt the same approach, the estimated additional cost would be approximately £915,600 in staff costs and £23,100¹⁵² in travel costs. That is, the estimated total additional cost would be £938,700 a year.

- 8.319 In 2015-16, Carmarthenshire had the fourth largest SEN pupil population in Wales¹⁵³. Thus, this estimate would be at the higher end, since some local authorities would not necessarily need to employ a family support worker on a full-time basis.
- 8.320 Whilst the introduction of approaches to avoid disagreements will have a cost, the benefits are expected to be greater than the cost.
- 8.321 Data about the number of appeals in Carmarthenshire, whilst not conclusive, suggest the role is having an impact on reducing the number of appeals made to SENTW.
- 8.322 Prior to the introduction of the family support worker, Carmarthenshire had an average of approximately 10 appeals per year¹⁵⁴ (see Table 53 and Figure 1 below). Following the introduction of the family support worker, an average of 1.5 appeals per year have been made in Carmarthenshire¹⁵⁵. That is, there has been a reduction of approximately 8.5 appeals per year to SENTW in Carmarthenshire.
- 8.323 There is a risk this reduction is an over estimation since there was a spike in the number of cases over the four year period 2007-08 to 2010-11 when a

¹⁵¹ Consists of cost of petrol. Based on Carmarthenshire grant claim of £527 for a 6 months period October 2012 to March 2013.

¹⁵² Since Carmarthen already employ an ALN learning support worker, the additional cost estimate is based on the remaining 21 local authorities.

¹⁵³ <https://statswales.gov.wales/Catalogue/Education-and-Skills/Schools-and-Teachers/Schools-Census/Pupil-Level-Annual-School-Census/Special-Educational-Needs/pupilssen-by-localauthorityregion-provision>

¹⁵⁴ During the ten year period 2002-03 to 2011-12, there were 98 appeals made in Carmarthenshire. See Table 53.

¹⁵⁵ During the four year period 2012-13 to 2015-16, Carmarthenshire had a total of six appeals – two in 2012-13, none in 2014-15, one in 2014-15 and three in 2015-16. See Table 53.

total of 62 appeals were made¹⁵⁶, an average of 15.5 appeals to SENTW per year. When the years 2007-08 to 2010-11 are removed, there an average six appeals per year, suggesting a reduction of 4.5 appeals per year¹⁵⁷.

8.324 It is estimated Carmarthenshire County Council incurs average costs of £10,917 per appeal to SENTW, of which approximately £600 is for local authority funded dispute resolution services¹⁵⁸ and £10,317¹⁵⁹ is for local authority defence costs. Thus, it is estimated Carmarthenshire County Council has reduced the costs of appeals by an average of approximately £49,100 per year. The net saving, once the cost of the family support worker is removed, is approximately £4,400. If this saving was replicated across Wales, local authorities would save an estimated £96,800. In addition, providers of dispute resolution services are estimated to subsidise each case supported to SENTW by £3,525. Since providers only support an estimated 9% of cases (an average of approximately 9 cases of the average 95 appeal cases), it is difficult to estimate with any accuracy the potential savings to service providers. The potential savings is not, therefore, known.

¹⁵⁶ This spike coincided with the ALN reform pilots and parental awareness of statements being replaced by IDPs.

¹⁵⁷ When calculating the potential reductions in appeals which could be achieved from introducing practices to avoid disagreements, this has been done in isolation from other proposals which aim to reduce conflict in the current system. Thus, the reduction in the number of appeals has not been adjusted to take account of the proposed changes to remove the distinction between statutory and non-statutory plans. That is, appeals relating to not having a statement have not been removed. If both the provision to remove the distinction between statutory and non-statutory plans and ALN support workers are introduced across Wales, the number of appeals avoided as a result of introducing the ALN family support workers is likely to be less than the estimated reduction of 4.5 a year, since some of these will have been avoided by removing the distinction between statutory and non-statutory plans. This does not impact on the overall estimated costs and benefits of introducing the provisions in the Bill since the potential savings from introducing ALN family support workers are set out for illustrative purposes only and not included in the tables summarising the total costs and benefits of the provisions in the Bill.

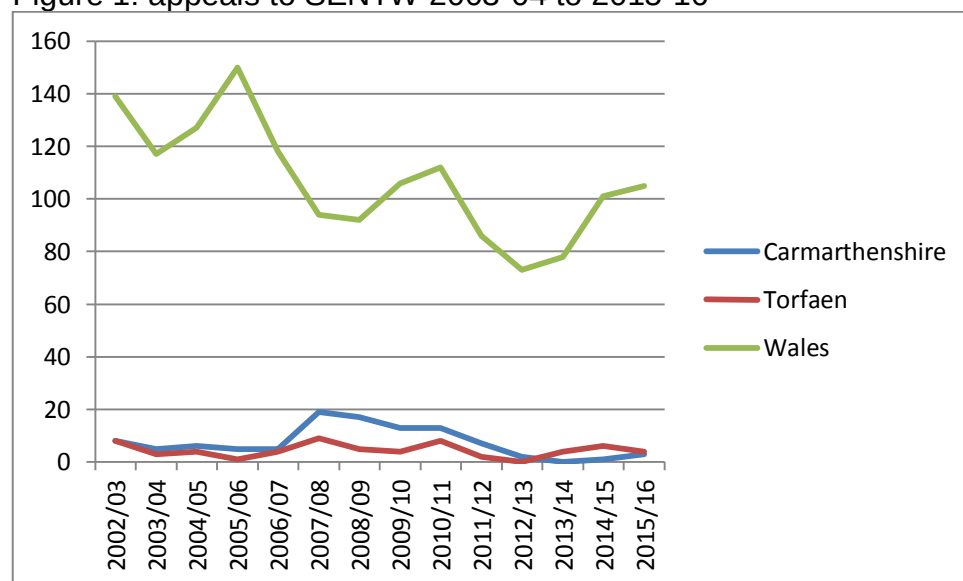
¹⁵⁸ Source: SNAP Cymru. Based on the average cost October 2014-April 2016.

¹⁵⁹ 10,000 uprated to 2016-17 prices.

Table 53: appeals to SENTW in Carmarthenshire and Torfaen

	Registered appeals - Carmarthenshire	Registered appeals - Torfaen	Registered appeals - Wales
2002/03	8	8	139
2003/04	5	3	117
2004/05	6	4	127
2005/06	5	1	150
2006/07	5	4	118
2007/08	19	9	94
2008/09	17	5	92
2009/10	13	4	106
2010/11	13	8	112
2011/12	7	2	86
2012/13	2	0	73
2013/14	0	4	78
2014/15	1	6	101
2015/16	3	4	105

Figure 1: appeals to SENTW 2003-04 to 2015-16



8.325 Research has not been undertaken to determine a causal relationship between the introduction of the family support worker and the reduction in the number of appeals to SENTW in Carmarthenshire. It is possible, however, to consider the impact of the family support worker by comparing trends across Wales.

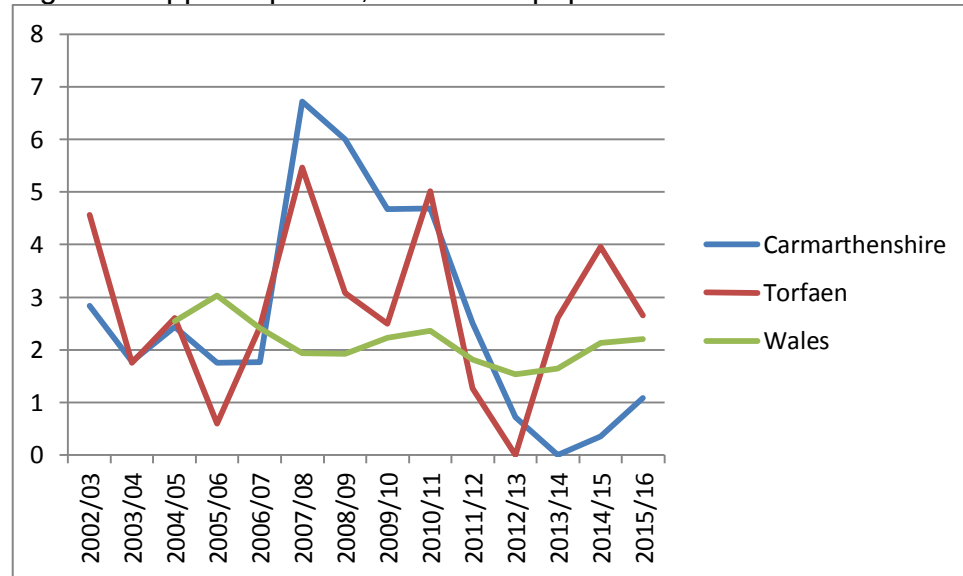
8.326 Comparing the period 2002-03 to 2006-07 against the period 2012-13 to 2015-16, Carmarthenshire has seen an average decrease of 4.5 appeals per

year compared to Wales as a whole, which has seen a decrease of approximately two appeals per year. Thus, whilst there has been a fall in the number of appeals across Wales generally, the fall has been considerably greater in Carmarthenshire.

- 8.327 It is also possible to compare the period 2002-03 to 2006-07 against the period 2012-13 to 2015-16, in terms of the number of appeals as a proportion of the school population (see Figure 2 below). During the period 2002-03 to 2006-07 Carmarthenshire had an average of two appeals per 10,000 school population compared to 0.5 appeals per 10,000 school population during the period 2012-13 to 2015-16. That is, Carmarthenshire had a reduction of 1.5 appeals per 10,000 school population. This compares to a reduction of one appeal per 10,000 across Wales.
- 8.328 It is possible the reduction in the number of appeals in Carmarthenshire could be the result of the introduction of PCP as part of the ALN pilot, rather than the introduction of the support worker. To consider this, it is possible to compare the reduction in appeals in Carmarthenshire with any reduction in appeals in Torfaen, which was also involved in the ALN pilot¹⁶⁰ and introduced PCP but not the family support worker role.
- 8.329 Comparing the period 2002-03 to 2006-07 against the period 2012-13 to 2014-15, Torfaen had an average decrease of 0.5 appeals per year compared to Carmarthenshire, which had an average decrease of 4.5 appeals per year.

¹⁶⁰ Carmarthenshire and Torfaen made up pilot B, which was established to develop and pilot an inter-disciplinary model for the identification, assessment, planning and review of provision for children and young people with severe and/or complex needs. The developmental phase took place between 2009 and 2011, followed by the piloting during 2012. Thus, PCP for young people with complex and/or severe needs would have been implemented by 2012-13 in Carmarthenshire when the family support worker role was introduced. Torfaen works as a comparator since PCP was introduced at the same time but the support worker role was not introduced.

Figure 2: appeals per 10,000 school population 2003-04 to 2015-16



8.330 A similar finding arises when comparing the number of appeals per 10,000 school population in Carmarthenshire and Torfaen. As set out above, Carmarthenshire saw a reduction of 1.5 appeals between the period 2002-03 to 2006-07 and 2012-13 to 2014-15. During the same period, there was no reduction in appeals per 10,000 school population in Torfaen. Thus, it can be inferred the role of support worker, rather than PCP, has had an impact on reducing the number of appeals in Carmarthenshire.

8.331 Although research is required to substantiate this finding, is not surprising since the support worker role was introduced to focus on the statement process, whereas PCP is designed to work across all young people with ALN as a way of engaging children, parents and young people in the decision making process. It would, therefore, be expected the family supporter worker would impact more on disagreements at appeal level and that PCP will have more impact on avoiding disagreements more generally.

8.332 In addition to avoiding appeals, it is expected local authorities will also avoid disagreements. It is not known what proportion of disagreements will be avoided once disagreement avoidance approaches have been put in place. Thus, it has not been possible to monetise the potential cost benefits of implementing such approaches. This saving is, therefore, unknown.

Benefits

- 8.333 As set out in Table 54 below, option two has potential to reduce costs to local authorities and SENTW by an estimated £156,690 a year.

Table 54: summary of estimated potential costs and benefits to local authorities

	Savings and costs (£)
local authority disagreement resolution services – disagreements (increase in age up to 25)	760
local authority disagreement resolution services - appeals (increase in age up to 25)	150
Net savings of ALN family support worker on appeals across Wales	-96,800
Total	-95,890
SENTW	-60,800
SENTW Total	-60,800
Public administration total	-156,690
Dispute resolution service providers – disagreements (increase in age up to 25)	570
Dispute resolution service providers – appeals (increase in age up to 25)	880
Dispute resolution service provider total	1,450
Parents	-765,600
Parents total	-765,600
Total Savings	-920,840

- 8.334 There is potential for parents to save an estimated £765,600, should the reduction in appeals achieved in Carmarthenshire be replicated across Wales (see paragraph 8.345 below). In addition, it is expected providers of dispute resolution services will see an overall reduction in costs since the number of disagreements and disputes supported to SENTW would be expected to fall. Since providers currently only support around 9% of such cases (an average of approximately 9 cases of the average 95 appeal cases), it is difficult to estimate with any accuracy the potential savings to service providers. The potential saving is not, therefore, known.

Local authorities

- 8.335 Local authorities will incur some ongoing costs as a result of providing disagreement resolution services and disagreement resolution services to young people up to the age of 25. This is estimated to be approximately £910 per year. In addition, providers of dispute resolution services are expected to incur costs of £1,450 as a result of subsidising dispute resolution services for young people up to the age of 25.
- 8.336 This cost should be off-set by potential savings from option two. As set out above, there is encouraging evidence from Carmarthenshire County Council which suggests the introduction of approaches to avoid disagreements has potential to result in local authorities saving £96,800 per year.
- 8.337 Since it is not known what approaches local authorities will adopt, it is not possible to state with any certainty these savings will be realised. It is, however, assumed local authorities and providers will benefit at least to the extent there will be no net costs incurred when introducing approaches to avoid disagreements.

SENTW

Costs

- 8.338 SENTW will not incur any additional ongoing costs as a result of implementing option two.

Benefits

- 8.339 Since it is not known what approaches local authorities will adopt when implementing disagreement avoidance practices, it is not possible to determine with accuracy the potential benefits to SENTW.
- 8.340 It is, however, possible to illustrate the potential savings to SENTW based on the estimated average reduction in appeals to SENTW since the family support worker was appointed in Carmarthenshire County Council.

- 8.341 Between 2012-13 and 2015-16, SENTW incurred an average cost of £1,600 per appeal. The reduction of an average of 4.5 cases per year in Carmarthenshire would have resulted in SENTW saving an estimated £7,200 per year between 2012-13 and 2015-16 – a total estimated saving of £28,800.
- 8.342 If this reduction in the number of appeals is replicated across Wales, there could be a 42% reduction in the number of appeals to SENTW. The reduction in appeals in Carmarthenshire from 6 to 1.5 between 2002-03 to 2006-07 and 2012-13 and 2015-16 represents a 75% decrease. The reduction across Wales during this period was 32%. Thus, the difference is a reduction of 43%. There is potential, therefore, if the reduction was replicated across Wales, for there to be a decrease in the number of average appeals from 89 per year to 51 per year - 38 fewer cases per year. Based on an average cost of £1,600 per appeal, there is potential for SENTW to save £60,800 per year.
- 8.343 Further research is required to determine if there is a casual relationship between the introduction of the support worker and the drop in appeals observed in Carmarthenshire. In addition, it is not known whether all local authorities will adopt the same practice as Carmarthenshire to implement option two. As a result, it is not possible to estimate with any accuracy any potential cost savings to SENTW as a result of option two. Thus, the savings set out in Table 54 are an illustration of potential savings. These savings have not, however, been included in Table 70 and Table 71 which set out the overall costs and savings of the preferred options.

Children, young people and parents

- 8.344 Children and young people will benefit where disagreements are avoided and they are not distracted from their studies by uncertainty.
- 8.345 Parents currently incur estimated average costs of £7,738¹⁶¹ when making an appeal to SENTW. A reduction of 4.5 appeals per year in would, therefore, have resulted in a saving to parents in Carmarthenshire of approximately

¹⁶¹ Based on 2013-14 cost of £7,500, uprated to 2016-17 prices.

£34,800 per year. If this was replicated across Wales, the savings to parents would be approximately £765,600.

8.346 In addition, parents currently incur average costs of £3,817¹⁶² when disagreeing with decisions made by local authorities. Since the proportion of disagreements which will be avoided under option two is not known, it is not possible to determine the cost benefits for parents.

8.347 Due to the uncertainty about whether the reduction in appeals resulting from the introduction of the ALN family support workers, the potential savings to parents are for illustrative purposes and are not included in Table 70 and Table 71, which sets out the summary of costs and savings associated with the preferred options.

Risks

8.348 Having a clear requirement to have both avoidance and resolution arrangements has potential to increase the costs of such arrangements. This could arise, for example, where avoidance and resolution arrangements are not effectively implemented and, as a result, there will be an increase in costs rather than the expected cost savings. To support the effective implementation of disagreement avoidance and resolution arrangements, the Welsh Government will encourage good practice to be shared across local authorities. In addition, findings and recommendations from implementation monitoring and evaluation will be shared with local authorities to encourage effective implementation.

¹⁶² Based on 2013-14 cost of £3,700 uprated to 2016-17 prices.

Responsibility for securing and funding specialist further education provision

- 8.349 As set out above, the financial data collected by Deloitte refers to 2011-12 to 2013-14. These figures have been used within this section on securing and funding further education provision, where it is the most up-to-date information available. The 2013-14 prices have also been set out in present day (2016-17) prices using the GDP deflator series. In addition, for comparative purposes, all costs have been set out in 2016-17 prices.

Option one: do nothing

- 8.350 Under option one, existing responsibilities for securing and funding specialist post-16 education would remain.
- 8.351 There are no additional cost implications associated with option one.

Costs

Careers Wales

- 8.352 Consideration of funding specialist placements for young people with LDD starts with the conduct of an assessment under section 140 of the 2000 Act. Section 140 (s140) assessments, which lead to the development of a Learning and Skills Plan for the young person, are carried out on behalf of Welsh Ministers by Careers Wales.
- 8.353 As Table 55 below shows, in 2013-14 Careers Wales undertook 1,103 s140 assessments at a cost of £343,800¹⁶³ and completed 119 applications for funding at an independent special college at a cost of £129,800 (see also Table 38 above). Assuming this level of activity continues in future years, the

¹⁶³ This cost has not been included in the summary tables as it has been included in the section on plans to support young people with ALN.

cost for undertaking s140 assessment and applications is estimated to total £488,600 per year (in 2016-17 prices)¹⁶⁴.

Table 55: cost to Careers Wales of funding applications

	2013-14	Ongoing annual cost
Number of applications for funding at an independent specialist college	119	-
Estimated spend on completing funding applications (£)	129,800	133,900
Total spend (£)	129,800	133,900

Welsh Government

- 8.354 In 2015-16, the Welsh Government incurred costs of £12,054,251 funding independent specialist college placements for young people with LDD. The estimated cost to the Welsh Government in 2016-17 prices is £12,244,983 (see Table 56 below).
- 8.355 In addition, the Welsh Government incurred salary costs of £195,720¹⁶⁵ for officials assessing post-16 funding applications¹⁶⁶. The total estimated cost to the Welsh Government in 2016-17 prices is, therefore, £12,440,703.

Local health boards

- 8.356 Table 56 below shows the estimated ongoing costs of £903,893 to local health boards for funding independent specialist college placements. This cost is not expected to change under option two.

¹⁶⁴ 2013-14 price adjusted to 2016-17 prices using the GDP deflator series. Based on the same number of applications being undertaken in 2016-17 as 2013-14.

¹⁶⁵ 2016-17 mid range salary costs, including on costs. Executive officer £32,424; higher executive officers £43,200 and senior executive £55,248.

¹⁶⁶ The post-16 funding application team consists of one senior executive officer, one higher executive officer and three executive officers. The mid-point on the salary scale has been used for each position other than for executive officers, where an average across the salary scales has been used. On-cost of 30% have been added to the salaries.

Table 56: annual cost of independent specialist college placements by funding body

	2015/16	Ongoing annual cost ¹⁶⁷
Number of learners	298 ¹⁶⁸	-
Total cost of placements (£)	18,577,467	18,871,415
Welsh Government (£)	12,054,251	12,244,983
Local authority social services (£)	5,633,402	5,722,538
Local Health Boards (£)	889,813	903,893
Average cost of placements (£)	62,264	63,249
Range of cost – low (£)	7,136	7,249
Range of cost – high (£)	196,333	199,440

Local authority social services

8.357 Table 56 above shows the estimated ongoing costs of £5,722,538 to social services for funding independent specialist college placements. These costs are not expected to change under option two.

Estyn

8.358 Up until September 2016, there were six independent specialist colleges located in Wales, which Estyn inspected and monitored within a six year inspection cycle, with monitoring generally taking place yearly, other than the year of inspection¹⁶⁹. As part of the inspections and monitoring visits, inspectors evaluate:

- the quality of the education and training
- the standards achieved by those receiving that education and training; and
- whether the financial resources made available to those providing it are managed efficiently and used so as to provide value for money.

¹⁶⁷ 2015-16 price adjusted to 2016-17 prices using the GDP deflator series. Assumes same number of learners with similar needs to 2015-16.

¹⁶⁸ Total learners in ISCs at various stages of study.

¹⁶⁹ From September 2016, a seven year inspection cycle was introduced. In addition, a seventh independent specialist college was opened in Wales in September 2016. For further information about the inspection of ISCs see: <https://www.estyn.gov.wales/document/guidance-inspection-independent-specialist-colleges>

- 8.359 Estyn spends an average of 16.5 days inspecting an independent college at a cost of approximately £14,500. It is estimated the monitoring process takes 6.5 days at a cost of approximately £5,700 per independent specialist college.
- 8.360 All independent specialist colleges are inspected within a six year inspection cycle, thus there would be an average of one independent specialist college inspection per year. The estimated annual cost for inspecting independent specialist colleges is, therefore, £14,500. In addition, Estyn would monitor six independent specialist colleges per year at an annual cost of approximately £34,200.
- 8.361 The total annual average cost of inspecting and monitoring the six independent specialist colleges in Wales is currently estimated to be approximately £48,700.

Table 57: annual cost to Estyn of independent specialist college inspection and monitoring visits

	Cost per year (£)
Inspection	14,500
Monitoring	34,200
Total	48,700

- 8.362 Table 58 below provides a summary of current costs by activity and agency. The total cost of the current system is estimated to be £19,249,734 per year. This consists of costs of £19,201,034 incurred as a result of securing provision and £48,700 incurred as a result of monitoring and inspecting independent specialist colleges. This represents the best estimate of the ongoing annual cost in the do nothing option.

Table 58: summary of annual cost of securing and inspecting specialist provision

	Securing provision	independent specialist college Inspection and monitoring
Welsh Government (administration)	195,720	-
Welsh Government (provision)	12,244,983	-
Local authority social services (provision)	5,722,538	-
Local health boards (provision)	903,893	-
Local authority education services	-	-
Careers Wales ¹⁷⁰	133,900	-
Estyn	-	48,700
Total¹⁷¹	19,201,034	48,700

Advantages

8.363 There are no advantages associated with option one.

Disadvantages

8.364 Under the current arrangements when learners move from school to further education, they move from SEN legislation to LDD legislation. Under the new system, learners will be subject to the same legislation throughout school and further education.

8.365 The lack of a single plan which follows young people throughout school and further education means information does not necessarily follow a young person making the transition from school to further education.

8.366 Under the current arrangements, local authorities are responsible for assessing need and for securing special educational provision for children and young people up to the age of 16 (or 19 where the young person is in a special school). Following this, responsibility for assessing the education and

¹⁷⁰ The costs of £354,700 incurred from assessing the needs of young people and developing the learning and skills plans has not been included as it has been included in the section on the plans to support young people with LDD. Including it here would, therefore, result in double counting.

¹⁷¹ This is a needs based system. Thus, costs per year go up or down depending on the number, and the needs, of learners who come through the system each year.

training needs of learners going into further education is the responsibility of Careers Wales on behalf of the Welsh Ministers.

- 8.367 The arrangements have potential for the knowledge the local authority has built up about the learner over their school career to be lost when the young person makes the transition to further education. Unlike local authorities, Welsh Government officials have not developed relationships with the young person and, thus, have limited information on which to base decisions.
- 8.368 In addition, the existing relationship between the local authority and young people and parents come to an end and parents have to develop a new relationship with the Welsh Government. This can be frustrating for young people and their parents.

Option two: make local authorities responsible for planning and securing specialist further education provision for learners with ALN

- 8.369 Under option two, where learners have a local authority maintained IDP, responsibility for securing post-16 provision, including specialist provision, would be transferred to local authorities.
- 8.370 In addition, the Welsh Ministers would be required to maintain, and publish, a list of independent specialist post-16 providers. Where providers do not agree with Welsh Minister's decisions in relation to the list, such as refusing to list an institution, specialist providers will be able to appeal to tribunal.
- 8.371 Local authorities would not be able to place a young person in independent specialist post-16 provision which was not on the list of independent specialist colleges maintained by the Welsh Ministers.
- 8.372 Local authority education services would work directly with schools and post-16 providers to identify and secure the necessary provision to meet the learners' needs.
- 8.373 Option two is expected to result in transition costs of £9,520 (see Table 59 below) and ongoing benefits of £133,580 per year.
- 8.374 Option two is the preferred option.

Costs

Career Wales

- 8.375 Under option two, Career Wales will no longer be responsible for developing learning and skills plans since they will be replaced by IDPs.
- 8.376 The group of learners currently in receipt of learning and skills plans are those with learning difficulties. Since local authority education services will be responsible for developing and maintaining IDPs for young people with the most complex needs, it is expected local authorities will be responsible for

making and maintaining a small number of these plans for the group of young people currently in receipt of learning and skills plans. The majority of young people with learning difficulties, however, have their needs met in an FEI. As such, and where appropriate, the majority of IDPs, for this group of learners, will be maintained by the FEI.

8.377 In addition, applications for funding will not exist under option two. Careers Wales will not, therefore, incur any costs under option two. As discussed above (see paragraph 8.28), there will be a transition period of two years (2018-19 to 2019-20) whereby the Welsh Government will fund Careers Wales to assist local authorities to identify suitable placements. Thus, there is a transition cost to the Welsh Government of approximately £709,400 (see Table 5 for Welsh Government implementation costs)¹⁷².

8.378 Transferring the work associated with undertaking S140 assessments and making applications to the Welsh Government for funding to attend an independent specialist college will result in Careers Wales having less funding. As stated above, the Welsh Government will continue to provide funding to Careers Wales for two years following the implementation of option two.

Local authority education services

8.379 The existing budget currently used by the Welsh Ministers to secure and fund specialist post-16 provision will be transferred to local authorities when they take on the additional responsibilities. For the purposes of the regulatory impact assessment, it is assumed this will be equivalent to existing expenditure of £12,440,703 per year¹⁷³. Local authorities will not, therefore, be subject to any additional ongoing costs associated with option two¹⁷⁴.

¹⁷² This cost has not been included in the summary tables in this section as it has been included in the section on the plans to support young people with LDD. Including it here would, therefore, risk double counting.

¹⁷³ 2016-17 prices. Made up of SEP of £12,244,983 and salary costs of £195,720, see Table 58.

¹⁷⁴ Under option two, local authorities will not have to undertake an application process. Thus, there will be no additional responsibilities.

8.380 In addition, the Welsh Government is providing ongoing funding¹⁷⁵ for two years to Careers Wales to enable knowledge to be transferred from Careers Wales to local authorities. This could include, for example, Careers Wales providing training to local authorities. As such, local authorities are not expected to incur any transition costs.

Welsh Government

8.381 Welsh Government will incur costs developing and maintaining the list of independent specialist colleges.

8.382 Welsh Government officials will undertake a number of administrative activities which would include, for example, ensuring independent specialist post-16 providers have submitted all the information required to demonstrate they meet the criteria for being entered onto, and remaining on, the published list. In addition, officials will review the Estyn inspection and annual monitoring reports to ensure no concerns have been raised¹⁷⁶. Officials will update information on the published list about any changes to provision within an independent specialist post-16 provider, as notified by the provider.

8.383 From 2016-17 it is expected there will be seven independent specialist colleges operating in Wales¹⁷⁷. It is expected all independent specialist colleges located in Wales will apply to be included on the published list.

8.384 There are currently 64 independent specialist colleges situated in England which are registered on the list published by the UK Government. It is expected some independent specialist post-16 providers located in England, particularly those situated along the Welsh-English border, will apply to be on the list for Wales. Whilst the number of independent specialist post-16 providers located in England who will apply to be registered on the published list is not known, we can expect it to be at least equal to the number of

¹⁷⁵ Transition funding of £709,400 is being made available to Careers Wales (see Table 5).

¹⁷⁶ These are forwarded to the Welsh Assembly Government and subsequently the school, as part of the continued monitoring of the school to ensure that any identified shortcomings are addressed.

¹⁷⁷ A new ISC has been established in Wales, which will be expected to start accepting learners from 2016/17. At the time of writing, the ISC had not started operating.

independent specialist post-16 providers the existing cohort of learners from Wales are currently attending.

- 8.385 During 2014-15 and 2015-16, there were 10 independent specialist post-16 providers located in England which learners from Wales attended.
- 8.386 It is estimated the administrative costs will be approximately £320. This is based on a Welsh Government executive officer spending approximately 60 minutes on each of the 17 applications for independent specialist post-16 providers to be placed on the list¹⁷⁸. This is a one-off transition cost which is expected to be incurred in 2017-18.
- 8.387 In addition, independent specialist colleges who wish to be considered for the published list will have to provide financial information to the Welsh Government which will be assessed by Welsh Government officials (as part of a financial 'health' check). The financial checks are expected to be undertaken by a senior executive officer and take 30 minutes for each application to be assessed. The estimated total for assessing 17 applications for independent specialist post-16 providers to be placed on the list is approximately £280¹⁷⁹. In total, then, the Welsh Government is expected to incur transition costs of £320 in 2017-18 and on-going costs of £280 per year.

