

**JOINT EDUCATION & YOUTH AND SOCIAL & HEALTH CARE OVERVIEW
AND SCRUTINY COMMITTEE**

Date of Meeting	Thursday, 25 th July 2019
Report Subject	Additional Learning Needs and Education Tribunal (Wales) Act 2018
Cabinet Member	Leader of the Council and Cabinet Member for Education
Report Author	Chief Officer Education & Youth
Type of Report	Operational

EXECUTIVE SUMMARY

This report updates Elected Members about the Additional Learning Needs and Education Tribunal (Wales) Act 2018 which 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 report also highlights the activity undertaken by the Local Authority in response to the Act to date and highlights the potential impact once the legislation is implemented.

RECOMMENDATIONS

1	That Committee receives and considers the report on the Additional Learning Needs and Education Tribunal (Wales) Act 2018.
2	That Committee Members raise awareness with the Council's Cross Party Working Group with regard to the potential funding pressures as a result of this legislation.

REPORT DETAILS

1.00	EXPLAINING THE ADDITIONAL LEARNING NEEDS AND EDUCATION TRIBUNAL (WALES) ACT 2018
1.01	<p>The Welsh Government (WG) gave a commitment to review the legislation and guidance covering children and young people with special educational needs (SEN) following a period of consultation with all stakeholders in 2007. This was followed by a period of research, targeted trials/pilots and further consultation which fed into a white paper in 2014 and resulted in the publication of the draft Additional Learning Needs and Education Tribunal Bill (2015). Following a pause in process, the Additional Learning Needs and Education Tribunal (Wales) Bill was passed by the National Assembly for Wales on 12 December 2017 and became an Act on 24 January 2018 after receiving Royal Assent. The anticipated implementation date of the reforms as a result of the Act is September 2020.</p>
1.02	<p>The Act extends the legal protection currently offered to pupils with a Statement of SEN to all individuals between the ages of 0 and 25 identified as having additional learning needs (ALN), significantly broadening the statutory responsibilities of the authority. To accompany the Act, WG produced a draft Code which provided further information and detail regarding the duties to be placed on schools, local authorities and other stakeholders. A period of consultation on the Code was initiated in December 2018, closing on 22 March 2019. Flintshire officers undertook a range of consultation events with key stakeholders to feed into the overall response from the authority which was submitted within the allocated timescale. WG has now collated the information received and published a document in response, outlining the main points raised.</p>
1.03	<p>WG has indicated in their published document that the responses to the consultation have raised a number of issues that now require detailed consideration to determine what changes to make to the Code and the associated regulations. Once this consideration is complete, it is intended that WG will lay a revised draft of the ALN Code before the National Assembly for its approval later in 2019. At the same time, it is intended that various regulations (some in draft form) to be made under the Act will be laid, including those consulted on as part of the consultation process. The laying of the ALN Code and regulations will be accompanied by the publication of the relevant explanatory memoranda and impact assessments.</p>
1.04	<p>Subject to the National Assembly's approval of the Code, it is expected that it will be issued before the end of 2019 with the new ALN system being implemented over a period of three years, alongside the existing system, beginning in September 2020. The Flintshire ALN Transformation Plan developed for the authority maps out the activity required to ensure the authority and schools are ready and prepared for implementation in September 2020. Flintshire officers are also actively engaging in the work taking place across North Wales to support a consistent regional approach to the Act.</p>

1.05	The completion of the WG Readiness Audit identified the need to recruit additional capacity to enable Flintshire to respond appropriately to the requirements of the Code. An officer was appointed in September 2018 and has been responsible for the development of the local Transformation Plan.
1.06	As well as responding to the consultation on the Code, a range of activities have been undertaken in preparation for the Act. These include regular information update sessions and the establishment of school cluster groups to facilitate their collaborative working. These groups have focused on completing and school readiness audits and cluster transformation plans, along with working on a definition of universal school provision, a key element of the new system. Regional and local Training Plans have also been developed identifying the requirements for school-based staff, officers and partners. Training on Person-Centred Planning (PCP) has been extended to ensure all schools have appropriately trained staff. Additional staff are being trained as PCP trainers to extend the capacity to offer training to wider partners, e.g. early years settings.
1.07	Local authority officers have also been working on mapping the new systems required based on the information available in the draft Code. They have contributed to a feasibility study which is exploring the development of a regional IT support system to facilitate the new procedures. Discussion is now underway with WG to explore the possibility of this becoming a national system.
1.08	Additional working groups with partners such as staff from local further education institutes and health colleagues have been established to oversee and steer the collaboration required to ensure appropriate systems are in place across sectors to implement the requirements of the Act.

