

EDUCATION & YOUTH OVERVIEW AND SCRUTINY COMMITTEE

Date of Meeting	Thursday 30 th January 2020
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 Councillors 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 references the activity undertaken by the Local Authority in response to the Act to date and highlights the potential impact once the legislation is implemented. Reference is also made to the recently announced delay in the implementation schedule.

RECOMMENDATIONS

1	That Committee receives and considers the report on the Additional Learning Needs and Education Tribunal (Wales) Act 2018.
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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 was September 2020 however WG have recently amended this to September 2021.</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. WG collated the information received and published a document in response.</p>
1.03	<p>WG indicated in their published document that the responses to the consultation raised a number of issues that required detailed consideration to determine what changes to make to the Code and the associated regulations. The volume and nature of the responses received has now resulted in the decision to delay the implementation by 12 months to September 2021. WG will now lay a revised draft of the ALN Code before the National Assembly for its approval during the Autumn Term 2020.</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 2020 with the new ALN system being implemented over a period of three years, alongside the existing system, beginning in September 2021 instead of September 2020. The regulations have been revised in relation to the statutory posts and the following must now be in place by January 2021:</p> <ul style="list-style-type: none">• Additional Learning Coordinator (ALNCo) in schools• Early Years Additional Learning Needs Lead Officer (ALNLo) for the LA• Designated Clinical Lead Officer (DECLo) within the Health Board <p>Many schools already have an ALNCo however, consideration will need to be given to ensure that the post holder has the appropriate skills and status within the school to complete the new duties. An ALNLo has been temporarily appointed within the Council. This arrangement will be reviewed and formalised once the final Code has been published.</p>
1.05	<p>The Flintshire ALN Transformation Plan maps out the activity required to ensure the Council and schools are ready and prepared for</p>

	<p>implementation; this has been revised to respond to the new implementation date. Flintshire officers are actively engaging in the work taking place across North Wales to support a consistent regional approach to the Act. The completion of the WG Readiness Audit identified the need to recruit additional capacity to enable the Council to respond appropriately to the requirements of the Code. A senior officer was appointed in September 2018 and has been responsible for the development of the local Transformation Plan. Two additional ALN officers have also been appointed, one of whom took up post in January 2020 with the second joining the Council in April 2020.</p>
1.06	<p>A range of activities continue to be undertaken in preparation for the Act including regular information update sessions with key stakeholders. The school cluster groups continue to facilitate collaborative working across the county, with the nominated cluster leads working on close collaboration with the authority's Transformation Lead. The focus for the groups during the Autumn term has been on defining universal school provision, a key element of the new system. A key focus for the Spring term is a Parental Engagement Strategy and the trial of the Individual Development Plan template. Both Council and school-based staff are continuing to train as Person Centred Planning trainers to ensure that sufficient capacity is available to meet the training needs of our schools.</p>
1.07	<p>A feasibility study has been completed in relation to a regional IT support system to facilitate the new Act. Regional representatives have attended meetings with WG to discuss the need for a national system. A paper is due to be presented to the Education Cabinet Secretary for consideration. The proposed timescale around a national system is likely to be two to three years if consent is given to proceed. Regional discussions are underway to determine whether a local solution should be developed now given the delay.</p>
1.08	<p>Additional working groups with partners such as staff from local further education institutes (FEIs) 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. Strong links have been established with colleagues from the local FEIs and work is underway to determine what constitutes universal provision in these establishments along with the anticipated support from specialist staff such as Education Psychologists. Engagement with Health colleagues is at a very early stage.</p>

2.00	RESOURCE IMPLICATIONS
2.01	<p>The Act has a number of resource implications for both the Council and schools. As highlighted in previous reports, there are a number of additional roles and responsibilities that the authority must respond to including the ALNLo for Early Years, school ALNCoS, additional officer capacity to implement the new systems along with specialist staff to cover the extended age range from 0 to 25. The delay in the publication of the final Code has impacted on the ability of officers to finalise the capacity requirements as the system detail and duties are not yet available.</p>

2.04	Under the new Act, local authorities will take on responsibility for commissioning specialist Post 16 provision, a responsibility which currently sits with WG. As commissioning officers, the authority will assume responsibility for funding specialist educational provision for young people up to the age of 25. There is a potential financial risk associated with this given that the number of placements required is not fixed and likely to vary from year to year. The budget was due to be transferred in 2021. The mechanism for this is currently being discussed and it is unclear at present when this duty will finally be transferred to local authorities. It also remains unclear how the budget allocation model will enable local authorities to respond to any significant changes in the number of placements required year on year.
2.05	<p>Further scrutiny of the draft Code had identified additional areas of responsibility not previously anticipated and for whom the authority has no allocated funding including:</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>In response to the discussion around EHE and the lack of current funding allocated to councils to support this group of children, WG has identified £1.1m for 2020-21. A data collection activity is underway to collect the information from each authority regarding numbers of EHE children and it is assumed that this will inform the allocation of this funding.</p>
2.06	The need for specialist legal advice has been discussed at a regional level. It is felt that this will be essential to support authorities to navigate the new system and a regional work stream has been established to explore the potential requirements and associated costs for consideration.
2.07	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.

3.00	IMPACT ASSESSMENT AND RISK MANAGEMENT
3.01	The potential impact of the Act and its reforms have been identified as a risk both through the Council planning system (CAMMS) and the Financial Mid-Term Plan. 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 now not be available until the end of 2020. The work undertaken has based the financial estimates on the data available and the detail in the draft Code in the absence of the final document.

4.00	CONSULTATIONS REQUIRED / CARRIED OUT
4.01	Officers undertook a range of consultation activities to ensure that the Council's response on the proposed Code was as informed as it could be. This included a range of stakeholders including Headteachers, ALN Cos, officers from Education and Social services and young people. WG is planning to consult on two new elements that they were unable to consult on previously, these relate to parents of children and young people lacking capacity and the list of Independent Special post-16 Institutions; officers will respond when these consultations go live.

5.00	APPENDICES
5.01	None.

6.00	LIST OF ACCESSIBLE BACKGROUND DOCUMENTS
6.01	Additional information on the Act is available at - ALN & Education Tribunal Act 2018 ALN Transformation Programme

7.00	CONTACT OFFICER DETAILS
7.01	Contact Officer: Jeanette Rock, Senior Manager - Inclusion & Progression Telephone: 01352 704017 E-mail: jeanette.rock@flintshire.gov.uk

8.00	GLOSSARY OF TERMS
8.01	<p>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:</p> <p>(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.</p> <p>(2) A child of compulsory school age or person over that age has a learning difficulty or disability if he or she —</p> <p>(a) has a significantly greater difficulty in learning than the majority of others of the same age, or</p> <p>(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.</p>

(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.