Social services and health boards

- 8.388 As noted above (paragraphs 3.357 and 3.356), the costs incurred by social services and local health boards in funding specialist placements is not expected to change under this option.

¹⁷⁸ Based on an average EO salary in 2016-17 of £32,424 including on-costs, weekly costs of £704.87 (46 weeks) and an hour costs of £19.05 (37 hours). Total cost is £323.86.

¹⁷⁹ Based on 2016-17 SEO average salary of £55,248 including on-costs, weekly costs of £1201.04 (46 weeks) and 30 minutes costs of £16.23 (37 hours). Total cost £275.92.

Estyn

- 8.389 Under option two, Estyn will continue to monitor independent specialist colleges in Wales. The cost of monitoring independent specialist college will be the same as option one¹⁸⁰.
- 8.390 Estyn will also undertake an assessment of the information provided by independent specialist colleges based in Wales who apply to be placed on the published list. It is estimated Estyn will incur costs of approximately £9,200¹⁸¹ undertaking seven assessments. This will be a one-off transition cost which will be incurred in 2017-18.

Benefits

- 8.391 Under option two, there is an expected saving of £133,580 per year (see Table 59 below), which will result from removing the need for Careers Wales to make applications to Welsh Ministers to secure and fund placements.
- 8.392 In addition, the need for Careers Wales to develop learning and skills plans has also been removed. The introduction of a single plan which follows a young person throughout their educational journey means the need to develop separate learning and skills plans in preparation for young people entering further education will no longer be required. Rather, the planning will take place as part of the IDP review process. This benefit has not been included in the summary of costs for this section as it has been included in the section on plans to support children and young people with ALN.
- 8.393 Existing relationships would be maintained and the knowledge the local authority has built up about the young person will not be lost on transition to further education.

¹⁸⁰ For illustrative purposes, the RIA assumes the number of independent specialist colleges has remained stable at six college and the inspection cycle has remained the same. Neither change is the result of provisions within the Bill.

¹⁸¹ Based on 1.5 days at a daily rate of £878. Total cost £9,219.

Table 59: cost difference

	Annual costs – do nothing	Transition costs 2017-18 to 2020-21	Annual costs – option two	Ongoing cost difference
Welsh Government – administration	195,720	320	280	-195,400
Welsh Government – provision	12,244,983		0	-12,244,983
Local authority social services – provision	5,722,538		5,722,538	0
Local health boards – provision	903,893		903,893	0
Local authority education service	0		12,440,703	12,440,703
Careers Wales	133,900		0	-133,900
Estyn	48,700	9,200	48,700	0
Total	19,249,734	9,520	19,116,114	-133,580

- 8.394 Transferring responsibility to local authorities would enable local authority education services and local authority social services to collaborate when negotiating the development of, and cost of, provision. In this way, the local authority is better positioned than Welsh Government officials to encourage the development of local packages of support as well as deliver improved transition arrangements from school into FE and out of education.
- 8.395 In addition, taking on a direct role would allow an opportunity for the local authority to work with local further education institutions and specialist providers in developing local provision for young people with complex needs. This will facilitate local authorities and FEIs to jointly plan placements for the needs of children and young people whilst they are still at school. As such, post-16 provision for young people with complex needs could be expanded locally. This has potential to reduce out-of-county and out-of-country placements and to make associated savings. Young people and their families would benefit from the option of having local provision.

- 8.396 It has not been possible to estimate the number of local placements which would replace out-of-county and out-of-country placements. This benefit is not, therefore, known.
- 8.397 Welsh Ministers' list of independent specialist colleges should provide assurance to local authorities and to young people regarding the standards and quality of teaching.
- 8.398 It will also increase awareness of the specialist provision available, as the published list will outline the specific provision each independent specialist college can cater for.
- 8.399 The list will facilitate local authorities to place young people in appropriate independent specialist colleges, with the potential to increase the effective use of public money by having a positive impact on outcomes for young people.

Risks

- 8.400 There is a risk the knowledge Careers Wales has built up about specialist post-16 provision in terms of the support they can provide for specific groups of young people with additional needs will be lost. This, in turn, could result in a risk of inappropriate placements and increased appeals about local authority decisions.
- 8.401 This risk is expected to be low and can be mitigated by Careers Wales transferring this knowledge to local authorities. As set out above, the Welsh Government is providing ongoing funding for two years to Careers Wales to enable knowledge to be transferred from Careers Wales to local authorities. This could include, for example, Careers Wales providing training to local authorities.
- 8.402 There is a risk of increased costs where independent specialist colleges appeal to tribunal against decisions made by the Welsh Ministers in relation to the list, such as refusing to list an institution. This risk is, however, considered

to be very small due to the experience of similar arrangements in relation to the registration of independent schools.

8.403 Under option two, the right of appeal for independent specialist colleges to appeal against decisions made by Welsh Ministers in relation to the list is similar to the right of appeal independent schools have to challenge Welsh Ministers' decisions in relation to registration¹⁸². Experience of the independent schools registration system in Wales shows that no appeals have been lodged since it was established in 2002. This may be attributed to:

- close working with Estyn;
- the incentive arising from the link between registration and the provider's ability to operate; and
- the opportunity for providers to submit an action plan setting out how and by when they will address any standards they don't meet first time.

8.404 A similar approach will be taken when operating the list with the aim of mitigating the risk of challenges.

¹⁸² The independent schools registration system under Part 10 of the Education Act 2002 provides the proprietor of an independent school with a right of appeal against a decision by Welsh Ministers to refuse or cancel their registration. These appeals are made to the Health, Education and Social Care Chamber of the First-tier Tribunal, part of HMCTS, an agency of the Ministry of Justice, whose jurisdiction covers England and Wales.

Registration and approval of independent schools in respect of SEN

- 8.405 There are 66 independent schools in Wales¹⁸³, of which 31 are 'generally approved' to admit learners with statements of SEN.
- 8.406 Currently, there are two separate legislative systems in operation for the 'registration' and 'approval' of independent schools in Wales in respect of SEN¹⁸⁴.
- 8.407 Any establishment wishing to operate as a school in the independent sector must be registered with the Welsh Ministers. All independent schools are inspected by Estyn as part of seven-year inspection period. The seven-year inspection period was introduced in September 2016.
- 8.408 In addition, an independent school must be approved by the Welsh Ministers to generally admit children and young people with a statement of SEN. Organisations can either seek approval when applying to become a registered independent school or, where a school is already registered, an application for material change can be submitted. In both cases, the type of SEN which can be accommodated must be set out. Where independent schools are approved to generally admit children and young people with a statement of SEN, they are monitored annually by Estyn.
- 8.409 Where an independent school has not been approved to generally admit learners with a statement of SEN, it is possible for a local authority to seek the Welsh Ministers' consent to an individual placement of a child with a statement of SEN within the school. Since 2008, there have been 24 schools across Wales and England which have admitted pupils on the basis of

¹⁸³ <https://stats.wales.gov.wales/Catalogue/Education-and-Skills/Schools-and-Teachers/Schools-Census/Independent-Schools/Schools/schools-by-localauthorityregion-year>

¹⁸⁴ Section 160 of the Education 2002 requires schools to register in respect of SEN and section 347 of the Education Act 1996 requires schools to gain the approval of the Welsh Ministers to admit a child with a statement of SEN.

consent from the Welsh Ministers¹⁸⁵. The independent school the learner is placed in will not be monitored annually by Estyn.

8.410 The number of applications for consent to admit a learner with a statement of SEN to an independent school is based on demand. Consequently, numbers can fluctuate from year to year. During 2014-15, for example, there were 17¹⁸⁶ applications for consent for pupils to attend six independent schools in Wales, compared to six¹⁸⁷ applications to three independent schools during 2015-16. The number of applications to schools in England was more stable. During 2014-15, there were seven applications to six independent schools in England, compared to ten applications to seven independent schools in 2015-16. In total, there were 40 applications received during 2014-15 and 2015-16 to 18 schools¹⁸⁸ in England and Wales.

8.411 It is possible for parents to make their own arrangements to fund a place for a child or young person with a statement of SEN at an independent school, which has not been approved by the Welsh Ministers, insofar as the authority maintaining the statement is satisfied the arrangements are suitable.

Option one: do nothing

8.412 Under option one the current arrangements to 'register' or 'approve' independent schools who wish to admit children and young people with a statement of SEN will remain.

Costs

8.413 As Table 60 and Table 61 set out, the cost of option one is estimated to be £451,020. This is made up of £63,420 costs incurred from registration,

¹⁸⁵ Records go back to May 2008. Since then, Welsh Ministers have given consent for 24 schools, which are not registered to generally to admit pupils with SEN, to admit pupils with SEN. Of the 24 schools, 14 are now generally approved to admit young people with SEN.

¹⁸⁶ Financial year. Excludes applications not required as the school was already generally registered.

¹⁸⁷ Financial year. Excludes applications not required as the school was already generally registered.

¹⁸⁸ There is repetition in applications to schools across years, thus the total number of unique schools applied to is 18 schools rather than 22 schools.

general approval and individual consent and £387,600 from inspection and monitoring. The majority of the costs, £414,550, are incurred by Estyn.

Table 60: cost of registration, general approval and individual consent by body

	Registration and approval (£)	Material change (£)	Individual consent (£)	Total (£)
Schools	9,600	25	1,000	10,625
Welsh Government	70	5	110	185
Estyn	45,700	650	5,900	52,250
Local authority education service	0	0	360	360
Total	55,370	680	7,370	63,420

Table 61: cost of inspection and monitoring

	Inspection of all independent schools (£)	<i>Inspection of independent schools not approved (£)</i>	<i>Inspection of approved independent schools (£)</i>	Annual monitoring of approved independent schools (£)	Total (£)
Estyn	210,700	<i>136,100</i>	<i>74,600</i>	151,600	362,300
Schools	10,400	<i>5,500</i>	<i>4,900</i>	14,900	25,300
Total	221,100	141,600	79,500	166,500	387,600

Cost of registration and general approval process

Welsh Government

- 8.414 Following the receipt of an application to register¹⁸⁹ an independent school, the Welsh Government will check the form has been completed correctly and that all the necessary paperwork has been submitted, prior to sending the application to Estyn.
- 8.415 Between 2011/12 and 2015/16, there were 19 applications¹⁹⁰ for registration of an independent school, an average of approximately four per year. The

¹⁸⁹ Any application where the establishment has identified its wish to admit learners with SEN, will also be considered for general approval at the same time. This is an integrated registration process. There is no separate application process for general approval.

¹⁹⁰ 2 in 2011/12, 5 in 2013/14, 2 in 2013/14, 3 in 2014/15 and 7 in 2015/16.

Welsh Government incurred cost of approximately £18¹⁹¹ to complete the checking process for each application for referral to Estyn and for responding to the school following recommendation from Estyn. The total cost per year is, therefore, estimated to be approximately £70 per year¹⁹².

Estyn

- 8.416 Estyn has a three-part process¹⁹³ for inspecting applications to register as an independent school:
- assessment of the information provided on the application form
 - pre-registration visit and report to Welsh Government setting out the recommendation regarding registration
 - post-registration visit.
- 8.417 Estyn takes an average of 13 days to complete the registration inspection process set out above and incurs costs of approximately £11,400¹⁹⁴ for each application to register. The total cost based on four applications to register an independent school each year is, therefore, £45,700 (see Table 60 above).
- 8.418 Following registration, Estyn inspects independent schools as part of the mainstream seven-year inspection period. Estyn spends between 17 and 35 days inspecting an independent school, depending on the size of the school. The average cost of inspecting an independent school is £21,072¹⁹⁵.

¹⁹¹ Based on an executive officer spending one hour per application. Average salary £31,200 including on-costs, weekly costs of £678.26 (46 weeks) and an hourly cost of £18.33 (37 hours). Salary costs for 2014-15 and 2015-16 are the same.

¹⁹² £18*4 applications per year=£72.

¹⁹³ Where an establishment has identified its wish to admit learners with SEN, Estyn will consider as part of its registration process whether the establishment should be recommended for general approval to admit learners with SEN.

¹⁹⁴ Based on a daily rate of £878. The rate is based on the total budget of £11.594m divided by the total number of HMI activity days available in a year (60HMI*220 working days=13,200 days).

¹⁹⁵ Source Estyn

- 8.419 The majority of inspections of approved independent schools, however, take 17 days at a cost of £14,926¹⁹⁶. The majority of inspections of non-approved independent schools take 31 days at a cost of £27,218¹⁹⁷.
- 8.420 Estyn inspect an average of 10 independent schools per year at an estimated cost of approximately £210,700 per year. Of the 10 independent schools an average of five a year will be approved independent schools. Estyn incurs costs of £14,926 inspecting each approved independent school. Thus, the cost of inspecting five approved independent schools per year is approximately £74,600 a year.
- 8.421 The remaining five independent schools will be non-approved schools which take 31 days to inspect at a cost of £27,218. Thus, Estyn incurs costs of approximately £136,100 per year inspecting the five non-approved independent schools. The total cost incurred by Estyn for inspecting independent schools is, therefore, £210,700 (see Table 61 above).
- 8.422 In addition to inspection, Estyn undertakes annual monitoring on those independent schools which are approved to generally admit learners with SEN. It is estimated the monitoring process takes 6.5 days at a cost of approximately £5,700 per school. The cost to Estyn for monitoring 31 approved independent schools in Wales would be approximately £176,900 a year, if monitoring took place every year. Since Estyn undertakes monitoring visits six out of every seven years, as one of the years will be a full inspection, the average annual cost incurred by Estyn for monitoring visits is, therefore, approximately £151,600¹⁹⁸ (see Table 61 above).
- 8.423 In total, the costs Estyn incur from inspecting and monitoring schools is £362,300 per year.

¹⁹⁶ Source Estyn

¹⁹⁷ Source Estyn

¹⁹⁸ Estyn incurs costs of £5,707 undertaking an individual monitoring visit. Undertaking annual monitoring visits to 31 schools cost £176,917. Average annual cost for six out of seven years is $(176,917/7)*6 = 151,643$.

Independent schools

- 8.424 Currently organisations that wish to register as an independent school need to apply to the Welsh Government¹⁹⁹. Where an organisation wishes to be registered as an independent school which admits young people with SEN, the organisation will set out the SEN that can be provided for as part of the registration process.
- 8.425 It is estimated schools spend two hours collating the necessary paperwork and filling out the application form. Assuming the application form is completed by the proposed head teacher, it is estimated the cost of applying for registration is £100 per school²⁰⁰. The total estimated cost per year based on four applications to register as an independent school is approximately £400.
- 8.426 As part of the application process, schools have to submit plans of the school, drawn to scale in square metres, showing the layout of the premises and accommodation of all buildings. It has not been possible to determine a cost per school for this requirement because of the diversity of school circumstances. Some schools may, for example, have had plans drafted by an architect as part of an application for planning permission, some may choose to draft plans in-house, whilst others will choose to commission an architect to develop the plans.
- 8.427 The school proprietor(s) will be subject to a Disclosure and Barring Service (DBS) check. Proprietor includes the owner and/or those with responsibility for the governance of the school, such as the members of the board of governors. A DBS check currently cost £44²⁰¹. The number of checks required

¹⁹⁹ Information about the registration of independent schools can be found at:

<http://gov.wales/docs/dcells/publications/141126-independent-school-registration-handbook-en.pdf>

²⁰⁰ Based on a head teacher salary of £85,848 including on-costs, £1,866 per week (46 weeks) and £50 hour (37 hours).

IAPS guide: <https://www.hcrlaw.com/wp-content/uploads/2015/06/Independent-Schools-%E2%80%93-IAPS-Guide-to-Salaries-2015.pdf>

NASUWT guide:

http://www.nasuwt.org.uk/consum/groups/public/@salariespensionsconditions/documents/nas_download/nasuwt_014603.pdf

²⁰¹ <https://www.gov.uk/disclosure-barring-service-check/overview>

will depend on the number of proprietors. For illustrative purposes, it is assumed each school has a board of governors consisting of between 15 and 30 members²⁰², costing an average £1,000 per school²⁰³. The estimated total per year for four schools is approximately £4,000.

- 8.428 Schools are subject to both a pre-registration and post-registration visit. Staff will be involved in preparing for the visits, meeting with inspectors, accompanying the inspector around the school and responding to requests for follow up information. It is expected the schools will spend one and a half days on pre-registration visit related activities and two days on post-registration visit activities. The estimated cost incurred by schools is approximately £1,300 per school²⁰⁴. The cost per year to four schools is estimated to be approximately £5,200.
- 8.429 A school would, therefore, incur costs of approximately £2,400 completing the process of registration²⁰⁵. The total cost per year to four schools is estimated to be approximately £9,600 (see Table 60 above).
- 8.430 Once registered, schools will be subject to inspection by Estyn as part of the seven-year inspection cycle. It is expected schools will spend three days on inspection related activities, once during each seven-year period. Based on the assumption the head teacher undertakes the inspection related activities, it is estimated schools will incur costs of approximately £1,100²⁰⁶ per inspection, with an average cost of approximately £160²⁰⁷ per year. The total estimated cost for the 66 independent registered schools in Wales is approximately £10,400²⁰⁸ per year, of this £4,900 is the cost incurred by inspecting the 31 approved independent schools (see Table 61 above).

²⁰² <http://www.moderngovernor.com/wp-content/uploads/2011/06/Who-Governs-the-Governors.pdf>

²⁰³ Average number of governors 22.5*44=990.

²⁰⁴ Based on a head teacher salary of £85,848 including on-costs, £1,866 per week (46 weeks) and £373 per day.

²⁰⁵ £1,000 average DBS checks, £1,300 pre and post registration visit and £100 for the application.

²⁰⁶ Based on a head teacher salary of £85,848 including on-costs, £1,866 per week (46 weeks) and £373 per day. 3*£373=£1,119

²⁰⁷ 1/7 of £1,100 cost per inspection. Costs incurred £157 per inspection per school.

²⁰⁸ £157.88*66=£10,420.08.

8.431 Where a school is successful in being granted approval to generally admit learners with SEN, it will be subject to annual monitoring. This will take place six out of every seven years, since a full inspection will take place once every six years. Based on the assumption it takes a school 1.5 days on monitoring visit related activities, such as accompanying the inspector and providing follow up information, it is estimated schools incur costs of £560 per monitoring visit²⁰⁹, with an average yearly cost of approximately £480²¹⁰ per school. The total cost for the 31 approved schools in Wales is estimated to be approximately £14,900 per year (see Table 61 above).

Cost – material change to admit young people with statements of SEN

Welsh Government

- 8.432 Where an independent school did not seek to admit children and young people with SEN at the point of registration, and thus be generally approved to admit children and young people with statements of SEN, the school can subsequently request approval to do so from the Welsh Ministers.
- 8.433 On receipt of a request for a material change to admit children and young people with SEN, the Welsh Government checks the application is complete, prior to seeking the views of Estyn.
- 8.434 It takes approximately 30 minutes for the Welsh Government to check the request at an estimated cost of approximately £9 per application²¹¹. During the academic years 2014/15 and 2015/16, only one material change request was received in relation to SEN²¹². Based on an average of one request every two years, the cost to Welsh Government is estimated to be approximately £5 per year (see Table 60 above).

²⁰⁹ Based on a head teacher salary of £85,848 including on-costs, £1,866 per week (46 weeks) and £373 per day.

²¹⁰ 6/7 of £560 is £467.

²¹¹ Based on an executive officer spending one hour per application. Average salary £31,200 including on-costs, weekly costs of £678.26 (46 weeks) and an hourly cost of £18.33 (37 hours).

²¹² Data relating to materials changes prior to September 2014 is not disaggregated by the type of change being requested.

Estyn

- 8.435 On receipt of a request from the Welsh Government to consider a request for a material change from an independent school, Estyn undertakes an assessment to inform the recommendation. It is estimated the assessment process takes 1.5 days at a cost of approximately £1,300 per application. Based on receiving one material request change every two years, it is estimated the cost incurred to Estyn is approximately £650 per year (see Table 60 above).
- 8.436 Estyn monitors schools generally approved to admit learners with statements of SEN, annually. It is estimated the monitoring process takes 6.5 days at a cost of approximately £5,700 per school. Based on one school being granted approval to generally admit learners with statements of SEN every two years, the cost per year would be £2,850. Monitoring visits are, however, undertaken in six out of every seven years, as an inspection visit will take place once every six years. Thus, the cost of undertaking monitoring visits for additional schools approved to generally admit young people with statements SEN is estimated to be approximately £2,400 per year²¹³. The cost of monitoring the newly registered schools has been included in the cost of monitoring all 31 approved schools in Wales (see paragraph 8.422 above)²¹⁴.

Independent schools

- 8.437 Where an independent school subsequently wishes to admit learners with statements of SEN, general approval from the Welsh Government must be gained. To seek approval for material change in respect of SEN provision, independent schools write to the Welsh Government setting out the numbers and age range of proposed pupils, together with information about the types of special educational needs to be catered for.

²¹³ $(£2,850/7)*6=£2,442.86$.

²¹⁴ The newly approved schools are included in the 31 schools Estyn monitors, since there is a total of 31 approved school in Wales. Hence this cost is already included within the cost of monitoring the 31 schools in Wales

- 8.438 It is expected making such an application to generally admit learners with statements of SEN and collating any additional information²¹⁵ required will take no longer than an hour. Assuming the application is made by the head teacher, it is estimated the cost per school is approximately £50. The total cost per year, based on one request every two years, is estimated to be approximately £25 (see Table 60 above).
- 8.439 Where a school is successful in being granted approval to generally admit learners with SEN, it will be subject to annual monitoring. This will take place five out of every six years, since a full inspection will take place once every six years. Based on the assumption it takes a school 1.5 days on monitoring visit related activities, such as accompanying the inspector and providing follow up information, it is estimated schools incur costs of £560 per monitoring visit²¹⁶, with an average yearly cost of approximately £480²¹⁷ per school. The cost per year for those schools who subsequently gain a request for material change is estimated to be approximately £240 per year (based on one school every two years). This cost is included in the total cost of approximately £14,900 per year for all 31 approved schools in Wales²¹⁸.

Costs – individual consent to admit learners with a statement of SEN

- 8.440 Where a local authority wishes to place a learner in a school, located in England and Wales, which does not have approval to generally admit learners with statements of SEN, the local authority must seek approval from the Welsh Ministers to do so.
- 8.441 As stated above, 40 applications were received during 2014-15 and 2015-16 to 18 schools in England and Wales. An average of 20 applications to nine schools located in England and Wales each year.

²¹⁵ Depending on the numbers of pupils to be catered for the Welsh Government may also require curriculum details, schemes of work and, where alterations have been made to the school premises, two copies of the school plans drawn to scale in square metres.

²¹⁶ Based on a head teacher salary of £85,848 including on-costs, £1,866 per week (46 weeks) and £373 per day.

²¹⁷ 5/6 of £560 is £467.

²¹⁸ The newly approved schools are included in the 31 schools Estyn monitors, since there is a total of 31 approved school in Wales. Hence, this cost is included in the cost of monitoring the 31 schools in Wales.

- 8.442 The process involves completing an application form and providing supporting documents, such as the statement of SEN. It is estimated local authorities will spend approximately one hour preparing the application at a cost of approximately £18²¹⁹ per application. The total cost to local authorities, based on 20 applications per year, is estimated to be approximately £360 per year (see Table 60 above).
- 8.443 The application also requires evidence the school can meet the needs of the learner. It is estimated schools will incur costs of £50²²⁰ preparing written confirmation of ability to meet the learner's needs. The total cost to schools, based on 20 applications per year, is estimated to be approximately £1,000 per year (see Table 60 above).
- 8.444 On receipt of an application for a school based in Wales, the Welsh Government sends the application to Estyn for consideration. Estyn considers the information provided by the local authority together with information collected as part of any inspections undertaken and makes a recommendation to the Welsh Government. It is estimated Estyn spends an average of 1.5 days considering the information at an estimated cost of £1,300 per application. The total cost to Estyn, based on an average of 4.5 applications per year to schools based in Wales, is estimated to be approximately £5,900 per year (see Table 60 above).
- 8.445 The Welsh Government will make a decision based on the recommendation from Estyn. It is estimated the Welsh Government spends one hour assessing the information at a cost of approximately £24 per application. Based on an average of 4.5 applications per year, the estimated cost to the Welsh Government is approximately £110 per year (see Table 60 above).

²¹⁹ Based on the equivalent of a Welsh Government executive officer spending one hour per application. Average salary £31,200 including on-costs, weekly costs of £678.26 (46 weeks) and an hourly cost of £18.33 (37 hours).

²²⁰ Based on a head teacher salary of £85,848 including on-costs, £1,866 per week (46 weeks) and £50 hour (37 hours).

- 8.446 Unlike general approval to admit young people with statements of SEN, Estyn does not annually monitor independent schools who have received Welsh Ministers consent to admit a child or young person with a statement of SEN.

Advantages

- 8.447 There are no additional costs associated with option one.

Disadvantages

- 8.448 The Welsh Ministers will be required to continue to operate two separate legislative systems which, to an extent, replicate each other.
- 8.449 Under the existing arrangements, it would continue to be possible for children and young people with SEN to have a placement at an independent school which is inspected as part of the mainstream seven-year cycle of inspection but not monitored on an annual basis. This would happen where a school did not have the approval of the Welsh Ministers to generally admit children and young people with a statement of SEN but the local authority had gained consent to an individual placement of a child with a statement of SEN within the school.
- 8.450 In addition, it is not currently clear what each independent school is able to cater for. Under the current arrangements, there is not publicly available information which covers all independent schools in respect of the special education provision they deliver. This restricts choice for children, young people and parents.

Option two: reform the system for the registration and approval of independent schools in respect of SEN

- 8.451 Option two differs from the current situation in the following ways. First, option two removes the existing legislative system for approving independent schools and enables a single legislative process for the registration of independent schools who wish to admit learners with ALN.
- 8.452 Second, as part of the registration process independent schools will be required to set out the ALP they are able to provide, rather than the type of ALN they cater for.
- 8.453 Third, since the legislative system for approving independent schools will be removed, including the requirement to seek consent for individual placements, option two places a restriction on local authorities who will not be able to place learners with a local authority maintained IDP at an independent school which is not registered for the ALP required by the learner.
- 8.454 Finally, option two would introduce a requirement for the Welsh Ministers to maintain, and publish, a register of independent schools. Where an independent school does not agree with a decision made by the Welsh Ministers, such as a decision not to include the independent school on the published list, the independent school may appeal against the decision.
- 8.455 Option two is the preferred option.

Summary of costs

- 8.456 Table 62 and Table 63 below set out the costs incurred as a result of option two. The total cost of option two is estimated to be £497,710. This is made up of £56,410 incurred as a result of registration, material change and individual consent and £441,300 incurred from inspecting and monitoring independent schools.

8.457 This compares to an estimated cost of £451,020 for option one (see paragraph 8.413 above). The overall cost difference is, therefore, estimated to be an additional £46,690.

Table 62: annual cost of registration, material change and individual consent by body

	Registration and approval (£)	Material change (£)	Individual consent (£)	total (£)
Schools	9,600	25	0	9,625
Welsh Government	70	5	0	75
Estyn	45,700	650	0	46,350
Local authority education service	0	0.0	360	360
Total	55,370	680	360	56,410

Table 63: annual cost of inspecting and monitoring independent schools

	Inspection	Annual monitoring	Total
Estyn	210,700	200,500	411,200
Schools	10,400	19,700	30,100
Total	221,100	220,200	441,300

8.458 As Table 64 sets out, the estimated transition costs associated with implementing option two are £55,770. The costs are incurred by independent schools, Estyn and the Welsh Government and are related to the 41 independent schools which are expected to apply to register their additional learning provision (ALP). The 41 schools comprise of the estimated 10 independent schools in Wales which currently have learners placed on an individual consent basis; and the 31 schools currently generally approved to admit learners with statements of SEN. The transition costs are expected to be incurred in 2017-18.

Table 64: transition costs associated with amending registration details to identify the additional learning provision a school can cater for

	Transition cost (£)
Independent schools seeking material change	2,100
Estyn	53,300
Welsh Government	370
Total	55,770

- 8.459 Table 65 below sets out the cost difference between options one and two in relation to registration approval and consent. There are no changes in the costs incurred from registration and material change. In terms of individual consent, there is an estimated saving of £7,010. This is because individual consent will not exist under option two, thus the costs incurred by independent schools, Welsh Government and Estyn will not arise under option two.

Table 65: cost difference between option one and option two – registration, approval and consent

	Registration (£)	Material change (£)	Individual consent (£)	total
School	0	0	-1,000	-1,000
Welsh Government	0	0	-110	-110
Estyn	0	0	-5,900	-5,900
Local authority education service	0	0	0	0
Total	0	0	-7,010	-7,010

- 8.460 However, as set out in Table 66 below, independent schools will incur additional costs due to the additional number of schools which are expected to be registered to cater for young people with local authority maintained IDPs and the consequent additional monitoring visits. This additional activity is estimated to result in costs of approximately £4,800 for schools and £48,900 for Estyn.
- 8.461 The overall estimated additional ongoing cost for independent schools is approximately £3,800 a year and for Estyn the estimated additional ongoing is £43,000.