2.00	RESOURCE IMPLICATIONS
2.01	The Act has a number of resource implications for both the LA and schools. As highlighted in previous reports, there are a number of additional roles and responsibilities that the authority must respond to including the need to identify an Additional Learning Needs Lead Officer (ALNLO) for Early Years. An internal officer has been identified to take on the role but there is a need to provide backfill to enable the post holder to complete the duties associated with the new role alongside their existing duties.
2.02	Every school must name an additional learning needs coordinator (ALNCo) to lead on the school's processes which from September 2020 will be challengeable in law. This potentially will present schools with capacity issues to deliver against the new procedures identified within the Act.
2.03	The Act extends the range of provision to cover children and young people from 0 to 25. There are potential resource issues at pre-school level and post 16 as these are both areas where the current system does not require the local authority to fund additional learning provision to the level required by the new Act. This extension in age range also has implications with regard to current officer capacity to implement the new system alongside the existing one during the 3 year transformation period. The need for

	<p>additional specialist staff such as education psychologists, sensory support teachers and outreach workers has also been identified to cover the extended age range. Officers are exploring ways of quantifying the number of additional staff required based on the available data.</p>
2.04	<p>The draft Code has placed the responsibility for generating the Individual Development Plans (IDPs) which will replace Statements of SEN for children who are looked after to the home authority; in the current system, Statements are written by the authority in which the pupil resides. A significant number of the looked after population are identified with a high level of SEN and there will therefore be a need to increase the capacity within the education team to write these additional plans.</p>
2.04	<p>From 2021, local authorities will take on responsibility for commissioning specialist Post 16 provision, a responsibility which currently sits with WG. The mechanism for delegating the budget across 22 authorities is currently being discussed. As commissioning officers, the authority will adopt responsibility for funding specialist educational provision for young people up to the age of 25. There is a potential financial risk given that the number of placements required is not fixed and likely to vary from year to year; it is not yet clear how the budget allocation model will enable local authorities to respond to these changes.</p>
2.05	<p>Further scrutiny of the draft Code has identified additional areas of responsibility not previously anticipated and for which the authority has no allocated funding. These include:</p> <ul style="list-style-type: none"> • Identification of ALN for young people in custody; • Additional support/resources for children and young people with ALN who are being electively home educated (EHE). <p>Officers are in discussion with WG, particularly around the requirement for EHE as the authority does not currently receive any funding for this particular group of children.</p>
2.06	<p>Given the broadening of the legislative protection, the revised process includes dispute resolution as a formal part of the process. This has potential resource implications as does the potential increase in appeals to the Educational Tribunal which becomes an option for all children and young people with ALN under the new Act. It may be that the level and complexity of the legal challenges levied at the authority will result in the need for additional specialist legal advice.</p>
2.07	<p>The Act also requires services to consider whether a child or young person needs provision through the medium of Welsh. If they do, 'all reasonable steps' must be taken to secure the provision in Welsh. WG have indicated that further duties will come into play that mean the requirement to provide provision for ALN through the medium of Welsh will become a mandatory requirement over time which also has associated resource implications in terms of staff skills and available provision.</p>

3.00	CONSULTATIONS REQUIRED / CARRIED OUT
3.01	The authority undertook a range of consultation activities to ensure that Flintshire's response to WG was as informed as it could be and included a range of stakeholders including Headteachers, ALNCoS, officers from Education and Social services and young people.

4.00	RISK MANAGEMENT
4.01	The potential impact of the Act and its reforms have been identified as a risk both through the Council planning system (CAMMS) and the Medium Term Financial Strategy. Budget Method Statements have been generated however, it remains difficult to fully quantify the level of risk given that the final Code and associated regulations will not be available until the end of December 2019/beginning of January 2020. WG are committed to keeping to the published timescales however, the work that needs to be undertaken in response to the consultation process may impact on the timelines and delay the final publication of the Code. Work is being undertaken to base the financial estimates on the data available and the detail in the draft Code in the absence of the final document.

5.00	APPENDICES
5.01	None.

6.00	LIST OF ACCESSIBLE BACKGROUND DOCUMENTS
6.01	Additional information on the Act is available at - https://gov.wales/additional-learning-needs Contact Officer: Jeanette Rock, Senior Manager - Inclusion & Progression Telephone: 01352 704017 E-mail: jeanette.rock@flintshire.gov.uk

7.00	GLOSSARY OF TERMS
7.01	Additional Learning Needs (ALN): The Act replaces the current terms 'special educational needs' (SEN) and 'learning difficulties and/or disabilities' (LDD) with the one term ALN where ALN is defined as: (1) A person has additional learning needs if he or she has a learning difficulty or disability (whether the learning difficulty or disability arises from a medical condition or otherwise) which calls for additional learning provision.

(2) A child of compulsory school age or person over that age has a learning difficulty or disability if he or she—

(a) has a significantly greater difficulty in learning than the majority of others of the same age, or

(b) has a disability for the purposes of the Equality Act 2010 which prevents or hinders him or her from making use of facilities for education or training of a kind generally provided for others of the same age in mainstream maintained schools or mainstream institutions in the further education sector.

(3) A child under compulsory school age has a learning difficulty or disability if he or she is, or would be if no additional learning provision were made, likely to be within subsection (2) when of compulsory school age.

(4) A person does not have a learning difficulty or disability solely because the language (or form of language) in which he or she is or will be taught is different from a language (or form of language) which is or has been used at home

Statement of Special Educational Need: A Statement is a document which sets out a child's SEN and any additional help that the child should receive. The aim of the Statement is to make sure that the child gets the right support to enable them to make progress in school.

Individual Development Plan: An Individual Development Plan (IDP) is a plan created and agreed by those people most closely involved with supporting a child or young person with ALN including parents/carers, which outlines the support and provision that should be made for the individual.

Education Tribunal: An independent process that deals with appeals against local authority decisions about a child or young person and their education and also discrimination claims of unfair treatment in schools related to a disability.

Code: WG guidance outlining the statutory requirements in relation to systems and provision for ALN.