Table 66: cost difference between option one and option two – inspection and monitoring

	Inspection of all independent schools (£)	Annual monitoring of approved schools (£)
Estyn	0	48,900
Schools	0	4,800
Total	0	53,700

Costs

Independent schools

- 8.462 Under option two, section 347 of the 1996 Education Act would be repealed, thus removing the existing legislative duplication²²¹.
- 8.463 There will be no additional costs or benefits from this change for organisations which apply to register as a school following the implementation of the Bill. The existing registration and general approval system is currently administered as a single system, since the application to register independent schools includes the same information needed to assess if the organisation can also be approved to generally admit children and young people with SEN. In addition, the current system of applying for a material change will remain the same under option two. Thus, there will be no additional costs or benefits for schools which subsequently wish to register their ALP through a material change.
- 8.464 There are, however, transition costs for the 31 schools currently generally registered to admit young people with SEN and both ongoing costs and transition costs for those 10 schools who have received Welsh Minister's consent for the placement of children and young people with statements of SEN.
- 8.465 The cost per independent school to amend their registration to identify the ALP it can provide will be the same as the current cost of a material change request. That is, £50 per school. The total estimated cost for 41 schools to register their ALP will, therefore, be approximately £2,100 (see Table 64). This is a one-off transition cost, which it is expected will be incurred in 2017/18.
- 8.466 Following the material change to deliver ALP, the 10 independent schools who have received Welsh Ministers consent for the placement of individual

²²¹ Section 347 of the 1996 Education Act essentially duplicates the requirements of section 160 and section 162 of the 2002 Education Act. The existing school standards which relate to the 2002 Education Act will be updated to include two standards set out in the approval regulations relating to the 1996 Education Act.

pupils, will be subject to annual monitoring at an estimated additional cost of £560 per school per monitoring visit. Since schools are subject to monitoring visits in six out of seven years, the cost per school is estimated to be approximately £480 per year. The total additional cost for the 10 schools is estimated to be approximately £4,800 year. The estimated cost for the 31 schools which are currently monitored by Estyn is approximately £14,900. The total cost for 41 schools is, therefore, approximately £19,700 a year (see Table 63 above).

- 8.467 There are no additional costs for inspection, since all independent schools are currently inspected.

Risks

- 8.468 There is a risk all 66 independent schools will consider the need to register their ALP, especially where learners have low level ALN, such as mild dyslexia. However, as with mainstream schools, it is expected independent schools can differentiate teaching practice to meet the needs of these low level ALN learners.
- 8.469 To avoid the situation where all independent schools in Wales would have to register all ALP delivered, the Welsh Government will update the Independent Schools Registration and Operation Guidance²²² to provide advice on what level of ALP has to be registered. The Welsh Government has allocated £18,000 to update policy and guidance following the implementation of the Bill (see Table 5 above).

Estyn

- 8.470 As with option one, Estyn will undertake pre and post registration inspection, which would include consideration of the ALP the school has applied to register for. It is expected the cost incurred by Estyn will be the same as the current cost. That is, approximately £11,400 for each application to register, an estimated total of approximately £45,700 per year (see Table 62 above).

²²² <http://gov.wales/docs/dcells/publications/141126-independent-school-registration-handbook-en.pdf>

- 8.471 Estyn is expected to incur additional annual monitoring costs since under option two, any school wishing to deliver ALP will have to be registered to do so and will, therefore, be subject to annual monitoring by Estyn.
- 8.472 Assuming the 10 independent schools who have received the consent of Welsh Ministers to place an individual pupil with a statement of SEN register their ALP, the estimated additional cost incurred by Estyn is expected to be approximately £48,900 per year.
- 8.473 The current cost incurred by Estyn to monitor the 31 schools currently approved to admit learners with statements of SEN is £151,600 per year (see Table 61 above). Thus, the total cost under option two for monitoring schools registered to deliver ALP is estimated to be approximately £200,500 (see Table 63 above).
- 8.474 There are no additional costs for inspection, since all independent schools are currently inspected.
- 8.475 Estyn will also incur a one-off cost as a result of the requirement for schools to register the ALP they intend to deliver. It is expected the 31 schools currently generally approved together with the 10 schools with pupils admitted on the basis of individual consent will submit a material change request to amend their registration to identify the ALP they will provide. The cost incurred by Estyn to consider these material change requests will be the same as the cost currently incurred by Estyn when undertaking any other request for a material change. That is £1,300 per school. The total cost incurred by Estyn for undertaking 41 material change requests is, therefore, estimated to be approximately £53,300. This is a one-off transition cost. It is expected this cost will be incurred in 2017-18 (see Table 64 above).

Local authorities

- 8.476 Local authorities are not expected to incur any additional costs under option two. Currently, local authorities put together a case when applying to the Welsh Ministers for consent for a child or young person with a statement of

SEN to be placed at an independent school which is not generally approved to admit learners with statements of SEN. Under option two, local authorities will continue to have to satisfy themselves the placement is appropriate. Thus, it is expected local authorities will undertake the same activities under both option one and option two. This represents an annual cost to local authorities of £360 (see Table 62 above).

Welsh Government

- 8.477 The Welsh Government will incur no ongoing additional costs since a register of independent schools is already kept.
- 8.478 The Welsh Government will incur transition costs related to changing the 41 independent schools which are expected to register their ALP. It is estimated it will take approximately 30 minutes for the ALP to be recorded at an estimated cost of £9 per school²²³. The cost of recording the ALP for 41 schools is, therefore, expected to be approximately £370. This is a one-off transition cost. This cost is expected to be incurred in 2017-18 (see Table 64).

Benefits

- 8.479 The publication of the independent schools' register, combined with the changes to the registration system, would clearly set out for local authority education services and parents of learners with ALN the additional learning provision an independent school can cater for. This will raise awareness of the choice of provision available and, therefore, is likely to result in improved choice of provision for parents and learners.
- 8.480 The availability of clearer information, through the published register and a restriction on local authorities about where they can place a learner would reduce the risk of inappropriate placements for learners with ALN into an independent school.

²²³ Based on an executive officer spending one hour per application. Average salary £31,200 including on-costs, weekly costs of £678.26 (46 weeks) and an hourly cost of £18.33 (37 hours).

- 8.481 Option two provides a level of assurance to the local authority and the parent, that the independent school can meet the needs of the learner, as identified within their IDP. In addition, all independent schools who have registered their ALP will be monitored annually by Estyn, providing assurance to all children, young people and their parents about the quality and provision of ALP at the school.

Risks

- 8.482 There is a risk of increased costs where independent schools appeal to tribunal against decisions made by Welsh Ministers in relation to the list, such as refusing to place an independent school on the list. This risk is, however, considered to be very small due to the experience of similar arrangements in relation to the registration of independent schools.
- 8.483 Independent schools currently have a right of appeal to challenge Welsh Ministers' decisions in relation to registration²²⁴. Experience of the independent schools registration system in Wales shows that no appeals have been lodged since it was established in 2002.

Disadvantages

- 8.484 There are no disadvantages associated with option two.

²²⁴ The independent schools registration system under Part 10 of the Education Act 2002 provides the proprietor of an independent school with a right of appeal against a decision by Welsh Ministers to refuse or cancel their registration. These appeals are made to the Health, Education and Social Care Chamber of the First-tier Tribunal, part of HMCTS, an agency of the Ministry of Justice, whose jurisdiction covers England and Wales.

Statutory basis of special educational needs support co-ordinators in education

- 8.485 The existing approach to co-ordinating support for children and young people with SEN in early years settings and in schools is through a special educational needs co-ordinator (SENCo)²²⁵. The SENCo has responsibility for coordinating SEN provision for children including training other staff, coordinating with a range of agencies, liaising with families, teaching and supporting children and young people, and maintaining records.
- 8.486 Whilst the SENCo is a recognised role, there is currently no requirement for maintained nurseries, mainstream schools, pupil referral units or FEIs to have a designated member of staff who undertakes the role of a SENCo.
- 8.487 The Special Educational Needs Code of Practice for Wales has no mandatory basis and, thus, the Welsh Ministers are currently unable to prescribe how the SENCo role should be undertaken. The code sets out the key responsibilities the role of a SENCo *might* include but provides little guidance about the time and support that should be given to the role. Consequently, there is no agreed definition of the role at either the local or national level and the role is undertaken in diverse ways.

Option one: do nothing

- 8.488 Under option one the current approach to co-ordinating provision for children and young people with SEN and LDD would continue. That is, there would be no statutory requirement for schools, or other education settings, to appoint a SENCo and no requirement for FEIs to establish support services.

²²⁵ Unlike mainstream schools, special schools are specifically designed to deliver special educational provision and, thus, it is not necessary for special schools to appoint a SENCo to coordinate SEN provision.

Cost

Schools

- 8.489 There are currently 1,574²²⁶ schools in Wales. Assuming an average of one SENCo per school²²⁷ employed at £39,466.05²²⁸ per year, the cost per year of is estimated to be approximately £62,119,600. In addition, some SENCos will be entitled to an SEN allowance²²⁹. Based on 50% of SENCos receiving an SEN allowance of £4,030.65, the estimated cost is approximately £3,172,100 per year. The total cost to schools of employing SENCos is, therefore, estimated to be approximately £65,291,700 per year.

Pupil referral units

- 8.490 There are currently 28 pupil referral units in Wales. Pupil referral units are specialist providers in that all the teaching staff are experienced in delivering education to young people with behavioural issues, who may also have SEN. Unlike schools pupil referral units would not usually have a designated

²²⁶ <https://statswales.gov.wales/Catalogue/Education-and-Skills/Schools-and-Teachers/Schools-Census/Pupil-Level-Annual-School-Census/Schools/schools-by-localauthorityregion-welshmediumtype>

²²⁷ The average is likely to be less than one ALNCo per school because the Bill will only require the governing body to designate a person responsible for co-ordinating ALP. The Bill does not require the person to be employed by the school. Thus, it will be possible for schools to take advantage of existing cluster or federated school arrangements. The current situation whereby it is possible for small schools to share a SENCO and for larger schools to employ more than one SENCO will, therefore, continue following the introduction of the Bill. For the purposes of estimating current costs, however, an average of one SENCo per school is used.

²²⁸ The SENCo has been implemented in diverse ways. It is possible for the main role of the SENCo to be a higher level teaching assistant (HLTA), a teacher or a member of the leadership group such as head of year, head of department, deputy head teacher or teacher. Consequently, it is not possible to determine the precise national salary costs of SECOS. For the purposes of estimating current costs, the midpoint for classroom teachers September 2016 to August 2017 of £30,358.50 (£39,466.05 including on cost) has been used.

In addition, the proportion of time a SENCo spends undertaking their teaching duties in relation to the SENCO role is not known. Consequently, it has not been possible to disaggregate the cost of the undertaking SENCo related tasks from total salary costs. The salary costs are, therefore, likely to over, rather than under, estimated.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/550286/STPCD_2016_guidance.pdf

²²⁹ The SEN allowance ranges from £2,085 to £4,116 with a midpoint of £3,100.50 (£4,030.65 including on costs).

The SEN allowance is paid to classroom teachers only. It is not paid to HLTAs nor to staff on the leadership group pay range. Data is not currently collected on the number of SENCos who receive the SEN allowance. In addition, the proportion of SENCos who are classroom teachers is not known. Thus, it has not been possible to establish with actual current cost of the SEN allowance. For the purposes of estimating current SEN allowance costs, it is assumed 50% of SENCos will be classroom teachers who receive the SEN allowance.

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 £39,466.05²³⁰ per year and all SENCos receive an average SEN allowance of £4,030.65. The current cost to pupil referral units of employing SENCos is estimated to be approximately £1,217,900.

8.491 There are currently 13 FEIs in Wales. Although not required, each FEI provides student support services and will have an LDD co-ordinator, who undertakes a role broadly similar to SENCos in schools. The individual undertaking the role may be a member of the teaching staff or a member of student support services. For illustrative purposes, it is assumed the LDD co-ordinator will be on a comparable pay scale to SENCos - £39,466.05²³¹ per year. The total estimated cost of the existing role in FEIs is, therefore, approximately £513,100.

8.492 The total cost of SENCos and SENCo type roles in Wales is, therefore, estimated to be £67,022,700 (see Table 67 below).

Table 67: current estimated cost of SENCo and SENCo type roles

	SENCo cost (£)
Schools	65,291,700
Pupil referral units	1,217,900
FEIs	513,100
Total	67,022,700

Advantages

8.493 There are no additional costs associated with option one.

²³⁰ For the purposes of estimating current costs, the midpoint for classroom teachers September 2016 to August 2017 of £30,358.50 (£39,466.05 including on cost) has been used.
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/550286/STPCD_2016_guidance.pdf

²³¹ For the purposes of estimating current costs, the midpoint for classroom teachers September 2016 to August 2017 of £30,358.50 (£39,466.05 including on cost) has been used.
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/550286/STPCD_2016_guidance.pdf

Disadvantages

- 8.494 Currently, there is no requirement for education settings to have SEN co-ordinators. Although schools do have them, there is no consistent approach across Wales in terms of who should be a SENCo, what qualifications the SENCo should have and how the role should be undertaken. Whilst SENCos are generally qualified teachers, it is also possible for SENCos not to be qualified teachers. The SENCo could, for example, be a higher level teaching assistant or a member of the non-teaching staff.
- 8.495 To undertake the role effectively, SENCos need specific training in assessing and teaching young people with SEN. There is, however, currently a lack of specific training and a corresponding lack of consistency in the knowledge and skill base of SENCos.
- 8.496 There are currently issues regarding the extent to which teachers are trained to assess and teach young people with SEN (see for example Rose, 2010 cited Holtom et al 2012)²³². In a recent study commissioned by the Welsh Government, Holtom et al (2010)²³³ concluded education staff were generally confident in their skills and knowledge in relation to SEN. The evidence from the study suggests, with the important exceptions of assessment and differentiation²³⁴, this confidence is reasonably well-founded.
- 8.497 Lack of training for SENCos and teachers can result in some schools having limited capacity to deal with SEN and prevent unnecessary recourse to local authority assessments (see for example Rose, 2010 cited Holtom et al 2012)²³⁵. In addition, parents have expressed concerns over inconsistencies

²³² <http://dera.ioe.ac.uk/16170/1/120626learningneedsfinalen.pdf>

²³³ <http://dera.ioe.ac.uk/22888/1/150330-sen-en.pdf>

²³⁴ Differentiation refers to an educational approach that requires teachers to tailor their learning, teaching and assessment whilst adjusting the curriculum to the needs of children, including those with SEN, rather than expecting pupils to fit the existing curriculum (Cole, R, (2008), *Educating Everybody's Children: Diverse Strategies for Diverse Learners*, Association for Supervision and Curriculum Development, Google Books, <http://books.google.co.uk/books?id=ixmW-porsOAC>; Rogers, C. (2007), *Experiencing an Inclusive Education: Parents and their Children with Special Educational Needs*, *British Journal of Sociology of Education*, 28, 1, pp55-68).

²³⁵ <http://dera.ioe.ac.uk/16170/1/120626learningneedsfinalen.pdf>

in the effectiveness and quality of service from the SENCos at their children's school²³⁶.

²³⁶ Welsh Government (2008) Statements or something better: Summary of progress to date and the next steps. Available at:
<http://gov.wales/dcells/publications/publications/guidanceandinformation/ellscomitteerecommendations/summaryprogressenglish?lang=en>

Option two: introduce a statutory ALN support co-ordinator role

- 8.498 Under option two, a statutory role of ALN co-ordinator (ALNCo) would be introduced. The ALNCo will be responsible for providing strategic leadership to the delivery of ALP.
- 8.499 The ALNCo will provide a co-ordinating function at the strategic level and, as such, will not necessarily be responsible for the day-to-day activities relating to the ALP such as teaching or managing specialist ALN units within schools. It is expected these functions will continue to be the responsibility of teachers and higher level teaching assistants.
- 8.500 All education settings, other than special schools, would be required to appoint an ALNCo. Unlike mainstream schools, special schools are specifically designed to deliver special educational provision and, thus, it is not considered necessary for special schools to have to appoint an ALNCo to coordinate provision.
- 8.501 It is expected within schools and maintained early years settings²³⁷, the ALNCo will be a qualified teacher and within FEIs the ALNCo will be a teaching practitioner. In addition, all ALNCos will have to have undertaken a masters level programme of training.
- 8.502 Option two is the preferred option.

Cost

- 8.503 There are no additional ongoing costs for schools, pupil referral units and FEIs since they already have SENCoS or a SENCo role in place. The total on going cost of the ALNCo role is, therefore, estimated to be £67,022,700 (see Table 67 above). Where the existing SENCo is not, for example, a qualified teacher, responsibility for strategic co-ordination will have to be allocated to a qualified teacher. The day-to-day functions currently being undertaken by a SENCo

²³⁷ Independent early years settings will not be required to have an ALNCo but will be required to refer young people with ALN to the local authority.

can, however, continued to be undertaken by, for example, a higher level teaching assistants. As such, it is expected costs will remain the same.

- 8.504 Schools, pupil referral units and FEIs will, however, incur transition costs related to the training of the ALNCos. In total, the transition costs are expected to be £9,255,320 (see Table 68 below).

Table 68: cost of ALNCos

	2017-18	2018-19	2019-20	2020-21	Total
Schools - cost of degree	944,400	1,888,800	1,888,800	944,400	5,666,400
Schools - cost of training days	558,770	1,117,540	1,117,540	558,770	3,352,620
total schools	1,503,170	3,006,340	3,006,340	1,503,170	9,019,020
Pupil referral units - cost of degree	16,800	33,600	33,600	16,800	100,800
Pupil referral units - cost of training days	10,407	20,813	20,813	10,407	62,440
Total pupil referral units	27,207	54,413	54,413	27,207	163,240
FEIs - cost of degree	7,800	15,600	15,600	7,800	46,800
FEIs - cost of training days	4,377	8,753	8,753	4,377	26,260
Total FEIs	12,177	24,353	24,353	12,177	73,060
Total	1,542,554	3,085,106	3,085,106	1,542,544	9,255,320

Schools

- 8.505 Schools will experience transition costs incurred as a result of funding the masters level qualification for 1,574²³⁸ ALNCos. Based on the cost of a course of study being £3,600²³⁹, the total cost would be £5,666,400. It is expected the course will be undertaken on a part-time basis over three years. Based on the

²³⁸ <https://statswales.gov.wales/Catalogue/Education-and-Skills/Schools-and-Teachers/Schools-Census/Pupil-Level-Annual-School-Census/Schools/schools-by-localauthorityregion-welshmediumtype>

²³⁹ Based on Welsh Government masters in education practice course delivered between 2013/14 and 2016/17.

assumption 787 ALNCos start the course in years 2017-18 and in 2018-19, the costs are estimated to be approximately £944,400 in 2017/18, £1,888,800 in both 2018/19 and 2019/20 and £944,400 in 2020/21.

- 8.506 In addition, schools will incur opportunity costs as a result of the time ALNCos will be out of school studying. It is assumed teachers will spend a minimum of 10 days attending university and completing assignments²⁴⁰. It is estimated the opportunity cost per ALNCo will be approximately £1,960²⁴¹, with a total opportunity cost of approximately £3,352,620²⁴². It is expected this cost will be spread over four years with opportunity costs of £558,770 in 2017/18, £1,117,540 in both 2018/19 and 2019/20 and £558,770 in 2020/21.
- 8.507 While presented here as an opportunity cost, this may be a financial cost to schools where they hire supply staff to provide cover for ALNCos when they are away from the school.

Pupil referral units

- 8.508 Pupil referral units will experience transition costs incurred as a result of funding the masters level qualification for 28 ALNCos. Based on the cost of a course of study being £3,600²⁴³, the total cost would be £100,800. It is expected the course will be undertaken on a part-time basis. Based on the assumption an average of 14 ALNCos start the course in years 2017-18 and in 2018-19, the costs are estimated to be approximately £16,800 in 2017/18, £33,600 in both 2018/19 and 2019/20 and £16,800 in 2020/21.
- 8.509 In addition, pupil referral units will incur opportunity costs as a result of the time ALNCos will be out of pupil referral units studying. It is assumed pupil referral units teachers will spend a minimum of 10 days attending university

²⁴⁰ The 10 days have been averaged across the three year degree course as it is expected each student will choose to take their study time at different points in the course.

²⁴¹ $\text{£}39,466.05 / 195 \text{ contracted days} + ((4030.65 / 195 \text{ contracted days}) * .5) = \text{£}212.73 \text{ per day} (\text{£}2,127.25 \text{ for 10 days}).$

²⁴² $\text{£}2,130 * 1,574 \text{ ALNCos} = \text{£}3,352,620$

²⁴³ Based on a Welsh Government tender for the masters in educational practice course delivered between 2013/14 and 2016/17.

and completing assignments²⁴⁴. It is estimated the cost per ALNCo will be approximately £2,230²⁴⁵, with a total opportunity cost of £62,440. It is expected this cost will be spread over four years with opportunity costs of £10,407 in 2017/18, £20,813 in both 2018/19 and 2019/20 and £10,407 in 2020/21.

- 8.510 While presented here as an opportunity cost, this may be a financial cost to pupil referral units if they decide to hire supply staff to provide cover for ALNCos when they are away from the pupil referral unit.

Further education institutions

- 8.511 FEIs will experience transition costs incurred as a result of funding the masters level qualification for 13 ALNCos. Based on the cost of a course of study being £3,600²⁴⁶, the total cost would be £46,800. Based on the assumption an average of 6.5 ALNCos start the course in years 2017-18 and in 2018-19. It is expected the course will be undertaken on a part-time basis. Thus, the costs are estimated to be approximately £7,800 in 2017/18, £15,600 in both 2018/19 and 2019/20 and £7,800 in 2020/21.
- 8.512 In addition, FEIs will incur opportunity costs as a result of the time ALNCos will be out of FEI studying. It is assumed the ALNCo will spend a minimum of 10 days attending university and completing assignments²⁴⁷. Based on the assumption an ALNCo based in an FEI is paid a similar salary to an ALNCo based in a school, it is estimated the cost per ALNCo will be approximately £2,020²⁴⁸, with a total opportunity cost of £26,260 for the 13 ALNCOs. It is expected this cost will be spread over four years with opportunity costs of £4,377 in 2017/18, £8,753 in both 2018/19 and 2019/20 and £4,377 in 2020/21.

²⁴⁴ The 10 days have been averaged across the three year degree course as it expected each student will choose to take their study time at different points in the course.

²⁴⁵ £39,466.05/195 contracted days /195 contracted days +4030.65/195 contracted days = £223.06 per day (£2,231 for 10 days).

²⁴⁶ Based on a Welsh Government tender for the masters in educational practice course delivered between 2013/14 and 2016/17.

²⁴⁷ The 10 days have been averaged across the three year degree course as it expected each student will choose to take their study time at different points in the course.

²⁴⁸ £39,466.05/195 contracted days = £ 202.39 per day (£2,023.90 for 10 days).

- 8.513 While presented here as an opportunity cost, this may be a financial cost to FEIs where supply staff are required to cover for ALNCos when they are away from the FEI.
- 8.514 Following the passage of the Bill, the Welsh Government ALN implementation team will be involved in a number of activities associated with the SEN masters qualification. This includes: engaging with higher education institutions to explore delivery options; and administering the Welsh Government ALN local authority implementation grant. The cost of the ALN implementation team are set out in Table 5 and are not, therefore, included here.
- 8.515 The Welsh Government will provide funding via the Welsh Government ALN local authority implementation grant, to assist with the cost of funding the masters qualification. The cost of the ALN local authority implementation grant has not been included here as it is set out in Table 5.

Risks

- 8.516 There is a risk the transition costs associated with the masters qualification could be higher than projected. This would arise where, during the four year implementation period, an ALNCo starts the qualification but does not complete it due to, for example, resigning from their post. We do not have any information on the level of churn in the current SENCo role and so it has not been possible to estimate it at this stage. This cost is, therefore, unknown.
- 8.517 There is also a risk there will not be sufficient capacity to train all ALNCos within the four year time frame set out above. This would result in the implementation costs per year being lower than set out above since the cost would be spread over a greater number of years.

Advantages

- 8.518 The requirement to appoint an ALNCo will extend current practice. Under option two, all education settings including pupil referral units and FEIs will be required to appoint an ALNCo.
- 8.519 Making the ALNCo a statutory role and ensuring the role is clearly defined within regulations and the code, would lead to a consistent approach to the coordination role across Wales.
- 8.520 A specific masters level qualification will provide the training necessary for the ALNCo to effectively fulfil the responsibilities of the role, including training and supporting other staff.
- 8.521 A qualified and trained ALNCo will ensure each setting has access to an individual with an advanced level of knowledge and skill across the range and types of ALN. This will enable all education setting practitioners to be better supported in the classroom and ensure learners needs are identified early and evidence based interventions are provided to meet those needs.
- 8.522 Improved support from ALNCos to classroom practitioners and their learners should also contribute to improved learning outcomes and attainment for ALN learners.
- 8.523 At a strategic level, a qualified ALNCo will be able to implement whole setting systems/approaches to inclusion and ensure resources are managed effectively to better meet the needs of all learners.
- 8.524 A qualified ALNCo will also contribute to reducing inappropriate referrals to specialist services and, in turn, improve the capacity of specialist services to meet the needs of those learners who actually require their input. The advanced level of knowledge and skill the ALNCo will acquire through the qualification, should be sufficient to meet the needs of the majority of learners within their setting. The ALNCo will be the central point of contact for the

setting and so will have a specific role in identifying those learners who require specialist service input and refer them as required.

Disadvantages

- 8.525 There are no disadvantages associated with option two.

Risks

- 8.526 There is a risk the new ALNCo requirements may be perceived as creating too much of a burden, which may put people off remaining, or becoming, an ALNCo.
- 8.527 This risk is, however, considered to be small due to the work the Welsh Government will undertake to avoid the role becoming too burdensome. This will include, for example, the ALN strategic implementation group (SIG) and its sub-expert group which will focus on the ALNCo role; consulting on the detail of the role as set out in regulation; and providing teacher training and support linked to the professional learning offer.
- 8.528 There is also a risk the additional responsibility together with the higher qualification may raise expectations of higher pay. There is, however, no link between the ALNCo qualification and teacher's pay.

Statutory basis of strategic co-ordinators in health

- 8.529 There is currently no requirement for health boards to appoint a lead role or single point of contact with strategic responsibility for health related provision for children and young people with SEN.

Option one: do nothing

- 8.530 Under option one, the existing approach to provision would continue. That is, health boards would continue to adopt diverse approaches to the strategic development, co-ordination and oversight of health related provision for children and young people with SEN. In addition, there would be no standard approaches to quality assure performance and drive service improvement.

Costs

- 8.531 It has not been possible to determine the cost of strategic development, co-ordination and oversight of health provision for children and young people with SEN due to the diversity of approaches adopted by health boards. Since the role is already being undertaken, it is expected current costs will be a minimum of the costs set out in option two. That is, approximately £206,400²⁴⁹ (see paragraph 8.539).

Advantages

- 8.532 There are no additional costs associated with option one.

Disadvantages

- 8.533 Although health boards currently secure SEN provision, which is overseen and coordinated to some degree, there is no formalised leadership role. It is not, therefore, consistently or strategically overseen across the Welsh NHS, nor is it necessarily prioritised at a central, strategic level. There is no single, identifiable role and thus, no common job title or set of responsibilities. In addition, there is also often no single point of contact within health boards in

²⁴⁹ Inclusive of on costs.

respect of SEN matters. Lack of coordination for statutory SEN duties risks negligence claims or reputational damage to health boards.

Option two: introduce a statutory role of designated educational clinical lead officer

- 8.534 Option two would introduce a statutory role of designated education clinical lead officer (DECLO). Each health board would be required to appoint a DECLO.
- 8.535 It is expected the DECLO role will be undertaken by an individual reporting to the board. The role will facilitate the development of an efficient and effective delivery framework for ALN support, the promotion of local problem solving, escalation of issues to the board and facilitate monitoring compliance of the board's statutory duties. The DECLO will have strategic responsibility for raising awareness of the provisions within the Bill and for establishing efficient systems to ensure the health professionals involved in ALN assessment (including speech and language therapy, occupational therapy, physiotherapy, child and adolescent mental health services (CAMHS), community paediatrics and learning disability services, primary care teams including GPs, health visitors and school nurses) are skilled to undertake appropriate, timely assessments, make evidence based recommendations on effective interventions, monitor outcomes, quality assure advice and benchmark across health boards to reduce any variation in practice or expectations.
- 8.536 The DECLO will be responsible for ensuring the day-to-day health provision for ALN is effectively managed and co-ordinated. The operational aspects of this function should, however, be delegated to a health professional, who is in contact with the child or young person. The health professional would act as a 'health co-ordinator' at a local level and would be the key point of contact for children and young people, parents, schools and local authorities.
- 8.537 The DECLO will be a registered healthcare professional with clinical qualifications and senior experience in an aspect of healthcare relevant to ALN, including but not confined to medical (primary or secondary care), nursing, midwifery, allied health or public health. It is expected the time allocated to the role will be one day per week per 200,000 population

(equivalent to one day per week per 40,000 children and young people). The population in Wales is 3,092,000²⁵⁰, thus it would require the equivalent of three full time positions²⁵¹. On average, each of the seven health boards in Wales would have a healthcare professional undertaking DECLO responsibilities approximately two days per week.

8.538 Option two is the preferred option.

Cost

Health boards

8.539 Since the role can be undertaken by a range of senior registered health professionals, the salary cost will be determined by the main role of the individual who becomes the DECLO. For illustrative purposes, an estimated salary of approximately £68,800²⁵² is used. The total cost for three DECLOs appointed at midpoint of band 8 would, therefore, be £206,400 (inclusive of on costs).

Implementation costs

Welsh Government and health boards

8.540 The Welsh Government has produced a job description for the DECLO role, which will be included in the ALN code. The code will have been finalised when the Bill is implemented. Any associated costs will, therefore, be sunk costs. There will be no external recruitment costs associated with the introduction of the DECLO role, since the role is expected to be undertaken by an existing healthcare professional.

²⁵⁰ Annual Mid-year Population Estimates:2014

<http://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/bulletins/annualmidyearpopulationestimates/2015-06-25>

²⁵¹ $(3,092,000/200,000)/5=3$.

²⁵² Based on 2016/2017 agenda for change (A4C) pay scales, midpoint band 8a to band 8c including on costs (£68,801). An individual at the level of band 8 would be required to ensure the strategic input required of the role.

- 8.541 In the short term, there will be start-up activities to ensure DECLOs effectively bed-in within health boards. Specifically these will include multi-agency induction, training and the establishment of relevant contacts and relationships within, and external to, the health board.
- 8.542 DECLOs, school nurses and health coordinators will need to participate in multi-agency training about the shared expectations of the role and responsibilities of a DECLO, including the delegated functions. The cost of developing the training will be met through the £390,000 Welsh Government transition cost associated with developing core skills, awareness raising and developing resources. Delivery costs will be met through Welsh Government grant funding. This will be a one-off transition cost. There will be no costs to health boards as it is expected DECLOs and other health professionals will undertake the training within the hours allocated for them to undertake continuous professional development.
- 8.543 The establishment of effective relationships between health boards and educational establishments will be critical to the smooth introduction of DECLOs and to ensure maximum added value long term. As experienced health professionals with expertise relevant to ALN and ALP, DECLOs will have existing relationships with other health practitioners. Relationships with all relevant local authority officers and FEI staff will need to be established and developed. The DECLOs will need to make contact with officers from the local authorities within the health board area and with staff from those of the 13 FEIs that have links with the health board area.
- 8.544 Work is underway to encourage the establishment of these relationships now, ahead of the statutory duty on health boards coming into force, through Welsh Government transition support funding²⁵³ and the work of delivery partners via the Welsh Government's ALN Strategic Implementation Group. It is expected the relationships will have been developed to a large extent prior to the

²⁵³ Specifically, the Welsh Government Innovation Fund.

implementation of the Bill. Thus, it is expected any associated costs will be sunk costs²⁵⁴.

- 8.545 In addition, it is envisaged DECLOs will develop a support network to facilitate benchmarking, audit and quality improvement and sharing of good practice. This is likely to require a combination of face-to-face (initially two to four times per year until the services bed in, then every six months) and telephone or video conference meetings. It is estimated the total additional cost for travel will be approximately £330 per year²⁵⁵. There will be no additional staff costs since the support network will be undertaken as part of the DECLO role.

Benefits

- 8.546 Appointing a DECLO within health boards would have the benefit of facilitating the delivery of effective, co-ordinated health services to improve outcomes for children and young people with ALN, health boards to discharge their ALN responsibilities and facilitate the effective collaboration between health boards and their partners in the delivery of services for learners with ALN. The DECLO would also ensure there is a robust structure for assuring the quality and safety of services and collect data about service quality, outcomes and performance; manage complaints and facilitate the resolution of conflict; simplify the system for children, young people, parents and partners by providing a single point of contact within health boards on ALN matters. In addition, the appointment of the DECLO should ensure ALN provision is an appropriate strategic priority for health boards. The DECLO is expected to offer benefits to the learner by overseeing the embedding and integration of effective health provision in relation to ALN and by ensuring the delivery of appropriate health services.. The introduction of DECLOs is also expected to facilitate the development of all-Wales standards of practice through the

²⁵⁴ This includes the Welsh Government Innovation fund of £1,100,000 which was awarded to local authorities in 2016-17 to support the development of relationships and collaborative working (see table 5).

²⁵⁵ Based on LHBs meeting at Powys Teaching Health Board (PTHB), which would result in approximately 730 miles being travelled. Based on 45 pence per mile the cost to LHBs would be £ 328.50. 45 pence per mile cost is based on NHS Wales local agreement on the reimbursement of travel costs, effective from 1 January 2015 to 31 December 2017, <http://www.wales.nhs.uk/documents/NHSWalesSection17.pdf>

sharing of the evidence base, professional consensus, evaluated models, audit and quality improvement, so helping embed national equity of ALP across NHS Wales regardless of geographical location.

- 8.547 It is expected the introduction of the DECLO will result in a co-ordinated approach to ALP, which has potential to contribute to better outcomes for children, increase parental satisfaction and reduce duplication.

Risks

- 8.548 Although the responsibilities of the DECLO are currently being undertaken in a dispersed way by health boards, and so are an existing resource which would benefit from better focus and organisation, there is a risk the introduction of a formal role of DECLO could have additional cost implications. Since current practices are diverse across health boards, it has not been possible to estimate what, if any, these additional costs could be. This cost is, therefore, not known.
- 8.549 The vast majority of learners with ALN who require ALP delivered by NHS Wales are already receiving the support they need. It is possible, however, that by placing ALN on the strategic agenda of health boards and improving the way NHS manage ALN functions and responsibilities, the introduction of DECLOs could result in the identification of a greater need for ALP. It is not possible to quantify any potential increase in need but taking an early adopter approach to the roll out of the DECLO role should help ensure any new need is effectively planned for and managed. This cost is, therefore, not known.
- 8.550 The additional population of 18-24 year olds that now fall within the remit of the ALN system represent a new potential client group who previously may have not received any NHS contribution to learning support. This is as yet unquantified, but is not envisaged to include many learners who have not been identified prior to age 16.

Statutory basis of early years co-ordinators in local authorities

- 8.551 There is currently no requirement for local authorities to appoint a lead role or single point of contact with strategic responsibility for co-ordinating additional learning provision for children under compulsory school age.

Option one: do nothing

- 8.552 Under option one, the existing approach to provision would continue. That is, local authorities would continue to adopt diverse approaches to co-ordinating additional learning provision for children under compulsory school age.

Costs

- 8.553 It has not been possible to determine the current cost of co-ordinating additional learning provision for children under compulsory school age due to the diversity of approaches adopted by local authorities. Since the role is already being undertaken, it is expected current costs will equivalent to those set out in option two. That is, approximately £1,093,400 a year (see paragraph 8.561).

Advantages

- 8.554 There are no additional costs associated with option one.

Disadvantages

- 8.555 Although local authorities currently coordinate additional learning provision for young people under compulsory school age, there is no consistent model or formalised leadership role. There is no single, identifiable role and thus, no common job title or set of responsibilities. In addition, there is also often no single point of contact within local authorities for additional learning provision for children under compulsory school age. Lack of coordination for statutory SEN duties risks negligence claims or reputational damage.

Option two: introduce a statutory role of designated early years additional learning needs lead officer

- 8.556 Option two would introduce a statutory role of early years additional learning needs lead officer. Each local authority would be required to designate an individual (similar to an ALNCo in schools and FEIs) with responsibility for coordinating local authority functions under the Bill in relation to children under compulsory school age who do not attend a maintained pre-school setting.
- 8.557 In addition to coordinating additional learning provision, the early years ALN lead officer role will include:
- Early identification of lower level ALN
 - Prevention of the development of ALN. That is, identifying young children with developmental delay, which could escalate to ALN if they don't receive appropriate early intervention.
 - Ensuring the early years workforce has the appropriate skills, mechanisms and tools for preventing the development of ALN and supporting young children with ALN.
- 8.558 Option two is the preferred option.

Ongoing cost

Local authorities

- 8.559 For illustrative purposes, a salary of £49,700 is used to estimate the ongoing costs of introducing the early years ALN lead officer²⁵⁶. The estimated ongoing cost to the 22 local authorities in Wales is, therefore, estimated to be approximately £1,093,400 a year. Since local authorities already undertake the functions associated with the early years ALN lead officer, this will not be an additional ongoing cost.

²⁵⁶ Based on a salary of £38,237 (Scale PO4, spine 43) with 30% on costs (£49,708.10).

Implementation costs

Local authorities

- 8.560 As table 62 below sets out, it is estimated local authorities will incur transition costs of £126,700 related to training early years ALN lead officers. The estimated cost of training early years ALN lead officers is based on the same cost model used to estimate the ALNCo training costs. That is, it is assumed the early years ALN lead officers will be trained to masters level at a cost of £3,600 per degree, with a total estimated cost of £79,200 to the 22 local authorities in Wales, and will take 10 days of paid study leave over the two year period at an estimated cost of £47,520²⁵⁷.

Table 69: early years ALN lead officer - estimated transitions cost 2017-18 to 2020-21

	2017-18	2018-19	2019-20	2020-21	Total
Cost of degree	13,200	26,400	26,400	13,200	79,200
Cost of training days	7,920	15,840	15,840	7,920	47,520
Total transition costs	21,120	42,240	42,240	21,120	126,720

Advantages

- 8.561 The requirement to appoint an early years ALN lead officer will extend current practice. Under option two, all local authorities will be required to appoint an early years ALN lead officer.
- 8.562 Making the early years ALN lead officer a statutory role and ensuring the role is clearly defined within regulations and the code, will lead to a consistent approach to the coordination role across Wales.
- 8.563 Specific early years ALN lead officer training will enable the early years ALN lead officer to effectively fulfil the responsibilities of the role.

²⁵⁷ Based on a weekly salary of £1,080.43 (annual salary of £49,700, 46 weeks) and a daily rate of £216.09. 10 days is approximately £2,160 per local authority, with a total cost of £47,520 across the 22 local authorities.

- 8.564 A qualified early years ALN lead officer will also contribute to the early identification and intervention which will support positive outcomes for children, including the preventing developmental delay becoming an additional learning need.

Disadvantages

- 8.565 There are no disadvantages associated with option two.

Additional learning provision through the medium of Welsh

- 8.566 Under the new system, where an IDP provides for a particular kind of additional learning provision to be delivered in Welsh, local authorities, governing bodies and NHS bodies are required to take all reasonable steps to secure the provision in Welsh.
- 8.567 In addition, local authorities will be required to keep under review the arrangements made by the authority and by the governing bodies of maintained schools in its area for children and young people with additional learning needs. This includes consideration of the extent to which the provision is sufficient to meet the additional learning needs of children and young people through the medium of Welsh.
- 8.568 Whilst the extent to which additional learning provision through the medium of Welsh meets demand at the local authority level will be known by local authorities, there is currently no arrangements in place to review the demand for, and supply of, additional learning provision delivered through the medium of Welsh at the national level. Thus, the extent to which demand for additional learning provision delivered through the medium of Welsh is met across Wales is unknown.

Option one: do nothing

- 8.569 Under option one, the existing approach would continue. That is, there will be no requirement to review the demand for, or supply of, additional learning provision delivered through the medium of Welsh at the national level.

Costs

- 8.570 There are not costs associated with option one.

Advantages

- 8.571 There are no additional costs associated with option one.

Disadvantages

- 8.572 The extent to which demand for additional learning provision delivered through the medium of Welsh is met across Wales will not be routinely assessed and, thus, will not be known. This restricts the ability to make informed policy decisions about additional learning provision through the medium of Welsh.

Option two: introduce a requirement for Welsh Ministers to review additional learning provision delivered through the medium of Welsh

- 8.573 Under option two, Welsh Ministers would be required to review the demand for, and supply of, additional learning provision delivered through the medium of Welsh. The requirement is that such a review is undertaken once every 5 years.

Ongoing cost

Local authorities

- 8.574 There will be no costs to local authorities. Under the new system local authorities will be required to collect the data which will be used to inform a review of the demand for, and supply of, additional learning provision delivered through the medium of Welsh.

Welsh Government

- 8.575 It is estimated it will take Welsh Government officials three days to produce a review of the demand for, and supply of, additional learning provision delivered through the medium of Welsh.
- 8.576 Based on the assumption the review is drafted by a senior executive officer, the cost of drafting the review would be approximately £720²⁵⁸. The costs per year would, therefore, be approximately £140.

Advantages

- 8.577 Introducing a requirement for Welsh Ministers to review the extent to which demand for additional learning provision delivered through the medium of Welsh will facilitate the ability to make informed policy decisions about additional learning provision through the medium of Welsh.

²⁵⁸ Based on 2016-17 SEO average salary of £55,248 including on-costs, weekly costs of £1201.04 (46 weeks) and a daily rate of £240.21. Total cost £720.63.

Disadvantages

8.578 There are no disadvantages associated with option two.

Determination powers in relation to disagreements about maintaining plans

- 8.579 Currently, local authority responsibility for developing and maintaining statements for young people ends when the young person leaves school.
- 8.580 Where a young person with additional learning needs goes on to further education, the FEI will develop a college-based plan for the young person.
- 8.581 Under the new system, IDPs will follow the young person from school to further education. Responsibility for school maintained IDPs will transfer from the school to the FEI when the young person starts further education. There are currently 8,905 young people with a learning difficulty and/or disability who attend FEIs. It is likely these young people have an IEP rather than a statement and are, therefore, likely to have a college maintained plan under the new system.
- 8.582 Local authorities will, however, maintain responsibility for some IDPs. This will include maintaining IDPs for the 298 young people who attend independent specialist colleges and a proportion of the IDPs for the 120 young people with PMLD who attend FEIs. It is not possible to be specific about the number of young people with PMLD who will have a local authority maintained IDP. This is because the number of young people with PMLD who attend FEIs and had a statement whilst at school is not known. It is possible that between 0 and 120 young people had a statement and, thus, may have a local authority maintained IDP whilst in further education. For the purposes of the RIA, the midrange of 60 local authority maintained IDPs is assumed.
- 8.583 Under the new system, it is possible for local authorities to request an FEI takes over the responsibility for maintaining a plan. This would happen in circumstances where the local authority considers the needs of the young person can reasonably be met by the FEI. The FEI does not, however, have to accept a local authority request to take over the responsibility of maintaining a local authority maintained IDP. Since local authorities can not

discharge their responsibility for maintaining an IDP until the FEI accepts responsibility for maintaining it, there is potential for local authorities to continue to maintain IDPs despite this not being appropriate.

Option one: do nothing

- 8.584 Under option one where an FEI refuses to accept responsibility for maintaining an IDP for a student enrolled at the FEI, which the local authority believes it would be appropriate for the FEI to maintain, the local authority would continue to be responsible for maintaining the IDP.

Cost

- 8.585 It has not been possible to determine the cost of the do nothing option. There are 120 young people who have PMLD who attend FEI. It is estimated 60 IDPs will be maintained by a local authority and 60 will be maintained by an FEI. There is potential for disagreements to arise around a proportion of the 60 IDPs it is estimated FEIs will be responsible for maintaining. Since it is not known how many disagreements may arise, it is not possible to estimate the number of IDPs local authorities may be required to maintain despite it not being appropriate for the local authority to maintain. It is not, therefore, possible to estimate the cost of option one.

Advantages

- 8.586 There are no advantages associated with option one.

Disadvantages

- 8.587 Under option one there is a risk local authorities may maintain IDPs which it is inappropriate for them to maintain. This would place an unnecessary burden and cost on local authorities and undermine the effectiveness of the system with responsibility for the maintenance of plans at an appropriate level, whether that be school, FEI or local authority.

Option two: introduce a power for the Welsh Ministers to determine who is responsible for maintaining an IDP

- 8.588 Option two would introduce a power for the Welsh Ministers to determine who is responsible for maintaining an IDP. This power would be used in instances where a local authority and FEI can not agree about who is responsible for maintaining an IDP.
- 8.589 Where an FEI refuses a request from a local authority to accept responsibility for maintaining an IDP, the local authority would be able to refer the matter to the Welsh Ministers for determination.

Cost

- 8.590 It has not been possible to estimate the cost of introducing a power for the Welsh Ministers to determine who is responsible for maintaining an IDP. There are 120 young people who have PMLD who attend FEI. It is estimated 60 IDPs will be maintained by a local authority and 60 will be maintained by an FEI. There is potential for disagreements to arise around a proportion of the 60 IDPs it is estimated FEIs will be responsible for maintaining. Since it is not known how many disagreements may arise, it is not possible to estimate the number of times determination will be sought. The cost of option two is, therefore, unknown.

Advantages

- 8.591 Option two provides a solution to resolving disagreements about who should be responsible for maintaining an IDP. There is, therefore, potential to reduce any unnecessary burden placed on local authorities in respect of maintaining IDPs.

Disadvantages

- 8.592 There are no disadvantages associated with option two.

Summary of cost and benefits of introducing the preferred options over a four-year period

- 8.593 Table 70 and Table 71 below, provide a summary of the estimated costs of the do nothing options and preferred options over a four-year period, by option and by group affected.
- 8.594 The tables present the cost of option two adjusted, where relevant, to incorporate the mid-range estimated increase or decrease in cost. Table 45, for example, sets out the estimated cost of options one and two, together with the estimated cost of option two after being adjusted to take account of the mid-range estimated reduction in cost. Rather than, for example, using the estimated total cost to local authority education services of £13,594,980 a year an adjusted estimated cost of £14,423,265 is presented, which reduces the potential saving from £1,515,970 to £687,685 a year (see Table 45). The estimated cost of £14,423,265 a year is used in the summary table. The purpose of doing this is to avoid overstating any potential savings.

Ongoing costs to public administration

- 8.595 Overall, the regulatory impact assessment suggests there could be an additional cost of £7,154,860 over the four year period 2017-18 to 2020-21, when all cost to public administration (ongoing costs and transition costs) are taken into account. This is an additional cost of approximately £1,788,715 per year.
- 8.596 There is potential for the provisions within the Bill to realise an ongoing cost saving to public administration of £4,500,300 over the four-year period 2017-18 to 2020-21. The estimated savings in ongoing costs each year from 2017-18 is approximately £1,125,075. As set out above, there are risks associated with the extent to which these potential savings will be realised.
- 8.597 The estimated savings are expected to be achieved from provisions in the Bill which aim to remove the current adversarial nature of the statement process.

- 8.598 As well as recognising the potential savings which could be realised from the introduction of the preferred options, the regulatory impact assessment acknowledges the extent to which the potential savings will be achieved is unknown. Thus, when calculating the savings, mid-range savings have generally been used to avoid overstating the potential savings.
- 8.599 In addition, where it has not been possible to identify the potential savings due to diverse practices likely to be put in place when implementing provisions within the Bill, illustrative savings are presented within the text, but are not then included in the summary table. This includes, for example, the potential savings which could be realised from introducing a requirement to avoid and resolve disagreements. Although, for example, it is estimated there could be savings for SENTW if ALN family support workers are put in place across Wales in response to the requirement to avoid disagreements, the Bill is not prescriptive about specific practices that should be implemented. Thus, it is not known whether the potential fall of 38 appeals per year will be realised. The potential savings of £60,800 per year have, therefore, been regarded as illustrative and not included in the summary of costs tables.
- 8.600 The regulatory impact assessment suggests local authorities will save an estimated £2,750,740 in ongoing costs over the four-year period. The saving per year from 2017-18 is estimated to be £687,685, which is an average saving of £31,258 per local authority each year. The saving is expected to be realised from reducing the controversial nature of the existing system through removing the distinction between statutory and non-statutory plans and the associated costs of providing dispute resolution services and the cost of responding to disagreements and appeals.
- 8.601 Careers Wales, which is funded by the Welsh Government, is expected to save £1,954,400 over the four-year period. The saving each year from 2017-18 is expected to be £488,600. This will be achieved by removing the requirement to undertake section 140 assessments and removing the necessity to apply to the Welsh Government for funding for independent specialist college placements. As set out in Table 5 above, the Welsh

Government will continue to fund Careers Wales for the two years 2018-19 and 2019-20.

- 8.602 There is potential for SENTW to make savings in ongoing costs of approximately £61,200 over the four-year period. The potential saving each year from 2017-18 is £15,300. This saving is dependent on the provisions to reduce the current adversary in the system realising the expected reductions in appeals. Risks to this saving being realised are discussed in detail above.
- 8.603 It is expected some organisations will incur additional ongoing costs when the provisions are implemented. This includes further education institutions which could see an increase in ongoing costs of £92,800 over the four-year period. The additional ongoing cost from 2017-18 is estimated to be £23,200 a year. This is an average ongoing cost per year of approximately £1,800 for each of the 13 further education institutions in Wales. This cost is expected to be incurred as a result of the provision to extend the scope of IDPs to include young in FE up to the age of 25, which will require FEIs to take on the additional responsibility of reviewing IDPs and responding to any disagreements which may arise. The estimated cost is considered to be the maximum since FEIs currently have college-based plans for young people with ALN. The current costs of maintaining these plans is not known and could not, therefore, be deducted from expected costs of extending the scope of IDPs to include young people with ALN in FEIs up to the age of 25. So, the potential cost is not anticipated to be fully realised.
- 8.604 Estyn is expected to incur additional ongoing costs of £172,000 over the four-year period. The additional cost from 2017-18 is estimated to be £43,000 a year. The additional cost results from the expected increase in the number of independent schools Estyn will be responsible for monitoring.

Transition costs to public administration

- 8.605 The total estimated cost of implementing the Bill is expected to be £11,655,160. Welsh government transition costs are £1,972,510, the

remaining £9,682,650 transition costs are incurred by nine public sector bodies (see Tables 70 and 71). The Welsh Government is providing grant funding to public sector organisations over the four-year period to support the implementation of the Bill.

- 8.606 The majority of the implementation costs will be incurred from the requirement for maintained schools, pupil referral units and FEIs to employ an ALNCo who has an appropriate post-graduate qualification. The estimated cost for the current ALNCos to achieve a masters level qualification is £9,255,320.
- 8.607 The remaining £427,330 implementation costs are expected to be incurred from implementing provisions associated with IDPs, DECLOs, the registration of independent schools and post-16 special education provision.

Costs to parents, independent schools and dispute resolution service providers

- 8.608 Overall, there is potential for parents to save an estimated £3,329,500 over the four-year period (see Table 72). The saving from 2017-18 is estimated to be £832,375 a year. This saving is dependent on the provisions to reduce the current adversary in the system realising the expected reductions in disagreements and appeals.
- 8.609 Independent schools are estimated to incur additional costs of £17,300 over the four-year period. This consists of £2,100 transition costs and £15,200 ongoing costs. The additional cost from 2017-18 is estimated to be £3,800 a year. The increase in costs is associated with the provisions which bring about changes to the registration of independent schools.

There is potential for service providers to save an estimated £293,840 over the four year period. The saving from 2017-18 is estimated to be £73,460 a year.

Table 70: cost of Bill by provision, 2016-17 to 2020-21

	Table	2016-17		2017-18	2018-19	2019-20	2020-21		
		Do nothing		Introduce preferred option					
		(£)	Total 4 yrs - do nothing	(£)	(£)	(£)	(£)	Total 4 years - preferred option	Cost difference
Individual development plans									
Local authority education services	Table 45	15,110,950	60,443,800	14,423,265	14,423,265	14,423,265	14,423,265	57,693,060	-2,750,740
Local authority education services	Table 46			18,200	0	0	0	18,200	18,200
Local authority social services	Table 45	489,900	1,959,600	489,900	489,900	489,900	489,900	1,959,600	0
Local authority social services	Table 46			118,700	0	0	0	118,700	118,700
Mainstream schools	Table 45	8,074,700	32,298,800	8,074,700	8,074,700	8,074,700	8,074,700	32,298,800	0

Special schools	Table 45	938,700	3,754,800	938,700	938,700	938,700	938,700	3,754,800	0
Local health boards	Table 45	2,911,700	11,646,800	2,911,700	2,911,700	2,911,700	2,911,700	11,646,800	0
Careers Wales	Table 45	629,500	2,518,000	274,800	274,800	274,800	274,800	1,099,200	-1,418,800
SENTW	Table 45	152,000	608,000	136,700	136,700	136,700	136,700	546,800	-61,200
SENTW	Table 45			100,900	0	0	0	100,900	100,900
Further education Institutions	Table 45	229,400	917,600	252,600	252,600	252,600	252,600	1,010,400	92,800
Individual development plans - ongoing costs		28,536,850	114,147,400	27,502,365	27,502,365	27,502,365	27,502,365	110,009,460	-4,137,940
Individual development plans -transition cost				237,800	0	0	0	237,800	237,800
Dispute resolution									
Local authority education services	Table 52	0	0	0	0	0	0	0	0
Dispute resolution - ongoing		0	0	0	0	0	0	0	0

Dispute resolution - transition				0	0	0	0	0	0
Post-16 special education provision									
Local authority education services	Table 59	0	0	12,440,703	12,440,703	12,440,703	12,440,703	49,762,812	49,762,812
Local authority education services - Welsh Government transfer	Table 59	0	0	-12,440,703	-12,440,703	-12,440,703	-12,440,703	-49,762,812	-49,762,812
Careers Wales	Table 59	133,900	535,600	0	0	0	0	0	-535,600
Welsh Government	Table 59	12,440,703	49,762,812	280	280	280	280	1,120	-49,761,692
Welsh Government - transfer to local authority education	Table 59	0	0	12,440,703	12,440,703	12,440,703	12,440,703	49,762,812	49,762,812
Local health boards	Table 59	903,893	3,615,572	903,893	903,893	903,893	903,893	3,615,572	0
Local authority social services	Table 59	5,722,538	22,890,152	5,722,538	5,722,538	5,722,538	5,722,538	22,890,152	0

Estyn	Table 59	48,700	194,800	48,700	48,700	48,700	48,700	194,800	0
Estyn	Table 59			9,200	0	0	0	9,200	9,200
Post-16 special education provision - ongoing		19,249,734	76,998,936	19,116,114	19,116,114	19,116,114	19,116,114	76,464,456	-534,480
Post-16 special education provision - transition				9,200	0	0	0	9,200	9,200
Registration independent schools									
Welsh Government	Table 60 and Table 65	185	740	75	75	75	75	300	-440
Estyn	Table 60 and Table 61	414,550	1,658,200	457,550	457,550	457,550	457,550	1,830,200	172,000
Estyn	Table 64			53,300	0	0	0	53,300	53,300
Local authority education services	Table 62	360	1,440	360	360	360	360	1,440	0
Registration independent		415,095	1,660,380	457,985	457,985	457,985	457,985	1,831,940	171,560

schools – ongoing									
Registration independent schools - transition				53,300	0	0	0	53,300	53,300
ALNCo									
Mainstream schools - ongoing	Table 67	65,291,700	261,166,800	65,291,700	65,291,700	65,291,700	65,291,700	261,166,800	0
Mainstream schools	Table 68			1,503,170	3,006,340	3,006,340	1,503,170	9,019,020	9,019,020
pupil referral units - ongoing	Table 67	1,217,900	4,871,600	1,217,900	1,217,900	1,217,900	1,217,900	4,871,600	0
pupil referral units - transition				27,207	54,413	54,413	27,207	163,240	163,240
Further education Institutions - ongoing	Table 67	513,100	2,052,400	513,100	513,100	513,100	513,100	2,052,400	0
Further education Institutions - transition	Table 68			12,177	24,353	24,353	12,177	73,060	73,060
ALNCo - total ongoing		67,022,700	268,090,800	67,022,700	67,022,700	67,022,700	67,022,700	268,090,800	0
ALNCo - total transition	Table 68			1,542,554	3,085,106	3,085,106	1,542,554	9,255,320	9,255,320
DECLO									

Local health boards	See paragraph 8.540	206,400	825,600	206,400	206,400	206,400	206,400	825,600	825,600
Local health boards				330	0	0	0	330	330
DECLO - ongoing costs		206,400	825,600	206,400	206,400	206,400	206,400	825,600	825,600
DECLO - transition costs				330	0	0	0	330	330
Early years ALN lead officer									
Local authority education services – ongoing costs		1,093,400	4,373,600	1,093,400	1,093,400	1,093,400	1,093,400	4,373,600	0
Local authority education services – transition costs				126,700	0	0	0	126,700	126,700
Early years ALN lead officers – ongoing costs		1,093,400	4,373,600	1,093,400	1,093,400	1,093,400	1,093,400	4,373,600	0
Early years ALN lead officers – transition costs				126,700	0	0	0	126,700	126,700
Review of provision of ALN via medium Welsh									
Welsh Government – ongoing costs		0	0	140	140	140	140	560	560

Review of provision of ALN via medium Welsh – ongoing costs		0	0	140	140	140	140	560	560
Total - ongoing costs		116,524,179	466,096,716	115,399,104	115,399,104	115,399,104	115,399,104	461,596,416	-4,500,300
Welsh Government transition costs - costs	Table 5			497,510	757,300	612,700	105,000	1,972,510	1,972,510
Total - transition cost				2,467,394	3,842,406	3,697,806	1,647,554	11,655,160	11,655,160
TOTAL OVERALL COST		116,524,179	466,096,716	117,866,498	119,241,510	119,096,910	117,046,658	473,251,576	7,154,860

Table 71: cost of Bill by organisation, 2016-17 to 2020-21

	2016-17		2017-18	2018-19	2019-20	2020-21		
	Do nothing		Introduce preferred option					
	(£)	Total 4 yrs - do nothing	(£)	(£)	(£)	(£)	Total - preferred option (inc transition costs)	Cost difference
Local authority education services								
Individual development plans	15,110,950	60,443,800	14,423,265	14,423,265	14,423,265	14,423,265	57,693,060	-2,750,740
Transition cost			18,200	0	0	0	18,200	18,200
Dispute resolution	0	0	0	0	0	0	0	0
Post-16 special education provision	0	0	12,440,703	12,440,703	12,440,703	12,440,703	49,762,812	49,762,812
Post-16 special education provision - Welsh Government transfer	0	0	-12,440,703	-12,440,703	-12,440,703	-12,440,703	-49,762,812	-49,762,812

Registration independent schools	360	1,440	360	360	360	360	1,440	0
Early years ALN lead officer	1,093,400	4,373,600	1,093,400	1,093,400	1,093,400	1,093,400	4,373,600	0
Early years ALN lead officer - transition cost			126,700	0	0	0	126,700	126,700
Total local authority education services ongoing costs	16,204,710	64,818,840	15,517,025	15,517,025	15,517,025	15,517,025	62,068,100	-2,750,740
Total local authority education services transition costs			144,900	0	0	0	144,900	144,900
Local authority social services								
Individual development plans	489,900	1,959,600	489,900	489,900	489,900	489,900	1,959,600	0
transition costs			118,700	0	0	0	118,700	118,700
Post-16 special education provision	5,722,538	22,890,152	5,722,538	5,722,538	5,722,538	5,722,538	22,890,152	0
Total local authority social services ongoing costs	6,212,438	24,849,752	6,212,438	6,212,438	6,212,438	6,212,438	24,849,752	0
Total local authority social services - transition costs			118,700	0	0	0	118,700	118,700
Mainstream schools								

Individual development plans	8,074,700	32,298,800	8,074,700	8,074,700	8,074,700	8,074,700	32,298,800	0
ALNCo - ongoing	65,291,700	261,166,800	65,291,700	65,291,700	65,291,700	65,291,700	261,166,800	0
ALNCo - transition costs			1,503,170	3,006,340	3,006,340	1,503,170	9,019,020	9,019,020
DECLO - ongoing	0	0	0	0	0	0	0	0
Total mainstream schools - ongoing costs	73,366,400	293,465,600	73,366,400	73,366,400	73,366,400	73,366,400	293,465,600	0
Total mainstream schools - transition costs			1,503,170	3,006,340	3,006,340	1,503,170	9,019,020	9,019,020
Special schools								
Individual development plans	938,700	3,754,800	938,700	938,700	938,700	938,700	3,754,800	0
Total - ongoing costs	938,700	3,754,800	938,700	938,700	938,700	938,700	3,754,800	0
Total - transition costs			0	0	0	0	0	0
Local health boards								

Individual development plans	2,911,700	11,646,800	2,911,700	2,911,700	2,911,700	2,911,700	11,646,800	0
Post-16 special education provision	903,893	3,615,572	903,893	903,893	903,893	903,893	3,615,572	0
DECLO - ongoing	206,400	825,600	206,400	206,400	206,400	206,400	825,600	0
DECLO - transition			330	0	0	0	330	330
Total health boards - ongoing costs	4,021,993	16,087,972	4,021,993	4,021,993	4,021,993	4,021,993	16,087,972	0
Total health boards - transition costs			330	0	0	0	330	330
Careers Wales								
Individual development plans	629,500	2,518,000	274,800	274,800	274,800	274,800	1,099,200	-1,418,800
Post-16 special education provision	133,900	535,600	0	0	0	0	0	-535,600
Total Careers Wales - ongoing costs	763,400	3,053,600	274,800	274,800	274,800	274,800	1,099,200	-1,954,400
Total Careers Wales - transition costs			0	0	0	0	0	0
SENTW								
Individual development plans	152,000	608,000	136,700	136,700	136,700	136,700	546,800	-61,200

Total SENTW - ongoing costs	152,000	608,000	136,700	136,700	136,700	136,700	546,800	-61,200
Individual development plans			100,900				100,900	100,900
Total SENTW - transition costs			100,900	0	0	0	100,900	100,900
Further education Institutions								
Individual development plans	229,400	917,600	252,600	252,600	252,600	252,600	1,010,400	92,800
Dispute resolution	0	0	0	0	0	0	0	0
Post-16 special education provision	0	0	0	0	0	0	0	0
Registration independent schools	0	0	0	0	0	0	0	0
ALNCo - ongoing	513,100	2,052,400	513,100	513,100	513,100	513,100	2,052,400	0
ALNCo - transition costs			12,177	24,353	24,353	12,177	73,060	73,060
Total FEI - ongoing costs	742,500	2,970,000	765,700	765,700	765,700	765,700	3,062,800	92,800
Total FEI - transition costs			12,177	24,353	24,353	12,177	73,060	73,060
Estyn								
Post-16 special education provision	48,700	194,800	48,700	48,700	48,700	48,700	194,800	0
Post-16 special education provision - transition costs			9,200	0	0	0	9,200	9,200

Registration independent schools - transition costs	414,550	1,658,200	457,550	457,550	457,550	457,550	1,830,200	172,000
Registration independent schools - transition costs			53,300	0	0	0	53,300	53,300
Total Estyn - ongoing costs	463,250	1,853,000	506,250	506,250	506,250	506,250	2,025,000	172,000
Total Estyn - transition costs			62,500	0	0	0	62,500	62,500
Pupil referral units								
ALNCo - ongoing	1,217,900	4,871,600	1,217,900	1,217,900	1,217,900	1,217,900	4,871,600	0
ALNCo - transition			27,207	54,413	54,413	27,207	163,240	163,240
Total pupil referral units - ongoing costs	1,217,900	4,871,600	1,217,900	1,217,900	1,217,900	1,217,900	4,871,600	0
Total pupil referral units - transition costs			27,207	54,413	54,413	27,207	163,240	163,240
Welsh Government								
Post-16 special education provision	12,440,703	49,762,812	280	280	280	280	1,120	-49,761,692
Post-16 special education provision - transfer to local authority education	0	0	12,440,703	12,440,703	12,440,703	12,440,703	49,762,812	49,762,812
Registration independent schools	185	740	75	75	75	75	300	-440

Review of provision of ALN via medium Welsh - ongoing costs	0	0	140	140	140	140	560	560
Welsh Government transition costs - costs			497,510	757,300	612,700	105,000	1,972,510	1,972,510
Total Welsh Government - ongoing costs	12,440,888	49,763,552	12,441,198	12,441,198	12,441,198	12,441,198	49,764,792	1,240
Welsh Government transition costs - costs			497,510	757,300	612,700	105,000	1,972,510	1,972,510
Total ongoing costs	116,524,179	466,096,716	115,399,104	115,399,104	115,399,104	115,399,104	461,596,416	-4,500,300
Total transition costs			2,467,394	3,842,406	3,697,806	1,647,554	11,655,160	11,655,160
OVERALL COSTS	116,524,179	466,096,716	117,866,498	119,241,510	119,096,910	117,046,658	473,251,576	7,154,860

Table 72: cost of Bill to parents, independent schools and service providers

	2016-17		2017-18		2018-19	2019-20	2020-21		
	Do nothing		Introduce preferred option						
	Ongoing	Total 4 yrs - do nothing	Transition	Ongoing	Ongoing	Ongoing	Ongoing	Total - preferred option (inc transition costs)	Cost difference
Independent schools									
Registration independent schools	35,925	143,700	2,100	39,725	39,725	39,725	39,725	161,000	17,300
Total	35,925	143,700	2,100	39,725	39,725	39,725	39,725	161,000	17,300
Parents									
Appeals	817,550	3,270,200	0	595,650	595,650	595,650	595,650	2,382,600	-887,600
Disagreements	2,861,050	11,444,200	0	2,102,475	2,102,475	2,102,475	2,102,475	8,409,900	-3,034,300
Total benefits	3,678,600	14,714,400	0	2,698,125	2,698,125	2,698,125	2,698,125	10,792,500	-3,921,900
Appeals – extended right of appeal	0	0	0	27,300	27,300	27,300	27,300	109,200	109,200
Disagreements – extended right of appeal	0	0	0	120,800	120,800	120,800	120,800	483,200	483,200

Total costs	0	0	0	148,100	148,100	148,100	148,100	592,400	592,400
Overall total	3,678,600	14,714,400		2,550,025	2,550,025	2,550,025	2,550,025	10,200,100	-3,329,500
Service providers									
Appeals	31,800	127,200		20,600	20,600	20,600	20,600	82,400	-44,800
Disagreements	288,710	1,154,840		212,200	212,200	212,200	212,200	848,800	-306,040
Service provider total benefits	320,510	1,282,040	0	232,800	232,800	232,800	232,800	931,200	-350,840
Appeals - extending right of appeal	0	0	0	11,600	11,600	11,600	11,600	46,400	46,400
Disagreements - extending right of appeal	0	0	0	2,650	2,650	2,650	2,650	10,600	10,600
Service provider total costs	0	0	0	14,250	14,250	14,250	14,250	57,000	57,000
Service provider overall total	320,510	1,282,040	0	218,550	218,550	218,550	218,550	874,200	-293,840

Table 73: Welsh Government transition costs

	2017-18	2018-19	2019-20	2020-21	Total
ALN Strategic Implementation Group (SIG) Expert Groups	5,000	5,000			10,000
Development of core skills, awareness raising and resources	100,000	50,000	135,000	105,000	390,000
Compliance and impact monitoring	80,000	130,000			210,000
Implementation project management	217,600	217,600	123,000		558,200
Code of practice development	76,220				76,220
Policy and guidance revision	18,000				18,000
Careers Wales		354,700	354,700		709,400
Post-16 specialist placements	320				320
Registration of independent schools	370				370
Totals	497,510	757,300	612,700	105,000	1,972,510

Specific impact assessments

8.610 A number of specific impact assessments have been completed, they are summarised below. Where specific impact assessments have been published, this is referred to under the relevant heading.

Equality

8.611 An analysis of impacts against the interests of six groups with protected characteristics (according to age, disability, gender or transgender, race, religion or belief/ non-belief, and sexual orientation) and two further groups introduced by the Strategic Equality Plan (marriage/civil partnership, pregnancy/maternity) has been undertaken. As our proposals seek to improve the educational outcomes for those children and young people with ALN, a number of positive impacts have been identified.

8.612 The Bill will:

- have a positive impact on people because of their age, as it will benefit children of compulsory school age or below with ALN, and young people with ALN up to the age of 25 who are in school or pursuing further education;
- have a positive impact on disabled children and young people with ALN; and
- support Human Rights, in particular the United Nations Convention on the Rights of the Child (which is discussed in greater detail below).

8.613 No negative impacts were identified. The full assessment has been published on the Welsh Government's website at:

<http://gov.wales/topics/educationandskills/schoolshome/pupilsupport/additoinal-learning-needs-reform/>

United Nations Convention on the Rights of the Child

- 8.614 The reforms aim to improve the educational outcomes for those children and young people within this age range who have ALN. The Bill provides that if a local authority or governing body is made aware that a child or young person within this age range has or may have ALN, the local authority or governing body must determine whether or not the individual has ALN. This includes children and young people who attend an independent setting (whether funded by the parents or otherwise), are educated at home or detained. If ALN are identified by a local authority or governing body, all children are entitled to an IDP; and young people in schools or FEIs, or those who require specialist post 16 provision, will also be entitled to an IDP.
- 8.615 A young person's version of the consultation *Legislative Proposals for Additional Learning Needs* was produced and disseminated and a series of engagement events were held during 2014 to gather a representative sample of views from children and young people. Further engagement with children, young people and their parents/carers took place during the consultation on the draft Bill in 2015, including a youth friendly version of the consultation, an easy read explanation of the draft Bill and bespoke workshops. The feedback received from this engagement was considered along with the wider consultation and was used to develop the Bill and wider programme of reforms.
- 8.616 An 'easy read' explanation of the Bill was published on the Welsh Government's website in February 2017.
- 8.617 It has been identified that the Bill supports the following articles:
- 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 – The rights and responsibilities of parents and carers to provide guidance and direction to their child as they grow up, so that they fully enjoy their rights, are respected in a way that recognises the child's increasing capacity to make their own choices.
- 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 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 23 – Children who have any kind of disability should have special care and support so that they can lead full and independent lives.
- Article 28 – Children have a right to an education. Discipline in schools should respect children's human dignity. Primary education should be free.
- 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.

8.618 The full assessment has been published on the Welsh Government's website at:

<http://gov.wales/topics/educationandskills/schoolshome/pupilsupport/additoinal-learning-needs-reform/>

Health impact

- 8.619 Our proposals support timely identification and intervention to meet the ALN of children and young people. Where there is a benefit to the child or young person, this would include timely input and advice from health professionals. Ensuring timely interventions can reduce the need for more complex and expensive later interventions and so help the child or young person achieve their potential, which would also benefit their health. The balance of evidence strongly supports the principle that effective early intervention is more cost effective than that in later years, forestalling a wide range of social problems including poor educational attainment, adverse health conditions and in association with these poverty and inequality.
- 8.620 The NHS already has frameworks established to help prioritise provision based on need; we would expect health boards to use these existing frameworks to determine the provision they make for children and young people with ALN. A statutory plan would not disrupt established frameworks. The use of these frameworks means that health boards provision costs are unlikely to change.
- 8.621 The new Designated Education Clinical Lead Officer (DECLO) introduced by the Bill will play a pivotal role in improving the extent and effectiveness of collaboration between health, education and social care departments in the delivery of services for children and young people with ALN. We do not envisage the DECLO being routinely involved in the assessment and reviews of specific IDPs, these functions will be undertaken by 'health co-ordinators' who are in direct contact with children, parents and young people, rather this is a strategic role, responsible for ensuring the appropriate health board input is provided. Overall, the role will ensure that, for the first time, ALN will be on the strategic agenda of health boards – with a senior, strategic lead in each health board overseeing the board's responsibilities and acting as a single point of contact, coordination and liaison for other agencies on ALN matters.

Privacy

- 8.622 Consideration has been given to the collection and transfer of personal data, in particular with IDPs being transferred between different bodies. Public bodies are required to follow relevant legislation when storing or transferring data, in particular the Data Protection Act. Any personal data collected, stored or being transferred as part of the IDP would need to follow existing legislation. It would be the responsibility of the relevant public body to ensure any transfer of data complies with the Data Protection Act and personal data is securely kept. During implementation we would work with stakeholders to ensure data compliance, although public bodies would need to satisfy themselves that they are complying with relevant legislation.

Justice impact

- 8.623 The Bill does not create new civil sanctions, orders or offences. However, it does impact on Devolved Tribunals – in particular the Education Tribunal for Wales (currently the Special Educational Needs Tribunal for Wales).
- 8.624 The Bill replaces existing rights of appeal under the current SEN framework with new rights of appeal. The number of children and young people who will have a right to appeal is expanded to cover those in further education up to the age of 25, as well as those under the age of two.
- 8.625 As discussed (see section on dispute resolution), the Bill contains a number of provisions to ensure the system is less adversarial and to help disagreements be resolved at a more local level before reaching the Tribunal.
- 8.626 Relevant training for Tribunal members will be funded by the Welsh Government. There will be close monitoring by the Welsh Government and the Tribunal to ensure that, in the event of an increase in caseload arising from the Bill, there is sufficient resource to enable the statutory functions of the Tribunal to be fulfilled.

- 8.627 The Bill provides that a party to any proceedings before the Education Tribunal for Wales may appeal to the Upper Tribunal on any point of law arising from a decision made by the Tribunal. An appeal may only be brought if the Tribunal or the Upper Tribunal has given its permission.
- 8.628 The provisions in relation to appeals to the Upper Tribunal directly replace provisions currently included in the 1996 Act (which are being repealed). Therefore, these are not new provisions and the Bill does not amend them in any substantive way. There is no reason to believe that there will be any significant impact on the number of cases referred to the Upper Tribunal, given that very few referrals have ever been made.
- 8.629 The Bill places a duty on the Welsh Ministers to establish and maintain a list of independent specialist colleges. Local authorities would only be able to fund learners to attend independent specialist colleges if the institution is entered on the list. There would be no compulsion for independent specialist colleges to be entered on the list, but decisions of who is entered on the list would be of some importance to independent specialist colleges.
- 8.630 In order to provide a fair system and to comply with Article 6 of the ECHR, independent specialist colleges will be able to appeal decisions made by the Welsh Ministers to an independent and impartial tribunal.
- 8.631 This appeal mechanism will be routed through the First Tier Tribunal, operated by HMCTS. The proposals are expected to have a negligible impact on HMCTS. Experience of the independent schools registration system in Wales shows that no appeals have been lodged since it was established in 2002. This may be attributed to:
- close working with Estyn;
 - the incentive arising from the link between registration and the provider's ability to operate; and
 - the opportunity for providers to submit an action plan setting out how and by when they would address any standards they do not meet first time.

- 8.632 We will be seeking to replicate this to ensure that appeals of independent specialist colleges are kept to an absolute minimum.
- 8.633 HMCTS will need to prepare for all new appeal provisions that the Bill states will be routed through the First Tier Tribunal and the Upper Tribunal and provide training for relevant members of HMCTS staff and the judiciary.
- 8.634 General advice and assistance for SEN is available under the legal aid scheme as set out in Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012. The Bill does not amend Schedule 1. In fact, its provisions are aimed at reducing the number of legal aid cases by introducing a less adversarial approach to the assessment of need and planning of provision, thus offsetting any increase in the number of individuals accessing legal aid that might otherwise result from extending the right to appeal to young people receiving further education. The Bill's impact will be monitored following implementation.

Third sector, communities and tackling poverty

- 8.635 The Welsh Government is committed to supporting communities and tackling poverty. The ALN reforms complement the Pupil Development Grant, which is fully delegated to schools to invest in effective approaches for tackling the impact of deprivation on educational attainment.
- 8.636 The Welsh Government has six key priorities in the *Tackling Poverty Action Plan*. Our proposals strengthen:
- 8.637 Early Years – all children below compulsory age who have ALN would be covered by the Bill's provisions. Our proposals promote early identification of ALN and providing necessary support and provision based on the child's needs. The Bill includes a duty on non-maintained nursery education providers to have due regard to the ALN Code, which will provide guidance on how children with ALN within these settings should be supported. The Bill also creates a new role in local authorities – Early Years ALN Lead Officer – to coordinate functions in respect of young children not yet attending a

maintained setting. Those living in Flying Start Areas receive enhanced screening from health visitors, which can identify ALN.

- 8.638 Reducing the number of young people who are NEET - Currently, those with SEN are more likely to become NEET. The Audit Commission found in 2010 that *Over 40 per cent of young people with SEN were NEET at least once, and a quarter were NEET for six months or more*²⁵⁹.
- 8.639 Timely identification and the correct provision of support for a child or young person based on their needs would help them achieve their educational potential. This would help children and young people with ALN to make a smooth transition into adulthood and reduce the likelihood of them becoming NEET.
- 8.640 The enhanced health visitor assessments that take place in Flying Start areas (the most deprived areas in Wales) can identify ALN at an earlier date and work with the local authority to ensure the correct provision is put in place as soon as possible. It will ensure the child's needs are planned for in advance to ensure smooth transitions between education settings and into adulthood. Evidence indicates that children in more deprived areas are likely to be classified as having SEN; therefore, by improving the educational achievement for those with ALN it will have a proportionally more positive effect on those within Flying Start areas.
- 8.641 As with the current system, the new system will enable local authorities to contract their disagreement resolution services out to third sector organisations, should they wish.

Welsh language

- 8.642 The Welsh Government's strategy *A living language: a language for living* states: 'The strategy also emphasises the importance of our Welsh-medium Education Strategy as an essential component in producing the Welsh

²⁵⁹ Against the odds: Targeted briefing – young people with special educational needs. The Audit Commission, August 2010

speakers of the future - alongside encouraging the use of the language in families.' The Bill supports this strategy; it also complements the WESP (Welsh in Education Strategic Plan) requirements (required under the School Standards and Organisation (Wales) Act 2013) which can support local authorities to improve the planning and delivery of additional learning provision for pupils in in Welsh-medium education.

8.643 The Bill specifically supports the delivery of Welsh medium ALP.. The Bill places duties on a local authority or governing body to decide whether a child or young person should receive provision through the medium of Welsh. If it decides that provision should be provided in Welsh, it must state this in the IDP and take all reasonable steps to ensure that it is provided in Welsh. It requires local authorities to consider the sufficiency of ALP in Welsh in their respective areas and take action if deficiencies are identified. It also requires Welsh Ministers to review the sufficiency of ALP in Welsh every 5 years. Intelligence from these reviews will be used to inform decisions around the use of a mechanism to, via regulations, remove the all reasonable steps test from the duties in the Bill around providing ALP in Welsh, meaning these duties will become absolute. Taken together, these provisions are intended to drive progress towards a bilingual ALN system. The Code will provide further information on the delivery of provision in the Welsh language.

8.644 The full assessment has been published on the Welsh Government's website at:

<http://gov.wales/topics/educationandskills/schoolshome/pupilsupport/additoinal-learning-needs-reform/>

Other impact assessments

8.645 It has been considered that our policy does not affect biodiversity, rural proofing, the environment, habitat regulations, climate change or state aid. Therefore, full impact assessments of these topics have not been completed.

9. Competition Assessment

- 9.1 The provisions within the Bill will not affect business, or charities and/or the voluntary sector in ways that raise issues related to competition. The competition filter has not been applied.
- 9.2 The provisions in the Bill are not expected to have any impact on competition or place any restrictions on new or existing suppliers. The majority of the costs associated with the legislation are expected to fall on public bodies, who already meet these costs.
- 9.3 The legislation is not expected to have any negative impact on small and medium sized enterprises (SMEs) in Wales.

10. Post implementation review

- 10.1 The approach to implementation of the provisions in the Bill and monitoring and review of that implementation is outlined in detail in the implementation and delivery plan section above (pages 25-27).
- 10.2 In summary, the Welsh Government intends to adopt a phased approach to implement the new statutory framework, which will run alongside delivery of the wider ALN Transformation Programme, in order for institutions and practitioners to understand the new system and effectively manage and transfer learners from the existing system to the new approach. A full public consultation on the options for phasing in the new system took place between March and June 2017. A summary of responses and statement from the Government will be published during the autumn 2017.
- 10.3 A post implementation review 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.
- 10.4 This compliance, impact monitoring and evaluation approach will be further supported through ongoing inspection and review arrangements led by Estyn.

ANNEX 1 – Explanatory notes

ADDITIONAL LEARNING NEEDS AND EDUCATION TRIBUNAL (WALES) BILL

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes are for the Additional Learning Needs and Education Tribunal (Wales) Bill which was introduced into the National Assembly for Wales on 12 December 2016 and amended following Stage 2 proceedings on 4 and 12 October.
2. They have been prepared by the Education and Public Services Group of the Welsh Government to assist the reader.
3. The Explanatory Notes should be read in conjunction with the Bill but are not part of it. They are not meant to be a comprehensive description of the Bill. Where an individual section of the Bill does not seem to require any explanation or comment, none is given.
4. The powers to make the Bill are contained in Part 4 of the Government of Wales Act 2006 (GoWA 2006). The relevant provisions of GoWA 2006 are set out in section 108 and Schedule 7. The Assembly has the requisite legislative competence to make the provisions in this Bill. Under Part 1 of Schedule 7 to GOWA 2006, paragraph 5 sets out the subjects on which the Assembly may legislate under the heading “education and training”; Paragraph 9 sets out the subjects on which the Assembly may legislate under the heading “health and health services”; and paragraph 15 sets out the subjects on which the Assembly may legislate under the heading “social welfare”.
5. In these Explanatory Notes, ‘the 1996 Act’ means the Education Act 1996 and ‘the 2000 Act’ means the Learning and Skills Act 2000. References to local authorities, maintained schools etc, are usually to those in Wales (unless otherwise indicated).

Background

6. Between 2003 and 2007, a three-part review of special educational needs (SEN) was undertaken by the former Education, Lifelong Learning and Skills Committee of the National Assembly for Wales, and associated reports were published in the following order:
 - a. *Early Identification and Intervention*, November 2004;
 - b. *Statutory Assessment Framework (Statementing)*, May 2006;
 - c. *Transition*, March 2007.
7. The evidence presented in the Committee's reports was informed by earlier reports from the Audit Commission (*Special educational needs: A mainstream issue*, 2002) and Estyn (*Support for Children with Special Educational Needs: An Estyn Overview*, 2003). Taken together, these reports concluded that in relation to the current system of SEN:
 - a. the assessment process associated with statements is inefficient, bureaucratic, costly, and insufficiently child-centred or user-friendly;
 - b. needs are often identified late and interventions are not sufficiently timely or effective; and
 - c. families say that they often have to battle to get the right support for their child and do not know where to turn for information and advice.
8. In response to the Committee's reports, the then Welsh Assembly Government conducted a wide ranging consultation on possible reforms to the existing system of support for SEN and learning difficulties and/or disabilities (LDD) in 2007 (*Statements or Something Better*) and again in 2012 (*Forward in Partnership for Children and Young People with Additional Needs*). In addition, the Welsh Government's *Programme for Government*, published in July 2011, contained a commitment to 'reform the additional learning needs (ALN) process for the most vulnerable children and young people in either a school or further education (FE) setting.'
9. The Education (Wales) Bill introduced to the National Assembly for Wales in July 2013, contained provisions relating to the registration and approval of independent schools for the placement of learners with SEN, the assessment of the educational and training needs for post-16

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learners with LDD, and specialist FE placements. However, in response to calls from the Children and Young People's Committee to consider all SEN provisions in a single legislative vehicle these provisions were removed from the Bill during Stage 2 proceedings in January 2014. The Minister for Education and Skills announced at that time that the provisions would be incorporated into a separate Bill dealing with the full range of issues relating to ALN.

10. Drawing on the outcome of the previous consultations and stakeholder engagement, and taking into account the provision withdrawn from the previous Education Bill, the Welsh Government published for consultation on 22 May 2014 a White Paper entitled *Legislative Proposals for Additional Learning Needs*.
11. A summary of responses to the consultation was published in October 2014. Broadly, the Welsh Government's proposals were welcomed by those who responded to the consultation. A draft Bill was developed around the principles and proposals set out in that consultation and was published in July 2015. A summary of the responses to the draft Bill was published in May 2016 and these have been used to inform the development of the current Bill.

SUMMARY OF THE BILL

12. The Bill has four Parts comprising 94 sections and one Schedule. Part 2 is separated in to five chapters.
13. It will establish a new statutory framework for supporting children and young people with ALN. This will replace existing legislation surrounding SEN and the assessment of children and young people with LDD in post-16 education and training up to the age of 25 years.
14. It will introduce a new statutory plan to replace all the existing statutory and non-statutory education plans specifically for children and young people with SEN and LDD. The meaning of child and young person for the purposes of this Bill are set out in section 92. A 'child' means a person not over compulsory school age, while a 'young person' means a person over compulsory school age but under 25.
15. It will provide rights of appeal to children, the parents of children and young people in connection with this new statutory plan and related rights about additional learning provision. These appeals will be to the

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Education Tribunal for Wales, which will be the new name for Special Educational Needs Tribunal Wales (SENTW).

16. It will make consequential amendments to other Acts, including the 1996 Act, the 2000 Act, the Education (Wales) Measure 2009, and the Equality Act 2010.

COMMENTARY ON SECTIONS OF THE BILL

Part 1 – Overview

Section 1 - Overview of this Act

17. This section describes the content of the Bill.

Part 2 – Additional Learning Needs

Chapter 1 – Key Terms, Code and Participation

Key terms

Section 2 - Additional learning needs

18. Section 2 defines the term ‘additional learning needs’ (‘ALN’) for the purposes of the Bill. This definition is very similar to the definition of ‘special educational needs’ (SEN) under the 1996 Act but it does not limit its use to those below the age of 18 as in the case of the term SEN. A person has ALN if the person has a “learning difficulty or disability” (see subsections (2) – (3) for the meaning of this) which calls for additional learning provision (see section 3 for the definition of this).
19. Subsection (1) clarifies that a learning difficulty or disability may, but need not, arise from a medical condition. Also, a person is not considered to have ALN because their home language is different to the language in which they are taught (subsection (4)).

Section 3 - Additional learning provision

20. Section 3 defines the meaning of ‘additional learning provision’ (‘ALP’), which itself forms part of the definition of ALN in Section 2. This definition is very similar to the definition of ‘special educational provision’ found in the 1996 Act but in particular widens the definition by reference to mainstream institutions in the further education sector in Wales. Mainstream institutions in the further education sector are defined in section 92.
21. The definition of ALP included in the Bill has been made by reference to a child’s age, with a slightly different definition operating in relation to children under the age of three (compared to children under the age of two in the 1996 Act). Regulations under this section would allow the Welsh Ministers to replace the current references to the age of three with references to a different age.

Code of practice

Section 4 - Additional learning needs code

22. Section 4 places a duty on Welsh Ministers to issue and publish a code (‘the Code’) on ALN. This can contain guidance about the exercise of functions under Part 2 of the Bill, and about other matters relating to ALN. The persons listed in this section (see subsection (3)) must have regard to the Code when exercising their functions under this Bill in relation to ALN. This means that the guidance in the Code should be adhered to unless there is a good reason to depart from it. Subsection (4) provides a signpost to section 153 of the Education Act 2002 which, as amended by this Bill, requires local authorities, in funding non-maintained providers of nursery education, to require the provider to have regard to relevant guidance in the code.
23. In addition, the Code may also impose requirements on local authorities and governing bodies of maintained schools or institutions in the further education sector (defined in section 92 and hereafter referred to as further education institutions or FEIs) in Wales in respect of specific matters (see subsection (5)).
24. There are certain requirements on governing bodies and local authorities which the code must include (subsection (6)). It must include one or more standard form or forms for an individual

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development plan and require that the appropriate form is used. It must also require those bodies to do the following within the relevant period of time set by the code, subject to any exceptions (also provided for in the code):

- a. give any notification that a child or young person does not have ALN; and
- b. (where it is determined that the child or young person has ALN) prepare and give a copy of the individual development plan.

25. The Education Tribunal for Wales must have regard to the Code where relevant to any questions arising on an appeal (subsection (10)).

Section 5 - Procedure for making the code

26. Section 5 ensures that before the Code can be issued or subsequent changes can be made to the Code, it must be consulted upon first and be approved by the National Assembly for Wales. This section includes a list of public bodies which must be consulted about the draft Code or a revised Code, though the Welsh Ministers must also consult anyone else they consider appropriate. Then, a proposed Code or revised Code cannot be issued unless a draft of it has been laid before and approved by the Assembly. If a draft is so approved, it must be issued as the Code. The Code comes into force on the day or days appointed by the Welsh Ministers in an order (subsections (3) and (4)).

Participation and access to information

Section 6 - Duty to involve and support children, their parents and young people

27. Section 6 seeks to ensure that local authorities place children, their parents and young people at the centre of decisions taken under the Bill which directly affect them, and enable them to participate in a fully informed way.

Section 7 - Advice and information

28. Section 7 requires local authorities to ensure that those who have an interest in the operation of the new ALN system (including children, children's parents and young people) are provided with information and advice about ALN and the system provided for by the Bill. Local

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authorities must also make the availability of information and advice services known to schools and others. The ALN Code may impose further legal requirements related to advice and information (see section 4).

Chapter 2 – Individual Development Plans

Preparing and maintaining individual development plans

Section 8 - Individual development plans

29. Section 8 explains what an individual development plan ('IDP') is. This plan will form the basis of the system for planning and providing ALP for children and young people with ALN as set out in the Bill. Generally, all children and young people with ALN will have an IDP, in contrast to the system under the 1996 Act, which only provided for statements of SEN for those with greater needs.

Section 9 - Duty to decide: maintained schools and further education institutions

30. Section 9 requires the governing body of a maintained school or FEI, if it appears to it that one of its learners may have ALN or this has been brought to its attention, to decide whether that child or young person has ALN. However, the governing body does not have to do so in certain circumstances. For example, where a young person does not consent to a decision being made; and where the governing body has previously decided whether the child or young person has ALN and there has been no material change in the child or young person's needs or new information that would affect the decision.
31. Where the governing body decides that the child or young person does not have ALN it must notify the child and their parent, or the young person, of the decision and the reasons for that decision. Where a child does not have sufficient understanding and intelligence to understand what this means, the duty to notify the child does not apply pursuant to section 79. However, where a child has a case friend under section 80, the governing body must notify the child's case friend. The Code will set a deadline for the notification of these decisions, subject to any exceptions specified in the code (see section 4(6)).

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32. The duties in this section apply in respect of children and young people resident in England where they attend the maintained school or FEI in Wales, except where an Education Health and Care plan is being maintained for the learner by a local authority in England under the Children and Families Act 2014. This is because that plan will address the special educational provision that their needs call for.

Section 10 - Duties to prepare and maintain plans: maintained schools and further education institutions

33. Section 10 requires the governing bodies of maintained schools and FEIs to prepare and maintain an IDP for those learners they have decided have ALN; or in case of a governing body of a maintained school, where it is directed to do so by a local authority; or in the case of a governing body of an FEI, where it has agreed to, or the Welsh Ministers have determined that it should, maintain a plan previously maintained by a local authority (see section 34). They must also consider whether any ALP should be provided in Welsh and where they decide that is the case, so specify in the IDP.
34. The Code will set a deadline within which the governing body must prepare the plan and give a copy of it (under section 20), subject to any exceptions specified in the Code (see section 4(6)).
35. However, in certain circumstances, a governing body is not required to prepare and maintain an IDP for a learner it has decided does have ALN. Some of these recognise that in some cases (generally involving greater needs) it is more appropriate for needs to be considered or provision secured by the local authority in whose area the person is. This includes instances where the governing body considers that the learner's needs may call for ALP that it would not be reasonable for the governing body to secure. In that case, the governing body must refer the matter to the relevant local authority for it to decide.
36. Similarly, there is also provision for the duties not to apply where the learner is in the area of a local authority in England and their needs are being considered or addressed by that local authority under the Children and Families Act 2014. Again, this is likely to be in cases of greater needs where a local authority is likely to be better placed to deal with the matter.
37. As education or training is not compulsory for young persons, the duties to prepare or maintain an IDP cease to apply in respect of a

young person if that person no longer consents (at any time) to its preparation or maintenance.

38. Where a governing body maintains an IDP, it must secure the ALP set out in that IDP and take all reasonable steps to secure provision in Welsh where that is specified.

Section 11 - Duty to decide: local authorities

39. Section 11 requires a local authority to decide if a child or young person has ALN where it comes to its attention or appears to it that the child or young person may have ALN. A local authority would exercise the functions set out in this section where, for example, a decision about a child or young person's ALN has been referred by a governing body under section 10 or a child, a child's parent or a young person has made a direct request to the local authority; or a Local Health Board has made a referral under section 60.
40. However, there are certain exceptions to the duty to decide. For example, where a young person does not consent to a decision being made; where the local authority has previously decided whether the child or young person has ALN and there has been no material change in the child or young person's needs or new information that would affect the decision; or where a young person is enrolled at an FEI and no referral has been made by the governing body of the institution.
41. Where the local authority decides that the child or young person does not have ALN it must notify the child and their parent, or the young person of the decision and the reasons for that decision. The Code will set a deadline for the notification of this decision, subject to any exceptions specified in the code (see section 4(6)).
42. The duty to decide applies in respect of children or young persons for whom the local authority is responsible, namely those in its area (including if they attend school in a different area), except for children who are looked after for the purposes of this Bill (see the definition in section 13).

Section 12 - Duties to prepare and maintain plans: local authorities

43. Where a local authority decides that a child or young person in its area has ALN, section 12 sets out the circumstances where it is required to prepare and maintain an IDP and secure the ALP set out in that IDP; or, if the child or young person is to attend a maintained school, the

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local authority may prepare an IDP and direct the governing body of the school to maintain the plan; or direct the governing body of the school to prepare and maintain a plan.

44. These duties apply in relation to children (that is, those not over compulsory school age as defined at section 92), young people who are registered pupils at maintained schools or enrolled students at FEIs, and to other young people where the local authority considers it necessary to meet the person's reasonable needs for education or training. Consideration of where it is so 'necessary' is to be undertaken in accordance with regulations made by the Welsh Ministers.
45. The section also sets out matters which may need to be set out in an IDP prepared or maintained by a local authority.
46. The local authority must consider whether any ALP should be provided in Welsh and where it decides that is the case, so specify in the IDP.
47. If the local authority is satisfied that the reasonable needs of a child or young person for ALP cannot be met unless it also secures a place at a particular school or institution (provided the person or body responsible for admissions to the institution consents, unless it is a maintained school in Wales); and/or board and lodging, that other provision must be described in the plan and must be secured by the local authority. Where this applies, the local authority is unable to direct the governing body of a maintained school to prepare and/or maintain the IDP.
48. Where the local authority maintains an IDP it must secure the ALP and any such other provision described in the plan and take all reasonable steps to secure provision in Welsh where that is specified.

Additional Learning Needs provision for looked after children

Sections 13 to 17 - Key terms, Amendments to the Social Services and Well-being (Wales) Act 2014, Duty to refer a matter to a local authority that looks after a child, Duty to decide whether a looked after child has additional learning needs, Duties to prepare and maintain plans for looked after children.

49. Sections 13 to 17 contain provisions on ALN which are to apply in the case of children looked after by a local authority in Wales. Generally, looked after children have care and support plans which include a personal education plan (PEP) by virtue of the Social Services and

Well-being (Wales) Act 2014. In the case of such children (subject to exceptions – see section 13), the authority that looks after the child is to be responsible for any decision on ALN, maintaining an IDP and incorporating it into the child's PEP. Accordingly, the equivalent duties on the governing body of a maintained school the child may attend and on the local authority (if different) in whose area the child is, do not apply. The result is that the educational planning, including planning for the provision of ALP of the looked after child who has ALN, is done by one body, namely the local authority looking after the child, and is set out in one document. For young persons who are looked after or were formerly looked after, the usual duties under the Bill apply as they do to other young persons.

50. The duties to decide whether a looked after child has ALN and to prepare and maintain an IDP do not apply if the child is in the area of a local authority in England (sections 16(2)(c) and 17(2)). If the child is resident outside England and Wales, for example, a child may be placed in Scotland, only the duty to decide applies (section 17(2)). This is because a local authority's ability to secure ALP for a child living outside Wales may be relatively limited in many cases. However, the child may be within the local education system and have entitlements under it. For example, if the child is in the area of a local authority in England, that authority may be responsible for the child under section 24 of the Children and Families Act 2014 (Part 3 of that Act deals with children and young people in England with special educational needs or disabilities).
51. Section 13 sets out the meaning of key terms used in the Bill which relate to children who are looked after by a local authority. A person who is looked after for the purposes of Part 6 of the Social Services and Well-being (Wales) Act 2014 is not looked after for the purposes of the Bill if the person is a young person, a detained person (defined in section 37) or within a category of looked after child prescribed in regulations.
52. Section 14 amends the Social Services and Well-being (Wales) Act 2014 so that a PEP is usually a required element of the Care and Support Plan prepared for those who are looked after by a local authority under that Act. Furthermore, section 14 amends the 2014 Act so that any IDP maintained under section 17 must be incorporated into the PEP in the case of looked after children of compulsory school age and below who have ALN.

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53. Section 15 requires the governing body of a maintained school which a looked after child attends, or the local authority in whose area a looked after child is, to inform the local authority which looks after the child if it becomes aware that the child may have ALN.
54. Section 16 imposes on the local authority which looks after a child, a duty to decide whether the child has ALN which is equivalent to the duty in section 11 in relation to children and young people who are not looked after. This duty does not apply if the child is in the area of a local authority in England.
55. Section 17 imposes on the local authority which looks after a child (provided that the child is in the area of a local authority in Wales), duties to prepare and maintain individual development plans which are equivalent to the duties in section 12 in relation to children and young people who are not looked after. However, the local authority must prepare and maintain the plan itself: it cannot direct a maintained school attended by the looked after child to do so.

Section 18 - Additional learning provision: Local Health Boards and NHS Trusts

56. Section 18 enables local authorities and the governing bodies of FEIs to ask an NHS body (defined in section 92) whether there is any treatment or service (normally provided as part of the comprehensive health service) which is likely to be of benefit in addressing the ALN of a child or young person. If the NHS body identifies any relevant treatment or service, it must secure its provision, decide whether it should be provided in Welsh and if so take all reasonable steps to secure its provision in Welsh.

Section 19 - Individual development plans: Local Health Boards and NHS Trusts

57. Section 19 requires an NHS body to inform the body that has made a section 18 referral, and if different, the body that maintains an individual development plan for the child or young person concerned, of the outcome of the referral (subsections (1) and (2)). It must do so within the period of time to be prescribed in regulations, subject to any prescribed exceptions (subsection (10)). In cases where a relevant treatment or service is identified, once informed, the body maintaining the individual development plan must include the treatment or service as ALP within the plan as provision to be delivered by the NHS body (subsection (3)). If it was decided that the provision should be provided

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in Welsh, this must also be specified in the plan (subsection (4)). The NHS body, not the governing body or local authority, is then under duties to secure the provision, which may only be removed from the plan or changed on a review and with the agreement or at the request of the NHS body (and if so requested, the governing body or local authority must comply with the request) (subsections (5) – (7)). Where the Education Tribunal orders a revision to the ALP included in the plan under this section, the NHS body is not required to secure the revised provision unless it agrees to do so (subsection (9)).

Information about plans

Section 20 - Provision of information about individual development plans

58. Section 20 requires a local authority or governing body which prepares an IDP to give a copy of the plan to the child, the child's parents, and if the child is looked after, the independent reviewing officer, or the young person. If a local authority or governing body becomes responsible for maintaining a plan in place of another authority or body, it must inform the child, the child's parents, or the young person and provide a copy of the plan to the independent reviewing officer.

Review of plans

Section 21 - Review of individual development plans for children that are not looked after

59. Section 21 provides for reviews of an IDP for a child or young person (who is not looked after). A review must take place before the end of each review period. The first review period is a year starting with the date on which a copy of an IDP is given under section 20. Usually, subsequent review periods are a year starting with the date in the previous review period when (a) a copy of a revised plan was given in relation to that previous review period, or, (b) if the plan was not revised during the previous review period, notice of a decision not to revise the plan was given. The result is that the plan should be reviewed at least once in any 12 month period. There is also provision for cases where neither a revised plan nor notice that no revision is to be made is given during the previous review period (subsection (4)).

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Subsection (6) provides for the duty to be treated as met in situations where a body other than that which is maintaining it, in effect, reviews it.

60. An IDP must also be reviewed at the request of a child or a child's parent, or a young person unless considered unnecessary by the local authority or governing body; and at the request of an NHS body required to secure provision under section 18. This section also permits the plan to be reviewed at any time. This will enable prompt review of the IDP when circumstances change or in accordance with review dates set as part of the IDP's action plan. If the IDP is revised a copy of the revised plan must be provided to the child and their parent, or the young person. If it is decided not to revise the IDP following a review, the child, their parent, or the young person must be notified of the decision and reasons for it.
61. Section 22 deals with reviews for looked after children not covered by this section (subsection (12)).

Section 22 - Review of individual development plan for looked after children

62. Section 22 makes in relation to looked after children, provision equivalent to that in section 21.
63. In addition to the requirements of this section, a local authority looking after a child is under other duties related to the review of the child's IDP. These are the duties in relation to the review of a care and support plan under and by virtue of the Social Services and Well-being (Wales) Act 2014 (see section 83 of that Act). Since an IDP for a looked after child must be incorporated into the personal education plan, which in turn is part of the care and support plan (see section 14 of the Bill), those duties of review cover the IDP.

Section 23 - Relationship of individual development plans to other similar documents

64. Section 23 enables alignment of the process of preparing and reviewing IDPs for a child or young person with the preparation of other documents for that child or young person, such as any health and social care plans.

Local authority reconsideration of governing body decisions and plans

Section 24 - Reconsideration by local authorities of decisions under section 9(1)

65. Section 24 enables a child or their parent, or the young person, to request that a local authority (which is responsible for the child or young person) reconsiders the decision of a maintained school governing body that a child or young person has or does not have ALN. Where requested, the local authority must make its own decision on the issue; that decision will then replace the decision of the governing body, and the previous decision made by the governing body will cease to have effect. Before making a decision, the local authority must inform the governing body of the request and invite representations from the governing body. This section provides children and their parents, and young people, with an effective means of challenging the decision of the governing body of a maintained school in Wales, in the absence of a right of appeal to the Tribunal against these bodies (see section 66 which gives rights of appeal against local authority decisions). Section 27 deals with the circumstances in which the duty in this section does not apply.

Section 25 - Reconsideration by local authorities of plans maintained under section 10

66. Section 25 enables a child, child's parent or young person to ask a local authority (which is responsible for a child or young person) to reconsider an IDP maintained by the governing body of a maintained school with a view to revising it. Before deciding whether or not to revise the plan, the local authority must inform the governing body of the request and invite representations from the governing body. Where the local authority decides that the IDP does not require revision it must notify the child and their parent, or the young person, of the decision and the reasons for that decision and give a copy of that notification to the governing body.
67. Under this section the local authority may direct the governing body to maintain the revised IDP; alternatively, the local authority may take on responsibility for maintaining the IDP itself. The former may occur where the local authority considers that the content of the IDP is such that the governing body can be expected to deliver the ALP it contains; the latter where this would not be reasonable for the governing body to provide.

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- 68. If a local authority revises an IDP, the local authority must give a copy of the revised plan to the governing body and section 21(11) requires that a copy be given to the child, their parent, or young person. This section provides children, their parents, and young people with an effective means of challenging the content of the IDP put in place for them by the governing body of a maintained school, in the absence of a right of appeal against these bodies (see section 66 which gives rights of appeal relating to local authority actions).
- 69. Section 27 deals with the circumstances in which the duty in this section does not apply.

Section 26 - Local authority duty to decide whether to take over governing body plans

- 70. Section 26 requires a local authority (which is responsible for a child or young person) to decide whether it should take over responsibility for maintaining an IDP in response to a request to do so. The request might be made by a governing body of a school or FEI – for example where the governing body no longer believes that maintaining the plan and delivering the ALP is within its capability – or by a child, a child’s parent or young person, where they do not believe the governing body has proven capable of delivering the ALP required by the child or young person. The decision of the local authority not to take over responsibility for an IDP is challengeable by appeal to the Education Tribunal under section 66.
- 71. Where the request is from a governing body, the local authority must notify the child and their parent, or the young person, and invite representations. Where the request is from a child, a child’s parent or a young person, the local authority must inform the governing body and invite representations. The local authority must notify the governing body, and either the child and their parent, or the young person, of the decision and the reasons for that decision.
- 72. Section 27 deals with the circumstances in which the duty in this section does not apply.

Section 27 - Circumstances in which the duties in sections 24(2), 25(2) and 26(3) do not apply

- 73. Section 27 sets out that where a local authority has previously made a decision under one of the above named sections and it is satisfied that there has been no material change in the child or young person’s

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needs or new information that would materially affect the decision, there is no duty to make a new decision under the respective section. In addition, no duty applies in relation to these sections where a child becomes looked after.

74. For a child who has become looked after, the looking after local authority becomes responsible for maintaining the plan (section 33(9) and (10)) and has review functions (section 22).

Section 28 - Registration or enrolment at more than one institution

75. Section 28 together with section 9(3)(d) ensures that where a child or young person attends more than one maintained school or FEI and a local authority is responsible for the person, responsibility for determining if the person has ALN, and preparing and/or maintaining a plan for them lies with that local authority and the equivalent duties on the governing body of the school or FEI do not apply. The governing body must refer such matters to the local authority.

Ceasing to maintain plans

Section 29 - Ceasing to maintain individual development plans

76. Section 29 sets out the circumstances in which a governing body's or local authority's particular duty to prepare or maintain an IDP ceases. These circumstances cover where the child or young person ceases to be a registered pupil or enrolled student or the child becomes looked after (in the case of governing bodies), or where the local authority ceases to be responsible for the child or young person, or a child becomes or ceases to be looked after (for the purposes of Part 2) or a looked after child ceases to be in the area of any local authority, or the governing body or local authority decides that the child or young person no longer has ALN, or in the case of a young person, the local authority decides in accordance with regulations that it is no longer necessary to maintain the plan to meet the young person's reasonable needs for education or training.
77. Before deciding to cease to maintain an IDP because it believes the child or young person no longer has ALN or, in the case of a young person, that it is no longer necessary to maintain it, the governing body or local authority must notify the child, child's parent, or young person (and in the case of a looked after child, the independent reviewing

officer) of the proposed decision. It must also notify the same persons when it has made its decision (together with reasons) and, in the case of a maintained school governing body, inform those persons of their right to request a local authority reconsideration of the decision under section 30.

78. Section 33 deals with situations where a duty to maintain an IDP is transferred to another body. Section 42 makes provision for duties to maintain an IDP to cease in situations where the child or young person becomes detained.

Section 30 - Reconsideration by local authorities of decisions of governing bodies under section 29

79. Section 30 enables a child, a child's parent or a young person to request that a local authority (which is responsible for the person) reconsiders a school governing body's decision to cease to maintain an IDP. The period during which this request can be made will be set out in regulations. The local authority must decide whether the duty to maintain the IDP should cease and notify (with reasons) the governing body, the child and their parent, or the young person accordingly. If the local authority decides that the IDP should be maintained, the governing body must continue to do so. Where the local authority agrees that the IDP can cease to be maintained, its decision is appealable under section 66 and the appeal must be determined or the time for an appeal must have expired with no appeal being made, before the duty to maintain the IDP falls away (see section 31).

Section 31 - Limitation on ceasing to maintain plans to allow reconsideration or appeal

80. Section 31 ensures that an IDP continues to be maintained until the child, the child's parent or young person has had the opportunity to exhaust their appeal options. So the governing body of a maintained school may not cease to maintain the IDP unless the period prescribed for reconsideration by the local authority under section 30 has ended without a request for reconsideration being made or, if a request is made in that period, until the local authority has made its decision and the period for appealing it has ended, or an appeal brought within that period has been fully determined. Similarly, a governing body of a FEI or a local authority may not cease to maintain the IDP until the period for an appeal to be made has ended or until after an appeal brought

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within that period has been determined. The period for bringing an appeal is to be set out in regulations under section 71.

Section 32 - Individual development plan after a young person's 25th birthday

81. Section 32 ensures that if a young person becomes 25 whilst on a course of education or training, the body responsible for the IDP and the ALP it contains must continue to deliver the ALP until the end of the academic year (as defined in subsection (2)).

Transfer of plans

Section 33 - Transfer of duties to maintain plans

82. Section 33 transfers the duty to maintain an IDP in the various situations set out. Generally, it requires that where a child or young person with an IDP transfers between maintained schools, or between a maintained school and an FEI, or moves from one local authority area to another, the IDP transfers/moves with them. Similarly, it deals with a child with an IDP becoming looked after or ceasing to be looked after.

Section 34 – Request to transfer plan to governing body of further education institution.

83. Section 34 permits a local authority to request the governing body of an FEI to become responsible for maintaining an IDP for a young person, where that young person is enrolled at the FEI and the local authority currently maintains an IDP for him or her. If the governing body does not agree with the request within a prescribed period, section 34 permits the local authority to refer the matter to the Welsh Ministers for them to decide whether the governing body should maintain the plan. If the governing body agrees to the request, or if the Welsh Ministers determine that it should maintain the plan, then it is under a duty to do so (see section 10(4)).

Section 35 - Regulations about transfer of individual development plans

84. Section 35 enables the Welsh Ministers to make further provision in regulations on the matters listed in subsection (1) which all relate to transfers of duties to maintain IDPs. This includes providing for further transfers (besides those in section 33) in specific circumstances and provision related to local authorities requesting FEIs to take over an

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IDP and referring the matter to the Welsh Ministers for them to determine (under section 34).

Powers to direct governing bodies of maintained schools

Section 36 - local authority power to direct governing bodies of maintained schools

85. Where a local authority does not maintain a maintained school, section 36 prevents it from using any of its powers to direct the governing body of that school without having consulted the local authority which does maintain the school.

Additional learning provision for detained persons

Section 37 - Meaning of “detained person” and other key terms

86. Section 37 gives the meaning of “detained person” as a child or young person who is subject to a detention order and detained in relevant youth accommodation in Wales or England (and in the case of provisions applying on release, covers someone who was detained immediately before release). This relates to definitions of the terms “detention order” and “relevant youth accommodation” in section 562 of the 1996 Act:
- a “detention order” is an order made by a court, or an order of recall made by the Secretary of State (but not the orders or authorisations mentioned in section 562(2) and (3) of the 1996 Act);
 - “relevant youth accommodation” is youth detention accommodation (within the meaning given by section 107(1) of the Powers of Criminal Courts (Sentencing) Act 2000), and is not a young offender institution, or part of such an institution, that is used wholly or mainly for the detention of persons aged 18 and over.
87. This section also defines other related key terms used in the Bill, including “beginning of the detention” and “home authority”. In addition, it allows for regulations to be made which apply with modifications, the definition of “home authority”.

Section 38 - Duty to prepare individual development plans for detained persons

88. The purpose of section 38 is to ensure that where it is brought to the attention of or otherwise appears to the home authority that a detained child or young person may have ALN and an IDP is not being kept for them under section 40 the home local authority (if in Wales) must decide whether the child or young person has ALN. If the home local authority decides that a child or young person does have ALN, it must decide whether it is necessary to maintain an IDP for that child or young person once they have been released from detention.
89. In order to make this decision, there is a duty placed on the home authority to invite the person in charge of the relevant youth accommodation to participate in the decision-making process, and if necessary in the preparation of an IDP. A copy of the IDP must be given to the detained child and their parent, or the detained young person, and the person in charge of the relevant youth accommodation.
90. The home authority must notify the detained child and their parent, or the detained young person, and the person in charge of the relevant youth accommodation, if it decides that the detained child or young person does not have ALN or that maintaining an IDP would not be necessary when he/ she is released. The home authority must provide an explanation of the reasons for their decision.

Section 39 - Circumstances in which the duty in section 38(2) does not apply

91. Section 39 sets out the exceptions to the duties on home authorities in section 38 in relation to deciding whether a person has ALN and whether an IDP is needed for when the person is released. These duties do not apply if a detained young person does not consent to the decision as to whether the person has ALN being made or a plan being prepared. Nor do they apply if the local authority has previously decided whether the child or young person has ALN and is satisfied that the child or young person's needs have not changed materially since that decision was made, and there is no new information which would materially affect that decision or one that it will not be necessary to maintain an IDP for the person when released.

Section 40 - Duty to keep individual development plans for detained persons

92. If a child or young person has an IDP immediately before becoming detained, or one is prepared during their detention by the home local authority in preparation for their release (under section 38), unless a young person does not consent to it, section 40 places a duty on the home local authority to keep the IDP while the person is detained in relevant youth accommodation, and arrange for appropriate ALP to be provided to them whilst they are so detained. Appropriate ALP is the ALP set out in the IDP, or if that is not practicable, educational provision which corresponds as closely as possible to it, or (where the ALP in the plan is no longer appropriate) ALP which the home authority considers appropriate.
93. A home authority will only be responsible for keeping an IDP under section 40 once the fact that an IDP was being maintained by another body or authority is brought to their attention.
94. The detained child and their parent, or the detained young person must be informed by the home authority if such an IDP is being kept and a copy of it given to the person in charge of the relevant youth accommodation.

Section 41 - Release of a detained person

95. Section 41 ensures that when a child or young person is released from detention and on the date of release a local authority in Wales is responsible for the person, the local authority responsible will maintain a plan which was being kept for the person under section 40 and secure the provision set out in it. However, if the released person is a looked after child upon release, it is the local authority in Wales that looks after the child that must maintain the plan (and does so under section 17).

Section 42 - Certain provisions of Part 2 not to apply to children and young persons in detention

96. Section 42 deals with the application of duties in the Bill in relation to children and young people who are detained. Subsection (1) provides for the duties listed in subsection (2) on governing bodies and local authorities to cease to apply in relation to a detained person (defined in section 37(1)) from the start of the detention.

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97. Subsection (3) provides for the duties listed in subsection (4) on governing bodies not to apply in relation to a child or young person who is detained in accommodation other than relevant youth accommodation in Wales or England.
98. Subsections (5) to (7) deal with the interaction between Part 2 and section 562 of the Education Act 1996. They apply section 562 of the 1996 Act for the purposes of the Bill as if the amendments to it made by the Apprenticeships, Skills, Children and Learning Act 2009 were already fully in force in relation to Wales, and its reference to relevant youth accommodation were to relevant youth accommodation in Wales or England. The result is that the duties in Part 2 of the Bill on home authorities in relation to detained persons apply as set out in Part 2 and duties on local authorities in Part 2 do not apply in relation to a child or young person who is detained in accommodation other than relevant youth accommodation in Wales or England.

Chapter 3 – Supplementary Functions

Functions relating to securing additional learning provision

Section 43 - Duty to take all reasonable steps to secure additional learning provision

99. Section 43 requires that where a child or young person with ALN is a registered pupil at a maintained school or enrolled at an FEI, but has no IDP maintained for them, the relevant governing body must take all reasonable steps to secure the ALP called for by the person's ALN. This is to ensure, for example, that such children and young people receive appropriate support whilst their needs are being determined or a plan is being prepared for them.
100. Section 43 also requires that when a local authority maintains an IDP for a child or young person attending a maintained school or FEI, the relevant governing body takes all reasonable steps to help the local authority secure the ALP set out in the IDP.

Section 44 - Duty to admit children to named maintained schools

101. Section 44 places a duty on governing bodies of maintained schools in Wales to admit children where that school is named for the purpose of admission by a local authority in an IDP. This is similar to existing legislation in relation to the naming of a school in a statement of SEN. However, this section limits the circumstances in which schools can be named to those where the local authority is satisfied that the child's interest requires the ALP to be made at that school, and it is appropriate for the child to be provided with education and training there. Before naming a school under this section, the local authority must consult the governing body of the school, and in the case of a maintained school where neither the local authority nor its governing body is the admissions authority for the school (as defined by section 88 of the School Standards and Framework Act 1998), the local authority for the area in which the school is located.

Section 45 - No power to charge for provision secured under this Act

102. Section 45 ensures that a child, parent (who is an individual rather than a local authority who looks after a child) or a young person does not have to pay for any provision that a governing body or local authority must secure for that child or young person under the Bill.

Section 46 - Welsh Ministers' duties to secure post-16 education and training

103. The 2000 Act currently deals with post 16 learners who have learning difficulties. Section 46 amends the 2000 Act to reflect the new meaning of the term ALN defined under section 2 of the Bill. It also amends the same Act to remove the duties of the Welsh Ministers in relation to the securing of boarding accommodation for persons over the age of 16 years when they have a learning difficulty and/or disability. Local authorities have a duty, in specified circumstances under section 12 of the Bill to include board and lodging provision in an IDP and to secure that provision for persons up to the age of 25 years. Section 46 also removes section 140 of the 2000 Act which relates to assessments for Learning and Skills Plans, which will be replaced by IDPs established by section 8 of the Bill.
104. Finally, section 46 also amends the 2000 Act so that the Welsh Ministers, when planning the provision of post-16 education, take into account the capacity of the further education workforce to deliver ALP

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in Welsh and availability of facilities for assessing whether persons have ALN through the medium of Welsh.

Section 47 - Duty to favour education for children at mainstream maintained schools

105. Section 47 requires that where a child of compulsory school age with ALN should be educated in a school, the local authority must ensure that the child is educated in a mainstream maintained school, unless any of the circumstances set out in subsection (2) apply. These exceptions recognise that it might sometimes be appropriate to educate a child with ALN elsewhere.

Section 48 - Children with additional learning needs in mainstream maintained schools

106. Section 48 requires that children with ALN educated in mainstream maintained schools take part in activities alongside their peers who do not have ALN, in so far as that is reasonably practicable and compatible with the matters listed in subsection (2).

Section 49 - Additional learning provision otherwise than in schools

107. Section 49 allows a local authority to secure the ALP or any part of it identified in an IDP it maintains for a child to be made elsewhere when it is satisfied that it would be inappropriate for it to be made in a school.

Section 50 - Amendments to registration requirements for independent schools in Wales

108. Section 50 amends the Education Act 2002 so that the Welsh Ministers must publish a list of the schools included in the register of independent schools in Wales. Furthermore, when independent schools register with the Welsh Ministers they shall be required, by regulations, to specify the type(s) of ALP they make for pupils with ALN. This information must also be specified in the published register.

Section 51 - Conditions applicable to securing additional learning provision at independent schools

109. Under section 51, a local authority may not place a child or young person at an independent school in Wales unless the school is on the register of independent schools in Wales and the local authority is satisfied that it can make the ALP described in the person's IDP.

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110. Similarly, a local authority is prohibited from placing children and young people at independent educational institutions (as defined under the Education and Skills Act 2008) in England, unless the institution is included in the register of independent educational institutions in England and the local authority is satisfied that the institution can make the ALP described in the person's IDP.
111. These provisions replace the existing approval and individual consent provisions in section 347 of the 1996 Act, which are removed under section 54 of this Bill.

Section 52 - List of independent special post-16 institutions

112. Section 52 requires the Welsh Ministers to establish and maintain a published list of independent special post-16 institutions (defined in subsection (6)) in England and Wales. Proprietors of such institutions that are specially organised to provide education and training for persons over compulsory school age with ALN may apply to the Welsh Ministers to be approved and placed on the list. Local authorities may not exercise their functions under Part 2 of the Bill to place children and young people at such institutions which are not on the list. The application procedures and requirements, including rights of appeal against decisions to refuse to list an institution, must be provided for by regulations made by the Welsh Ministers.

Section 53 - Abolition of approval of non-maintained special schools in Wales

113. Section 53 amends the 1996 Act to remove the power of the Welsh Ministers to approve the creation of non-maintained special schools in Wales. There are no such schools currently in existence in Wales. In the future, new schools that are not maintained will all have to register as an independent school under the Education Act 2002.

Section 54 - Abolition of approval of independent schools in Wales

114. Section 54 repeals section 347 of the 1996 Act (approval of independent schools as suitable for admission of children with statements of special educational needs). See sections 50-51 on matters related to registration requirements for independent schools and conditions for a local authority securing education for a child or young person with ALN at an independent school.

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Section 55 - Additional learning provision outside England and Wales

115. Section 55 allows a local authority to arrange for a child or young person with ALN to attend an institution outside England and Wales, where that institution is organised to make the ALP described in their IDP.

Additional learning needs co-ordinating officers

Section 56 - Additional learning needs co-ordinator

116. Section 56 requires governing bodies of maintained schools (except special schools) and FEIs in Wales to designate a person (or persons) as the additional learning needs co-ordinator (ALNCO) to be responsible for co-ordinating ALP for pupils and students with ALN. It also allows regulations to confer functions on ALNCOs relating to provision for pupils or students with ALN and to require governing bodies to ensure that ALNCOs have qualifications or experience (or both) as prescribed in the regulations.

Section 57 - Designated education clinical lead officer

117. Section 57 places a duty on Local Health Boards to designate an officer to be responsible for co-ordinating the Board's functions in relation to children and young people with ALN. The officer must be suitably qualified and experienced in the provision of health care for children and young people with ALN. This section requires the officer to be either a registered medical practitioner, or a registered nurse or other health professional.

Section 58 – Early years additional learning needs lead officer

118. Section 58 places a duty on local authorities to designate an officer with responsibility for coordinating the authority's functions under Part 2 in relation to children under compulsory school age, who have or may have ALN, and are not in a maintained nursery or school.

Miscellaneous functions

Section 59 - Duty to keep additional learning provision under review

119. Section 59 places a duty on local authorities to keep under review the arrangements that they and the governing bodies of maintained schools in their area make for children and young people with ALN, in order to ensure that they are sufficient to meet the ALN of the children and young people for whom they are responsible. As part of their considerations, local authorities must have regard to the ALP that may reasonably be arranged by other bodies (such as health bodies). It also requires local authorities to consider the sufficiency of ALP in Welsh and if they consider that the availability of ALP in Welsh is insufficient, take all reasonable steps to remedy the matter. Local authorities must consult any persons that they consider appropriate in order to inform the consideration and review, and at times which they consider appropriate.

Section 60 - Functions of health bodies to notify parents etc.

120. This section relates to situations in which a specified health body in Wales or England is exercising any of its functions in relation to a child who is under compulsory school age and for whom a local authority in Wales is responsible. If the health body forms the opinion that the child has (or probably has) ALN, the health body must bring its opinion to the attention of the local authority in Wales responsible for the child (or if the child is looked after, the authority that looks after the child), if the health body is satisfied that doing so would be in the best interests of the child.
121. This section ensures that the child's parent is informed of the health body's opinion and its duty to inform the appropriate local authority, and ensures that the parent has an opportunity to discuss this opinion with an officer of the health body, before the health body brings its opinion to the attention of the appropriate local authority .
122. This section also places a duty on the health body to inform the parent of any voluntary organisations which it believes are likely to provide the parent with advice or assistance in connection with any ALN that the child may have.

Section 61 - Duties to provide information and other help

123. Section 61 provides that when local authorities request information or help from certain public bodies in order to exercise their functions under this Part in relation to children and young people with ALN, those requests are complied with. The persons who are subject to this duty are listed in sub- section (4).
124. Such person can decline to comply with the request for help or information if they consider that it is incompatible with their own duties or would have an adverse effect on the exercise of the person's functions. However, if the person does not comply with such a request for help or information, they must provide their reasons for refusing the request to the local authority in writing.
125. This section allows for regulations to set out a prescribed period within which the person must comply with a request, and for exceptions to apply to the requirement to comply within this prescribed period.

Section 62 - Right of local authority to access premises of schools and other institutions

126. Section 62 ensures that a local authority that maintains an IDP for a child or young person has a right to access the premises of the school or other institution in Wales or England where education or training is provided for that child or young person. This right of access only applies where it is necessary for the local authority to exercise its functions under this Part of the Bill, and it must be at a reasonable time.
127. The institutions that a local authority has a right to access are listed in section 62(3).

Section 63 - Provision of goods or services in relation to additional learning provision

128. Section 63 allows for regulations to provide for local authorities to supply goods and services to persons providing ALP or exercising functions under this Bill. This may include regulations about terms and conditions for the supply of such goods and services

Chapter 4 – Avoiding and Resolving Disagreements

Local authority arrangements

Section 64 - Arrangements for the avoidance and resolution of disagreements

129. Section 64 requires local authorities to make arrangements for both avoiding and resolving disagreements in relation to functions under the Bill, between children, children's parents and young people on the one hand, and maintained schools, local authorities and other relevant institutions, listed in subsection (7), on the other hand. This requirement includes providing access to help in resolving a disagreement from an independent person. Under section 7 local authorities must take reasonable steps to make the arrangements known to various people, including children, children's parents and young people, governing bodies. Local authorities must also promote their use (subsection (4)). The Code may make further requirements under section 4(5). Local authorities are also required to inform children, parents of children and young people that these arrangements do not affect their rights to appeal to the Education Tribunal for Wales (subsection (5)). Subsection (8) provides that local authorities' arrangements under this section will also apply to children they look after, but are not in their area.

Section 65 - Independent advocacy services

130. Section 65 requires local authorities to make arrangements for independent advocacy services providing advice and assistance to a child, a young person or a case friend when making, intending to make, or considering making, an appeal to the Education Tribunal for Wales. These services must also be provided for children, young people or a case friend taking part in, or intending to take part in, arrangements for the resolution of disagreements made under section 64 of the Bill. By virtue of section 64(8), local authorities' arrangements under this section will also apply to children it looks after, but who are not in its area.
131. Local authorities must have regard to the principle that the independent advocacy service arrangements should be independent of any person who is the subject of appeal or involved in the appeal.

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132. Local authorities are also required, under section 7, to take reasonable steps to ensure that various people, including children, parents of children, young people, governing bodies, are made aware of these arrangements.

Appeals and applications to the Tribunal

Section 66 - Appeal and application rights

133. Section 66 provides children, parents of children and young people with rights of appeal to the Education Tribunal for Wales against decisions of governing bodies of FEIs and decisions of Local Authorities and in relation to IDPs prepared or maintained by such a body or authority or revised by an authority under section 25(6).
134. This section sets out the matters and circumstances in which a child, child's parent or young person may appeal to the Education Tribunal for Wales, for example about a decision that a child or young person has or does not have additional learning needs. By virtue of section 80, in relevant circumstances, case friends can bring appeals on behalf of a child who does not have sufficient understanding and intelligence to understand some of the issues covered by this Bill. The lack of understanding could be because of their young age, or for other reasons, such as a learning disability. Section 79 provides for children who lack understanding.
135. This section also enables a child or a child's parent to apply to the Education Tribunal for a declaration that the child either does or does not have the capacity (level of understanding necessary) to make decisions or understand information in relation to their ALN.

Section 67 - Decisions on appeals and applications under section 66

136. Section 67 sets out the orders or other decisions that the Education Tribunal for Wales may make on an appeal under section 66(2) (Appeal and application rights). It also provides for the Tribunal, on an application under section 66(3) as to whether or not a child has capacity, to make a declaration upon the matter.

Section 68 - Appeal rights: detained persons

137. Section 68 lists the matters against which a detained child, their parent, or a detained young person, may appeal to the Education Tribunal for

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Wales. It also lists the powers of the Education Tribunal in relation to such an appeal.

Section 69 - Decisions on appeals under section 68

138. Section 69 sets out the orders or other decisions that the Education Tribunal for Wales may make on an appeal under 68 (Appeal rights: detained persons).

Section 70 - Regulations about appeals and applications

139. This section enables the Welsh Ministers to make regulations in relation to appeals and applications to the Tribunal under this Part of the Bill, including, for example, about other matters relating to an individual development plan against which appeals may be brought, provision about making and determining appeals or applications, conferring further powers of the Tribunal on determining an appeal or application, and unopposed appeals or applications.

Section 71 - Regulations about procedure

140. This section enables the Welsh Ministers to make regulations about the initiation of an appeal or application and the proceedings of the Education Tribunal for Wales under Part 2. This section lists provisions which may be made and that proceedings before the Tribunal must be held in private, except in circumstances prescribed in regulations.

Section 72 – NHS Bodies: evidence and Tribunal recommendations

141. Section 72 provides that the Education Tribunal may exercise its functions to: require an NHS body to give evidence about the exercise of the body's functions; and make recommendations to an NHS body about the exercise of the body's functions, in both cases in relation to an appeal under Part 2. It also requires the NHS body to which a recommendation has been made, to report to the Tribunal, within any period prescribed in regulations, on either: the actions it has taken or proposes to take in response to the recommendation; or if it has not and does not intend to take any action, why that is.

Section 73 - Compliance with orders

142. This section requires that if the Education Tribunal for Wales makes an order under Part 2 (e.g. requiring a local authority to revise an IDP), the governing body or the local authority concerned must comply with the Order before the end of the period (if any) prescribed in regulations,

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beginning with the date on which it is made. Subsection (2) requires the body or authority concerned to report to the Tribunal on compliance with the order within the 14 day period starting on the day after the date by which it must have complied with the order (under subsection (1)).

Section 74 - Offence

143. This section provides that those who fail, without reasonable excuse, to comply with a requirement (where the requirement is imposed by regulations) related to the disclosure or inspection of documents or to attend the tribunal to give evidence and produce documents, is guilty of an offence punishable by fine.

Section 75 - Allowances for attendance at the Education Tribunal for Wales

144. This section provides a power for Welsh Ministers to pay allowances in relation to attendance at the Education Tribunal for Wales.

Section 76 - Appeals from the Education Tribunal for Wales to the Upper Tribunal

145. The purpose of section 76 is to allow a party to any proceedings about ALN before the Education Tribunal for Wales to appeal to the Upper Tribunal on any point of law arising from a decision made by the Education Tribunal for Wales in those proceedings.

Chapter 5 – General

Section 77 - Regulations about disclosure and use of information

146. Section 77 allows for regulations about how information may be used and disclosed for the purposes of Part 2 (Additional learning needs) or other purposes connected with the education of a child or young person. This can include regulations about additional persons who must receive copies of IDPs, and cases when copies of plans must be provided without the consent of the child, the child's parent or young person

Section 78 - Parents and young people lacking capacity

147. The purpose of section 78 is to require regulations to be made to enable parents and young people who are lacking mental capacity at a

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time when they have a right to make a decision or have their views represented about matters under the Bill, to be represented by an appropriate person. In this section, reference to lacking capacity refers to that which is defined within the Mental Capacity Act 2005.

Section 79 - Capacity of children

148. Section 79 provides for circumstances where a child does not have sufficient understanding and intelligence to understand documents provided under this Bill, or what it means to exercise the rights under the Bill. This could be due to their young age, or for other reasons, such as a learning disability. Where a governing body, local authority, or NHS body considers that a child does not have the ability to understand, and/or where the Education Tribunal has made a declaration to that effect, duties under the Bill to provide the child with information or notify them of decisions do not apply unless a case friend has been appointed for the child by the Education Tribunal or the Education Tribunal has declared that the child does have capacity.
149. On the same basis, this section disapplies duties to review or reconsider IDPs following a request from a child who is considered to lack the capacity to understand.
150. Where a governing body of a maintained school considers that a child does or does not have the capacity to understand, this section enables the child or child's parent to request that the local authority responsible for the child reconsiders the matter. The local authority must then decide the matter.

Section 80 - Case friends for children who lack capacity

151. Section 80 provides for a "case friend" to be appointed (or removed) by order of the Education Tribunal for Wales, where the child lacks the capacity to conduct appeals, make decisions in respect of rights conferred by the Bill, or understand information or documents which are sent to them.
152. A case friend would be able to represent and support the child, take decisions on their behalf and exercise the child's rights under the Bill. The case friend must act fairly and competently and for the benefit of the child.
153. Regulations made under this section will allow the Welsh Ministers to provide further details on how case friends might be used to support

These notes refer to the Additional Learning Needs and Education Tribunal (Wales) Bill which was amended following Stage 2 proceedings on 4 and 12 October.

the rights of children. Having a case friend will allow children who, for example, may not receive assistance from their parent to bring an appeal or exercise other rights under the Bill.

Section 81 - Application of reconsideration provisions to pupils and students resident in England

154. This section applies, with modifications, specific local authority functions under the Bill to children or young people who are resident in England but attend a maintained school in Wales. The Bill gives local authorities functions to reconsider decisions of, and plans maintained by, governing bodies of maintained schools, in respect of pupils in its area. Appeal rights lie against those local authority decisions, rather than those of the governing body. However, registered pupils at the school may be in the area of a local authority in England. In order to ensure that such English resident learners can challenge decisions of schools in relation to their ALN, this section applies the sections on local authorities reconsidering school governing body decisions with modifications.
155. The local authority maintaining the Welsh school attended by the English resident child or young person, is responsible for reconsidering decisions about ALN (in accordance with section 24), reconsidering governing body IDPs (in accordance with section 25), and reconsidering governing body decisions to cease to maintain IDPs (in accordance with section 30). There are some differences in the application of these provisions regarding what the maintaining local authority may do, which reflect that there is a local authority in England with responsibilities under the Children and Families Act 2014. For example, the local authority may only direct the governing body to maintain, or prepare and maintain an IDP – it cannot maintain or take over responsibility for the IDP. In addition, the local authority is not required to prepare an IDP or direct a governing body to do so where it has requested the relevant English local authority to conduct an assessment of the child or young person's needs under section 36 of the Children and Families Act 2014 or an Education Health and Care Plan is maintained for the child or young person under that Act.

Section 82 - Giving notice etc. under this Part

156. Where the Bill requires a governing body or local authority to deliver a document or notification to a person, section 82 lists the methods of delivery. Electronic delivery can only take place where the person has

These notes refer to the Additional Learning Needs and Education Tribunal (Wales) Bill which was amended following Stage 2 proceedings on 4 and 12 October.

indicated that they wish to receive notifications or documents electronically and has provided a suitable address.

Section 83 - Review of additional learning provision in Welsh

157. Section 83 requires the Welsh Ministers to review and report on the sufficiency of additional learning provision in Welsh. The first report must be published before 1 September in the fifth year following the commencement by order of any provision of Part 2, and thereafter before 1 September in the fifth year following the last year in which a report was required to be published.

Section 84 - Power to amend duties to secure additional learning provision in Welsh

158. Section 84 provides the Welsh Ministers with a power to make regulations which remove the words “take all reasonable steps to” from those provisions of the Bill (listed in subsection (1)) where they appear in relation to the securing of additional learning provision in Welsh or provide that in those same provisions, the words “take all reasonable steps to” no longer apply relation to certain prescribed bodies or for a prescribed purpose, or for a prescribed purpose in relation to prescribed body. Section 84 also provides the Welsh Ministers with the power to omit section 83 (i.e. the duty to undertake reviews of the sufficiency of Welsh language additional learning provision) if the words “take all reasonable steps” are removed from all relevant provisions in the Bill. This section links to section 83 because the outcome of the reviews will be a relevant consideration in the decision to exercise this regulation making power.

Part 3 – Education Tribunal for Wales

Section 85 - Constitution of the Education Tribunal for Wales

159. Section 85 provides for the Special Education Needs Tribunal for Wales to be renamed as the Education Tribunal for Wales (‘the Tribunal’). This section sets out how it must be constituted, including that it must have a President a ‘legal chair panel’ and a ‘lay panel’, and provides for their respective appointments. This section also enables the Welsh Ministers, with the agreement of the Secretary of State, to make regulations relating to the Tribunal.

Section 86 - The President and members of the panels

160. Section 86 sets out the conditions and requirements under which a person may be appointed, re-appointed or may resign as a President, a member of the legal chair panel or a lay panel member of the Tribunal. It provides for the circumstances in which the Lord Chancellor (with the agreement of the Lord Chief Justice) may remove the President from office. This section also allows for regulations to be made by the Welsh Ministers with the agreement of the Secretary of State in relation to requirements for the appointment of members of the lay panel.

Section 87 - Remuneration and expenses

161. Section 87 enables the Welsh Ministers to pay for the services of the President, members of the legal chair panel and lay panel members, and the expenses of the Tribunal.

Part 4 – Miscellaneous and General

Section 88 - Meaning of “in the area” of a local authority

162. Section 88 amends the 1996 Act’s definition of “in the area” of a local authority. It provides that references to a person who is “in the area” of a local authority in England in the 1996 Act, do not include a person who would be wholly or mainly resident in the area of a local authority in Wales, were it not for provision secured under Part 2. Similarly, a reference to a person who is in the area of a local authority in Wales under the 1996 Act, does not include a person who would be wholly or mainly resident in a local authority area in England, were it not for provision secured under Part 3 of the Children and Families Act 2014.

Section 89 - Minor and consequential amendments and repeals

163. Section 89 introduces Schedule 1, which makes minor and consequential amendments and repeals.

Section 90 - Power to make consequential and transitional provision etc.

164. Section 90 provides the Welsh Ministers with powers to make regulations to make supplementary, incidental, consequential, transitory, transitional or saving provisions in order to give effect to any provisions in this Bill or in consequence of provisions in the Bill or for the purposes of the Bill. In doing so, Welsh Ministers are enabled to

These notes refer to the Additional Learning Needs and Education Tribunal (Wales) Bill which was amended following Stage 2 proceedings on 4 and 12 October.

make regulations which amend, repeal or revoke any provisions in legislation including statutory documents.

Section 91 - Regulations

165. Section 91 sets out that powers to make regulations under this Bill are to be exercised by statutory instrument. It allows for such regulations to make different provision for different purposes or cases; and to make incidental, supplementary, consequential, transitory, transitional or saving provisions. It also sets out the procedure of the National Assembly for Wales applicable to each regulation making provision.

Section 92 - General interpretation

166. Section 92 provides interpretations and definitions of terms and references used in the Bill. It also provides for definitions in the Education Act 1996 to apply where the defined term is used in this Bill, unless the term is given a different meaning in this Bill, in which case the Bill's definition applies. Amongst other things, this section states that for the purposes of the Bill, a local authority is responsible for a child or young person if he or she is "in the area of" the local authority. The Education Act 1996 meaning of "in the area of" a local authority applies (section 88 of the Bill amends the partial definition of that term in section 579 of that Act).

Section 93 - Coming into force

167. Section 93 enables a number of sections to come into force on the day after the day of Royal Assent; these sections are listed in this section. It provides for the remaining provisions within the Bill to come into force on the day set out in an Order made by the Welsh Ministers, exercisable by statutory instrument, which may appoint different days for different purposes; and the Order may make transitory, transitional or saving provisions about the provisions coming into force.

Section 94- Short title and inclusion as one of the Education Acts

168. The short title of the Bill on becoming an Act will be 'the Additional Learning Needs and Education Tribunal (Wales) Act 2017'. It will be included in the list of Education Acts set out in section 578 of the 1996 Act.

Schedule 1 – Minor and Consequential Amendments and Repeals

169. Paragraphs 1-22 of Schedule 1, as appropriate, repeal provisions in primary legislation replaced by provisions included in this Bill (including, for example, the whole of Chapter 1 of Part 4 (children in Wales with special educational needs) of the 1996 Act), substitute references to terms made obsolete by this Bill with the references to the terms it introduces (for example, replacing references to special educational needs with additional learning needs), and substitute references to repealed or amended provisions with references to equivalent provisions in the Bill.
170. In addition, the Schedule makes the following minor amendments.
171. In relation to the provisions relating to school attendance orders found in the 1996 Act, paragraph 4, subparagraphs (14), (15), (17) and (18), modifies the relevant processes so that reference to statements of special educational needs are replaced by the most appropriate equivalent in the context of such orders, that is individual development plans that name a particular school (not all individual development plans will name a particular school).
172. Paragraph 4, sub-paragraph (30) amends the 1996 Act so that if a statutory instrument is to be made containing regulations under both section 562J(4) of the 1996 Act and section 37(2) of the Bill (both of which relate to the meaning of “home authority” in respect of detained persons), it will be subject to affirmative rather than negative resolution procedure.
173. Sub-paragraph (30) also requires that regulations which make further provision about the meaning of references in the 1996 Act to a person who is “in the area” of a local authority in Wales (in regulations under subsection (3C) of section 579 of that Act as inserted by section 88(c) of the Bill), are subject to the affirmative rather than negative resolution procedure.

These notes refer to the Additional Learning Needs and Education Tribunal (Wales) Bill which was amended following Stage 2 proceedings on 4 and 12 October.

174. Paragraph 8, sub-paragraph (2) inserts a duty into section 153(2) of the Education Act 2002 requiring the arrangements under which non-maintained providers of nursery education are funded by local authorities, to include a requirement on the providers to have regard to any relevant guidance in the ALN Code. Section 153 already requires local authorities to exercise their functions with a view to securing that those nursery education providers meet the requirements placed on them by the local authority.
175. Paragraph 11 inserts a reference to s.61 of the Children and Families Act 2014 in to paragraph 2 of Schedule 1 to the National Health Service (Wales) Act 2006. This secures appropriate reciprocity between Welsh additional learning needs and English special educational needs systems in relation to the power to provide for medical inspection and treatment of pupils in attendance at educational establishments other than schools maintained by local authorities.
176. Paragraph 12, subparagraph (4) replaces the term special educational needs in section 14 of the Learner Travel Measure (Wales) Measure 2008 with a reference to learning difficulties which has the effect of requiring learning difficulties generally to be taken into consideration in decisions relating to the withdrawal of travel arrangements.
177. Paragraph 17, subparagraphs (5)(f) and (g) replace the existing paragraphs 6A and 6F in Schedule 17 to the Equality Act 2010 with new paragraphs about case friends and the capacity of parents and persons over compulsory school age that ensure that the legislative framework for the making of disability discrimination claims to the Education Tribunal remains compatible with the legislative framework for making appeals to the Education Tribunal under the Bill.
178. Paragraph 21, subparagraph (3), amends section 43(1) of the Children and Families Act 2014 so that schools in Wales are not under a duty to admit a child because the school has been named in a Education, Health and Care Plan. Paragraph 21, subparagraph (5) amends section 83(6) of the Act so that the definition of “in the area” of a local authority included in that Act’s interpretation section has the same meaning as that term has in section 579 of the 1996 Act (as amended by section 88 of the Bill).

Annex 2 – Index of Standing Order requirements

Table: Index of Standing Order requirements

Standing order		Section	pages/ paragraphs
26.6(i)	Statement the provisions of the Bill would be within the legislative competence of the Assembly.	Member's declaration	Page 1
26.6(ii)	Set out the policy objectives of the Bill.	Chapter 3 - Purpose and intended effect of the legislation	Pages 6-11
26.6(iii)	Set out whether alternative ways of achieving the policy objectives were considered and, if so, why the approach taken in the Bill was adopted.	Part 2 Chapter 7 – Options	Pages 96-131

Standing order		Section	pages/ paragraphs
26.6(iv)	Set out the consultation, if any, which was undertaken on: (a) the policy objectives of the Bill and the ways of meeting them; (b) the detail of the Bill, and (c) a draft Bill, either in full or in part (and if in part, which parts)	Part 1 Chapter 4 – Consultation	Pages 46-64
26.6(v)	Set out a summary of the outcome of that consultation, including how and why any draft Bill has been amended	Part 1 Chapter 4 – Consultation	Page 46-64
26.6(vi)	If the Bill, or part of the Bill, was not previously published as a draft, state the reasons for that decision	The requirement of Standing Order 26.6(vi) does not apply to this Bill as a consultation was undertaken on a draft Bill	N/A
26.6(vii)	Summarise objectively what each of the provisions of the Bill is intended to do (to the extent that it requires explanation or comment) and give other information necessary to explain the effect of the Bill	Annex 1 – Explanatory Notes	Pages 336-375

Standing order		Section	pages/ paragraphs
26.6(viii)	Set out the best estimates of: (a) the gross administrative, compliance and other costs to which the provisions of the Bill would give rise; (b) the administrative savings arising from the Bill; (c) net administrative costs of the Bill's provisions; (d) the timescales over which such costs and savings would be expected to arise; and (e) on whom the costs would fall	Part 1 Chapter 6 – regulatory impact assessment Part 2 Chapter 8 – costs and benefits	Pages 90-95 Pages 132-333
26.6(ix)	Any environmental and social benefits and dis-benefits arising from the Bill that cannot be quantified financially	Part 2 Chapter 7 – Options	Pages 96-131
26.6(x)	Where the Bill contains any provision conferring power to make subordinate legislation, set out, in relation to each such provision: (a) the person upon whom, or the body upon which, the power is conferred and the form in which the power is to be exercised; (b) why it is considered appropriate to delegate the power; and (c) the Assembly procedure (if any) to which the subordinate legislation made or to be made in the exercise of the power is	Part 1 Chapter 5 - Power to make subordinate legislation	Pages 65-89

Standing order		Section	pages/ paragraphs
	to be subject, and why it was considered appropriate to make it subject to that procedure (and not to make it subject to any other procedure).		
26.6(xi)	Where the Bill contains any provision charging expenditure on the Welsh Consolidated Fund, incorporate a report of the Auditor General setting out his or her views on whether the charge is appropriate.	The requirement of Standing Order 26.6(xi) does not apply to this Bill	Page 139, paragraph 8.20
26.6B	Where provisions of the Bill are derived from existing primary legislation, whether for the purposes of amendment or consolidation, the Explanatory Memorandum must be accompanied by a table of derivations that explain clearly how the Bill relates to the existing legal framework.	Annex 3 –Table of Derivations	Pages 380-391
26.6C	Where the Bill proposes to significantly amend existing primary legislation, the Explanatory Memorandum must be accompanied by a schedule setting out the wording of existing legislation amended by the Bill, and setting out clearly how that wording is amended by the Bill.	Annex 4 – Schedule of Amendments	Pages 392-412

Annex 3 - Table of derivations

The table below is intended to provide information on the derivation of the provisions of the Additional Learning Needs and Education Tribunal (Wales) Bill. The table does not provide definitive or exhaustive guidance, and should be read in conjunction with the Bill and the explanatory notes on the Bill. While care has been taken to ensure that the document is as accurate as reasonably practicable, it does not purport to be, and should not be relied on as, authoritative.

KEY TO ABBREVIATIONS

EA 1996	Education Act 1996
EA 2002	Education Act 2002
LSA 2000	Learning and Skills Act 2000
2002 Regulations	The Education (Special Educational Needs) (Wales) Regulations 2002

Additional Learning Needs and Education Tribunal (Wales) Bill – Table of Derivations		
Section/ Paragraph	Corresponding Reference in Existing Legislation	Substantive Change
Part 1 – Overview		
1 (Overview of this Act)	New	
Part 2 – Additional Learning Needs		
Chapter 1 – Key terms, code and participation		
2 (Additional learning needs)	S.312 EA 1996 and S.41 LSA 2000	Yes
3 (Additional learning provision)	S.312 EA 1996	Yes
4 (Additional learning needs code)	S.313 EA 1996	Yes

5 (Procedure for making the code)	S.314 EA 1996	Yes
6 (Duty to involve and support children, their parents and young people)	New	
7 (Advice and information)	S.332 AA EA 1996	No
Chapter 2 – Individual Development Plans		
8 (Individual development plans)	New	
9 (Duty to decide: maintained schools and further education institutions)	New	
10 (Duties to prepare and maintain plans: maintained schools and further education institutions)	New	
11 (Duty to decide: local authorities)	New	
12 (Duties to prepare and maintain plans: local authorities)	New	
13 (Key terms)	New	
14 (Amendments to the Social Services and Well-	New	

being (Wales) Act 2014		
15 (Duty to refer a matter to a local authority that looks after a child)	New	
16 (Duty to decide whether a looked after child has additional learning needs)	New	
17 (Duties to prepare and maintain plans for looked after children)	New	
18 Additional learning provision: Local Health Boards and NHS trusts)	New	
19 (Individual development plans: Local Health Boards and NHS trusts)	New	
20 (Provision of information about individual development plans)	New	
21 (Review and revision of individual development plans)	S.328 EA 1996	Yes

22 (Review and revision of individual development plans for looked after children)	S.328 EA 1996	Yes
23 (Relationship of individual development plans to other similar documents)	New	
24 (Reconsideration by local authorities of decisions under section 9(1))	New	
25 (Reconsideration by local authorities of plans maintained under section 10)	New	
26 (Local authority duty to decide whether to take over governing body plans)	New	
27 (Circumstances in which the duties in sections 24(2), 25(2) and 26(3) do not apply)	New	
28 (Registration or enrolment at more than one institution)	New	
29 (Ceasing to	Paragraph 11(1); paragraph	Yes

maintain individual development plans)	11(2); and paragraph 11(2A) of Schedule 27 to the EA 1996	
30 (Reconsideration by local authorities of decisions of governing bodies under section 29)	New	
31 (Limitation on ceasing to maintain plans to allow reconsideration or appeal)	Paragraph 11(2B); paragraph 11(4); and paragraph 11(5) of Schedule 27 of the EA 1996	Yes
32 (Individual development plan after a young person's 25 th birthday)	New	
33 (Transfer of duties to maintain plans)	New	
34 (Request to transfer plan to governing body of further education institution)	New	
35 (Regulations about transfer of individual development plans)	Paragraph 7 of Schedule 27 of the EA 1996 Regulation 23 of the 2002 Regulations	Yes
36 (Local authority power to direct governing bodies of maintained	New	

schools		
37 (Meaning of 'detained person' and other key terms)	New	
38 (Duty to prepare individual development plans for detained persons)	New	
39 (Circumstances in which the duty in section 38(2) does not apply)	New	
40 (Duty to keep individual development plans for detained persons)	New	
41 (Release of a detained person)	New	
42 (Certain provisions of Part 2 not to apply to children and young persons in detention)	New	
Chapter 3 – Supplementary Functions		
43 (Duty to take all reasonable steps to secure additional learning provision)	Section 317 (1) of the EA 1996	Yes
44 (Duty to admit children to named maintained	Paragraph 3 and paragraph 3A of Schedule 27 of the EA 1996	Yes

schools)		
45 (No power to charge for provision secured under this Part)	New	
46 (Welsh Ministers' duties to secure post-16 education and training)	Amends and repeals existing legislation (S.33N; S.33P; S.41 and S.140 LSA 2000)	
47 (Duty to favour education for children at mainstream maintained schools)	S.316 and S.316A of the EA 1996	Yes
48 (Children with additional learning needs in mainstream maintained schools)	S.317 (4) of the EA 1996	No
49 (Additional learning provision otherwise than in schools)	S.319 EA 1996	No
50 (Amendments to registration requirements for independent schools in Wales)	New (amends S.158 and S.160 of the EA 2002)	
51 (Conditions applicable to securing additional learning provision at independent schools)	New	

52 (List of independent special post-16 institutions)	New	
53 (Abolition of approval of non-maintained special schools in Wales)	Repeals existing legislation (S.337A and S.342 of EA 1996)	
54 (Abolition of approval of independent schools in Wales)	Repeals existing legislation(S.347 of EA 1996)	
55 (Additional learning provision outside England and Wales)	S.320 EA 1996	Yes
56 (Additional learning needs co-ordinator)	S.317 (3A) EA 1996	Yes
57 (Designated education clinical lead officer)	New	
58 (Early years additional learning needs lead officer)	New	
59 (Duty to keep additional learning provision under review)	S.315 EA 1996	Yes
60 (Duty of health bodies to notify parents etc.)	S.332 EA 1996	Yes
61 (Duties to provide information and other help)	S.322 EA 1996	Yes

62 (Right of local authority to access premises of schools and other institutions)	S.327 EA 1996	Yes
63 (Provision of goods or services in relation to additional learning provision)	S.318 EA 1996	Yes
Chapter 4 – Avoiding and resolving disagreements		
64 (Arrangements for the avoidance and resolution of disagreements)	S.332BA EA 1996	No
65 (Independent advocacy services)	S.332BB EA 1996	No
66 (Appeal and application rights)	S.325; S.326; S.332ZA; S.336(5); S.336(6); paragraph 8 of Schedule 27 and paragraph 11 of Schedule 27 to the EA 1996	Yes
67 (Decisions on appeals and applications under section 66)	S.336 EA 1996 and the regulations made under that section	Yes
68 (Appeal rights: detained persons)	New	
69 (Decisions on appeals under section 68)	New	
70 (Regulations about appeals and applications)	New	
71 (Regulations about procedure)	S.336 EA 1996	No

72 (NHS Bodies: evidence and Tribunal recommendations)	New	
73 (Compliance with orders)	S.336A EA 1996	No
74 (Offence)	New	
75 (Allowances for attendance at the Education Tribunal for Wales)	S.336(3) EA 1996	No
76 (Appeals from the Education Tribunal for Wales to the Upper Tribunal)	S.336ZB EA 1996	No
Chapter 5 - General		
77 (Regulations about disclosure and use of information)	Paragraph 7 of Schedule 27 to the EA 1996 Regulation 24 of the 2002 Regulations	Yes
78 (Parents and young people lacking capacity)	New	
79 (Capacity of children)	New	
80 (Case friends for children who lack capacity)	S.332ZC EA 1996	Yes
81 (Application of reconsideration provisions to pupils and students resident in	New	

England)		
82 (Giving notice etc. under this Part)	S.572 EA 1996	No
83 (Review of additional learning provision in Welsh)	New	
84 (Power to amend duties to secure additional learning provision in Welsh)	New	
Part 3 – Education Tribunal for Wales		
85 (Constitution of the Education Tribunal for Wales)	S.333 EA 1996	Yes
86 (The President and members of the panels)	S.334 EA 1996	Yes
87 (Remuneration and expenses)	S.335 EA 1996	No
Part 4 – Miscellaneous and General		
88 (Meaning of “in the area” of a local authority)	New	
89 (Minor and consequential amendments and repeals)	New	
90 (Power to make consequential and transitional provision etc.)	New	

91 (Regulations)	New	
92 (General interpretation)	New	
93 (Coming into force)	New	
94 (Short title and inclusion as one of the Education Acts)	New	

Annex 4 – Schedule of amendments

AMENDMENTS TO BE MADE BY THE ADDITIONAL LEARNING NEEDS AND EDUCATION TRIBUNAL (WALES) BILL

In accordance with Standing Order 26.6C, the following schedule sets out where the Bill proposes to significantly amend existing primary legislation. It sets out the wording of the existing legislation and how that wording is amended by the Bill. It is intended to show how the provisions of the Social Services and Well-being (Wales) Act 2014, Learning and Skills Act 2000, Education Act 2002 (c. 32) and Education Act 1996, as they applied in relation to Wales on 11 November 2016, would look as amended by the Additional Learning Needs and Education Tribunal (Wales) Bill (if enacted) as introduced on 12 December 2016.

Material to be deleted by the Additional Learning Needs and Education Tribunal (Wales) Bill is in strikethrough, e.g. ~~omitted material looks like this~~. Material to be added by the Additional Learning Needs and Education Tribunal (Wales) Bill is underlined, e.g. added material looks like this. References to the relevant amending provisions of the Bill are provided in the right hand column on each page.

A number of related provisions from the Act, although not being amended, are included to aid understanding of the proposed amendments.

Warning

This text has been prepared by officials of the Education and Public Services Group of the Welsh Government. Although efforts have been taken to ensure that it is accurate, it should not be relied on as a definitive text of the Act or the Bill.

It has been produced solely to help people understand the effect of the Additional Learning Needs and Education Tribunal (Wales) Bill. It is not intended for use in any other context.

*Amending section
of the Additional
Learning Needs
and Education
Tribunal (Wales)
Bill*

Social Services and Well-being (Wales) Act 2014

83 Care and support plans

Section 14

(1) Where a child becomes looked after by a local authority, any care and support plan prepared under section 54 in relation to that child must be—

- (a) reviewed, and
- (b) maintained under this section.

(2) Where a child who does not have a care and support plan under section 54 becomes looked after by a local authority, the local authority must prepare and maintain a care and support plan in relation to that child.

(2A) A care and support plan prepared for a child must include a record of the arrangements made to meet the child's needs in relation to education or training (a "personal education plan").

(2B) But subsection (2A) does not apply to a child if he or she is within a category of looked after child

prescribed in regulations, for whom no personal educational plan is to be prepared.

(2C) If—

(a) a child has additional learning needs, and

(b) the child's care and support plan includes a personal education plan,
any individual development plan maintained for the child under section 17 of the Additional Learning
Needs and Education Tribunal (Wales) Act 2017 must be incorporated within the personal education
plan.

(2D) For the purposes of subsection (2C)—

(a) a "child" means a person not over compulsory school age (within the meaning given by section 8
of the Education Act 1996 (c.56));

(b) "additional learning needs" has the meaning given by section 2 of the Additional Learning Needs
and Education Tribunal (Wales) Act 2017.

(3) A local authority must keep under review the plans that it maintains under this section a child's care and
support plan under review.

(4) Where a local authority is satisfied that the circumstances of the child to whom a care and support plan
~~a plan~~ relates have changed in a way that affects the plan, the authority must—

(a) carry out such assessments as it considers appropriate, and

(b) revise the plan.

(5) Subject to the provisions of Part 2 of the Additional Learning Needs and Education Tribunal (Wales) Act
2017 ~~R~~ regulations must make provision about—

- (a) how care and support plans ~~plans under this section~~ are to be prepared;
 - (b) what ~~a plan is to contain~~ a care and support plan is to contain (including what the personal education plan is to contain);
 - (c) the review and revision of ~~plans~~ care and support plans.
- (6) Regulations under subsection (5)(c) must specify, in particular—
 - (a) the persons who may request a review of a plan (on their own behalf or on behalf of another person);
 - (b) the circumstances in which a local authority—
 - (i) may refuse to comply with a request for a review of a plan, and
 - (ii) may not refuse to do so.
- (7) When preparing, reviewing or revising a care and support plan ~~a plan under this section~~, a local authority must involve the child to whom the plan relates and any person with parental responsibility for the child.
- (8) The local authority may—
 - (a) prepare, review or revise a care and support plan ~~a plan under this section~~ at the same time as it or another body is preparing, reviewing or revising another document in the case of the child concerned, and
 - (b) include the other document in the plan.
- (9) Any part of a ~~plan~~ care and support plan maintained under this section which meets the requirements imposed by or under section 31A of the Children Act 1989 may be treated for the purposes of that Act as a plan prepared under section 31A of that Act.

Deddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014

83 Cynlluniau gofal a chymorth

(1) Pan fo plentyn yn dod yn un sy'n derbyn gofal gan awdurdod lleol, rhaid i unrhyw gynllun gofal a chymorth a lunnir o dan adran 54 mewn perthynas â'r plentyn hwnnw gael—

- (a) ei adolygu, a
- (b) ei gynnal o dan yr adran hon.

(2) Pan fo plentyn nad oes ganddo gynllun gofal a chymorth o dan adran 54 yn dod yn un sy'n derbyn gofal gan awdurdod lleol, rhaid i'r awdurdod lleol lunio a chynnal cynllun gofal a chymorth mewn perthynas â'r plentyn hwnnw.

(2A) Rhaid i gynllun gofal a chymorth a lunnir ar gyfer plentyn gynnwys cofnod o'r trefniadau a wneir i ddiwallu anghenion y plentyn mewn perthynas ag addysg a hyfforddiant ("cynllun addysg personol").

(2B) Ond nid yw is-adran (2A) yn gymwys i blentyn os yw o fewn category o blentyn sy'n derbyn gofal a ragnodir mewn rheoliadau, ac nad oes cynllun addysg personol i gael ei lunio ar ei gyfer.

(2C) Os—

- (a) oes gan blentyn anghenion dysgu ychwanegol,
- (b) yw cynllun gofal a chymorth y plentyn yn cynnwys cynllun addysg personol, rhaid cynnwys unrhyw gynllun datblygu unigol a gynhelir ar gyfer y plentyn o dan adran 17 o Ddeddf Anghenion Dysgu Ychwanegol a'r Tribiwnlys Addysg (Cymru) 2017 yn y cynllun addysg personol.

(2D) At ddibenion is-adran (2C)—

(a) ystyr “plentyn” yw plentyn nad yw’n hŷn na’r oedran ysgol gorfodo (o fewn yr ystyr a roddir i “compulsory school age” gan adran 8 o Ddeddf Addysg 1996 (p. 56))l:

(b) mae i “anghenion dysgu ychwanegol” yr ystyr a roddir gan adran 2 o Ddeddf Anghenion Dysgu Ychwanegol a’r Tribiwnlys Addysg (Cymru) 2017.”.

(3) Rhaid i awdurdod lleol barhau i adolygu’n gyson y cynlluniau y mae’n eu cynnal o dan yr adran hon gynllun gofal a chymorth plenty.

(4) Pan fo awdurdod lleol wedi ei fodloni bod amgylchiadau’r plentyn y mae cynllun gofal a chymorth yn ymwneud ag ef wedi newid mewn ffordd sy’n effeithio ar y cynllun, rhaid i’r awdurdod—

(a) gwneud unrhyw asesiadau y mae’n barnu eu bod yn briodol, a

(b) diwygio’r cynllun.

(5) Yn ddarostyngedig i ddarpariaethau Rhan 2 o Ddeddf Anghenion Dysgu Ychwanegol a’r Tribiwnlys Addysg (Cymru) 2017, rhaid i reoliadau wneud darpariaeth ynghylch—

(a) sut y mae cynlluniau gofal a chymorth o dan yr adran hon i’w paratoi;

(b) pa bethau y mae cynllun gofal a chymorth i’w cynnwys (gan gynnwys pa bethau y mae’r cynllun addysg personol i’w cynnwys) mae’n rhaid i gynllun eu cynnwys;

(c) adolygu a diwygio cynlluniau gofal a chymorth.

(6) Rhaid i reoliadau o dan is-adran (5)(c) bennu, yn benodol—

(a) y personau a gaiff ofyn am adolygiad o gynllun (ar eu rhan hwy eu hunain neu ar ran person arall);

(b) o dan ba amgylchiadau—

- (i) y caiff awdurdod lleol wrthod cydymffurfio â chais am adolygiad o gynllun, a
- (ii) na chaiff awdurdod lleol wrthod gwneud hynny.

(7) Wrth lunio, adolygu neu ddiwygio cynllun gofal a chymorth ~~o dan yr adran hon~~, rhaid i awdurdod lleol gynnwys y plentyn y mae'r cynllun yn ymwneud ag ef ac unrhyw berson sydd â chyfrifoldeb rhiant dros y plentyn.

(8) Caiff yr awdurdod lleol—

- (a) llunio, adolygu neu ddiwygio cynllun gofal a chymorth ~~o dan yr adran hon~~ yr un pryd ag y mae ef neu gorff arall yn llunio, adolygu neu ddiwygio dogfen arall yn achos y plentyn o dan sylw, a
- (b) cynnwys y ddogfen arall yn y cynllun.

(9) Caniateir i unrhyw ran o gynllun gofal a chymorth a gynhelir o dan yr adran hon sy'n bodloni'r gofynion a osodir gan neu o dan adran 31A o Ddeddf Plant 1989 gael ei thrin at ddibenion y Ddeddf honno fel cynllun a lunnir o dan adran 31A o'r Ddeddf honno.

SCHEDULE 1 Contributions towards maintenance of looked after children (introduced by section 85)

Section 43

Liability to contribute

1 (1) Where a local authority is looking after a child (other than in the cases mentioned in sub-paragraph (8), and in cases where charging is prohibited by or under an enactment) it must consider whether it should recover contributions towards the child's maintenance from any person liable to contribute ("a contributor").

ATODLEN 1 Cyfraniadau tuag at gynhaliaeth plant sy'n derbyn gofal

(a gyflwynwyd gan adran 85)

Atebolrwydd am gyfrannu

1 (1) Pan fo awdurdod lleol yn gofalu am blentyn (mewn achosion ar wahân i'r rhai a grybwyllir yn is-baragraff (8), ac mewn achosion pan fo codi ffioedd wedi ei wahardd gan neu o dan ddeddfiad) rhaid iddo ystyried a ddylai adennill cyfraniadau tuag at gynhaliaeth y plentyn gan unrhyw berson sy'n atebol am gyfrannu ("cyfrannwr").

Learning and Skills Act 2000

Main duties

Section 46

31 Education and training for persons aged 16 to 19

(1) The Welsh Ministers must secure the provision of proper facilities for—

- (a) education (other than higher education) suitable to the requirements of persons who are above compulsory school age but have not attained the age of 19,
- (b) training suitable to the requirements of such persons,
- (c) organised leisure-time occupation connected with such education, and
- (d) organised leisure-time occupation connected with such training.

(2) Facilities are proper if they are—

- (a) of a quantity sufficient to meet the reasonable needs of individuals,
- (b) of a quality adequate to meet those needs and

(c) sufficient to satisfy the entitlements conferred under section 33F.

(3) In performing the duty imposed on them by subsection (1) the Welsh Ministers must—

(a) take account of the places where facilities are provided, the character of facilities and the way they are equipped;

(b) take account of the different abilities and aptitudes of different persons;

(c) take account of the education and training required in different sectors of employment for employees and potential employees;

(cc) take account of the education and training that is required in order to ensure that employees and potential employees are available who are able to deliver additional learning provision in Welsh;

(cd) take account of the education and training that is required in order to ensure that facilities are available for assessing through the medium of Welsh whether persons have additional learning needs;

(d) take account of facilities whose provision the Welsh Ministers think might reasonably be secured by other persons;

(e) [repealed]

(4) [repealed]

(5) For the purposes of this section—

(a) education includes both full-time and part-time education;

(b) training includes both full-time and part-time training;

(c) training includes vocational, social, physical and recreational training;

(d) higher education is education provided by means of a course of any description mentioned in

32 Education and training for persons over 19

- (1) The Welsh Ministers must secure the provision of reasonable facilities for—
- (a) education (other than higher education) suitable to the requirements of persons who have attained the age of 19,
 - (b) training suitable to the requirements of such persons,
 - (c) organised leisure-time occupation connected with such education, and
 - (d) organised leisure-time occupation connected with such training.
- (2) [repealed]
- (3) In performing the duty imposed on them by subsection (1) the Welsh Ministers must—
- (a) take account of the places where facilities are provided, the character of facilities and the way they are equipped;
 - (b) take account of the different abilities and aptitudes of different persons;
 - (c) take account of the education and training required in different sectors of employment for employees and potential employees;
 - (cc) take account of the education and training that is required in order to ensure that employees and potential employees are available who are able to deliver additional learning provision in Welsh;
 - (cd) take account of the education and training that is required in order to ensure that facilities are available for assessing through the medium of Welsh whether persons have additional learning needs;

- (d) take account of facilities whose provision the Welsh Ministers think might reasonably be secured by other persons;
- (e) [repealed]

(4) [repealed].

(5) For the purposes of this section—

- (a) education includes both full-time and part-time education;
- (b) training includes both full-time and part-time training;
- (c) training includes vocational, social, physical and recreational training;
- (d) higher education is education provided by means of a course of any description mentioned in Schedule 6 to the Education Reform Act 1988.

(6) References in this Part to post-16 education are to—

- (a) education falling within section 31(1)(a) or subsection (1)(a) above, and
- (b) organised leisure-time occupation connected with such education.

(7) References in this Part to post-16 training are to—

- (a) training falling within section 31(1)(b) or subsection (1)(b) above, and
- (b) organised leisure-time occupation connected with such training.

41 Persons with additional learning needs ~~learning difficulties~~

(1) In discharging its functions under sections 31, 32 and 34(1)(a) to (d) and (g) the Welsh Ministers must have regard— *Section 46*

(a) to the needs of persons with ~~learning difficulties~~, and additional learning needs

(b) ~~in particular, any report of an assessment conducted under section [...] 140.~~ to the desirability of facilities being available which would assist the discharge of duties under the Additional Learning Needs and Education Tribunal (Wales) Act 2017.

~~(2) If the Welsh Ministers are satisfied that they cannot secure the provision of facilities for education or training which are sufficient in quantity and adequate in quality for a person with a learning difficulty who is over compulsory school age but who has not attained the age of 19 unless they also secure the provision of boarding accommodation for him, the Welsh Ministers must secure the provision of boarding accommodation for him~~

~~(3) If the Welsh Ministers are satisfied that they cannot secure the provision of reasonable facilities for education or training for a person with a learning difficulty who has attained the age of 19 but not the age of 25 unless they also secure the provision of boarding accommodation for him, the Welsh Ministers must secure the provision of boarding accommodation for him.~~

~~(4) If the Welsh Ministers are satisfied that they cannot secure the provision of reasonable facilities for education or training for a person with a learning difficulty who has attained the age of 25 unless they also secure the provision of boarding accommodation for him, the Welsh Ministers may secure the provision of boarding accommodation for him.~~

~~(5) A person has a learning difficulty if—~~

- ~~(a) — he has a significantly greater difficulty in learning than the majority of persons of his age, or~~
- ~~(b) — he has a disability which either prevents or hinders him from making use of facilities of a kind generally provided by institutions providing post-16 education or training.~~

(5A) In this Part, “additional learning needs” has the meaning given by section 2 of the Additional Learning Needs and Education Tribunal (Wales) Act 2017, and “additional learning provision” has the meaning given by section 3 of that Act.

~~(6) — But a person is not to be taken to have a learning difficulty solely because the language (or form of language) in which he is or will be taught is different from a language (or form of language) which has at any time been spoken in his home.~~

140 Assessments relating to learning difficulties

Section 46

~~(1) — Subsection (2) applies if —~~

- ~~(a) — a local authority in Wales maintains a statement of special educational needs for a person under section 324 of the Education Act 1996, and~~
- ~~(b) — the Welsh Ministers believe that the person will leave school at the end of his last year of compulsory schooling to receive post-16 education or training (within the meaning of Part 2 of this Act) or higher education (within the meaning of the Education Reform Act 1988).~~

~~(2) — The Welsh Ministers must arrange for an assessment of the person to be conducted at some time during the person's last year of compulsory schooling.~~

~~(3) — The Welsh Ministers may at any time arrange for an assessment to be conducted of a person —~~

~~(a) — who is in his last year of compulsory schooling or who is over compulsory school age but has not attained the age of 25,~~

~~(b) — who appears to the Welsh Ministers to have a learning difficulty (within the meaning of section 41), and~~

~~(c) — who is receiving, or in the opinion of the Welsh Ministers is likely to receive, post-16 education or training (within the meaning of Part 2 of this Act) or higher education (within the meaning of the Education Reform Act 1988).~~

~~(4) — For the purposes of this section an assessment of a person is an assessment resulting in a written report of —~~

~~(a) — his educational and training needs, and~~

~~(b) — the provision required to meet them.~~

~~(5) — A local authority in Wales must send a copy of a statement maintained by it under section 324 of the Education Act 1996 to the Welsh Ministers on their request.~~

~~(5A) — “Local authority in Wales” has the same meaning as in the Education Act 1996 (see section 579(1) of that Act).~~

~~(6) — [repealed]~~

Education Act 2002 (c.32)

Requirement of registration

Section 50

158 The registers

- (1) There shall continue to be—
 - (a) [repealed]
 - (b) a register of independent schools in Wales.
- (2) [repealed]
- (3) The register of independent schools in Wales shall be kept by the Welsh Ministers.
- (4) The Welsh Ministers must publish a list of the schools included in the register of independent schools in Wales, as amended from time to time.
- (5) If the Welsh Ministers have been provided with the necessary information by the proprietor of the school, the published list must specify the type or types of additional learning provision made by a school on the list for pupils with additional learning needs (if any).

Registration procedure

160 Applications for registration

- (1) An application to enter an independent school in the register must—
 - (a) contain the prescribed information, and
 - (b) be made to the registration authority by the proprietor of the school in the prescribed manner.
- (2) The information prescribed under subsection (1)(a) shall include information as to the following matters relating to the school—
 - (a) the age range of pupils;
 - (b) the maximum number of pupils;
 - (c) whether the school is for male or female pupils or both;
 - (d) whether the school provides accommodation for pupils;
 - (e) whether the school admits pupils with special educational needs the type or types of additional learning provision made by the school for pupils with additional learning needs (if any).
- (3) Where the proprietor of an independent school makes an application to the registration authority under this section, the authority shall notify the Chief Inspector.
- (4) The Chief Inspector shall then inspect the school and report to the registration authority on the extent to which the independent school standards are met, and are likely to continue to be met, in relation to the school.

Education Act 1996

337A Interpretation of Chapter

In this Chapter—

“a non-maintained special school” means a school that is approved under section 342;

~~“the appropriate national authority” means—~~

~~(a) in relation to a school in England, the Secretary of State;~~

~~(b) in relation to a school in Wales, the Welsh Ministers.~~

342 Approval of non-maintained special schools

(1) ~~The appropriate national authority~~ Secretary of State may approve under this section any school in England which—

(a) is specially organised to make special educational provision for pupils with special educational needs, and

(b) is not a community or foundation special school or an Academy school, and may give approval before or after the school is established.

(2) Regulations may make provision as to the requirements which are to be complied with as a condition of approval under subsection (1) above.

(3) Any school which was a special school immediately before 1st April 1994 shall be treated, subject to subsection (4) below, as approved under this section.

- (4) Regulations may make provision as to—
- (a) the requirements which are to be complied with by a school while approved under this section, and
 - (b) the withdrawal of approval from a school (including approval treated as given under subsection (3)) at the request of the proprietor or on the ground that there has been a failure to comply with any prescribed requirement.
- (5) Without prejudice to the generality of subsections (2) and (4), the requirements which may be imposed by the regulations include requirements—
- (a) which call for arrangements to be approved by the ~~appropriate national authority~~ Secretary of State, or
 - (b) as to the organisation of any special school as a primary school or as a secondary school.
- (5A) Regulations shall make provision for securing that, so far as practicable, every pupil attending a school in England that is approved under this section—
- (a) receives religious education unless withdrawn from receiving such education in accordance with the wishes of the pupil's parent, and
 - (b) attends religious worship unless withdrawn from attendance at such worship—
 - (i) in the case of a sixth-form pupil, in accordance with the pupil's own wishes, and
 - (ii) in any other case, in accordance with the wishes of the pupil's parent.
- (5B) In subsection (5A) “a sixth-form pupil” means a pupil who—
- (a) has ceased to be of compulsory school age, and
 - (b) is receiving education suitable to the requirements of pupils over compulsory school age.

~~(6) Regulations shall make provision for securing that, so far as practicable, every pupil attending a school in Wales that is approved under this section—~~

~~(a) receives religious education and attends religious worship, or~~

~~(b) is withdrawn from receiving such education or from attendance at such worship in accordance with the wishes of his parent.~~

Independent schools providing special education

Section 54

~~347 Approval of independent schools~~

~~(1) The Welsh Ministers may approve an independent school in Wales as suitable for the admission of children for whom statements are maintained under section 324.~~

~~(2) Regulations may make provision as to—~~

~~(a) the requirements which are to be complied with by a school as a condition of its approval under this section,~~

~~(b) the requirements which are to be complied with by a school while an approval under this section is in force in respect of it, and~~

~~(c) the withdrawal of approval from a school at the request of the proprietor or on the ground that there has been a failure to comply with any prescribed requirement.~~

~~(3) An approval under this section may be given subject to such conditions (in addition to those prescribed) as the Welsh Ministers see fit to impose.~~

~~(4) — In any case where there is a failure to comply with such a condition imposed under subsection (3), the Welsh Ministers may withdraw their approval.~~

~~(5) — No person shall so exercise his functions under this Part that a relevant child is educated in an independent school unless—~~

~~(a) — the school is for the time being approved by the Welsh Ministers as suitable for the admission of children for whom statements are maintained under section 324, or~~

~~(b) — the Welsh Ministers are satisfied that there is a place available for the child at the school and consent to the child being educated there.~~

~~(5ZA) — In subsection (5) “a relevant child” means a child with special educational needs—~~

~~(a) — for whom a local authority in Wales maintain a statement under section 324, or~~

~~(b) — for whom no local authority maintain such a statement and who is in the area of a local authority in Wales.~~

~~(5A) — Subsection (5) does not apply to a local authority in Wales deciding, for the purposes of section 324(5), whether a parent has made suitable arrangements.~~

579 General interpretation

...

(3A) —References in this Act to a person who is “in the area” of a local authority in England do not include a person who is wholly or mainly resident in the area of a local authority in Wales or who would be wholly or mainly resident in the area of a local authority in Wales were it not for provision secured for the person under

Section 88

Part 2 of the Additional Learning Needs and Education Tribunal (Wales) Act 2017.

(3B) References in this Act to a person who is “in the area” of a local authority in Wales do not include a person who is wholly or mainly resident in the area of a local authority in England or who would be wholly or mainly resident in the area of a local authority in England were it not for provision secured for the person under Part 3 of the Children and Families Act 2014.

(3C) The Welsh Ministers may make further provision by regulations about the meaning of references in this Act to a person who is “in the area” of a local authority in Wales.

Annex 5 – Glossary

Additional learning needs	ALN
Additional Learning Needs Coordinator	ALNCo
Additional Learning Needs Strategic Implementation Group	ALN-SIG
Additional learning provision	ALP
Designated Education Clinical Lead Officer	DECLO
Education Tribunal for Wales	The Tribunal
Further education institution	FEI
Further education	FE
Individual development plan	IDP
Learning difficulty and/or disability	LDD
Local health boards	Health boards
Local health boards and NHS Trusts in Wales	NHS bodies
Person-centred practice	PCP
Personal education plan	PEP
Revenue Support Grant	RSG
Special educational needs	SEN
Special Educational Needs Coordinator	SENCo
Special Educational Needs Tribunal for Wales	SENTW
Special education provision	SEP
Third Sector Additional Needs Alliance	TSANA
United Nations Convention on the Rights of the Child	UNCRC
Welsh Local Government Association	WLGA